

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.446/2025
(IA No.1280/2025)

IN THE MATTER OF:

RCC E-Construct Pvt. Ltd.
Through its Authorized Representative
Michael Raj Abraham
Having its office at C-74, Sushant Lok,
Phase-1, Gurgaon, Haryana – 122 002.

...Appellant

V

Mr. J. Ramkumar
No.3/21, Pillaiyar Koil Street,
Vengal Post, Pagalmedu,
Vengal, Thiruvallur District – 600 103.

Mr. B. Gayathri
No.20/1, Bajanai Koil Street, Redhills,
Chennai – 600 052.

Mr. J. Satheshkumar
No.3/21, Pillaiyar Koil Street,
Vengal Post, Pagalmedu,
Vengal, Thiruvallur District – 600 103.

Mr. K. Thambusamy
No.C-4, Bharathi Road, Block 9,
Neyveli, Pin – 607 801.

Mr. Palaranga Siva Kumar
No.25-10-429, Chaithanayapuri Colony,
Vedayapalem, Nellore, Vengal Rao Nagar,
Andhra Pradesh – 524 004.

**Mr. R. Ramanan,
No.36-B, Type II, Block No.6,
Neyveli, Pin – 607 803.**

**M/s. P Dot G Constructions Pvt Ltd
(CIN): U45200TN2007PTC063625
Office at Ground Floor, No.66, 3rd Main Road,
Kasturba Nagar, Adyar, Chennai – 600 020.**

...Respondents

Present :

For Appellant : Mr. Shobit Phutela, Advocate

For Respondents : Mr. P. Elayarajkumar, Advocate for R1 to R6

**JUDGMENT
(Hybrid Mode)**

[Per : Justice Sharad Kumar Sharma, Member (Judicial)]

The challenge as given by the Appellant in the instant Company Appeal, is an agitation of his grievances being aggrieved as against the impugned order dated 28.04.2025, that was rendered by the Learned Adjudicating Authority i.e., NCLT, Division Bench-1, Chennai, in IA(IBC)/660/(CHE)/2025, which was preferred by the Appellant by invoking the provisions contained under Rule 11 of the NCLT Rules, for the purposes to seek a recall of the order that was passed on merits on 24.03.2025. The said application for recall of the order 24.03.2025 has been dismissed, holding thereof that the recall will not lie, because for the purposes of preference of a recall application, exercising of an inherent power under Rule 11 of NCLT Rules, would not be open to be resorted to by a party, who had admittedly already been a party to the proceedings and had

contested on merits and lost. Having not questioned the propriety of the principal order, the preference of a recall application cannot be taken as to be a substitute to seek a review of the order that, was passed on merits, which otherwise, under the provisions of the I & B Code, to be read with the NCLT Rules, is not a scope left open for reviewing of an order which has been admittedly passed on merits. Rule 11 as incorporated is in the shape of the savings clause, where the exercise of inherent powers is an exclusive prerogative vested with the Learned Tribunal, which has given an overriding effect to the other provisions, for the purposes of extension or exercise of powers by the Learned Tribunal to pass any such order, as may be necessary to meet the ends of Justice depending upon the facts and circumstances of each case. The intention of Rule 11 of NCLT Rules, is that it is a savings power, which has been vested with Learned Tribunal that, in any given situation of a stalemate, in the proceedings, where the Learned Tribunal feels that the I & B Code, or the rules framed thereunder are silent to deal with the particular peculiar aspect and which is inevitably required to be exercised for the purposes to meet the ends of Justice.

