

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO: II**

**PHYSICAL HEARING**

**CORAM: JUSTICE TELAPROLU RAJANI – HON’BLE MEMBER (J)**

**CORAM: SHRI CHARAN SINGH - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 05.07.2023 AT 02:30 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/1031/2023 IA (IBC)/305/2023 Intervention Petition (IBC)/15/2023 Intervention Petition (IBC)/30/2023in IA No.305/2023 in CP (IB) No.372/7/HDB/2018
NAME OF THE COMPANY	Indu Projects Ltd
NAME OF THE PETITIONER(S)	Bank of India
NAME OF THE RESPONDENT(S)	Indu Projects Ltd
UNDER SECTION	7 of IBC

**ORDER**

**IA (IBC)/1031/2023 Intervention Petition (IBC)/15/2023 and Intervention  
Petition (IBC)/30/2023in IA No.305/2023**

These applications are dismissed, vide separate orders.

**IA (IBC)/305/2023**

This application is allowed, vide separate orders.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD  
COURT No.II**

**IA No. 15 of 2023  
in  
IA No. 305/HDB/2023  
IN  
CP (IB) No. 372/7/HDB/2018  
[ 60(5) of Insolvency and Bankruptcy Code, 2016  
r/w rule 11 of the NCLT Rules, 2016)**

**In the matter of Indu Projects Limited**

**Between**

**Enforcement Directorate,  
Hyderabad Zonal Office,  
3<sup>rd</sup> Floor, Shakar Bhawan,  
Fateh Maidan Road, Hyderabad - 500 004  
Represented by its Deputy Director**

**... Applicant/Implead Petitioner**

**And**

**Indu Projects Limited  
Registered Office at 1009,  
Indu Fortune Fields,  
13<sup>th</sup> Phase, KPHB Colony  
Through the Resolution Professional  
Mr. Anup Kumar Singh**

**... Respondent No.1/Corporate Debtor**

**Mr. Anup Kumar Singh,  
4<sup>th</sup> Floor, Flat No. 4A, Bidyaraj Niket  
22/28A, Manohar Puku Road,  
New Deshpriya Park, Kolkata,  
West Bengal - 700 029**

**... Respondent No. 2/Resolution Professional**

**Date of order : 05/07/2023**

**Coram:**

**Hon'ble Justice Mrs. Telaprolu Rajani, Member (Judicial)  
Hon'ble Shri Charan Singh, Member (Technical)**

**Parties / counsels present:**

For petitioner : Mr. D. Narender Naik, Advocate

For respondent: : Mr. V.V.S.N. Raju, Advocate

### **ORDER**

1. This application is filed by the Applicant, who is the Enforcement Directorate seeking to implead itself in IANo.305 of 2023 on the ground that it came to know about the Resolution Plan approval application before this Tribunal and the RP may be aware from the records available in the office of the CD that some of the properties of the CD are under attachment under the Prevention of Money Laundering Act, 2002. However, the RP has not provided any information to the Applicant as to whether the attached properties are also being put to sale. There is a specific prohibition under the PMLA from sale/disposal/transfer of tainted property which has proceeds of crime and hence, hearing of the above plan approval application would be detrimental to the applicant.

2. Respondent No. 1 filed Counter denying the contentions of the application and further contending that the applicant has no locus standi to file the instant application at this stage, as the applicant has been silent for such a longtime and even after service of a notice, it did not appear before this Tribunal and did not come forward in the previous 2 rounds of CIRP and nothing substantial has changed which would necessitate the impleadment of the applicant in this round of CIRP.

2.1 It is contended that the contention of the applicant that the properties are attached by it are getting released under the present resolution plan is pre-mature. The process of resolution is governed by the Rules and Regulations under the IB Code, 2016 and the resolution plan needs to be approved by the Tribunal. When there are two special statutes in conflict, the one which came later shall prevail. In the present case, there is a conflict between Prevention of Money Laundering Act, 2002, under which, the applicant attached the properties and the IB Code, 2016 and, therefore, the latter shall prevail. If the criminal proceedings under the

PMLA would take a long time and if the applicant is impleaded at this stage, it would cause irreversible loss to the interest of the Corporate Debtor.

