NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

I.A. No. 6907 of 2026 in Company Appeal (AT) (Insolvency) No. 460 of 2026

IN THE MATTER OF:

Directorate of Enforcement
Gurugram Zonal office,
Saraswati Vihar, M. G. Road,
Sector-28 Gurugram- Pin: 122002 **...Applicant**

IN THE MATTER OF:

Art Construction Pvt. Ltd. **...Appellant**

Versus

Udayraj Patwardhan
Resolution Professional, Adel Landmarks Ltd. & Ors. **...Respondent**

Present:

For Applicant	**:**	Mr. Sanjeev Menon, Adv. for ED
For Appellant	**:**	Mr. Krishnendu Dutta, Sr. Adv. & Mr. Abhijeet Sinha, Sr. Adv. with Ms. Manvi Jain, Ms. Astha Singh, Ms. Niharika, Adv.
For Respondents	**:**	Ms. Shruti Munjal, Adv. for R1 Mr. Aslam Ahmed, Ms. Kheyali Singh, Adv. for R3/ACRE

O R D E R
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present matter relates to I.A. 6907 of 2026 filed by Applicant-Directorate of Enforcement ('**ED**' in short) seeking recall of the order dated 16.04.2026 passed by this Tribunal in CA(AT)(Ins)No. 460 of 2026 (hereinafter referred to as the "**impugned order**") wherein the order of the Adjudicating Authority dated 27.02.2026 was set aside and I.A No. 1817 of 2023 filed by the Resolution Professional ('**RP**' in short) seeking approval of the resolution plan was revived for consideration by the Adjudicating Authority. Aggrieved

by the impugned order, the recall application has been filed with the following prayers:

> *a. Recall order dated 16.04.2026 passed by this Hon'ble Tribunal in Company Appeal(AT) (Insolvency) No. 460 of 2026;*
>
> *b. Declare that the attached properties could never have formed part of the resolution plan and*
>
> *c. Pass such other orders/orders as this Hon'ble Tribunal may deem fit.*

2. Throwing light on the factual background of the matter at hand, Shri Sanjeev Menon, the Ld. Counsel for the Applicant-ED submitted that the Adjudicating Authority in its order dated 27.02.2026 had rejected the plan approval application filed by the RP vide I.A No. 1817 of 2023 and remanded the plan proposal back to the CoC for its consideration for re-examination in the wake of subsequent developments including the Provisional Attachment Order ('**PAO**' in short) dated 09.01.2026 passed by the ED provisionally attaching some of the assets of the Corporate Debtor. This order of 27.02.2026 was challenged before this Tribunal by the Successful Resolution Applicant ('**SRA**' in short). This Tribunal on 16.04.2026 passed the impugned order reviving I.A. No. 1817 of 2023 before the Adjudicating Authority for passing of fresh order in accordance with law in pursuance of which the Adjudicating Authority passed an order on 19.05.2026 approving the resolution plan.

3. It was submitted by the Applicant that the impugned order was passed by this Tribunal on 16.04.2026 without hearing or issuing any notice to the ED though the order of the Adjudicating Authority which was under challenge had been passed *inter-alia* on the basis of submissions of the ED. It was

added that the order of the Adjudicating Authority dealt with properties which stood attached under PAO orders passed by the ED and the applicability of Section 32A of the IBC on such properties. It was added that the impugned order was passed without the Applicant being able to put forth their arguments on Section 32A of IBC in the light of judgements of this Tribunal in ***Anil Kohli v. Directorate of Enforcement in CA(AT)(Ins.) No. 389 of 2018*** and in ***Vantage Point Asset Management Pvt. Ltd. v. Gaurav Mishra 2025 SCC OnLine NCLAT 1652***. Since this Tribunal had passed orders without affording the ED an opportunity of hearing to field their submissions, this amounted to breach of the principles of natural justice and therefore the impugned order deserves to recalled. Reliance was placed on the judgment of the Hon'ble Supreme Court in ***Asit Kumar Kar Vs. State of W.B. (2019) 2 SCC 703*** wherein it has been held that it is a basic principle of justice that no adverse orders should be passed against a party without hearing the party and that an order which is passed without giving an opportunity of hearing to an affected party can be recalled. It was further argued that it is well settled that where an order is passed without affording a hearing to a person who is likely to be affected by the order, such a person may seek recall of the order by which it is aggrieved and that in this backdrop the ED-Applicant has approached this Tribunal seeking recall of its order dated 16.04.2026. It was asserted that the recall application is maintainable under Rule 11 of the NCLAT Rules, 2016 which Rules do not lay down any specific limitation period. Once the Applicant became aware of the impugned order dated 16.04.2026, it filed the recall application on 20.07.2026 which was contended as a reasonable period of time.

