
(2025) 03 NCLAT CK 0696

In the National Company Law Appellate Tribunal

Case No : Company Appeal (AT) (Insolvency) No. 376 of 2025

Shristi Infrastructure Development Corporation Limited

APPELLANT

Vs

Housing and Urban Development Corporation Limited

RESPONDENT

Date of Decision : 25-03-2025

Acts Referred:

Insolvency and Bankruptcy Code 2016 — Section 10, 5

Citation : (2025) 03 NCLAT CK 0696

Hon'ble Judges : Ashok Bhushan, Chairperson; Barun Mitra, Member (T); Arun Baroka, Member (T)

Bench : Full Bench

Advocate : Abhishek Anand, Sugandh Kocchar, Srishti Juneja, Akshra Arshi, Ashok Kumar Jain

Final Decision : Dismissed

Judgement

ASHOK BHUSHAN, J.

This appeal by a Promoter of the Corporate Debtor has been filed challenging the order dated 20.12.2024 passed by the Adjudicating Authority (National Company Law Tribunal) Kolkata Bench, Kolkata rejecting I.A. No.693/KB/2024 filed by the Appellant to recall the order dated 30.08.2023 passed by the Adjudicating Authority.

2. Brief facts of the case necessary to be noticed for deciding this appeal are:

(i) The Corporate Debtor - Sarga Udaipur Hotels & Resorts Private Limited entered into a loan agreement with Housing and Urban Development Corporation Limited (HUDCO) for an amount of Rs.6907.92 Lakhs. Under the loan agreement, the Respondent No.1 was empowered to appoint a Nominee Director in the Board of the Corporate Debtor. One Dr. Alok Kumar Joshi was appointed by Respondent No.1 as Nominee Director of the Corporate Debtor.

(ii) The Corporate Debtor - Sarga Udaipur Hotels & Resorts Private Limited filed

an application under Section 10 of the I&B Code. CIRP against the Corporate Debtor commenced by order dated 29.04.2022 passed by the Adjudicating Authority on Section 10 application filed by the Corporate Debtor itself.

(iii) Respondent No.1 – HUDCO filed a claim in the CIRP of the Corporate Debtor for an amount of Rs.23,82,02,414/-. The Resolution Professional admitted an amount of Rs.20,60,55,675/-.

(iv) The Respondent No.1 claimed that Respondent No.1 is also entitled to be member of the CoC of the Corporate Debtor. There are only four creditors of the Corporate Debtor viz (i) Shristi Infrastructure Development Corporation Limited; (ii) Shristi Urban Infrastructure Development Limited (SUIDL); (iii) JSP Tracomm Private Limited; and (iv) Housing and Urban Development Corporation Limited (Respondent No.1). The Resolution Professional refused to include HUDCO in the CoC on the ground that HUDCO is a related party of the Corporate Debtor under Section 5(24) of I&B Code.

(v) HUDCO filed an application being I.A. No. 514/KB/2022 before the Adjudicating Authority seeking direction to include HUDCO as member of the CoC. The said application was opposed by the Resolution Professional and after hearing the parties, the said application was allowed by the Adjudicating Authority vide its order dated 30.08.2023 holding that HUDCO is not a related party of the Corporate Debtor, hence, deserves place in the CoC and Resolution Professional was directed to reconstitute the CoC.

(vi) Appellant aggrieved by the order dated 30.08.2023 filed Company Appeal (AT) (Ins.) No.1687 of 2023 in this Tribunal, which appeal was dismissed as withdrawn upon submission of the Appellant that Appellant intends to prefer an application before the Adjudicating Authority.

(vii) Appellant thereafter filed an application being I.A. No.693/KB/2024 before the Adjudicating Authority praying for recall of order dated 30.08.2023. Respondent No.1 filed a reply to the application. The Adjudicating Authority by impugned order dated 20.12.2024 rejected the application. Aggrieved by which order this appeal has been filed.

3. We have heard Shri Abhishek Anand, learned counsel for the Appellant and Shri Ashok Kumar Jain, learned counsel appearing for the Respondent No.1.

4. Learned counsel for the Appellant submits that HUDCO in Joint Venture with Shristi Infrastructure Development Corporation Limited (SIDCL) has incorporated Srishti Urban Infrastructure Development Ltd. (SUIDL). In SUIDL, SIDCL has 60% shareholding and HUDCO has 40% shareholding. The SUIDL has promoted the Corporate Debtor, hence, HUDCO has control over the Corporate Debtor through SUIDL. HUDCO has a Nominee Director in the Board of the Corporate Debtor to exercise influences. It is submitted that while hearing the application filed by the HUDCO being I.A. No.514/KB/2022, HUDCO did not disclose the Annual Report of the HUDCO which has described the Corporate Debtor as its

subsidiary company. The Annual Report of the HUDCO being suppressed from the Adjudicating Authority, order dated 30.08.2023 was obtained by playing fraud on the Court, hence, said order deserve to be recalled. The Adjudicating Authority committed error in rejecting I.A. filed by the Appellant for recall of the order.

