IN THE HIGH COURT OF ORISSA AT CUTTACK

RVWPET No.399 of 2023

CNR No.ODHC010828962023

Ferro Alloys Corporation Limited, Bhadrak	.....	**Petitioner**

-versus-

The Presiding Officer, Labour Court, Bhubaneswar and others	.....	**Opposite Parties**

Advocates appeared in this case:

For Petitioner :Mr. Lalitendu Mishra, Advocate
Mr. Saswat Kumar Acharya, Advocate

For Opp. Parties : Ms. Biswabara Dash,
Additional Standing Counsel
(for O.P. No.1)

CORAM:

THE HON'BLE THE CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE M.S. SAHOO

J U D G M E N T

Date of hearing :13.10.2026: Date of Judgment: 05.11.2026

PER **MRUGANKA SEKHAR SAHOO, J.**

1. The application has been filed seeking review of the judgment dated 29.08.2023 passed by Division Bench in W.P.(C) No.21154 of 2023.

Since one of us M.S. Sahoo, J. was member of the Division Bench that had considered the writ petition, W.P.(C) No.21154 of 2023 and rendered the judgment dated 29.08.2023 dismissing the writ application, the review application is listed before a Bench of which M.S. Sahoo, J. is a member, the other Hon'ble Judge who was part of the Bench that had delivered the judgment dated 29.08.2023 is not available.

2. The review application has been filed under Order XLVII Rules 1 and 2 read with Section 114 of C.P.C. The petitioner in the writ petition is also the petitioner in the review petition.

3. In the review application the notices were issued by order dated 16.05.2024. The learned ASC/AGA appears on behalf of the opposite party no.1. The notice on the opposite party no.2 has been held to be sufficient by order dated 03.07.2024 passed by another Division Bench of which M.S. Sahoo, J. was a member. Paragraph-3 of the said order dated 03.07.2024 observing the notice on the opposite party no.2 to be sufficient is reproduced herein:

> *"3. Petitioner has liberty to effect service through learned advocate, who had represented opposite party no.2 in the Labour Court. This is in addition to the service already attempted, which is good service per decisions of the Supreme Court, reported in* ***C.C. Alavi Haji v. Palapetty Muhammed****, reported in* ***(2007) 6 SCC 555****, paragraph 14,* ***State of M.P. v. Hiralal****, reported in* ***(1996) 7 SCC 523****, paragraph 1 and* ***M/s. Madan***

and Co. v. Wazir Jaivir Chand, *reported in* ***AIR 1989 SC 630***, *paragraph 6."*

4. By order dated 03.09.2024 in I.A. No.277 of 2024 substitution of opposite party no.2 was allowed as the said opposite party had unfortunately passed away. Paragraphs-3 and 4 of the order dated 03.09.2024 are reproduced herein:

> *"3. Application is allowed. Hema Devi (widow), Deepak Kumar (son), Raj Nandini Kumari (daughter) and Nikita Kumari (daughter) are substituted as opposite party no.2 series. Amended cause title be filed and circulated. The application is disposed of.*
> *4. Mr. Sahoo submits he has already filed power on behalf of substituted legal representatives. His name be accordingly reflected."*

Thereafter, on each date of listing i.e. 08.12.2025, 13.02.2026, 20.03.2026 and lastly on 13.10.2026 when the matter was finally heard and judgment was reserved, none had/has appeared on behalf of opposite party no.2.

Learned counsel for the review petitioner, Mr. Mishra and Mr. Acharya have been heard at length. The note of submissions filed in the review application along with the date chart has also been considered.

5. Now, the issue for consideration and determination in the review is whether the review petitioner has made out a case for review of the judgment dated 29.08.2023 in W.P.(C) No.21154 of 2023, as per the parameters of Order XLVII Rules 1 and 2 read with Section 114 of the C.P.C.

6. The applicable provisions of C.P.C. which have bearing in deciding the review application are reproduced herein:

> "*ORDER XLVII*
> *REVIEW*
>
> ***1. Application for review of judgment****.—(1) Any person considering himself aggrieved—*
> *(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,*
> *(b) by a decree or order from which no appeal is allowed, or*
> *(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.*
>
> *(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applied for the review.*
> *[Explanation.—The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]*

***2. To whom applications for review may be made**.—[Rep. by the Code of Civil Procedure (Amendment) Act, 1956 (66 of 1956) s. 14.]*
*"**114. Review**.—Subject as aforesaid, any person considering himself aggrieved— (a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred. (b) by a decree or order from which no appeal is allowed by this Code, or (c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit."*

Judgment in the writ application:

7. In the writ application petitioner-employer challenged the award dated 16.03.2023 passed by the Presiding Officer, Labour Court, Bhubaneswar in Industrial Dispute Misc. Case No.63 of 2021.The industrial adjudication involved issue raised under Section 33-C(2) of the Industrial Disputes Act, 1947 which was for recovery of money due from the employer determined by the Labour Court in the award dated 17.02.1999 passed in I.D. Case No.60 of 1990 and confirmed by Division Bench in the writ petition. The direction contained in the award of the Labour Court in I.D. Case No.60 of 1990 at paragraphs-7 and 8 of the award are reproduced herein:

"7.Issue No. (i) :-The termination of the workman was done by virtue of the domestic enquiry report and orders of the management dated 21.10.86. Since the domestic enquiry report as well as the orders of the management dated 21.10.86 are held

to be not legal and proper, the actions of the management in terminating the workman with effect from 24.10.86 is also not legal and justified. The issue no.(i) is answered accordingly.

8. Issue No. (iv):-In view of my findings on the foregoing issues, the workmen is entitled to be reinstated in service, but considering the peculiar nature and circumstances of this case, I feel that the award of back wages at the rate of 50 per cent would meet the ends of justice. The issue No. (iv) is answered accordingly."

8. The management-employer is aggrieved by the direction as it was held by the Labour Court that termination of service of the opposite party no.2-employee (since deceased) with effect from 24.10.1986 is not legal and justified. The said workman is entitled to be reinstated in service with continuity of service. His entitlement towards back wages was held to be 50% of the amount.

9. The management challenged the award by filing writ petition, OJC No.7286 of 1999. The Division Bench of this Court by order dated 11.12.2019 upheld the award, confirmed the observations at paragraphs-6, 7 and 8 of the award. Thereafter, the management-present review petitioner have stated to have filed a review petition RVWPET No.2 of 2020 on 08.01.2020, the said review application remains without any further steps being taken by the review petitioner. The order passed by the Division Bench has attained finality.

