

INT THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

IA NO. 1258 OF 2025

IN

C.P.(IB) NO. 572(PB)/2019

*(Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with
Rule 11 of the National Company Law Tribunal Rules, 2016)*

IN THE MATTER OF:

**MANOJ KUMAR GOYAL & ANR.
(MEMBERS OF SUSPENDED BOARD OF
M/s. BIGMOON BUILDCON PRIVATE LIMITED)**

...APPLICANTS

VERSUS

DINESH KHETAN & ORS.

...RESPONDENTS

Order Pronounced On: 08.07.2026

CORAM:

**JUSTICE ANUPINDER SINGH GREWAL
HON'BLE PRESIDENT**

**SHRI RAVINDRA CHATURVEDI
HON'BLE MEMBER (TECHNICAL)**

Present:

For the Applicants : Mr. Rishi Kapoor, Adv., along with Mr. Shashank
Agarwal and Mr. Surya Pratap Sirohi, Advs.

For the SRA : Mr. Pankaj Agarwal, Adv., along with Mr. Shashwat
Srivastava and Ms. Mrigangi Parul, Adv. in IA-
4910/2022.

ORDER

1. The instant Application bearing IA No. 1258 of 2025 (“**the Application**”) has been filed by Mr. Manoj Kumar Goyal and Mrs. Kavita Goyal, erstwhile members of the Suspended Board of Directors of the Corporate Debtor, M/s. Bigmoon Buildcon Private Limited (“**Applicants**”/ “**Corporate Debtor**”/ “**CD**”), under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“**Code**”/ “**IBC**”) read with Rule 11 of the National Company Law Tribunal Rules, 2016 (“**NCLT Rules**”), seeking recall of the order dated 04.01.2021 (“**Plan Order**”) passed by this Adjudicating Authority in C.P.(IB) No. 572(PB)/2019, whereby the Resolution Plan submitted by the consortium comprising Respondent No. 2 (M/s. SBC Exports Limited) and Respondent No. 3 (M/s. JM Propinfra Pvt. Ltd.), approved by the Committee of Creditors (“**CoC**”) with 100% voting share, was confirmed.

BRIEF FACTS OF THE CASE

2. The Corporate Insolvency Resolution Process (“**CIRP**”) against the Corporate Debtor was initiated vide order dated 03.09.2019 passed by this Adjudicating Authority in C.P.(IB) No. 572(PB)/2019, on an application filed by Respondent No. 1, Mr. Dinesh Khetan (“**Financial Creditor**”/ “**FC**”), under Section 7 of the Code.
3. In its 11th meeting held on 20.10.2020, the CoC, by a 100% majority vote, approved the Resolution Plan submitted by the consortium of Respondent Nos. 2 and 3, constituting the Successful Resolution Applicant (“**SRA**”). The voting share of the CoC members is recorded as: M/s. Endless Services Pvt. Ltd.-50.43%; M/s. Capital Trade Links Ltd.-33.87%; M/s. P-Net Solutions Ltd. (now M/s. Meratask Enterprise Pvt. Ltd.)-14.56%; and the Financial Creditor-1.14%.
4. The said Resolution Plan was thereafter confirmed by this Adjudicating Authority vide the impugned Plan Order dated 04.01.2021 passed under Section 31 of the Code.

5. The Applicants have filed the present Application, more than four years after the passing of the Plan Order, alleging that the CIRP itself, and consequently the approval and confirmation of the Resolution Plan, is vitiated by fraud, misrepresentation and collusion practised by the Financial Creditor in connivance with the CoC members (alleged to be entities under his control), the erstwhile Resolution Professional and the SRA. It is also not in dispute that during the currency of the CIRP, the Applicants, were entitled under Section 24(3)(b) and Section 24(4) of the Code to receive notice of, and to attend and express their views at, every meeting of the CoC, including the meeting(s) at which the valuation of the assets of the Corporate Debtor and the Resolution Plan itself were placed for consideration and approval.

