IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH–I, CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **02.04.2026** THROUGH VIDEO CONFERENCING

CORAM: **HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)**
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF **:** Dipak Raj Sood and Another

MAIN PETITION NUMBER **:** CP(CAA)/34(CHE)/2024

(IA/MA) APPLICATION NUMBERS

IA(CA)/235(CHE)/2024

ORDER

Present: Shri. K.M. Ashif, Ld. Counsel for the Applicant.

Shri. Shakthivelan, Ld. Counsel for the Respondent.

Vide separate order pronounced in the Open Court, application is dismissed.

Sd/-
[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)

Sd/-
[SANJIV JAIN]
MEMBER (JUDICIAL)

vs

Date: 02.04.2026

IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, CHENNAI

IA(CA)/235(CHE)/2024
IN
CP(CAA)/34(CHE)/2024
IN
CA(CAA)/65(CHE)/2023

[filed under Rule 11 of NCLT Rules, 2016 R/w Section 230(12) & 231(1)(B) of the Companies Act, 2013]

In the matter of India Forge & Drop Stampings Limited

1. **Tamilnadu Industrial Investment Corporation Limited**
   Having registered office at
   No. 692, Anna Salai, Nandanam,
   Chennai – 600 035
   Represented by
   S. Kathambari, Senior Manager.

… Applicant

Vs

1. **Dipak Raj Sood**
   Shareholder of India Forge & Drop Stampings Limited
   Havind residence at G-10, Maharani Bagh,
   New Delhi – 110 065

… Respondent No. 1

2. **Rupa Sood**
   Shareholder of India Forge & Drop Stampings Limited
   Havind residence at G-10, Maharani Bagh,
   New Delhi – 110 065

… Respondent No. 2

3. **India Forge & Drop Stampings Limited**
   Having its registered office at
   A1 J Industrial Area, Maraimalai Nagar,

Kaneheepuram, Tamil Nadu - 603 209.

… Respondent No. 3

Order pronounced on ***2nd April, 2026***

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Present:

For Petitioner : P.H. Arvindh Pandian, Senior Advocate
Sandeep Kumar Ambalavannan, Advocate

For Respondents : T.K. Bhaskar, Advocate

O R D E R
(Heard Through Hybrid Mode)

1. This application IA(CA)/235(CHE)/2024 has been filed seeking the following reliefs.

i) *To recall/modify the Scheme of Arrangement approved vide order dated 31.07.2024 in CP(CAA)/34(CHE)/2024 IN CA(CAA)/65(CHE)/2023 in light of the Disinvestment Guidelines issued vide GO No. Ms. No. 448 dated 19.06.1991 and direct the Respondents to value the 71,179 equity shares of the Applicant in the 3rd Respondent Company as per the above said G.O. and consequently direct the Respondents to pay the difference in valuation as per the said G.O.to the Applicant.*

ii) Pass such other order as this tribunal may deem fit and proper.

2. Applicant - Tamilnadu Industrial Investment Corporation Limited, (TIIC) is a Public Limited Company incorporated on 26/03/1949 having its registered office at No.692, Anna Salai, Nandanam , Chennai 600 035, Tamil Nadu. The applicant is a State Financial Corporation classified as a "State Government Company" owned and managed by the Government of Tamilnadu.

3. The 3rd Respondent Company, ***India Forge & Drop Stampings Limited*** *[CIN: U28910TN1960PLC004192]* is a Company which is primarily involved in the business of forge masters and drop stampers and to manufacture every type of forging and drop Stampings for all traders and industry. The 3rd Respondent Company had a paid up capital of Rs. 2,97,88,030/ which is divided into 29,78,803 Equity Shares of Rs. 10 each.

4. The 1st and 2nd Respondent are Mr. Dipak Raj Sood and Mrs. Rupa Sood respectively, both of whom are the promoters and shareholders of the 3rd Respondent Company. The 1st and 2nd Respondent being the first and second Applicants in the CP (CAA) / 34 (CHE) / 2024 IN CA(CAA) / 65 (CHE) / 2023 being a scheme of arrangement which was

preferred by them under Sections 230-232 of the Companies Act, 2013 for the purpose of takeover of public shares belonging to the 3rd Respondent Company .

5. It is stated that the 1st and 2nd Respondent preferred the Scheme of Arrangement for the following reasons which they stated as the rationale which was portrayed as the benefit of the Scheme of Arrangement. The rationale is extracted below for clarity:

"The Scheme of Arrangement will have the following benefits among others:

a. The public shareholders of the Company have very limited avenues available to monetize their holding in the Company and unlock the value of their investment.

b. All the key business and commercial decisions of Company are undertaken by its board of directors and to the extent required under applicable laws, are ratified by the shareholders of Company i.e., the Promoter Group and the public shareholders (to the extent of their participation). Given that the Promoter Group is the largest shareholder in

the Company, all matters requiring shareholders consent are automatically ratified, upon receipt of the standalone approval of the Promoter Group.

c. Furthermore, managing such a vast majority of public shareholders for a company, which effectively functions as a private company, leads to incremental cost and compliance requirements."