10. The Division Bench in the writ petition has noted the subsequent developments till filing of the W.P. (C) No.21154

of 2023 that was dismissed by judgment dated 29.08.2023 of which review is sought for. The relevant paragraph from the judgment dated 29.08.2023 is reproduced herein:

> *"7. The Petitioner for the bad financial condition was meanwhile admitted into Corporate Insolvency Resolution Process (CIRP) under IBC vide order dated 06.07.2017 passed by the NCLT annexed as Annexure-2 to the Writ Petition, the order of NCLT remains as follows:-*
>
> > *"The petition filed by the Financial Creditor under section 7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Resolution Process and declare a moratorium and public announcement as stated in section 13 of IBC 2016. The relevant sections 13 and 14 are reproduced below for the purpose of convenience.*
> > *13. Declaration of moratorium and public announcement*
> >
> > *(1) The Adjudicating Authority, after admission of the application under section 7or section 9 or section 10, shall, by an order-*
> > *(a) to in section 14; declare a moratorium for the purposes referred*
> > *(b) cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims under section 15; and*
> > *(c) appoint an interim resolution professional in the manner as laid down in section 16.*
> > *(2) The public announcement referred to in clause(b) of sub-section(1) shall be made immediately after the appointment of the interim resolution professional.*
> >
> > *14. Moratorium*
> > *(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorim for prohibiting all of the following namely:-*
> > *(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including executing of any judgment, decree or order in any court of law, tribunal arbitration panel or other authority;*

(b) transforming, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right of beneficial interest therein;

(c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
(d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.
Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."
Necessary public announcement as per section 15 of the IBC, 2016 may be made by the Company.
Financial Creditor has also resolved to appoint Mr. K.G.Somani, having registration no. IBBI/I?PA-001/IP-address (1) P00300/2017-18/10544 [e-mail kgsomani@kgsomani.com to be appointed as interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for appointment of Resolution Professional and for evolving a resolution plan.
Shri K.G.Somani has submitted his consent in Form-2 under Rule 9 of the insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
The applicant/petitioner has also certified the fact that Mr. K.G.Somani is fully qualified and permitted to act as an Insolvency Professional in accordance with Code and the Associated Rules and Regulations. Therefore, Mr.

K.G.Somani is appointed as Interim Resolution Professional.

The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors.
Let the copy of the order be sent to the Applicant/Financial Creditor as well as Corporate Debtor and I.R.P.
List the matter on 22nd July, 2017."

8. In the meantime as per procedure laid down under IBC, a Committee of creditors was formed and Resolution professional being appointed it took over the Management. As final outcome, one Sterlite Power Transmission Limited (SPTL) was declared as the Successful Resolution Applicant (SRA) and the above resolution was approved by the NCLT Cuttack Bench vide its order dated 30.01.2020 at Annexure-3 and 4 respectively. An Appeal being preferred by erstwhile establishment, the NCLAT confirmed the order of the NCLT and this order again got confirmed by the Hon'ble apex Court in its order dated 27.09.2021 vide Annexure-5 herein.
9. It is in the meanwhile for the Management not working out the direction of Industrial Tribunal in I.D. Case No.60 of 1990, the workman-Opposite Party No.2 got constrained to initiate a proceeding under Section 33-C(2) of the I.D. Act to compute the back wages @ 50% arrear wages after the back wages period till Opposite Party No.2 attended the age of superannuation, bonus and leave salary during his service period and this matter got registered as I.D. Misc. Case No.63 of 2021. The Opposite Party No.2 led its claim as an outcome of the award dated 17.02.1999 in I.D. Case No.60 of 1990 and final award being confirmed vide O.J.C. No.7286 of 1999."

11. The submissions and reliance upon the judgment of the Hon'ble Supreme Court in ***Ghanashyam Mishra and Sons Private Limited vrs. Edelweiss Asset***

Reconstruction Company Limited: 2021 SCC Online SC 313 has been noted in the judgment at paragraph-10. The contentions on behalf of the petitioner by the learned counsel Mr. Mishra and Mr. Acharya have been noted at paragraphs-12 and 13. The said paragraphs are reproduced herein:

> *"10. In limiting the challenge to the order in I.D. Misc. Case No.63 of 2021, Mr. Mishra, learned counsel for the Petitioner submitted that for there is liquidation of the Petitioner and there is approval of transfer plan, there is no possibility of admission of further claim.*
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> *The Management-Petitioner also attempted to take help of the judgment in* ***Ghanashyam Mishra and Sons Private Limited vrs. Edelweiss Asset Reconstruction Company Limited: 2021 SCC Online SC 313.***
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> *xxx xxx xxx xxx*
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> *12. Mr. Mishra, learned counsel appearing for the Management-Petitioner raised the following contentions:-*
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> *4. That it is a settled position of law that as soon as a Resolution Plan is approved by the Hon'ble NCLT u/s. 31(1) of IBC, all the dues of the Corporate Debtor cease to exist especially dues pertaining to period prior to the CIRP of the Corporate Debtor. In the Petitioner's case also, the Petitioner was admitted to CIRP and eventually when the resolution plans were invited for taking over the Petitioner Company, SPTL was declared as the SRA and as soon as the Hon'ble NCLT Cuttack Bench approved the Resolution Plan on 30.01.2020, all the prior dues of the Petitioner company ceased to exist including the dues payable to OP No. 2. Moreover, the order of the Hon'ble NCLT Cuttack Bench clearly specifies that the order will be binding on the Corporate Debtor (i.e. the Petitioner) and its employees, members, all creditors including Central & State Government and local authorities, guarantors and other stakeholders. The said paragraph has been reproduced below:*
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> *"19. The Resolution Plan submitted by Ms Sterlite Power Transmission Limited (SPTL) i.e. Resolution Applicant, approved by 95.15% of voting share in 31 Committee of*

Creditors Meeting dated 13.11.2019 is APPROVED, as per Section 31 (1) of the Insolvency and Bankruptcy Code, 2016. Accordingly, the same shall be binding on the Corporate Debtor and its employees, members, all creditors including Central and State Government and local authorities, guarantors and other stakeholders."

In fact, even the Hon'ble Supreme Court stamped with finality the Resolution Plan of the Petitioner on 27.09.2021. 5. That Section 31 of the IBC clearly states that the Resolution Plan once approved will be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholder involved in the Resolution Plan. The creditors whose claims are accepted by the Resolution Professional and are acknowledged in the Resolution Plan get paid accordingly. Therefore, any claim relating to period prior to the CIRP automatically extinguishes as soon as the Resolution Plan is approved. The relevant extract of section 31 is reproduced below: "31 (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan."

