

**Does NCLT has Right to Recall Orders – A Study on Inherent Powers of NCLT under IBC Laws**

- Contributed by CS Phanindra DVK

An interesting question has arisen before the National Company Law Appellate Tribunal (for brevity 'NCLAT') in the matter of Printland Digital (India) Private Limited vs Nirmal Trading Company<sup>1</sup>. The question involves the rights of the adjudicating authority, that is National Company Law Tribunal (for brevity 'NCLT').

The facts before Hon'ble NCLT, Delhi Bench, were that an application is filed by Nirmal Trading Company, an Operational Creditor against Printland Digital (India) Private Limited ['Printland'], Corporate Debtor, for commencement of corporate insolvency resolution process. Printland has not filed its reply, even after giving sufficient opportunities. Accordingly, Honourable NCLT has passed the orders wherein the right to file any reply in the said case by Printland ceased to exist.

Consequent to such orders, Printland filed an application before the Hon'ble NCLT, to recall the order, so as to enable it to file the counter/reply. The Hon'ble NCLT dismissed the application on the ground that not only that NCLT is not vested with any power to recall or review its own order, but also sufficient opportunities were already been granted to Printland to file the Reply which were not availed.

Aggrieved by the above order rejecting the request to recall its order, Printland has approached the NCLAT, seeking its intervention.

Printland submitted that under Rule 11 of the NCLT Rules<sup>2</sup>, NCLT has inherent powers, and thereby has the jurisdiction to recall its order. It further contended that, had it been a case of deciding a substantial issue, then the matter would have been altogether different because such an action amounts to review of the order, but since, in the instant facts, it was just a procedural aspect, for which Printland had made a request for recall, the NCLT had the jurisdiction to recall its order.

Printland has relied on the decision of NCLAT in Grand Arch Resident Welfare Association vs. Ireo Private Ltd<sup>3</sup>, wherein it was held in similar facts, that NCLT has power to recall its own order in pursuance of delivery of substantial justice. NCLAT has stated in the above matter that, it is not the case where NCLT has exercised its power of review on merits of any issue decided. It was the case that NCLT has accepted the reply by using inherent power under Rule 11 *ibid* and accordingly NCLAT upheld the action of NCLT recalling its own order.

Nirmal Trading Company contended that the act and conduct of Printland is such which does not allow it to seek the interference by NCLAT, as sufficient opportunities were granted by the NCLT to file the reply which have deliberately not been chosen to avail and this application is a ploy on the part of Printland to delay the decision of the application pending before NCLT.

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<sup>1</sup> 2022 SCC OnLine NCLAT 297

<sup>2</sup> NCLT Rules, 2016

<sup>3</sup> Company Appeal (AT) (Insolvency) No. 271 and 272 of 2022, decided by the NCLAT, Principal Bench, Delhi.

**Decision by NCLAT:**

After hearing the contentions of both the parties, the NCLAT observed that, there is no substantial issue on hand, since it is the issue relating to recall of order of NCLT, so as to grant permission to Printland to file its reply.

Hon'ble NCLAT observed that Nirmal Trading Company did not deny the fact that the decision in the case of Aggarwal Coal Corporation Private Limited Vs. Sun Paper Mill Limited & Another, **relied upon by the NCLT, is not applicable to the case on hand, because in that case the NCLT had decided the issue on merits for which it had no jurisdiction to review its order.**

Hon'ble NCLAT noted that there is a difference between '*recalling of order*' and '*review of order*'. Hon'ble NCLAT has stated that what is not possible is the latter (review of order) and not the former (recalling of order). The Hon'ble NCLAT finally held as under:

*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., where the right to Reply was closed by an order on the ground that the opportunities granted were not availed.*

Hon'ble NCLAT relied upon the decision rendered in the Grand Arch Resident Welfare Association vs. Ireo Private Ltd (supra) and as a result, the appeal filed by Printland was allowed and remanded the matter to the NCLT, to consider the application on merits and decide the same in accordance with law.

From the above, it is clearly, evident the circumstances when the Adjudicating Authority can review or recall its own order. The same are summarised hereunder:

- ➔ *NCLT has no jurisdiction to review its order after deciding a substantial issue on the basis of merits. It may be noted that amendment/correction of an error on the face of the order does not amount to review of its order.*
- ➔ *NCLT has the jurisdiction to recall the order of the kind in dispute i.e., where the right to reply was closed by an order on the ground that the opportunities granted were not availed.*

Further, many of the applications/petitions, for which no specific rule or section is provided under the Companies Act, or the NCLT rules framed thereunder, it is a practice to invoke the Rule 11 of NCLT Rules *ibid*, seeking such reliefs, orders as may be necessary for meeting the ends of justice or to prevent abuse of the process.

From a bare reading of Rule 11, it would be an understatement that NCLT does not have powers to recall its orders. For reasons unknown, the inherent powers are not being invoked, and the NCLT themselves are hesitant/reluctant to pass orders purely falling within their jurisdiction, which makes the aggrieved parties to approach to NCLAT and other appropriate forums, which is a substantial waste of valuable time of such Appellate Authorities.