3. Heard both the counsel and perused the written submissions. We do not find it necessary to discuss about the submissions made in writing before us since the Resolution Professional, during the course of his arguments, submitted that there is no proposal to sell the assets which are under attachment of the ED and that the application in 305 of 2023 is filed only for approval of the resolution plan. Hence, the intervention sought for by the applicant on the apprehension that the assets under the attachment of the ED would be sold by the RP is found to be baseless. In view of the categorical submission made by the RP that there is no such proposal to sell the assets at this stage, the apprehension and the prayer to implead do not sustain. For the above reason, we do not opine that the intervention of the applicant is needed in I.A. No. 305 of 2023, which is filed only for approval of the Resolution Plan. Hence, this application is dismissed.

4. Accordingly, IA 15/2023 in IA No. 305/2023 in CP(IB) No. 372/7/Hyd/2018 is dismissed with liberty for the applicant to move the tribunal if need be, at the relevant time.

Sd/-

**CHARAN SINGH  
MEMBER (TECHNICAL)**

Sd/-

**JUSTICE TELAPROLU RAJANI  
MEMBER (JUDICIAL)**

*kv*

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD  
COURT No.II**

**Intervention Petition No. 30 of 2023  
in  
IA No. 305/HDB/2023  
IN  
CP (IB) No. 372/7/HDB/2018  
[ 60(5) of Insolvency and Bankruptcy Code, 2016  
r/w rule 11 of the NCLT Rules, 2016)**

**In the matter of Indu Projects Limited**

**Between**

**The Andhra Pradesh Industrial  
Infrastructure Corporation Ltd.,  
Represented by its Vice Chairman and Managing Director,  
APIIC Towers, Plot No. CFC-1,IT Park,  
Manglagiri, Guntur - 522503**

**... Petitioner**

**And**

**Indu Projects Limited  
Represented through the Resolution Professional  
Mr. Anup Kumar Singh  
Ideal Plaza, S-405, 4<sup>th</sup> Floor,  
11/1 Sarat Bose Road, Kolkata - 700 020  
West Bengal, India.**

**M/s Lepakshi Knowledge Hub Ltd.,  
Sy.No. 35/2, 35/1, (Part), 1<sup>st</sup> Cross,  
Ananthapura Village, Singanaykanahalli,  
Yalahanka, Bengaluru,  
Karnataka - 500 064, India**

**M/s Earthin Projects Ltd.,  
Address: H.No. 1-1867(B) Velamapalem  
Chittor AP 517 640  
Represented by its Managing Director**

**... Respondents**

**Date of order : 05/07/2023**

**Coram:**

**Hon'ble Justice Mrs. Telaprolu Rajani, Member (Judicial)  
Hon'ble Shri Charan Singh, Member (Technical)**

**Parties / counsels present:**

For petitioner : Mr. P.H. Pannagasai, Advocate

For respondent: : Mr. V.V.S.N. Raju

**ORDER**

1. This application is filed by the Applicant, who is Andhra Pradesh Industrial Infrastructure Corporation Ltd. seeking to a) direct the Respondent No. 1 to exclude the land which was previously allotted to Respondent No. 2 in Chilamathur Mandal, AP by the GO A/APIIC from the Asset/Information Memorandum of the Corporate Debtor and the Liquidation Estate of Respondent No. 1/Corporate Debtor and further to restrain the Resolution Professional/Corporate Debtor from dealing with the subject lands in any manner including entering the land and b) to cancel and set aside the Resolution Process, in so far it relates to the subject lands and any Resolution Plan including the transfer of the said land and to effect such deletion in changed Resolution Plan also from Resolution Process carried out afresh in terms of the order passed by this Tribunal, to the extent the same included the subject assets and to pass any necessary orders in the interest of justice.

2. It can be seen that though the application is captioned as Intervention Petition, no prayer for intervention is made. At the time of hearing, the applicant did not press for relief against the 3<sup>rd</sup> Respondent and the application filed against the Respondent No.3 is dismissed by this Tribunal by virtue of order dated 22/06/2023. The applicant is not a party in I.A. No. 305 of 2023, but, it seeks relief with respect to I.A. No. 305 of 2023, which is not sustainable.

