NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

I.A No. 7094 of 2026 in I.A. No. 1245 of 2026 in Comp. App. (AT) (Ins) No. 330 of 2026

IN THE MATTER OF:

EXCEL ARCADE PRIVATE LIMITED **...Applicant/Appellant**
3RD FLOOR, HDIL TOWERS, ANANT KANEKAR MARG, MUMBAI – 400051

Versus

UNITY SMALL FINANCE BANK LIMITED
CENTRUM HOUSE, CST ROAD, VIDYANAGARI MARG, KALINA SANTACRUZ (E), MUMBAI – 400098

...Respondent

Present:

For Applicant : Mr. Gaurav Mitra, Sr. Adv. with Ms. Neeha Nagpal, Ms. Asha Shah, Mr. Ajatshatru Singh Rawat, Ms. Aishwarya Modi, Adv

For Appellant : Mr. K. Dutta, Sr. Adv. with Mr. Atul Sharma, Mrs. Renuka Iyen, Mr. Aditya Vashisth, Mr. Arpit Paul, Adv.

O R D E R
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present matter relates to I.A. 7094 of 2026 filed by Applicant-Excel Arcade Pvt. Ltd. seeking recall of the order dated 22.05.2026 (hereinafter referred to as the '**impugned order**') passed by this Tribunal in I.A. No. 1245 of 2026 in Company Appeal (AT)(Ins) No. 330 of 2026.

2. Making submissions on behalf of the Applicant, Shri Gaurav Mitra, Ld. Sr. Counsel submitted that the Applicant vide Company Appeal No. 330 of 2026 had challenged an order dated 08.12.2025 passed by Adjudicating Authority in CP (IB) No. 1068/MB/2023. This appeal was accompanied with an application praying for condonation of delay in filing of the appeal which

application was dismissed by this Tribunal on 22.05.2026 on the ground that it had been e-filed beyond the outer limit of 30 + 15 days prescribed under Section 61(2) of the IBC. Contending that the delay was not occasioned by any negligence/laches on their part but was due to technical glitches in the e-filing system administered by the NCLAT Registry, their delay condonation application ought not to have been rejected by this Tribunal. The present application I.A. No. 7094 of 2026 is a recall application filed before this Tribunal seeking correction of the prejudice suffered by them for rejection of their condonation of delay application by this Tribunal.

3. Elaborating further on the condonation of delay application, it was submitted that the 45 days outer time-period to file the appeal against the order dated 08.12.2025 passed by the Adjudicating Authority was to come to an end on 22.01.2026. The concerned counsel had readied all the documents and thereafter attempted to e-file the appeal on 22.01.2026 but could not succeed since the e-filing portal of the Registry of this Tribunal was unresponsive. On account of this technical bottleneck, the counsel sent an email to the IT Support Wing of this Registry on 22.01.2026 at 22:36 hours along with the copy of the appeal petition with a request that the email be treated to serve the purpose of e-filing. Though the above email dated 22.01.2026 was received by the NCLAT Registry, but the same got quarantined by phishing protection controls of this Registry for which the Applicant cannot be blamed or held responsible in any manner. The appeal could thereafter be effectively e-filed only on 28.01.2026.

4. The Ld. Counsel for the Applicant submitted that in similar circumstances, the Hon'ble Supreme Court in ***Regional Provident Fund Commissioner-II vs. Ms. Mamta Binani & Ors 2026 INSC 1003*** had dismissed an order rejecting the condonation of delay application beyond the 45 days period passed by this Tribunal since the delay in e-filing was on account of technical defects in the back-end of NCLAT Registry. The Hon'ble Apex Court further held in this case that the date on which the first bonafide attempt was made by the litigant to e-file the appeal is what is to be kept in mind while computing limitation period. The Hon'ble Supreme Court held that in such special circumstances, the NCLAT ought to have invoked the higher principle of "*actus curiae neminem gravabit*". It was therefore contended by the Applicant that in the present case too, the same precept was applicable and limitation should have run against them only from the date when the e-filing portal was open and functional to receive the appeal. The date of first attempt to e-file by the Applicant should have been treated as date of presentation of the appeal since the fault lay with the e-filing system of the NCLAT Registry and as this was not done, hence, the recall application ought to be allowed by this Tribunal in exercise of the inherent powers under Rule 11 of NCLAT Rules.

