

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, (COURT-II)

Item No. 4
(IB)-35(ND)/17

IN THE MATTER OF:

M/s. Helpline Hospitality Pvt.Ltd ... Applicant/Petitioner

Under Section: 9 of IBC, 2016

Order delivered on 26.02.2021

CORAM:

**SHRI. ABNI RANJAN KUMAR SINHA,
HON'BLE MEMBER (J)**

**SHRI. L. N. GUPTA,
HON'BLE MEMBER (T)**

PRESENT:

ORDER

The Order Pronounced in the Open Court today in CA-266/2020.



**(L.N. GUPTA)
MEMBER (T)**



**(ABNI RANJAN KUMAR SINHA)
MEMBER (J)**

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

CA-266/C-II/ND/2020
IN
(IB)-35(ND)/2017

IN THE MATTER OF:

T S Murali & Anr.
G-158, Sector-41
Noida-201301

...Applicant

Versus

Liquidator of Helpline Hospitality Private Ltd

...Respondent

Delivered on: 26.02.2021

CORAM:

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)
SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For Applicant : Mr. Rakesh Tiku, Senior Advocate with Mr. Ajit Paliwal, Advocate
For Respondent : Mr. Dhruvajit Saika, Advocate for Liquidator

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The present Application is preferred by Sh. T.S Murali, Ex-Director of M/s Helpline Hospitality for seeking the following reliefs:

- “(A) Permit the Applicants herein to deposit/pay the sum of Rs. 65,29,836/- over a period of 6 months.*
- (B) Modify the Orders dated 20.12.2019 in CP (IB)-35(ND)/2017 passed by the Hon’ble NCLT New Delhi Bench- II in view of the submissions made hereinabove by staying/removing the warrants of attachment dated 24.12.2019 issued by the Liquidator pertaining to the property bearing no. G-158, Sector 41, Noida, Uttar Pradesh- 201301.”*

2. The brief background of the case is that an Application bearing no. 840/C-II/ND/2018 filed in (IB)-35(ND)/2017 under Section 25(2)(j) read with Section 66 of the IBC, 2016 preferred by the Liquidator of the Corporate Debtor (CD) namely, M/s Helpline Hospitality Private Limited was allowed vide order dated 20.12.2019 passed by this Tribunal, wherein the following directions were passed :

“15. In the light of the facts and circumstances, submissions made by the Liquidator, documents including report of the Forensic Auditor and other material on record, the prayer at Serial (C) of the Application is allowed. Since the property belongs to the Corporate Debtor i.e., M/s Helpline Hospitality and Ex-Director Sh. T.S Murali has fraudulently recorded the same in his name, the property bearing Plot No. G-158, Sector-41, Noida, Uttar Pradesh-201302 is hereby attached. Warrants of attachment be affixed to the said property by the Liquidator, who shall take further steps for public auction of the same. The Respondents are directed to not to alienate, lease or create any kind of encumbrance or third party interest in the property in question till the Order is fully complied.

16. Ld. Liquidator is also directed to act upon the other findings of the Forensic Report in an appropriate manner so as to maximise the liquidation value of assets of the Corporate Debtor.”

3. That it was informed by the Ld. Liquidator on 17.08.2020 through the 11th Progress Report filed with this Tribunal vide IA no. 2744/2020 that the Applicant herein had preferred a **Comp. Appeal (AT) (Ins) No. 262 of 2020 T.S. Murali & Anr. Vs Liquidator of Helpline Hospitality Pvt. Ltd**, wherein the Hon'ble NCLAT has passed the following order on 13.03.2020:

“3. It is submitted that after passing the impugned order, the Appellants have filed an application bearing no. C.A No. 266 of 2020 dated 07.01.2020 for modification of the order, before the Adjudicating Authority. After hearing the argument, the Adjudicating Authority has reserved for orders. No order has been passed till date.

4. Learned counsel for the Appellant submits that till passing of the order by the Adjudicating Authority, the order for handing over the possession of the aforesaid property be stayed.