4. Per contra, it was contended by Shri Krishnendu Dutta and Shri Abhijeet Sinha, Ld. Sr. Counsels for the Respondents that while the impugned order was passed on 18.04.2026, the recall application was filed by the Applicant on 20.07.2026 which entailed a lapse exceeding 45 days in filing. It was contended that though no fixed period of limitation is prescribed for a recall application, such application must be filed within a reasonable time, however, delay of over four months is not a reasonable period of time. Moreover, this lapse in terms of delay is further compounded by the fact that the affidavits supporting the recall application are dated 31.08.2026 while the recall application was dated 20.07.2026 thus rendering the filing non-est.

5. Submission was further pressed that the statutory remedy available to any person aggrieved by an order of this Tribunal is to file an appeal before the Hon'ble Supreme Court under Section 62 of the IBC. However, in the present case, no credible reason has been placed on record as to why the Applicant did not proceed to challenge the impugned order despite having sufficient time to do so after having acquired knowledge of the impugned order. It was argued that the power of recall under Rule 11 of the NCLAT Rules, 2016 cannot be invoked as a substitute for a time-barred appeal.

6. It was also contended that there is no dispute that the Adjudicating Authority in pursuance of the order of this Tribunal of 16.04.2026 had reconsidered the plan and approved the same on 19.05.2026. It was pointed out that not only did the Applicant-ED not file any appeal challenging the impugned order of 16.04.2026 despite being fully aware of the matter having been remanded for reconsideration before the Adjudicating Authority, it also

did not take any steps to challenge the subsequent plan approval order of 19.05.2026 passed by the Adjudicating Authority. Not having challenged the plan approval order passed by the Adjudicating Authority of 19.05.2026, even after having participated in the proceedings remanded before the Adjudicating Authority by the impugned order, the recall application is an attempt to unsettle the plan approval order of 19.05.2026 which cannot be allowed as the plan is already under implementation.

7. We have heard Ld. Counsels for the parties and perused the records carefully.

8. The short question before us is whether there is any cogent ground made out by the Applicant for filing this recall application.

9. For better appreciation of the matter at hand, we would like to first notice some of the relevant dates necessary for deciding this recall application. The Corporate Debtor had been admitted into CIRP on 05.12.2018. The CoC approved the resolution plan of the SRA on 15.09.2022. Thereafter the RP had filed plan approval application before the Adjudicating Authority vide I.A No. 1817 of 2023 on 20.01.2023. Much after the plan approval application had been filed before the Adjudicating Authority, the Applicant-ED had issued PAO order on 09.01.2026. The Adjudicating Authority did not approve the plan approval application *inter-alia* on account of the PAO order dated 09.01.2026 and related developments and instead remanded back the resolution plan to the CoC on 27.02.2026 for reconsideration and re-examination. The order of the Adjudicating Authority dated 27.02.2026 was challenged before this Tribunal. By the impugned order dated 16.04.2026,

this Tribunal revived I.A No. 1817 of 2023 before the Adjudicating Authority for passing of a fresh order in accordance with law.

10. It is the case of the Applicant that they were not heard before passing of the impugned order by this Tribunal. It was asserted that notice should have been issued to the ED by this Tribunal as it was exercising its appellate jurisdiction on the order of the Adjudicating Authority of 27.02.2026 which was passed on the basis of submissions made by the ED. Having not impleaded the ED it tantamount to denying a necessary party an opportunity of hearing. A necessary party not being present before this Tribunal makes it a fit case for recall.