CONTENTIONS RAISED BY THE APPLICANTS

6. Learned Counsel for the Applicants has broadly urged the following contentions in support of the prayer for recall:
- (a) That at the time of initiation of CIRP, the Corporate Debtor owned two parcels of land at Sadik Nagar, Ghaziabad (Khasra No. 899 and Khasra No. 914) having a combined actual market value of approximately Rs. 65.55 crores, as against which the Resolution Professional recorded a grossly undervalued Fair Value of Rs. 18.77 crores and Liquidation Value of Rs. 14.66 crores in Form H, and the lands were ultimately transferred to the SRA at a discounted price of Rs. 19.5 crores.
 - (b) That the CoC members, namely M/s. Endless Services Pvt. Ltd., M/s. Capital Trade Links Ltd. and M/s. P-Net Solutions Ltd. (now Meratask Enterprise Pvt. Ltd.), are shell companies controlled by the Financial Creditor, who is stated to be a former director of one such entity and continues to exercise de facto control over all three, thereby vitiating the independence of the CoC's commercial decision.

- (c) That the SRA, M/s. SBC Exports Limited, is itself connected to the Financial Creditor through a chain of common directorships and corporate interconnections, rendering the SRA not an independent third party but an alter ego of the Financial Creditor.
- (d) That common e-mail identities used by different CoC members, and the Financial Creditor being copied on correspondence addressed by CoC members to the Corporate Debtor, demonstrate collusion and coordinated action amongst the CoC members and the Financial Creditor.
- (e) That the genesis of the underlying debt itself is tainted, inasmuch as the Financial Creditor is alleged to have fraudulently caused the opening of a bank account of the Corporate Debtor and routed monies from his own shell entities to create an artificial appearance of financial debt, culminating in registration of FIR No. 587/2020 at P.S. Kavi Nagar, Ghaziabad, presently pending trial before the Court of the Chief Judicial Magistrate, Ghaziabad.
- (f) That this Tribunal, in its order dated 28.08.2024 passed in RCP(IB)-6/ND/2023 (Old Case No. IB-120(ND)/2021) involving a connected entity, M/s. KDP Buildwell Pvt. Ltd., has already made observations to the effect that amounts advanced by one of the very same CoC members, M/s. Capital Trade Links Ltd., were traceable to consideration under an Agreement to Sell rather than any genuine financial debt, which, according to the Applicants, exposes the fraudulent foundation of the CIRP in the present case as well.
- (g) That an order obtained by playing fraud upon a Court or Tribunal is a nullity, and this Tribunal, in exercise of its inherent powers preserved under Rule 11 of the NCLT Rules, 2016, is competent to recall such an order, relying upon the decision of the five-Member Bench of the National Company Law Appellate Tribunal (“NCLAT”) in **Union Bank of India v. Dinkar T. Venkatasubramanian, I.A. No. 3961 of 2022 in CA(AT)(Ins.) No. 729 of 2020**, as affirmed by the Supreme Court in **Civil Appeal No.**

4620 of 2023, and on the principle that fraud vitiates the most solemn of proceedings, as reiterated in **Commissioner of Customs (Preventive) v. M/s. Aafloat Textiles (I) Pvt. Ltd.** and connected matters.

- (h) That the corporate veil of the CoC members and the SRA is liable to be pierced to hold the Financial Creditor liable as the real beneficiary of the Resolution Plan, relying upon **Delhi Development Authority v. Skipper Construction Co. (P) Ltd., (1996) 4 SCC 622.**

7. On the above grounds, the Applicants pray, inter alia, for recall of the Plan Order dated 04.01.2021, for a declaration that the Resolution Plan is null and void, for directions for status quo over the aforesaid lands, and for consequential/penal action against the Financial Creditor and connected entities.

