

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1074 of 2023
& I.A. No. 4628 of 2023**

[Arising out of Order dated 11.08.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in IA (IB) No.391/KB/2023]

In the matter of:

Adisri Commercial Pvt. Ltd.

....Appellant

Vs.

Reserve Bank of India & Ors.

...Respondents

For Appellant: Mr. Ranjit Kumar and Mr. Abhijeet Sinha, Sr. Advocates with Mr. Rajarshi Banerjee, Mr. Rishav Banerjee, Mr. Bhavya Sethi, Mr. Chanakya Sharma, Advocates.

For Respondents: Mr. Gopal Jain, Sr. Advocate with Mr. Vijayendra Pratap Singh, Mr. Vivek Shetty, Mr. Nishant Upadhyay, Mr. Akhilesh M., Mr. Kushapra Jain, Advocates for R1/RBI.

Mr. Krishnendu Datta, Sr. Advocate with Mr. Raghav Shankar, Mr. Navneet R. Mr. Rahul Gupta, Ms. Neha, Advocates for Administrator.

Mr. Arun Kathpalia, Sr. Advocate with Mr. Saurav Panda, Mr. Vaijayant Paliwal, Ms. Charu Bansal, Ms. Arushi Chandra, Ms. Mehak Nayak, Ms. Rashi Sharma, Ms. Diksha Gupta, Advocates for CoC.

Mr. Raunak Dhillon, Mr. Nihood D., Advocates for SRA.

Company Appeal (AT) (Insolvency) No.1075 of 2023

[Arising out of Order dated 11.08.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in IA (IB) No. 389/KB/2023]

In the matter of:

Adisri Commercial Pvt. Ltd.

....Appellant

Vs.

Reserve Bank of India & Ors.

...Respondents

For Appellant: Mr. Abhijeet Sinha, Sr. Advocate with Mr. Rajarshi Banerjee, Mr. Rishav Banerjee, Mr. Bhavya Sethi, Mr. Chanakya Sharma, Advocates.

For Respondents: Mr. Gopal Jain, Sr. Advocate with Mr. Vijayendra Pratap Singh, Mr. Vivek Shetty, Mr. Nishant Upadhyay, Mr. Akhilesh M., Mr. Kushapra Jain, Advocates for R1/RBI.
Mr. Krishnendu Datta, Sr. Advocate with Mr. Raghav Shankar, Mr. Navneet R. Mr. Rahul Gupta, Ms. Neha, Advocates for Administrator.
Mr. Arun Kathpalia, Sr. Advocate with Mr. Saurav Panda, Mr. Vijayant Paliwal, Ms. Charu Bansal, Ms. Arushi Chandra, Ms. Mehak Nayak, Ms. Rashi Sharma, Ms. Diksha Gupta, Advocates for CoC.
Mr. Raunak Dhillon, Mr. Nihood D., Advocates for SRA.

JUDGMENT
(4th April, 2024)

Ashok Bhushan, J.

These two Appeals by the same Appellant, the Shareholder of the Corporate Debtor have been filed against the common order dated 11.08.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench in IA (IB) No. 389/KB/2023 & IA (IB) No.391/KB/2023 respectively. The above IAs were filed by the Appellant for recall of the order dated 08.10.2021 passed by this Tribunal admitting the Corporate Debtor namely— ‘SREI Infrastructure Finance Limited’ (SIFL) and ‘SREI Equipment Finance Limited’ (SEFL) into CIRP. Both the Applications i.e. IA No. 391 of 2023 and IA No. 389 of 2023 having been rejected by the

Adjudicating Authority, these Appeals have been filed challenging the said order dated 11.08.2023.

