

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 2227 of 2024

**[Arising out of the Impugned Order dated 18.11.2024 passed by the
Adjudicating Authority, National Company Law Tribunal, Mumbai
Bench in I.A. No. 4881 (MB)/2024 in CP (IB) No. 4320 of 2019]**

In the matter of:

Marvel Landmarks Pvt Ltd.

Office No. 301-302, Jewel Tower,
Lane No. 5, Koregaon Park, Pune,
Pune, Maharashtra, India-411 001

...Appellant

Versus

- 1. Jay Nihalani**
B1/27, Kubera Colony,
NIBM Road, Kondhwa,
Pune – 411048
- 2. Sanjay Sabharwal**
B-25, 2nd Floor,
Marian Vihar, New Delhi 110028
- 3. Nirmala Parmar**
8 Hill Range Society, Phase Two
Anand Marg, Deolali Camp,
Nashik 422401
- 4. Ankit Ashok Laungani**
402, Satnam Society, Plot No.83,
29th Road, Behind Agarwal Nursing
Home, Bandra (West) Mumbai 400050
- 5. Ram Krishan Chopra**
24-A, Hills and Dales,
Undri, Pune — 411 060
- 6. Rustom Cyrus Dadachanji**
1031 Clover Highlands, Building No. 10,
Flat 31, Undri-Pisoli Road, Next to
NIBM Post office, Kondhwa
Pune- 411 048.

- 7. Chitra Sharma**
Flat No. 103, Block C-2, Waterlily,
Adani Shantigram, Near Vaishnodevi
Circle, S. G Road, Gandhinagar- 382421
- 8. Chetlapalli Radhakrishna**
Flat No. 1213, Clover Highlands
Near NIRM, Kondhwa, Pune- 411048.
- 9. Shankar Bhima Nadoni**
B-1/ 2 Todkar Garden, Bibvewadi
Kondhwa Road, Pune 411037.
- 10. Tanjana Sehgal**
Plot No.90, Sahney Sujan Park,
Lullanagar Pune 411 040 11.
- 11. Sameer Vilas Raikar**
213, Krutarth Society, Off Pune Satara
Road Near, Citipride Multiplex,
Pune- 417037.
- 12. Swati Abhijit Phadiya**
B 402, Konark Indraya Phase 2,
Undari Road, Kondhwa, Pune- 411048.

...Respondents

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Dhyal Deshpandy and Mr. Amit Arsiwala, Advocates.

For Respondents : Mr. Chaitanya Nikte and Mr. Anuj Tiwari, Advocates.

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('**IBC**' in short) by the Appellant arises out of the Order dated 18.11.2024 (hereinafter referred to as '**Impugned Order**') passed by the

Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court VI) in IA/4881(MB) /2024 in Company Petition (IB) No. 4320/2019. By the impugned order, the Adjudicating Authority has recalled its earlier order dated 06.04.2024 disposing of this Company Petition. Aggrieved by the restoration of the Company Petition 4320/2019 by this impugned order, the present appeal has been preferred by the Appellant.

2. The sequence of events which require to be noticed by this Tribunal for consideration of the matter at hand are as outlined herein. The Corporate Debtor-Appellant had entered into Agreements to Sale with the Respondents-Homebuyers/Financial Creditors for purchase of residential units in the Marvel Isola J Building Project. Since the residential units could not be constructed and possession could not be handed over on time, the Respondents had filed a Section 7 petition for initiation of Corporate Insolvency Resolution Proceedings (**'CIRP'** in short) on 30.11.2019. The Corporate Debtor raised questions on the maintainability of the Section 7 petition, inter alia, including the ground that the Respondents had failed to meet the requirements laid down by the 2nd proviso to Section 7(1) of the IBC which had come into effect with an amendment in the IBC during 2020 which prescribed minimum threshold of 100 allottees or 10% of the total allottees in a Section 7 petition. The Section 7 petition was taken up for hearing by the Adjudicating Authority several times by Bench III and then got transferred to Bench VI. When the matter came up for hearing before Bench VI on 24.04.2024, it was listed for final hearing on 15.05.2024. When the matter came up for hearing on 15.05.2024, the Respondents sought an adjournment. The same was allowed by the Adjudicating Authority by way of last chance and

