NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1370 of 2024

[Arising out of the Impugned Order dated 12.06.2024 passed by the National Company Law Tribunal, Court II, Mumbai Bench in Intervention Petition No. 31 of 2023 in CP(IB) No. 3574/MB/2019]

In the matter of:

Mr. Chandar Narayan Chavan

T-12/26, Talwar Camp, Woodhouse Road

Colaba, Mumbai-400005.

... Appellant

Versus

1. **M. D. Devcon Private Limited**

   A Company incorporated under the Companies Act

   Having Registered Office at 5th Floor, Prime Plaza, Next to Asha Parekh Hospital, S.V. Road Santacruz, Mumbai-400054 Through Resolution Professional Mr. Kedar Parshuram Mulye.

   Also At

   Mr. Kedar Parshuram Mulye

   Resolution Professional

   M.D. Devcon Private Limited, 1301, Chaitanya Residency, Jay Prakash nagar Road No. 2, Goregaon (E), Mumbai-400063.

2. **Indranil Das**

   Anamitra A/1303, Prakruti Park, Azad Nagar, Thane West - 400607

3. **Nandita Das**

   Anamitra A/1303, Prakruti Park, Azad N agar, Thane West – 400607

... Respondents

Present:

For Appellant : Mr. Aayush Agarwala, Mr. Gaurav Verma, Advocates.
For Respondents : Mr. Prateek Dwivedi, Mr. Krishan Mishra, Advocates for R- 2 & 3.

J U D G M E N T
(Hybrid Mode)

[Per: Ajai Das Mehrotra, Member (Technical)]

The present appeal has been filed by Mr. Chandar Narayan Chavan against the impugned order dated 12.06.2024 passed by the NCLT, Mumbai in Intervention Petition No. 31/2023 in CP(IB) No. 3574/MB/2019 filed by the Appellant, wherein the Ld. NCLT dismissed the said Intervention Petition.

2. In the Intervention Petition No. 31/2023, the Applicant/Appellant had sought two main reliefs as follows:

> *"(i) The Adjudication Authority be graciously pleased to allow the present intervention application and pass an order allowing the Applicant herein to intervene as party in the above-captioned Company Petition; and*
> *(ii) The Adjudicating Authority be further pleased to pass an order to recall/vacate the Order dated 27.05.2021 being without jurisdiction and contrary to law."*

3. The aforesaid Intervention Petition was dismissed by the Ld. NCLT vide order dated 12.06.2024, and being aggrieved by it the present appeal has been filed.

4. The brief facts of this case are as under:

i. CP(IB) No. 3574/MB/2019 was filed by Mr. Indranil Das and Mrs. Nandita Das under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the **'IBC, 2016'**) seeking to initiate Corporate Insolvency

Resolution Process (hereinafter referred to as the **'CIRP'**) against M.D. Devcon Private Limited (hereinafter referred to as the **'Corporate Debtor'**) alleging default in payment of financial debt.

ii. The Corporate Debtor was carrying on business of construction and development and one of upcoming residential project known as "SAVANNAH" was being constructed on land bearing CTS No. 1285 A/E, Kanjurmarg (East), Mumbai.

iii. The Petitioners, Mr. Indranil Das and Mrs. Nandita Das were allotted Flat No. 1504 on the 15th Floor vide letter allotment dated 25.08.2019.

iv. The Corporate Debtor failed to start the project and the Petitioners wrote letter dated 08.09.2016 and finally, on 13.12.2016 had sent the final termination letter of allotment and requested the Corporate Debtor to refund the amount with interest as per clause 9 of the allotment letter.

v. As per clause 9 of the allotment letter it was clearly mentioned that if the Corporate Debtor fails to execute the agreement for sale or fails to start the construction, then the Petitioners had the right to terminate the letter of allotment and claim the refund amount paid under the allotment letter along with interest @ 15% p.a.

vi. The Petitioners filed the following chart giving the total amount payable by the Corporate Debtor:

Sr. No	Amount paid	Interest@15% p.a. from 24.09.2019 (i.e. date of filing the petition)	Amount due up to date of filing of petition
1	Rs. 19,00,000/-	Rs. 8,78,750/-	Rs. 27,78,750/-
		Total	27, 78, 750/ -

vii. The Petitioners submitted before the Ld. NCLT that FIR has been registered against the Corporate Debtor and the matter is under investigation by Economic Offences Wing and one of the Directors of the Respondent company was arrested and recently granted bail by the Hon'ble Metropolitan Magistrate, 47th Court, Mumbai.

