

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

IA No. 47 / 2026

in

Company Appeal (AT) (CH) (Ins) No. 17 / 2026
(IA No. 46 / 2026)

In the matter of:

P V Mohammed Equbal

Aged 54 Years

S/o. Hamza Haji P, Flat No. R6, Summerfield Apartments,
Near Sangeetha

Theatre, Onden road, Kannur, Kerala, Pin-670001

...Appellant

V

Tata Capital limited

Represented by its Manager,

Registered Office at 11th Floor, Tower A, 1101

Peninsula Business Park, Ganpatrao Kadam Marg,

Lower Parel, Mumbai, Pin-400013

...Respondent No. 1

C.A. Jasin Jose

Resolution Professional,

Ponmattom, Madassery, Mookkanoor P.O.

Angamaly, Kochi, Pin – 683577

...Respondent No. 2

WITH

IA No. 48 / 2026

in

Company Appeal (AT) (CH) (Ins) No. 18 / 2026
(IA No. 49 / 2026)

In the matter of:

Ponnuvalappil Zubair

Aged 50 Years

S/o. Hamza Haji P, Flat No. R6, Summerfield Apartments,
Near Sangeetha

Theatre, Onden road, Kannur, Kerala, Pin-670001

...Appellant

V

Tata Capital limited

Represented by its Manager,
Registered Office at 11th Floor, Tower A, 1101
Peninsula Business Park, Ganpatrao Kadam Marg,
Lower Parel, Mumbai, Pin-400013

...Respondent No. 1

C.A. Jasin Jose

Resolution Professional,
Ponmattom, Madassery, Mookkanoor P.O.
Angamaly, Kochi, Pin – 683577

...Respondent No. 2

Present :

For Appellant : Mr. Vinay Mathew Joseph, Advocate
For Respondents : Mr. Chandapillai, Advocate for R1
Mr. Akhil Suresh, Advocate for R2

ORDER
(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma, Member (Judicial)]

The foundation of the proceedings, in these two Company Appeals, from the perspective of law, remains identical, as similar question of law is required to be considered, except for there being certain marginal factual distinctions.

2. In the **Company Appeal (AT) (CH) (Ins) No. 17/2026**, the Appellant challenges the impugned order dated 27.05.2025, passed in CP(IB)/48/KOB/2024 which was filed before Learned NCLT, Kochi Bench, under Section 95 of I&B Code, to be read with Rule 7 (2) of I&B (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to the Corporate Debtors), Rules, 2019, which has

resulted into admission of the Appellant / Personal Guarantor to face the Insolvency Resolution Process (IRP).

3. Similarly, the connected **Company Appeal (AT) (CH) (Ins) No. 18/2026**, has too been preferred by the Appellant / Personal Guarantor, challenging the order that was rendered in CP(IB)/49/KOB/2024, resulting into admission of the Appellant, to face the Insolvency Resolution Process.

4. These two Company Appeals are accompanied by respective Condone Delay Applications. In Company Appeal (AT) (CH) (Ins) No. 17/2026, the Appellant has filed the Condone Delay Application being IA No.47/2026, seeking condonation of 15 days of delay in filing the Appeal, as against the impugned order of 27.05.2025. The ground, which has been taken by the Appellant for seeking condonation of delay in filing the Appeal was that, the order of 27.05.2025 was uploaded on 28.05.2025, and as no free copy of the order was made available to the Appellant, hence the Appellant had to apply for the certified copy on 24.06.2025, which was prepared on 26.06.2025. The copy of the same was issued on 01.07.2025 and consequentially, the Company Appeal was preferred by e-filing of the same, before the registry of this Appellate Tribunal on 16.11.2025. The Appellant has claimed that the Appeal has been filed with a delay of 15 days only.

