

## Volume 03, Number 39 (December 22, 2020)

### Anubhav Anilkumar Agarwal Vs Bank of India & Anr CompanyAppeal(AT)(Insolvency)No.1504 of 2019 (NCLAT) Date of order: 07 December, 2020

#### **Power of review has not been expressly conferred upon NCLAT under Rule 11 of NCLAT Rules**

#### **Facts of the case:-**

An application was filed in the above case by the Appellant under Rule 11 of NCLAT Rules, 2016 to review the judgment of NCLAT dated February 07, 2020 on the ground that the NCLAT (hereinafter referred as “the Appellate Tribunal”) has made an inadvertent error in the judgment ignoring various documents placed on record by both the parties which included the Deed of Guarantee executed by Chamber Constructions in favor of Bank of India (hereinafter referred to as “the Bank”). Consequent to this error there is no debt due payable in law by the Corporate Debtor as Bank has claimed the same amount pertaining to the same debt in the Corporate Insolvency Resolution Process of the Guarantor viz. M/s Chamber Constructions Pvt. Ltd.

#### **NCLAT observations:-**

The Appellate Tribunal refers to Rule 11 of NCLAT Rules, 2016 and observed that the power of review has not been expressly conferred on Appellate Tribunal which cannot be exercised unless conferred. The power vested upon Appellate Tribunal under Rule 11 can only be exercised for correction of a mistake. In view of the Appellant Tribunal exercise of inherent powers under Rule 11 has its limitation and same cannot be enlarged to review the decisions and substitute a view. The inherent power cannot be exercised in a manner that it would amount to sitting in appeal over the findings recorded on appreciation of evidence. Hence, in view of the Appellate Tribunal, reappraisal of evidence for examining or otherwise of the finding would amount to sitting in appeal in disguise. Therefore, findings of fact, how-so-ever erroneous they may be, cannot be revisited and substituted within the limited scope of exercise of power under Rule 11.





Further, to clear the cloud the Appellate Tribunal refers to section 420 of Companies Act, 2013 and observed that the power to rectify a mistake apparent from the record cannot be construed to confer a power on the Appellate Tribunal to reappraise material on record to substitute a finding. This would amount to usurping the jurisdiction vested in a court of appeal. The finding of fact may be erroneous but if the same is based on appreciation of evidence, reappraisal of material on record to arrive at a different finding, changing the decision rendered on merit, would be impermissible. Hence, misreading of evidence/material or drawing of a wrong conclusion from it which involves application of mind, would not justify invoking of inherent powers to substitute that findings and alter the judgment.

Therefore, the application in the said case was dismissed.

