

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.308

IA/347(AHM)2024 in CP(IB) 40 of 2017

Order under Section 44 of The Evidence Act,1872 r.w.Rule 11 of NCLT Rule,2016

IN THE MATTER OF:

Gujarat Operational Creditors Association & Another
Vs
Nemo

.....Applicants

.....Respondent

Order delivered on: 20/03/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

SD/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

SD/-

CHITRA HANKARE
MEMBER (JUDICIAL)

**IN THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-2**

**IA NO. 347 of 2024
In
Cont. Pet. No. 19 of 2023 & Cont. Pet. No. 20 of 2023
In
IA No. 419 of 2017
in
C.P. (IB) No. 40 of 2017**

In the matter of:

Having its office at:

Corporate Center
State Bank of India
Madame Cama Road
Nariman Point
Mumbai – 400 021

Also at:

State Bank of India
Corporate Accounts Group Branch
The Capital, capital 'A' Wing
16th floor, Bandra Kurla Complex
Bandra East
Mumbai – 400 051

.....Financial Creditor

VERSUS

Essar Steels India Ltd.

Having its office at:
27th Km, Hazira Road
Hazira
Surat – Gujarat – 392 470

.....Corporate Debtor

And in the matter of:

1. GUJARAT OPERATIONAL CREDITORS ASSOCIATION,

a Section 8 Company registered with the Registrar of Companies (Ahmedabad) under the Companies Act (2013) on 28.11.2023, identified by its unique Corporate Identification Number (CIN) as U 94990 GJ 2023 NPL 146489, acting through Mr Kamlesh Luhar, its duly- authorised Manager)
Having its Office at:
B-10 Saritadarshan Society
Behind City Gold Cinema
Ashram Road
Ahmedabad - 380 009

2. M/s SAYAM SHARES & SECURITIES (P) LTD,

a private limited Company registered with the Registrar of Companies (New Delhi) under the Companies Act (1956), identified by its unique Corporate Identification Number (CIN) as U 67120 DL 2008 PTC 177224, and its Regd Office at:
201 Malhotra Complex, Chawla Wali Gali, Near Bank of Baroda, Shakarpur, Delhi-110 092

Order pronounced on: 20.03.2024

**Coram: Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)**

Appearance:

For the Applicant : Mr. Deepak Khosla, Adv.

JUDGMENT

1. This is an application invoking the duty of this Hon'ble Tribunal to act *Ex Debito Justitiale*, and discharging its duty under Section 44 of the Evidence Act, read with Rule 11 of the NCLT Rules (2016), Recall alleged nullity order dated 16.02.2024 in Cont. Pet. 19 of 2023 and Cont. Pet. No. 20 of 2023 in IA No. 419 of 2017 in C.P.(IB) No. 40 of 2017.
2. The application IA 343 of 2024 along with IA 347 of 2024 filed in Cont Petitions 19 and 20 of 2023 in IA 419 of 2017, Intervention A 5 of 2024 in Cont P/5 of 2024 & Intervention A 4/2024 in Cont P 6 of 2024 was listed for hearing on 20 February 2024. When the matter reached for hearing at 4.55 PM, the Learned Counsel for the applicant requested for adjournment as he had to argue the matter in detail. While disposing off the IA 343 of 2024 after detailed hearing of the matter, the application IA 347 of 2024 was further heard for its maintainability and admission on the same date and orders reserved. The Learned Counsel further submitted that in IA A/5 of 2024 in Cont P/5 of 2024 & Intervention A 4 of 2024 he is not willing to argue these matters unless the order is passed in IA 347/2024. It is pertinent to mention that the Court No. 1 of this Tribunal had passed an

order on 8th January, 2024 in Cont. P 19 and 20 of 2023 in CP IB 40 of 2017 filed by the applicant. On 9th January 2024, both the Hon'ble Members Judicial and Technical decided to withdraw from all IAs and pending matters filed by the applicant. Based on the orders passed by the President on 17th January 2024, this Court was directed to hear all further matters pending or filed by the applicant. Accordingly, pending IAs filed by the applicant were heard in detail on 23 Jan 2024, 2 Feb 2024 and listed for further hearing on 26 February 2024. After detailed perusal and hearing of the submissions on 16 February 2024, the IA 327 & 328 which were filed on 15 February 2024 by the applicant, a detailed order was passed rejecting the applications as not maintainable.