2. Brief background facts need to be noted for considering the issue raised in these Appeals:-

2.1. SIFL and SEFL are financial service providers registered with Reserve Bank of India (RBI). RBI passed an order dated 01.10.2021 in exercise of jurisdiction under Section 45- IE of the RBI Act, 1934 superseding the Board of Directors of SEFL and SIFL. One Mr. Rajneesh Sharma was appointed as Administrator with immediate effect. The Appellant who is shareholder of the Corporate Debtor- SIFL filed Writ Petition under Article 226 of the Constitution of India before the High Court of Bombay challenging the order dated 01.10.2021 passed by the RBI superseding the Board of Directors of SIFL and SEFL. The Writ Petition filed by the Appellant was dismissed by the Bombay High Court vide its judgment and order dated 07.10.2021. Challenging the order dated 07.10.2021, a Special Leave Petition (Diary) No.17275 of 2022 was filed by the Appellant before the Hon'ble Supreme Court which was subsequently dismissed by the Hon'ble Supreme Court. The RBI filed CP (IB) No. 295/KB/2021 against SIFL and CP (IB) No.294/KB/2021 against SEFL under Section 227 of the IBC r/w Rules 5 & 6 of the Insolvency and Bankruptcy (Insolvency & Liquidation proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 ("FSP Rules" for short). In the application, RBI before presenting the application has issued advance notice to the Administrator of SIFL and SEFL. The Applications were taken by the Adjudicating Authority

on 08.10.2021. Administrator of SIFL and SEFL was also present before the Adjudicating Authority. Administrator who was present in the Court gave his consent to act as Administrator unconditionally. Adjudicating Authority by order dated 08.10.2021 admitted both the applications filed under Section 227 and declared the Moratorium in terms of Section 14 of the IBC in respect of financial service providers. The order dated 08.10.2021 passed in CP (IB) No.295/KB/2021 and order dated 08.10.2021 passed in CP (IB) No. 294/KB/2021 was challenged by the Appellant in this Tribunal by filing Company Appeal (AT) (Insolvency) No.1293 of 2022 and Company Appeal (AT) (Insolvency) No.1294 of 2022. The memo of appeal was presented in the office of the Appellate Tribunal on 22.11.2021 and after due scrutiny, defects were intimated, however, after delay of 321 days, Appellant filed memo of appeal with an application for condonation of delay of 321 days in re-filing the Appeal. Application seeking condonation of re-filing delay in both the above Appeals was heard and dismissed by this Appellate Tribunal vide its judgment dated 21.12.2022. In view of the dismissal of the application for condonation of delay in re-filing the Appeals, memo of both the Appeals were also rejected. Aggrieved by the order dated 21.12.2022, Appellant filed Civil Appeal No. 473 of 2023 and Civil Appeal No. 486 of 2023 before the Hon'ble Supreme Court. Hon'ble Supreme Court on 30.01.2023 dismissed both the Appeals filed by the Appellant being Civil Appeal No. 473 of 2023 and Civil Appeal No. 486 of 2023. After dismissal of Civil Appeals by the Hon'ble Supreme Court upholding the order of this Tribunal dated 21.12.2022, Appellant filed IA No. 391/KB/2023 as well as

IA No. 389/KB/2023 on 14.02.2023 praying Adjudicating Authority to recall the order dated 08.10.2021 in the CIRP of the Corporate Debtor. The applications filed by the Appellant being IA No. 391/KB/2023 and IA No. 389/KB/2023 were opposed both by the RBI as well as Administrator. CIRP against the Corporate Debtor proceeded and Resolution Plans were submitted and received in the CIRP of the Corporate Debtor. CoC on 14.02.2023 approved the Resolution Plan submitted by NARCL. Application was filed before the Adjudicating Authority for approval of the Resolution Plan which remain pending. Intervention applications were filed both by the Consortium of CoC of SIFL and SEFL before the Adjudicating Authority for intervention. Intervention applications were also filed in IA No. 391/KB/2023 and IA No. 389/KB/2023. Recall applications were opposed by the RBI, Administrator as well as Consortium of Committee of Creditors raising various objections regarding the maintainability of the application. Adjudicating Authority after hearing the parties in the applications as well as the intervention applications, by impugned order dated 11.08.2023 rejected IA No. 391/KB/2023 and IA No. 389/KB/2023. Aggrieved by the order dated 11.08.2023, these two Appeals have been filed.