2. It is the exclusive prerogative of the Learned Tribunal based on its rationale judgment to extend its ambit of powers, to pass an appropriate order under Rule 11 of the NCLT Rules, 2016. The language that has been used under Rule 11, makes it apparent: -

- (i) That it acts as a savings clause in the absence of there being a specific provision under the statute to deal with a subject covered under the statute,
- (ii) That it enables Learned Tribunal to pass orders on those issues where it is necessary to pass an order, in order to meet the ends of Justice and to prevent abuse of law.
- (iii) Thus, invocation of the same, as the matter of right is not the intention of Rule 11 of the NCLT Rules, 2016. The purposes of the exercise of inherent powers under Rule 11 of the NCLT Rules, 2016, is to meet the ends of rendering substantial Justice or to prevent an abuse of process. In the instant case, invoking of Rule 11 of NCLT Rules for the purposes of seeking recall of an order passed on merits, after participation of a party in the connected proceedings is neither intended to prevent an abuse of process nor it intends to meet the ends of Justice. Rather, exercise of inherent powers under Rule 11 of NCLT Rules, is being prayed for, by filing the application under Rule 11 to sustain the recall application, so as to circumvent a situation where the Tribunal has not been vested with the power of review under the statute and to seek review of an order, which has been otherwise passed on merit after participation in the proceedings.

3. Rule 11 of the NCLT Rules, 2016, reads as under,

“11. Inherent Powers.-

Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal”.

4. In the case of ***Printland Digital (India) Pvt. Ltd. v. Nirmal Trading Company (Company Appeal (AT) (Insolvency) No.504 of 2022)***, the Hon’ble NCLAT held that the Adjudicating Authority (NCLT), is vested with power to recall its order in terms of Rule 11 of NCLT Rules, 2016. However, this power does not include within its ambit, the power to review its order after a substantial issue in the matter has been decided. The relevant paragraphs is extracted hereunder,

“No doubt that the Adjudicating Authority has no jurisdiction to review its order after deciding a substantial issue but it has the jurisdiction to recall the order of the kind in dispute i.e. where the right to Reply was closed by an order on the ground that the opportunities granted were not availed. In this regard, we rely upon a decision of this Tribunal rendered in the case of CA (AT) (Ins) No. 271 of 2022 in which it has been held that if there is an adjudication by the Adjudicating Authority on merits of the issues then it would not have the jurisdiction to review its order but insofar as the dispute with regard to right to file the Reply which is closed by an order, it certainly has the jurisdiction to recall it in terms of the Rule 11 of NCLT Rules, 2016”.

5. The facts, that emerge for consideration in the instant Company Appeal are that, the Corporate Debtor M/s. P Dot G Constructions Pvt Ltd was placed under the insolvency proceedings by an order that, was passed on 13.07.2018 in CP/193(IB)/CB/2018. The Appellant, who happens to be the Applicant to the recall application i.e., M/s. RCC E-Construct Pvt Ltd, claims itself to be the Successful Resolution Applicant, who contends that the plan stood approved by the Learned NCLT. Be that as it may. At this stage, we are not dealing with the issue about the status of the Applicant as the Successful Resolution Applicant, or what implications, would it have on the recall application, as a consequence of the approval of the Resolution Plan of the Applicant, because that would be the subject matter of the principal order dated 24.03.2025, which is sought to be recalled, subject to condition that it is put to challenge by the appellant/applicant in a regular appellate proceeding.

6. It is a fact which could be borne from records, that the six homebuyers have filed an application seeking execution of the sale deed of their respective units of the real estate, which was said to have been developed by the Corporate Debtor. The said application as preferred by the homebuyers, was disposed of by the Learned NCLT, by a common order that was passed on 24.03.2025, directing the Appellant to act as per the approved Resolution Plan, since already being the Successful Resolution Applicant.

The common order which was thus passed by the Learned Tribunal on the said Interlocutory Applications, was passed in the presence of the Appellant and his counsel, as would be apparent from the introduction of the order dated 24.03.2025 itself. If the order dated 24.03.2025 is taken into consideration in its totality, it can be seen that the Appellant was heard and the contention raised by the Applicant (Appellant herein), being the Successful Resolution Applicant, was considered by the Learned Tribunal, while passing the order on the merits of the issue by deciding the respective Interlocutory Applications.