ANALYSIS

8. It is well settled that this Tribunal does not possess an express power of review over its own orders; what is preserved under Rule 11 of the NCLT Rules, 2016 is the inherent power to recall an order, which is distinct in kind and narrower in scope than a review. The NCLAT in **Union Bank of India v. Dinkar T. Venkatasubramanian** (supra), while recognising that fraud played upon the Tribunal is a well-recognised ground for recall, was equally categorical that the power of recall is not a power to re-hear the matter or to correct an alleged error apparent on the face of the record, and is confined to cases of a fundamental procedural infirmity, such as a necessary party not being heard, when the order was passed. The mere invocation of the word “fraud”, without more, does not by itself clothe an applicant with an unrestricted right to reopen a concluded insolvency resolution process years after its culmination.
9. The Supreme Court has, in more recent pronouncements including **RPS Infrastructure Ltd. v. Mukul Kumar, Resolution Professional, (2023) 10 SCC 718**, and **Greater Noida Industrial Development Authority v.**

Prabhjit Singh Soni, (2024) 6 SCC 767, cautioned that the limited jurisdiction to recall an order confirming a Resolution Plan cannot be permitted to be used as a surrogate for an appeal, nor as a device to reopen the commercial wisdom of the CoC or to conduct a fresh valuation exercise at the recall stage. The power of recall being an extraordinary and inherent power must be exercised sparingly, and only where the fraud alleged is such as would go to the very root of the confirmation proceedings before this Tribunal, and not merely to underlying commercial or valuation disputes between the parties.

10. Section 31(1) of the Code provides that once a Resolution Plan, as approved by the Committee of Creditors, is confirmed by the Adjudicating Authority, it shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. The binding and conclusive character of an approved and confirmed Resolution Plan is central to the object and architecture of the Code and has been repeatedly emphasised by the Supreme Court.
11. In Committee of Creditors of **Essar Steel India Limited v. Satish Kumar Gupta, (2020) 8 SCC 531**, the Supreme Court held that once the CoC approves a resolution plan, the commercial wisdom of the CoC is not open to judicial review by the Adjudicating Authority or the Appellate Tribunal, save on the limited grounds specified in Sections 30(2) and 31 of the Code, and that finality of the resolution process is integral to its success and to attracting investment into distressed assets.
12. In **K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150**, it was held that the commercial wisdom of the CoC in approving or rejecting a resolution plan is non-justiciable, and that the limited scope of enquiry available to the Adjudicating Authority is to examine whether the resolution plan meets the statutory requirements under Section 30(2), and no more.

13. In **Ghanashyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited, (2021) 9 SCC 657**, the Supreme Court authoritatively held that once a resolution plan is approved by the CoC and confirmed by the Adjudicating Authority under Section 31, it binds all stakeholders, including the Central Government, State Governments and local authorities, and that all claims not forming part of the approved resolution plan stand extinguished, with no person being entitled to initiate or continue proceedings in respect of a claim which is not part of the resolution plan. The rationale underlying this position is to grant a successful resolution applicant a “clean slate” so as to enable revival of the Corporate Debtor, free from the spectre of undecided or resurrected claims.
14. Similarly, in **Ebix Singapore Pte. Ltd. v. Committee of Creditors of Educomp Solutions Ltd., (2022) 2 SCC 401**, the Supreme Court emphasised the sanctity and time-bound nature of the CIRP, holding that permitting re-negotiation or unsettling of an approved resolution plan after its acceptance by the CoC would seriously undermine the timely and successful implementation of the resolution process contemplated under the Code.
15. Applying the aforesaid principles, the Plan Order dated 04.01.2021 attained finality upon confirmation of the Resolution Plan under Section 31 of the Code. The Resolution Plan has admittedly been implemented, and the lands in question have already been transferred to the SRA pursuant thereto. In these circumstances, absent a specific and substantiated plea that the confirmation process before this very Tribunal was itself procured by fraud practised upon it as opposed to allegations of fraud in the genesis of the underlying financial debt or in the internal affairs of the CoC members, which are matters requiring detailed evidence and are the subject matter of separate proceedings the statutory finality engrafted in Section 31 cannot be lightly disturbed at the instance of the erstwhile suspended management years after the event.