3. We have heard Shri Ranjit Kumar, Senior Advocate and Shri Abhijeet Sinha, Learned Senior Counsel with Shri Rishav Banerjee for the Appellant. Shri Gopal Jain, Learned Senior Counsel has appeared for RBI, Shri Krishnendu Datta, Learned Senior Counsel has appeared on behalf of Administrator, Shri Arun Kathpalia, Learned Senior Counsel has also

appeared on behalf of the CoC and Shri Raunak Dhillon, Learned Counsel has appeared for SRA.

4. By our order dated 16.08.2023, we granted time to the RBI to file a reply to the application. Reply has been filed by the RBI in pursuance of our order dated 16.08.2023. Counsel for the Administrator, CoC and SRA has also advanced submissions objecting entertainment of these Appeals.

5. Shri Ranjit Kumar, Learned Senior Counsel appearing for the Appellant challenging the order dated 08.10.2021 passed by the Adjudicating Authority admitting CP (IB) No. 294/KB/2021 and CP (IB) No. 295/KB/2021 filed under Section 227 by the RBI submits that the order passed by the Adjudicating Authority was order passed in violation of principal of natural justice and deserves to be recalled. It is further submitted that the default on the part of UCO Bank which was relied in the applications filed by the RBI were default during the period of Section 10A and the application filed by the RBI was barred by Section 10A and could not have been entertained. Adjudicating Authority committed error of jurisdiction in admitting the application by order dated 08.10.2021 which jurisdiction error need to be corrected in the recall application. It is submitted that an order passed without jurisdiction can be recalled by the Adjudicating Authority in exercise of its inherent jurisdiction. It is submitted that on account of default during the period covered by Section 10A, no application can be filed. It is submitted that as per Financial Service Providers Rules, 2019, the application under Section 227 has to be in

accordance with the provisions of the Code. It is submitted that the Adjudicating Authority committed error in rejecting the recall application. It is further submitted that the Appeals filed by the Appellant against the order dated 08.10.2021 was dismissed by this Tribunal on account of rejection of the application praying for condonation of re-filing delay and the issues raised by the Appellant were never decided on merits. Order of the Hon'ble Supreme Court dated 30.01.2023 dismissing Civil Appeals upholding the order of this Tribunal rejecting the application for condonation of re-filing delay, hence, neither this Tribunal nor the Hon'ble Supreme Court adverted to the issue raised on merits by the Appellant for recall of the order dated 08.10.2021. The Adjudicating Authority committed error in observing that since the similar grounds were raised by the Appellant in this Tribunal and the Hon'ble Supreme Court, Appellant cannot be allowed to re-agitate the said ground which observations are erroneous and incorrect. Issues have never been decided on merits. Principle of *res judicata* are not attracted. Appellant being shareholder of the Corporate Debtor had every right to pray for recall of the order dated 08.10.2021 admitting Section 227 application filed by the RBI. All the assets and liability of the SIFL were transferred to its subsidiary SEFL by Business Transfer Agreement dated 16.08.2019. Due to above, there was no debt in SIFL and the admission of SIFL to the CIRP is not in accordance with law. No default having been committed by SIFL towards payment of any debt, admission was wholly illegal and deserves to be recalled.

6. Learned Counsel for the RBI refuting the submissions of the Counsel for the Appellant submits that the applications for recall filed by the Appellant were not maintainable and deserves to be rejected and has rightly been rejected by the Adjudicating Authority. It is submitted that the admission order dated 08.10.2021 was assailed by the Appellant by filing two appeals in this Tribunal which were dismissed by this Tribunal on 21.12.2022. Against which order, Appellant also filed Civil Appeals in the Hon'ble Supreme Court which too were dismissed by the Hon'ble Supreme Court on 30.01.2023. It is submitted that the Appellant having filed the Appeals unsuccessfully against the order dated 08.10.2021 cannot now resort to filing of recall application before the Adjudicating Authority after 17 months of order of admission passed on 08.10.2021. It is submitted that there was no lack of jurisdiction of the Adjudicating Authority in passing of the impugned order dated 08.10.2021. Application was filed by the RBI, the sectoral regulator of the financial service providers as per the FSP Rules, 2019, there was material before the Adjudicating Authority. The default committed by financial service providers in November 2020 and February, 2021 were still continuing. Record of continuous defaults were before the Adjudicating Authority and the Adjudicating Authority satisfied that it was a fit case for admission has passed the impugned order. Appellant has filed the recall application which is nothing but review application disguised as recall application. Appellant is virtually seeking review of the order dated 08.10.2021 raising various pleas which cannot be entertained. Submission of the Appellant that there is violation of principle of natural justice has no