6. It is stated that TIIC held 71,179 equity shares which was 2.39% of the total shareholding of the Company prior to the Scheme of Arrangement being approved/sanctioned by this tribunal on 31.07.2024. The pre and post Scheme of Arrangement shareholding pattern of the Company is extracted below:

Sl. No.	Category of Shareholding	Pre-Scheme of Arrangement		Post-Scheme of Arrangement	
		No. of Shares	%	No. of Shares	%
1	Promoter Group Shareholding				
(1)	Mr. Dipak Raj Sood	14,33,516	48.12%	15,47,408	51.95%
(2)	Mrs. Rupa Sood	14,30,895	48.04%	14,30,895	48.04%

(5)	Suresh Kumar	100	0.00%	100	0.00%
(6)	Ranjit Abraham	100	0.00%	100	0.00%
(7)	Mandip Malik	100	0.00%	100	0.00%
2	Non-Promoter/Public Shareholding				
(1)	CDSL & NSDL	42,613	1.43%	-	-
(2)	**TIIC**	**71,179**	**2.39%**	-	-
(3)	Giridhar Krishnan	00	0.00%	-	-

7. It is stated that two valuation reports were obtained by the Respondents which are as follows:

a. Transaction Square LLP's valuation report dated 30.10.2023 arrived at a value of INR 1,155.60 per share.

b. PKF Sridhar & Santhanam LLP's valuation report dated 03.11.2023 arrived at a value of INR 1,147 per share.

8. It is stated that the Respondents decided to offer the highest of the two valuations which is Rs. 1,156 as the offer price in respect of the take-over

of shares. The total consideration was calculated at Rs. 13,16,59,152/- for the acquisition/takeover of 1,13,892 equity shares from the public shareholders of the Company at Rs. 1156/- each.

9. It is stated that the Applicant Company TIIC participated in the shareholders meeting held on 20.05.2024 and raised its objections to the method of valuation of the shares of the 3rd Respondent Company. Further in the said meeting the Applicant Company had while raising its objections and voting against the Scheme of Arrangement emphasised and reminded the Company on a particular Government Order ('G.O') GO No. Ms. No. 448 dated 19.06.1991 issued by the Government of Tamil Nadu.

10. It is stated that said GO No. 448 dated 19.06.1991 issued by the Government of Tamil Nadu had issued guidelines for disinvestment of equity shares held by TIIC, the Applicant Company. It is further submitted that the valuers only considered the factors as per clause (a) of sub rule (6) of rule 3 of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016.

11. It is stated that as the valuation accepted by 3rd Respondent Company was not in accordance with the Disinvestment Guidelines, Applicant Company voted against the resolution in the meeting held on 20.05.2024 to obtain approval of the sanction of the Scheme of Arrangement.

False Declaration of Compliance

12. It is stated that GO No. Ms. No. 448 dated 19.06.1991 which laid down the Disinvestment Guidelines was completely ignored while valuing the shares of the 3rd Respondent Company and the Respondents had not brought the same to the knowledge of the Tribunal before the Scheme of Arrangement was sanctioned / approved vide an order dated 31.07.2024 by this Tribunal, while mentioning in the Scheme of Arrangement that all applicable laws have been complied.

13. It is stated that as per GO No. Ms. No. 448 dated 19.06.1991 valuation of one equity share of the 3rd Respondent stood at Rs. 5687/- and the Applicant Company was entitled to receive Rs.40,48,13,766/- for 71,179 equity shares of the 3rd Respondent Company held by the Applicant (as of 20 May 2024), without prejudice to its rights otherwise to challenge

the said Scheme of Arrangement under the laws applicable. However, the Respondents provided only Rs.8,22,82,924/- (INR 1,156 per share for 71,179 shares). It is thus submitted that the Respondents have completely disregarded GO No. Ms. No. 448 dated 19.06.1991 despite having knowledge of the same and consciously suppressed the same before the NCLT, Chennai Bench and had with strong mala fides obtained the sanction/approval of the Scheme of Arrangement, thus ultimately cheating the Public at large considering the fact that the Applicant is a public undertaking of Government of Tamilnadu. It is on this ground, applicant preferred this instant application *to recall the impugned order and/or order the modification of the Scheme of Arrangement to the extent that the Applicant shall paid as per the valuation methods as prescribed under GO No. Ms. No. 448 dated 19.06.1991 mentioned SUPRA for the equity share held by the Applicant Company in the 3rd Respondent Company.*

Vitiated by Fraud and Material Suppression:

14. It is further submitted that the Applicant informed about the valuation guidelines prescribed under said GO dated 19.06.1991 to the

Respondent No.3 as early as June 2019 and knowing fully well the existence of the guidelines prescribed in the said GO, the Respondents proceeded suppressing the said GO in the Scheme of Arrangement and clandestinely obtained the sanction / approval of the Scheme of Arrangement.