5. In Company Appeal (AT) (CH) (Ins) No. 18/2026, which too is accompanied with a Condone Delay Application being IA No. 48/2026, the

Appellant has sought a condonation of 15 days of delay, that has chanced in preferring the Company Appeal and in the Condone Delay Application, once again its almost the similar reiteration of facts, that after passing of the impugned order on 27.05.2025, the Appellant admits that, the order was uploaded on 28.05.2025 and according to the records available before us, the Appellant is shown to have applied for the certified copy on 24.06.2025, which was issued to the Appellant on 01.07.2025 and thereafter the Company Appeal was preferred before this Appellate Tribunal, by e-filing of the same on 17.11.2025.

6. Obviously both the Appeals have been filed 174 days after the date of pronouncement of the impugned order, which clearly exceeds 30 + 15 days permitted under Section 61 (2) of the Code. Therefore, the question that, would arise for consideration, while determining maintainability of the said Condone Delay Applications, will be as to whether the period spent by the petitioners in prosecuting the respective writ petitions can be excluded while computing the limitation period. When the said writ petitions being Writ Petition (C) 25018/2025 and Writ Petition (C) 25071/2025 were disposed of on 05.11.2025 with the following directions:

"In view of the same, since there is an effective alternative remedy available to the petitioners as provided under Section 60(1) of the I&B Code, 2016, I am not interfering with the impugned orders in these writ petitions. Petitioners are relegated to file appeals as provided under the statute. The

period spent by the petitioners for prosecuting these writ petitions should be excluded while computing the limitation period for preferring appeals against the orders impugned in these writ petitions before the NCLAT."

7. It is pertinent to note that after passing of the impugned order on 27.05.2025, both Appellants filed Writ Petition being WP (C) 25018/2025 and WP (C) 25071/2025 before the Hon'ble High Court of Kerala on 06.07.2025, that is, the 40th day, from the date of pronouncement of the Impugned Order. The said writ petitions were decided by the Hon'ble High Court of Kerala on 05.11.2025, directing them to file appeals before this Appellate Tribunal. Thus the period spent by the petitioners for prosecuting these writ petitions starting from 06.07.2025 to 05.11.2025 adds up to 122 days.

8. The questions that arises for consideration before us, are that:

i) Whether the period of 122 days spent in prosecuting the writ petitions before the Hon'ble High Court of Kerala can be excluded for computation of limitation?

ii) Whether the **Hon'ble High Court could have passed a direction for this Appellate Tribunal, that the period spent before the High Court "should be excluded"** for computing the limitation period for preferring the Appeal, even while declining to interfere with the impugned

orders on the grounds that there is an effective alternative remedy available under I&B Code?

9. It is to be noted that resolution of insolvency under the Code is a strictly time bound process and a party cannot be permitted to set the limitation period for filing the Appeal extended by preferring writ petitions, without availing the statutory remedy available to them of preferring of an Appeal under Section 61 (1) of the Code and then waiting for the verdict of the Hon'ble High Court of Kerala. In the instant case, the writ petitions were filed on 05.07.2025, which was beyond the 30 days period of limitation as prescribed under the statute and the recourse to file the Company Appeal was resorted to only thereafter, under the shelter granted by the Hon'ble High Court, that, the period spent in prosecuting the writ petitions should be excluded, while computing limitation period.

10. We are of the view that, the benefit of limitation ought not to have been extended on the directives of the Hon'ble High Court, because the time consumed by the Appellants while pursuing the writ remedies, was not statutorily available for exclusion from limitation under law, and further, because the writ petition itself was preferred after the expiry of period of limitation of 30 days as prescribed under Section 61 (2) of the Code, having been filed on 05.07.2025, that is, the 40th day from the date of pronouncement of the impugned order. This will mean that the Appellants,