16. Section 238A of the Code makes the provisions of the Limitation Act, 1963 applicable, as far as may be, to proceedings before the Adjudicating Authority and the Appellate Tribunal. The Supreme Court in **B.K. Educational Services Private Limited v. Parag Gupta and Associates, (2019) 11 SCC 633**, and thereafter in **Sagufa Ahmed v. Upper Assam Plywood Products (P) Ltd., (2021) 2 SCC 317**, has clarified that the Limitation Act applies to applications filed before the Adjudicating Authority under the Code from the inception of the Code, and that neither ignorance of law nor delay in realisation of one's rights constitutes "sufficient cause" for condonation of an inordinate delay.
17. No specific article of the Limitation Act, 1963 having been prescribed for an application of this nature, Article 137 of the Schedule thereto, being the residuary provision, applies, prescribing a period of three years from the date on which the right to apply accrues. In the present case, the right to apply for recall of the Plan Order, if any, accrued on 04.01.2021, the date on which the order was passed and, on the case set up by the Applicants themselves, the date from which the alleged fraudulent resolution plan came to be confirmed. The period of three years prescribed under Article 137 expired on 03.01.2024. The present Application has been filed thereafter, and even taking the Applicants' own case at its highest, no application seeking condonation of the resultant delay, nor any specific and cogent explanation therefor, has been placed on record.
18. It is also relevant to note that an appeal against an order under Section 31 of the Code lies to the National Company Law Appellate Tribunal under Section 61 of the Code, within thirty days, extendable by a further period not exceeding fifteen days on sufficient cause being shown. The period for filing such a statutory appeal against the Plan Order dated 04.01.2021 expired long ago. It is well settled, including by the recent decisions in **RPS Infrastructure Ltd. (supra)** and **Greater Noida Industrial Development Authority (supra)**, that the inherent power of recall cannot be resorted to as a substitute for, or a means of reviving, a statutory remedy of appeal

that has become time-barred, nor can it be employed to circumvent the period of limitation prescribed for challenging an order of this nature.

19. The Applicants have sought to justify the delay by asserting that the alleged fraud came to their knowledge only when a prospective purchaser of the lands approached them and raised queries regarding valuation. This explanation does not inspire confidence for more than one reason.
20. First, the Applicants, being themselves the erstwhile promoters/suspended directors of the Corporate Debtor and signatories to the very transactions, bank accounts and agreements now impugned, cannot credibly claim ignorance of the facts constituting the alleged fraud, particularly when FIR No. 587/2020 was lodged by the Applicants themselves as far back as the year 2020 prior even to the passing of the impugned Plan Order in relation to substantially the same allegations of illegal operation of the Corporate Debtor's bank account and coerced execution of loan documents.
21. Second, no specific date of the alleged discovery has been pleaded with particularity, nor has any explanation been furnished for the delay of over four years in approaching this Tribunal after the passing of the Plan Order, despite the underlying facts having been within the Applicants' own knowledge since at least 2020. Thereafter, they failed to exercise the liberty of objecting to the same before the CoC or the Resolution Professional, at the material time. Therefore, the plea of a later discovery of fraud, unaccompanied by particulars and inconsistent with the Applicants' own conduct, cannot extend the period of limitation in their favour.
22. Quite apart from the bar of limitation, this Tribunal is also of the view that the allegations raised by the Applicants pertaining to the alleged interconnection of the CoC members and the SRA through common directorships, alleged siphoning of funds through a web of shell companies, and the alleged undervaluation of the CD's assets involve disputed questions of fact requiring detailed evidence, cross-examination and adjudication, which this Tribunal, exercising summary jurisdiction under

the Code, is neither equipped nor intended to undertake. This position finds support in **Embassy Property Developments Pvt. Ltd. v. State of Karnataka, (2020) 13 SCC 308**, and is consistent with the observations of this Tribunal itself in its order dated 28.08.2024 in RCP(IB)-6/ND/2023, relied upon by the Applicants, wherein it was specifically held that issues of fraud, manipulation, or the validity and legality of documents cannot be adjudicated in summary proceedings under the Code. It would be somewhat incongruous for the Applicants to place reliance upon that very order for the proposition that fraud is writ large, while ignoring its equally categorical holding that such questions are not amenable to adjudication in summary IBC proceedings.