2.1 We do not opine that traversing to the entire facts is required as the relevant facts would be discussed during the process of adjudicating the issues. The Government authorities allotted some land to the Respondent No. 2 for specific purpose of project implementation within the prescribed

period under SEZ. Even though NOC documents dated 05/09/2009 and 12/05/2020 were withdrawn by the applicant, following the breach of the terms and conditions of MoA, the Government of AP cancelled the allotment of subject assets to Respondent No. 2 vide order in GO MS 44 dated 13/02/2014 and the same was challenged by the Respondent No. 2 in a WP No. 5028 of 2014, which is pending for disposal before the Hon'ble High Court.

3. The applicant is trying to mislead the Tribunal by contending that Respondent No. 1 is trying to sell those lands. From the argument of the Resolution Professional and the categorical statement made before the Tribunal that Respondent No. 1 is not trying to sell the lands which are the subject matter of I.A. No. 30 of 2023, we do not find any reason to allow the prayer of the applicant to implead it in I.A. No. 305 of 2023, which is not a prayer in the application. The application itself has not properly formatted and, hence, we dismiss the application.

4. Accordingly, I.A. No. 30 of 2023 in IA No. 305/2023 in CP(IB) No. 372/7/Hyd/2018 is dismissed and stands disposed of.

Sd/-

**CHARAN SINGH**  
**MEMBER (TECHNICAL)**

Sd/-

**JUSTICE TELAPROLU RAJANI**  
**MEMBER (JUDICIAL)**

*kv*

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD  
COURT No.II**

**IA No. 305/HDB/2023  
IN  
CP (IB) No. 372/7/HDB/2018  
[ 60(5) of Insolvency and Bankruptcy Code, 2016  
r/w rule 11 of the NCLT Rules, 2016)**

**In the matter of Indu Projects Limited**

**Between**

**Mr. Anup Kumar Singh  
Registration No. IBBI/IPA-001/IP-P00153/2017-2018/10322  
Having Office at Suite 1B, 1<sup>st</sup> Floor,  
22/28A Manoharpukar Road,  
Kolkata – 700 029**

**... Applicant**

**And**

**Indu Projects Limited  
Registered Office at 1009,  
Indu Fortune Fields,  
13<sup>th</sup> Phase, KPHB Colony  
Through the Resolution Professional**

**... Corporate Debtor**

**Vs.**

**Bank of India  
Large Corporate Branch,  
PTI Building, 1<sup>st</sup> Floor,  
10-1-1199/2, AC Guards,  
Hyderabad – 500 004, Telangana**

**... Financial Creditor**

**Date of order : 05/07/2023**

**Coram:**

**Hon'ble Justice Mrs. Telaprolu Rajani, Member (Judicial)  
Hon'ble Shri Charan Singh, Member (Technical)**



**Parties / counsels present:**

For petitioner : Mr. S. Ravi, Sr. Counsel along with  
Mr. V.V.S.N. Raju, Advocate

For respondent: : -

**ORDER**

1. This application is filed by the Applicant u/s 30 R/w 60(5) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of NCLT Rules, 2016, by the Resolution Professional, seeking to approve the Resolution Plan submitted by the consortium of Mr. B. Subba Reddy and Mr. C. Venkateswara Reddy as approved by the Committee of Creditors (CoC) and to issue necessary directions to the statutory and regulatory bodies to grant necessary approvals in an expeditious manner.

2. The facts, in brief, are as follows:

i) The Corporate Debtor (CD) has been taken into CIRP by virtue of the order dated 25/02/2019 by this Tribunal. Two Resolution Plans were received by the Applicant and the same were put for voting in the 11<sup>th</sup> CoC meeting conducted on 24th January, 2020. In the said meeting, the plan proposed by one, Shyamraju & Company (India) Private Limited was accepted by the CoC and the said Resolution Applicant was declared as the H1 Bidder. However, the said plan could not muster the minimum 66% of the vote of the CoC and, hence, the same was rejected.

ii) The Applicant filed an application u/s 33 of the IBC for commencement of liquidation proceedings and due to Covid-19, the same could not be taken up by this Tribunal. Meanwhile, the Applicant received an Expression of Interest (EoI) from M/s Earthin Projects Limited, which expressed an intention to participate in the resolution process in relation to the CD. An extension was sought for the CIRP. Thereafter, the applicant published fresh Form G and the applicant received three Resolution Plans.