7. This order, which was solicited by the Appellant, was after a contest put in by the Applicant which was now being sought to be recalled by filing a recall application on 10.04.2025 by the Appellant, particularly in the context of the order that was passed on MA No.554/2019. The prayer made by the Appellant in the recall application, thus preferred by the Applicant, has been that the order dated 24.03.2025, which was rendered on Interlocutory Applications being IA(IBC)/2067(CHE)/2024, IA(IBC)/2069(CHE)/2024, IA(IBC)/2081(CHE)/2024, IA(IBC)/2106(CHE)/2024, IA(IBC)/2239(CHE)/2024 & IA(IBC)/2242(CHE)/2024, may be recalled and the applications may be restored to its original number to be reheard. In the said order, Learned NCLT, after observing that the respective apartments for which the

applicants were seeking registration of sale deed relate to the project other than the Matrix, that the Resolution Professional has admitted the claim, that as per approved resolution plan, receivables are nil and that the Applicant allottees were willing to remit the Incremental Demand Payable under the plan, and that since the plan in the instant case has been approved, the same is to be implemented, proceeded to deciding the aforesaid Interlocutory Applications and issued the following directions:

“Let the Applicant(s) pay the amount. The Respondent/Successful Resolution Applicant is directed to act as per the approved plan”.

8. If the reason for recall, as narrated in the recall application, which was preferred on 10.04.2025 is taken into consideration, the appellant has come out with the case that, the Tribunal, by an order of 13.12.2019 as rendered in MA No.554/2019, had approved the Resolution Plan for the purposes of revival of the Corporate Debtor, and the **same has now attained finality**, that the additional time was sought to file replies to the said Interlocutory Applications with just grounds and that the Learned Adjudicating Authority proceeded to dispose of the Applications by a common order without allowing time to file replies. In case, if we go through the entire IA(IBC)/660(CHE)/2025 in its entirety, the reason for recall has been narrated by the Appellant in para 16 onwards of the application which reads as under: -

(i) If the order of 24.03.2025 is permitted to continue, it will cause a grave injustice.

(ii) The replies were not allowed to be brought on record.

(iii) There is no adjudication on the Application.

9. In our view, these grounds, which have been taken by the Appellant in filing of the recall, would entail reconsideration of the order dated 24.03.2025 afresh on its own merits, and will amount to be a review of the said order because all these conditions, which are now being agitated under the garb of the recalling of the order dated 24.03.2025, by preferring IA(IBC)/660(CHE)/2025, actually takes the shape of revisiting/reviewing the controversy on its merit, of the order passed on MA No.554/2019, of approving the plan for the purpose of revival of the Corporate Debtor. The grounds which have been taken, particularly that as contained in para 17 & 18 of the application, will not fall to be within the scope of the recall of the order under the garb of attracting Rule 11 of the NCLT Rules, 2016, because of the vague terminology used by the Appellant such as causing of grave injustice, is a personal conception of the Appellant that, has had to be legally substantiated, which the Appellant has failed to establish by any of the grounds that has been taken in the IA(IBC)/660(CHE)/2025. Even if it is presumed for the time being that, the replies were not allowed to be taken on record, in that eventuality, too, at the stage when the Tribunal was

considering MA No.554/2019, the Appellant ought to have raised his objection. Having not done so which is not even the case of Appellant, and having voluntarily participated in the proceedings that were held on 24.03.2025 in continuation to the order of the approval of the Resolution Plan dated 13.12.2019, as rendered in MA No.554/2019, the order dated 24.03.2025, would have to be treated to be an order passed on merits after participation of the Appellant in the proceedings.