5. It was further submitted that the Applicant had made an attempt to e-file the appeal on 22.01.2026 but finally succeeded in doing so only on 28.01.2026 which was admittedly 5 days beyond the 30+15 days period. It was emphatically asserted that even during the 5 intervening days between 22.01.2026 and 28.01.2026, the Applicant had continued to make efforts to

e-file the appeal though unsuccessfully. Towards explaining the 5 days gap, it was submitted that there were only two effective working days as 24.01.2026 and 25.01.2026 fell on Saturday and Sunday while 26.01.2026 was a gazetted holiday on account of Republic Day.

6. It was also belaboured that this Tribunal in the impugned order had wrongly rejected their delay condonation application by relying on the NIC report received by the NCLAT Registry which stated that the NCLAT portal was functional on 22.01.2026 as 70 filings were done on that day. It was contended that this report cannot be relied upon as it does not disclose the exact time when these 70 filings were done. Nor does the report establish that appeals were successfully filed by others during the same time when the Applicant also made its attempts to file the appeal but had failed. It was contended that the fact that some users were able to e-file their appeal at some hours of the day does not establish that portal was available to the Applicant at the time they had attempted to e-file their appeal. It vehemently contended that this Tribunal has not considered the absence of time-stamps in the report of the NIC in respect of the 70 filings and that this Tribunal while rejecting their delay condonation application had not dealt with this aspect.

7. Repelling the above arguments, Shri Krishnendu Datta, Ld. Sr. Counsel for the Respondent contended that the recall application cannot be entertained as it is not maintainable. It was asserted that there are limited grounds for filing the recall application viz. when an order has been obtained by fraud or collusion or when a necessary party has not been impleaded or when the court has mistakenly passed an order or that the court lacked

jurisdiction to pass such an order. Since none of these grounds have been made out, the question of entertaining the recall application does not arise.

8. Submission was further pressed that in the present case, the delay condonation application had been rejected by this Tribunal by way of a detailed impugned order on 22.05.2026. This impugned order was a well-reasoned, speaking order which was never challenged by Applicant before the Hon'ble Supreme Court. This distinguishes the factual matrix of the present case from that of ***Mamta Binani*** case. In the ***Mamta Binani*** case, the aggrieved litigant had challenged the rejection of their delay condonation application by filing an appeal before the Hon'ble Supreme Court. In the present case when the Applicant did not file an appeal before Hon'ble Apex Court within the prescribed limitation period, the impugned order passed by this Tribunal dated 22.05.2026 had attained finality. It is only on realising that the Applicant cannot appeal before the Supreme Court having turned time-barred, the present recall application is a clever attempt to seek a back-door entry to re-open their Company Appeal.

9. We have heard the arguments advanced by both the parties as well as perused the records carefully.

10. The first issue before us is the maintainability of the recall application. To answer this question, we would like to rely on the principles set out by the judgement of the Hon'ble Supreme Court of India in ***Budhia Swain v. Gopinath Deb (1999) 4 SCC 396.*** This judgement delves into the intricacies surrounding the powers to review or recall orders and serves as a reference-

point in delineating the boundaries of review and recall powers. The relevant extract from the order is as reproduced below:

> ***"8.*** *In our opinion a tribunal or a court may recall an order earlier made by it if:*
>
> *(i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent,*
>
> *(ii) there exists fraud or collusion in obtaining the judgment,*
>
> *(iii) there has been a mistake of the court prejudicing a party, or*
>
> *(iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented.*
>
> *The power to recall a judgment will not be exercised when the ground for reopening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed. The right to seek vacation of a judgment may be lost by waiver, estoppel or acquiescence.*
>
> ***9.*** *A distinction has to be drawn between lack of jurisdiction and a mere error in exercise of jurisdiction. The former strikes at the very root of the exercise and want of jurisdiction may vitiate the proceedings rendering them and the orders passed therein a nullity. A mere error in exercise of jurisdiction does not vitiate the legality and validity of the proceedings and the order passed thereon unless set aside in the manner known to law by laying a challenge subject to the law of limitation.****"***

11. It is the case of the Applicant that the recall application is warranted since the impugned order had failed to appreciate that their attempt to e-file the appeal within the prescribed limitation period had failed not on account of any lapse or negligence on their part but because of system failure of the e-filing portal which had turned unresponsive. To overcome the stalemate arising out of the technical glitch, the Applicant had been compelled to send the appeal petition by email but the same got quarantined due to back-end phishing control checks put in place by the Registry. It was also contended that while in terms of the extant NCLAT circular, an email cannot substitute

the requirement of e-filing, in the present case, this recourse of filing the appeal through email had to be resorted to because of the exceptional circumstances on account of non-responsiveness of the e-filing portal of NCLAT Registry. Furthermore, in view of the fact that in similarly placed peculiar circumstances, the ***Mamta Binani judgment*** had restored the delay condonation application therein, applying the same ratio, the present recall application stood well justified.