6. That it is further submitted that the approved Resolution Plan also bars anyone to claim any amount which does not form the part of the Resolution Plan as on the Plan Effective Date (i.e., date on which Resolution Plan was approved). Moreover, the Resolution Plan also clearly states that apart from admitted workmen dues, any dues be it demand for any losses, damages, interest, back wages, compensation, penal interest liquidated damages already accrued / accruing or in connection with any claims) any present or past, direct or indirect, permanent or temporary employee and/or workmen of the company whether admitted or not, due or contingent, asserted or unasserted, crystalized or un-crystallized, known or un- known, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the IM will cease to exist. The Sub-clause (iii) of Para 3(b) at internal Pg. 20 of the Resolution Plan reads as follows:

"Other than the Admitted Workmen and Employees Dues and Potential Workmen Dues, any and all claims or demands made by, or liabilities or obligations owed or payable to (including any demand for any losses or damages, or interest, back wages, compensation, penal interest, liquidated damages already accrued/accruing or in connection with any claims) any present or past direct or indirect, permanent or temporary employee and lor workmen of the company whether admitted or not, due or contingent, asserted or unasserted, crystalized or un-crystallized, known or un-known, secured or unsecured, disputed or undisputed. present or future, whether or not set out in the IM, the balance sheets of the Company or the list of creditors, in relation to any period prior to the Plan Effective Date or arising on account of the acquisition of control by the Applicant over the Company pursuant to this Resolution Plan, will be written off in full and shall be deemed to be permanently extinguished by virtue of the order of the NCLT approving this Resolution Plan and the Company or the Applicant shall at no point of time be directly or indirectly, held responsible or liable in relation there to."

7. That it is also profitable to contend that the binding nature of the Resolution Plan is to such an extent that the IBC under Section 74(3) also provides that if the Corporate Debtor, any of its officers, creditors or any person upon whom the Resolution Plan is binding, contravenes the Resolution Plan then such person shall be punishable with imprisonment of not less than one year, but may extend to five year or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both. The Resolution Plan is binding upon the OP No. 2 and the OP No. 2 has clearly proceeded in violating Section 74(3) of IBC which is a punishable offence. The relevant extract of the section is reproduced below:

"74. Punishment for contravention moratorium or the resolution plan

(1)...

(2)....

(3) Where the corporate debtor, any of its officers or creditors or any person on whom the approved resolution

plan is binding under section 31 knowingly and wilfully contravenes any of the terms of such resolution plan or abets such contravention, such corporate debtor, officer, creditor or person shall be punishable with imprisonment of not less than one year, but may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.

8. That further it is pertinent to note that IBC has been given overriding powers under Section 238 which clearly specifies that the IBC will prevail over any other law. The section states as below:

"238. Provisions of this Code to override other laws - The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law"

9. That the claim of the OP No. 2 is not maintainable as it relates prior to CIRP period and hence extinguished after the approval of the Resolution Plan. This Hon'ble Court in the Petitioner's own matter where the Department of Mines, State of Odisha had raised claims of Rs. 215.92 Crores, has quashed the said demand on the ground that the claim is extinguished as it relates to a period prior to the approval of the Resolution Plan. The said judgment.is reported as Ferro Alloys Corporation Ltd. vs. State of Odisha, AIR 2022 Orissa 17.

10. The binding nature of the approved Resolution Plan and the overriding powers of the Code have been stamped with approval by several judgments which are binding. on the Opposite Parties. The Hon'ble Supreme Court in the landmark judgment of Committee of Creditors of Essar Steel vs. Satish Kumar Gupta (2020) 8 SCC 531 has held as follows: "105. Section 31(1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution Applicant starts running the business of the corporate debtor on a fresh slate as it were.

107.. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan

submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove."

11. Further, the Hon'ble Supreme Court, in the case of Ghanashyam Mishra and Sons Pvt. Ltd. vs. Edelweiss Asset Reconstruction Company Ltd, (2021) SCC ONLINE SC 313, has clearly held that claims which are not part of the resolution plan shall stand extinguished upon approval of resolution plan and the same has been quoted below for the kind perusal of this Hon'ble Court:

"95. In the result, we answer the questions framed by us as under:

(i) That once a resolution plan is duly approved by the Adjudication Authority under subsection (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

(ii) 2019 amendment to Section 31 of the I & B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;

(iii) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to

the date on which the Adjudicating Authority grants its approval under Section 31 could be continued."

13. It is in the above grounds and taking cue from the judgment in Ghanashyam Mishra (supra) and a further direction of this Court in O.J.C. No.7286 of 1999, Mr. Mishra, learned counsel for the Petitioner claimed declaring the direction in I.D. Misc. Case No.63 of 2021 as bad in law and setting aside the same."

12. The discussions on the factual issues raised as well as the law has been discussed threadbare at length by the Division Bench in its judgment at paragraphs-15, 16, 17 and 18, which are reproduced herein:

"15. This Court here finds undisputed facts here remain to be Petitioner herein became insolvent on 06.07.2017. In between 2017-2020 Resolution Professional (R.P) was in-charge as per IBC appointed by NCLT Calcutta Bench and the R.P. invited claims from 2017 till 2020. The C.P.(I.B) No.251/KB/2017 got concluded in order of NCLT dated 22.07.2017. There is drawing of Resolution Plan and the Resolution Plan got approved by NCLT Cuttack on 30.01.2020. Copy of Resolution plan is available here as Annexure-3 and copy of approval order by NCLT appears at Annexure-4. In the meantime promotors appealed before NCLAT also failed. The matter went to the level of Hon9ble apex Court and Hon9ble apex Court not only upheld the decision of NCLT as well as NCLAT but it also stamped the Resolution Plan by its order dated 27.09.2021 vide Annexure-5. Resolution Plan dated 13.11.2019 at Annexure-3 vide clause-10 under heading the Resolution Plan and Implementation Schedule at sub-para (a) and (b) reads as follows:-

"a) The term of the Resolution Plan shall commence on the date of submission of the Resolution Plan to the Resolution Professional and shall remain valid till the Plan is fully implemented. Notwithstanding anything

contained in this Resolution Plan (except to the extent set out in Section 7(b) of this Resolution Plan). no part of this Resolution Plan shall become effective or enforceable until either (i) the Resolution Plan is approved by the NCLT in the manner previously proposes by the Applicant and approved by the CoC; or (ii) if approved by the NCLT with any variance which does not result in any change in the Total Consideration proposed under the plan or does not impact the overail Financial Proposal of the Applicant, in the manner approved by the NCLT; (iii) if approved by the NCLT with any variance other than (iv) above, then in the form and substance acceptable to the COC and the Applicant Upon approval of the Resolution Plan by the NCLT, this Resolution Plan shall ispo facto form part of the NCLT order approving the Resolution Plan.

b) The implementation schedule for the Resolution Plan is set out in Section 7(b) of this Plan."