5. We are of the view that the prayer is reasonable and therefore, we pass the order that till passing of the order (in C.A No. 266 of 2020 dated 07.01.2020) by the Adjudicating Authority taking the possession of the aforesaid property by the Liquidator is hereby stayed.

6. It is made clear that we are not passing any order on merit and the Adjudicating Authority is free to pass the order without influenced by this order.

7. The Liquidator who is represented by Mr. Sameer Rastogi is directed not to proceed further in light of this order.”

4. It was also informed through the 11th Progress Report that the Hon'ble NCLAT had stayed the Liquidator from taking possession of the aforesaid property.

5. That accordingly, while taking the 11th Progress Report submitted by the Liquidator on record on 17.08.2020, this Tribunal had observed that :

“The Liquidator has mentioned that the IA 266/2020, which was heard by the earlier Bench but one of the Member Ms. Ina Malhotra has superannuated without pronouncement of the order. Hence, the IA 266/2020 needs to be relisted and re-heard. The registry is directed to list the IA 266/2020 on 11th September 2020.”

6. That in view of the above, the present Application has been heard and is decided on merits vide this Order.

7. That although the present Application is filed under Rule 11 of the NCLT Rules 2016, during the course of the final hearing, the Ld. Senior Counsel appearing for the Applicant also relied upon Section 420 of the Companies Act, 2013 to seek modification of the order dated 20.12.2019.

8. That while addressing the issue of maintainability of the present Application, Ld. Senior Counsel appearing for the Applicant submitted that it is permissible for this Tribunal to amend and rectify any mistake from a factual or legal view point, as would be apparent from the record and therefore, the present application is maintainable.

9. The Corporate Debtor through Ld. Senior Counsel as well as in his written submissions dated 29.01.2021 has placed reliance on the Judgement of the Hon'ble NCLAT passed in Review Application No.2 of 2018 in Company Appeal (AT) No.12 of 2018 in the matter of Dr. M.A.S. Subramanian & Ors Vs TS Sivakumar & Ors.



10. The Corporate Debtor through Ld. Senior Counsel as well as in his written submissions has further placed reliance on the para 13 of the Judgement of Hon'ble Supreme Court in the matter of **Honda Siel Power Products Ltd. Vs Commissioner of Income Tax Appeal (Civil) 5412 of 2007**, as quoted below :

“13. "Rule of precedent" is an important aspect of legal certainty in rule of law. That principle is not obliterated by section 254(2) of the Income-tax Act, 1961. When prejudice results from an order attributable to the Tribunal's mistake, error or omission, then it is the duty of the Tribunal to set it right. Atonement to the wronged party by the court or Tribunal for the wrong committed by it has nothing to do with the concept of inherent power to review. In the present case, the Tribunal was justified in exercising its powers under section 254(2) when it was pointed out to the Tribunal that the judgment of the coordinate bench was placed before the Tribunal when the original order came to be passed but it had committed a mistake in not considering the material which was already on record. The Tribunal has acknowledged its mistake, it has accordingly rectified its order. In our view, the High Court was not justified in interfering with the said order. We are not going by the doctrine or concept of inherent power. We are simply proceeding on the basis that if prejudice had resulted to the party, which prejudice is attributable to the Tribunal's mistake, error or omission and which error is a manifest error then the Tribunal would be justified in rectifying its mistake, which had been done in the present case.”

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11. During the hearing, it was stated by the Ld. Senior Counsel that this Tribunal has committed the following mistakes that are apparent on the face of the record and which can be rectified by using its jurisdiction conferred under Section 420 of the Companies Act, 2013 :

a) That the Transaction is much older and is outside the purview of Section 66 of IBC 2016. It was added that the limitation period with respect to cumulative effect of Section 67 and 69 of IBC 2016 is 2-5 years, whereas admittedly the transaction in question is of year 2005 and the insolvency proceeding were initiated on 24.04.2017.

b) That the order dated 24.12.2019 will result in cancellation of the sale deed dated 09.02.2005, which is not the jurisdiction of this Tribunal and only Civil Court can do that.

c) That this Tribunal had held that the property in question as Benami. Further the act which deals with the Benami Property is Benami Transactions (Prohibition) Act, 1988. He placed further emphasis on Section 4 and Section 67 of the Benami Transactions (Prohibition) Act, 1988, which are reproduced below:

“4. Prohibition of the right to recover property held benami- (1) No suit, claim or action to enforce any right in respect of any property held benami against the



person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.”

