NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 792 of 2026
& I.A. No. 3098 of 2026

In the matter of:

Shripal Sevantilal Morakhia ....Appellant

Vs.
Bhrugesh Amin RP – Smaaash Entertainment Pvt. Ltd. ...Respondents & Ors.

For Appellant	**Mr. Pratik Sarkar, Advocate.**
For Respondents	**Ms. Avni Sharma, Mr. Aman Acharya, Advocates for R1** **Mr. Gopal Jain, Sr. Advocate with Mr. Madhav Kanoria, Ms. Surbhi Pareek, Ms. Srideepa Bhattacharyya, Ms. Aparajita, Advocates for R3.**

ORDER

(Hybrid Mode)

26.10.2026: **I.A. No. 3098/2026 :-** This is an application praying for condonation of *12* days' delay in filing of the appeal.

2. The reason mentioned in the application is hospitalization of the appellant himself.

3. The learned Sr. counsel for the respondent submits in case the appeal is heard today, they have no objection of allowing the application.

4. The application is allowed accordingly.

Company Appeal (AT) (Insolvency) No. 792 of 2026

This Appeal is filed against an impugned order dated 17.02.2026 passed by the Ld. Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, Court-*III* in IA No.*1985/2025* in IA No.*69 (Plan)2024* in C.P.(IB)

No.*935(MB)/C-III-2020* by the Suspended Director of the Corporate Debtor to highlight the *alleged* material irregularity in the process of the CIRP. It is argued the Appellant is prejudiced through the decision making process adopted by the Ld. Adjudicating Authority which resulted in the infraction of the principles of natural justice since he never got any opportunity to contest the grounds, basis which his application was rejected by the Ld. Adjudicating Authority. IA bearing no. *1985 of 2025* (supra) was filed in IA No.*69 of 2024* seeking rejection of the plan approval application and for consideration of the settlement proposal of the Appellant under Section *12A* of the Code. It is argued by the Ld. Counsel for the Appellant the Resolution Plans were received from *'Nazara Technologies Limited'* and *'Consortium of Resurgent Property Ventures Pvt. Ltd. and Sanjay Lodha'*. The CoC negotiated with the Resolution Applicants. M/s. Nazara Technologies Limited submitted its revised/modified Resolution Plan. The Resolution Plan filed by M/s. Nazara Technologies Limited was approved by the CoC by *99.59%* voting. The Resolution Professional issued Letter of Intent to the Successful Resolution Applicant.

2. The Resolution Professional filed IA No.*69 of 2024* on *10.08.2024* seeking sanction of the Resolution Plan by the Ld. Adjudicating Authority which was extensively heard on *02.04.2025* in the presence of the Suspended Directors who raised oral objections on the ground of undervaluation of the Corporate Debtor and non-consideration of the Suspended Director's proposal. An application IA No.*1658 of 2025 viz.* first objection was filed. Counsel for the Resolution Professional submitted the CoC has considered the proposal of the Suspended Director and rejected such proposal under Section *12A* of IBC.

3. On *01.05.2025*, the Suspended Director sought to withdraw IA No.*1658 of 2025 viz.* first objection which was disposed of as *not pressed*.

4. It is alleged by the Ld. Counsel for the Appellant the Learned Counsel appearing for the Suspended Director had orally mentioned the Suspended Director had filed an another application objecting the Resolution Plan but till 07.05.2025, no such IA was listed and whereas on 07.05.2025, the matter was listed for pronouncement of the order in IA No.*69 of 2024* but it missed out in the cause list of 07.05.2025 and later published in revised cause list on 07.05.2025 to be pronounced at 2.30 P.M. It was approved on the same day by the plan approval order but on 09.05.2025, IA No.*1985 of 2025* was filed for withdrawal of the IA No.*1658 of 2025* which was already withdrawn on 01.05.2025. IA No.*1985 of 2025* also contained a prayer to reject the application for approval of Resolution Plan, but IA No.*69 (Plan)/2024* was already allowed on 07.05.2025.

5. The Ld. Counsel for the Applicant raised three issues before the Ld. NCLT *viz.* **(a)** no communication was sent to the Appellant regarding the CIRP; **(b)** excessive CIRP costs and **(c)** the proposal of the Appellant was wrongly rejected.

6. We have heard the arguments advanced by the Ld. Counsel for the Appellant and also for the Ld. Counsel for the Respondents and also perused the materials on record including the impugned order.

