

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT I

Interlocutory Application No. 3403/2024
IN
Company Petition No.(IB) 322 of 2023

M/s. Perfect Infraengineers Ltd.

... Applicant/Corporate Debtor

Vs.

Technology Development Board

... Respondent/Financial Creditor

Order delivered on: **15.07.2024**

Coram:

Hon'ble Justice (Retd.) Sh. Virendrasingh Bisht, Member (Judicial)

Hon'ble Shri Prabhat Kumar, Member (Technical)

Appearance:

For the Applicants : Mr. Mathews Nedumpara, Advocate

For the Respondents : Mr. Sumedh Ruikar, Advocate

i/b Mr. Pradip Yadav, Advocate

ORDER

1. This is an application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of the NCLT Rules and seeks following reliefs –

- a. Recuse from hearing the above case;
 - b. Pass such further and other orders as this Court may deem fit in the interest of justice and equality.
2. According to the Applicant, application under Section 7 of the Technology Development Board was never heard right from the beginning. This Bench, to the great chagrin of the Applicant, had taken a view that there is nothing to be heard or argued by the Applicant and that the petition filed by the TDB ought to be admitted even without a hearing and that there is nothing that the Applicant can argue.
3. As per the Applicant's contentions, the present case is an extraordinary case where the Tribunal by its order dated 18.03.2024, inspite of the fact that the Applicant was not heard, adjourned the case for pronouncement of orders.
4. The Applicant next contends that during the pendency of the said case, the Applicant was contacted by Ms. Mahi Bhatt, allegedly representing this Tribunal, who demanded Rs. 75 Lakhs for dismissing the said case. Ms. Mahi Bhatt also told that unless Applicant pays an amount of Rs. 75 Lakhs as bribe the application of TDB will be allowed and her Company will be liquidated.

5. From the above extracted contentions, what appears to us is that the recusal has been prayed for on two-fold grounds viz-
- i) The applicant was never afforded any opportunity of being heard in the matter; and
 - ii) There was demand of bribe in the sum of Rs. 75 Lakhs from one Ms. Mahi Bhatt, who allegedly represented this Bench.
6. Mr. Mathews Nedumpara, learned Counsel for the Applicant, took great pains to repeat the above noted contentions during the course of his arguments and also placed reliance on numbers of judgments. As far as those judgments are concerned, in our considered view, are quite distinguishable on facts and therefore in our humble opinion will not further the case of the learned Counsel. The learned Counsel forcefully submitted that in all fairness this Bench should recuse from the matter.
7. We have given our anxious thoughts to the contents of application and has as also submissions canvassed before us by learned Counsel for the Applicant. We put it on record candidly and expressly that there is plenty of croaking, but little substance. It does not require any great mental perspicacity to see through the game. We qualify this perception with reasons.

8. We deal with the first ground i.e. Applicant was not given any opportunity of being heard before closing the matter for orders.
9. We may point out here that reply to the present case was filed by the Corporate Debtor on 13.07.2023. This Tribunal had directed the Corporate Debtor to remain present on 21.08.2023 with directions that if it failed to remain present and advance arguments the matter shall be decided on the basis of material available on record. Despite that the Corporate Debtor remained unrepresented. We also find that since hard copy of the reply was not available on record, vide order dated 05.09.2023 Corporate Debtor was given last opportunity to bring on record its reply and the matter was adjourned to 09.10.2023. However, the Corporate Debtor remained absent on 09.10.2023. Still by way of another opportunity, in the interest of justice matter was adjourned to 10.11.2023.
10. On 10.11.2023 learned Counsel for the Corporate Debtor informed that the matter cannot be proceeded any further because the Writ Petition for the interpretation of the provisions of MSME Act qua IBC is pending before the Hon'ble High Court, decision has been reserved and orders are awaited. This Bench considered it appropriate, though there was no stay to the proceeding, to adjourn the matter to next date i.e. 01.12.2023 because the

learned Counsel for the Corporate Debtor was not ready to advance any arguments on merits of the case. The same story was repeated by the learned Counsel for the Corporate Debtor on 01.12.2023. On 23.01.2024 since the Corporate Debtor was not represented the matter was adjourned to 08.02.2024, on which date also, the learned Counsel remained absent but the Corporate Debtor through junior counsel was represented. The matter was then adjourned to 29.02.2024.