“67. Act to have overriding effect- *The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”*

d) That the Loan from ICICI Bank was taken by the Directors in their individual capacity and the Corporate Debtor company has stood as the guarantor. Since ex-Directors failed to repay the loan, therefore payment was made by the Company in the capacity of a guarantor.

12. That the Liquidator / Respondent in its Written Submissions has opposed the prayer of the Applicant and submitted that this Tribunal / Adjudicating Authority has no power to review its own order.

13. That the Liquidator/Respondent has placed reliance on the decision of the Hon'ble NCLAT in the matter of APC Credit Rating Pvt. Ltd Vs. ROC, NCT of Delhi and Haryana in Company Appeal (AT) No.206 and 221 of 2017, wherein it was held that the Adjudicating Authority has no general power to review its own order or judgement.

14. It is further submitted by the Liquidator/Respondent that the extra-ordinary power of this Tribunal under Rule 11 of NCLT Rules 2016 cannot be used for review of its own order/judgement. It is added by the

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Respondent that Rule 154 of NCLT Rules 2016 can only be used for the purpose of rectification of any clerical or arithmetical mistake in the order arising from any accidental slip or omission and not for any other purpose. There being no clerical or arithmetical mistake in the Order of this Tribunal dated 20.12.2019, the present Application is not maintainable.

15. It is further stated by the Liquidator/Respondent that the Law of Limitation is not applicable on the proceedings initiated under Section 66 of IBC 2016 as the Forensic Auditor in his findings has found the ex-management fraudulently diverting funds of the corporate debtor for the purpose of acquiring assets in their own name and the assets acquired fraudulently in the name of ex-directors must be restored to the corporate debtor.

16. It is further submitted by the Liquidator/Respondent that as per Section 238 the Insolvency and Bankruptcy Code 2016, the IBC has overriding effect on any other laws for the time being in force including the Benami Transactions (Prohibition) Act, 1988 as the Insolvency and Bankruptcy Code, 2016 is enacted later in time. Therefore, in view of the non-obstante clause under Section 238 of the Insolvency and Bankruptcy Code, 2016, provisions of the Benami Transactions (Prohibition) Act, 1988 shall have no effect.

17. It is further stated by the Liquidator / Respondent that the fact that the ex-management were the co-applicant for seeking the loan from the banker of the Corporate Debtor has no persuasive value as in the case of an application for loan to a Company, the Directors of the company are invariably made party.

18. After going through the Application, written submissions on record and hearing both the parties, this Bench is of the view that the issues involved in the present Application are the following :

- (a) Whether this Adjudicating Authority/Tribunal can review its own Order dated 20.12.2019 ?
- (b) Is there any mistake apparent from the record in the order dated 20.12.2019, which could be rectified by exercising jurisdiction conferred to this Adjudicating Authority under Rule 11 of the NCLT Rules, 2016 or to this Tribunal under Section 420 of the Companies Act, 2013 ?

19. That at this stage, it is worthwhile to refer to the Judgement of the Hon'ble High Court of Allahabad dated 27.09.2018 in WRIT-C No.-32675 of 2018 in the matter of **M/S Khan Enterprises Through Prop. Mohd. Naushad Khan vs The National Company Law Tribunal**, which held that :



“It is admitted that there is no provision in IBC for review of the order admitting a petition filed under Section 9 of the IBC. It is also not disputed in law that the power to review cannot be exercised unless there is specific provision for the same.”

“As far as power to recall an order is concerned, it is nothing but a procedural review which can be availed only if there is any procedural defect in passing the order or the order has been obtained by playing fraud in any manner. There is hardly any procedural defect pointed out in admitting the petition filed under Section 9 of IBC. The said order of admission is self-explanatory and conforms to all the requirements necessary for admitting a petition filed under Section 9 of the IBC. Merely for the reason that it was not contested by respondent no. 3, it cannot be said that it was a collusive petition or that the order of admission was obtained by collusion between respondents no. 2 and 3.”