15. It is submitted that the sanction/approval of the Scheme of Arrangement dated 31.07.2024 is vitiated by fraud, suppression misrepresentation, warranting recall of the said order.

GO binding on respondents

16. It is submitted that the said GO is binding on Respondents as they have neither challenged nor obtained any stay of the said Government Order. The said G.O. therefore continues to be valid and constitutes "law in force" and is mandatorily required to be complied with. It is submitted that the contention of the Respondents that the said GO applies only to cases of voluntary disinvestment is unsustainable in law. The applicability of the G.O. depends on the effect of the transaction which extinguishes the Government shareholding, and not on the form or voluntariness of the transaction. The reliance placed by the

Respondent on *Regulation 2(1)(g) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011* to contend that 'disinvestment' means only direct or indirect sale, is misplaced as the said SEBI Regulations would not be applicable to the 3rd Respondent Company that is an Unlisted Public Company.

Against the Public Interest at large:

17. It is stated that as per said GO dated 19.06.1991 valuation of one equity share of the 3rd Respondent stands at Rs. 5687/- and the Applicant Company is entitled to receive Rs.40,48,13,766/- for 71,179 equity shares of the 3rd Respondent Company held by the Applicant Company (as of 20 May 2024), without prejudice to its rights otherwise to challenge the said Scheme of Arrangement under the laws applicable. However, the Respondents have provided only Rs. 8,22,82,924/- (INR 1,156 per share for 71,179 shares). It is thus submitted that the Respondents completely disregarded the said GO despite having knowledge of the same and consciously suppressed the same and with strong mala fides obtained order the sanction/approval of the Scheme of

Arrangement thus cheating the Public at large, considering the fact that the Applicant is a Public undertaking of the Government of Tamilnadu.

18. It is submitted that the order of sanction / approval of the Scheme of Arrangement came to the knowledge of the Applicant Company only on 08.08.2024 on receipt of the 1st Respondent's letter dated 07.08.2024. The 1st Respondent vide a letter dated 13.08.2024 addressed to the Applicant Company enclosed a demand draft (DD No. 003472 dated 13.08.2024) amounting to Rs. 8,22,82,924/- being the consideration of take-over of the 71,179 equity shares of the 3rd Respondent held by the Applicant Company. It is stated that the Applicant Company accepted the DD of Rs. 8,22,82,924/- under protest.

19. It is submitted that the GO No. Ms. No. 448 dated 19.06.1991 which laid down the Disinvestment Guidelines was completely ignored while valuing the shares of the 3rd Respondent Company and the Respondents had not brought the same to the knowledge of this Tribunal before the Scheme of Arrangement was sanctioned/approved vide an order dated 31.07.2024 by this Tribunal. Hence this application.

Counter by respondents

20. It is stated that the present Application made under Section 230(12) read with Section 231(1)(b) is neither maintainable in law, nor on facts and suffers from delay and laches.

21. It is stated that the main prayer in the present Application seeks recall/modification of the Scheme of Arrangement sanctioned by this Tribunal. It is submitted that once the Scheme is sanctioned, it forms part of, and it is deemed to form part of the Tribunal's order. No provision of law enables modification of this Tribunal's order sanctioning the Scheme. Further, the jurisdiction to recall of orders passed by this Tribunal does not extend to rehearing the case. It is well settled that the power to recall of a judgment can only be exercised when any procedural error is committed in delivering the judgment, or where fraud is played upon the court in obtaining judgment, such that the judgment suffers from such an illegality that it would vitiate the proceedings and invalidates the order. In the present case, nothing has been pleaded to demonstrate that the order sanctioning the Scheme suffers from error apparent on the face of the record, or other grounds

warranting recall of the order. Hence the prayer is not maintainable, the Application ought to be dismissed as such.

22. It is stated that Section 231(1)(b) of the Companies Act, 2013 is not applicable in the present case. The said provision is limited in scope to make modifications in the Scheme, which are necessary for proper implementation of the Scheme. In the present case, the Scheme has been properly implemented.

23. It is stated that an application under Section 230(12) may be preferred by aggrieved persons for grievances against the takeover offer. It is stated that grievances, if any, ought to be brought to the notice of the Tribunal prior to the sanction of the Scheme. Once the Scheme is sanctioned, and the takeover offer is accepted, Section 230(12) becomes wholly inapplicable.