legs to stand. The Board of Directors of the SIFL having been superseded by the RBI on 01.10.2021, it was Administrator who was representing the Corporate Debtor and the order dated 08.10.2021 passed by the Adjudicating Authority was after hearing the Administrator, hence, there was no question of violation of principle of natural justice. There was no requirement of law to issue any notice to any shareholder of the Corporate Debtor. It is further submitted that Section 10A of the IBC shall not apply to financial service providers. Section 10A is applicable with regard to application filed under Sections 7, 9 and 10 and there is nothing in Section 10A to indicate that it shall apply to application filed by RBI under Section 227 of the IBC. It is submitted that no debt was owed by the Corporate Debtor to the RBI who was only sectoral regulator. RBI considered various factors such as serious deterioration in the Corporate Debtors' financial position, several supervisory concerns, non-compliances with regulations etc. hence, the order was passed. In the petition for CIRP, default towards numerous lenders were also indicated. It is submitted that no grounds have been made out to recall the judgment dated 08.10.2021 passed by the Adjudicating Authority and applications are nothing but efforts of Appellant to obstruct and stall the CIRP and abuse the process of law.

7. Learned Counsel for the SRA has submitted that the Appeals have become infructuous since Resolution Plan of NARCL which was approved by the CoC has been subsequently approved by this Tribunal by order dated 05.01.2024. Approval of the Resolution Plan of NARCL was also challenged before this Tribunal in Company Appeal (AT) (Ins.) No.1072 of 2023 which

was dismissed on 05.01.2024 and Appeal against the order dated 05.01.2024 of this Tribunal was also being dismissed by the Hon'ble Supreme Court on 07.03.2024. The Resolution Plan having been approved and affirmed upto the Hon'ble Supreme Court, Appeals filed by the Appellant are virtually infructuous and need to be dismissed on this ground alone. It is submitted that the NARCL has also implemented the Resolution Plan and Appeals need to be dismissed in *limine*.

8. Shri Arun Kathpalia, Learned Senior Counsel appearing for the CoC also contended that there are no grounds made out in the recall applications filed by the Appellant to recall the judgment dated 08.10.2021. It is submitted that the prayer made in the recall applications was nothing but prayer to review the judgment dated 08.10.2021 on merits which is not the jurisdiction vested with the Adjudicating Authority and the Adjudicating Authority did not commit any error in rejecting the recall applications. It is submitted that the recall application which was filed under Section 420 of the Companies Act, 2013 could not have been entertained since the power under Section 420(2) was only with rectification of an error apparent on the face of the record. Further in view of the appeals having been filed against the order dated 08.10.2021, remedy under Section 420(2) was not available. The recall application was nothing but the second appeal in disguise against the CIRP admission order. Appeals were filed by the Appellant against the order dated 08.10.2021 which stood dismissed up to the Hon'ble Supreme Court. There is no occasion for permitting the Appellant to indirectly

challenge an order which was unsuccessful challenge by the Appellant up to the Hon'ble Supreme Court.

9. We have considered the submissions of the Counsel for the parties and perused the record.

10. We have already noticed that the Board of Directors of SIFL was superseded by order dated 01.10.2021 passed by the RBI under Section 45-IE. Order dated 01.10.2021 passed by the RBI is as follows:-

“CO.DOR.ISG.No. 51467/20.27.007/2021-2022

October 01, 2021

***Supersession of the Board of Directors of M/s
Srei Infrastructure Finance Limited, Kolkata,
West Bengal under Section 45-IE of the Reserve
Bank of India Act, 1934***

Order

Srei Infrastructure Finance Limited, Kolkata (SIFL) is a Non-Banking Finance Company (CoR No.B.05.02773 dated March 31, 2011), governed by the provisions of the Reserve Bank of India Act, 1934.