was adjourned to 04.06.2024. Since the Respondents did not appear before the Adjudicating Authority again on 04.06.2024, the Adjudicating Authority disposed of the Company Petition No. 4320 of 2019 and the two IAs on the ground that the present Respondents therein did not comply with the amended law setting up requisite percentage/number of allottees to make them eligible to continue with the Company Petition. Subsequently, on 14.09.2024, the present Respondents filed an application IA No.4881 of 2024 under Rule-11 of the NCLT Rules, 2016 seeking recall of the order of 04.06.2024. The matter was heard by the Adjudicating Authority on 18.11.2024 on which date the impugned order was passed recalling the order dated 04.06.2024 and restoring the Company Petition and the two IAs. Aggrieved by this order, the Appellant- Corporate Debtor has come up in appeal.

3. We have heard Shri Abhijeet Sinha, Ld. Sr. Advocate for Appellant and Shri Chaitanya Nikte, Ld. Advocate representing the Respondent.

4. The Ld. Sr. Counsel for the Appellant assailing the impugned order contended that the Adjudicating Authority having already passed an order on merits in the Company Petition on 04.06.2024 and dismissed it, the same could not have been reheard on merits by the Adjudicating Authority, basis a recall application filed by the present Respondents before the Adjudicating Authority. The order of 04.06.2024 was an appealable order and the same not having been challenged within the prescribed period of limitation had already attained finality. It was asserted that the powers of the Adjudicating Authority in the context of recall under Rule 11 of NCLT Rules was limited and did not extend to review of its own order or judgement. In the instant case, however, in the guise

of an IA filed under Rule 11 of NCLT Rules, which rule only permits recall of the order, the Respondent has managed to seek review of the order of 04.06.2024 which is not permissible. Submission was also pressed that the order passed by the Adjudicating Authority on 04.06.2024 was clearly decided on the merits of dispute between both parties particularly with regard to maintainability of the petition of the Respondents. The Adjudicating Authority in its orders had categorically held that the Company Petition was not maintainable as it did not comply with the requirements under 2nd proviso to Section 7(1) of the IBC. The Adjudicating Authority by allowing the recall application and rehearing the matter on maintainability issue committed a mistake as it did not have the power to re-examine the merits of the case while hearing a recall application.

5. In support of their contention, reliance was placed on the judgement of this Tribunal in ***Union Bank of India Vs Dinkar T. Venkatasubramanian & Ors*** in **CA(AT) (Ins.) No. 729 of 2020** where it has been held that 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. Attention was also adverted to the judgment of the Hon'ble Apex Court in ***My Palace Mutually Aided Co-operative Society Vs B. Mahesh and Others*** [2022 SCC Online SC 1063] wherein it was held that Civil Courts in exercising their inherent powers under Section 151 of the Code of Civil Procedure (CPC), cannot exercise substantive jurisdiction to unsettle already decided issues. A Court having jurisdiction over the relevant subject matter has the power to decide and may come either to a right or a wrong conclusion but the same is binding on the

parties until it is set aside by an appellate court or through other remedies provided in law. It was pointed out that Rule 11 of the NCLT Rules, 2016 is *pari materia* to Section 151 of CPC and hence an application for recall cannot supplant the substantive provisions of appeal as contained in IBC.

6. It is also contended by the Appellant that there is no mention in the order of 04.06.2024 that the company petition was being dismissed on grounds of non-prosecution. The impugned order wrongly held that the Adjudicating Authority in its order dated 04.06.2024 dismissed the petition for non-prosecution. It was emphasised that the right course of action for restoration of an application on grounds of non-prosecution is provided under Rule 48(2) of the NCLT Rules which however is required to be made within 30 days from the date of dismissal. On the other hand, the present IA has been filed well beyond the period of 30 days. To circumvent the period of limitation set out in Rule 48(2), the Respondents have invoked Rule 11. The ground for seeking recall was therefore not violation of the principles of natural justice but on merits which is not permissible.

