NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No. 1928 of 2026

IN THE MATTER OF:

1. **Babita Agarwal**
   W/o Shailendra Agarwal,
   R/o 5, Maharani Estate, Site-C,
   UPSIDC Road, Shastri Puram,
   Agra, Uttar Pradesh – 282007.

2. **Shailendra Agarwal**

   S/o Late Om Prakash Agarwal,
   R/o 5, Maharani Estate, Site-C,
   UPSIDC Road, Shastri Puram, Agra,
   Uttar Pradesh -282007.

3. **Shailendra Agarwal**
   S/o Kishan Lal Agarwal,
   R/o 34/23/R, Kishan Nagar,
   Baleshwar, Agra,
   Uttar Pradesh - 282005. **...Appellants**

Versus

Pramod Kumar Sharma
Resolution Professional
Kunal Structural Developers & Industries Private Limited
H. No. 16, Dasharath Kunj-B,
West Arjun Nagar, Agra,
Uttar Pradesh - 282001. **...Respondent**

Present:

For Appellants : Mr. Deepak Motla, Adv.

For Respondent : Mr. Nilotpal Shyam, Ms. Shivali, Ms. Tejas Mishra, Advocates.

with

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Resolution Professional
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Private Limited
H. No. 16, Dasharath Kunj-B,
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Uttar Pradesh - 28200l. **...Respondent**

Present:

For Appellants	**:**	**Mr. Deepak Motla, Mr. Sahil Rao, Adv.**
For Respondent	**:**	**Mr. Nilotpal Shyam, Ms. Shivali, Ms. Tejas Mishra, Advocates.**

J U D G M E N T
(2nd November, 2026)

SHARAD KUMAR SHARMA, MEMBER (J)

These are two connected company appeals, though they are arising out of two separate interlocutory applications being I.A. No. 4139/ND/2026 as it stood engaged consideration in Company Appeal (AT) (Ins.) No. 1928 of 2026

and I.A. No. 4138/ND/2026 as it stood engaged consideration in Company Appeal (AT) (Ins.) No. 1929 of 2026.

2. A few common facts, which engages consideration are that:

The proceedings of the Company Petition, being C.P. (IB) No. 723(ND)/2020, were taken up before the Ld. Tribunal, and the Ld. Tribunal vide its order of 28.08.2025, after recording the absence of the appellant (who was Respondent No. 5 in the proceedings of the company petition), directed the matter to be proceeded ex-parte.

3. By virtue of the said order of 28.08.2025, the Ld. Tribunal had directed the matter to be proceeded ex-parte against the appellant, in terms of its earlier order of 04.07.2023. The records of the company appeal do not reflect, as to what proceedings took place on 04.07.2023, which has been taken into consideration and has been referred by the Ld. Tribunal in its order of 28.08.2025, while directing the proceedings to be taken ex-parte as against the present appellants. This order to proceed ex-parte stands good, having not been set aside, and admittedly, it has never even been sought to be recalled by the appellant during the pendency of the proceedings of the company petition.

4. At a much belated stage, a recall was preferred, seeking recall of the order dated 28.08.2025, which was filed by the appellants herein, before the Ld. Tribunal on 05.01.2026 i.e. almost after 4 months. What consequences the said application reached are the facts, which are neither on record nor

pleaded by the appellants. An order was later passed by the Ld. Tribunal on 27.04.2026, after taking into consideration the effect of the earlier order passed on 28.08.2025, directing to proceed with the matter ex-parte and observed that the application for recall, being **I.A. No.1599/2026** that was preferred by Respondents No. 5,7 & 8 is in the proceedings for recalling the order of 28.08.2025. It was observed that since the application itself for recalling the order to proceed ex-parte was barred by limitation as having not been preferred within 30 days, as prescribed under Article 122 of 3rd division of Part-I of the Limitation Act.