5. Learned counsel for the Respondent – HUDCO refuting the submissions of learned counsel for the Appellant submits that the issue as to whether HUDCO is a related party of the Corporate Debtor or not has been examined threadbare by the Adjudicating Authority in I.A. No.514/KB/2022 and the Adjudicating Authority had after considering all submissions made on behalf of the Resolution Professional for treating the HUDCO as related party has rejected the submission and had held that HUDCO is not a related party of the Corporate Debtor. The application filed by the Appellant, who is Promoter of the Corporate Debtor is nothing but an application to review the judgment dated 30.08.2023 which order was passed after considering all submission and all materials on the record. Appellant admittedly is related party of the Corporate Debtor. No grounds have been made out to recall order dated 30.08.2023 and the Adjudicating Authority has rightly rejected the application. Learned counsel appearing for the Respondent has further contended that the Annual Report of HUDCO on which reliance has been placed by the Appellant has also been extracted by the Adjudicating Authority in the impugned order which in no manner indicate that HUDCO has accepted the Corporate Debtor as related party. The Corporate Debtor was mentioned as related party of Associate Company i.e., Srishti Urban Infrastructure Development Ltd. (SUIDL).

6. We have considered the submission of learned counsel for the parties and perused the record.

7. We need to first notice few details pertaining to the Appellant, HUDCO, Corporate Debtor and JV Company i.e., Srishti Urban Infrastructure Development Ltd. (SUIDL). Appellant and HUDCO entered into Joint Venture Agreement on 02.05.2006 incorporating Srishti Urban Infrastructure Development Ltd. The shareholding as per the Joint Venture Agreement between the Appellant and the Respondent No. 1 for SUIDL was in the proportion of 60:40. Corporate Debtor was promoted by Appellant and SUIDL. The Corporate Debtor entered into a loan agreement with HUDCO for an amount of Rs.6907.92 Lakhs. Under the loan agreement HUDCO was empowered to appoint a Nominee Director. HUDCO exercised its right and appointed a Nominee Director in the Board of the Corporate Debtor.

8. A Section 10 application was filed by Sarga Udaipur Hotels & Resorts Private Limited – the Corporate Debtor itself on 30.07.2021 for initiating CIRP against the Corporate Debtor on which order was passed on 29.04.2022 by the Adjudicating Authority admitting CIRP against the Corporate Debtor. The claim filed by the Respondent No.1 was admitted in the CIRP. The Resolution Professional did not include the Respondent No.1 in the CoC treating HUDCO to be related party on account of it being promoter of Joint Venture Company -

Srishti Urban Infrastructure Development Ltd. which in turn was promoter of the Corporate Debtor. An application was filed by the Respondent No.1 being I.A. No.514/KB/2022 seeking a direction to include the HUDCO as member of the CoC which application was heard and allowed by order of the Adjudicating Authority dated 30.08.2023. Appellant first filed an appeal against the said order before this Tribunal which appeal was dismissed as withdrawn. Thereafter, I.A. No.693/KB/2024 was filed. Prayers made in I.A. No.693/KB/2024 are as follows:

"a) Invoke its inherent powers as vested under Rule 11 of National Company Law Tribunal Rules, 2016, and Re-call the Order dated 30th August 2023 passed in I.A.(IBC) No. 514/KB/2022 arising out of C.P.(IB) No. 202/KB/2021 and direct exclusion of the Respondent No. 1 from the CoC of the Corporate Debtor;

b) Pass/issue necessary order and/or orders directing the Respondent No.2/ Interim Resolution Professional to restart Corporate Insolvency Resolution Process of the Corporate Debtor from the stage of constitution of Committee of Creditors after declaring all resolutions and/or decisions taken by the Committee of Creditors of the Corporate Debtor, which involved Respondent No. 1 as the lead member of the Committee of Creditor despite it being a related party. as null and void and consequently all such resolutions and/or decisions taken in such Committee of Creditors' meeting involving Respondent No. 1 should be immediately set aside by this Hon'ble Tribunal;