11. When we look at the chronological sequence of events, we find that the impugned order was passed on 16.04.2026 in which the Applicant was undoubtedly not a party. It is also an undisputed fact that the Applicant had become aware of the impugned order on 15.05.2026 as is evident from para 20 of the I.A No. 6907 of 2026 filed by the Applicant as reproduced below:

> *"That it is submitted that since the ED was not made a party before this Ld. Tribunal, it was not aware of the Order of Ld. Tribunal dated 16.04.2026 until the matter came up for hearing before the Ld. NCLT in the remanded proceedings"*

12. The above pleading is an unequivocal admission that the Applicant was well aware of the impugned order when the proceedings were remanded back by this Tribunal to the Adjudicating Authority and was being heard. Furthermore, on a pointed query made by this Bench, it was also admitted by the Counsel for the Applicant that they had become aware of the remanded proceedings on 16.05.2026. Thus, when it was pretty much within the

knowledge of the Applicant-ED by 16.05.2026 that the impugned order had remanded the plan approval application back to the Adjudicating Authority, they had ample opportunity to challenge the same by exercising the statutory remedy available to them under Section 62 of the IBC.

13. If the Applicant on gaining awareness of the impugned order harboured reasons for feeling aggrieved by it, nothing had stopped them from exercising the statutory remedy of approaching the Hon'ble Apex Court as the limitation period of 45 plus 15 had not yet expired. The Applicant-ED, instead, waited until 20.07.2026 to file the present recall application. No credible reason has been placed on record as to why the Applicant did not proceed to challenge the impugned order despite having sufficient time to do so. Thus, though the Applicant had ample opportunity to protect its interest against the impugned order, for reasons better known to them, they had chosen not to avail of this opportunity. Where a proper remedy such as by way of appeal was available but was not availed, in such circumstances, filing of the recall application tantamount to indirectly filing of an appeal against the impugned order of 16.04.2026 camouflaged as a recall. Allowing the recall in effect would mean reopening of the hearing of Company Appeal No. 460 of 2026 which is impermissible as the power of recall is not power of the Tribunal to rehear the case.

14. Interestingly from the material on record, it is also clear that the Adjudicating Authority after hearing the remanded proceedings had passed orders approving the resolution plan on 19.05.2026. However, yet again, the Applicant-ED did not file any appeal against the 19.05.2026 order passed by

the Adjudicating Authority approving the plan. A plan once approved by the Adjudicating Authority and not having been challenged within the period available for filing of a statutory appeal acquires finality and binds all stakeholders including government authorities. This lends force and weight to the contention of the Respondents that the present recall application is crafted to seek review of the matter under the guise of recall.

15. The other limb of argument canvassed by the Applicant to justify their recall application is that the impugned order so delivered was adverse to their interests as the properties attached by the ED could not have formed part of the resolution plan. To buttress their contention, the findings of this Tribunal in the context of Section 32A of the IBC as contained in para 11 of the impugned order has been attacked by the Applicant in their recall application.

16. To return our finding, we may first refer to Para 11 of the impugned order of 16.04.2026 which is as extracted below:

> *"**11.** The next area of concern which led the Adjudicating Authority to remand the plan back to the CoC relates to the subject property which had come under PAO of the ED._It is the contention of the RP that the attachment order had been issued subsequent to the approval of the plan by the CoC. It was also emphatically asserted that the attachment was only provisional and not final in nature as borne out from ED's own affidavit dated 02.02.2026. It was further contended by the RP that in terms of Section 32A of the IBC, once a Resolution Plan is approved and there is a change in management of the Corporate Debtor, the Corporate Debtor and its properties stand protected from prosecution and attachment for offences committed prior to the commencement of the CIRP. Reliance was placed on the judgement of the Hon'ble Supreme Court in Kalyani Transco v. Bhushan Power and Steel Limited & Ors. in Civil Appeal No. 1808 of 2020 which has clearly recognized the effect of Section 32A of the IBC in protecting the assets of the Corporate Debtor from enforcement proceedings arising out of prior offences once the Resolution Plan stands approved and such property is covered under the Resolution*