24. It is stated that Respondent No.3 / India Forge & Drop Stampings Limited was not party to the principal proceedings in CP(CAA)/34(CHE)/2024 IN CA(CAA)/65(CHE)/2023. No application has been made to implead India Forge & Drop Stampings Limited to these proceedings. The Company is neither a necessary nor a proper party to

the present proceedings. Therefore, the 3rd Respondent ought to be deleted as party to the present proceedings.

A. THE APPLICATION IS NOT BONA FIDE AND HOPELESSLY BELATED

25. It is stated that present Application has been preferred by the Applicant who held 2.39% of the shareholding in the Respondent No. 3, without any basis whatsoever seeking modification/recall of the Scheme under Section 230(11) of the Companies Act, 2013 as approved by this Tribunal.

26. It is stated that the statute itself mandates that any Application raising objections to a Scheme under Section 230(11) ought to be preferred as per provisions of Section 230 (12) of the Companies Act, 2013 the same is extracted hereunder: "(12) An aggrieved party may make an application to the Tribunal in the event of any grievances with respect to the takeover offer of companies other than listed companies in such manner as may be prescribed and the Tribunal may, on application, pass such order as it may deem fit."

27. It is stated that though the present Application is an objection to the Scheme, the Applicant had tacitly styled it in the form of a recall application and filed it under Rule 11 of the NCLT Rules, 2013. An application under Section 230(12) ought to be preferred prior to the approval of the Scheme by the Tribunal. It is further submitted that the Application has also been filed with insufficient court fee. The fees for an Application under Section 230 (12) is Rs. 5000/- however, the Applicant has only paid Rs. 1000/- as if the present Application has been filed for recall of an order under Rule 11 of the NCLT Rules, 2016.

28. It is stated that since the Applicant belatedly filed the present Application even after it accepted the consideration issued by the Respondents, it has approached the Tribunal with unclean hands. It has attempted to circumvent the requirement under the statute that an aggrieved person ought to approach this Tribunal prior to sanction of the Scheme.

29. It is stated that the present Application is not maintainable since it is hopelessly belated and merely a delay tactic played by the Applicant.

Applicant has spent a year in the present litigation without any progress.

B. *IT IS STATED THAT THE APPLICANT CANNOT APPROBATE AND REPROBATE; HAVING ACCEPTED AND CASHED THE CONSIDERATION FOR THE SHARES, THE APPLICANT IS PRE-EMPTED FROM OBJECTING TO THE SCHEME AT THIS STAGE.*

30. It is stated that upon sanction of the Scheme by this Tribunal on 31.07.2024, the Respondent No. 3 issued letters to all the public shareholders of the Company on 07.08.2024, to intimate them that consideration for their shares would be deposited in their bank accounts and further sought their account details for the said purpose. As things stood thus, the Respondent No. 1 issued a letter dated 13.08.2024 addressed to the Applicant enclosing a Demand Draft No.003472 dated 13.08.2024 for INR 8,22,82,924/- drawn on Axis Bank Ltd. The same was admittedly received by the Applicant. However, the Applicant had failed to cash the same within the 3 month period and for this reason the Demand Draft came to be returned on 13.11.2024. It is stated that the Applicant thereafter issued a letter on 14.11.2024, requesting that a fresh

Demand Draft be issued in pursuance of the aforesaid. In response, Respondent No. 1 issued a letter dated 19.11.2024 addressed to the Applicant, enclosing the revalidated Demand Draft, which was dated as 18.11.2024. On 20.11.2024, Applicant issued a letter to the Company and the 1st Respondent conveying its acceptance of the Demand Draft, under protest. The said Demand Draft was cashed by the Applicant on 21.11.2024. It is submitted that the consideration was paid and accepted by the Applicant in pursuance and compliance of the Scheme approved by this Tribunal.

31. It is stated that Applicant is trying to circumvent the said order as an afterthought well after accepting the consideration in line with the decision of this Tribunal that has become final.

32. It is stated that respondents rely upon the decision of the Hon'ble Supreme Court in **State of Punjab and Ors. v. Dhanjit Singh Sandhu (AIR 2014 SC 3004)**, wherein it was held that a party cannot accept an order, comply with it while deriving benefit and thereafter challenge it on any other ground. The extract of para 22 of the said judgment is hereunder: "**It is a settled proposition of law that once an order has**

been passed, it is complied with, accepted by the other party and derived the benefit out of it, he cannot challenge it on any ground."

C. THE DISINVESTMENT GUIDELINES ISSUED VIDE GO NO. MS. NO. 448 DATED 19.06.1991 IS ENTIRELY INAPPLICABLE TO PRESENT FACTS AND CIRCUMSTANCES

33. It is stated that Applicant's reliance on the Disinvestment Guideline is entirely erroneous since the present Scheme of Takeover does not amount to a disinvestment. The term disinvestment is defined in P Ramanatha Aiyer Law Lexicon: "The process of disinvesting; negative investment. The process of dilution of the government's stake in Public Sector Undertakings." Regulation 2(1)(g), of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 defines disinvestment as: "the direct or indirect sale by the Central Government or any State Government or by a government company, as the case may be, of shares or voting rights in, or control over, a target company, which is a public sector undertaking."