Similarly Resolution Plan at clause-3(b) under heading proposed for workman-Employees sub-clause (iii), at page-61 of the brief reads as follows:

"(iii) Other than the Admitted Workman and Employees Dues and Potential Workmen Dues, any and all claims or demands made by or liabilities or obligations owed or payable to, (including any demand for any losses or damages, or interest, back wages, compensation, penal interest, liquidated damages already accrued/accruing or in connection with any claims) any present or past, direct or indirect, permanent or temporary employee and/or workman of the Company whether admitted or not, due or contingent, asserted or unasserted, crystalized or uncrystallised known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the IM, the balance sheets of the Company or the profit and loss account statements of the Company or the list of creditors, in relation to any period prior to the Plan Effective Dare or arising on account of the acquisition of control by Applicant over the Company pursuant to this Resolution Plan, will be written off in full and shall be deemed to be permanently extinguished by virtue of the order of the NCLT approving this Resolution Plan and the Company or Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto."

16. This condition appears to make it clear that the resolution placed covers all other dues except the admitted workman and employees9 dues. It be made here that here the admitted dues of the workman involved case by way of an industrial adjudication in I.D. Case No.60 of 1990 decided on 17.02.1999 and decided much prior to Company-Petitioner herein became insolvent on 06.07.2017. The benefit to the workman came by way of award dated 17.02.1999 in disposal of I.D. Case No.60 of 1990. It is thus the outcome in I.D. Misc. Case No.63 of 2021 remain immaterial as it is only in giving into effect the outcome in I.D. Case No.60 of 1990 that too being confirmed in O.J.C. No.7286 of 1999. Pendency of the Review Petition without even admitted has no consequence for there is loss of decade in the meantime. The Petitioner claims here undoubtedly remain outside, the Resolution Plan and Petitioners attempt if entertained will frustrate the effect of award being confirmed by this Court and the Management here is expecting undue advantage of the Resolution Plan and an outcome of its approval by Supreme Court vide Civil Appeal No.5991-92 of 2021 and 5129 of 2021 decided on 27.07.2021 particularly when for there is undertaking of industrial adjudication since 1990, there was no scope for inclusion of such claim in undertaking of exercise in calling for the claims in 2017.

17. This Court here considering the effect of the judgment in Ghanashyam Mishra and Sons Private Limited Vrs. Edelweiss Asset Reconstruction Company Limited , 2021 SCC Online SC 313 finds, the short question decided to be determined there as taken down in paragraph-2 reads as follows:-

> *"2. The short but important questions, that arise for consideration in this batch of matters, are as under:-*
>
> *(i) As to whether any creditor including the Central Government, State Government or any local authority is bound by the Resolution Plan once it is approved by an adjudicating authority under sub-section (1) of Section 31*

of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I& B Code')?

(ii) As to whether the amendment to Section 31 by Section 7 of Act 26 of 2019 is clarificatory/ declaratory or substantive in nature?

(iii) As to whether after approval of resolution plan by the Adjudicating Authority a creditor including the Central Government, State Government or any local authority is entitled to initiate any proceedings for recovery of any of the dues from the Corporate Debtor, which are not a part of the Resolution Plan approved by the adjudicating authority?"

18. Attention in taking help of the above decision was drawn through question (iii) particularly plain reading of the aforesaid question, this Court here observes, the question (iii) does not fit to the issue involved herein as there should not be any doubt that the dispute here involved a determination on claim prior to 1990 and the final outcome in the dispute even involving benefit through as a corollary but all as an outcome of the result in I.D. Case No.60 of 1990 being confirmed by way of disposal in O.J.C. No.7286 of 1999 but disposed of on 11.12.2019 and claims here placed to be confident in terms of Resolution Plan involved herein. It be stated here that even though liquidation process involving the Petitioner commenced in 2017 till disposal of the Writ Petition in 2019, the Management-Petitioner consciously let this issue from being considered in the previous round of litigation."

13. The Division Bench further formulated its conclusion with the reasons after discussing the law at paragraph-19 to 24, which are reproduced herein:

"19. Undisputedly in the case at hand not only not a part of the Resolution plan nor even there is any claim put here after approval of the Resolution. The claim here arises by way of Industrial Adjudication in an award, vide I.D. Case No. 60 of 1990 passed on 17.02.1999. Such Award even got confirmed by this

Court in disposal of OJC No. 7286 of 1999. It be stated here that here the Resolution plan was submitted for the first time on 30.01.2020 and was approved by NCLT also on 30.01.2020 and ultimately confirmed by Hon9ble apex Court, vide judgment reported in (2022) 10 SCC 493 being decided on 27.09.2021. For the benefit here through award passed on 17.02.1999 in a litigation initiated in 1990 and litigation going on, there was no deliberate inclusion of this aspect in the Resolution plan.

20. This Court here further also observes, the legal position on above is well settled that an approved Resolution Plan can deal with related party claim and extinguish the same, which shall ensure that the successful Resolution applicant can take over the Corporate Debtor on hassle-free and clean state. This Court here also finds, once the Corporate Debtor was with clear knowledge of such an outstanding coming on its head, nothing prevents to the Corporate Debtor also putting such claim in the Resolution Plan. On the other hand attempt of the Petitioner here appears to circumvent the yield through the Industrial Adjudication settled through disposal of the Writ Petition in the guise of Resolution plan and trying to avoid its responsibility.

21. On the Petitioner here attempting to take advantage of Ghanashyam Mishra (supra) in the first step, this Court finds, there is, however, involve the issue involved therein and on the other hand even deciding the issue No. (iii) taken note herein the Hon9ble apex Court though taken its view in Paragraph-95 therein also does not come in the aid of the Petitioner.

22. It be stated here that the Petitioner even though has some other grounds but the impugned order was challenged only on the premises that the proceeding therein in I.D. Misc. No. 63 of 2021 does not stand to test for its Resolution Plan confirmed involving the company and did not include such claim further also hit by judgment of Hon9ble apex Court in Ghanashyam Mishra (supra).