10. The Hon'ble NCLAT in the case of *Aircastle (Ireland) Ltd. v. Mr. Ashish Chawchharia, RP of Jet Airways (India) Ltd. and Ors. (Comp. App. (AT) (Ins) No.1178/2024)* has further emphasised on the difference between 'review' and 'recall'. It was made clear that the power to recall can be exercised only on account of a procedural error apparent on the face of record such as the mistake of the court prejudicing the parties, fraud or collusion in obtaining the judgment or a judgment that was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented, and that powers vested on this Tribunal under Rule 11 of NCLT Rules, 2016, must not be invoked to re-open the case and to re-examine the findings. The relevant paragraphs are extracted hereunder for reference,

“56. At this stage, it is important to go into aspect of recall v/s review primary issue in the present appeal. We note that several judgments have been passed by the Hon'ble Supreme Court of India

and this Appellate Tribunal explaining the distinction between review petition and recall petition. Based on such judgements, we find following ratios relevant which are summarised as under :-

- Power of review has to be expressly conferred by a Statute.*
- Power to recall does not require an express provision in a Statute.*
- To recall is an inherent power whereas to review its judgement is not.*
- In a review petition, the Court considers the error apparent on the face of record on its merits.*
- 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 review.*
- Power of recall of a judgment can be exercised by the 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. One other well-known grounds for recall is the ground for fraud.*
- Where an application is styled as recall but in essence is review application, the same cannot be entertained.*
- Power to recall can be exercised under Rule 11 of NCLAT Rules, 2016*

57. We will also refer to the judgment of the Hon'ble Supreme Court of India in the matter of Sri Budhia Swain v. Gopinath Deb & Ors. [(1999) 4 SCC 396] which stipulated an order or judgement can be recalled in the following instances i.e.,

i) *The proceedings culminating into an order suffer from inherent lack of jurisdiction and such lack of jurisdiction is patent,*

ii) *There exists fraud or collusion in obtaining the judgment,*

iii) *There has been a mistake of the Court prejudicing a party,*

or

iv) *A judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented.*

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60. We consciously note that the NCLT & NCLAT have inherent powers to recall order but have no power to review its order.

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62. However, the Rule cannot be invoked to revisit the findings and it is not open to re-examine the findings. The mistake/error must be apparent on the face of the record and must have occurred due to oversight, inadvertence or human error. It would be open to correct the conclusion if the same is not compatible with the finding recorded on the issues raised".

11. This Tribunal refers to the decision of the five-member bench of the Principal Bench of the Hon'ble NCLAT in the case of ***Union Bank of India v. Dinkar T. Venkatasubramanian and Ors (I.A. No.3961 of 2022 in Company Appeal (AT) (Ins.) No.729 of 2020*** wherein the Appellate Tribunal, while deciding on the question, whether it was vested with the

power to entertain an application for recall of judgment on sufficient ground, elaborated on the difference between ‘review’ and ‘recall’. While doing so, it has held that power of recall on sufficient grounds is an inherent power vested with the Appellate Tribunal under Rule 11 of NCLT Rules, 2016 and has to be exercised to rectify any procedural error committed by it and that the power of review has not been vested upon the Appellate Tribunal. It was clarified that the power of recall of the Appellate Tribunal does not include the power to re-hear the matter. It is pertinent to note that Rule 11 of the NCLAT Rules, 2016 is *pari materia* Rule 11 of NCLT Rules, 2016. Hence, the findings of the Hon’ble NCLAT may be relied upon to assess the scope of powers vested upon this Tribunal under Rule 11 of NCLT Rules, 2016. The relevant paragraph of the judgment is extracted as under,

*“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, power which are inherent in the Tribunal as has 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.”

12. The decision of the Hon’ble NCLAT in ***Dinkar T. Venkatasubramanian (supra)*** was upheld by the Hon’ble Supreme Court of India vide its order dated 31.07.2023 in ***Union Bank of India Vs. Financial Creditors of M/s. Amtek Auto Ltd. & Ors. (Civil Appeal No.4620/2023)***.