3. The Applicant submitted that:

- a. That it is a fact on judicial record of this Hon'ble Tribunal that the applicants have voiced on affidavit not-inconsequential concerns at the manner in which Contempt Petitions No. 19 and 20 of 2023 were heard by Court I on 15-12-2023.
- b. That similarly, it is also a fact on judicial record of this Hon'ble Tribunal that the applicants have voiced not-inconsequential concerns at the manner in which the hurried pronouncement of

the orders dated 08.01.2024 was effected on that date by Court

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- c. That similarly, it is also a fact on judicial record of this Hon'ble Tribunal that only because of the manner of conduct of proceedings on 15-12- 2023, coupled with the manner in which the orders dated 08-01-2024 were pronounced by Court I, the applicants were forced to file IA No. 327 and 328 of 2024, both seeking recall of the orders dated 08-01-2024 passed, respectively, in Contempt Petition No. 19 and 20 of 2023.
- d. That now, it is also a matter of fact on judicial record that since the aforesaid IA Nos. 327 and 328 of 2024 were heard and disposed of by Gorder dated 16-02-2024, the applicants are seeking recall of the order dated 16-02-2024 on account of numerous facets of the order dated 16- 02-2024 which show that it is a nullity in law, void ab initio as if non est, as it was passed per incuriam, in ignoratium of binding statutory provisions, as well as binding judgements that settled the law in a manner contrary to that acted upon by this Hon'ble Tribunal in its order dated 16- 02-2024.
- e. That moreover, the order dated 16-02-2024 has been passed by expressing views on certain aspects of the law applicable to the

matter, but in a manner that does not incorporate contents of the pleadings and/or contents of the oral arguments canvassed on 16-02-2024 on the same aspects of law, which, if captured in the order, would have reflected a curious sight insofar as the order dated 16-02-2024 is concerned.

- f. That what emanates from the above is that unless the applicants are in a position to undeniably prove what transpires during the hearing, they will be left at the mercy of their fate, seeking recall after recall after recall or after recall of an order.
4. An application was filed by the petitioner on behalf of M/s. Gujarat Operational Creditors Association and Another seeking re-listing of the matter. The matter was heard on 22.02.2024, interim prayers in the application were as given below:
 - a. Recall the order dated 16-02-2024, which has been passed *per incuriam*, being delivered *in ignoratium* of binding statutory provisions (contained, inter-alia, in Section 44 of the Evidence Act read with the law contained in judgements that are binding upon this Hon'ble Tribunal by virtue of Article 141 of the Constitution of India), as well as has been passed in patent non-reading of the recall applications in question (including rather,

especially - the Memo of Parties to the recall applications forming an integral part and parcel of the same, but which very vital and material fact has not been noticed), therefore, being null and void *ab initio* as if *non est*, warranting 'recall' (not *review and ensuing recall*).

- b. INTERIM RELIEF (1): Direct the Ld. Joint Registrar, or such other person deemed appropriate by this Hon'ble Tribunal, to give a report on the incidents of 08.01.2024 presented to this Hon'ble Tribunal in IA No 327-328 of 2024, including, *inter-alia*, whether or not the order dated 08.01.2024 was ready for the affixation of signatures in open Court at the time of the pronouncement of order at around 10:40 AM, and the reason why the Cause List of 08-01-2024 was not published on time, but was belatedly published on Sunday afternoon, 07.01.2024, the circumstances under which a Supplementary Cause List was published on the morning hours of 08-01-2024 at around 10:15 AM (including the name of the official who directed the person who uploaded the supplementary Cause List to do so), et cetera.

- c. INTERIM RELIEF (2): Pending uploading of live-streaming of all NCLT proceedings on Youtube (as directed by the Hon'ble Supreme Court of India), direct the Court Officer to switch on the recording feature in the WebEx program so that the hearings pertaining to the present matter may be video and audio recorded.