20. That Ld. Senior Counsel for the Applicant has placed reliance on para 30 of the Judgement passed by Hon'ble Supreme Court in Civil Appeal No. 1171 of 2004 in the matter of **Assistant Commissioner, Income Tax, Rajkot Vs. Saurashtra Kutch Stock Exchange Limited**, which is reproduced overleaf :

“30. In our judgement, therefore, a patent, Manifest and self-evident error which does not require elaborate discussion of evidence or argument to establish it, can be said to be an error apparent on the face of the record and can be corrected while exercising certiorari jurisdiction. An error cannot be said to be apparent on the face of the record if one has to travel beyond

the record to see whether the judgement is correct or not. An error apparent on the face of the record means an error which strikes on mere looking and does not need long-drawn out process of reasoning on points where there may conceivably be two opinions. Such error should not require any extraneous matter to show its incorrectness. To put it differently, it should be so manifest and clear that no court would permit it to remain on record. If the view accepted by the court in the original judgement is one of the possible views, the case cannot be said to be covered by an error apparent on the face of the record.”

21. Further, in Review Application No. 2 of 2018 in **Company Appeal (AT) No.12 of 2018 - DR MAS Subramanian & Ors Vs TS Sivakumar & Ors.**, also relied by the Applicant, it is held by the Hon’ble NCLAT that :

*“9. **Power of Review is not an inherent power.** Reference can be made to the Judgement of Hon’ble Supreme Court in the matter of Assistant Commissioner, Income Tax, Rajkot Vs. Saurashtra Kutch Stock Exchange Limited reported in (2008) 14 SCC 171. In that matter Hon’ble Supreme Court was considering a provision similarly worded as sub-section 2 of Section 420. Hon’ble Supreme Court in Para 30 of the Judgement observed as under:-*

*“30. In our judgment, therefore, a patent, Manifest and self-evident error **which does not require elaborate discussion of evidence or argument to establish it**, can be said to be an error apparent on the face of the record and can be corrected while exercising certiorari jurisdiction. **An error cannot be***

said to be apparent on the face of the record if one has to travel beyond the record to see whether the judgment is correct or not. An error apparent on the face of the record means an error which strikes on mere looking and does not need long-drawn-out process of reasoning on points where there may conceivably be two opinions. Such error should not require any extraneous matter to show its incorrectness. To put it differently, it should be so manifest and clear that no court would permit it to remain on record. If the view accepted by the court in the original judgment is one of the possible views, the case cannot be said to be covered by an error apparent on the face of the record.”

22. Since, there is no express provision for “Review” of an order by the Adjudicating Authority in the IBC, 2016 and the “Power of review is not an inherent power” as held by the Hon’ble NCLAT in the aforesaid Judgement and again, reiterated in its latest Judgement dated 03.02.2021 in the matter of Adish Jain Vs. Sumit Bansal and Ors in Company Appeal (AT) (Insolvency) No. 379 of 2020, this Bench is of the considered opinion that this Adjudicating Authority does not have and therefore, cannot exercise any “Power to Review” its own Order under Rule 11 of the NCLT Rules 2016 or otherwise.

23. Further to see whether the alleged mistakes as stated by the Ld. Sr. Counsel for the Applicant and mentioned in Para 11 of this order are the ones, which can be rectified by exercising jurisdiction under Section 420(2) of the Companies Act, 2013. For adjudicating this, it is necessary to examine the nature of the alleged mistakes, in the light of Section 420(2) of the Companies Act 2013, within the boundaries of the documents available on record:

a) In reference to the mistake alleged with respect to the transaction referred to this Adjudicating Authority under Section 66 being barred by Limitation it is seen that it has been rebutted by the Liquidator in his written submissions stating that Law of Limitation is not applicable to the proceedings under Section 66 of IBC 2016. Further, the aforesaid plea (of transaction referred to this Adjudicating Authority under Section 66 being barred by Limitation) was not raised by the Applicant at the time of the hearing of CA-840/C-II/ND/2018. Therefore, in our view, the Applicant cannot seek re-hearing of the matter under the garb of rectification under Section 420 of the Companies Act 2013. Here, it is worthwhile to refer to the Judgement passed by Hon'ble High Court of Calcutta in the matter of **Prashant Properties Limited Vs SPS Steels Rolling Mills Ltd. C.O.**