5. Hence, the Ld. Tribunal on 27.04.2026 passed an order that, since the application for recall i.e. I.A. No.1599/2026 was preferred on 05.01.2026 seeking recall of the order dated 28.08.2025 directing to proceed the matter ex-parte, it had declined to interfere in the application on the ground that the applicants to I.A. No.1599/2026, seeking recall of the order dated 28.08.2025, the applicants for recall had been negligent in pursuing the proceedings and imposed a cost of Rs. 25,000/- to be deposited in the Prime Minister's Relief Fund, because of the fact that the recall application was knowingly, it has been preferred on 05.01.2026 after a lapse of a substantial time period i.e. 174 days and was not supported with the delay condonation application. Hence, an opportunity was granted to file a delay condonation application.

6. Accordingly, the appellant filed I.A. No. 4139/ND/2026, seeking condonation of 174 days of delay, that has chanced in preferring an application, which was for setting aside the order of 28.08.2025.

7. At this juncture, itself we make it clear, that it is surprising as to the manner in which the appellant has taken up the proceedings for the reason being that:

(i) Order to proceed ex-parte was passed on 28.08.2025

(ii) Recall was filed on 05.01.2026

(iii) By an order of 27.04.2026, the appellant was granted time to file delay condonation application

(iv) Meaning thereby, if at all any application was to be filed by the appellant for seeking condonation of delay, that ought to have been filed at least within 30 days from the date of the order, i.e., 27.04.2026, i.e. when the liberty was granted by the Ld. Tribunal to file the delay condonation application. But surprisingly the application seeking condonation of delay, being **I.A. No. 4138/ND/2026**, was filed by the appellant on 24.08.2026 that means almost approximately after four months, of grant of permission to file delay condonation.

8. That itself shows that the appellant was not diligent and vigilant too in contesting the proceedings, despite when he was made conscious, that the recall application of 05.01.2026, was mandatorily supposed to be supported with the delay condonation application, and despite when he was made

conscious of the fact by an order of 27.04.2026, he should have filed an application for the delay condonation application as contemplated under Article 122 of the Limitation Act i.e. within 30 days at least, and couldn't have waited to file the delay condonation application on 24.08.2026 that itself would be barred by limitation.

9. In order to better elucidation, the provisions of Article 122 of the Limitation Act are extracted hereunder:

> *"122. To restore a suit or appeal or application for review or revision dismissed for default of appearance or for want of prosecution or for failure to pay costs of service of process or to furnish security for costs…… 30 days"*

10. We have already observed, that even in the case of the appellant, if the limitation is considered from the date of his knowledge, i.e., 16.10.2025, as pleaded in the application for condonation of delay itself as well as in the recall application. It would be much beyond the period of limitation prescribed under Article 122 of Limitation Act, as extracted above, which provides for a determination of 30 days' delay from the "**date of dismissal**", and not from the date of knowledge. Even in those circumstances, too, the application for condonation of delay as well as for recall would be falling to be much beyond the period of limitation as prescribed, and since 174 days are inordinate, it cannot be condoned.

11. Another glaring feature though earlier observed, but which is required to be considered is that if the application for delay condonation itself is taken

into consideration in paragraph 7, the appellant has raised the following pleading:

> *"7. That the Respondents most respectfully submit that they gained knowledge of the order dated 28.08.2025 only on 16.10.2025 when the Respondents had logged in to observe the proceedings. However, the matter did not reach on that day. Thereafter, upon perusing the order sheet, the Respondents were shocked and surprised to note that vide order dated 28.08.2025, they had been proceeded ex-parte and it was further observed that there was no representation on behalf of the Respondents on several previous dates."*

12. This pleading in itself show, that the appellant got the knowledge of the order of 28.08.2025, back as on 16.10.2025, when he logged into the proceedings. If the appellant got the knowledge on 16.10.2025, then at least the recall of the order of 28.08.2025 should have been filed within 30 days and the appellant couldn't have waited till 05.01.2026 and more importantly what we have already asserted the date when he filed the delay condonation application i.e. 24.08.2026.