The plan submitted by M/s Earthin Projects Limited in consortium with K. Ramachandra Rao Transmission & Projects Pvt. Ld. was approved by the CoC with 100% voting and the same was approved by this Tribunal. However, due to the failure of the said Resolution Applicant to fulfil the conditions under the Resolution Plan, a fresh process of CIRP was conducted, during which 8 EoIs were received and the plan submitted by , B. Subba Reddy in consortium with C. Venkateswara Reddy, was approved after due deliberations, by 100% voting. The plan is as follows:

Sl.No.	Particulars	Amount claimed (Rs.)	Amount admitted by RP (Rs.)	Amount provided under Resolution Plan	Term
1	CIRP Costs	1,00,00,000	1,00,00,000	1,00,00,000	Upto 90 days
2	Operational Creditors				
	a) Operational creditors (other than workmen and employees)	2,91,32,32,996.00	1,78,66,48,321.41	4,99,81,567.87	Upto 90 days
	b) Operational creditors (workmen and employees)	6,47,96,432.00	4,21,37,889.00	1,00,00,000	Upto 90 days
	c) Other operational creditors				
	Total operational creditors	2,97,80,29,428.00	1,82,87,86,210.41	5,99,81,567.87	
3	Financial Creditors	41,89,94,65,115	38,90,93,27,075.57	3,94,00,00,000.00	Upto 90 days

4	Unsecured Financial Creditors (Related Party)	43,67,27,483.00	43,67,27,483.00	0	Upto 90 days
5	Government dues	1,84,282.00	1,82,025.88	18,432.13	Upto 90 days
	<b>Total</b>	42,33,63,76,880.00	39,34,62,36,584.45	3,94,00,18,432.13	
6	Working capital			1,00,00,00,000.00	Upto 90 days
	<b>Total Resolution Fund</b>			<b>501,00,00,000.00</b>	

**Notes:**

(i) The Resolution Applicant is proposing to assume responsibility of all the existing uninvoked Bank Guarantees – as set out in Section E Clause 2.6 of the Resolution Plan.

(ii) The Resolution Applicant is also proposing to invest INR 100,00,00,000 towards the Working Capital based on the business exigencies as set out in Section E Clause 2.8 of the Resolution Applicant.

Both (i) and (ii) shall be read as part of the total resolution fund proposed by the RA, for the Corporate Debtor but not forming part of the payments proposed to the stakeholders outlined in the resolution plan.

A copy of the Resolution Plan proposed by consortium of B. Subba Reddy and C. Venkateswara Reddy as approved by the CoC is annexed hereto and marked as **Annexure X**.

iii) Post approval of the Resolution Plan by the Members of CoC, the applicant issued a letter of intent dated 04/02/2023 to the successful resolution applicant being the consortium of Mr. B. Subba Reddy and Mr. C. Venkateswara Reddy and received a Performance Bank Guarantee (PBG) of Rs. 29,40,00,000/- dated 9<sup>th</sup> February, 2023 along with Rs. 10,00,00,000/- of Earnest Money Deposit, which forms part of the Performance security, adding up to a total amount of Rs. 39,40,00,000/- in terms of requirement of PBG required as per the letter of intent dated 04/02/2023, to the successful resolution applicant, till the complete

implementation of the resolution plan, in compliance with Regulation 36B(4A) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. A copy of the Letter of Intent dated 04/02/2023 and receipt of PBG dated 09/02/2023 are annexed as “Annexure Y” to the application.

iv) The compliance certificate is submitted in Form H of the Schedule, in accordance with Regulation 39(4) IBBI (Insolvency Resolution Process for Corporate Persons), 2016. The contents of the Resolution Plan meet the requirements as mandated under the Provisions of IBC, 2016 and Regulations therein. A copy of the report of the Legal Advisor, validating that consortium of Mr. B. Subba Reddy and Mr. C. Venkateswawra Reddy, who is successful resolution applicant is eligible to participate in the Resolution Process u/s 29A of the IBC, 2016, was received by the applicant and annexed as “Annexure AA” to the application.

v) The Resolution Plan is in compliance with the IBC, 2016 and the Regulations made thereunder and does not contravene any of the provisions of the law.