No. 2205 of 2019 With C.A.N. No. 6305 of 2019 dated 25.09.2019, wherein it was observed that :

*“29. Even if Section 66 of the IBC applied to past transactions, unlike Sections 44, 48 and 51, IBC (under which the NCLT, as Adjudicating Authority, can avoid past transactions), under Section 66, the NCLT cannot avoid past transactions, even if fraudulent, but under Section 66(2) can only direct the Director/partner of the Corporate Debtor, and not other parties to the transaction, to make contribution to assets of the Corporate Debtor. **As such, even if Section 66, IBC could arguably apply at all to past transactions, it would not then be subject to the restriction as to look-back period.** Palpably with such reason in mind, the said section might have been sought to be applied to the PUA-in-question, despite not being otherwise applicable at all to the same.”*

That further, the coordinate Bench of NCLT Ahmedabad in I.A No. 212 of 2019 in I.A. No. 458 of 2018 in C.P. (I.B) No. 19/7/NCLT/AHM/2017 dated 29.05.2020, in the case of VITOL S.A. in the matter of Mr. Abhishek Nagori Vs Asian Natural Resources (India) Limited held that :

*“10.3 Moreover, while a look-back period has been provided for undervalued transactions under section 46, **there is no limitation period for fraudulent***

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transactions covered under sections 49 and 66 of the Code. The intent is that “once a fraud always a fraud”.

The maxim “fraud vitiates every transaction into which it enters as well as to contracts and other transactions.”

The basic essence is that any person who has carried out any wilful act should not be allowed to get away by citing reasons such as lapse of time or look back period is 2 years only.”

b) That with regard to direction of cancellation of the sale deed dated 09.02.2005, from perusal of the order dated 24.12.2019, it is observed that there is no order of cancellation of the sale deed in the order dated 20.12.2019. Only a direction for attachment of the said property and its public auction was given by this Adjudicating Authority with a view to recover and maximise the value of the assets of the Corporate Debtor-in-Liquidation. That this Adjudicating Authority is empowered under Section 66(2) of the IBC 2016 to direct the Ex-Directors to make such contribution to the assets of the corporate debtor as it may deem fit. The provision of Section 66(2) of IBC 2016 is reproduced below: **“Fraudulent trading or wrongful trading.**

66. (1)

(2) *On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if-*

(a) before the insolvency commencement date, such director or partner knew or ought to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and

(b) such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.”

In the case herein, the Ex-Directors instead of minimising losses of the Corporate Debtor, their action of fraudulently recording of the property belonging to the Corporate Debtor M/s Helpline Hospitality in their own name has resulted in complete loss of the asset, which was duly procured in the name of and from the funds of the Corporate Debtor.



c) As regards to calling the property in question as Benami, this Adjudicating Authority has referred to the Judgement of the Hon'ble High Court of Delhi in the matter of Reserve Bank of India Vs JVG Finance Ltd. in Co. Appeal 1818/2011 in Co. Pet. 265/1998 only to infer that the property purchased from the funds of a company belongs to the company and therefore, should vest in the Corporate Debtor/Company. This Adjudicating Authority has never termed the property in question as Benami. Further, the Liquidator in his written submissions had rebutted the allegations of the Applicant by stating that the Section 238 of IBC 2016 will override the provisions of Benami Transactions (Prohibition) Act, 1988. That which Act will override which one is a question of law where there could be views. Therefore, the moment the issue is debatable and there is a possibility of having more than one view, this Tribunal ceases to have jurisdiction under Section 420 of the Companies Act 2013. In this context, it is worthwhile to refer to the Judgement of Hon'ble NCLAT in the **Review Application No. 09 of 2020 Company Appeal (AT) (Insolvency) No. 848 of 2019 in the matter of Deepakk Kumar Vs M/s Phoenix ARC Pvt. Ltd.**, wherein it was held that :

“26 The term ‘record’ in Section 420 of the Companies Act, 2013 means record to the proceedings of the case. An error must be a ‘patent error’ and not a mere ‘wrong decision’.

