

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH (Court-II)

I.A. No. 115/KB/2024

C.P.314/KB/2023

In the matter of :-

The Companies Act, 2013

And

In the matter of :

Section 241 and 242 of the Companies Act, 2013

And

In the matter of:

Section 59 of the Companies Act 2013

And

In the matter of:

Vidya Finvest Limited

....Company

And

In the matter of:

1. Om Parkash Agarwal

2. Umesh Agarwal

.... Petitioners

Versus

1. Vidya Finvest Limited

2. Shankar Lal Agarwal

3. Sanwormal Agarwal

4. Vidyawati Agarwal

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- 5. Nirmala Agarwal**
- 6. Anant Agarwal**
- 7. Sunil Singh**
- 8. M/s. K.K. Poddar & Associates**
- 9. Kishan Kumar Poddar**
- 10. Ashmika Poddar**

..... Respondents

Date of Pronouncement of the order: 26.07.2024.

Coram:

Ms. Bidisha Banerjee, Member (Judicial)

Mr. D. Arvind, Member (Technical)

Appearances (via video conferencing/physical):

For the Respondent No.7

Mr. Anirban Ray, Adv.

Mr. Dripto Majumdar, Adv.

Mr. Soumalya Ganguly

For the Respondent No. 1 in IA (COMPANIES Act)/115(KB)2024

Mr. Ratnanko Banerji, Sr. Adv

Mr. Shaunak Mitra, Adv.

Mr. Shounak Mitra, Adv.

Mr. Keshav Tiberwalla, Adv.

For the Respondent No.2 in IA(COMPANIES ACT.115(KB)2024

Mr. Joy Saha ,Sr. Adv.

Mr. Dipen Chatterjee, Adv.

Mr. Vaibhavi Pandey, Adv.

Mr. Aditya Sarkar, Adv.

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For the Respondent No. 2 and 4

Mr. Abhrajeev Mitra, Sr. Adv.

Mr. Dihrendranath Sharma, Adv.

Mr. Durgesh Kr. Jha, CS.

Mr. Urmila Chakraborty, Adv.

For the Respondent No. 3,5& 7

Mr. Jishnu Saha, Sr. Adv.

Mrs. Manju Bhuteria, Adv.

Mr. Imran Hassan, Adv.

Mr. Sanket Sarawgi, Adv.

Mr. Dipak Varma, Adv.

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Court convened through hybrid mode.
2. Ld. Counsels appearing for the parties were heard in extenso.
3. This Application has been preferred by Shankar Lal Agarwal (SLA in short) in CP 314/KB/2023 to seek the following reliefs:
 - a. *The company petition being C.P. No. 314/KB/2023 (Omprakash Agarwal & Anr. Vidya Finvest Ltd.) de dismissed.*
 - b. *Stay of all further proceedings in C.P. No. 314/KB/2023 and injection restraining the petitioners from taking any step or further step inconsistent with the terms as agreed by them in the Deed of Family Settlement being Annexure "D" hereto.*
 - c. *Ad-interim orders in terms of prayers above.*

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- d. Costs of and/or incidental to this application be borne by the petitioners in the main company petition.*
- e. Such further order or orders be made and/or direction or directions be given as this Hon'ble Tribunal may deem fit and proper.*

4. The summation and summarisation of submissions made by Learned Senior Counsel Mr. Abhrajee Mitra in course of hearing in support of recall, would be the following :

- i. There is mistake apparent on the face of the order to the extent the Hon'ble Tribunal while considering I.A (Companies Act)/83/KB/2024 has considered a prayer for resisting the holding of EOGM. There is no such prayer made in either I.A (Companies Act)/83/KB/2024 or for that matter in the main company petition.
- ii. By the order impugned I.A (Companies Act)/83/KB/2024 has been disposed of finally.
- iii. Even though the order dated 13th June 2024 is passed only in I.A (Companies Act)/83/KB/2024, a direction has been made in paragraph 18 (vi) on the exercise of rights over the shares of Late Ram Kishan Agarwal (altogether 9.5%) both as Karta of Ram Kishan & Sons HUF as well as the shares standing in his own name.
- iv. While deciding grant of interim relief in I.A (Companies Act)/83/KB/2024, it appears that the Hon'ble Tribunal has passed a direction [paragraph 18(vi)] which is in consonance with the prayers made by the petitioners in C.P.No.314/KB/2023.