11. On 29.02.2024 the learned Counsel for the Corporate Debtor informed that their Writ Petition has been dismissed and Review Petition has been filed and thus sought adjournment.
12. It is again pertinent to note here that though there was no stay to the proceedings in question yet the learned Counsel chose to prolong the matter on one pretext or other and never came forward with arguments on merits of the case.
13. On 12.03.2024 an adjournment was again sought on the ground of illness of arguing Counsel. On 18.03.2024 one advocate representing Corporate Debtor repeated the same submission and sought adjournment, however, looking the past conduct of the learned Counsel and the fact that there was no stay to the proceedings and moreover the proposition advanced by the learned Counsel for the Corporate Debtor that MSME Act

overrides IBC had duly been decided by the Hon'ble High Court, this Bench arrived at conclusion that Corporate Debtor is deliberately dragging the issue and therefore the Bench proceeded to hear learned Counsel for the Petitioner and reserved the matter for judgment.

14. From the above elaboration of the facts which are very self-explanatory, one can hardly be audacious enough to take a stand that no opportunity at all was given to argue the matter in question.
15. We are constrained to observe that an Advocate owes a duty not only to his client but also to the Court. It is the bounden duty of an Advocate to consider whether such submissions, as are pleaded in the application, were justified, having regard to his and his client's earlier conduct. The manner in which learned Counsel has reflected and conducted himself does not stand to the test of reason.
16. Second ground we are clear in our mind that if the judges decide to recuse themselves on the basis of frivolous and baseless allegations it will be a convenient ploy to litigant to choose their own Benches by stage managing such kind of litigations. Recusal is not to be forced by any litigant to choose a Bench. It is for the judge to decide to recuse. The picture emerging from the

conspectus of the detailed facts summarized hereinabove amounts to choosing Bench of one's liking. If allowed to happen, this would open the flood gates of forum shopping. Quintessentially the plea tantamounts to Bench hunting.

17. It would be quite apposite and appropriate to note that in the matter of **Company Appeal (AT) (Insolvency) No. 420 of 2023 & IA No. 1388 of 2023** at National Company Law Appellate Tribunal Principal Bench, New Delhi held as under –

5. Rule 62 of NCLT Rules, 2016 which deals with the recusal provides as follows:

62. Recusal –

(1) For the purpose of maintaining the high standards and integrity of the Tribunal, the President or a Member of the Tribunal shall recuse himself: -

a) In any cases involving persons with whom the President or the Member has or had a personal, familial or professional relationship;

b) In any cases concerning which the President or the Member has previously been called upon in another capacity, including as advisor, representative, expert or witness: or

c) If there exists other circumstances such as to make the President or the Member's participation seem inappropriate.

(2) The President or any Member recusing himself may record reasons from recusal:

Provided that no party to the proceedings or any other person shall have a right to know the reasons for recusal by the President or the Member in the case.

6. *The provision of Recusal as provided in the rules is a provision which can be utilized by Members and President to recuse themselves from hearing a proceeding if conditions or factors as mentioned in sub-clause (a), (b) and (c) are fulfilled. The litigant has no right to ask the member to recuse himself. The present is a case where request was made by the Appellant to the Member to recuse from hearing the proceeding. Rule 62 cannot be put to such interpretation and giving any such right to litigant shall lead to disastrous and unwelcome results.”*

18. We are fortified in our view in the light of observation of Hon'ble NCLAT, that no person can maintain application for recusal of the Member.
19. Seen against this backdrop, what is immediately obvious is that Applicant was given every possible and reasonable opportunity to advance her case and spearhead arguments in support and substantiation of her case. But it was not to be for obvious and oblique reasons.
20. That much having been said, we are constrained to observe and stress that learned Counsel should have desisted and dissuaded himself, in the light of obtaining situation on record, from indulging in such unwarranted exercise. We

close here with a word of caution-to avoid such an unproductive adventurism in future.

21. In view of above, this application **IA No. 3403/2024** is **dismissed** and **disposed of** accordingly.

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-
JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)

Sapna