OR: permit the applicants to submit a tape-recording device to the Court which may be activated by the Court Officer for the duration of the hearings, and which device will remain with this Hon'ble Tribunal at the applicants complete risk as to the cost and the consequences (including any possible damage thereto), and in which the hearings pertaining to the present matter may be audio-recorded, for reference/retrieval at a later date.

- d. In the alternative to passing a Speaking Order on prayer (3): Adjourn all matters relating to the applicants *sine die*, to enable them to pursue appropriate remedies in law against the refusal/deemed refusal of this Hon'ble Tribunal to create a working atmosphere whereby there is an incontrovertible record

what transpires during its hearings from a Court of competent jurisdiction.

- e. Pass *ex parte* orders as prayed above.

Observations:

1. The main prayer sought by the Learned Counsel before this Court through this application is recording of the proceedings to be conducted when the cases filed by him are being heard in order to enable him to interpret or determine whether the orders passed are in order to satisfy the prayers filed by him. This Court has no powers under either the duties and responsibilities entrusted to this Court for conducting the proceedings, or the procedure prescribed in NCLT Rules (which were followed to hear the application) to pass any order as sought and the orders were passed strictly in terms of Rules laid down in NCLT 2016.
2. This Tribunal has carefully gone through the Prayers in Para 4(d) and (e) and feels that there are no sound grounds made or is deemed fit to recall the orders passed on 16 February 2024. In case the applicant is aggrieved by the order on admitting the petition, which was heard on its merits and admission before this Tribunal, the process of appeal to the next authority is

available in terms of the IBC. Further the applicant on his filing the appeal was heard in the open court and the orders were passed, thereby the grievance expressed is inability to accept an order which decided the merits of the application and its eligibility to be further considered, is but a lack of trust to address the issues of the applicant, which are either not merited or is accepted when decided by the appropriate authority. Since there have been repeated such grievances expressed by the applicant even in the other cases where the Hon'ble bench of Court No. 1 has recused itself, it itself shows that the applicant is not willing to accept the orders when they are heard in open court before the other counsels, court staff and during the specified timings. The orders are passed based on its merits, thereby the applicant does not deserve to be heard further in the matter if he does not wish to proceed further. Applicant does not have a right to get the judgment in his favor in all cases, which are decided based on the merits and the arguments put forth. The appellant if he unilaterally decides an order of this Tribunal as Null and Void cannot appeal for recall of an order passed on merits, after duly hearing the applicant and admitting his documents, for its admission of the prayers sought, if at all he

may seek corrections, if any objections may appeal as provided under the Act. We do not want to deal with any other provisions of the legal remedy sought in his prayers other than restricting to Rule 11 of IBC on which the appeal was considered to be of no merit to be admitted. Hence, we do not wish to recall the order passed on 16 February 2024.

3. As regards the other prayers listed in Para 5 (a) we reiterate the observations made in the para 2 above and hold that it is not necessary to recall the orders passed on 16th Feb 2024, on the grounds mentioned. As regards the other sub para (b) to (e) we do not deem appropriate to give any directions to the Court Registry which has enabled listing of this application and the same was heard as per the existing procedure. The order dated 16 feb 2024 cannot be treated as “null and void” by the applicant and additionally made certain observations seeking recording of proceedings. There is no such established procedure before any of the cases listed and to consider a judgment passed as null and void due to absence of meeting such requirements makes prays conditional which cannot be ordered by this tribunal. We do not wish to pass sine die orders in IA 347 and allow any other proceedings revived in which orders were passed.

4. After hearing the Learned Counsel for the applicant and in view of the above mentioned observations the following orders are passed.

ORDERS

1. IA No. 347 of 2024 is rejected.
2. Till the project for online recording of proceedings is taken up by the administrative side we will not hear any of applicant's matters and it is listed for further hearing Sine die as per his prayer.

SD/-

**DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)**

SD/-

**CHITRA HANKARE
MEMBER (JUDICIAL)**