7. It is one of his argument that the appellant was not heard on the second application *viz.* IA No.*1985 of 2025* on the ground no liberty was granted to file the objections to the Resolution Plan upon dismissal of IA No.1658 of 2025.

In any case, if one peruses paragraph *15* of the impugned order, we find the Ld. NCLT has itself stated in the order they were not inclined to dismiss the instant application at the outset, even if the IA No.*1985 of 2025,* objecting to the approval of the plan, was filed *without liberty* and the Ld. NCLT heard it at length and proceeded to deal with the submissions of the Appellant to evaluate whether there was any material irregularity in the CIRP process or if any fraud was played upon the Ld. NCLT. It did not consider it necessary to deal with the contentions on the applicability of *Order XXIII Rule 1* of the CPC or the right of the Appellant to file second objection *IA 1985 of 2025* without liberty.

8. The grounds raised by the Appellant was dealt with in the following manner by the Ld. NCLT in its impugned order:-

> *"17.1 Ld. Counsel for the Applicant has alleged that the emails addressed to the Applicant were not sent by the RP to instead of shripal@ahaholdings.co.in as requested by the Applicant, but to an email shripal@smaaash.in, to which he had no access. It was only later that RP started sending the emails to 'shripalmorakhia88@gmail.com' after repeated requests from the Applicant, however, the communication regarding certain CoC meetings were not addressed to the Applicant. Thus, it is submitted that the Applicant was deprived of the information relating to CIRP.*
>
> *17.2 We notice that the Applicant has annexed certain email communications. Perusal of the same shows that an email dated 28.10.2022 @ 10:00 PM which was sent by the RP to CoC members and the suspended management regarding the 7th CoC Meeting, was*

forwarded to the Applicant by Ms. Kalpana Morakhia, the wife of the Applicant, at the same email id i.e. 'shripal@smaaash.in' which the Applicant claims to be not in his access. If the wife of the applicant is using email id 'shripal@smaaash.in' for forwarding the email to the applicant, then surely, it cannot be said that the applicant was not having access to the said email especially when the applicant has been regularly attending the CoC meetings. Further, all the communications sent to the Applicant was also sent alongside to his wife, Ms. Kalpana Morakhia, who is also a co-suspended director of the Corporate Debtor. Therefore, the submission of the applicant that he was deprived of the criticalities of the insolvency resolution process is rejected.

18. Excessive CIRP Costs

18.1 The second contention of the applicant is that there has been excessive CIRP cost provided in the resolution plan which has been approved at 1st and 2nd CoC meetings without any supporting material/ documents.

18.2 As per Regulation 31 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, costs relating to CIRP have to be approved by the CoC. Therefore, the quantum of CIRP cost has to be ascertained and approved by the CoC which cannot be interfered by this Tribunal. Ultimately, it is the CoC members who are affected by the excess CIRP cost and in their commercial wisdom, if they have decided the CIRP cost in the CoC meeting, such approval cannot be questioned. It is to be noticed that the Corporate Debtor had been running as a going concern and the CIRP cost

pertained to the operational costs has been duly approved by the CoC.

18.5 The above judgment again emphasizes that the CoC has to determine and approve the CIRP cost. One of the criteria is costs incurred by RP in direct relation to the CIRP with approval from the CoC. In the present case, the CIRP Costs have been ratified by the CoC and there is nothing on record to show that any objection was raised regarding CIRP cost by any of the CoC members or even by the applicant during CoC meetings. It is also relevant to note that the Applicant being the suspended director of the Corporate Debtor, had attended the CoC Meetings through his authorized representative, however, there is nothing on record to show that any objections whatsoever was raised by the Applicant during or after the said CoC meetings regarding the alleged excessive CIRP Costs.

18.6 Accordingly, the decisions regarding CIRP costs remain in the domain of the CoC and it is not for the Adjudicating Authority to examine the quantum of CIRP costs at the behest of suspended directors. Thus, this ground of objection is also rejected.

19. Proposal of the Applicant

19.1 On the settlement proposal of the Applicant under section 12A of the Code, it is pertinent to mention that the Bench had considered the submissions of the suspended directors while approving the resolution plan. It is recorded in the order that the CoC had expressed disinterest in the proposal of the Applicant. Additionally, and more important fact is ineligibility of the applicant under section 29A of the Code.

