IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

(IB) 2060 (PB)/2019

IN THE MATTER OF:

Amarendera Financial Pvt. Ltd. .... Petitioner
Vs.
Cynosure Real Estates Pvt. Ltd. .... Respondent

Order under Section 7 of Insolvency & Bankruptcy Code, 2016

And

IA-06/2023

IN THE MATTER OF:

Amarendera Financial Pvt. Ltd. .... Applicant
Vs.
Cynosure Real Estates Pvt. Ltd. .... Respondent

Order under Rule 11 of NCLT Rules, 2016

And

(IB) 2061 (PB)/2019

IN THE MATTER OF:

Dinkar Commercial Pvt. Ltd. .... Petitioner
Vs.
Cynosure Real Estates Pvt. Ltd. .... Respondent

Order under Section 7 of Insolvency & Bankruptcy Code, 2016

And

IA-05/2023

IN THE MATTER OF:

Dinkar Commercial Pvt Ltd. .... Applicant
Vs.
Cynosure Real Estates Pvt. Ltd. .... Respondent

Order under Rule 11 of NCLT Rules, 2016

Order dated 16.07.2026

CORAM:
JUSTICE ANUPINDER SINGH GREWAL
HON'BLE PRESIDENT

MS. ANU JAGMOHAN SINGH
HON'BLE MEMBER (TECHNICAL)

HYBRID HEARING (PHYSICAL & VC)

PRESENT:

For the Applicant	:	Mr. Ravi Prakash, Advocate along with Ms. Bhumika Bhardwaj, Advocate in IA-06/2023 & 05/2023
For the Respondent(s)	:	

ORDER

1. This application has been preferred for recall of the order dated 19.04.2022 whereby this Court had dismissed the application preferred by the Application under Section 7 of Insolvency & Bankruptcy Code, 2016. Ld. Counsel submits that the fraud had been played upon this Court by the Respondent(s) as it did not produce income tax returns for the assessment year 2018-19 filed with the Income Tax Department which clearly establishes an acknowledgment of the financial debt owed to the applicant. The respondent has also not filed any of its balance sheet subsequent to the Financial Year 2016-17 and 2017-18 with the Registrar of Companies (ROC) and they had acknowledged debt in books of accounts in the unaudited

balance sheet for the Financial Year 2017-18. He also submits that this Court has the inherent power to recall an order under Rule 11 of the NCLT Rules, 2016 and this power ought to be exercised in the instant case. He has relied upon the Judgements of ***Greater Noida Industrial Development Authority*** v. ***Prabhjit Singh Soni & Anr.*** (2024 INSC 102) and ***Union Bank of India*** v. ***Dinkar T. Venkatasubramanian & Ors.*** (IA No. 3961/2022 in Company Appeal (AT) (Ins.) No. 729/2020). He further submitted that once a fraud has been played upon the Court by the Respondent(s) in obtaining an order from this Court, the order would stand vitiated ab initio and is rendered a nullity in the eyes of law. He has relied upon the Judgement in the case of ***EPC Operational Creditors Association & Ors.*** v. ***EPC Constructions India Ltd. & Ors.*** I.A. 1332/2024 in C.P. No. (JB) 1832/MB/C-111/2017).

2. Heard.
3. The applicant had preferred an application under Section 7 of the Insolvency & Bankruptcy Code, 2016. This Court had dismissed the application vide order dated 19.04.2022. The relevant extract of the order is reproduced hereunder:

*"**8.** We have heard both the parties and perused the documents. The Applicant has not filed any loan agreement. The Applicant has filed Bank Statement (Annexure I-B at page 20-21) which shows an amount of Rs. 1,50,00,000 (in 2 transactions of Rs. 75,00,000) each) withdrawn from the Applicant's account on 05.04.2017 and paid by RTGS to Cynosure Real Estate Private Limited (Corporate Debtor). Likewise on 06.04.2017 it as disbursed an amount of Rs. 20,00,000 through RTGS to the account of Cynosure Real Estate Private Limited. However, the Bank Statement at Annexure I-B in the petition is not duly certified by the Bank nor is there any stamp of HDFC Bank on the statement. The Applicant has not submitted any loan agreement to substantiate that this is a Financial Debt. Nor have the terms and condition of payment been laid down in the absence of any loan agreement.*

Further, no proof of service has been submitted by the Applicant for his letters to the Corporate Debtor dated 14.07.2017, 12.01.2018, 11.04.2018 and 30.04.2019. Not a single document has been enclosed by the Corporate Debtor showing acknowledgement of the debt.