3. We have heard the Id. Counsel for the Applicant and perused the record.

The counsel for the petitioner submits that the Resolution Plan meets the requirement of Section 30 (2) of the Code, as under:-

(a) Provides for payment of Rs. 1,00,00,000/- towards CIRP Cost within 30 days of the NCLT Approval Date.

(b) The Plan provides for payment of the amount provided under the Resolution Plan of the operational creditor on priority, in terms of Section 30 (2)(b).

(c) There are no dissenting creditors, as such the plan does not provide for payment to the dissenting Operational Creditors.

4. The Resolution Plan is in compliance of Regulation 38 of the Regulations in the following manner:

(a) The Plan provides for payment of claim amount restricted only to the extent specified in the resolution plan to the operational creditor on priority

(b) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38 (1A) is placed on record.

5. In *K. Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No. 10673/2018) the Hon'ble Apex Court held that, when the CoC had approved the Resolution Plan by requisite percent of voting share, then as per Section 30 (6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority. On receipt of such proposal, the Adjudicating Authority (NCLT) is required to satisfy itself that the resolution plan, as approved by CoC, meets the requirements specified in Section 30(2). No more and no less".

6. The Hon'ble Supreme Court has further held at para 35 of the above judgement that the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31, limited to scrutiny of the resolution plan "as approved" by the requisite percent of voting share of Operational creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements.

7. The Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors*, held that "the limited judicial review available to AA has to be within the four corners of section 30(2) of the Code. Such review can in no circumstance trespass upon a business decision of the majority of the CoC. As such the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved".

8. The Hon'ble Supreme Court of India, in the recent ruling in re Vallal RCK vs M/s Siva Industries and Holdings Limited & Ors, has held as under:-

*“21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that Operational creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in the cases of K. Sashidhar v. Indian Overseas Bank and Others, Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another, and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.*

*27. This Court has, time and again, emphasized the need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this Court made in the case of Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another: “95. ....However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.....”*

9. As per the Resolution Plan “The Insolvency Resolution Plan considers Insolvency Resolution Process Costs which have been estimated at an amount of Rs.1,00,00,000/- which includes payment to the Resolution Professional and all amount of expenses incurred by RP, to the extent duly ratified or approved by the COC and shall be paid in priority to all other debts by the Resolution Applicants. The source for the amount

can be identified as a commitment by the resolution applicants. Any higher amount over and above this (as approved by the COC) shall be borne and paid by the Resolution Applicants on a priority basis in addition to the proposed amount as above”.

10. In so far as the CIRP expenses are concerned the plan provides for Rs. 1,00,00,000/- payable in priority to all other debts payable by the Resolution Applicants.

11. Therefore, by testing the resolution plan, on the touch stone of the aforesaid facts and the rulings, we are of the view that the instant resolution plan satisfies the requirements of Section 30 (2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. We also find that the Resolution Applicant is eligible to submit the Resolution Plan under Section 29A of the Code.

12. We therefore, hereby approve the Resolution Plan submitted by Mr. B. Subba Reddy in consortium with Mr.C. Venkateswara Reddy along with annexure, schedules forming part of the Resolution Applicant annexed to the Application and order as under:

(i) The Resolution Plan along with annexures and schedules forming part of the plan shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

(ii) All crystallized liabilities and unclaimed liabilities of the Corporate Debtor as on the date of this order shall stand extinguished on the approval of this Resolution Plan.

(iii) The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/ liabilities of the Corporate Debtor and shall be dealt with by the appropriate Authorities in

accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned as held by Hon'ble Supreme Court in the matter of Ghanashyam Mishra And Sons Private Limited Versus Edelweiss Asset Reconstruction Company Limited in CIVIL APPEAL NO.8129 OF 2019 dated 13.04.2021.

(iv) That amount deposited in lieu of Performance Bank Guarantee shall remain as performance guarantee till the amount proposed to be paid to the creditors under this plan is fully paid and the plan is fully implemented.

(v) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC) Hyderabad for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.

(vi) Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to supra.

(vii) The moratorium under Section 14 of the Code shall cease to have effect from this date.

(viii). The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this order for information.

(ix). The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.

(x). The Registry is directed to furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016.

(xi) The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and also forward a copy to IBBI. (xii).



xii) Accordingly, IA 305/2023 in CP(IB) No. 372/7/Hyd/2018 is allowed and stands disposed of.

