

NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1,
MUMBAI BENCH

Item No. 10

IA 3501/2024 (NEW IA) in C.P. (IB)/2156(MB)2019

CORAM:

SH. PRABHAT KUMAR JUSTICE VIRENDRASINGH BISHT (Retd.)
HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON **08.07.2024**

NAME OF THE PARTIES: **CANARA BANK VS KGS SUGAR AND**
INFRA CORPORATION

Section 60(5) & 7 of the Insolvency and Bankruptcy Code, 2016

ORDER

IA 3501/2024 (NEW IA) in C.P. (IB)/2156(MB)2019

- 1) Mr. Partho Sarkar, Ld. Counsel for the Applicant is present.
- 2) This Interlocutory Application has been filed by the Applicant/Sunil G. Kundnani, seeking recall of the order dt. 03.05.2024, passed by this Bench in IA 1133 of 2022 on the basis of law settled by the Hon'ble Appellate Tribunal in the matter of *Rakesh Kumar Gupta V/s Straight Edge Contracts (P) Ltd., 2023 SCC OnLine NCLAT 2669*, wherein it was ruled that '*the Adjudicating Authority had the jurisdiction to recall its own order which has been obtained by playing fraud upon it*'.
- 3) It is submitted that in the facts of the instant case, the fraud committed by the Respondent was iterated before this Tribunal *inter alia* vide **Diary No.**

D - 4089, dt/- 12.04.2024, which escaped consideration in the order dt. **03.05.2024 in IA (I.B.C) - 1133/2022**.

- 4) Heard the Ld. Counsel for the Applicant and perused the material available on record.
- 5) It is undisputed proposition that this Tribunal has power to recall its order in terms of Rule 11 of NCLT Rules, 2016. In the case of *Greater Noida Industrial Development Authority v. Prabhjit Singh Soni and Anr.*, the Hon'ble Apex Court held that "Further, Rule 11 of the NCLT Rules, 2016 preserves the inherent power of the Tribunal. Therefore, even in absence of a specific provision empowering the Tribunal to recall its order, the Tribunal has power to recall its order. However, such power is to be exercised sparingly, and not as a tool to re-hear the matter. Ordinarily, an application for recall of an order is maintainable on limited grounds, inter alia, where (a) the order is without jurisdiction; (b) the party aggrieved with the order is not served with notice of the proceedings in which the order under recall has been passed; and (c) the order has been obtained by misrepresentation of facts or by playing fraud upon the Court/Tribunal resulting in gross failure of justice".
- 6) This Application is filed claiming that the order dt. 03.05.2024 in IA 1133 of 2022, was obtained by playing a fraud and this fact was iterated to this Tribunal *vide* **Diary No. D - 4089, dt/- 12.04.2024**, which escaped the consideration in the order dt. 03.05.2024.

7) On perusal of the case records, we find that the document filed vide **Diary No. D - 4089, dt/- 12.04.2024**, is still lying in defect which was notified on 25.04.2024. The order which is sought to be recalled was pronounced by this Bench on 03.05.2024. The relevant screenshot is as below:

7.	Any-Other-Document	Respondent : R1	Written-Submission-KGS.pdf	1	2709138020862022/5	Defected Doc	12-04-2024 00:00:00	 YES 25-04-2024 00:00:00	 NO	 NO
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- 8) In view of the above, we do not find any merit in the submissions of the Applicant that the order dt. 03.05.2024, came to be passed without considering the material before the Bench till that date.
- 9) With the aforesaid observations, the Interlocutory Application bearing IA No. 3501 of 2024, is disposed of dismissed.

Sd/-

**PRABHAT KUMAR
MEMBER (TECHNICAL)**

Vedant Kedare

Sd/-

**JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)**