tacitly and indirectly, have already availed the benefit of limitation, when they filed the writ petition before the High Court against the impugned order, after the expiry of period of limitation as prescribed under the statute. Further, when the High Court in its order observed that, it declines to interfere in writ petition because, the Appellants have an alternative effective remedy of filing of Company Appeal under Section 61 of I&B Code, it is to be construed that, as soon as the Hon'ble High Court has come to a conclusion of not to interfere with the impugned order due to availability of an alternative statutory remedy, its authority to condone the delay, or to issue any positive direction for condoning the delay ceases from that point onwards and therefore it could not have exercised its power of condonation of delay. When the High Court itself has held that the proceedings in the writ jurisdiction was not maintainable and it has passed an order, that writ is not the remedy, it will have no authority to condone the delay and that too, in relation to the proceedings, which was otherwise not maintainable before it, being governed by a special statute as per the principle laid down by the Hon'ble Apex Court in the judgment of **Asma Lateef & Anr. v. Shabbir Ahmad & Ors.** as reported in 2024 Vol 1 SCR Page 517. In the said judgment, the Hon'ble Apex Court has held that when the proceedings are held to be not maintainable, the High Court could not have passed an order, which provides any positive benefits or directions, which would be amounting to be an interference or overriding the proceedings of an Appeal,

which otherwise would be the subject matter to be considered by this Appellate Tribunal. Therefore, for all practical purposes when the Hon'ble High Court has observed that the writ petition is not maintainable and has declined to interfere on the same count, it becomes functus officio. Once the maintainability question has been decided by the High Court, on the basis of availability of an appellate remedy before the NCLAT under Section 61 itself, the High Court should not have passed an order, directing this Appellate Tribunal to condone the delay, since the Appellate Tribunals created under Section 410 of Companies Act, under law, are kept out of the supervisory jurisdiction of the High Courts.

11. The Hon'ble High Court, while holding the writ petition to be not maintainable, should not have passed an order, directing the Tribunal to condone the delay, because it will amount to that the part of the decision making process on the aspect touching merits of sustainability of the proceedings before the Appellate Tribunal, has been taken over by the High Court, despite the fact of having observed that the proceedings of a writ were not maintainable before it. Once the High Court has taken a view that the proceedings are not maintainable, it becomes functus officio to pass order on any aspect having a bearing on decision on merits. Once the High Court holds that the proceedings would lie before the platform that has been created under law, in that eventuality, the part of the order of directing the exclusion

of the period spent before it from computation of limitation, will impact the decision of this Appellate Tribunal in deciding the aspect of which is not envisaged under the Code and hence it will have to be construed as being beyond jurisdiction of the proceedings before High Court.

12. This issue had earlier come up for consideration before this Appellate Tribunal, regarding the authority of the High Court to issue directions to condone the delay or to condone the delay itself, while simultaneously holding the proceedings before it to be not maintainable. We had an occasion to consider this aspect in the matters of **Johnson Lifts Pvt. Ltd. Vs. Tracks & Towers Infratech Pvt. Ltd.** as reported in **2024 SCC Online NCLAT, 2424**. In the said judgment, we had referred to the judgment of the Calcutta High Court, as reported in ILR 60(8) Calcutta 138, wherein it has been held that before a Court can be said to hold a jurisdiction to decide the matter, it must, not only have the jurisdiction to try the matter, or the case, but also, the authority or jurisdiction to pass an order. In the instant case, as soon as the High Court held that it has got no jurisdiction, its adjudicatory power to hold authority to condone the delay or to direct to condone a delay ceases in the light of the principles enunciated by the judgment of the **M/s. Embassy Property Developments Pvt. Ltd. v. State of Karnataka** as rendered in Civil Appeal No. 9170/2019. The said judgment was dealing with the similar question with regards to the scope of

interference by the High Court under Article 226 or under Article 227 of the Constitution of India, and it framed a question as to whether the High Court could interfere and pass an order in any of the proceedings under the I&B Code, where there is an available statutory remedy of filing of an appeal, before the NCLAT. The said question has been answered in Para 46, of the judgment where it has been enunciated in very clear terms that writ jurisdiction would be maintainable only in those cases where NCLT chooses to exercise a jurisdiction not vested in it in law. The said paragraph is extracted here under:

46. Therefore, in fine, our answer to the first question would be that NCLT did not have jurisdiction to entertain an application against the Government of Karnataka for a direction to execute supplemental lease deeds for the extension of the mining lease. Since NCLT chose to exercise a jurisdiction not vested in it in law, the High Court of Karnataka was justified in entertaining the writ petition, on the basis that NCLT was coram non judice.