34. It is stated that Paragraph II of the Disinvestment Guideline unequivocally prescribes the mechanism for divestment of shareholding by the Applicant in private companies, mandating that the Applicant shall first offer its shares to the promoters, failing which to financial institutions, and thereafter to the public. The minimum sale price in case of such disinvestment is to be fixed at the highest value determined under the five formulae expressly stipulated in the Guideline. Without prejudice to the above, it is stated that the Disinvestment Guideline relied upon by the Applicant is merely an executive instruction issued under a State Government Order dated 19.06.1991. Such executive guidelines cannot override or dilute a statutory scheme sanctioned by this Tribunal under Section 230 of the Companies Act, 2013, which is a central legislation. Once a Scheme of Arrangement is sanctioned under the Companies Act, it operates with statutory force and cannot be invalidated by reference to an administrative guideline.

35. It is stated that a plain reading of the GO makes it abundantly clear that divestment contemplates a conscious decision by the Applicant to sell its shares, which process is to be initiated by the Applicant itself, and

the pricing mechanism is to be applied at the time of such voluntary offer for sale. There is, therefore, no basis to interpret the Disinvestment Guideline, which specifically governs voluntary divestment by the Applicant, as being applicable to a Scheme involving a takeover proposed under Section 230(11) of the Companies Act, 2013, since the Scheme process under Section 230 operates in a distinct statutory domain and cannot be equated with a voluntary divestment.

36. The valuation in the present case was carried out as per **Rule 3(6)(a) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016**, as applicable for Takeover Offer u/s 230(11) of the Companies Act, 2013.

37. It is stated that while Rules prescribe report of one valuer, in the present Scheme, two valuation reports were produced and the higher of the two valuation was paid as the offer price. The valuation arrived at by Transaction Square Advisory LLP in the report is Rs. 1,155.60/share. The valuation arrived at by PKF Sridhar & Santhanam LLP is Rs. 1,147/share. The Promoter Group decided to offer the higher of the two valuations as

the offer price in respect of the takeover of the shares. i.e., INR 1,155.60 per share (rounded off to INR 1156/share).

38. It is stated that under the Scheme the Applicant stands at the same footing as any other shareholder of Respondent No. 3 and enjoys the same rights as any other shareholder. The Applicant has no ground to claim special status and separate valuation in the garb of being a public sector undertaking.

D. THE APPROVED SCHEME FULFILLED ALL THE NECESSARY CRITERIA AS PER THE SECTION 230 (11) OF THE COMPANIES ACT, 2013 AND THE ALLIED RULES AS PRESCRIBED BY THE COMPANIES ACT, 2013 AND HAS BEEN RIGHTLY APPROVED BY THIS HON'BLE TRIBUNAL AS ON 31.07.2024.

39. It is stated that the Scheme approved in the present case is a Scheme under Section 230 (11) of the Companies Act, 2013. This Tribunal rightly approved the Scheme after considering all the mandates and compliances as per the statute . A plethora of judgments that have held that Scheme once implemented is binding on all.

Status of implementation of the Scheme as on date

40. It is stated that the Scheme was sanctioned by this Tribunal on 31.07.2024 and has since been implemented, save certain dormant demat accounts whose account holders are not traceable. Consideration to the tune of INR 12,39,28,055/- has been credited to 121 shareholders out of the 131 shareholders. As on date, the Respondent No. 1 holds 15,39,495 shares representing 51.68% of the paid-up capital, and the Respondent No. 2 holds 14,30,895 shares, representing 48.04% of the paid-up capital. Cumulatively they hold 99.72% of the paid-up capital of Respondent No. 3. The dormant account holders hold merely 0.26% of the paid-up capital, and attempts are being made to trace the said account holders in order to remit the consideration due to them. It is an established principle that once a Scheme is sanctioned, it forms part of, and it is deemed to form part of the Tribunal's order. No provision of law enables modification of this Tribunal's order sanctioning the Scheme.

E. *THE APPLICATION DOES NOT MAKE OUT ANY OF THE GROUNDS FOR RECALL AS LAID DOWN BY THE HON'BLE NCLAT*

IN THE CASE OF UNION BANK OF INDIA (ERSTWHILE CORPORATION BANK) V. DINKAR T. VENKATASUBRAMANIAN

41. It is stated that the recall jurisdiction of this Tribunal is not a general remedy or a matter of right under Rule 11 of the NCLT Rules, 2016. The power of recall can be invoked only in narrow and exceptional circumstances, exercisable only on the specific grounds laid down by the Hon'ble NCLAT in **Union Bank Of India (Erstwhile Corporation Bank) V. Dinkar T. Venkatasubramanian in CA (AT) (Ins) No. 729 of 2020** which has been upheld by the Hon'ble Supreme Court in Union Bank of India v. Dinkar T. Venkatasubramanian in **Civil Appeal No. 5979 of 2025**.

