

## NCLAT: Whether vested with power to Review or Recall its own judgement?

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The Courts have inherent power under Civil Procedure Code (CPC) to Review and Recall its own judgements. In this regard, The Hon'ble Supreme court has repeatedly defined the scope of recall and review.

In this connection reliance maybe placed on the judgement of Supreme Court in the case of ***Asit Kumar Kar Vs. State of West Bengal & Ors* [(2009) 2 SCC 703]** wherein the Hon'ble Supreme Court laid that, for a review petition the court considers "*the merit that the judgement has an error apparent on the face of the record*" and for a recall petition "*the court does not go into merit but simply recalls the order which was passed without giving due opportunity of hearing to the affected party*".

The difference between recall and review can be further understood, through the interpretations made by Apex court in various matters, defining the scope of inherent power vested with Courts to Recall and Review. In this regard we can place reliance on the judgement given by the Hon'ble Supreme court in the case of ***Indian Bank Vs. M/s Satyam Fibres India Pvt. Ltd. [AIR 1996 Supreme Court 2592]***, wherein the Hon'ble Apex court held that the courts have inherent power to recall and set aside an order which is obtained by fraud practiced upon the Court, or when the Court is misled by a party or when the Court itself commits a mistake which prejudices a party. The similar observation was made by the Hon'ble Apex Court in the case of ***A.R. Antulay Vs. R.S. Nayak [(1988) 2 SCC 602]*** wherein the Hon'ble Court has observed the motion to set aside such judgement which has been rendered in ignorance of the fact, that a necessary party had not been served at all and was shown as served or in ignorance of the fact that a necessary party had died and the estate was not represented, where the judgment was obtained by fraud, or a judgement where the party who had no notice when the decree was passed against him and he approaches the court for setting aside the order. Further, in this regard, the interpretation made by the Hon'ble Supreme court in the case ***Budhia Swain & Ors. Vs. Gopinath Deb & Ors, [(2017) ibclaw.in 282 SCJ]*** stands important. In the instant case Hon'ble Apex court observed that, a Tribunal or a Court may Recall an order earlier made by it if the order suffers from an inherent lack of jurisdiction, or that it has been obtained under fraud or collusions, or there has been mistake of court prejudicing a party, or that the judgement has been obtained by ignoring the fact that a necessary party had not been served at all or had died and the estate was not represented. The Hon'ble Apex Court further held that the power to Recall a judgement cannot be exercised where the ground for reopening of the proceedings or appealing before the higher forum, or any other remedy was available to the party. In such case, the right to seek vacation of a judgment may be lost by waiver, estoppel, or acquiescence.

Further, the scope of review can be better understood through the precedents laid by the Hon'ble Courts in various matters before it. In this regard, reliance may be placed on the judgement given in the case of ***Grindlays Bank Ltd. vs. Central Government Industrial Tribunal and others [(1980)***

**Supp. SCC 420]** wherein the Hon'ble Supreme Court has observed that the expression "review" is used in the two distinct senses one being a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order and the other a review which is on merits and the error sought to be corrected is that of law and is apparent on the face of the record and when such review is sought it is important for the tribunal to correct such inadvertent error as principal under '**ex debito justitiae**' and to prevent the abuse of its process. It was further held that, that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be re-heard and decided again"

An aligned view and interpretation was made by Hon'ble Supreme Court in the case of **Kapra Mazdoor Ekta Union vs. Birla Cotton Spinning & Weaving Mills Ltd. & Anr.** [(2005) 13 SCC 777] while defining the scope of review and the procedural review.

At this juncture it is important for us to analyze the intent of the legislature behind vesting powers with the Courts/Tribunals to recall or to review. For this, we may look at Section 424 of the Companies Act 2013, which covers Procedure before Tribunal and Appellate Tribunal (NCLT). It lays that, the Tribunal or the Appellate Tribunal while disposing of any matter before it, is not bound by the procedure laid down in the Code of Civil Procedure, 1908(CPC), but shall be guided by the principles of natural justice, and, subject to the other provisions of the companies Act, and of any rules made thereunder. Further, sub-section (2) of Section 424 lays that, the for the purpose of discharging function under the Companies Act, the Tribunal and the Appellate Tribunal shall have the same power as that of Civil Court under the CPC. Further, it is also pertinent to note Rule 11 of the National Company Law Appellate Tribunal Rule, 2016(Tribunal Rule), which covers the inherent power of the Tribunal.

It is pertinent to look at the interpretations laid by the Hon'ble courts in this regard, reliance can be placed on the judgement of the Hon'ble Supreme Court in the case of **Manohar Lal Chopra vs. Rai Bahadur Rao Raja Seth Hiralal** [AIR 1962 SC 527] herein it was observed that, the inherent powers of the courts and the Tribunals are not conferred to them but is inherited to do the justice in its true sense.

Considering the above discussed provisions and the observations made by the Hon'ble Apex court of India, a reasonable analysis can be made that, Rule 11 is akin to Section 151 of the CPC. The procedures followed may be different but functions need not be different. The same view has been taken by the Hon'ble Supreme Court in the case of **Harinagar Sugar Mills Ltd. vs. Shyam Sunder Jhunjhunwala & Ors** [AIR 1961 SC 1669].

However, there has also been contrasting view taken by the Hon'ble Appellate Tribunal while dealing with various cases before it. In this regard, reference can be made to the judgement given in the case of **Agarwal Coal Corporation Pvt. Ltd. vs. Sun Paper Mill Ltd. & Anr** [(2021) [ibclaw.in/493NCLAT](http://ibclaw.in/493NCLAT)] where an I.A. was filed to place on record the fraudulent acts of the Respondent and prayed for exercise of inherent power in allowing the application, however the tribunal refused to interfere in the order of the Adjudicating Authority and held that power of review and recall is not inherent power given to tribunals under IBC. A similar contrasting judgement was given in the case of **Rajendra Mulchand Varma & Ors. vs. K.L.J Resources Ltd. & Anr.** [(2022) [ibclaw.in/827NCLAT](http://ibclaw.in/827NCLAT)] which relied on the judgement of **Agarwal Coal Corporation (Supra)**.

However, in the recent case **Union Bank of India (Erstwhile Corporation Bank) vs Dinkar T.**

**Venkatasubramanian & Ors[2023] ibclaw.in 381 NCLAT.**, the five judge bench of Hon'ble NCLAT, while dealing with issue of "whether the Appellate Tribunal is vested with the power to review and recall the judgement on sufficient ground, has analyzed various Supreme Court cases and the precedents laid by the Apex Court along with, legal provisions such as Section 424 of Companies Act, Rule 11 of Tribunal Rule, 2016 and held that the NCLAT is not vested with any power to review its own judgment, however, in exercise of its inherent jurisdiction NCLAT can entertain an application for recall of judgment on sufficient grounds. The judgement of the NCLAT in the above discussed case has also been upheld by the Hon'ble Supreme Court of India, in **Union Bank of India Vs. Financial Creditors of M/s. Amtek Auto Ltd. & Ors. (2023) ibclaw.in 85 SC.** With this judgement, the power of the of the Tribunals in respect of review and recall its own judgement stands well defined today and shall act as precedent while dealing with any matter pertaining to the discussed issue.

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