19.2 The Applicant contended that the email dated 03.06.2024 which was sent by the Applicant to the RP requesting for consideration of the Applicant's proposal was not placed before the CoC and the resolution plan of the SRA was approved by the CoC without considering the proposal of the Applicant. However, we note that as on the date of submission of the proposal on 03.06.2024, the Applicant was already disqualified under section 29A(g) of the Code. In Arun Kumar Jagatramka vs Jindal Steel and Power Ltd. [Civil Appeal No. 9664 of 2019], the Hon'ble Supreme Court has held that the ineligibility criteria under section 29A of the Code shall be applicable even to the propounder/proposer of a scheme under section 230-232 of the Companies Act, 2013 under CIRP/liquidation of the CD as the back-door entry of the management cannot be permitted. Going by the same logic, when the applicant has been held guilty of fraudulent transactions by order dated 22.11.2023 in IA/2115/2022, then this Tribunal cannot direct the CoC members to consider the settlement proposal of the suspended director who is found to be ineligible under section 29A, even if the proposed value is higher than the value of resolution plan approved by the CoC.

19.4 The above observations are also reiterated in Nehru Place Hotels and Real Estate Private Limited vs. Sanjeev Mahajan & Ors. [Company Appeal (AT) (Ins) No. 1715-1716 of 2023], decided on 08.01.2024. Thus, it is clear that once a resolution plan is approved by the CoC, an application under 12A of the Code for withdrawal of the CIRP cannot be moved before the Tribunal.

19.5 The judgment of Sandeep Gupta vs. JM Financial Asset Reconstruction Company Ltd. & Anr. [2024 ibclaw.in 16 NCLAT] relied upon by the Applicant, pertains to a case where the CoC therein was considering the settlement proposal at its various meetings and it was resolved by the CoC that if the entire money is deposited with the RP, then the CoC would consider the proposal positively. Accordingly, the CoC gave six weeks' time to the suspended director to deposit the entire amount. However, within three days, the CoC voted against the proposal. Even when the suspended director deposited the entire amount within the stipulated time, the CoC refused to accept the same. Under such circumstances, the Hon'ble NCLAT held that the decision of the CoC to refuse to accept the proposal is arbitrary and unsustainable. On the contrary, in the present case, the Applicant has failed to comply with the directions of Hon'ble Supreme Court to deposit an amount of Rs. 50 crores to show their bona fide in reviving the Corporate Debtor. The facts are clearly distinguishable and cannot be applied to the present case.

19.6 Another aspect to be noticed is the timeline. The lackadaisical approach of the applicant is writ large. The resolution plan was approved by CoC on 05.08.2024 with 99.59% voting in its favour. The Plan IA was filed by the RP on 10.08.2024 and was pending adjudication till 11.04.2025 The Suspended directors had sufficient time to file Objection IA and to ensure that the objection IA is listed before Bench for hearing along with the Plan IA. If the suspended director had any serious grievance or wanted to point out any non-compliance of law or violation of law then Objection IA

would have been filed within reasonable time. The present IA has been filed on 30.04.2025 after lapse of 8 months and after reserving the order on 11.04.2025 for the Plan IA.

19.7 To our mind, the present application appears to be a last minute, desperate attempt to take back the Corporate Debtor from SRA. This is against the spirit of the Code as the same director who was found indulging in fraudulent transaction by stripping of the Corporate Debtor of its valuable Brand "SMAAASH" as recorded in the order dated 22.11.2023 in IA/2115/2022, is not entitled to take back the Corporate Debtor. Accordingly, no directions can be given to the CoC to re-consider the settlement proposal under section 12A of IBC when CoC, in its commercial wisdom, has already rejected the said proposal.

20. Thus, based on our discussions and observations made in the preceding paragraphs, we are of the view that the Applicant has failed to make out any ground for rejection of the resolution plan or for any directions to the CoC to consider its settlement proposal.

21. Ld. Counsel for the Applicant also attempted to raise an objection on the procedure followed in the pronouncement of the Plan Approval Order. It is contended that the requirements of Rule 89(1) of NCLT Rules, 2016 governing the preparation and publication of daily cause list was not followed while listing the Plan IA for pronouncement of order. Rule 89 (1) of the NCLT Rules, 2016 is reproduced below:

89. Preparation and publication of daily cause list.

(1) The Registry shall prepare and publish on the notice board of the Registry before the closing of working hours on each working day the cause list for the next working day and subject to the directions of the President, listing of cases in the daily cause list shall be in the following order of priority, unless otherwise ordered by the concerned Bench; namely: -

(a) cases for pronouncement of orders;

(b) cases for clarification;

(c) cases for admission;

(d) cases for orders or directions;

(e) part-heard cases, latest part-heard having precedence; and

(f) cases posted as per numerical order or as directed by the Bench.