23. It is also not lost on this Tribunal that the allegations of fraud qua the genesis of the underlying debt and the conduct of the Financial Creditor are already the subject matter of an independent criminal trial pending before the learned Court of the Chief Judicial Magistrate, Ghaziabad, pursuant to FIR No. 587/2020, which is the appropriate forum for determination of such criminal culpability, and the outcome whereof shall bind the parties according to law. Similarly, the observations in the order dated 28.08.2024 in RCP(IB)-6/ND/2023 were rendered in a separate company petition concerning a different corporate debtor, namely M/s. KDP Buildwell Pvt. Ltd., and cannot, without more, be treated as a finding of fraud qua the resolution process of the present Corporate Debtor, M/s. Bigmoon Buildcon Private Limited.

24. As regards the plea of undervaluation, it is well settled that determination and approval of the fair value and liquidation value, and the adequacy of the resolution plan consideration, fall squarely within the commercial wisdom of the CoC, which is non-justiciable, as held in **Central Bank of India vs. Bijendra Kumar Jha & Ors. (supra)**.

25. The Resolution Plan in the present case was approved with a 100% voting share of the CoC, including creditors independent of the Financial Creditor's alleged shell companies. Bald allegations of undervaluation, unaccompanied by a successful challenge to the underlying valuation reports at the appropriate stage and within the prescribed limitation, cannot furnish a ground for recall of an order that has since attained finality and been substantially acted upon.
26. The reliance placed by the Applicants on **Delhi Development Authority v. Skipper Construction Co. (P) Ltd., (1996) 4 SCC 622**, for lifting the corporate veil of the CoC members and the SRA, does not, in the considered view of this Tribunal, further the Applicants' case at the present stage. The principle in Skipper Construction (supra) permits the corporate veil to be pierced where it is established, on evidence, that the corporate form has been used as a device to perpetrate fraud.
27. Whether the CoC members and the SRA are, in fact, alter egos of the Financial Creditor is itself a disputed question requiring an evidentiary determination, and cannot be assumed as an established fact for the purpose of granting the extraordinary relief of recall of a four-year-old, substantially implemented Plan Order, particularly when the application itself is barred by limitation.
28. It is further noted that the Applicant has failed to show as to how any alleged relationship or interconnection between the SRA and the Financial Creditor operates as a bar to the SRA participating in the CIRP or submitting a resolution plan under Section 29A of the Code. Mere allegations of common directorship or interconnection, without more, do not render a resolution applicant ineligible under Section 29A, and the Applicants have neither pleaded nor demonstrated that the SRA falls within any of the specific categories of ineligibility enumerated therein; consequently, the participation of the SRA in the CIRP and the submission and approval of its Resolution Plan cannot be faulted on this ground.

29. For the reasons recorded above, this Tribunal is of the considered view that:

- i. the Plan Order dated 04.01.2021, having attained finality under Section 31 of the Code and having been substantially implemented, is binding on all stakeholders including the Applicants, and cannot be unsettled at this belated stage on the basis of disputed allegations that are, in any event, the subject matter of independent proceedings;
- ii. the present Application is, in any event, barred by limitation, no specific article of the Limitation Act, 1963 being prescribed for an application of this nature, the residuary Article 137 thereof applies, prescribing three years from the date of accrual of the right to apply, which accrued on 04.01.2021 and expired on 03.01.2024, the Application having been filed thereafter without any application for condonation of delay or cogent explanation therefor, and the plea of belated discovery of fraud being unparticularised and inconsistent with the Applicants' own conduct, including the lodging of FIR No. 587/2020 by the Applicants themselves in the year 2020 on substantially similar allegations, cannot extend the period of limitation in their favour;
- iii. the limited inherent power of recall preserved under Rule 11 of the NCLT Rules, 2016 cannot be invoked as a substitute for a time-barred appeal under Section 61 of the Code, nor to reopen the non-justiciable commercial wisdom of the CoC or to conduct a fact-intensive enquiry into fraud that is beyond the summary jurisdiction of this Tribunal;
- iv. the Applicant has failed to show as to how any alleged relationship or interconnection between the SRA and the Financial Creditor operates as a bar to the SRA participating in the CIRP or submitting a resolution plan under Section 29A of the Code;
- v. the Applicants have failed to substantiate the plea of fraud qua the alleged undervaluation of the assets of the Corporate Debtor, inasmuch as no independent valuation report or other cogent material has been placed on