13. We in the matters of Johnson Lifts Pvt. Ltd. Vs. Tracks & Towers Infratech Pvt. Ltd., in Restoration Application (AT) (CH) No. 2, 3/2024 while dealing with the powers vested with the Tribunals under I&B Code, have held that the High Court could not have condoned the delay and it could not have directed the matter to be decided on merits. The relevant part is extracted here under:

Needless to mention, in the Judgment of Embassy Property Developments Pvt. Ltd. v. State of Karnataka, the issue of jurisdiction and the powers of the NCLT has been dealt with in very clear terms in Para 30 of the Judgment which is extracted hereunder: -

"Jurisdiction and powers of NCLT

30. NCLT and NCLAT are constituted, not under the IBC, 2016 but under Sections 408 and 410 of the Companies Act, 2013. Without specifically defining the powers and functions of the NCLT, Section 408 of the Companies Act, 2013 simply states that the Central Government shall constitute a National Company Law Tribunal, to exercise and discharge such powers and functions as are or may be, conferred on it by or under the Companies Act or any other law for the time being in force. In so far as NCLAT is concerned, Section 410 of the Companies Act merely states that the Central Government shall constitute an Appellate Tribunal for hearing appeals against the Orders of the Tribunal. The matters that fall within the jurisdiction of the NCLT, under the Companies Act, 2013, lie scattered all over the Companies Act. Therefore, Sections 420 and 424 of the Companies Act, 2013 indicate in broad terms, merely the procedure to be followed by the NCLT and NCLAT before passing orders. However, there are no separate provisions in the Companies Act, exclusively dealing with the jurisdiction and powers of NCLT."

Thus, the aforesaid Judgment makes it quite clear that the Hon'ble High Courts should lay their hands off in those proceedings which are governed by a special statute like I & B Code, 2016, because the right of judicial review being made available before the Appellate Jurisdiction under the code itself, it should not be left open to be gone into under Article 226 & 227 of the Constitution of India, despite being a constitutional remedy for the infringement of a constitutional right or for the exercise of a supervisory jurisdiction. It follows that the matters emanating from I & B

Code, do not apparently fall for consideration under either of the expressions given under Article 226 & 227 of the Constitution of India and hence this Tribunal would not hesitate to observe that the Hon'ble High Court of Telangana, should not have by the order condoned the delay and instead could have directed the matter to be decided on merits by the Tribunal.

14. It will be apt to mention that when the Hon'ble Apex Court in the matters of **Gujarat State Civil Supplies Corporation Ltd Vs. Mahakali Food and Pvt Ltd.** along with other connected Appeals was dealing with the issue of the principles to be followed in a scenario, where the legislature has consciously framed a special statute to govern the proceedings before the special Tribunals / Courts, constituted under the act, it has, in Para 17 and 18 of the said judgment, held in very specific terms, that a special statute will override the provisions of the general statute, and in that eventuality, the invocation of a writ jurisdiction, to get an order / direction to condone the delay may not override the provision under special statute which has got in its inbuilt mechanism for condonation of delay.

15. So far nothing is brought before us to show that the judgment rendered by us in Johnson Lifts Pvt Ltd. has been challenged before the Apex Court or the same has been dis-judged so far. If that be the fact, then the direction to exclude the period spent before it has to be disregarded and in that eventually, the Appeals having been filed 173 / 174 days after the

pronouncement of the impugned order are clearly barred by limitation as prescribed under Section 61 of I&B Code, and since the said period is not extendable by the application of the general law, the Appeals would be barred by limitation, and the same are accordingly dismissed. All pending Interlocutory Applications would stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

09/04/2026
YS/MS/AK