***9.** In the absence of Loan Agreement setting out the terms and condition of the loan granted, nor any certified copy of Bank Statement nor any acknowledgement of debt by corporate debtor, we are unable to accept the contention of the Financial Creditor that the amount disbursed to the Corporate Debtor would constitute a financial debt within the meaning of Section 5(8) of Insolvency and Bankruptcy Code 2016.*

Accordingly, the present petition No. ***IB-2060(PB)/2019 stands dismissed.***

The associated Interlocutory Applications ***are disposed*** *of in these terms."*

4. A bare reading of the order dated 19.04.2022 indicates that the application of the petitioner has been dismissed as he could not establish that he had given a loan to the Respondent(s). He could not place on record the loan agreement in support of his averments.
5. It is significant to note that the Applicant is a Non- Banking Financial Company and it would be incumbent upon it to lend money after a formal written agreement. The Master Circular issued by the Reserve Bank of India for Fair Practices Code dated 01.07.2015 for Non- Banking Financial Companies requires that loan be disbursed only with a formal written agreement, sanction letter after setting out the terms and conditions. The bank statements relied upon by the applicant mentioned purported transfers but the same are vague as they do not mention the nature of the transfer alleged to be loan. Internally created ledgers and calculation sheets of the applicant without formal agreement or acknowledgement by the

borrower would not be sufficient to hold that the money had been lent as a loan. The applicant also did not produce even a single acknowledgement of debt although it was for the applicant to have established his case. The judgments relied upon by the applicant are clearly distinguishable and not applicable to the instant case. There is no denying the proposition of law laid down by the Supreme Court in the *Prabhjit Singh Soni* (Supra) that the NCLT has an inherent power of recall. However, it has also been held by the Supreme Court that the power of recall is to be exercised sparingly in exceptional circumstances. It is not to be exercised as a review even though there may be an error apparent on the face of record. This Court does not have any power of review even if this Court finds that there is a manifest error apparent on the face of the record. One of the instances wherein the power of recall could be exercised is that an order has been passed without issuance of notice or opportunity of hearing to a necessary party although it would be adversely affected by the order. The relevant extract of the judgement of ***Prabhjit Singh Soni*** (Supra) is reproduced below:

"49. In a recent decision (i.e., Union Bank of India vs. Dinakar T. Vekatasubramanian & Ors.), a five member Full Bench of NCLAT held 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. It was held that power of recall of a judgment can be exercised when any procedural error is committed in delivering the earlier judgment; for example, necessary party has not been served or necessary party was not before the Tribunal when judgment was delivered adverse to a party. It was observed that there may be other grounds for recall of a judgment one of them being where fraud is played on the Court in obtaining a judgment. This decision of NCLAT was upheld by a two-Judge Bench of this Court vide order dated 31.07.2023 in Civil Appeal No.4620 of 2023 (Union Bank of India vs. Financial Creditors of M/s Amtek Auto Ltd. & Ors.).

50. In light of the discussion above, what emerges is, a Court or a Tribunal, in absence of any provision to the contrary, has inherent power to recall an order to secure the ends of justice and/or to prevent abuse of the process of the Court. Neither *the IBC nor the Regulations framed thereunder, in any way, prohibit, exercise of such inherent power. Rather, Section 60(5)(c) of the IBC, which opens with a non-obstante clause, empowers the NCLT (the Adjudicating Authority) to entertain or dispose of any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under the IBC. Further, Rule 11 of the NCLT Rules, 2016 preserves the inherent power of the Tribunal.* ***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****."*

6. It is true that if an order has been obtained by fraud, the power of recall ought to be exercised. However, in the instant case there is nothing whatsoever to suggest that the order dated 19.04.2022 has been obtained by fraud. The order dated had been passed after hearing the petitioner and on his inability to produce cogent evidence in support of the application for initiating the CIRP proceedings against the Respondent(s). It was enjoined upon the applicant to have established his case and it cannot shift the onus entirely on the Respondent(s) to produce the relevant documents. The allegations of fraud are easy to make but difficult to substantiate and prove. The bald assertions of the applicant cannot in any manner lead this Court to the conclusion that the order had been obtained by fraud. On the contrary, as set out herein before it is manifest that the order had been passed after considering the factual matrix when the applicant had not been able to establish that it had indeed advanced loan to the Respondent(s). The judgements relied upon by the Applicant did not advance the case of the Applicant.

7. Consequently, Application bearing **IA-05/2023** and **IA-06/2023** are **dismissed.**

Sd/-
(Anupinder Singh Grewal)
President

Sd/-
(Anu Jagmohan Singh)
Member (Technical)

Lalit