7. Making rival contentions, submission was made by the Ld. Counsel for the Respondent that the Company Petition No. 4320 of 2019 had been heard 31 times. The Respondents were represented by their counsel regularly in these hearings until the matter was transferred from Bench-III to Bench-VI of the Adjudicating Authority. Bench VI heard the matter twice in quick succession within a span of twenty days. During the hearing on 15.05.2024, the junior counsel of the present Respondents had sought adjournment since the hearing

could not be not be attended by the senior. The matter was adjourned and admittedly fixed for final hearing on 04.06.2024 on which date too, the hearing could not be attended by the counsel of the Respondents. The absence of the counsel on both these dates was not intentional but was on account of serious life-threatening medical complication suffered by the wife of the Ld. Counsel during that period. It was pointed out that for good measure they attached the medical certificate of the doctor with their IA No. 4881 of 2024 which clearly shows that as on 04.06.2024 also, the counsel's wife was under treatment in the hospital. There were compelling circumstances for the absence of the counsel during the two crucial hearings held on 15.05.2024 and 04.06.2024. Due to the prolongation of the critical and emergent medical condition of the wife of the counsel, the Respondents were not able to communicate with their counsel even thereafter. However as soon as it came to their knowledge that the Adjudicating Authority had passed an order on 04.06.2024, they filed the recall application IA No 4881 of 2024. Since the Adjudicating Authority had passed the order on 04.06.2024 in their absence, this had prejudicially affected their rights as allottees. Hence, in the interest of justice, the recall application was filed by them before the Adjudicating Authority. It was also asserted that it is a well settled dictum that a litigant should not suffer injustice for no fault of theirs. Being bonafide litigants, their valuable rights and interests cannot be sacrificed on account of a genuine handicap faced by their counsel in registering their presence before the Adjudicating Authority on the relevant dates of hearing. In support of their contention, attention was adverted to the judgment of the Hon'ble Supreme Court in **Secretary, Department of Horticulture,**

Chandigarh Vs Raghu Raj in **Civil Appeal No. 6142 of 2008** wherein it was held that a litigant should not suffer on account of default or non-appearance of the advocate. It was also mentioned that the Hon'ble Supreme Court in **Rafiq & Anr. Vs Munshilal & Anr. (1981) 2 SCC 788** had also held that a party should not suffer for the inaction on the part of the lawyer. In any case, it was contended that in the present matter the non-appearance of the advocate was also bonafide having been propelled by circumstances of medical emergency.

8. It was also vehemently contended that the Corporate Debtor had misled the Adjudicating Authority on 04.06.2024 into believing that there are 288 unit-holders in Marvel Isola J Building Project, while the correct position was that in this Building Project where the Respondents were to get their units, there were only 44 units. It was pointed out that the MAHARERA Certificate also clearly showed that there were 44 flats in this building project. Hence, with 12 Applicants in CP No. 4320 of 2019, the 10% threshold criteria stood fulfilled making the Company Petition maintainable. On the other hand, taking advantage of the absence of the Respondents-Allottees during the hearing, the Appellants succeeded in misleading the Adjudicating Authority into believing that the project consisted of 282 residential flats and the Company Petition having been filed by only 12 allottees, the 10% threshold was not fulfilled. This was a clear case whereby the Corporate Debtor had suppressed material information from the Adjudicating Authority which led to the erroneous finding on the part of the Adjudicating Authority that the Company Petition was not maintainable. It was vehemently asserted that this concealment and

misrepresentation of facts was a fraud played upon the Adjudicating Authority to obtain a favourable order. In the given circumstances, when the Corporate Debtor had obtained orders of the Adjudicating Authority by suppression of fact and making misleading statements, the Adjudicating Authority was well within its jurisdiction to exercise its inherent powers under Rule 11 of NCLT Rules.

9. We have duly considered the arguments advanced by the Learned Counsel for both the parties and perused the records carefully.

10. To arrive at our analysis and findings, at the outset, it would be useful and constructive to note the order of the Adjudicating Authority dated 04.06.2024 which is as extracted below:

1. Heard Counsel for the CD on the main CP and two IAs. There is no representation from the FC. It has been stated by the Counsel for the CD that there are originally 282 unit-holders for the Housing Project, namely, 'Marvel Isola J Building'. However, there are only 12 Applicants who have filed the CP as FCs. The application was filed on 29.11.2019. There is no record to show that the Applicants have complied with the amended law to make the requisite percentage/number of the unitholders to make them eligible to continue with the present C.P.