Where two views are possible and the matter is debatable, the order cannot be rectified by mistake apparent from record as per decision *‘Commissioner of Income Tax’ V. ‘East India Cotton Association Ltd.’ (1984) 149 ITR pg. 274. When there is no mistake apparent from the record in the judgement delivered by a Tribunal, then an application for review filed by the concerned Applicant cannot be construed to be one under Section 420(2) of the Companies Act or under Rule 11 of ‘NCLAT’ Rules, 2016.*

Therefore, we are of the opinion that the rectification sought is outside the purview of Section 420 of Companies Act, 2013.

d) Further, with regard to the argument advanced by the Sr Counsel on behalf of the Corporate Debtor *“that the Loan from ICICI Bank was taken by the Directors in their individual capacity and the Corporate Debtor company has stood as the guarantor and as the ex-Directors failed to repay the loan, the payment was made by the Company in the capacity of a guarantor”*the same has been rebutted by the Liquidator in its submissions stating that the Ex- management was the co-applicant for seeking loan from the banker of the Corporate

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Debtor has no persuasive value as in the case for application for loan to a company, the Directors of the Company are made party to it. In this regard, it is worth perusing the relevant finding of Forensic Auditor, which was placed by the Liquidator and quoted in the Order of this Tribunal dated 20.12.20219 in the CA-840/C-II/ND/2018, recording that:

“The Company has taken a loan of Rs. 36,59,250/-vide agreement dated 30.10.2004 for a tenure of 104 Months (8Years 8 Months) period ended on 22.07.2013 for asset located at Plot No. G-158, Sector-41, Noida, Uttar Pradesh-201302 for personal assets in the name of Mr. Thondiyil Sivarama Pillai Murali (T.S. Murali) Director, being a Co-applicant of said assets. The facts are not addressed by auditors in their audit report for the financial year 2004-05 to 2013-14. The Amount withdraw from company account for creating their personal wealth is treated as siphoning of money and cheating, fraud, misrepresentation of facts to company financial position.

The Agreement No. is LEDEL00000921645 from ICICI bank and the said Loan EMI is auto debit from account No. 630xxxxxx943. Hence on the basis of facts it is evident that directors made a wilful attempt for diversion of funds from company account to their personal benefits fraudulently hence the same amount is liable to be recovered along with interest @18%. The Total Amount diverted as an consolidated instalment in view of loan statement taken from ICICI bank dated 30.08.2018 is Rs.65,28,836.56/-

The Present estimated market Value of above said property around 4 Crores which is created from the

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funds of company moving fraudulently for repayment of the loan taken for purchase of this house. This House shall be transfer to Company immediately to safeguard the interest of stakeholders specially Service Tax department, Government of India. RS.3,91,04,886/- were overdue of Service Tax Department which can be recovered to sale this property. It is recommended that an early action will support the claim overdue of different stakeholders, the amount can be recovered by the court of law from their personal estate of directors or sale their property for which loan has taken by transfer into company account.”

That it is a matter of fact that the aforesaid findings were neither challenged nor anything contrary was produced by the Applicant herein. Therefore, there was no reason for this Adjudicating Authority to believe that the findings of the Forensic Auditor are untrue.

