NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1759 of 2026

IN THE MATTER OF:

Nandkumar Khattumal Harchandani **...Appellant(s)**

Versus

Incorp Restructuring Services LLP & Ors. **...Respondent(s)**

Present:

For Appellant(s)	:	Mr. Gopal Jain, Sr. Adv. with Mr. Kumar Anurag Singh, Mr. Kartik Saran, Mr. Zain A. Khan, Mr. Dev Aaryan & Mr. Mohd. Abran Khan, Advocates.
For Respondent(s)	:	Mr. Abhijeet Sinha, Sr. Advocate for RP. Mr. Arvind Verma, Sr. Adv. with Mr. Kunal Godhvani, Mr. Raghav Shukla, Ms. Ishika Rawat & Mr. Ankur Anand, for CoC.

O R D E R
(Hybrid Mode)

27.10.2026: **I.A. No. 6838 of 2026 in Comp. App. (AT) (Ins) No. 1759 of 2026**

Heard Shri Gopal Jain, Learned Senior Counsel for the Applicant as well as Shri Abhijeet Sinha, Learned Senior Counsel for the RP and Shri Arvind Verma, Learned Senior Counsel appearing for the opposite party No. 4 i.e., CoC.

2. Appellant in the aforesaid appeal has moved the aforesaid interim application under Rule 11 of the NCLAT Rules, 2016 for grant of following prayers: -

> *"In the premises aforesaid, it is most respectfully prayed that this Hon'ble Appellate Tribunal may graciously be pleased to:*

(a) permit the appellant to place on record the documents at Annexures 1 to 13;

(b) permit the Appellant to deposit, by FDR or DD in favour of the Registrar of this Hon'ble Tribunal, Rs. 75,00,00,000/- immediately which is kept in the form of FDR with IndusInd bank from last more than 9 months and the balance of Rs. 14,94,95,437/- of the admitted claim within 15 days thereafter, as set out in Part V; direct that the sums be kept in an interest-bearing deposit and not be released save under orders of this Hon'ble Tribunal; and clarify that the deposit is by way of security, without prejudice to the contentions of all parties, and does not constitute a discharge or settlement;

(c) take on record the Appellant's undertaking of cooperation under Section 19 of the Code at Part V(d) and Annexure 15;

(d) subject to the deposit under prayer (b), direct that status quo be maintained or until the Ld. Adjudicating Authority decides the interim prayers in I.A. No. 2962 of 2026, whichever is earlier, and that during that period Respondent No. 1 shall not issue the request for resolution plans under Regulation 36B, Respondent No. 1 otherwise continuing to discharge all its functions, with liberty to seek exclusion or extension of time;

(e) pass ad-interim orders in terms of prayers (b) to (d);

(f) clarify that nothing in the order expresses any view on the merits of I.A. No. 2962 of 2026, on withdrawal under Section 12A of the Code, or on quantum or interest; and

(g) pass such other order or orders as this Hon'ble Appellate Tribunal may deem fit and proper in the facts and circumstances of the case, in the interest of justice."

3. Ld. Counsel for the Appellant submits that the Appellant is the promoter and a suspended director of N. Kumar Housing & Infrastructure Private Limited (Corporate Debtor) and has preferred above mentioned Appeal against the impugned order dated 07.09.2026 passed by the National Company Law Tribunal, Mumbai Bench, Court-IV (Adjudicating Authority) in

I.A. No. 2739 (MB) of 2026 in C.P. (IB) No. 1093 (MB) of 2020 (Impugned Order).

4. It is further submitted that the intention of moving this application is not to close the CIRP of the Corporate Debtor or to permit withdrawal of the Section 7 application or to restore management or procuring any direction to decide the I.A. No. 2962 of 2026, which is pending before the Ld. Adjudicating Authority and this application is being moved (a) to permit him to deposit from his own funds whole of the amount as set out in Part V as security for the creditors and to require the sole financial creditor to state on affidavit whether it will accept the amount so deposited and also to take on record his undertaking of cooperation under Section 19 of the Code and further to defer for a short period and subject to the deposit the proceedings be stayed.

5. It is further submitted that a term loan of Rs. 62 Crore was sanctioned to the Principal Borrower on 23.03.2011, and the Corporate Debtor executed a Deed of Guarantee and only Rs. 25 Crore was disbursed to the Principal Borrower. However, the amount claimed against the Corporate Debtor multiplied overtime and was mentioned as Rs. 45,05,22,863/- in the recall notice dated 03.04.2017, Rs. 60,62,82,715.78/- shown as default on 31.12.2019 in Section 7 petition and Rs. 89,94,95,437/- as on 24.02.2023 and Respondent Omkara now asserts that the dues as on 31 July 2026 are more than 128 Crores, without any computation.

