NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 2018 of 2025 & I.A. No. 7874 of 2025

IN THE MATTER OF:

Sudhir Kumar Jha **...Appellant(s)**

Versus

Anil Kumar Agarwal & Ors. **...Respondent(s)**

Present:

For Appellant : Mr. Ankush Munjal, Utsav Chaudhry, Adv.
For Respondents : Mr. Saswat Acharya, Subham Agarwal, Adv. for R1
Adv. Vandana Ahuja, for R2

With

Comp. App. (AT) (Ins) No. 415 of 2026 & I.A. No. 1576 of 2026

IN THE MATTER OF:

Sudhir Kumar Jha **...Appellant(s)**

Versus

Anil Kumar Agarwal & Ors. **...Respondent(s)**

Present:

For Appellant : Mr. Ankush Munjal, Utsav Chaudhry, Adv.
For Respondents : Mr. Saswat Acharya, Subham Agarwal, Adv. for R1
Adv. Vandana Ahuja, for R2

O R D E R
(Hybrid Mode)

27.03.2026: Heard Ld. Counsel for the Appellant and Ld. Counsel for the Respondent.

2. These two appeals have been filed by the same Appellant challenging two orders passed by the NCLT, Cuttack Bench.

3. CA (AT) (Ins) No. 2018 of 2025 has been filed challenging the order dated 15.10.2025 passed in I.A (IB) No. 26/CB/2024 in TP (IB) No. 115/CTB/2019 and CA (AT) (Ins) No. 415 of 2026 has been filed challenging the order dated

19.12.2025 passed in I.A (IB) (Dis) No. 1 / CB/2025 in T.P. No. 115/CTB/2019.

4. By the order dated 15.10.2025 the application filed by the Appellant being I.A No. 26 of 2024 has been rejected and by subsequent order dated 19.12.2025 the Adjudicating Authority had directed for dissolution of the CD.

5. Brief facts necessary to be noticed for deciding the appeal are that CIRP of the CD commenced on 06.04.2022. The present appellant filed an appeal before this Tribunal challenging the admission order which came to be dismissed on 02.06.2022. An application for liquidation was filed which was allowed by the Adjudicating Authority on 14.09.2022. The Appellant thereafter filed I.A No. 13 of 2023 raising allegation of related party being member of the CoC which application continued on the board for several dates but was ultimately withdrawn on 11.10.2023 with no liberty granting of fresh application. The appellant thereafter on 02.01.2024 filed I.A No. 26 of 2024 for setting aside the liquidation proceedings carried out in prejudicial manner and in violation of the provisions of the IBC in which application notices were issued then thereafter I.A No. 2 of 2024 was filed for additional document which was allowed, the application was heard. On 08.07.2025 dissolution application i.e. I.A No. 1 of 2025 was filed by the liquidator. On 15.10.2025 I.A No. 26 of 2024 was dismissed and subsequently dissolution was allowed on 19.12.2025. Aggrieved by these two orders, these appeals have been filed.

6. Ld. Counsel for the Appellant challenging the orders submits that one M.S. Balaji who was managing the day to day affairs of the CD was a shareholder having 27% equity in the CD and hence the whole process was

not drawn in accordance with the IBC. The operational creditors itself being a related party to the CD having 27% shareholding he could not have been part of the CoC. He submitted that in view of the aforesaid the application was filed by the Appellant i.e. 26 of 2024 which has wrongly been rejected. Ld. Counsel for the Appellant submitted that in the relevant form MGT 7 shareholding of the Balaji shown as 27% although the said shareholding was of the Kasa Anlagen India Pvt. Ltd. ('Kasa' in short).

7. Ld. Counsel for the liquidator opposing the submission submits that when the earlier application 13 of 2023 was dismissed which was praying for sale relief has withdrawn and no liberty was obtained, it is not open for the Appellant to file fresh application. It is submitted that the Appellant unsuccessfully challenged order of admission of CIRP and much after the liquidation order was passed I.A has been filed. It is submitted that Balaji had already resigned from directorship of the OC and CD which fact has been noticed by the AA in the impugned order. The argument which was raised by the Appellant before the AA was that Kasa was related party who could not be part of the CoC and whole process drawn by related party was vitiated. It is submitted that what was alleged that it was shareholding of Kasa 27% due to which the entire process was vitiated.

