

There is no express provision in NCLAT Rules, 2016 for Review and Power of Review has to be granted by statute and the power of Review is not an inherent power and therefore cannot be exercised unless conferred specifically or by necessary implications

CASE TITLE	Adish Jain Vs. Sumit Bansal & Anr ¹
CASE CITATION	COMPANY APPEAL (AT) (Insolvency) No. 379 of 2020
DATE OF ORDER	03.02.2021
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Fernandes V/s. 'RangaNayakulu Action Barter Private Limited V/s. SREI Equipment Finance Limited & Anr
SECTION/REGULATION REFERRED	Section 22 of Recovery of Debts and Bankruptcy Act, 1993 read with Rule 11 of NCLAT Rules and Section 9 of IBC, 2016

Brief of the case:

A review application was filed under Section 22 of the Recovery of Debts and Bankruptcy Act, 1993 and Rule 11 of the NCLAT Rules seeking review of the Order dated 10.08.2020, passed by Hon'ble NCLAT, New Delhi, whereby Hon'ble NCLAT had dismissed the Appeal challenging the Order of the Learned Adjudicating Authority, which had admitted the Application under Section 9 of Insolvency and Bankruptcy Code, 2016 preferred by an Operational Creditor.

Decision:

Hon'ble NCLAT dismissed the review application with following observations:

"13. It is significant to mention that in the NCLAT Rules, 2016 there is no express provision for 'Review' and the contention of the Review Applicant that Rule 11 of the NCLAT Rules, 2016 is applicable and therefore this Application is maintainable, is untenable as the power vested in this Tribunal under Rule 11 can only be exercised to enhance cause of justice or prevent abuse of process. To reiterate, Power of Review has to be granted by statute and the 'power of Review' is not an inherent power and therefore cannot be exercised unless conferred specifically or by necessary implications...

18. We observe that there is no 'mistake apparent from the record' and the Applicant cannot be permitted to seek re-hearing of the Appeal in regard to any finding which would amount to sitting in an Appeal in disguise. In the garb of this Review Application, the Applicant seeks to re-argue the matter.."



QR CODE FOR FULL ORDER/JUDGEMENT:

¹<https://nclat.nic.in/Useradmin/upload/1798063725601a51242c0c4.pdf>