13. If this application, which was preferred by the appellant seeking recall of the order dated 28.08.2025, which came up for consideration before the Ld. Tribunal and the same has been rejected by the impugned order, is taken into consideration in paragraph 7, admitted knowledge is of 16.10.2025.

14. The Ld. Tribunal, while considering the purport and purpose of seeking condonation of delay, has passed an order rejecting the delay condonation application, observing thereof, that when an application for seeking condonation of delay is to be preferred, first of all, the delay has to be reasonably explained, and looking at the contents of the application in

itself, the applicant was expected to explain the same in the application. As there was no reason given in the application, as to what prevented the counsel or the parties to appear before the Tribunal on the date when the matter was proceeded ex parte, i.e., on 28.08.2025. Hence, the delay was declined to be condoned. And accordingly, as a consequence of the same, an order passed on I.A. No. 218 of 2023, was declined to be recalled.

15. Another reason, and quite validly too which has been argued and taken into account in the proceedings before the Ld. Tribunal was, that the counsel who was pursuing the matter on his behalf had stopped representing him and his cause in the proceedings without there being any prior intimation to the appellant. In fact, this ground, which has been carved out by the appellant in the application for seeking condonation of delay, doesn't seem to be justified in the absence of any credible material on record to show that when the earlier counsel had withdrawn his Vakalatnama from the records and had stopped pursuing the proceedings on behalf of the appellant. Besides that, even if is presumed that because of the conduct of the earlier counsel, he remained unrepresented even prior to 28.08.2025. There is nothing on record to show that the appellant ever made any communications with his counsel or had carried any step as against his earlier counsel for its professional dereliction for not pursuing the matter on his behalf, particularly when the authority vested by the appellant continued to operate as on the date when the ex-parte order of 28.08.2025 was passed. There had been no pleading on record to show that appellant had ever

communicated with his counsel, showing his inquisitiveness towards his case, showing his diligence to contest the proceedings.

16. It's not the case of the appellant, that the earlier counsel ever refused to appear. Nor is it the case of the appellant or his counsel too that, upon the refusal of the earlier counsel, he has ever taken his no objection for engaging another counsel as contemplated under Order III Rule 4 of CPC, which was required by the counsel who has filed the delay condonation application, nor is there any pleading to the said effect in the application for seeking condonation of delay.

17. Much authenticity cannot be attached to the pleadings raised in that context about the conduct of the previous counsel as raised in paragraph 5 of the application, since it didn't contain any credible material or a basis, if this could be permitted to be accepted by us for the purposes of condonation of delay in recalling of an order. It would rather be opening a pandora's box; invariably, any party to the proceedings could be filing a recall application on that pretext, and more particularly when the other counsel who has been engaged for the purposes of filing the recall application has not taken his no objection from the earlier counsel, as required under law.

18. As the delay is inordinate of 174 days and there is no plausible reason, which has been assigned by the appellant, and more particularly when the application itself has been preferred much beyond the period of acquiring the knowledge on 16.10.2025. The reasons in the application cannot be

accepted, as they are being artificially created for the purposes of the present application itself.

19. Thus, the impugned order rejecting the delay condonation application, i.e., I.A. No. 4139/ND/2026, doesn't suffer from any apparent error that would call for any interference by us. In the exercise of our appellate jurisdiction, particularly in a proceeding of I&B Code, where the statute itself intends that the proceedings have to be completed within a specified time frame and where the time is the essence of the proceedings.

20. The connected company appeal, which arises out of an order of 31.08.2026, is against the rejection of I.A. No. 4138/ND/2026 for recalling the order of 28.08.2025 because of the fact that we have already rejected the delay condonation application in Company Appeal (AT) (Ins.) No. 1928 of 2026, i.e., I.A. No. 4139/ND/2026. This appeal too would stand covered by the said judgment, hence, would stand dismissed, because the consequence of the rejection of the delay condonation application is obviously an application to set aside an ex-parte order dated 28.08.2025 would meet its legal death. Hence, this company appeals too would stand dismissed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

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