42. The grounds for recall as laid down in Union Bank Of India (Erstwhile Corporation Bank) V. Dinkar T. Venkatasubramanian (supra) are as follows:

> *"20. ... The power to review is not conferred upon this Tribunal but power to recall its judgment is inherent in this Tribunal since inherent power of the Tribunal are preserved, powers which are inherent in the Tribunal as has been declared by Rule 11 of the NCLAT Rules, 2016.*

Power of recall is not power of the Tribunal to rehear the case to find out any apparent error in the judgment which is the scope of a review of a judgment. Power of recall of a judgment can be exercised by this Tribunal when any procedural error is committed in delivering the earlier judgment; for example; necessary party has not been served or necessary party was not before the Tribunal when judgment was delivered adverse to a party. There may be other grounds for recall of a judgment. Well known ground on which a judgment can always be recalled by a Court is ground of fraud played on the Court in obtaining judgment from the Court. We, for the purpose of answering the questions referred to us, need not further elaborate the circumstances where power of recall can be exercised"

43. It is stated that the Applicant had in compliance with the order approving the Scheme cashed the Demand Draft issued in its favour . It is submitted that the present Application which is not maintainable, is an afterthought floated by the Applicant with mala fide intention to deter the implementation of the Scheme.

Analysis and Findings

44. Heard submissions of parties and perused pleadings, documents submitted and written submissions placed on record.

45. The present application has been filed under Rule 11 of NCLT Rules read with Section 230(12) and Section 231 (1) (b) of Companies Act 2013. The contention of the applicant is that it is a state public utility and the amount due to be paid to it by third respondent company is based on the GO 448 dated 19.06.1991 which deals with disinvestment of equity shares .

46. IA CA 138 of 2025 was filed by the applicant to amend the GO Number in the application IA 235 of 2024 . It is stated that in IA 235 of 2024 the applicant has referred to GO No 441 dated 19.06.1991 . However the correct GO No is GO 448 dated 19.06.1991. IA 138 of 2025 was disposed of by the tribunal on 30.07.2025 and the applicant was allowed to make amendments in IA 235 of 235 of 2024. Accordingly amendments were made. Copy of 30.07.2025 order is appended below:

IN THE MATTER OF : Dipak Raj Sood & Anr

MAIN PETITION NUMBER : CP(CAA)/34(CHE)/2024

(IA/MA) APPLICATION NUMBERS

IA(CA)/138/(CHE)/2025

ORDER

IA(CA)/138/(CHE)/2025

Present: Mr. Sandeep Kumar Ambalavanan, Ld. Counsel for Applicant.
Mr. T.K.Bhaskar, Ld. Counsel for Respondent.

This Application has been filed seeking the following reliefs:-

> *"To amend the plcadings in I.A. No. 235 of 2024 in CP(CAA)/34 2024 IN CA(CAA)/65(CHE)/2023, where reference has been made to GO. Ms. No. 441 dated 19.06.1991 be amended and read as GO. Ms. No. 448 dated 19.06.1991 in such instances which are more specifically stated in paragraph 11 of this present Interlocutory Application;*

Ld. Counsel for the Respondents submits that Respondents have no objection.

Recording the no objection, the Application is **allowed**.

Petitioner is permitted to amend the Application IA/235/2024, which is listed for hearing on 24.09.2025. The advance copy be sent to the Respondents for their response, if any.

IA(CA)/138/(CHE)/2025 is **disposed of.**

-sd- **-sd-**

47. It is stated by Ld. Counsel of the applicant that the above GO prescribed that during disinvestment, the applicant is eligible to receive as per highest of the 5 methods of valuations. It is stated that the GO No. 448 dated 19.06.1991 states that the shares of the company are to be valued at five methods prescribed viz.

i) Investment Value,

ii) Net worth Value,

iii) Market Value,

iv) Earnings Yield Value and

v) Face Value

and the price of the shares shall be the highest of the prices as determined based on the above 5 methods of valuation.

48. It is further submitted that the valuers in the scheme have only considered the following two factors for valuation as per *clause (a) of sub rule (6) of rule 3 of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016* i.e.:

a. *the highest price paid by any person or group of persons for acquisition of equity shares of the Company during the last twelve months;*

b. *the fair price of equity shares of the Company has been determined by the registered valuer after taking into account valuation parameters including the return on net worth, book value of shares, earning per share, price earning multiple vis-a-vis the industry average, and other customary valuation parameters.*

49. It is stated that valuation accepted by 3rd Respondent Company was not in accordance with Disinvestment Guidelines. Applicant Company voted against the resolution in the meeting held on

20.05.2024 to obtain approval of the sanction of the Scheme of Arrangement.