c) Pass/issue necessary order and/or orders staying any further Committee of Creditors' meeting and/ or staying all further functioning of the Committee of Creditor in respect of the Corporate Debtor and/or staying the passing of any resolution in any Committee of Creditors' meeting of the Corporate Debtor and/ or taking any further decision by the Committee of Creditors of the Corporate Debtor till the adjudication of this instant application;

d) Ad-interim orders in terms of prayer (c) hereinabove and particularly ad-interim orders restraining Respondent No. 1 from exercising its voting rights in any Committee of Creditors' meeting of the Corporate Debtor till the adjudication of this instant application;

e) Issue appropriate direction to the Interim Resolution Professional/ Respondent No. 2 to include the Applicant as a member of the Committee of Creditors of the Corporate Debtor;

f) Pass such other and further order(s) and/or direction(s) as this Hon'ble Tribunal may deem fit and proper, in the facts and circumstances of the present case and in the interest of justice;"

9. The Adjudicating Authority in the impugned order has noted the grounds for recall of judgment passed by Tribunal and has referred to the judgment of this Tribunal in Union Bank of India vs. Dinkar T. Venkatasubramanian & Ors. It is useful to extract Para 20 of the judgment of the Adjudicating Authority, which is as follows:

"20. The issue of recall and review of a judicial order has received the consideration of the Hon'ble NCLAT in the matter of Union Bank of India Vs. Dinkar T. Venkatasubramanian and Ors. wherein it has been held that:

"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, 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 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.""

10. The submission which has been pressed by learned counsel for the Appellant is that the Application filed by the Appellant was fully covered on the ground that there was suppression on the part of HUDCO which lead to issuance of order dated 30.08.2023 which was obtained by HUDCO by playing fraud on the Court. The submission is pressed on the ground that Annual Report of the HUDCO was not placed by HUDCO when earlier application was decided on 30.08.2023. In the application which was filed by the HUDCO seeking direction to include it in the CoC, reply was filed by the Resolution Professional and the Adjudicating Authority after hearing HUDCO and the Resolution Professional decided the application on merit rejecting the contention of the Resolution Professional for treating HUDCO as related party within the meaning of Section 5(24) (h), (m)(i). The Adjudicating Authority dealt with all contentions and held that HUDCO is not a related party. The Adjudicating Authority while deciding the application noticed all limbs of arguments raised by the Resolution Professional to treat the HUDCO as related party including control of HUDCO on Corporate Debtor through SUIDL which was JV promoted by HUDCO. Admittedly, the Appellant is related party of the Corporate Debtor which is an undisputed fact. All aspects of the matter including HUDCO having promoted JV with Appellant where HUDCO has 40% shareholding and Appellant has 60% shareholding has been noticed and examined by the Adjudicating Authority in order dated 30.08.2023.

11. Learned counsel for the Appellant being aware of the limited scope of recall has pleaded that the order was obtained by HUDCO by suppressing relevant facts including Annual Report which reflect the Corporate Debtor as related party.

12. In the present case suppression of relevant document cannot be accepted

since all the document which were relevant for determination of issues raised in I.A. No.514/KB/2022 were filed and relied by both the parties i.e., HUDCO and Resolution Professional. It is not the case of the Appellant that HUDCO was asked to file Annual Report in which it failed to file. 51st Annual Report of HUDCO on which reliance has been placed by the Appellant was filed with the ROC and is matter of public record. When the report is filed with the ROC, there is no question of suppression of the report and submission of the Appellant tat there was any suppression on part of HUDCO is baseless.

13. In any view of the matter, 51st Annual Report of HUDCO has been noticed by the Adjudicating Authority in Para 26 of the order and the Report, in 'Related Party Disclosure' in Note 40 Item 32 Clause (a) has mentioned as follows:

"Related parties Disclosure

(a) Associates

(1) Shristi Urban Infrastructure Development Ltd.

(2) Pragati Social Infrastructure & Development Ltd.

(3) Signa Infrastructure India Ltd.

(4) Indbank Housing Ltd."

14. Thus, 'Related Party Disclosure' in Item 32 Clause (a) does not contain name of Corporate Debtor whereas name of SUIDL is mentioned at Serial No.1. Another part referred to is after Clause (f) containing heading 'In case of Associate Company:' where name of 'Sarga Udaipur Hotel & Resorts Pvt. Ltd.' is mentioned as subsidiary of Associate Company which action cannot lead to any admission that Corporate Debtor is related party of HUDCO.

15. The Adjudicating Authority after considering all submissions of the Appellant including 51st Annual Report, on which the Appellant has placed reliance found no ground to recall order dated 30.08.2023. We fully concur with the views expressed by the Adjudicating Authority while rejecting I.A. No.693/KB/2024. There is no merit in the appeal. Appeal is dismissed.