6. It is further submitted that the CD was admitted in CIRP on 24.02. 2023.The appeal against admission order was dismissed on 26.04.2023, however some period was granted for settlement, which was further extended by order dated 25.05.2023. In the meantime, respondent Omkara took the

assignment of the loan from the bank and is the sole financial creditor with an admitted claim of Rs. 89,94,95,437/- and 100% of the voting share.

7. It is submitted that it is known that in pursuance of the form G, expression of interests has been submitted and final list of PRAs has also been published and on 06.06.2026 a Settlement Proposal with payment of Rs. 89.94 crore was sent by email dated 10.06.2026, however Omkara replied that such proposal at this juncture is not permissible under applicable laws being barred under Section 12A (2) of the Code and thereafter some more correspondence has taken place between parties.

8. It is further submitted that appellant makes fresh offer in supersession of earlier proposal and willing to deposit immediately after an order of this Tribunal, Rs. 75,00,00,000/- (Rupees Seventy-Five Crores only), which are deposited in the form of FDR with IndusInd Bank from last more than 9 Months towards the entire admitted claim of the financial creditor of Rs. 89,94,95,437/-, by FDR or DD in favour of the Registrar of this Tribunal and within 15 days of this deposit the Appellant will deposit the balance of Rs. 14,94,95,437/- of the admitted claim of the financial creditor, in the same manner; and the Appellant undertakes to extend to the RP the necessary cooperation required by Section 19 of the Code, without prejudice to his contentions stated in Comp. App. (AT) (Ins) Nos. 1759-1761 of 2026 and the deposit is offered as security, pending further orders and it constitutes neither a discharge nor a settlement. It does not concede Omkara's claim to post-commencement interest or the quantum of that claim.

9. It is further submitted that Full payment is distinct from settlement, as ordinarily upon settlement Section 12A regulates the withdrawal of an

admitted application, however payment of the entire admitted debt is not a compromise as it discharges the debt and with it the default on which the CIRP rests. It is submitted that when every admitted claim and the CIRP costs are paid or secured, the continuation of the CIRP serves no purpose and the earlier rejection of proposal by the COC of the CD will also not come in the way as the same was on legal basis.

10. It is further submitted that the appellant be permitted to deposit the amount as aforesaid and the proceeding of the CIRP may kindly be stayed.

11. Ld. Counsel for the appellant has placed reliance on **Sandeep Gupta v. JM Financial ARC (Asian Hotels (West)), CA (AT) (Ins) Nos. 1192– 1193 of 2022**, decided by this Appellate Tribunal on 09.01.2024 and also on Achak Kumar Jindal v Sanjay Kumar Bhuwalaka and Anr., **CA (AT) (Ins) Nos. 2341 of 2024** decided on 30.06.2026.

12. Ld. Counsel for the Respondent Omkara Assets Reconstruction Pvt, Ltd., which has been impleaded subsequently as well Counsel for the RP on the other hand submits that the application filed by the appellant is wholly misconceived and is an abuse of the process, as under the guise of an interlocutory application in an appeal against a non-corporation order, the appellant seeks to halt the process of CIRP and to reopen a withdrawal, which is barred by section 12A of the code.

13. It is further submitted that Indian Bank, formerly known as Allahabad Bank, sanctioned a term loan of rupees 62 crores to the principal borrower on 23.03.2011, and the corporate debtor stood as corporate guarantor for the said loan and the Indian bank filed a petition under Section 7 of the Code

which was admitted by the Learned Adjudicating Authority by order dated 24.02.2023 and the CIRP process against the corporate debtor was initiated.

14. It is further submitted that the aforesaid admission order was challenged by filing a company appeal number 301 of 2023 which was dismissed by the Appellant Tribunal on 26th April 2023, however, an opportunity was granted to the appellant to negotiate with the financial creditor to come to a settlement, if any, before the COC is constituted, and for that purpose, a months' time was granted to the appellant for the purpose of making efforts for settlement. However, a writ petition number 3766 of 2023 was filed by another suspended director of the CD before the Hon'ble Bombay High Court, which was also dismissed on 17.10.2025. In the meantime, the Indian bank assigned its debt to the respondent under an assignment agreement dated 17th February 2026, and thus the respondent became the sole financial creditor with an admitted claim of Rs. 89,94,95,437/- 100% voting share in the CoC.

15. It is further submitted that that after Form G was issued, the suspended management sent a letter on 06.06,2026 titled settlement proposal, which among other sought release of the personal guarantee of the appellant and at the same time, the N. Kumar group asserted that the amount legally due is only about 46.36 crores. Therefore, via email dated 10.06.2026, the respondent informed that the proposal is not permissible under applicable law.