2. Counsel for CD also submits that RERA has granted extension for completion of the Project up to 30.12.2024 and based on which, the construction has been initiated again. Based on instructions received from his client, he also submits that construction will be completed within the said period. In view of the above, we find that the application lacks the requisite number/ percentage of the unit holders to be eligible to continue the C.P. and hence, the CP is disposed of. The IA Nos. 1750/2021 & 1755/2021 are also consequently disposed of.

(Emphasis supplied)

11. Having noted the order of 04.06.2024, we now proceed to notice the prayers of the Respondents as made out in IA No. 4881 of 2024 which had been

filed under Rule 11 of the NCLT Rules, 2016 seeking recall of the order of 04.06.2024. The prayers in the said application are as reproduced below:

- a) *“That this Hon’ble Tribunal be pleased to recall the Order dated 04/06/2024 passed by this Hon’ble Tribunal in Company Petition No. 4320 of 2019 and IA No.1750 of 2021 and IA No. 1755 of 2021;*
- b) *This Hon’ble Tribunal be pleased to urgently list the Company Petition No. 4320 of 2019 alongwith all the Interlocutory Application for hearing and final disposal.*
- c) *Any other order in the interest of justice may kindly passed.”*

12. That the above IA 4881 of 2024 had sought to invoke the Rule 11 of NCLT Rules is also borne out from the letter addressed to the NCLT Registry by the Ld. Counsel of the present Respondents which is as reproduced below:

*“To,
The Registrar,
National Company Law Tribunal,
Mumbai Bench
Sir,*

I, the undersigned on behalf of Applicants in the aforesaid matter is filing an IA under section 60(5) of the insolvency and bankruptcy code 2016 r/w rule 11 of the national company law tribunal rules, 2016 for seeking recall of the order dated 04/06/2024 in cp no.4320 of 2019 passed by this hon’ble tribunal

*Thanking You,
Yours Faithfully,
Advocate for Applicant
Chaitanya B. Nikte”*

From the prayers contained in IA No. 4881 of 2024 and the forwarding letter to the NCLT Registry with respect to this IA, it is clear that the Respondents had filed a recall application by invoking Rule 11 of the NCLT Rules. Given that the Respondents had sought to rely on the inherent powers of the Tribunal under NCLT Rule 11 and not NCLT Rule 48(2) while filing the IA No. 4881 of 2024 we,

therefore, do not find it necessary to dilate our views on the applicability of Rule 48(2) of NCLT Rules in the present factual matrix.

13. It is, however, the case of the Appellant that the Adjudicating Authority in its order of 04.06.2024, had arrived at a specific finding that the Company Petition was not maintainable. The dismissal of the Company Petition was therefore not on grounds of non-prosecution but was a decision on merits. It is the contention of the Appellant that the statutory provisions of the IBC do not permit the Adjudicating Authority to revisit its own findings of fact or law in any order delivered by it. Having already dismissed the Company Petition on 04.06.2024, the Adjudicating Authority, basis a recall application, cannot revisit the Company Petition on the ground that the dismissal was incorrect or that it had been incorrectly adjudicated because of disputed facts once having dismissed it. It was asserted that the impugned order has sought to review its earlier order of 04.06.2024 which is not permissible in a recall application and therefore needs to be set aside.

14. When we look at the impugned order, we find that the Adjudicating Authority in paragraph 2 therein has clearly taken note of the objections of the present Appellant that the power of recall is not a power of the Tribunal to be exercised for finding out any apparent errors and that the Adjudicating Authority does not have any power of review. In this context, the Adjudicating Authority has also taken cognizance of the judgment of this Tribunal in ***Venkatasubramanian supra*** at para 20 wherein this Tribunal has observed on the aspect of power of recall as follows:

“....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 National Company Law Appellate Tribunal 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.”

The above judgement while drawing a distinction between recall and review also clearly outlined some of the circumstances as to when a judgment can be recalled.

15. We may now proceed to examine whether there were sufficient grounds for recall of the order of 04.06.2024 in the present factual matrix. It would be useful at this juncture to examine the findings of the Adjudicating Authority as returned in the order of 04.06.2024. A plain reading of the above order, which has already been reproduced at para 10 above, clearly indicates that only the Counsel for the present Appellant-Corporate Debtor who was present before the Adjudicating Authority on 04.06.2024. The order also records the submission made by the Counsel for the Corporate Debtor that the Marvel Isola J Building Housing Project had 282 unit holders and that there is no record to show that the applicants had complied with the eligibility laid down in the amended provision of the IBC. Basis these submissions made by the Counsel for the

Corporate Debtor, the Adjudicating Authority had returned the finding that the Company Petition stands disposed since the Respondents lacked the requisite number/percentage of unit holders to be eligible to continue the Company Petition.