12. Per contra, it is the case of the Respondent that since none of the grounds for recall as outlined in the ***Budhia Swain judgement*** have been demonstrated by the Applicant to be applicable in the present case, the question of entertaining the recall application does not arise. It is also their contention that it is a misconceived proposition on the part of the Applicant to rely on the ***Mamta Binani judgment*** for in that case the rejection of the delay condonation application was challenged by filing an appeal before the Hon'ble Supreme Court and was not a recall application.

13. When we look at the material on record, we find that it has not been substantiated by the Applicant as to whether and how the impugned order can be said to have been obtained by fraud or collusion or passed without their impleadment as necessary party or that the court lacked jurisdiction to pass such an order or was mistakenly passed so as to justify the filing of a recall. We also notice that in the present case, the recall application was filed on 24.09.2026 after lapse of more than four months since the passing of the impugned order by this Tribunal on 22.05.2026. The Applicant did not challenge the impugned order and waited until the passing of the ***Mamta***

Binani judgment on 10.09.2026 and thereafter within a fortnight therefrom, filed the recall application on 24.09.2026. The recall application not having been premised on any of the grounds provided for in the ***Budhia Swain judgement***, this is clearly a camouflaged attempt to seek review of the judgment in the guise of recall which cannot be permitted as it upsets the doctrine of finality.

14. The ***Budhia Swain judgement*** as extracted above reinforces the principle of finality and mandates that challenges to orders must be grounded in expressly provided legal avenues and processes. The principle of *res judicata* and the doctrine of finality is one of the edifices on which the judicial architecture rests to checkmate arbitrary or unfounded attempts to overturn concluded decisions.

15. The impugned order which has been sought for recall was a reasoned, speaking order which was never challenged by Applicant before the Hon'ble Supreme Court even after having participated in the proceedings therein before this Tribunal. Upon an order having attained finality, any party aggrieved by the order must exhaust his remedies within the legal framework. The principle of *res judicata* is hinged on the pivotal framework that issues once decided conclusively in a *lis* may not be reopened for if it were to be otherwise, no dispute can be resolved or concluded. It is no longer open to the litigant to undo the effect of any order unless it is established that the order was obtained by fraud/collusion or that necessary party was excluded therefrom or that the court lacked jurisdiction or had mistakenly passed the order. It matters little as to whether the order passed was erroneous as long

as *lis* is heard and a conclusive finding thereon has been rendered and such finding has remained unchallenged. In the present case, the delay condonation application stood decided on the merits and was not challenged within the prescribed period of limitation before the next higher appellate body, hence, the order had acquired finality. The recall application, in the shape that it has been filed, has the characteristics of review of an order passed on merits. We are of the considered view that allowing the present recall application will tantamount to disturbing the foundational principles of *res judicata* which we do not countenance.

16. This brings us to the second limb of argument canvassed by the Respondent that in the ***Mamta Binani*** judgment, the Hon'ble Supreme Court took cognisance of the fact that the litigant therein had overshot the 30 + 15 days limitation period by only one day while in this case, the Applicant has tried to gloss over 5 days delay beyond 45 days after the initial e-filing on 22.01.2026 purportedly failed. To our minds, the plea taken by the Applicant that there were 3 days of intervening holidays to explain the delay is a frivolous argument since e-filing facility in the Registry remains functional and open 24x7x365 and holidays do not come in the way of e-filing of an appeal. The Applicant has thus grossly failed to explain the mitigating reasons for the 5 days delay in filing of the appeal beyond the statutorily permissible period which puts serious question marks on the claim of the Applicant that they were steadfastly pursuing their quest for filing Company Appeal (AT)(Ins) No. 330 of 2026 in a bonafide manner.

17. At this stage it is also felt necessary to observe that since this is a recall application, we are neither expected nor do we wish to enter into the merits of the impugned order. Hence, we are refraining from looking into the contention raised by the Applicant with regard to the absence of time-stamps in the report of the NIC regarding the 70 filings purportedly completed on the e-filing portal on the same day on which the Applicant had admittedly failed to e-file their appeal. The power of recall is not the power to rehear the case to find out any apparent error in the judgment. This lies in the scope and ambit of a review of judgment which power to review has not been vested upon this Tribunal.

18. In result, the present recall application lacks merit and is accordingly dismissed. 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