

**Insolvency and Bankruptcy Board of India**  
**7<sup>th</sup> Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001**

**5<sup>th</sup> June, 2023**

***Subject: Judgment<sup>1</sup> dated 25<sup>th</sup> May 2023 of five judge bench of National Company Law Appellate Tribunal, New Delhi in the matter of Union Bank of India (Erstwhile Corporation Bank) Vs. Dinkar T. Venkatasubramanian & ors. IA No.3691 of 2022 in CA (AT) (Ins.) No. 729 of 2020***

**I. Brief Background**

Corporate insolvency resolution process was initiated by financial creditor (FC) against Amtek Auto Ltd. corporate debtor. Resolution plan was approved by the Committee of Creditors (CoC) with requisite majority vote. Adjudicating Authority (AA) approved the resolution plan filed by the resolution professional. However, the reliefs prayed for by the FC in the interlocutory application (IA), was rejected by AA. Aggrieved by the order of AA, FC's appeal before National Company Law Appellate Tribunal (NCLAT) without impleading the Committee of Creditors was partly allowed. The FC filed appeal against the NCLAT judgment before the Hon'ble Supreme Court and the same was dismissed as withdrawn with the liberty to file a review application.

Subsequently, review application filed by the FC was dismissed by the NCLAT holding that there is no provision for review under the Code and the FC may take recourse in accordance with law, if aggrieved. The FC has filed the present IA seeking to recall the order partly allowed by the NCLAT.

On a reference by the three-member bench of the NCLAT, a five-member bench of the same Tribunal was constituted for considering the following questions.

**II. Questions:**

- 1 Whether the Tribunal not being vested with any power to review the judgment can entertain an application for recall of judgment on sufficient grounds?
2. Whether judgment of NCLAT in “*Agarwal Coal Corporation Private Limited Vs Sun Paper Mill Limited & anr.*” and “*Rajendra Mulchand Varma & Ors Vs K.L.J Resources Ltd & Anr.*” can be read to mean that there is no power vested in it to recall a judgment?

**III. Observations:**

- The NCLAT while considering judgments of Hon'ble Supreme Court which clearly lays down the distinction between the review and recall. The power of review is not conferred on the Tribunal; whereas the power to recall its judgment is inherent in it on sufficient grounds. Rule 11 of National Company Law Appellate Tribunal Rules, 2016 (NCLAT Rules) expressly provide for inherent powers of the Tribunal.
- On the question of powers of the Tribunal to recall its judgment, it was held that the view taken by the three-member bench of the NCLAT does not lay down the correct law. The five-member bench while answering the questions in the case held that power to recall a judgment is inherent in terms of rule 11 of the NCLAT Rules.

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