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- v. This Tribunal by way of the impugned order has in effect pre-decided the validity of the notice convening the EOGM i.e notice dated 8th June , 2024 which is not the subject matter of either C.P. No. 314/KB/2023 or I.A (Companies Act)/83/KB/2024.
 - vi. While deciding I.A (Companies Act)/83/KB/2024 the Hon'ble Tribunal could not have given any of the findings recorded in paragraph 18 and 19 and more particularly 18(iv) and 19 of the order impugned.
 - vii. There is no prayer directly or indirectly made in I.A (Companies Act)/83/KB/2024 in respect of the requisition dated 22nd April 2024.
- 5.** The prayer for recall is vehemently opposed by the Learned Senior Counsel Mr. Joy Saha appearing for the respondent No. 2 in IA (COMPANIES.ACT)/115(KB)2024, Learned Senior Counsel Mr. Ratnanko Banerji appearing for the respondent No. 1 in IA (COMPANIES.ACT)/115(KB)2024 and Learned Counsel Mr. Anirban Ray appearing for Sunil Kumar Singh, the Respondent no. 7 in the CP 148/KB/2023.
- 6.** Gist of the objections of the Respondents:
- i. The Application numbered IA 115/KB/2024 is not maintainable in law or on facts .
 - ii. In the garb of a recalling application the applicants are seeking a review of the order dated June 13th 2024 which is not permissible.

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- iii. It has been emphatically admitted by the applicants in paragraph IV (1) of the application that the application is for the review of the order dated June 13th 2024, which is not permitted before this tribunal.
 - iv. Furthermore, the said application is not maintainable since the application seeks to recall an order in a matter which has been disposed of by this Tribunal . Such application for recalling of a disposed of application is not maintainable.
 - v. Moreover, the said application is vexatious, malicious, mala fide and is in abuse of the process of law.
- 7.** In addition to the above, learned Senior Counsel. Mr Joy Saha would submit that the present application is hit by Section 10 and Section 11 of CPC in as much as the issues raised and decided in IA (Companies Act)/83(KB)2024 were directly and substantially in issue in IA (Companies Act)/115(KB)2024 which stands decided by this Tribunal. The applicant is asking for re adjudication of issues which is not permissible in law. It is submitted that the Learned Senior Counsel appearing for the applicant has argued the entire case of applicant (Respondent No. 2 in IA (COMPANIES.ACT)/115(KB)2024, for days together, placed numerous judgments as well as the family settlement all of which have found place in the order dated 13.06.2024.The order dated 13.06.2024 cannot be recalled.
- 8.** Learned Senior Counsel Mr. Ratnanko Banerji would argue that:
- I. A review in the guise of rectification/recall is impermissible.

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II. This Adjudicating Authority did not find any reason to stay the proceeding in C.P. 314/KB/2023 and IA 83/KB/2024 had no other prayer.

9. Learned Counsel Mr. Anirban Ray would vehemently oppose the prayer for recall on the ground that the applicant cannot do a forum shopping. Having already approached the City Civil Court and having failed to obtain an order it cannot approach this Tribunal for the self-same relief.

Analysis and Findings

10. We have considered the rival contentions.

11. We would note that IA (COMPANIES.ACT)/83(KB)2024 contained no prayers other than the following :

- I. *The Company Petition being C.P No. 314 /KB/2023 (Omprakesh Agarwal & Anr.V. Vidya Finvest Ltd.) be dismissed.*
- II. *Stay of all further proceedings in C.P. No. 314/KB/2023*
- III. *Ad-interim orders in terms of prayers above.*

This Tribunal vide an elaborate order dated 13.06.2024 has categorically refused the prayer for stay of proceedings in CP No. 314/(KB)/2023 .Nothing else survived for consideration in the IA (COMPANIES.ACT)/83(KB)2024, hence the IA was dismissed instead of keeping it alive.

12. We would further note that in order to appreciate whether proceedings in the C.P. No. 314/KB/2023 deserved to be stayed, the arguments advanced at length by all the Senior Counsels for days together were recorded vividly in the order dated 13.06.2024 .

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13. A bare perusal of the order would exemplify and demonstrate that Learned Senior Counsels for the respondents in the CP No. 314/(KB)/2023 while placing IA (COMPANIES.ACT)/83(KB)2024 had almost argued their case in the CP No. 314/(KB)/2023, they have placed the family settlement , cited decisions to show that as a Karta of the HUF ,SLA was entitled to exercise rights over the shares of HUF as well as over the shares individually held by the father Karta although the said shares are still recorded in the name of father individually as well as, as a Karta of HUF, and over the shares of the Sunil Kumar Singh (Respondent no. 7) in the CP No. 314/(KB)/2023 whose shares could not be touched due a restraining order from a competent Court of law.

14. We would also note that EOGM notices dated Dec 23 and 22nd April 2024 were also mentioned in course of hearing. However, the order does not mention about any EOGM notice dated 8.06.2024 but it categorically mentions at para 10, the purported notice dated 22nd April 2024 which was urged in course of arguments and a stay of proceedings would have by necessary implication have stayed the notice dated 22.04.24 as well.

15. In the present application the grounds seeking rectification of the order dated 13th June 2024 categorically mentions that :

The said order dated 13th June 2024 should be recalled owing to the following reasons:

- I. There is mistake apparent on the face of the order to the extent the Hon'ble Tribunal while considering I.A (Companies Act)/83/KB/2024 has considered a prayer for resisting the holding of EOGM . There is no such prayer made in either .A (Companies Act)/83/KB/2024 or for that matter in the main company petition.