2. The statutory inspection of the SIFL conducted by Reserve Bank of India under Section of 45-N of Reserve Bank of India Act, 1934 with reference to its financial position as on March 31, 2020 revealed serious deterioration in its financial position.

3. SIFL has defaulted in its payment obligations in respect of bank borrowings and market borrowings, which reveals serious concerns about the conduct of the affairs of the company.

4. Taking into account the defaults committed by SIFL in meeting various repayment obligations and concerns emanating from the inspection/special audit conducted by the Reserve Bank, in exercise of the

powers conferred by Section 45-IE of the Reserve Bank of India Act, 1934, the Reserve Bank of India, hereby supersedes the Board of Directors of SIFL and appoints Shri Rajneesh Sharma as its Administrator with immediate effect. The major supervisory concerns constituting the basis of the supersession of the Board of Directors are given in Annex.

The major reasons for supersession of Board of Directors are as follows:

- i. As per data submitted by financial institutions, the total borrowings of SIFL stood at Rs.11,746 crore, on June 30, 2021. SIFL has defaulted with 12 lenders aggregating Rs.3,566 crore.*
- ii. The Board of Directors of SIFL and Srei Equipment Finance Limited (SEFL) had on July 04, 2019 approved transfer of assets and liabilities (including liabilities towards issued and outstanding NCDs) of SIFL by way of slump exchange to SEFL with effect from October 01, 2019. Despite non-receipt of No-objection Certificate (NOC) from majority of the lending institutions, SIFL and SEFL had given effect to the slump exchange.*
- iii. Several supervisory concerns (e.g. violation of IRACP norms, evergreening of NPA accounts, connected lending, weak corporate governance standards, inadequate systems and control, poor compliance standards, etc.) observed during past inspections by the Reserve Bank have been communicated through supervisory letters, DO letters and also reiterated in the meetings held by the Reserve Bank with the management of the company.*
- iv. Inspection of SIFL with reference to financial position as on March 31, 2020 revealed that the company is not meeting minimum regulatory CRAR (15%) and NOF (Rs.300 crore). Further, infrastructure loans as a percentage of total assets was assessed at 3.33% as against the regulatory requirement of 75%.*
- v. Special Audit conducted by the Reserve Bank in December 2020-January 2021 observed that funds disbursed to certain borrowers were received back from such borrowers/ their group companies on the*

same date/dates close to the date of disbursement, which indicated evergreening.

vi. SIFL has remained non-compliant with RBI regulations and supervisory instructions.

Despite continuous engagement and follow up by the Reserve Bank, SIFL has failed to take corrective action on governance, systems and controls, compliance, etc.”

11. It is also relevant to notice that the supersession order dated 01.10.2021 indicate that the SIFL has defaulted with 12 lenders aggregating to Rs.3,566 Crores. Reasons for supersession were noticed in the Annexure to the order as extracted above.

12. Administrator was appointed by order dated 01.10.2021, Shri Rajneesh Sharma with immediate effect. The order dated 01.10.2021 was challenged by the Appellant before the Bombay High Court by Writ Petition No. 2272 of 2021 which were dismissed by the Bombay High Court by order dated 07.10.2021. The Bombay High Court while dismissing the Writ Petition in paragraphs 9.1 and 9.2 noticed as follows:-

“9.1. From a perusal of the order dated 01.10.2021, we find that statutory inspection of respondent No.2 was conducted by Reserve Bank of India under section 45N of the Reserve Bank of India Act, 1934 ('RBI Act' hereinafter) with reference to its financial position as on March 31, 2020. Such inspection revealed serious deterioration in its financial position. Respondent No.2 has defaulted in its payment obligations in respect of bank borrowings and market

borrowings, which is a matter of serious concern. Because of such defaults, Reserve Bank of India in exercise of powers conferred under section 45IE of the RBI Act has superseded the Board of Directors of respondent No.2 and has appointed Shri. Rajneesh Sharma as its administrator with immediate effect.