50. It is stated that as per GO No. 448 dated 19.06.1991 valuation of one equity share of the 3rd Respondent stood at **Rs. 5687/-** and the Applicant Company **was entitled to receive Rs.40,48,13,766/**- for 71,179 equity shares of the 3rd Respondent Company held by the Applicant (as of 20 May 2024). However, the Respondents **provided only Rs.8,22,82,924/-** (INR 1,156 per share for 71,179 shares). It is stated that the Respondents had completely disregarded GO No.448 dated 19.06.1991 despite having knowledge of the same and consciously suppressed the same before the NCLT, Chennai Bench and with mala fides obtained the sanction/approval of the Scheme of Arrangement. It is on this ground, applicant preferred this instant application to recall the impugned order and / or order the modification of the Scheme of Arrangement to the extent that the Applicant shall be paid as per the valuation methods as prescribed under GO No. Ms. No. 448 dated 19.06.1991 mentioned supra for the equity share held by the Applicant Company in the 3rd Respondent Company.

51. It is stated by Ld. Counsel of respondent that a plain reading of the GO makes it abundantly clear that divestment contemplates a conscious decision by the Applicant to sell the shares it holds, which process is to be initiated by the Applicant itself, and the pricing mechanism is to be applied at the time of such voluntary offer for sale. There is, therefore, no basis to interpret the Disinvestment Guideline, which specifically governs voluntary divestment by the Applicant, as being applicable to a Scheme involving a takeover proposed under Section 230(11) of the Companies Act, 2013, since the Scheme process under Section 230 operates in a distinct statutory domain and cannot be equated with a voluntary divestment.

52. It is stated that under the Scheme, the applicant stands at the same footing as any other shareholder of Respondent No. 3 and enjoys the same rights as any other shareholder. The applicant has no ground to claim special status and separate valuation, in the garb of being a public sector undertaking.

53. It is stated that applicant cashed the draft received as consideration of its shares , even though under protest . It is stated that Hon'ble

Supreme Court in *State of Punjab and Ors. v. Dhanjit Singh Sandhu (AIR 2014 SC 3004)*, has held that "*It is a settled proposition of law that once an order has been passed, it is complied with, accepted by the other party and derived the benefit out of it, he cannot challenge it on any ground.*"

54. It is observed that the Central Government notified Sections 230(11) and 230(12) of the Companies Act, 2013 ("**Act**"), which deal with takeover offers in respect of unlisted companies were notified on 03.02.2020. Simultaneously the Ministry of Corporate Affairs amended the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ("**CAA Rules**") and the NCLT Rules, 2016, corresponding to the above provisions. Sub-rules 5 and 6 have been added to Rule 3 of the CAA Rules, and Rule 80A has been inserted in the NCLT Rules, detailing the manner in which the applications may be made under Sections 230(11) and 230(12), respectively. The relevant provisions are reproduced below:

> ***Section 230 (11) of Companies Act 2013*** *states as under:*
> *Any compromise or arrangement may include takeover offer made in such manner as may be prescribed:*
> *Provided that in case of listed companies, takeover offer shall be as per the regulations framed by the Securities and Exchange Board.*

Section 230 (12) of Companies Act 2013 *states as under:*

An aggrieved party may make an application to the Tribunal in the event of any grievances with respect to the takeover offer of companies other than listed companies in such manner as may be prescribed and the Tribunal may, on application, pass such order as it may deem fit.

The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

(5) *A member of the company shall make an application for arrangement, for the purpose of takeover offer in terms of sub-section (11) of section 230, when such member along with any other member holds not less than three-fourths of the shares in the company, and such application has been filed for acquiring any part of the remaining shares of the company.*

Explanation I.—"shares" means the equity shares of the company carrying voting rights, and includes any securities, such as depository receipts, which entitles the holder thereof to exercise voting rights.

Explanation II.—Nothing in this sub-rule shall apply to any transfer or transmission of shares through a contract, arrangement or succession, as the case may be, or any transfer made in pursuance of any statutory or regulatory requirement.

(6) *An application of arrangement for takeover offer shall contain:-*

(a) the report of a registered valuer disclosing the details of the valuation of the shares proposed to be acquired by the member after taking into account the following factors:—

(i) the highest price paid by any person or group of persons for acquisition of shares during last twelve months;

(ii) the fair price of shares of the company to be determined by the registered valuer after taking into account valuation parameters including return on net worth, book value of shares, earning per share, price earning multiple vis-à-vis the industry average, and such other parameters as are customary for valuation of shares of such companies.