viii. The Ld. NCLT vide order dated 27.05.2021 admitted the Corporate Debtor into CIRP and appointed Mr. Kedar Parshuram Mulye as the Insolvency Resolution Professional (hereinafter referred to as the **'IRP'**).

ix. The Intervention Petition of the Applicant/Appellant requesting for intervention in the company petition bearing CP(IB) No. 3574/MB/2019 and recall of the order dated 27.05.2021 was rejected through the impugned order, as under:

> *"15. We have carefully scrutinized the matter and have given due weightage to the rival contentions.*
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> *16. The Applicant/Intervenor seeks to challenge the Admission Order dated 27.05.2021, primarily on the basis that the Petition/ Application filed under Section 7 of the Code failed to meet the statutory threshold as outlined in the second and third proviso to Section 7(1) of the Code. This threshold requires a minimum of either 100 allottees or 10% of the total allottees within the same real estate project, whichever is lower, to file an application u/s 7 of the Code. It is contended that the present challenge does not constitute a mere recall petition but rather entails a review of the order on its substantive merits. We agree with this contention. However, it is crucial to distinguish between a review petition and a recall petition. A review petition prompts the Court to assess the merits of the case, typically when there is a glaring error evident on the face of the record. On the other hand, a recall petition does not delve into the substantive merits but rather focuses on retracting an order passed without affording an opportunity for affected parties to be heard. A five-member bench of the Hon'ble NCLAT in Union Bank of India v/s. Dinakar T.Venkatasubramanian had held (vide its Judgment dated 25th May, 20 No. 3961 of 2022 in Company*

Appeal (AT)(Ins.) No. 729 of 20 that ***though the power to review is not conferred upon the Tribunal but power to recall its judgment is inherent in the Tribunal and is preserved by Rule 11 of the NCLT rules,2016.*** *This decision of NCLAT was upheld by a two-judge Bench of the Hon'ble Supreme Court of India vide its Order dated 31.07.2023 passed in Civil Appeal No.4620 of 2023 viz. Union Bank of India vs. Financial Creditors of M/s. Amtek Auto Ltd. & Others. Thus, it is firmly established in legal precedents that neither the Adjudicating Authority nor the Appellate Authority possesses jurisdiction to review their own orders. Indeed, if the Order dated 27.05.2021 is vacated due to the failure of the above-captioned Company Petition to meet the statutory threshold as outlined in the second and third proviso to Section 7(1) of the Code, then, such action, in our considered view, would constitute a review rather than a recall. Hence, we are not inclined to vacate the Order dated 27.05.2021. Accordingly, the prayer made by the Applicant/ Intervenor in terms of Para 29, Clause B stands rejected.*

17. The Hon'ble Supreme Court of India in Budhia Swain & Ors. v/s. Gopinath Deb & Ors. [Citation: (1999) 4 SCC 396] has held as follows:

> *"8. In our opinion a tribunal or a court may recall an order earlier made by it if*
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> *(i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent;*
> *(ii) there exists fraud or collusion in obtaining the judgment,*
> *(iii) there has been a mistake of the court prejudicing a party, or*
> *(iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented. The power to recall a judgment will not be exercised when the ground for re-opening the proceedings or vacating the judgment was available in the original action but was not done or* ***where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed.*** *The right to seek vacation of a judgment may be lost by waiver, estoppel or acquiescence."*
>
> (Emphasis Supplied)

The Hon'ble Supreme Court of India Greater Noida Industrial Development Authority v/s. Prabhjit Singh Soni & Anr. vide Judgment dated February 12, 2024 in Civil Appeal Nos. 7590-7591 of 2023 as follows:

> *"50. .... Therefore, even in absence of a specific provision empowering the Tribunal to recall its order, the Tribunal has power to recall its order. **However, such power is to be exercised sparingly, and not as a tool to re-hear the matter**. Ordinarily, an application for recall of an order is maintainable on limited grounds, inter alia, where (a) the order is without jurisdiction; (b) the party aggrieved with the order is not served with notice of the proceedings in which the order under recall has been passed; and (c) the order has been obtained by misrepresentation of facts or by playing fraud upon the court/ Tribunal resulting in gross failure of justice."*
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> *(Emphasis Supplied)*

18. If the Applicant/Intervenor was aggrieved by the Order dated 27.05.2021 passed by the Adjudicating Authority u/s 7 of the Code, then it was open to him to impugn the aforementioned Order in appeal before the Appellate Authority u/s 61 of the Code. However, the said remedy was not pursued. Consequently, we cannot permit the Applicant/ Intervenor to utilize the Tribunal's inherent power of recall as a means to revisit or re-hear the matter. It is firmly established in legal doctrine that objectives which cannot be attained directly cannot be pursued indirectly. Hence, by allowing the time limit for filing an appeal under Section 61 of the Code to expire, the Applicant/ Intervenor is deemed to have forfeited his right to contest the Admission Order. Therefore, he cannot now seek to achieve the same outcome indirectly by requesting a recall of the aforementioned order.