16. It is further submitted that on 07.07.2026, Ms Archana Wani, another suspended director, filed IA No. 2962 of 2026 seeking closure of the CIRP upon the payment of admitted claims, offering to deposit 50% of the admitted

amount before the Ld. Adjudicating Authority, and seeking stay on further steps in the CIRP Which is pending before the Ld. Adjudicating Authority for disposal and the reliefs sought in the instant application are substantially the same as have been requested in IA No. 2962 of 2026 and the only difference is that the offer of deposit has now been enhanced from 50% to the entire admitted amount, which is still the figure as on the insolvency commencement date.

17. It is further submitted that the respondent financial creditor has already refused and opposed such application, pointing the bar as contained under Section 12A (2) of the Code and also with regard to the conditional nature of the offer and also, the fact is that the dues as of now have exceeded more than Rs. 128 crores.

18. It is further submitted that, as the Appellant, being the suspended director of the CD, was not cooperating with the resolution professional, an application (being IA No. 2739 of 2026) was filed by the RP under Section 19(2) of the Code against the Appellant and other suspended directors for their continued non-cooperation. The Appellant did not appear despite service and was set ex parte and wilfully failed to cooperate and to hand over the custody of the assets of the CD. Thus, the adjudicating authority directed the suspended board of directors, including the appellant to hand over the possession of the records and assets of the corporate debtor within a week, by passing the impugned judgment.

19. It is further submitted that the Appellant, by moving the instant application, seeks leave to deposit Rs. 89,94,95,437/- in instalments and a direction to the respondent to state on affidavit whether it will accept that

amount. It also seeks a direction that the resolution professional shall not issue the request for a resolution plan until the adjudicating authority decides the interim prayers in IA No. 2962 of 2026. However, the reliefs sought by the Appellant are beyond the scope of the appeal and cannot be granted as such.

20. It is further submitted that the interim relief could only be granted in aid of the main relief. In the instant case, the subject matter of appeal is only the orders dated 3/9/2026 and 7/9/2026, whereby the Appellant has been set ex parte and certain directions have been issued under Section 19(2) of the Code with regard to non-cooperation of the Appellant and even if the appeal would succeed, the Appellant may not get the relief which he is seeking by moving this interim application, that too, in aid of an application which has been filed by another person and is pending before another forum i.e. the adjudicating authority. Reliance in this regard has been laid on **State of Odisha versus Madan Gopal Rungtaa, AIR 1952 SC 12, and Deepak Kishan Chabria and another versus Orbit Electricals Private Limited and others, Company Appeal No. (AT) 64 of 2020.**

21. It is further submitted that the application is an attempt to obtain under Rule 11 of the NCLT Rules what has been barred by Section 12A of the Code. In this regard, the law laid down by the Hon'ble Supreme Court in **GLAS Trust Company LLC versus Byju Raveendaran and others (2025 3 SCC 625), Vijay bhai, Dhanjibhai, Detroja versus Vidres India Ceramics Private Limited and another Company Appeal (AT) (INS) No. 1698 of 2026** and Regulation 30A (one of the CIRP Regulations, 2016) and Section 12A of the Code has been highlighted in order to impress that, when a specific provision has been made in the code with regard to withdrawal of application,

the withdrawal could only be possible through that mode and not otherwise and such powers cannot be exercised in contravention of the specific provisions of law. While in this case there is no consent of the financial creditor, no approval of the COC, and no application has been moved by the resolution professional, Form G has already been issued on 27/05/2026 (after the amended Section 12A of the Code came into force). Before the so-called proposal dated 06/06/2026, the question of withdrawal of the application is out of context.

22. It is further submitted that no such directions as desired by the Appellant could be issued to the financial creditor, keeping in view the various provisions of the Code. In this regard, the law laid down by the Hon'ble Supreme Court in **Vallal RCK versus Siva Industries and Holdings Limited and others (2022) 9 STC 803)** has been relied upon.

23. It is also submitted that the Appellant is offering Rs. 899,495,437, while it has been over 3.5 years since commencement of the CIRP proceedings as on 31 July 2026, the default amount in total has exceeded more than 128 crores and in these years, the suspended management has stalled the CIRP, and the instant application is another attempt to derail it. It is highlighted that the CIRP was initiated on 24/02/2023, but Form G could only be issued on 27 May 2026. The delay is entirely the result of proceedings initiated by the suspended management and the group at every stage. Even the undertaking given by the suspended directors on 26/07/2023 before the lender adjudicating authority to cooperate with the resolution professional was not honoured. Two days thereafter, on 08/06/2026, the Appellant published a caution notice in a newspaper, claiming that the land parcels of

the corporate debtor belonged to a partnership firm. Thereafter, the Appellant denied the resolution professional access to the assets of the CD on 09/06/2026 and 11/06/2026 and the conduct of the Appellant is such that he is not entitled to any discretionary relief. Therefore, the application moved by the Appellant is liable to be dismissed with costs.