Sd/-

**CHARAN SINGH  
MEMBER (TECHNICAL)**

Sd/-

**JUSTICE TELAPROLU RAJANI  
MEMBER (JUDICIAL)**

*kv*

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**HYDERABAD BENCH - II**

**IA No.1031/2023 in**  
**IP No.8/2023 in**  
**IA No.305 of 2023 in**  
**CP(IB) No.372/7/HDB/2018**  
**Under Rule 11 of NCLT Rules, 2016**

**In the matter of:**

M/s. Earthin Projects Ltd,  
In consortium with K. Ramachandra Rao  
Transmission & Projects Pvt. Ltd.  
D.No.1-1867-B, Velampalem,  
Srikalahasthi (M) – 517 644,  
Chitoor District

.... Applicant

Vs

1. Indu Projects Limited,  
1009, Indu Fortune Fields,  
13<sup>th</sup> Phase, KPHB Colony,  
Hyderabad – 500 072.
2. Mr. Anup Kumar Singh,  
H.No.162/D/702, Lake Gardens,  
Kolkata, West Bengal – 700 045.

....Respondents

**Date of order: 05.07.2023**

**CORAM:**

Hon'ble Justice Smt. Telaprolu Rajani, Member (Judicial)

Hon'ble Sri Charan Singh, Member (Technical)

**Counsels present:**

For the Applicant : Ms. Sandhya Rani, Advocate  
Mr. Avinash, Advocate

For the Respondents : Mr. S. Ravi, Senior Advocate  
Mr. V.V.S.N. Raju, Advocate

Heard on : 28.06.2023

**[PER: BENCH]**  
**ORDER**

1. This application is filed by the Applicant M/s. Earthin Projects Ltd, seeking to recall the Order dated 19.06.2023 in IP No.8 of 2023 in IA No.305 of 2023 in CP No.372/HDB/2018 and to defer the hearing of IA No.305 of 2023, pending disposal of the instant application.
2. At the outset, the 2<sup>nd</sup> prayer can be dismissed, since the hearing on the application is already concluded and it is reserved for Orders.
3. As regards the first prayer, the Counsel submits that, in the order sought to be recalled, at Para No.7, it was recorded that; the Counsel for the Respondent relied on the judgement of the Hon'ble NCLAT in the case of Vasan Health Care Pvt. Ltd. wherein it was held:

*“Appellant being an Unsuccessful Resolution Applicant, has no ‘Locus’, to ‘assail’ a ‘Resolution Plan’ or its ‘implementation’, coupled with a candid fact that he is not a ‘Stakeholder’, as per Section 31(1) of the I & B Code, 2016, in relation to the ‘Corporate Debtor’, this ‘Tribunal’, without any haziness, holds that the Appellant is not an aggrieved person coming within the ambit of*

*Section 61(1) of the I & B Code, 2016, especially when he is not a privy to the Resolution Plan.”*

4. He submits that the Applicant herein is not an Unsuccessful Resolution Applicant and he is in fact a Successful Resolution Applicant and hence, dismissing the application on the premise that the Applicant is an Unsuccessful Resolution Applicant and hence does not have locus, is erroneous.
  
5. As regards the jurisdiction of this Tribunal to recall its own Order, the Counsel relies on the judgement of the *Hon'ble Supreme Court in Civil Appeal No.955 of 1985 between Budhia Swain and Ors. Vs. Gopinath Deb and Ors, wherein, the Hon'ble Supreme Court observed as follows:*

*“What is a power to recall? Inherent power to recall its own order vesting in tribunals or courts was noticed in Indian Bank Vs. M/s Satyam Fibres India Pvt. Ltd. 1996 (5) SCC 550. Vide para 23, this Court has held that the courts have inherent power to recall and set aside an order (i) obtained by fraud practised upon the Court, (ii) when the Court is misled by a party, or (iii) when the Court itself commits a mistake which prejudices a party. In A.R. Antulay Vs. R.S. Nayak & Anr. AIR 1988 SC 1531 (vide para 130), this Court has noticed motions to set aside judgments being permitted where (i) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all and was*