19. The Admission Order dated 27.05.2021 cannot be said to have been passed by the Adjudicating Authority without jurisdiction, nor is it the case of the Applicant that he was a party to the case who was not served with notice of the proceedings in which the order under recall has been passed. Although the Applicant has alleged collusion between the Petitioner and the Corporate Debtor in the aforementioned Company Petition, such allegations remain unsubstantiated by any documentary evidence or material on record. Furthermore, the initiation of a civil suit against the

Corporate Debtor holds no relevance to the proceedings under Section 7 of the Code. Consequently, the accusations of concealment and misrepresentation of facts are entirely unfounded. The Applicant has failed to establish any valid grounds for the recall of the Order dated 27.05.2021, and thus, the present application warrants dismissal.

20. The Admission Order was issued on 27h May 2021, whereas the present application was filed by the Applicant on 26th June 2023, resulting in a time gap of over 2 years. The Applicant has failed to provide a satisfactory explanation to the Bench regarding the reason for this significant delay in filing the current application. The Applicant has stated in Paragraph 20 of their application that they became aware of the name of the proposed IRP, Mr. Partha Sarathy Sarkar, for the first time on 03.01.2023. Additionally, in Paragraph 23 of the application, the Applicant mentions that their advocates only learnt of the email address of the advocates for the CoC handling the Company Petition in question on 12.06.2023, following which they promptly contacted them for all relevant documents and proceedings. However, in our assessment these explanations do not sufficiently justify the time lag or the delay in filing the present application. Therefore, the instant application is liable to be dismissed on the grounds of delay and laches.

21. The Hon'ble NCLAT in Vekas Kumar Garg v/s. DMI Finance Pvt. Ltd. (Citation: 2021 SCC Online NCLAT 72) has held as follows:

> *"3. After hearing learned counsel for the Appellant and going through the record, we are of the view that the ground projected by the Appellant in his capacity as Resolution Professional of NDL for seeking impleadment in CP IB21 15/ ND/2019 pending consideration before the Adjudicating Authority does not warrant impleadment of Appellant as party Respondent. In an application under* ***Section 7, the Financial Creditor and the Corporate Debtor alone are the necessary party*** *and the Adjudicating Authority iS, at the pre-admission stage, only required to satisfy itself that there is a financial debt in respect whereof the Corporate Debtor has committed a default warranting triggering of CIRP. The Adjudicating Authority is required to satisfy itself in regard to there being a financial debt and default thereof on the part of the Corporate Debtor besides the application being complete*

as mandated under Section 7(5) of the 'I&B Code' and then pass an order of admission or rejection on merit as mandated under subsection (4) of Section 7 within 14 days. ***No third-party intervention is contemplated at that stage."***

(Emphasis Supplied)

The Hon'ble NCLAT in Prayag Polytech Pvt Ltd. v/s. Hind Tradex Ltd.

(Citation: 2019 SCC Online NCLAT 1029) had observed as follows:
"4. From the plain reading of Section 7 of IBC it is clear that the Adjudicating Authority, on being satisfied and if the application is complete, after notice and hearing the 'Corporate Debtor', may either admit the application or reject it. The Hon'ble Supreme Court also noticed the aforesaid mandate of law. In that view of the matter, ***we are of the view that there is no requirement for intervention of any Directors or shareholders of the 'Financial Creditor' or any other party before admission of Application under Section 7 of IBC. If the*** *application is admitted, it would be open to any aggrieved party to move before this Appellate Tribunal." (Emphasis Supplied)*

22. Based on the precedents established by the Hon'ble NCLAT, as referenced in the preceding paragraph, it is our considered opinion that in an application filed under Section 7 of the Code, the Applicant-Financial Creditor and the Corporate Debtor are the only necessary parties, and no third-party intervention is envisaged at that juncture. During the pre-admission phase, the sole requirement is to satisfy the conditions stipulated under Section 7, namely the existence of a financial debt and default on the part of the Corporate Debtor. Therefore, there is no necessity to involve any other party prior to the admission of an application under Section 7 of the Code, 2016. Consequently, we find that the Applicant lacks the standing to intervene at either the pre-admission or post-admission stages of the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor. Thus, in regards to the plea for intervention, the present application is subject to dismissal due to a lack of locus.