9.2. The major reasons for supersession of the Board of Directors are mentioned in the annexure appended to the impugned order dated 01.10.2021. While the total borrowings of respondent No.2 stood at Rs.11,476 crores as on 30.06.2021, it has defaulted with 12 lenders aggregating Rs.3,566 crores. Board of Directors of both respondent Nos.2 and 3 had on 04.07.2019 approved transfer of assets and liabilities of respondent No.2 by way of slump exchange to respondent No.3 with effect from 01.10.2019. However, despite non-receipt of no objection certificate from majority of the lending institutions, respondent Nos.2 and 3 had given effect to the slump exchange. Respondent No.2 did not maintain minimum regulatory CRAR and NOF. Infrastructure loans as a percentage of total assets was assessed at 3.33% as against the regulatory requirement of 75%. Special audit conducted by Reserve Bank of India during December, 2020 and January, 2021 revealed that funds disbursed to certain borrowers were received back from such borrowers either on the same date or on dates close to the date of disbursement which indicated evergreening.

Despite continuous engagement and follow up by Reserve Bank of India, respondent No.2 has failed to take corrective steps and remained non-compliant with Reserve Bank of India regulations and supervisory instructions.”

13. It is also relevant to notice that the order of the Bombay High Court was challenged before the Hon’ble Supreme Court by SLP Diary No. 17275 of 2022 also stood dismissed on 03.11.2022. The RBI filed application under Section 227 of IBC against SIFL and SEFL being CP (IB) No. 294/KB/2021 and CP (IB) No. 295/KB/2021. Section 227 of the IBC provides:-

“227. Power of Central Government to notify financial sector providers etc.- *Notwithstanding anything to the contrary [contained in this Code] or any other law for the time being in force, the Central Government may, if it considers necessary, in consultation with the appropriate financial sector regulators, notify financial service providers or categories of financial service providers for the purpose of their insolvency and liquidation proceedings, which may be conducted under this Code, in such manner as may be prescribed.*

[Explanation.- For the removal of doubts, it is hereby clarified that the insolvency and liquidation proceedings for financial service providers or categories of financial service providers may be conducted with such modifications and in such manner as may be prescribed.]”

14. The applications being CP (IB) No. 294/KB/2021 and CP (IB) No. 295/KB/2021 came for consideration before the Adjudicating Authority on 08.10.2021. The Administrator of the Corporate Debtor was present during the hearing which is noticed in the order. In paragraph 14 of the order dated 08.10.2021, following was observed:-

“14. The RBI vide its notification dated 04/10/2021 has superseded the Board of SIFL and appointed Mr. Rajneesh Sharma, ex-Chief General Manager, Bank of Baroda as the Administrator. The RBI has proposed the name of Mr. Rajneesh Sharma as the Administrator of the Corporate Debtor. He has also filed his written consent in Form 2 to act as such Administrator, which has been placed on record at pages 10-11 of the petition. The Form-2 appears to have been amplified by the Administrator by including certain caveats. Therefore, we were constrained to ask the Administrator whether he was willing to give his consent to act the Administrator unconditionally. Mr Rajneesh Sharma confirmed that he would do so. He is, therefore, hereby directed to file a fresh Form 2 with his unconditional consent to act as Administrator.”

15. It is also relevant to notice that the submissions made on behalf of the RBI were noticed in paragraph 4 of the order dated 08.10.2021, which are as follows:-

“4. Mr. Sudipto Sarkar, Learned Senior Counsel appearing on behalf of the Petitioner/Appropriate Regulator submits as follows:-

(a) On the basis of credit information available to it, the Reserve Bank of India (in short "RBI") came to the conclusion that SIFL has committed defaults of significant amount in relation to the financial debt availed by it from various financial creditors:

(b) In particular, UCO Bank has intimated vide its letter dated 07/10/2021 that the amount claimed to be in default in relation to working capital demand loan facility is 165,56,30,967.99. Of this the principal amount due is to the tune of ₹150.00 crore and the interest amount due is to the tune of ₹15,56,30,967,99

(c) Date of default with reference to repayment of principal sum is stated to be 13/02/2021. The default with reference to the interest amount is stated to be 01/11/2020. During the course of hearing. Mr. Sudipto Sarkar, Learned Senior Counsel submitted that this was the earliest date of default, and that there are continuing defaults since then.”