record to controvert the Fair Value and Liquidation Value recorded by the Registered Valuers in Form H, and bald allegations of fraud, unaccompanied by any such material, cannot furnish a ground for recall of the Plan Order;

- vi. the valuation of the assets of the Corporate Debtor was carried out by IBBI Registered Valuers in accordance with the applicable Regulations and duly placed before the CoC; the alleged undervaluation is a matter falling squarely within the commercial wisdom of the CoC, which is not open to reappraisal by this Tribunal, as held in **Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh & Ors., Civil Appeal No. 4242 of 2019 (decided on 22.01.2020), Essar Steel (supra) and Kalpraj Dharamshi v. Kotak Investment Advisors Ltd., (2021) 10 SCC 401;**
- vii. this position is further fortified by the recent decision of the NCLAT in **Central Bank of India v. Bijendra Kumar Jha & Ors., Company Appeal (AT) (Insolvency) No. 713 of 2025**, wherein it was held that valuers appointed during the CIRP are IBBI Registered Valuers and experts in their field, and their reports, where based on relevant material, cannot be lightly interfered with by the Adjudicating Authority or the Appellate Tribunal in judicial review; that valuation is not an exact science and falls within the commercial wisdom of the CoC, which is not subject to interference except on limited grounds; and that a dissenting or objecting stakeholder cannot be permitted to achieve, through recall or appellate proceedings, what it could not secure through voting before the CoC;
- viii. the Applicants, as members of the Suspended Board of Directors were entitled under Section 24(3)(b) and 24(4) of the Code to notice of, and participation (without vote) in, every CoC meeting, had a real and meaningful opportunity to object to the valuation and the terms of the Resolution Plan at the material time before the CoC or the Resolution Professional. They have now approached this Adjudicating Authority, belatedly and without just explanation.

Accordingly, we Order:

30. For the reasons set out above, Interim Application No. 1258 of 2025 for recall of the Plan Order dated 04.01.2021, passed by this Adjudicating Authority is hereby **dismissed** as being devoid of merits.
31. The other prayers being consequential to the main relief of recall of the Plan Order dated 04.01.2021, does not survive and are also dismissed.
32. It is, however, clarified that the dismissal of the present Application is confined to the limited question of recall of the Plan Order dated 04.01.2021 and shall not be construed as any expression of opinion by this Tribunal on the merits of the criminal proceedings pending before the learned Court of the Chief Judicial Magistrate, Ghaziabad, pursuant to FIR No. 587/2020, or on any other independent civil or criminal remedy that may be available to the Applicants in accordance with law against Respondent No. 1 and other connected entities, all of which are left open to be agitated before the appropriate forum.
33. It is further clarified that, the matter being already pending before the learned Court of the Chief Judicial Magistrate, Ghaziabad, this Tribunal is not seized of, and does not propose to adjudicate upon, any question that may overlap with the investigation or proceedings pending before the said Court.
34. Accordingly, liberty is granted to the Applicants to pursue such civil and/or criminal remedies as may be available to them in accordance with law, including in the pending criminal proceedings arising out of FIR No. 587/2020, before the appropriate forum. No order as to costs.

Sd/-
(ANUPINDER SINGH GREWAL)
PRESIDENT

Sd/-
(RAVINDRA CHATURVEDI)
MEMBER (TECHNICAL)