NATIONAL COMPANY LAW TRIBUNAL
राष्ट्रीय कंपनी विधि अधिकरण
CUTTACK BENCH
कटक खंडपीठ

ORDER SHEET OF THE HEARING ON 13th SEPTEMBER, 2023, 10:30 A.M.

CP No. 21/CB/2023, IA (Companies Act) No. 43/CB/2023

Coram : 1. Hon'ble Member (Judicial), Shri P. Mohan Raj
2. Hon'ble Member (Technical), Shri Kaushalendra Kumar Singh

Name of the Company	T. Banambar Patra & Ors. -Vs- Heritage Resorts Pvt. Ltd. & Ors.
Under Section	241-242

For Petitioner (s) Mr. Saradindu Jena, CS

For Respondent (s) Mr. Satya Smruti Mohanty, Adv.
Mr. Swayamjit Rout, Adv.
Mr. S.S. Pradhan, Adv.
Mr. Goutam Rai, Adv.
Ms. Gyaninee Nayak, Adv.

ORDER

IA (Companies Act) No. 43/CB/2023

This is an application filed under Rule 11 of NCLT Rules, 2016 to modify/recall the order of this Tribunal dated 10.07.2023 passed in CP No. 21/CB/2023 by which the right to file reply of the applicants/respondents were stands forfeited, when they failed to file their replies within three days from the said order dated 10.07.2023.

Mr. Satya Smruti Mohanty, Advocate appearing for the applicant, requested to grant

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a chance to file a reply. On the respondent side Mr. Saradindu Jena, CS, appeared. When the application came up on 29th August, 2023, he opposed the application stating that since this Tribunal has already passed an order and forfeited the right of the applicants to file their replies, it is final, the order cannot be modified, then it amounts reviewing of it's own order. At his request time was granted to file reply. To-day Mr. Saradindu Jena argued that no written reply has been field, however, he made oral submission reiterating regarding the maintainability of prayer made in this application, further he submitted that in the event of allowing the application, the petitioner in the main company petition needs to be granted leave to file rejoinder. It is correct since the applicants failed to comply the order of this Tribunal dated 10.07.2023, their right to file reply stands forfeited. The order is not passed on merits after adjudication. The forfeiture order is only a procedure in nature.

It is true that the Tribunal has no jurisdiction to review its order after decided an issue of merits, but granting time extension to file reply, recalling forfeiture orders are not come under the purview of review, they come under the inherent powers of Tribunal. Further procedural law is always subservient to substantial law. **The NCLAT NEW Delhi in Company Appeal (AT) (Insolvency) No. 504 of 2022 decided on 30.05.2022, Printland Digital (India) Pvt. Ltd. Vs. Nirmal Trading Company MANU/NL/0409/2022** in observed in Para 7 as follows: -

> *We have heard Counsel for the parties and perused the record. There is a difference between recalling of an order and review on merits of the issue decided by the Adjudicating Authority. No doubt that the Adjudicating Authority has no jurisdiction to review its order after deciding a substantial issue but it has the jurisdiction to recall the order of the kind in dispute i.e.,*

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where the right to Reply was closed by an order on the ground that the opportunities granted were not availed. In this regard, we rely upon a decision of this Tribunal rendered in the case of CA (AT) (Ins) No. 271 of 2022 in which it has been held that if there is an adjudication by the Adjudicating Authority on merits of the issues then it would not have the jurisdiction to review its order but insofar as the dispute with regard to right to file the Reply which is closed by an order, it certainly has the jurisdiction on recall it in terms of the Rule 11 of NCLT Rules, 2016.

In view of this supra citation the plea made on the respondent side is turned down as unsustainable, in the result, Application is allowed.

CP No. 21/CB/2023

Mr. Saradindu Jena, CS appeared for the petitioner. Mr. Satya Smruti Mohanty appeared for the respondent. IA (Companies Act) No. 43/CB/2023 allowed, forfeiture order is recalled, reply of the respondents 1 to 6 already submitted in registry is taken on record. Petitioner is granted 10 days' time to file his rejoinder, if any. List the matter on 04.10.2023.

Sd

Kaushalendra Kumar Singh
Member (Technical)

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P. Mohan Raj
Member (Judicial)

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