23. Based on the above discussion we are of the considered opinion that there are no reason for interference in the order dated 16.03.2023 passed by the Labour Court, Bhubaneswar in I.D. Misc. Case No. 63 of 2021 involving a proceeding under Section 33-C(2) of the I.D. Act and the Writ Petition thus declined to be entertained for having no merit. For there is inordinate delay in providing the legitimate dues to the Workman involved herein and he is pursuing his litigation remedy nearly three and half decade and the Workman is sufficiently aged in the meanwhile, the benefit by virtue of the impugned order unless paid within thirty days hereafter, the Petitioner shall be entitled to the same along with interest @ 8% per annum all through.

24. The Writ Petition stands dismissed, however, with the above direction. No Cost."

Submissions on behalf of the petitioner

14. Supporting the prayer seeking review of the judgment of the Division Bench extensive submissions have been made by the learned Counsel for the petitioner Mr. Mishra and Mr. Acharya. The summary of the submissions are indicated herein below:

(i) The opposite party no.2-workman since deceased never lodged a claim under IBC before the Resolution Professional.

(ii) Clause -3(f)(i) of the Resolution Plan provides that all mandatory liabilities arising out of the litigations relating to the period prior to the effective date indicated shall be settled as 'NIL'.

(iii) The Division Bench has determined 'apparently mistaken findings'.

(iv) At paragraph-33 of the review application, paragraph-A to Paragraph-E specific points have been raised by the review petitioner suggesting that the Division Bench has returned finding of fact, which are contrary on the face of the record.

15. The learned counsel Mr. Mishra and Mr. Acharya have relied on the decision of the Hon'ble Supreme Court in ***Board of Control for Cricket in India and another v. Netaji Cricket Club and others: (2005) 4 SCC 741***, to support the submissions that a case for review has been made out. Relied upon paragraphs-88, 90 and 93 are reproduced herein:

> *"**88.** We are, furthermore, of the opinion that the jurisdiction of the High Court in entertaining a review application cannot be said to be ex facie bad in law. Section 114 of the Code empowers a court to review its order if the conditions precedent laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in Section 114 of the Code in terms whereof it is empowered to make such order as it thinks fit.*
>
> *xxx xxx xxx xxx*
>
> ***90.** Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words "sufficient reason" in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a*

court or even an advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".

xxx xxx xxx xxx

***93.** It is also not correct to contend that the Court while exercising its review jurisdiction in any situation whatsoever cannot take into consideration a subsequent event. In a case of this nature when the Court accepts its own mistake in understanding the nature and purport of the undertaking given by the learned Senior Counsel appearing on behalf of the Board and its correlation with as to what transpired in the AGM of the Board held on 29-9-2004, the subsequent event may be taken into consideration by the Court for the purpose of rectifying its own mistake."*

16. Seeking the review, the learned counsel for the petitioner have also relied on the decisions of ***Ferro Alloys Corporation Ltd. v. State of Odisha and others: AIR 2022 Ori 17*** and ***Green View Tea and Industries v. Collector, Golaghat, Assam and others: (2004) 4 SCC 122.*** We have gone through the said decisions and considered whether they would be of any help to the petitioner.

Discussions, Reasoning and Conclusions of the Court in the review application

17. In ***The State of West Bengal & Ors. Vs. Confederation of State Government Employees, West Bengal & Ors.:*** R.V.W. 159 of 2022 In WPST 102 of 2020 With C.A.N. 1 of 2022 dated 22nd September, 2022, the Division Bench of Calcutta High Court considered the

review application; speaking for the Bench regarding interpretation of Order XLVII Rules- 1 and 2 of the C.P.C., one of us Harish Tandon,J. (as His Lordship then was) observed thus:

> "*Upon the meaningful reading of the above quoted provisions the review is permissible provided the condition enshrined therein are fulfilled. Although the High Court enjoins the plenary powers of review while dealing under Article 226 of the Constitution of India yet the condition put forth therein needs to be looked into and the power is to be exercised within the circumference thereof. The review is permissible provided the order/decree contained an error apparent on the face of the record or on a discovery of new and important matters or evidence which despite the exercise of due diligence was not within the knowledge of the aggrieved person, at the time of passing of the said order or decree or for any other substantial reasons. The explanation appended thereto creates a further fetter on the part of the Court exercising review jurisdiction in not entertaining if aimed at the subsequent decision of the superior Court in any other case.*"
>
> [Underlined to supply emphasis]

18. It would be apt and appropriate to quote the judgments relied upon and discussions made thereon by the Division Bench of the Calcutta High Court in ***State of West Bengal***(*supra*).

> "*The Three Judge Bench of the Supreme Court in case of* ***M/s. Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh reported in AIR 1964 SC 1372*** *discussed the incidents which can be engulfed within the expression "error*

apparent on the face of the record". It is held that there is a distinction between an erroneous decision and a decision vitiated by a patent error. It is highlighted that the review jurisdiction should not be invoked and/or exercised converting itself as a court of appeal but founded upon the well sanctified parameters and at the time of exercising such jurisdiction the Court must be cautious and careful in bearing in mind the aforesaid distinction. The error can be said to be apparent on the face of the record provided the law expounded therein does not invite two possible conclusions/opinions. It is an ardent duty of the Court not to find out the error after an elaborate argument…… …"

In ***Parsion Devi & Ors. vs. Sumitri Devi & Ors. reported in (1997) 8 SCC 715,*** *the Apex Court in fact, propelled the exposition of law laid down in the case of* ***Thungabhadra****(Supra) and held that the error apparent on the face of the record must be self-evident and does not require to be ascertained by a process of reasoning. It is further held that the said jurisdiction can never be invoked for the purpose of mere correction of the order and upon rehearing of the entire matter, in the following:*

> *"9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".*

[Emphasis in original]

In ***Haridas Das vs. Usha Rani Banik & Ors. reported in (2006) 4 SCC 78,*** *the Apex Court held that the error or mistake appearing in Order 47 Rule 1 of the Code must not be such which is to be established by a long drawn process of reasoning upon lengthy arguments but should be self-evident in the following:*