16. It is relevant to note that in paragraph 4(c) although it was noticed that the date of default with respect to UCO Bank was 13.02.2021 and 01.11.2020 but it is also pleaded that the default is continuing since then. The Adjudicating Authority after a detailed order holding the application to be complete in all respects and having held that the financial service

provider is in default of a debt due and payable, admitted Section 7 application and imposed the moratorium.

17. As noted above, against the order dated 08.10.2021 passed in CP (IB) No. 294/KB/2021 and CP (IB) No. 295/KB/2021, Company Appeal (AT) (Insolvency) Nos. 1293 of 2022 and 1294 of 2022 were filed by the Appellant in this Tribunal. Although Appeal was presented initially on 22.11.2021 but after communication of defects it was not removed and Appeal could be re-filed after delay of 321 days on 19.10.2022. Both the Appeals were after detailed hearing dismissed by this Tribunal on 21.12.2022. As the application praying for condonation of 321 days' delay in re-filing the appeal was not allowed, consequently memo of appeal is also rejected. Against the order passed by this Tribunal on 21.12.2022, Civil Appeal No. 473 of 2023 and Civil Appeal No. 486 of 2023 were filed by the Appellant which were dismissed by the Hon'ble Supreme Court by order dated 30.01.2023 which is as follows:-

"1 We find no error in the order of the National Company Law Appellate Tribunal dated 21 December 2022 in Company Appeal (AT)(Insolvency) Nos 1293 and 1294 of 2022.

2 The appeals are accordingly dismissed.

3 Pending application, if any, stands disposed of."

18. It was after above prolonged litigation on behalf of the Appellant being unsuccessful in challenging the order dated 08.10.2021, the recall applications being IA (IB) No. 389/KB/2023 & IA (IB) No.391/KB/2023 were

filed on 15.02.2023 before the Adjudicating Authority. It is well settled that the Tribunal is not vested with any jurisdiction to review its judgment. It is however well established that the Tribunal has jurisdiction to recall a judgment. The question as to whether this Tribunal has jurisdiction to review its order or recall its order arose in large number of cases. A five Member Bench of this Tribunal in **“Union of India (Erstwhile Corporation Bank) vs. Dinkar T. Venkatasubramanian & Ors.- Company Appeal (AT) (Ins.) No. 729 of 2020”** vide its judgment dated 25.05.2023 has laid down that the power to review is not conferred upon this Tribunal but power to recall its judgment is inherent. It was further held that the power of recall is not power of the Tribunal to rehear the case to find out any apparent error in the judgment which is the scope of a review of a judgment. After noticing the judgments of the Hon'ble Supreme Court on the subject, following was concluded by this Tribunal in paragraph 20 of the Judgment:-

“20. The above judgments of the Hon'ble Supreme Court clearly lays down that there is a distinction between review and recall. The power to review is not conferred upon this Tribunal but power to recall its judgment is inherent in this Tribunal since inherent power of the Tribunal are preserved, powers which are inherent in the Tribunal as has been declared by Rule 11 of the NCLAT Rules, 2016. Power of recall is not power of the Tribunal to rehear the case to find out any apparent error in the judgment which is the scope of a review of a judgment. Power of recall of a judgment can be exercised by this Tribunal 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. There may be other grounds for recall of a judgment. Well known ground on which a judgment can always be recalled by a Court is ground of fraud played on the Court in obtaining judgment from the Court. We, for the purpose of answering the questions referred to us, need not further elaborate the circumstances where power of recall can be exercised.”

19. The power of recall can be exercised on limited ground as noticed in the above Five Members Bench judgment of this Tribunal and other judgment of the Hon’ble Supreme Court referred therein. The power of recall can be exercised if there is any procedural error committed by the Court or order was obtained by playing fraud on the Court. The present is not a case where any procedural error has been committed by the Adjudicating Authority by passing the order dated 08.10.2021. Counsel for the Appellant has advanced submission that order dated 08.10.2021 is in violation of principle of natural justice which submission is wholly unfounded. As noted above, the Board of Directors of the Corporate Debtor was superseded by RBI on 01.10.2021 and Mr. Rajneesh Sharma was appointed as Administrator with immediate effect, the Corporate Debtor, thus, had to be represented by the Administrator alone. Administrator was present on the date when order was passed on 08.10.2021, hence, the submission that the order was passed in violation of principle of natural justice cannot be

accepted. There was no requirement of issue any notice to shareholders of the Corporate Debtor before passing of the order dated 08.10.2021.