(b) details of a bank account, to be opened separately, by the member wherein a sum of amount not less than one-half of total consideration of the takeover offer is deposited.

Rule 80A of NCLT Rules

80A. Application under section 230.

An application under sub-section (12) of section 230 may be made in Form NCLT-1 and shall be accompanied with such documents as are mentioned.

Section 231. Power of Tribunal to enforce compromise or arrangement

(1) *Where the Tribunal makes an order under section 230 sanctioning a compromise or an arrangement in respect of a company, it—*

(a) shall have power to supervise the implementation of the compromise or arrangement; and

(b) *may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper implementation of the compromise or arrangement.*

55. It is observed that Section 230(12) of Companies Act provides opportunity for an aggrieved person to apply to the tribunal in respect of grievance if any, in the takeover offer of the company. This application should be made when the scheme is under consideration by the tribunal. In the present case application has been filled much after the scheme was approved and implemented.

56. It is observed that Section 231(1)(b) gives power to the tribunal to give directions or modify the scheme for its proper implementation. In

the present case, scheme has been fully implemented and consideration has been distributed to all share holders other than dormant shareholders (0.26% of paid up capital) whose contact details are not available with the company. Applicant has also received its share of consideration.

57. It is observed that Scheme of takeover under Section 230 (11) of Companies Act 2013 was approved by the tribunal after following the due process on 31.07.2024 and the corrigendum was approved on 28.08.2024. Valuation of shares were made as provided under Rule 6 (a) of The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

58. The issues to be decided are whether takeover offer under a scheme of arrangement to acquire remaining minority shares under Section 230(11) of Companies Act can be treated as disinvestment? and whether the applicant is eligible for a higher amount of consideration compared to other shareholders?

59. It is observed that Section 230 (11) of Companies Act was notified on 03.02.2020 providing an opportunity for majority shareholders to

squeeze out minority share holders through a process of selective reduction. The framework set in place by the above provisions does not envisage any inherent right of minority shareholders to retain their shares in the face of fair consideration being offered to them based on legal precedents , some of them are cited here. Hon'ble Bombay High Court in ***Sandvik Asia Limited v. Bharat Kumar Padamsi***, *APPEAL NO 308 OF 2004 in COMPANY PETITION NO 478 OF 2003 in COMPANY APPLICATION NO 290 OF 2003* held that *"once it is established that non-promoter shareholders are being paid fair value of their shares...and that even overwhelming majority of the non-promoters shareholders having voted in favour of the resolution shows that the court will not be justified in withholding its sanction to the resolution."*

60. In the judgment in ***Cadbury India Limited***, the Bombay High Court *set out the principles a court should take into account while determining if selective reduction of share capital is fair*, and the new framework appears to have taken these principles into account. The Cadbury principles emphasize the importance of **ensuring fair valuation**, including by reference to the rate at which past offers were effected, as provided for

in the present rules with the requirement to provide in the application the highest price at which shares had been acquired in the past 12 months.

61. It is observed that in the present case, the respondent company engaged two valuers and the minority shareholders were paid on the basis the higher of the two valuation amounts. The scheme of takeover was approved by 96.20% share holders and after giving due public notice by providing opportunity for persons opposing the scheme, the scheme was approved by this tribunal on 31.07.2024. .

62. At the very basic level, disinvestment can be explained as follows:

> ***Definition of Disinvestment*** *(Source BSEPSU.com)*
>
> *"**Investment** refers to the conversion of money or cash into securities, debentures, bonds or any other claims on money. As follows, **disinvestment** involves the conversion of money claims or securities into money or cash."*

63. Disinvestment can also be defined as the action of an organisation (or government) selling or liquidating an asset or subsidiary. It is also referred to as 'divestment' or 'divestiture.'

64. In most contexts, disinvestment typically refers to sale from the government, partly or fully, of a government-owned enterprise.

65. From the definition of disinvestment it is clear that disinvestment is the process when Government wants to take back the investment made by it and the guidelines regarding getting the highest of the valuation from the five valuation methods will be applicable only then.

66. In the present case, it is a scheme under which shares of non-promoter shareholders are being taken over by the promoters based on the fair valuation as prescribed by Companies Act and applicable rules. So this process in no way can be termed as disinvestment.

67. Further it is observed that under Articles of Association or through any other instrument, the applicant does not get a special right for differential treatment in case of takeover of shares by promoters under Section 230(11) of Companies Act 2013.

68. In view of the above facts and the legal position there is no merit in the prayer made by the applicant and accordingly, the same is dismissed. Consequently, the application **IA(CA)/235(CHE)/2024** is dismissed.

69. File be consigned to record.

-Sd-	-Sd-
VENKATARAMAN SUBRAMANIAM	**SANJIV JAIN**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)