23. 23.1. Counsel for the Applicant/ Intervenor has drawn our attention to the judgment of Hon'ble Supreme Court of India in Beacon Trusteeship Ltd. v/s. Earthcon Infracon Pvt Ltd. [Citation: 2020 SCC Online SC 1233] pleaded by the Applicant to buttress his submission that intervention can be allowed and the intervenors have to be heard before any order of admission u/s 7 of the Code is passed for initiating CIRP of the Corporate Debtor. We have gone through the aforesaid ruling of the Hon'ble Apex Court. The aforesaid ruling does not deal with the issue of intervention. The Hon'ble Apex Coya Beacon Trusteeship case (supra) had held as follows:

> *"7. Considering the provision of Section 65 of the IBC, it is necessary for the Adjudicating Authority in case such an allegation is raised to go into the same case, such an objection is raised or application is filed before the Adjudicating Authority, obviously, it has to be dealt with in accordance with law. The plea of collusion could not have been raised for the first time in the appeal before the NCLAT or before this Court in this appeal. Thus, we relegate the appellant to the remedy before the Adjudicating Authority.*
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> *8. In case, a proper application is filed, aspect whether the proceedings have been initiated in collusive manner will be looked into, in accordance with law and the appropriate orders have to be passed, considering the facts and circumstances of the case. We have made it clear that we have not commented on the merit of the case. We set aside the impugned order passed by the NCLAT and dispose of the appeal in accordance with the aforesaid direction."*

23.2. From a straightforward interpretation of the quoted judgment, it is evident that whenever allegations of fraud, collusion, or malicious intent are raised or an application to that effect is filed before the Adjudicating Authority, it is incumbent upon the Authority to look into the same and pass appropriate orders. If the Applicant/Intervenor had asserted during the proceedings of the aforementioned petition that collusion existed between the Petitioners/Financial Creditors and the Corporate Debtor, and if the Adjudicating Authority had passed the Admission Order dated 27.05.2021 without affording the Applicant/Intervenor an opportunity to be heard or without considering his objections, then the Applicant/ Intervenor's case would align squarely with the

principles outlined in the referenced ruling. However, in the present case, during the proceedings of the aforementioned Company Petition, no objections of fraud, collusion, or malice were raised by the Applicant/ Intervenor, nor was any application to that effect filed. Consequently, the ruling cited by the Applicant/ Intervenor is irrelevant to the circumstances of the current case and thus not applicable.

24. No further contentions have been raised on behalf of the Applicant/ Intervenor, Thus, there are no remaining issues to be addressed.

25. Therefore, based on the aforementioned discussions, analysis, and findings, we hold the opinion that the application in question should be dismissed. ***Accordingly, Intervention Petition No. 31 of 2023 is hereby dismissed****, with no order as to costs."*

5. The Ld. Counsel appearing for the Appellant submitted that they were 725 homebuyers in the project and Suit was pending before the Hon'ble Bombay High Court and only allotees of one Flat, namely, Mr. Indranil Das and Mrs. Nandita Das had filed the petition under Section 7 of the IBC, 2016.

5.1 It is the submission of the Ld. Counsel for the Appellant that as per amended Section 7, a petition under Section 7 can be filed jointly by not less than 100 allotees or not less than 10% of the total allotees under the same real estate project, whichever is less.

5.2 It is submitted that as per third proviso to Section 7, the pending applications were to be modified to comply with the requirements of second proviso within 30 days of the commencement of the amendment Act, 2020 i.e. within 30 days of 28.12.2019. The relevant portion of Section 7 is as under:

"Section 7 – Initiation of corporate insolvency resolution process by financial creditor*:*

(1) A financial creditor either by itself or jointly with [1][other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government,] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

[Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.]"

5.3 It is submitted that since the provisions of third proviso of Section 7 were not complied with, the order of Ld. NCLT dated 27.05.2021 was bad in law and should have been recalled by the Ld. NCLT.

6. Heard. Perused the records.

7. Though the Appellant has alleged collusion between original petitioners and the Corporate Debtor, no evidence regarding this was presented before the

Ld. NCLT or this Tribunal. We note that there was considerable delay and laches in filing the Intervention Petition as the order for admission under Section 7 was passed on 27.05.2021 whereas the Intervention Petition seeking intervention and recall was filed in June, 2023 after more than two years.

