

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL****PRINCIPAL BENCH, NEW DELHI****COMPANY APPEAL (AT) NO. 196/2024**

(Arising out of judgement and order dated 5<sup>th</sup> April, 2024 passed by the National Company Law Tribunal, Mumbai in CP No.4024/MB/2018)

**In the matter of:**

Ms Kalpana Jain,  
W/o Late Shri Kantilal Jain  
Flat No.201, G Bldg, Nyati Equatorial,  
Phase I, Crystal Highway, Bavdhan,  
Budruk, Pune 411021

Appellant

Vs

1. Universal Oil Seals Mfg Co Pvt Ltd,  
16/18, Sidhapural Industrial Estate,  
Masarani Lane Halav Pool, Kurla,  
Mumbai 400070
2. Mr. Sandeep Kantilal Jain  
S/o Late Sh Kantilal Jain  
Sunder Bhavan,  
3<sup>rd</sup> Floor, 166E, Dr. Ambedkar Road, Dadar (East),  
Mumbai 400014
3. Ms Yogita Sandeep Jain  
W/o Shri Sandeep Jain  
House No.120, Plot No.166,  
Sundar Bhavan,  
3<sup>rd</sup> Floor, 166E  
Dr. Ambedkar Road, Dadar (East)  
Mumbai 400014

Respondents

For Appellant:Mr Sandeep Bajaj and Mr. Mayank Biyani, Advocates.

For Respondent:Mr. Tapeshe Kumar Singh, Sr. Advocate with Mr. Prabhat Ranjan Raj and Mr. Amarjeet Gupta, Advocates.

**JUDGEMENT****JUSTICE YOGESH KHANNA, MEMBER (JUDICIAL)**

The present appeal has been filed by the appellant under Section 421 of the Companies Act, 2013 against the order dated 5<sup>th</sup> April, 2024 passed by

the Ld. National Company Law Tribunal, Mumbai Bench in Restoration Application No. 7 of 2024 in CP No.4024 of 2018.

2. The brief facts are the appellant had filed a Company Petition No.4024/2018 before the Ld. NCLT Mumbai for several acts of oppression and mismanagement carried out by the Respondent No.2 and 3, more specifically narrated in the original company petition and the present appeal. It is alleged though the Ld. NCLT had substantially heard the matter on merits of the case on multiple issues but dismissed the company petition on account of inability of 80 years old appellant to provide certain information due to her continued bad health. The Company Petition was dismissed vide order dated 20<sup>th</sup> December, 2023 on the ground it is incomplete due to want of documents.

3. The appellant filed a Restoration/recall Application No.7/2024 before the Ld. NCLT for restoring of the company petition and for recall of its order dated 20<sup>th</sup> December, 2023 but it was also allegedly dismissed without assigning any proper reasoning on the merits of the case *vide* the impugned order.

4. The learned senior counsel for respondent appears on advance notice and took a primary objection that this appeal is not maintainable as the appellant had not filed any appeal against the impugned order dated 20<sup>th</sup> December, 2023 and this appeal being only against the impugned order 5<sup>th</sup> April, 2024 seeking restoration of order dated 20.12.2023, it be dismissed. Admittedly appeal against the order dated 20<sup>th</sup> December, 2023 is now barred by limitation and that this appeal does not challenge order dated 20.12.2023. Now the argument of the Ld. Counsel for the appellant is the requisite documents could not be filed before Ld. NCLT as the appellant was seriously

ill and was bed ridden during the period from August 2023 till December, 2023 and hence the recall application ought to have been allowed but admittedly the learned counsel for the appellant has no answer as to why only the appellant *viz* an 80 years old had filed this appeal and recall application on her medical grounds whereas the company petition was filed also by three daughters of the appellant. There is no explanation given as to why those three petitioners did not file the requisite documents. It rather shows the recall application was filed through this appellant taking advantage of her precarious health condition, lest the other three petitioners therein ought to have explained the delay.

5. We have heard the parties. It is apparent that the order dated 20<sup>th</sup> December, 2023 was an appealable order and admittedly no appeal was filed against such order and instead recall application was filed which *per se* was also not maintainable in law.

6. In Union Bank of India (erstwhile Corporation Bank) Vs Dinkar T Venkatasubramanian and others 2023 SCC Online NCLAT 283, this Tribunal held:-

*"20. The above judgments of the Hon'ble Supreme Court clearly lay down that there is a distinction between review and recall. The power to review is not conferred upon this I.A. No. 3961 of 2022 in Company Appeal (AT) (Ins.) No. 729 of 2020 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 on 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.

7. The aforesaid order of this Tribunal was upheld in Civil Appeal No.4620/2023 vide an order dated 31<sup>st</sup> July, 2023 by the Hon'ble Supreme Court as under:-

*"We are in agreement with the view taken by the Five Judges Bench of the NCLAT and thus find no reason to interfere with the impugned order.*

*Insofar as the endeavour of Learned counsel for the appellant to urge on the facts of the case is concerned, that would be a matter to be considered, dependent on the fate when the matter is placed before the appropriate Bench, to be decided on merits.*

*The Civil Appeal is dismissed.*

8. In Budhia Swain and others Vs Gopinath Deb and others 1999 4 Supreme Court Cases 396 the Hon'ble Supreme Court held as under:-

*"8.In our opinion a tribunal or a court may recall an order earlier made by it if*

- (i) the proceedings culminating into an order suffer from the 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.*

**The power to recall a judgment will not be exercised** when the ground for re-opening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or **where a proper remedy in some other proceeding such as by way of appeal or revision was**

***available but was not availed.*** *The right to seek vacation of a judgment may be lost by waiver, estoppel or acquiescence.*

9. Admittedly the order dated 20<sup>th</sup> December, 2023 did not fall within the *four* conditions as enumerated in para 8 of *Budhila Swain* (Supra). Instead of filing an appeal against the order dated 20.12.2023, the appellant had preferred a recall application, not permissible under Rule 11 of NCLT Rules.

10. We have thus perused the impugned order dated 05.04.2024 and find no illegality in it. There is no merit in this appeal and accordingly it is dismissed.

11. Pending applications, if any, are also closed.

**(Justice Yogesh Khanna)**  
**Member (Judicial)**

**(Mr. Ajai Das Mehrotra)**  
**Member (Technical)**

**Dated:06-09-2024**

**BM**