To further check whether any mistake apparent on the face of record has been committed by this Tribunal in this regard, we re-visit the relevant **Loan Account Statement of ICICI Bank itself**, that was placed as part of the record of CA-840/C-II/ND/2018 and which is reproduced overleaf :





Loan Account Statement for LND10001037104

Mr., Helpline Hospitality (P) Ltd.
T-1433/1 2nd Floor
Wazir Nagar Kotla Mubarak Pur
New Delhi
Delhi - 110003
Tel: (011) 24634385
Mob: 9910212103
Email: ajay_sonu18@rediffmail.com

Loan Account Details As on 31-Aug-18

Start Date	Start Amt	Disbursed Amt	Rate of Interest	Original Interest	Instt. Paid	Instt. Pending	Future Instt. Nos.	Future Instt. Amt	
31-Oct-04	3,659,250.00	3,659,250.00	0.00	10.25%	24.00%	102 / 6,525,773.00	0 / 0.00	0	0.00

Branch: Delhi
Co-Applicant Name: Thondiyil Sivarama Pillai Murali, Rema Murali
Product: HOME LOAN
Guarantor Name:
Application No: 7773119868
Customer Category: Corporate
Tenure: 104
Property Address: P No. G-168, Noida, Sector 41. 41, Noida 201302
Frequency: Monthly
Rate(%): 15.50
Variance: -5.25
Rest: Monthly
PAN No. :
Int. Rate Type: Floating
Current EMI: 83000.00
Currency: INR
Installment Plan: Equated Instl
HNI:
Repayment Mode: AUTO DEBIT A/C No.630005006943
Status: Closed
Closing Reason: REQUESTED FORECLOSURE

Evidently, the aforesaid Loan Account of ICICI Bank was in the name of the "Helpline Hospitality (P) Ltd" and the Ex-Directors Sh T.S. Murli and Ms Rema Murli were the "Co-Applicants" only. The column of the Guarantor, as a matter of fact, is appearing blank in the said statement.

It is, therefore, patently wrong to say that the Loan from the ICICI Bank was taken by the Ex-Directors in their individual capacity and the Corporate Debtor company stood as the guarantor.

24. When we again refer to the Judgement passed in the **Review Application No. 09 of 2020 Company Appeal (AT)(Insolvency) No. 848 of 2019 in the matter of Deepakk Kumar Vs M/s Phoenix ARC Pvt. Ltd., we find that the Hon'ble NCLAT has held that :**

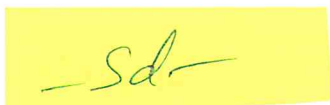
*“27. It is worth for this Tribunal to recollect and recall the decision of Hon'ble Supreme Court in 'Lily Thomas' V. 'Union of India' reported in AIR 2000 Supreme Court pg. 1650 at spl. Pg. 1665 wherein it is held **that the power to rectify or amend the order is exercised to remove the mistake without disturbing its finality.**”*

25. Through the prayers in the present Application, namely : “(A) *Permit the Applicants herein to deposit /pay the sum of Rs. 65,29,836/- over a period of 6 months (B) Modify the Orders dated 20.12.2019 in CP (IB)-35(ND)/2017 passed by the Hon'ble NCLT New Delhi Bench- II in view of the submissions made hereinabove by staying/removing the warrants of attachment dated 24.12.2019 issued by the Liquidator pertaining to the property bearing no. G-158, Sector 41, Noida, Uttar Pradesh- 201301.*”..... in our considered view, what the Applicant is asking (by seeking to amend the order) is to disturb the finality of the order dated 20.12.20219 passed by this Tribunal in the CA-840/C-II(ND)/2018, which is not permissible under Law.

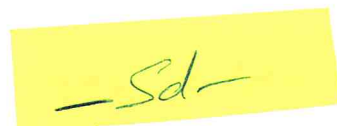


26. In the light of the discussion above, we find that the 'power of review' is not an inherent power and also, there is no express provision for 'review' of an Order in the IBC 2016, which is a self-contained Code dealing with both the provisions and procedure. Hence, we cannot assume the jurisdiction to review the Order as prayed for. Further, as discussed above, the rectifications as sought by the Applicant are neither apparent from the face of record nor involve any arithmetical, clerical or procedural mistake and therefore, are beyond the purview of Section 420(2) of the Companies Act, 2013.

27. In sequel to the above, **the present Application is dismissed**. The Liquidator is directed to proceed accordingly and keep this Authority posted of the progress of Liquidation proceedings at fortnightly interval.



(L. N. Gupta)
Member (T)



(Abni Ranjan Kumar Sinha)
Member (J)