> *"A Constitution Bench of this Court in the case of Pandurang Dhondi Chougule v. Maruti Hari Jadhav MANU/SC/0033/1965: [1966]1SCR102 has held that the issue concerning res judicata is an issue of law and, therefore, there is no impediment in treating and deciding such an issue as a preliminary issue. Relying on the aforementioned judgment of the Constitution Bench, this Court has taken the view in the case of Meharban v. Punjab Wakf Board (supra) and Harinder Kumar (supra) that such like issues can be treated and decided as issues of law under Order XIV, Rule 2(2) of the Code. Similarly, the other issues concerning limitation, maintainability and Court fee could always be treated as preliminary issues as no detail evidence is required to be led. Evidence of a formal nature even with regard to preliminary issue has to be led because these issues would either create a bar in accordance with law in force or they are jurisdictional issues."*
>
> *[Emphasis in original]*

In a recent judgment rendered by the Three Judge Bench of the Supreme Court in ***S. Madhusudhan Reddy (Supra)****, it is held that the power of review should not be equated with the power of an appeal. It is further held that the Court can exercise such powers for correction of a mistake but not to*

substitute its view taken earlier solely on the ground that there is a possibility of two views. It would be profitable to quote the observations contained in Paragraph 26 thereof which runs thus:

> *"26. As can be seen from the above exposition of law, it has been consistently held by this Court in several judicial pronouncements that the Court's jurisdiction of review, is not the same as that of an appeal. A judgment can be open to review if there is a mistake or an error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review under Order XLVII Rule 1 CPC. In the guise of exercising powers of review, the Court can correct a mistake but not substitute the view taken earlier merely because there is a possibility of taking two views in a matter. A judgment may also be open to review when any new or important matter of evidence has emerged after passing of the judgment, subject to the condition that such evidence was not within the knowledge of the party seeking review or could not be produced by it when the order was made despite undertaking an exercise of due diligence. There is a clear distinction between an erroneous decision as against an error apparent on the face of the record. An erroneous decision can be corrected by the Superior Court, however an error apparent on the face of the record can only be corrected by exercising review jurisdiction. Yet another circumstance referred to in Order XLVII Rule 1 for reviewing a judgment has been described as "for any other sufficient reason". The said phrase has*

been explained to mean "a reason sufficient on grounds, at least analogous to those specified in the rule" (Refer: Chajju Ram V. Neki Ram 17 and Moran Mar Basselios Catholicos and Anr. V. Most Rev. Mar Poulose Athanasius and Others 18)."

[Emphasis in original]

19. The further observations of the Division Bench of Calcutta High Court in ***State of West Bengal*** (*supra*) are quoted and applied in considering the present review application:

"*The law that emanates from the aforesaid decision leaves no ambiguity that the power of the review is to be exercised within the limited compass. Though the substantive provision in the Code of Civil Procedure in the form of Section 114 confers power upon the Court to review its judgment, order or decree yet it does not prescribe any conditions and/or the grounds of such review. In other words Section 114 of the Code of Civil Procedure neither prescribes any condition for exercising the power of review nor creates any brindle or prohibition on the Court from exercising such powers. Logically what follows therefrom is that though the substantive provision of review is provided in the Code yet the power is to be exercised by the Court on the grounds enumerated under Order 47 Rule 1 of the Code. Although the High Court enjoins a plenary power of correcting its mistakes or the errors in a writ jurisdiction yet by virtue of the introduction of Order 47 Rule 1 of the Code it is required to be exercised bearing in mind the condition enshrined therein. The expression 'mistake' or 'error' apparent on the face of the record leaves no ambiguity on the legislative intent that such error which are self-evident and does not require a detailed examination, the detailed scrutiny, roving enquiry and/or the elucidation of*

the facts or the legal position, are kept outside the purview of the aforesaid expression. The said expression connotes that the mistake or error apparent on the face of record must be such which does not require a long debate or the elaborate reasoning but on a bare look of the record and the consequence to follow therefrom. Every error cannot be construed as error apparent if it does not result into an accepted decision already taken. The fringe mistake or error which is ministerial having no impact on the ultimate decision taken on a well defined reasonings, cannot be perceived an error apparent on the face of the record. There is a real and apparent distinction between an erroneous decision and the decision containing an error apparent on the face of the record. In former case the remedy available to an aggrieved person is to move higher up and the review jurisdiction cannot be invoked; on the other hand, in later case if the Court finds that the judgment under review contained patent error striking at the root of the decision the review can be the proper remedy. Though the Justice is a virtue and transcends all barriers unbrindled with the rules of procedure or technicalities but there is a difference in the nature of a mistake and scope of the review as it largely depends upon the facts of the each case. The plenary powers of the Writ Court is based on equity and the fairness and the mistake of a Court should not cause prejudice to the litigants. The moment the mistake or the error is qualified with the word "apparent on the face of the record", the power is to be exercised in keeping the legislative intent and the conferment of the jurisdictions by the statutory provisions. The review jurisdiction is never equated with the appellate jurisdiction nor can be considered as an appeal in disguise. In case of an error, there is a possibility of two views and the one has been adopted it cannot come within the purview of the review jurisdiction even the Court feels the other possible views should have been taken. In such

cases, it should be regarded as an erroneous decision capable of being corrected by a higherer forum and does not come within the ambit of the review jurisdiction. The normal principle perceived in this regard is that the Court should avoid the departure from the judgment taken as it becomes final except when it is justified by the circumstances of substantial and compelling character.

[Underlined to supply emphasis]

20. In judgment dated 25.04.2022 in RVWPET No.20 of 2022 rendered by coordinate Bench of this Court, of which one of us M.S.Sahoo, J. was Member, decision of the Hon'ble Apex Court in ***Kamlesh Verma v. Mayawati***[1]was relied upon. ***Kamlesh Verma*** (*supra*)has also been relied upon by the Division Bench of the ***Calcutta High Court in State of West Bengal*** (*supra*).

21. In ***Kamlesh Verma*** (*supra*) the Hon'ble Supreme Court has laid down scope of exercise of power by the High Court for reviewing its own judgment and the limitations on exercise of such power. The paragraphs which are relied upon and applied for adjudication of the present review are reproduced herein; at paragraphs-12 to 20 of SCC the Hon'ble Supreme Court have held as follows:-

*"**12.**This Court has repeatedly held in various judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. A mere repetition through different counsel,*

[1](2013) 8 SCC 320

of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient. This Court in Sow Chandra Kante v. Sk. Habib [(1975) 1 SCC 674 : 1975 SCC (Cri) 305 : 1975 SCC (L&S) 184 : 1975 SCC (Tax) 200] held as under : (SCC p. 675, para 1)

(underlined to supply emphasis)

"1. Mr Daphtary, learned counsel for the petitioners, has argued at length all the points which were urged at the earlier stage when we refused special leave thus making out that a review proceeding virtually amounts to a rehearing. May be, we were not right in refusing special leave in the first round; but, once an order has been passed by this Court, a review thereof must be subject to the rules of the game and cannot be lightly entertained. A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for compliance with these factors is the rationale behind the insistence of counsel's certificate which should not be a routine affair or a habitual step. It is neither fairness to the court which decided nor awareness of the precious public time lost what with a huge backlog of dockets waiting in the queue for disposal, for counsel to issue easy certificates for entertainment of review and fight over again the same battle which has been fought and lost. The Bench and the Bar, we are sure, are jointly concerned in the conservation of judicial time for maximum use. We regret to say that this case is typical of the unfortunate but frequent phenomenon of repeat performance with the review label as passport.

