

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

Company Appeal (AT) (Insolvency) No. 504 of 2022

IN THE MATTER OF:

Printland Digital (India) Pvt. Ltd.

...Appellant

Versus

Nirmal Trading Company

...Respondent

Present:

**For Appellant: Mr. Sandeep Bisht, Mr. Yati Ranjan and Mr.
Divyam Garg, Advocates**

For Respondent: Mr. Geetesh Meena, Advocate

O R D E R
(Virtual Mode)

30.05.2022: This Appeal is preferred against the impugned order dated 10th March, 2022 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi, Court-IV) in I.A. No. 5064/ND/2021 in CP No. IB 1105/ND/2020.

In brief, the issue involved in this appeal is as to whether the Adjudicating Authority has the power to recall its order of closing of right to file the Reply?

Counsel for Appellant has submitted that the Appellant had filed an application on 16.09.2021 for recalling of the order dated 22.07.2021 by which its right to file the Reply as Corporate Debtor was closed.

It is submitted that the application has been dismissed by the impugned order, inter alia, on the ground that not only the Tribunal is not vested with any power to recall or review its own order but also sufficient opportunities had already been granted to the Appellant to file the Reply which were not availed.

Counsel for Appellant has submitted that the Tribunal had the jurisdiction to recall its order in terms of the Rule 11 of NCLT Rules, 2016 because it had not decided any substantial issue on merits. He has conceded that had it been a case of deciding a substantial issue by the Adjudicating Authority then the matter would have been altogether different for the purpose of passing an order of review but since it was just a procedural aspect for which the Appellant had made a request for recall, it had the jurisdiction to pass the order either to recall the order or to decline the same. In this regard, he has relied upon a decision of this Tribunal rendered in the case of CA (AT) (Ins) No.271 of 2022 decided on 16.03.2022 to contend that the facts of the case in hand are almost similar to the facts of the case which has been cited because in that case also the right to file the Reply was closed but on an applicant filed therein the reply was taken on record. The order of taking the Reply on record was challenged by the Creditor by way of an Appeal before this Tribunal in the case of CA (AT) (Ins) No. 271 of 2022 and this Tribunal had observed that *“Present is not the case where the Adjudicating Authority has exercised its power of review on merits of any issue decided by the Adjudicating Authority. Present is the case where with regard to the pleading i.e. accepting the Reply, inherent power has been exercised by the Adjudicating Authority under Rule 11 of the NCLT, Rules. We are of the view that substantial justice has been done by the Adjudicating Authority in taking the Reply on record.”*

On the other hand, Counsel for Respondent has argued that the act and conduct of the present Appellant is such which does not allow it to seek the interference by this Court because sufficient opportunities were granted *Company Appeal (AT) (Insolvency) No. 504 of 2022*

by the Adjudicating Authority to file the Reply which have deliberately not been chosen to avail and therefore it is just a ploy on the part of the Appellant to delay the decision of the application pending before the Adjudicating Authority. He has, however, did not deny the fact that the decision in the case of Aggarwal Coal Corporation Private Limited Vs. Sun Paper Mill Limited & Another, which has been relied upon by the Adjudicating Authority is not applicable because in that case the Adjudicating Authority had decided the issue on merits for which it had no jurisdiction to review its order.

We have heard Counsel for the parties and perused the record. There is a difference between recalling of an order and review on merits of the issue decided by the Adjudicating Authority. No doubt that the Adjudicating Authority has no jurisdiction to review its order after deciding a substantial issue but it has the jurisdiction to recall the order of the kind in dispute i.e. where the right to Reply was closed by an order on the ground that the opportunities granted were not availed. In this regard, we rely upon a decision of this Tribunal rendered in the case of CA (AT) (Ins) No. 271 of 2022 in which it has been held that if there is an adjudication by the Adjudicating Authority on merits of the issues then it would not have the jurisdiction to review its order but insofar as the dispute with regard to right to file the Reply which is closed by an order, it certainly has the jurisdiction to recall it in terms of the Rule 11 of NCLT Rules, 2016.

In view of the aforesaid discussions, we therefore, allow this appeal and remand the case back to the Adjudicating Authority to consider the application on merits and decide the same in accordance with law.

The parties are directed to appear before the concerned Adjudicating Authority on the date already fixed i.e. **09th June, 2022.**

**[Justice Rakesh Kumar Jain]
Member (Judicial)**

**[Dr. Alok Srivastava]
Member (Technical)**

Sheetal/md/rr