22. The Plan IA No. 69/2024 was reserved for orders on 11.04.2025. The order in IA/69/2024 came to be finalised on 06.05.2025 and was to be pronounced on 07.05.2025 but was inadvertently missed from the Cause List of 07.05.2025. Therefore, the Bench directed on 06.05.2025 evening to list the Plan IA by way of additional cause list which was uploaded on 07.05.2025 in the morning and pronouncement for order was kept at 2:30 PM. There is no provision either in the NCLT Rules or any other law which prohibits the preparation of additional cause list under appropriate circumstances due to missing out of any items and this has been a usual practice to upload revised/corrected/additional cause list. Thus, we do not find any non-compliance of Rule 89 of NCLT Rules, 2016.

27. We are of considered view that a person who approaches the Court/Tribunal must come with clean

hands. When we look at the conduct of the Applicant, it appears that the Applicant is making a desperate attempt to somehow derail the implementation of the resolution plan and completion of the CIRP of the Corporate Debtor. Thus, looking from any angle, we have no hesitation to hold that the present application merits dismissal.

29. In the result, for all the reasons discussed above, IA 1985/2025 is dismissed."

9. Though there is no reason to differ from the reasoning of the Ld. NCLT but in any case, during the course of the arguments, we find by *06.06.2025*, the plan has since been fully implemented and now there is nothing left to further adjudicate.

10. In ***"Torrent Power Ltd. vs. Ashish Arjunkumar Rathi and Ors.- (2026) SCC OnLine SC 325"***, the Hon'ble Supreme Court held as under:-

"13.1 In the present case, the Resolution Plan stands approved by both the NCLT and the NCLAT and has since been implemented, ***leaving absolutely no scope for intervention by this Court****.*

14.2 From an ex ante perspective also, the expectation of expansive judicial review distorts incentives for future bidders. Future resolution applicants may price legal uncertainty into their bids, either by discounting their offers or by refraining from participation in the CIRP altogether. This will weaken competition in the resolution process and reduce recoveries for creditors.

14.3 Excessive review also encourages strategic litigation. Stakeholders with little to no economic interest

in the Corporate Debtor may resort to litigation as a bargaining tool to delay implementation of the Resolution Plan or extract concessions, thereby converting the insolvency process into an adversarial contest. Such conduct takes the process away from its objective of value maximisation."

11. In ***"Kalyani Transco vs. Bhushan Power and Steel Ltd. & Ors.- 2025 SCC OnLine SC 2093"***, the Hon'ble Supreme Court held:-

"66. It can thus clearly be seen that the entire attempt of the appellants has been to thwart the CIRP and to not permit the same to be taken to a logical end. Having observed the conduct of the Appellants, we shall now proceed to deal with their contentions on merit.

c. Existence of the CoC after approval of the Resolution Plan by the Adjudicating Authority"

12. If one read the above paragraph 66 of ***"Kalyani Transco***" (supra) along with paragraph *27* of the impugned order, we would be left with nothing else to say. Even in an order dated 23.03.2026 in another appeal *viz.* Company Appeal (AT) (Ins.) No.944 of 2025, the following order was passed:-

"8. We are of the view that this Appeal need not proceeded any further and dismiss as infructuous.

9. It shall be open for the Appellant to challenge the subsequent order in accordance with law.

10. Ld. Counsel for Resolution Professional submitted that Plan has been fully implemented."

13. It is argued by the Ld. Counsel for the Appellant the order dated 23.03.2026 above kept it open for the Appellant to challenge the subsequent orders in accordance with law; but if we peruse the said order it says *the Resolution Plan has been fully implemented*. In this Appeal, the Appellant is again challenging the plan approval order which in fact is *not a subsequent order* per para (9) above. The plan has been fully implemented by 06.06.2025 per its approval order dated 07.05.2025 and hence, considering the nature of submissions, there is no scope for intervention.

14. Since the plan has been fully implemented and since the objections as raised by the Appellant has been fully dealt with in the impugned order and as we are not in variance to the reasoning given in the impugned order and also considering the scope of intervention at this stage *viz.* the plan being fully implemented, we find no merit in this Appeal. Accordingly, the Appeal is dismissed.

15. Pending applications, if any, are also disposed of.

[Justice Yogesh Khanna]
Officiating Chairperson

[Barun Mitra]
Member (Technical)

Anjali/md