Nothing which we did not hear then has been heard now, except a couple of rulings on points earlier put forward. May be, as counsel now urges and then pressed, our order refusing special leave was capable of a different course. The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality."

(emphasis in original)

13.*In a criminal proceeding, review is permissible on the ground of an error apparent on the face of the record. A review proceeding cannot be equated with the original hearing of the case. In Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi [(1980) 2 SCC 167 : 1980 SCC (Tax) 222] , this Court, in paras 8 and 9 held as under : (SCC pp. 171-72)*

"8. It is well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so: Sajjan Singh v. State of Rajasthan [AIR 1965 SC 845]. For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing, the Court will review its judgment: Girdhari Lal Gupta v. D.H. Mehta [(1971) 3 SCC 189 : 1971 SCC (Cri) 279]. The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice : O.N. Mohindroo v. District Judge, Delhi [(1971) 3 SCC 5]. Power to review its judgments has been conferred on the Supreme Court by Article 137 of the Constitution, and that power is subject to the provisions of any law made by Parliament or the rules made under Article 145. In a civil proceeding, an application for review is

entertained only on a ground mentioned in Order 47 Rule 1 of the Code of Civil Procedure, and in a criminal proceeding on the ground of an error apparent on the face of the record (Order 40 Rule 1 of the Supreme Court Rules, 1966). But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except 'where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility' : Sow Chandra Kante v. Sk. Habib [(1975) 1 SCC 674 : 1975 SCC (Cri) 305 : 1975 SCC (L&S) 184 : 1975 SCC (Tax) 200].

(underlined to supply emphasis)

9. Now, besides the fact that most of the legal material so assiduously collected and placed before us by the learned Additional Solicitor General, who has now been entrusted to appear for the respondent, was never brought to our attention when the appeals were heard, we may also examine whether the judgment suffers from an error apparent on the face of the record. Such an error exists if of two or more views canvassed on the point it is possible to hold that the controversy can be said to admit of only one of them. If the view adopted by the Court in the original judgment is a possible view having regard to what the record states, it is difficult to hold that there is an error apparent on the face of the record."

(underlined to supply emphasis)

14.*Review of the earlier order cannot be done unless the court is satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. This Court in Col. Avtar Singh Sekhon v. Union of India [1980 Supp SCC 562 : 1981 SCC (L&S) 381] held as under : (SCC p. 566, para 12)*

"12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In Sow Chandra Kante v. Sk. Habib [(1975) 1 SCC 674 : 1975 SCC (Cri) 305 : 1975 SCC (L&S) 184 : 1975 SCC (Tax) 200] this Court observed : (SCC p. 675, para 1)

'1. … A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. … The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.' "

15.<u>*An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.*</u> *This Court in Parsion Devi v. SumitriDevi [(1997) 8 SCC 715] held as under : (SCC pp. 718-19, paras 7-9)*

(underlined to supply emphasis)

"7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In Thungabhadra Industries Ltd. v. Govt. of A.P. [AIR 1964 SC 1372] this Court opined : (AIR p. 1377, para 11)

'11. What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an "error apparent on the face of the record". <u>*The fact that on the earlier occasion the court held on an identical state of facts that a substantial question of law arose would not per se*</u>

be conclusive, for the earlier order itself might be erroneous.Similarly, even if the statement was wrong, it would not follow that it was an "error apparent on the face of the record", for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.'

(underlined to supply emphasis)

8. Again, in Meera Bhanja v. Nirmala Kumari Choudhury [(1995) 1 SCC 170] while quoting with approval a passage from AribamTuleshwar Sharma v. Aribam Pishak Sharma [(1979) 4 SCC 389] this Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be 'reheard and corrected'. A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise'."

(emphasis in original)

16.*Error contemplated under the Rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The*

power of review can be exercised for correction of a mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review. This Court, in Lily Thomas v. Union of India [(2000) 6 SCC 224 : 2000 SCC (Cri) 1056] held as under : (SCC pp. 250-53, paras 54, 56 & 58)

(underlined to supply emphasis)

xxx xxx xxx xxx

56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised. However, this Court in exercise of its powers under Article 136 or Article 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment.

***

17.*In a review petition, it is not open to the Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Conclusion arrived at on appreciation of evidence cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. This Court in Kerala SEB v. Hitech Electrothermics&*

Hydropower Ltd. [(2005) 6 SCC 651] held as under : (SCC p. 656, para 10)

"10. … In a review petition it is not open to this Court to reappreciate the evidence and reach a different conclusion, even if that is possible. The learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise."

(underlined to supply emphasis)

18.*Review is not rehearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to reopen concluded adjudications. This Court in Jain Studios Ltd. v. Shin Satellite Public Co. Ltd. [(2006) 5 SCC 501] , held as under : (SCC pp. 504-505, paras 11-12)*

(underlined to supply emphasis)

19.*Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. In review jurisdiction, mere disagreement with the view of the*

judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction.

20.*Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:*

20.1.*When the review will be maintainable:*

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words "any other sufficient reason" have been interpreted in Chhajju Ram v. Neki [(1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius [AIR 1954 SC 526 : (1955) 1 SCR 520] to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd. [(2013) 8 SCC 337 : JT (2013) 8 SC 275]

20.2.*When the review will not be maintainable:*

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

(underlined to supply emphasis)

22. The principles laid down in ***Kamlesh Verma*** (*supra*), have been subsequently reiterated by the Hon'ble Supreme Court in several judgments. To refer to a few, we take note of ***Sunil Vasudeva & others vrs. Sundar Gupta & others***[2], ***Yashwant Sinha & others vrs. Central Bureau of Investigation through its Director and another***[3].