8. The Ld. NCLT has power to recall its own order but has no power to review its own order. We now examine the pre-conditions to exercise power of recall of order. The Hon'ble Supreme Court in the case of *Budhia Swain & Ors. v/s. Gopinath Deb & Ors.*, reported in *(1999) 4 SCC 396* has held as under:

> "*8. In our opinion a tribunal or a court may recall an order earlier made by it if*
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> *(i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent; (ii) there exists fraud or collusion in obtaining the judgment, (iii) there has been a mistake of the court prejudicing a party, or (iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented. The power to recall a judgment will not be exercised when the ground for re-opening the proceedings or vacating the judgment was available in the original action but was not done or* ***where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed.*** *The right to seek vacation of a judgment may be lost by waiver, estoppel or acquiescence.*"
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> (Emphasis Supplied)

9. The Hon'ble Supreme Court in the case of *Greater Noida Industrial Development Authority v/s. Prabhjit Singh Soni & Anr. vide* Judgment dated February 12, 2024 in Civil Appeal Nos. 7590-7591 of 2023 as follows:

> "*50. .... Therefore, even in absence of a specific provision empowering the Tribunal to recall its order, the Tribunal has power to recall its order.* ***However, such power is to be exercised sparingly, and not as a tool to re-hear the matter****. Ordinarily,*

> *an application for recall of an order is maintainable on limited grounds, inter alia, where (a) the order is without jurisdiction; (b) the party aggrieved with the order is not served with notice of the proceedings in which the order under recall has been passed; and (c) the order has been obtained by misrepresentation of facts or by playing fraud upon the court/ Tribunal resulting in gross failure of justice."*
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> (Emphasis supplied)

10. This Tribunal in the case of *Col. Ashish Khanna, SM (Retd) v/s Delhi Gymkhana Club Limited & Anr. in I.A. No. 6314 of 2025 in Company Appeal (AT) No. 203 of 2025* has held as under:

> *"8. .....There is no doubt to the preposition of law that this Tribunal has a power to recall its own order but such power can be exercised only when (i) order passed is without jurisdiction; (ii) it is obtained by practicing fraud or collusion; (iii) there exists a fundamental procedural error viz necessary party not being served; (iv) the order being passed on misunderstanding of facts which resulted in prejudice to a party; (v) and gross failure of justice.*
> *9. We do not find any of the ingredients of (i) to (v) as above; necessary for recall of the judgment/order dated 08.09.2025, present in this application, and hence we are not inclined to allow this application and we dispose it of as above....."*

11. In the present case, the Ld. NCLT has rightly noted that during the pre-admission phase, the sole requirement is to satisfy the conditions stipulated under Section 7 of the IBC, namely the existence of financial 'debt' and 'default' on the part of the Corporate Debtor and that the Applicant/Financial Creditor and Corporate Debtor are only necessary party, and no third-party intervention is envisaged at this stage. Since intervention was not allowed there was no question of any notice or hearing being granted to the Applicants in the Intervention Petition. We concur with the decision of Ld. NCLT in not allowing intervention.

12. From the facts of this case, we find that none of the ingredients which are pre-requisite for recalling of the order are present in this case. There is no case to recall the order as the order was not without jurisdiction, no fraud or collusion was proved, there was no fundamental procedural error, namely, service on the necessary party, there was no misunderstanding of facts or gross failure of justice. Regarding compliance of third proviso to Section 7 of the IBC, 2016, we find that the petition under Section 7 has been admitted on the basis of financial debt, which was above the threshold as prescribed then under Section 4 of the IBC, 2016. We note that the Petitioners were no longer homebuyers, as they had invoked clause 9 of the allotment letter and exercised the option of cancellation of allotment and to seek refund along with interest and thus, they can no longer be treated as homebuyers. It was a debt of Rs. 19,00,000/- plus interest which was due from the Corporate Debtor. In the circumstances, there was no necessity to comply with the provisions of third proviso of Section 7 of the IBC, 2016.

13. In conclusion, on the basis of above analysis, we find no reason to interfere in the impugned order of Ld. NCLT. The appeal is accordingly dismissed. No order as to costs. Pending application(s), if any, are also disposed of.

[Justice Yogesh Khanna]
Member (Judicial)

[Mr. Ajai Das Mehrotra]
Member (Technical)

Place: New Delhi
Dated: 07.05.2026
Ram N.