24. Having heard Ld. counsel for the parties and having perused the record, it is reflected that the CIRP against the CD was initiated by the adjudicating authority vide order dated 24.02.2023 on an application filed by the Indian bank under Section 7 of the Code. This order was challenged by the suspended director of the CD by filing an appeal before this Appellate Tribunal, and on 26/04/2023, the said appeal was dismissed. However, a month's time was given to the suspended director of the CD to negotiate with the financial creditor to arrive at a settlement. For this purpose, it was directed that the COC shall not be constituted for one month. However, the suspended director preferred a writ petition No. 3766 of 2023 before the Hon'ble Bombay High Court. However, the same was also dismissed on 17.10.2025. It appears that the amount of Rs. 606,282,715.78/- was mentioned in the petition filed under Section 7 of the Code, and Rs. 89,94,95,437/- was admitted as on 24.02.2023. Thus, at the time of admission of the petition, the default amount was Rs. 89,94,95,437/-. However, as per the financial creditor, by the passage of more than 3 years, due to the interest component, the amount has now accumulated to about 128 crores.

25. During the course of submissions, it is also surfaced that the matter of initiation of CIRP has travelled up to the Hon’ble Supreme Court. However,

the admission order remained intact and has not been interfered with either by this Appellate Tribunal or by the Hon'ble Supreme Court.

26. We notice that CA (AT) (Ins) No. 1759 of 2026, wherein this application has been filed, was preferred against the order dated 07/09/2026. That was an application moved by the resolution professional under Section 19(2) of the IBC, read with Regulation 30 of the CIRP Regulations, 2016, seeking directions against the Respondent therein, who are the suspended directors/promoters of the corporate debtor, for their continued and wilful non-cooperation and obstruction in the CIRP process. Thus, in our considered opinion, the scope of this appeal is limited to the validity of the impugned order passed by the adjudicating authority.

27. We also notice that, admittedly, IA No. 2962 of 2026 has already been moved by the Appellant before the Ld. Adjudicating Authority, seeking closure of the CIRP upon payment of the amounts due to all creditors and stay of further steps in the CIRP and the reply has also been filed by the respondents therein. Therefore, an application with regard to the same prayers has already been filed by the Appellant/Applicant before the learned adjudicating authority, and the same is still pending for disposal.

28. We also notice that the learned adjudicating authority in the impugned order, in paragraph number 2, has noted its earlier order with regard to the non-cooperation by the suspended directors of the CD on two applications, IA No. 2192 of 2023 and IA No. 2958 of 2025, filed by the erstwhile IRP on 24/04/2023 and 12/06/2025 however, the Appellant and other directors of the CD did not furnish any information in compliance of the same.

29. We also notice that the RP has issued multiple communications to the Appellant and other directors of the CD for the purpose of taking control and custody of the assets of the CD. However, the RP has been denied access to the assets of the CD by the erstwhile directors, and they refuse to provide documentary evidence, title documents, and revenue records, as well as access to the site. The RP, based on financial statements of the CD, has traced title of the CD to certain properties situated at Nagpur, however possession of the same has also not been given to the RP.

30. We also notice that a mechanism has been provided in the Code with regard to the withdrawal of the application by the financial or operational creditor under Section 12A of the Code and Regulation 30A of the CIRP Regulation, 2016, as elaborated by the Hon'ble Supreme Court in the GLAS Trust case. In our considered opinion, a financial creditor cannot be compelled to enter into a settlement against its willingness in order to close the CIRP. If there is a settlement, the parties are bound to adopt the procedure laid down in the Code and Regulations, as highlighted by the Hon'ble Supreme Court in the GLAS Trust case.

31. We are also of the considered view that moving an application in this appeal, similar to the one already pending before Ld. Adjudicating Authority, which is limited to the impugned order dated 7/9/2026 (whereby certain directions under Section 19(2) of the Code have been passed by the Ld. Adjudicating Authority), is nothing but an abuse of the process of law and is an attempt of forum shopping, which could not be allowed by this Appellate Tribunal and is required to be dealt with iron hands. Moreover, the proceedings are now in rem.

32. Thus, keeping in view all the facts and circumstances of this case, we are not inclined to accept the request/prayers made by Ld. Counsel for the applicant/appellant. In result, the aforesaid application filed by the applicant/appellant is not having any merit and is **dismissed** as such. However, keeping judicial restraint, we are not imposing any cost on the Applicant/Appellant.

33. List the Appeal on **02.11.2026** for further proceedings.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

sr/kam