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- II. While deciding grant of interim relief in I.A (Companies Act)/83/KB/2024, it appears that the Hon'ble Tribunal has passed a direction (paragraph 18 (vi) which is in consonance with the prayers made by the petitioners in CP. No. 314/KB/2023.

Both the grounds mentioned above are available where parties seek a review of the order not a mere recall of the order to rectify an error, where the errors complained of are self-evident and does not require to be detected by a power of reasoning. In fact, in order to prove that there is an error **“apparent as the face of the record”**, learned Senior Counsel seeking rectification by way of I.A. No. 115/KB/2024 had to argue for almost two days.

16. We are conscious of the legal position as in **Order 47 Rule 1 and Section 114 of the CPC**. It is settled law that a party may apply for review of an order/decreed passed by a Court if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying an exercise power of review under Order 47 Rule 1 of the Code. It is also well settled that in exercise of jurisdiction under Order 47 Rule 1 of the Code not permissible for decision to be reheard and corrected and the power of the Court to review its judgment cannot be allowed to be "an appeal in disguise". There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter can only be corrected by exercise of review jurisdiction. Even an erroneous decision cannot be a ground

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for the Court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order, review of which is sought suffers from any error apparent on the face of the order and in absence of any such error, finality attached to the judgment/order cannot be disturbed.

- 17.** In the case of **State of West Bengal and Others vs. Kamal Sengupta and Anr., (2008) 8 SCC 612**, Hon'ble Apex Court had an occasion to consider what can be said to be "mistake or error apparent on the face of record". In para 22 to 35 it is observed and held as under:

"22. The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.

(Emphasis added)

- 18.** Further, it is trite, axiomatic and settled law that even power of review can be exercised by a Tribunal only if such power is statutorily available for exercise, and that too on limited grounds of discovery of some new and important matter of evidence that was not within the knowledge of parties seeking review despite exercise of due diligence when the order

was made, or where the order discloses some error evident per se from the record of the case and can be detected without an elaborate process of reasoning a detailed scrutiny and elucidation either of facts or legal position.

19. Rule 11 of NCLT Rules, 2016 envisage the Inherent Powers of NCLT as follows.

“Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.”

Rule 154 on Rectification of Order reads.- *(1) Any clerical or arithmetical mistakes in any order of the Tribunal or error therein arising from any accidental slip or omission may, at any time, be corrected by the Tribunal on its own motion or on application of any party by way of rectification. (2) An application under sub-Rule (1) may be made in Form No. NCLT 9 within two years from the date of the final order for rectification of the final order not being an interlocutory order.*

20. In Union Bank of India (Estwhile Corporation Bank) v. Dinkar T. Venkatasubramanian Reported in **(2023) ibclaw.in 382 NCLAT**, the **Hon’ble NCLAT** after examining the provisions of Rule 11 of NCLT Rules akin to Section 151 of CPC and Rule 154 of the NCLT Rules akin to Section 152 of the CPC has succinctly held as under:

“27. The Hon’ble NCLAT has this Tribunal is not vested with any power to review the judgment, however, in exercise

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of its inherent jurisdiction this Tribunal can entertain an application for recall of judgment on sufficient grounds”.

(Emphasis added)

Thus, the power of review is not available to this Tribunal, what is available to this Tribunal is a power to rectify its order on limited grounds where errors arise from any accidental slip or omission.

- 21.** In the aforesaid backdrop the prayer for recall of the order dated 13.06.2024 on the grounds mentioned in the application are disallowed.
- 22.** However, it was pointed out in the course of arguments that the name of the father Karta has been wrongly mentioned in paragraphs 18 (iii) and (iv) of the order, the shareholding of petitioners is also incorrectly recorded in para 18 (i). These are errors that are self evident and need rectification for the ends of justice.
- 23.** The order dated 13.06.2024 is thus rectified in the following manner:
 - a. “40%” will read as “42.07%” in para 18(i) of the order.
 - b. “Shankar Lal Agarwal” in the paragraphs 18(iii) and (iv) order will read as “Ram Kishan Agarwal”, since the name of the father Karta has been wrongly mentioned therein.
 - c. After “brothers” in 18 (vi) “as of now” will be added as urged by the Learned Senior Counsels for the applicants, for it may impact the pending Civil Court proceedings.
 - d. The last line will read as “I.A. No. 115/KB/2024 is posted on 06.08.2024”.

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24. The present application **I.A.No.115/KB/2024** in C.P. 314/KB/2023 is thus *partly allowed and disposed of*.

25. The certified copy of this order, if applied or be supplied to the parties, subject to compliance with all requisite formalities.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order is signed on the 26th Day of July, 2024.

Tiwari, V. [LRA]