

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

IA-1758/2024
In
IB-571(ND)/2020

IN THE MATTER OF IB-571(ND)/2020:

M/s. SREI INFRASTRUCTURE FINANCE LIMITED

..... **Financial Creditor**

Versus

M/s. GUJARAT HYDROCARBONS AND POWER SEZ LIMITED

..... **Corporate Debtor**

AND IN THE MATTER OF IA-1758/2024:

Mr. RAKESH KUMAR AGARWAL

..... **Applicant**

Order Pronounced On: 23.04.2024

CORAM:

**SHRI ATUL CHATURVEDI
MEMBER (TECHNICAL)**

**SHRI BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)**

PRESENT:

For the Applicant : Mr. P. Nagesh, Sr. Adv., Mr. Abhinav Agrawal, Adv.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Application has been filed by Mr. Rakesh Kumar Agarwal, the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 for recall of the order dated 03.04.2024. The Applicant seeks the following reliefs:

“a) Recall the order dated 03.04.2024 passed in I.A NO. 2317 OF 2022 IN COMPANY PETITION NO. (IB) 571 OF 2020;

b) Pass such other and further orders as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice.”

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Date of Order: 23.04.2024

2. It is submitted by the Applicant that on 03.04.2024, an application being I.A. No. 2317 of 2021 filed by the Resolution Professional was listed before this Adjudicating Authority for hearing. The proxy counsel appearing on behalf of the Resolution Professional requested for a passover. The Adjudicating Authority while not entertaining the request for passover observed that its earlier order dated 08.11.2023 directing the RP to file an affidavit explaining non-appearance of the Counsel or his own appearance have not been complied with and proceeded to dismiss the said application filed by the RP and directed the IBBI to take strict action against the RP.
3. It is further submitted by the Applicant that the affidavit, as requested by this Adjudicating Authority vide order dated 08.11.2023, was duly filed on 25.11.2023, within the stipulated timeframe. Furthermore, the Learned Senior Counsel appearing on behalf of the Resolution Professional apprised this Adjudicating Authority about the filing of the affidavit and reassured this Adjudicating Authority about the presence of the RP through virtual hearing on 30.11.2023. The Resolution Professional also joined the hearing through Video Conference on the said date.
4. It is contended by the Applicant that there has been a misapprehension or oversight regarding the RP's compliance with the Adjudicating Authority's directives. The RP has duly discharged its obligations by filing the required affidavit, tendered his unconditional apology and participated in the proceedings through virtual means. It is most humbly submitted that the RP again tenders his unconditional apology to this Adjudicating Authority and requests this Adjudicating Authority to recall the said order dated 03.04.2024.
5. Heard the submissions made by Mr. P. Nagesh, Ld. Sr. Counsel Appearing for the Applicant and perused the records.

6. This Adjudicating Authority vide order dated 08.11.2023 passed the following order which is extracted below:

“IA-2317/2022:-

This application has been filed by RP under Section 66(1) of the IB Code, 2016 read with Regulation 35A(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 seeking the following prayers:-

(a) “To declare that the transactions as reflected in the transaction audit report are transactions wherein fraudulent and/or wrongful trading has been done in terms of Section 66 of the Insolvency and Bankruptcy Code, 2016.

(b) To pass appropriate order upon the Respondent nos. 1 to 11 in terms of Section 66 of the Insolvency and Bankruptcy Code, 2016, specifically directing the Respondents to make such contribution to the assets of the Corporate Debtor as this Hon'ble Tribunal may deem fit.

(c) To pass further appropriate orders under Section 67(1)(a) of the Insolvency and Bankruptcy Code, 2016.”

Neither the main Counsel who has been engaged by the Resolution Professional has appeared nor the Resolution Professional has appeared in person either through VC or physically. We take a serious note of the fact that the RP having filed an application has not appeared before this Tribunal.

We therefore direct the RP to file an affidavit clarifying as to why neither the main Counsel nor the Resolution Professional appeared at the time when the matter was called for hearing. The Resolution Professional is also directed to appear in person either through VC or physically and explain the position, failing which the matter will be reported to IBBI on the next date of hearing. The Registry is directed to send a copy of this order to IBBI.

List the matter on 30.11.2023.”

7. When the matter was listed on 30.11.2023, Ld. Sr. Counsel appearing for the Resolution Professional sought adjournment instead of complying with the order dated 08.11.2023 passed by this Adjudicating Authority. Subsequently, the matter was adjourned due to paucity of time on 08.12.2023, 16.01.2024, 09.02.2024 and 01.03.2024.
8. The matter got listed again on 03.04.2024 and the Adjudicating Authority passed the following order:

“IA-2317/2022:-

On 08.11.2023, the following order was passed:-

“IA-2317/2022:-

This application has been filed by RP under Section 66(1) of the IB Code, 2016 read with Regulation 35A(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 seeking the following prayers:-

(a) “To declare that the transactions as reflected in the transaction audit report are transactions wherein fraudulent and/or wrongful trading has been done in terms of Section 66 of the Insolvency and Bankruptcy Code, 2016.

(b) To pass appropriate order upon the Respondent nos. 1 to 11 in terms of Section 66 of the Insolvency and Bankruptcy Code, 2016, specifically directing the Respondents to make such contribution to the assets of the Corporate Debtor as this Hon'ble Tribunal may deem fit.

(c) To pass further appropriate orders under Section 67(1)(a) of the Insolvency and Bankruptcy Code, 2016.”

Neither the main Counsel who has been engaged by the Resolution Professional has appeared nor the Resolution Professional has appeared in person either through VC or physically. We take a

serious note of the fact that the RP having filed an application has not appeared before this Tribunal.

We therefore direct the RP to file an affidavit clarifying as to why neither the main Counsel nor the Resolution Professional appeared at the time when the matter was called for hearing. The Resolution Professional is also directed to appear in person either through VC or physically and explain the position, failing which the matter will be reported to IBBI on the next date of hearing. The Registry is directed to send a copy of this order to IBBI.

List the matter on 30.11.2023.”

The Resolution Professional has not filed any affidavit as directed in the above mentioned order. Further, neither the Counsel nor the Resolution Professional in person appeared today when the matter was called out. However, after some time, Proxy counsel appeared on behalf of the Resolution Professional and requested for a pass over. We are not inclined to grant any further indulgence in the matter.

Since, the Resolution Professional has not complied with the order dated 08.11.2023 in spite of such a long time already given, it is recommended that IBBI should take strict appropriate action against the RP concerned. The Registry is directed to forward a copy of this Order to IBBI.

*IA-2317/2022 **dismissed for non-prosecution.**”*

- 9.** We are of the considered view that the Applicant is attempting to seek a review of the order dated 03.04.2024 in the guise of filing the present application for recall of the said order. The order dated 03.04.2024 was passed after taking into consideration that the Resolution Professional had not filed any affidavit as directed vide order dated 08.11.2023, inspite of sufficient time lapse thereafter and neither the Ld. Counsel nor

the Resolution Professional in person appeared on two occasions i.e. 08.11.2023 and 03.04.2024.

10. Thus, the prayers made in this application cannot be allowed which will amount to review of the orders passed by this Adjudicating Authority on 03.04.2024. It is settled principle of law that this Adjudicating Authority has no power to review its order.

11. In view of the above facts and circumstances and the foregoing discussion. It is accordingly ordered as follows:

- i.** The Application bearing **IA-1758/2024** filed by the Applicant is **dismissed**.
- ii.** The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)