Plan approved by the Adjudicating Authority under Section 31 of the IBC. Further, it was pointed out that this Hon'ble Tribunal in Vantage Point Asset Management Pvt. Ltd. v. Gaurav Misra, Resolution Professional of Alchemist Infra Realty Ltd in CA(AT)(Ins.) No. 1495 of 2024 reiterated that attachments or enforcement actions in relation to prior offences cannot impede the implementation of a Resolution Plan once the statutory protections under the IBC are triggered. We also notice that the RP had kept apprised the CoC of the ED proceedings. It is also the contention of the SRA that it had submitted its plan after conducting due diligence and after verifying all the information contained in the Information Memorandum and it was aware that as SRA it was eligible to claim benefit under Section 32A of the IBC which provides them protection in respect of properties provisionally attached by the ED. In this backdrop of RP having kept apprised the CoC of the ED proceedings and that the SRA, before submitting his plan, was also aware of the PAO on having done his share of due diligence, mere existence of PAO cannot be seen to render the resolution plan incapable of implementation. The Adjudicating Authority has failed to appreciate the statutory protection provided under Section 32A of the IBC and the binding judicial precedents governing the interplay between insolvency proceedings and enforcement actions. We therefore fail to appreciate the concern expressed in the impugned order of the need to remand the matter back again to the CoC on this ground."

(Emphasis supplied)

17. It becomes clear from the above excerpts of the impugned order that what was considered by this Tribunal in CA(AT)(Ins)No. 460 of 2026 was whether the plan already approved by the CoC should go back again to the CoC for a fresh exercise of the CoC's commercial wisdom. The impugned order had only set aside the decision of the Adjudicating Authority to remand the plan back to the CoC and in doing so, the impugned order did not either stay or set aside the PAO of the ED-Applicant.

18. A recall is warranted only where an adverse order is passed against a party/person without hearing the party. This Appellate Tribunal in the impugned order has merely directed the Adjudicating Authority to reconsider the plan proposal in accordance with law and did not adjudicate either on the

sustainability and tenability of the resolution plan or the enforcement actions qua the PAO orders. Prima-facie, no adverse order had been passed against the Applicant-ED by this Tribunal in the impugned order, there is no substance in the argument that the impugned order needs to be recalled on grounds of non-impleadment of the ED while passing the impugned order.

19. The judgment in ***Asit Kumar Kar*** cannot come to the rescue of the Applicant as the facts in that case are clearly distinguishable for in that case, the licenses of the Applicants were cancelled without hearing them, while in the present case, no rights of the ED were adjudicated upon nor any interest of the Applicant interfered with by the impugned order. As the impugned order did not contain any directions against the ED, it is a misconceived proposition on part of the Applicant to claim to have been prejudiced by the impugned order or that the impugned order could not have been passed without them having been made a party therein and also heard. Hence, the reliance placed on ***Asit Kumar Kar*** judgment is wholly misplaced.

20. Further, when we see prayer (b) of the recall application which has been reproduced in the opening paragraph, it clearly seeks declaration that the properties attached by the ED could not have formed part of the resolution plan. Effectively this amounts to seeking a substantive declaration on merits which is wholly outside the scope of a recall application. Thus, we are persuaded to believe that the Applicant-ED under the guise of recall is seeking a rehearing and review of the impugned order on merits together with a fresh declaratory relief which is impermissible in the exercise of power of recall. The

present application of the Applicant is styled as recall but in essence is a review application and therefore cannot be entertained.

21. In view of the above discussion, we are of the considered view that the reasons for recall, as narrated in the recall application, do not fall within the scope and ambit of recall of an order passed by this Tribunal. No cogent grounds for entertaining the recall having been made out, we reject the recall application. No costs.

[Justice Yogesh Khanna]
Officiating Chairperson

[Barun Mitra]
Member (Technical)

[Ajai Das Mehrotra]
Member (Technical)

Place: New Delhi
Date : 02nd November, 2026
Sheetal/Farhan