*shown as served or in ignorance of the fact that a necessary party had died and the estate was not represented, (ii) a judgment was obtained by fraud, (iii) a party has had no notice and a decree was made against him and such party approaches the Court for setting aside the decision ex debito justitiae on proof of the fact that there was no service.”*

6. The Counsel on the grounds 2 & 3 mentioned in the above judgement seeks this Tribunal to recall the Order. He contends that the Court was misled as regards the status of the Applicant as Unsuccessful Resolution Applicant which he is not.
7. The judgement of the *Hon'ble NCLAT in IA 3961 of 2022 in Company Appeal (AT) (Ins.) No. 729 of 2020 between Union Bank of India (Erstwhile Corporation Bank) Vs. Dinkar T. Venkatasubramanian & Ors*, was also relied upon in support of the contention that, this Tribunal has the power to recall its Order.
8. It can be seen that the *Hon'ble NCLAT* in the above mentioned judgement has held that, the judgements of the *Hon'ble Supreme Court* mentioned therein clearly lay down that there is

a distinction between review and recall. It is held that the power to review is not conferred upon this Tribunal, but power to recall its judgement is inherent in this Tribunal, since inherent power of the Tribunal are preserved powers which are inherent in the Tribunal as has been declared by Rule 11 of the NCLAT Rules, 2016. It was also observed that power of recall is not power of the Tribunal to rehear the case to find out any apparent error in the judgment which is the scope of a review of the judgement. It was categorically held that the power to recall of a judgment can be exercised by this Tribunal, when any procedural error is committed in delivering the earlier judgement. Obviously, the error pointed is not a procedural error. But by relying on the 1<sup>st</sup> cited judgement rendered by the Hon'ble Supreme Court, he seeks for recall of the Order.

9. A look at the brief facts of the case as are necessary and relevant would be beneficial. At the outset it can be said that the term "unsuccessful" suits the applicant better than many. The Applicant nevertheless was a Successful Resolution Applicant, but he became unsuccessful in getting the Resolution Plan accepted due to his failure in fulfilling the

conditions under the Plan which is to pay the amount provided for under the Plan.

10. Due to his inability to pay the amount within the given time, the Applicant has sought for extension of time for payment which was granted by this Tribunal. Even after expiry of the said time period, he could not fulfil the condition. Hence, the Applicant moved another Application, seeking for further extension of 60 days time which was rejected, against which, an Appeal was preferred before the Hon'ble NCLAT and the Hon'ble NCLAT granted extension of 3 months during which period also, the Applicant could not pay the amount. Then, the Resolution Professional filed an IA, seeking fresh IRP which was allowed by this Tribunal against which also, an Appeal was preferred by the Applicant herein before the Hon'ble NCLAT and the Hon'ble NCLAT confirmed the Order passed by this Tribunal. Thereafter, the Applicant moved the Hon'ble Supreme Court and as submitted by the counsel, the case is pending before the Supreme Court.

11. After all these unsuccessful attempts made by the Applicant, he claims to be falling under the category of Successful Resolution Applicants by merely going on the technical interpretation that he became a Successful Resolution Applicant in the first instance which is a past story.
  
12. The Counsel could not satisfy us as to under what category, the Applicant who was once the Successful Resolution Applicant and could not fulfil the conditions of the Resolution Plan, would fall. The supreme court, in the above cited judgment, in fact used the term “unsuccessful resolution applicant” in respect of the resolution applicant who submitted his plan in response to the invitation and was in the fray. The applicant herein does not even fall under the definition of “unsuccessful resolution applicant” much less resolution applicant, since he did not submit any plan when invitation was made afresh. His grievance expressed through the counsel, at the time of arguments, as to what would happen to his earnest money, cannot be redressed by this tribunal in this application since it is beyond the scope of this application.



13. Hence, seeing no merits in the application, we dismiss the application, but not without observing that it is a frivolous application. We refrain from imposing costs, which this application deserves, out of mere sympathy, that he already sustained loss with regard to his earnest money and by considering this application as a desperate move. This application IA 1031/2023 is accordingly dismissed and disposed of.

**Sd/-**

**(CHARAN SINGH)  
MEMBER (TECHNICAL)**

**Sd/-**

**(JUSTICE TELAPROLU RAJANI)  
MEMBER (JUDICIAL)**

**VL**