

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

IA Nos.1293 & 1295/2024

in

Company Appeal (AT) (CH) (Ins) No.129/2024

(IA Nos.1294 & 1296/2024)

In the matter of:

M/s. Mantri Developers Pvt. Ltd.

49.99% Shareholder of M/s. Tarun Realtors Private Limited,
Having Registered Office at C-5, Richmond Homes,
No.5/1, Richmond Road, Bangalore, Richmond Town,
Bangalore, Karnataka – 560 025.

CIN: U70102KA1990PTC027924

...Applicant

V

Ace Enviro Tech Pvt. Ltd.

Having its Registered Office at ‘Basava Sadana’,
No.117, 3rd Floor, Coles Road, Fraser Town,
Bangalore – 560 005.

CIN: U74900KA2011PTC059112

Venkata Subbarao Kalva,

Erstwhile IRP of M/s. Tarun Realtors Private Limited,

IBBI/IPA-002/IP-N00179-18/10655,
41/1, 2nd Floor, 11th Cross, 8th Main, Jayanagar 2nd Block,
Bangalore, Karnataka – 560 011.

Asset Reconstruction Company (India) Limited,

The Ruby, 10th Floor,
29, Senapati Bapat Marg,
Dadar (W), Mumbai – 400 028.

Karur Vysya Bank,

No.6, 3rd Floor,
Vasavi Temple Street, V.V. Puram,
Bangalore – 560 004.

Phoenix ARC Private Limited,

3rd Floor, Wallace Towers,
139/140/B/1, Crossing of Sahar Road

and Western Express Highway,
Ville Parle East, Mumbai,
Maharashtra – 400 057.

**Assets Care & Reconstruction Enterprise Limited as
Trustee of ACRE-159-Trust,**

Reg. Office: 14th Floor, Eros Corporate Towers,
Nehru Place, New Delhi – 110 019.
Corporate Office: 502, C Wing, One BKC,
Bandra Kurla Complex, Mumbai – 400 051.

Ravi Sankar Devarakonda

Resolution Professional of M/s. Tarun Realtors Private Limited

IBBI/IPA-001/IP-P00095/2017-2018/10195,

41/1, 2nd Floor, 8th Main, 11th Cross,

Jayanagar 2nd Block, Bangalore, Karnataka – 560 011.

...Respondents

Present :

For Applicant : Mr. M.S. Shyamsundar, Senior Advocate
For Mr. Sriram Venkatavaradan, Advocate
For Respondents : Mr. Chandramouli Prabhakar, Advocate for R1
Mr. Varghese Thomas, Advocate for R3
Mr. P.S. Raman, Senior Advocate
For Mr. Vinod Kumar, Advocate for R6

ORDER

(Hybrid Mode)

Per: Justice Sharad Kumar Sharma, Member (Judicial)

This Company Appeal is listed for consideration of a recall application being **IA No.1293/2024 & IA No.1295/2024**, where both the Applicants have sought the recall of the order dated 14.10.2024 in CA (AT) (CH) (Ins) No.129/2024, by virtue of which we had vacated the earlier interim order granted by this Tribunal on 18.04.2024.

The facts, which emerge for consideration are that when the matter came up for consideration on 14.10.2024, an objection was raised by the Respondents

to the effect that, since the Appellant who was earlier represented through Mr. S. Baaskaran, the Suspended Director since he had resigned from the post of Director on 12.08.2024 and as a consequence thereto, when he does not continue to be the Director, the Appeal at his behest cannot be permitted to be continued and so, the Interim Order deserved to be vacated. Taking the aforesaid argument into consideration, we had passed the following orders: -

“An Interim Order was granted initially on 18.04.2024 by this Tribunal which continues to operate. It has been submitted by the Respondent that the Appellant Mr. S. Baaskaran, the Suspended Director has now resigned from the post of Director on 12.08.2024, and that as a consequence of his resignation the present Appeal is no more maintainable, in this scenario, as, the appellant has become a non-existing entity, the instant appeal cannot be permitted to be sustained and continued and hence the same is accordingly, dismissed”.

Seeking its recall an application has been preferred being **IA No.1293/2024**, by:-

M/s. Mantri Developers Private Limited

49.99% Shareholder of M/s. Tarun Realtors Private Limited

Having Registered Office at C-5, Richmond Homes,

No.5/1, Richmond Road, Bangalore, Richmond Town,

Bangalore, Karnataka – 560 025.