8. We have considered the submissions of Ld. Counsel for the parties and perused the record.

9. Although Ld. Counsel for the liquidator submitted that earlier application 13 of 2023 was withdrawn, the order having not brought on record we are not making any observation on the submissions. The Adjudicating

Authority has proceeded to examine I.A No. 26 of 2024 and has rejected the same. It is useful to notice para 10 of the impugned order where the Adjudicating Authority returned a finding that Balaji has resigned from his office of the CD on 17.11.2018 and subsequently he has also resigned from the directorship of OC on 01.04.2019. Para 10 of the judgement is as follows:-

> "10. In regard to the allegation raised by the Applicant upon the Operational Creditor as a related party in the Corporate Debtor, the Applicant contends that the Operational Creditor was holding 27% of shares in the Corporate Debtor. It is seen from the MGT-7 Annual returns for the F.Y. 2016-17 and 2017-18 of the Corporate Debtor, that there is no mention of Operational Creditor as a shareholder. It is also pertinent to mention here that the allegation raised by the Applicant in regard to the directorship of Mr. M.S. Balaji in both the operational creditor and Corporate Debtor, it is observed that before the filing of the Section 9 Application, it is seen in FORM No. DIR-12 of the Corporate Debtor, that Mr. M.S. Balaji has resigned from his office of the Corporate Debtor with effect from 17.11.2018 and subsequently, he has also resigned from the directorship of Operational Creditor on 01.04.2019, whereas the section 9 application was admitted on 06.04.2022, much later after his cessation from which it is established that at the time of Insolvency or liquidation proceeding, Mr. M.S Balaji was not holding any directorship."

10. The submission which is pressed before us by the Ld. Counsel for the Appellant that Balaji had 27% shareholding in the Kasa, hence, whole proceedings was vitiated. The application 26 of 2024 which has been filed by the Appellant was part on record. Ld. Counsel for the Appellant has referred to para 6 of the application in which para following has been pleaded:-

> "6. That it is further pertinent to mention that Kasa Anlagen India Private Limited had entered into a Memorandum of Understanding ("MoU") with the Corporate Debtor and as per the said MoU the McChem Energies & Infratech Private Limited

changed its name to McChem -Anlagen Energies & Infratech Private Limited. Kasa Anlagen India Private Limited became a shareholder in the Corporate Debtor company and held 1,25,000 equity shares of the Corporate Debtor, which is around 27% of the total equity shares Mr M.S Balaji director of Kasa Anlagen India Private Limited joined the Corporate Debtor and was involved in the day- to-day business of the Corporate Debtor which is reflected in the fact that Mr MS Balaji was a mandatory signatory of the bank accounts of the Corporate Debtor. Therefore, it is humbly submitted that Mr MS Balaji being director of Kasa Anlagen India Private Limited was exercising enough control over the affairs of the Corporate Debtor"

11. Ld. Counsel for the Appellant has also referred to MGT 7 of the additional affidavit. The said relates for the period 01.04.2017 to 31.03.2018, relevant entry which has been relied is at pg. 48 of the additional affidavit with regard to M.S Balaji who was shown as director of the CD and having equity shares of 1,25,000.

12. The above form MGT 7 in so far as the directorship of the Balaji is concerned does not render any help to the Appellant since the Balaji has resigned which is the finding of the Adjudicating Authority on the relevant dates mentioned in para 10. Coming to the equity shares 1 lakh 25 thousand, Ld. Counsel for the liquidator submitted that what was pleaded by the Appellant before the Adjudicating Authority is that 27% shareholding was held by Kasa who became the shareholder of the CD. Thus, the submission was on the ground that OC was being related party was not competent to be in the CoC or to proceed. M.S Balaji was referred as director of Kasa whose directorship has already been ceased as noted above.

13. We are thus of the view that no such error can be pointed out in the application on the basis of which the Adjudicating Authority could have set aside the entire process of liquidation. Liquidator has already filed the application for dissolution which has been allowed by the Adjudicating Authority. Thus, we are of the view that at the instance of the suspended director no error can be found out in the impugned order. Both the appeals are dismissed.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

Sheetal/Manu