16. After perusing the order of 04.06.2024, there is no ambiguity in our mind that the Adjudicating Authority in passing the order on 04.06.2024 had preponderantly relied on the submissions made by the Counsel of the Corporate Debtor on whether the Appellants were compliant with the 2nd proviso to Section 7(1) of the IBC to file the Company Petition No. 4320 of 2019. Per contra, when we look at the material on record placed before us, we find that the Respondents in the said Company Petition had categorically informed the Corporate Debtor on affidavit that they were in compliance with the 2nd proviso to Section 7(1) of the IBC. It was vehemently contended by the Respondents that in their Rejoinder affidavit to the Reply filed by the Corporate Debtor in the Company Petition, at paragraphs 4(iv) to 4(vii) it had been categorically pleaded that they were fully compliant with the amended Section 7 of IBC. This fact has been reiterated by the Respondents in their Recall application which is placed at pages 810 to 811 of Appeal Paper Book (“**APB**” in short). For reasons of clarity, we are extracting the categorical pleadings made by the Respondents in their Rejoinder affidavit to the Reply filed by the Corporate Debtor on the Company Petition as captured in the Recall application:

“iv. I say that, the Corporate Debtor has registered a “real estate project” under the MAHAREERA portal by the name of “MARVEL ISOLA J BUILDING” wherein the Corporate Debtor has mentioned total number

of apartments in the said project as “44”. I say that, all the 12 applicants of the captioned company petition are allottees of the abovementioned real estate project namely “Marvel Isola J Building” having a separate RERA Registration No. P52100001843. Hereto, annexed and marked as Annexure-4 is a copy of the RERA Registration certificate of the real estate project “Marvel Isola J Building” and Annexure-5 is a copy of the RERA Application made by the Corporate Debtor extracted from the MAHARERA portal with regards to the real estate project “Marvel Isola J Building”.

v. I say that, in addition to the above, the Director of co-promoter of the said project who is also the Director of the Corporate Debtor and who has signed the Affidavit in Reply on behalf of the Corporate Debtor, has also submitted an affidavit dated 17/07/2017 before the MAHARERA wherein the “Marvel Isola J Building” has been categorically identified as a spate project. Hereto, annexed and marked as Annexure-6 is a copy of the Affidavit dated 17/07/2017 submitted to MAHARERA.

vi. I say that, in the Application made by the Corporate Debtor for registration of the said project “Marvel Isola J Building”, the Corporate Debtor has categorically mentioned the total number of flats/apartments in the said project which are ‘44’ in number. Further, the Corporate Debtor has also mentioned in the said application the total number of Booked Apartments i.e. the total number of Allotted Apartments which is 25. Therefore, in view of the Amendment Act, of 2020 the total number of allottees are 25 and there are total 12 applicants in the captioned company petition which comes to 48% of the total allottees. I further say that, even for the sake of calculation if all the 44 apartments are considered as allotted even then the applicants shall form 27% of 44 allottees which are the total number of apartments in the said project. Therefore, the applicants are conveniently more than the minimum requirement of 10% as per the amendment act of 2020.

vii. I say that, accordingly the present company petition filed by the applicants is well in compliance of the Amendment Act of 2020 and as such requires no modification whatsoever. Therefore, this Hon’ble Tribunal is well within its jurisdiction to entertain and dispose off the captioned company petition on its own merits and the same is not deemed to be withdrawn as the captioned company petition complies with the Amendment Act of 2020.”

(Emphasis supplied)

17. From the above narration, it becomes clear that the Adjudicating Authority was misled by the present Appellant-Corporate Debtor for they suppressed the fact that the present Appellants-Homebuyers in their Reply affidavit to the Rejoinder filed by the Corporate Debtor had clearly articulated that they were compliant with the eligibility terms laid down in the 2nd proviso to Section 7(1) of the IBC along with supporting documents including MAHARERA certificate to buttress their claim. Instead, the Corporate Debtor wrongfully apprised the Adjudicating Authority during the hearing that the said project consisted of 282 flats and there being only 12 allottees as Respondents, they did not meet the requisite percentage of allottees required to file the Company Petition.