CIN: U70102KA1990PTC027924

The ground, which has been taken in the application seeking for recall of the order dated 14.10.2024 by the Applicant in IA 1293/2024, was that since being a nominee director of the board of directors of the Corporate Debtor

M/s. Tarun Realtors Private Limited, who had preferred the instant Appeal being aggrieved as against the Impugned Order passed on 20.07.2023, passed in CP(IB) No.72/BB/2021, which was as against allowing an application which had been preferred under Section 9 of the I & B Code, 2016. The Applicant (Mantri Developers Pvt. Ltd.) in his capacity as a shareholder had pleaded that the Corporate Debtor, had three shareholders, holding 49.99% shareholding by the Applicant, 50% shareholding by the M/s. Virtuous Retail Pte. Ltd. and M/s. Moribus Holdings Pte. Ltd. having a shareholding of 0.01%. It was argued by the Learned Counsel for the Applicant that as against the Corporate Debtor, there are multiple set of litigations which are going on between the shareholders of the Corporate Debtor too, which are detailed in para 5 of his recall applications which were even much prior to the filing of the present Insolvency Petition and hence he contended that, as against the order of 20.07.2023, the nominee director of M/s. TRPL, had preferred the Company Appeal being aggrieved as against the Impugned Order of 20.07.2023, in which there was initially the Interim Order granted, which continued to operate and be effective for some time, till it was vacated by the Tribunal an order of 14.10.2024.

There are various other facets, which has been pleaded and argued by the Learned Counsel for the Applicant on the ground that, as against the order of 14.10.2024, vacating the stay and dismissing the appeal, the Applicant had filed a Writ Petition before the Karnataka High Court, being W.P. No.29488/2024, *Mantri Developers Private Limited Vs The Registrar, NCLAT and Ors.*, wherein

it was observed by order dated 30.10.2024, that the proceedings in pursuance to the order of 14.10.2024 as passed by us, shall not be precipitated.

The Financial Creditor of the Corporate Debtor, M/s. Asset Care and Reconstruction Enterprise Ltd., had filed a Special Leave Petition No.027169/2024, before the Hon'ble Apex Court challenging the order of 30.10.2024, as it was passed by the High Court and the Hon'ble Apex Court, vide its order dated 22.11.2024, had directed that the CIRP will continue in accordance with law, which would be subject to the final outcome of Writ Petitions, pending before High Court of Karnataka as against the order passed by us on 14.10.2024, vacating the stay order and dismissing the Company Appeal.

The Hon'ble Apex Court had passed the following orders: -

“We, as an ad interim measure, direct that the CIRP proceedings will continue in accordance with the law, subject to the final outcome of Writ Petition No.29129/2024, titled “Baskaran S. v The Registrar of NCLAT & Ors” before the High Court of Karnataka, and other connected writ petitions pending before the High Court and the present special leave petitions”.

Based upon the aforesaid directives of the Hon'ble Apex Court, the Hon'ble High Court of Karnataka had passed the order on 10.12.2024 in W.P. Nos.29137/2024, 29129/2024 & 29488/2024, whereby the following directions were issued: -

“6. The above being said, it needs to be made clear that if the petitioners file the recall application within a period of two weeks from this day, the same shall be heard & decided by this Tribunal. In that

connection, all contentions of the parties are kept open. It is also open to the petitioners to seek appropriate interim protection if grounds do exist therefor”.

The present recall application has been filed. There are a few facts which emerges for consideration by us are that the power of recall is not the power which is specifically vested with the Appellate Tribunals. Except for owing to the exceptional circumstance, as carved out in the five Judges Bench of the Principal Bench, New Delhi in CA (AT) (Ins) No.729/2020, Union Bank of India Vs Mr. Dinkar T. Venkatasubramaniam & Ors., wherein the powers to recall has been confined to be applied, subject to certain embargos as contained in it, that Judgment on recall does not have universal applicability and more particularly when the recall in itself, though it may not be significant, since the same has been preferred under Section 151 of Code of Civil Procedure, 1908, it will not be maintainable. There is yet another reason for not to accept the recall application, because besides the applicant, there are other shareholders who are holding shares in a higher proportion, than that of the applicant who are not before us. The shareholders cannot be substituted in place of the Suspended Director, as they happen to be the shareholders limited to their rights restrained by investment in the Corporate Debtor.

Exclusively, owing to the fact that on the date of passing of the order i.e., 14.10.2024, it is an admitted case that Mr. S. Baaskaran, who had then filed the Company Petition in the capacity of being the Suspended Director, since has admittedly resigned as a director from the Company of the Corporate Debtor,

could not have been permitted to be continued and furthermore, the recall which has been preferred by the shareholder, he cannot be permitted to be substituted in place of the Suspended Director of the Corporate Debtor as his status is statutorily distinct, to the director. Hence the recall application is misconceived and the same is accordingly dismissed and the order passed by us on 14.10.2024 is confirmed.

Passing of the orders by the Hon'ble Apex Court in relation to the pending Writ Petitions and passing of the orders by the Division bench for considering the recall application by the Applicant, had not to be construed to be dealing with the aspect of maintainability of an application at the behest of the shareholder.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

07.03.2025
VG/TM/MS