20. The next submission which has been much pressed by the Appellant is bar of Section 10A. The submission is that the application was not maintainable under Section 10A on account of bar of Section 10A. The submission is that there is apparent error on the record since default noticed in the order was during 10A period but the Adjudicating Authority ignoring the bar of Section 10A has admitted 10A application. What is contended by the Appellant that the order dated 08.10.2021 be reviewed on merits. Appellant by recall application is seeking to review the judgment on merits which is not the scope of a recall application.

21. There can be no dispute that the Adjudicating Authority had jurisdiction to consider an application filed by the RBI. The sectoral regulator filed the application under Section 227 which was filed in accordance with FSP Rules 2019, there was no lack of jurisdiction in the Adjudicating Authority in passing of the order admitting the applications. Thus, the order cannot be said to be without jurisdiction. It is relevant to notice that the Appellant has exercised his right of appeal against order dated 08.10.2021 by filing Appeals in this Tribunal being Company Appeal (AT) (Insolvency) Nos. 1293 of 2022 and 1294 of 2022 which Appeals were dismissed on 21.12.2022 and appeals against order dated 21.12.2022 were also dismissed by the Hon'ble Supreme Court on 30.01.2023.

22. The present is a case where Appellant exercised its right of appeal and failed. Appellant who have challenged the order on merits in which he has been unsuccessful, cannot be allowed to file an application to recall the order on the same ground on which the appeal was filed by the Appellant. It is true that the Appeals filed by the Appellant were dismissed due to rejection of the application praying for condonation of 321 days' delay in re-filing the appeal but in the recall application, the ground to challenge the order on which appeal was founded are now being agitated in the Appeal. As observed above, the recall applications filed by the Appellant are nothing but application to review the judgment on merits which power is not vested with the Adjudicating Authority. The IBC is a statute which prescribes timelines for completion of the proceedings. The recall applications have been filed after 17 months of admission of application under Section 227 filed by the RBI that too after unsuccessful challenge by the Appellant to the order dated 08.10.2021 before this Tribunal as well as before the Hon'ble Supreme Court. The Adjudicating Authority has correctly observed in the impugned order that there were no grounds made out in the applications filed by the Appellant for recall of the judgment dated 08.10.2021. Applications filed by the Appellant were essentially applications to review the judgment dated 08.10.2021 when appeals filed by the appellant were unsuccessful up to the Hon'ble Supreme Court. The ground which is urged in applications are grounds seeking review of the judgment on the merits which jurisdiction is not vested with the Adjudicating Authority. Furthermore, as noted above, the Resolution Plan filed by NARCL was approved by the CoC. It is

submitted that the Resolution Plan was submitted in the CIRP of the Corporate Debtor. EOI was invited on 25.02.2022. The Resolution Plans were submitted in December 2022 and 1st week of January 2023. Challenge process was undertaken by the CoC on 03.01.2023 and further the plan is approved by the CoC in voting held on 15.02.2023 and application filed before the Adjudicating Authority for approval of the plan, the plan was approved on 11.08.2023 against which Company Appeal (AT) (Ins.) No. 1072 of 2023 was also dismissed on 05.01.2024 which order has also been affirmed by the Hon'ble Supreme Court. Plan having been approved and implemented which has also been affirmed by the Hon'ble Supreme Court, there is substance in the submission of the Counsel for the SRA that the Appeals are infructuous for all purpose. We, thus, are of the view that no error was committed by the Adjudicating Authority in rejecting recall applications being IA No. 391/KB/2023 and IA No. 389/KB/2023 filed by the Appellant. There is no merit in the Appeals. Appeals are dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

New Delhi
Anjali