IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
DIVISION BENCH
COURT – I

ITEM No.10 - IA/320(AHM)2024
In
C.P.(IB)/10(AHM)2023

Proceedings under Section 95 IBC

IN THE MATTER OF:

The Sarvodaya Sahakari Bank Ltd **.....Applicant**
V/s
Nileshkumar Navinchandra Choksi **.....Respondent**

Order delivered on 16/02/2024

Coram:
Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon,ble Member(T)

PRESENT:

For the Applicant :Mr. Nipun Singhvi, Adv.
For the Respondent :

ORDER

IA/320(AHM)2024

1. This is an IA filed by the Applicant under Rule 11 r.w. Rule 154 of the NCLT, Rules, 2016 seeking the following prayers:-

   (a) Your lordships may be pleased to allow the present application;

   (b) Your lordships may be pleased to recall the order dated 22.12.2023 passed by this Hon'ble Adjudicating Authority in CP(IB) No. 10 of 2023 in view of IBBI circular No. IBBI/II/62/2023 dated 21.12.2023;

   (c) Your lordships may be pleased to direct the registry to restore application filed under section 95 of the Code bearing CP(IB) No. 10 of 2023 filed by applicant against Nileshkumar Navinchandra Chokshi;

(d) *Your lordships may be pleased to pass any such order(s) as this Hon'ble Adjudicating Authority deems fit in the facts and circumstances of the case.*

2. It is stated that the Applicant has filed application under Section 95 of the Insolvency and Bankruptcy Code, 2016 (**"Code"**) against the Respondent, bearing CP(IB) No. 10 of 2023.

3. It is stated that thereafter, the matter was taken up for hearing on 21.12.2023 and the same was dismissed as being defective as allegedly the Form C was not correctly filed by the Applicant. The operative portion of the order dated 21.12.2023 is reproduced below:-

> *"'…Form B is signed bv the Sarvodava Sahakari Bank Ltd (Financial Creditor), the affidavit is affirmed by Sarvodava Sahakari Bank Ltd.*
>
> *However, it is seen that the Applicant has filled Part IV of the application and the proposed IRP has also signed the Application. Part IV needs to be filled only when application is filed through the proposed IRP.*
>
> *As such in our view Form-C has not been correctly filled by the Applicant. Accordingly, CP/IB/10/AHMZ2023 is dismissed as being defective* ***with liberty to file fresh".***

4. It is stated that the Insolvency and Bankruptcy Board of India (**"IBBI"**) has issued a circular No. IBBI/II/62/2023 dated 21.12.2023 providing detailed clarification regarding submissions of particulars and declaration by the insolvency professional in the application filed by the creditors in Part IV of Form C of the IRP PGCD Rules.

5. It is stated that Rule 11 read with Rule 154 of the NCLT Rules, 2016 empowers this Tribunal to pass any orders to meet the ends of justice and the same also includes the power to pass an order recalling its own order/judgment. The said rules are reproduced below:-

> ***Rule 11 of NCLT Rules, 2016***
>
> *Inherent Powers.- "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. Rectification of Order.-***
>
> *(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.*

6. Thereafter, the Applicant has submitted a judgment of the 5-Judge Bench of the Hon'ble NCLAT in ***Union of India v. Dinkar T. Venkatasubramanium,*** *2023 SCC OnLine NCLAT 283* wherein the Hon'ble NCLAT held that the power to recall a judgment is an inherent power which is in the Tribunal as has been so declared by Rule 11.

7. In view of the above, the Applicant has filed the present application.

8. We have heard the counsel for the Applicant and have perused the document. The circular No. IBBI/II/62/2023 dated 21.12.2023 was circulated only in the evening and order passed in the morning. It is seen that the order dated 21.12.2023 is a reasoned order through which CP(IB) No. 10 of 2023 was dismissed as being defective and **liberty** was given to the Applicant.

9. The Applicant instead of availing the liberty or challenging the impugned order has come before us with a request to recall the order. In our view, the contentions of the Applicant are misplaced and sans merit. The clarification from IBBI quoted by the Applicant is of a later than of order. In our view, the application is not maintainable.

10. Accordingly, **IA/320(AHM)2024** in CP(IB) No. 10 of 2023 is hereby dismissed.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

Swetambary