18. We are, therefore, of the considered view that a misrepresentation was made to the Adjudicating Authority by the Corporate Debtor for inspite of being aware that their submission before the Adjudicating Authority was not based on correct facts which tantamount to feeding of misleading facts to the Adjudicating Authority. We do not wish to express any opinion as to whether the misrepresentation was negligent, reckless, innocent or done with some oblique motive except for holding this to be a case of misrepresentation which had consequences of deflecting the course of judicial proceedings. It is a universally accepted position that the justice delivery system is expected to administer justice fairly and to the satisfaction of all concerned. In the present circumstances, where the Adjudicating Authority has been made to rely on distorted facts which the Adjudicating Authority became aware of belatedly, the

Adjudicating Authority can always invoke its inherent powers in order to protect itself and to prevent an abuse of its process.

19. We also find that the Adjudicating Authority has also in the impugned order distinguished the facts of the case in ***Venkatasubramanian supra*** from the present one on the ground that in that case the order was based on the recall of the final order passed after hearing both the parties on merit unlike the present case where the order of 04.06.2024 was held as one which was not passed on merits and had been passed without hearing the Respondents. It is amply clear that the Company Petition was not heard on merits since it was not decided in the presence of both parties. We must add here that the absence of the Ld. Counsel of the Respondent-allottees was not wilful, deliberate or intentional but was occasioned by critical medical conditions of the wife of the Ld. Counsel. We also notice that even on 04.06.2024 when the Adjudicating Authority had passed the order disposing of the Company Petition No. 4320 of 2019, the wife of the Counsel was still in hospital which is a factum not contested by the Appellants either. It was of course submitted by the Appellants that medical grounds cannot be stretched for so long a period to be viewed as a genuine ground for delay. However, keeping in mind the facts and circumstances, we are reasonably satisfied with the explanation offered by the Respondents for their absence and would like to give benefit of doubt to them.

20. We have no quarrel with the ratio in the judgment delivered by the Hon'ble Apex Court in ***My Palace Mutually Aided Co-operative Society supra*** that Civil Courts in exercising their inherent powers cannot exercise substantive

jurisdiction to unsettle already decided issues. Be that as it may, the same judgment at paragraph 35 has also clarified that it does not doubt the proposition of law that fraud nullifies all proceedings, or that the Court has power to recall an order which was passed due to a fraud played on the Court. The order of 04.06.2024 was passed by the Adjudicating Authority by predicated on the mis-statement made by the Corporate Debtor. As the order of 04.06.2024 had been obtained by the Appellants by suppressing material fact and by taking advantage of the absence of the Respondents, the Adjudicating Authority had therefore rightly recalled the order of 04.06.2024 which it had passed on incorrect and false submissions without going into merits. The Adjudicating Authority in such circumstances would have been failing in its duty of justice dispensation if it did not exercise its inherent powers as a remedial measure to jettison such manipulation, manoeuvring and misrepresentation. In the absence of the allottees being represented by their Counsel, the Corporate Debtor should have been fair to the allottees in pointing out to the Bench VI of the Adjudicating Authority that the pleadings in the matter had already been completed and that the present Respondent in their Rejoinder therein had depicted how they met the amended law of Section 7. Instead, the Corporate Debtor took undue advantage of the absence of the allottees and misrepresented the correct facts causing miscarriage of justice. In the above circumstances, the Adjudicating Authority did not commit any mistake in holding that the order dated 04.06.2024 was passed only on the submissions of the Corporate Debtor without getting into the merits of the matter. Since, the order was not on merits and was passed

without hearing the present Respondents, the Adjudicating Authority recalled the order of 04.06.2024 and restored the Company Petition.

21. For the foregoing reasons, we are convinced with the reasoning of the Adjudicating Authority in recalling the order of 04.06.2024 and restoring the Company Petition and the IA No.1750 of 2024 and 1755 of 2021 for examination on merits. While affirming the decision of the Adjudicating Authority of restoration of the Company Petition and the two IAs supra, we also add that none of our discussion above be viewed as expression of any opinion by us on the merits of the Company Petition. The Appeal is disposed of on the above terms. No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

**Place: New Delhi
Date: 21.01.2025**

Abdul/ Harleen