23. Keeping in view the principles which have been laid down in ***Kamlesh*** (*supra*) at paragraphs 20.1 and 20.2, the contentions raised in the review petition are to be considered: whether a case has been made out for reviewing judgment dated 10.01.2025. Accordingly, each of the

[2](2019) 17 SCC 385
[3](2020) 2 SCC 338

grounds raised by the petitioner are discussed and answered herein :

23.1 Submissions on behalf of the review petitioner inter alia suggest that the judgment passed by the Division Bench is erroneous. Assuming for the sake of argument that the submission is correct, review will not be maintainable as held in ***Kamlesh*** (*supra*); para-20.2(ii)(v): that a review by no means is an appeal in disguise whereby an erroneous decision is reheard and corrected. The arguments were considered and overruled by the Division Bench, therefore and such plea raised again is not enough to reopen the concluded adjudication.

23.2 The contentions raised regarding interpretation of ***Ghanashyam Mishra*** (*supra*) were considered in the judgment rendered by the Division Bench. The Division Bench has interpreted ***Ghanashyam***, determined the implications which has not favoured the review petitioner-opposite party. Reiteration of the argument in review cannot be countenanced as the argument has been overrulled. Consideration of the review petition cannot be equated with rehearing of the matter.

23.3 Further, assuming for the sake of argument that the interpretation of ***Ghanashyam*** *(supra)* suggested by the review petitioner would be a possible view, applying the principles laid down in ***Kamlesh*** 20.2(vi): mere possibility of two views on the subject cannot be a ground for review. In

the present case the Division Bench has considered and taken a view following ***Ghanashyam*** *(supra).*

23.4 The grounds as contended in the review application deal with legal and factual aspects. The said factual aspects have been considered by the Division Bench in challenge to the award of the learned Tribunal and have been discussed/decided. Therefore, the grounds would not come to the aid of the review petitioner as it would amount to reappreciation of evidence/material on record which would not be available to be done by the Court even in an appeal, much less in exercising review jurisdiction.

23.5 The legal issues raised in grounds of review are reiteration of contentions those were raised in writ petition and rejected, such contentions cannot be reheard and reconsidered again in review.

23.6 Further, the relief as sought at the time of arguing the writ application which have been negatived cannot be reconsidered.

24. Having heard learned counsel for the petitioner, we have also gone through the decision of the Hon'ble Supreme Court in ***Board of Control for Cricket in India*** (*supra*). We take note of the paragraphs-91, 95, 108 and 109 which are reproduced herein:

> *91. It is true that in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius [(1955) 1 SCR 520 : AIR 1954 SC 526] this Court made observations as*

regards limitations in the application of review of its order stating: (SCR p. 529)

"Before going into the merits of the case it is as well to bear in mind the scope of the application for review which has given rise to the present appeal. It is needless to emphasise that the scope of an application for review is much more restricted than that of an appeal. Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order 47 Rule 1 of our Code of Civil Procedure, 1908, the court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein. It may allow a review on three specified grounds, namely (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record and (iii) for any other sufficient reason. It has been held by the Judicial Committee that the words 'any other sufficient reason' must mean 'a reason sufficient on grounds, at least analogous to those specified in the rule'."

but the said rule is not universal.

xxx xxx xxx xxx

95. Furthermore, the impugned order is interlocutory in nature. The order is not wholly without jurisdiction so as to warrant interference of this Court at this stage. The Division Bench of the High Court had jurisdiction to admit the review application and examine the contention as to whether it can have a relook over the matter. This Court, it is trite, ordinarily would not interfere with an interlocutory order admitting a review petition. The contentions raised before us as regards the justification or otherwise of the Division Bench exercising its power of review can be raised before it. Furthermore, the Court having regard to clause (ii) of its order dated 29-9-2004 may have to consider as to

whether the election was held in accordance with the constitution of the Board and the Rules and Bye-laws framed by it.

xxx xxx xxx xxx

108. However, keeping in view the fact that the elected office-bearers are yet to take over charge, with a view to do complete justice to the parties, we would in exercise of our jurisdiction under Article 142 of the Constitution direct that the adjourned meeting should immediately be convened. As regards the election of the office-bearers of the Board, it would further be open to an aggrieved party to question the legality or validity of the said meeting dated 29-9-2004. Netaji also may, if it is otherwise permissible in law, subject to an appropriate order that may be passed by the Madras High Court, file an application for amendment of the plaint or take such other step or steps as it may be advised.

109. Keeping in view the fact that on 8-10-2004 when the impugned order was passed the new Board had not taken over as also having regard to the prayer made in the interim application filed by Netaji for grant of interim injunction restraining the newly elected Board from functioning in the interim, we make our interim order dated 11-10-2004 staying the operation of the part of the order whereby Mr. Justice S. Mohan was appointed as an interim administrator absolute, leaving the parties to file such interim applications as may be necessary in the changed situation."

25. The judicial pronouncements relied upon on behalf of the petitioner and dealt in the preceding paragraphs, would be of no avail for it's cause as the fact matrix of those cases are at miles apart from the facts of the present petition. A decision is only an authority for the proposition laid down in a given fact matrix, and not for all that, would logically

follow from what has been so laid down or every observation made, said the Earl of Halsbury, Lord High Chancellor more than a century ago in **Quinn v. Leathem**[4] and we quote:

> *"Before discussing the case of Allen v. Flood, [1898] AC 1 and what was decided therein, there are two observations of a general character which I wish to make; and one is to repeat what I have very often said before-that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow legically from it. Such a mode for reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all. I think that the application of these two propositions renders the decision of this case perfectly plain, notwithstanding the decision in Allen v. Flood(1)."*
>
> [Underlined to supply emphasis]

26. Further, it has to be and is held that the suggested grounds seeking review are not errors manifest on the judgment and that they do not undermine soundness of the judgment rendered by the Division Bench in the writ application.

26.1 We do not find any material error, manifest on the face of the judgment in the writ application nor can we 'revisit' the judgment when the matter is being 'reargued' in review.

[4] **[1901] UKHL 2:3[1901] AC 495:[1900-3] All E.R. Rep.1 (Page-7, placitum H & I of All E.R.)**

27. In view of the discussions made above, the review application being devoid of any merit has to be and is dismissed.

No costs.

I agree.

(HARISH TANDON)
CHIEF JUSTICE

(MRUGANKA SEKHAR SAHOO)
JUDGE

Orissa High Court, Cuttack
The 5th day of November, 2026/Jyostna/Radha

Signature Not Verified
Digitally Signed
Signed by: RADHARANI JENA
Reason: Authentication
Location: OHC
Date: 05-Nov-2026 16:20:49