13. The Hon’ble Supreme Court of India in the case of ***Greater Noida Industrial Development Authority Vs. Prabhjit Singh Soni and Anr. Civil Appeal Nos.7590-7591 of 2023 (Arising out of Diary No.3628 of 2023)*** dated 12.02.2024, has explained the difference between procedural review and review on merits. A procedural review is an inherent power of the Tribunal to set aside the palpably erroneous order passed under a misapprehension which is to be differentiated from a review on merits wherein the tribunal sets itself to review its decision on merits. The power to review on the case on merits is not considered to be an inherent power of the Tribunal. It can be seen that, in essence, the power of procedural review is nothing but the power of the Tribunal to recall its order. The relevant paragraphs of the judgment are extracted as under,

“44. In Grindlays Bank Ltd. vs. Central Govt. Industrial Tribunal a question arose whether Central Government Industrial Tribunal has power to recall/set aside an ex parte award when the party aggrieved had been prevented from appearing by a sufficient cause. Holding that such powers inheres in a Tribunal, this Court observed:

“6. We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well-known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary.” (Emphasis Supplied)

In addition to above, recognising the difference between a procedural review and a review on merits, it was observed:
13..... The expression “review” is used in the two distinct senses, namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record..... Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected

ex debito justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal.”

14. The Hon’ble Supreme Court of India in the case of ***Greater Noida Industrial Development Authority (supra)***, considered the case of ***State of Punjab vs. Davinder Pal Singh Bhullar*** wherein it was held that if a judgment has been pronounced without adhering to the principles of natural justice, then such an order becomes a nullity and the court may exercise its inherent power to recall such order. Such a power to recall is different from the power to review/alter its judgment. The relevant paragraphs are extracted for reference,

“45. In State of Punjab vs. Davinder Pal Singh Bhullar, while considering the bar imposed on a Court by Section 362 of the Criminal Procedure Code, 1973 on review of a judgment or final order disposing of a case, it was observed:

*46. If a judgment has been pronounced without jurisdiction or in violation of principles of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of court which would really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for the reason that in such an eventuality the order becomes a nullity and the provisions of Section 362 CrPC would not operate. **In such an eventuality the judgment is manifestly contrary to the audi alteram partem rule of natural justice. The power of recall is different from the power of altering/reviewing the judgment.***

However, the party seeking recall/alteration has to establish that it was not at fault.”

15. In the case of ***Greater Noida Industrial Development Authority*** (*supra*), it was held that an application for recalling the order of NCLT approving the resolution plan of the Corporate Debtor is maintainable if the same is made on the ground of non-adherence to provisions of IBC, 2016 and misrepresentation of facts by the Resolution Professional before the Tribunal. It was emphasized that such power to recall must be exercised sparingly and must not be a ground to rehear the case. The relevant paragraph is extracted for reference,

*“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 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 of any question of law or facts, arising out of 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-heard 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 the 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.”

16. None of the grounds as taken by Appellant in para 10, 11 & 12 do fall to be within the ambit of the recall, and further the recall too, in the instant case, will be having very restrictive applicability and cannot be utilised as a camouflage to seek review of an order which has been passed on merits.

17. Thus, the Learned Tribunal rightly observed that in view of the finding that has been recorded in the order of 24.03.2025, which has been sought to be recalled, is an order, which has been passed on merits and hence would not be falling within the ambit of the inherent exercise of powers for the grant of a recall under Rule 11 of NCLT Rules. As the Resolution Applicant had voluntarily participated in the proceedings and was directed upon to act as per the approved Resolution Plan, none of the ingredients as provided under Rule 11 of the NCLT Rules, 2016, is being satisfied by the grounds taken in the said recall application IA(IBC)/660(CHE)/2025. Besides that, we are of the considered view that since the recall application as it has been filed, is in the shape of a review of the order passed on merits after participation in the proceedings by the Appellant, the same has been

rightly rejected by the Learned Tribunal, holding it to be not falling to be within the ambit of Rule 11 of the NCLT Rules, 2016. Thus, rejection of the recall application does not suffer from any apparent error calling for any interference in the exercise of our Appellate Jurisdiction. The Company Appeal lacks merit and the same is accordingly dismissed. All pending Interlocutory Applications would stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

15/10/2025
VG/MS/AK