

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1221 of 2026

IN THE MATTER OF:

**Institute of Instrumentation & Media
Science and Ors.**

...Appellant(s)

Versus

**Sudha Sarma (Liquidator of Mayak
Infrastructure Pvt. Ltd.)**

...Respondent(s)

Present:

For Appellant : Mr. Shubhranshu Padh, Mr. Aman Varma, Ms. Riya Wasade, Mr. Ritik Sharma & Mr. Minal Mishra, Advocates.

For Respondents : Mr. Nirmal Goenka, Liquidator.

O R D E R
(Hybrid Mode)

[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]

I.A. No. 4518 of 2026- The instant application has been filed by the appellants requesting to condone the delay of 17 days which has occurred in re-filing the appeal.

Keeping in view the explanation given in paragraph no. 6, 7, 8 and 9 of the application we are satisfied that the delay of 17 days occurred in re-filing the appeal has been sufficiently explained and thus the aforesaid application is allowed and the delay of 17 days occurred in re-filing the appeal is hereby condoned.

CA (AT) (Ins) No. 1221 of 2026

2. Instant appeal has been filed against the impugned order dated 13.05.2026 passed by the National Company Law Tribunal, Guwahati

CA (AT) (Ins) No. 1221 of 2026

Bench, (Adjudicating Authority) in IA(IBC)/42/GB/2026 (recall application) moved in CP IB/10/GB/2021 whereby Ld. Adjudicating Authority has dismissed the recall application filed by the appellants.

3. Ld. Counsel for the appellant submits that the appellant No. 1 is a trust and runs an educational institute and has taken the 1st floor of the 3-storied building situated at Khaitan No. 1133/3242, Plot No. 196/2276, Area 105 Dec, Mouza Bhubaneswar Jagamaga Tehsil District Bhubaneswar, Khorda Odisha on lease from its recorded owners/landlords Mr. Prakash Chandra Bijuli and Mr. Subhendra Kumar Bhanjadeo, on the basis of an unregistered lease agreement dated 03.01.2023.

4. It is further submitted that during the subsistence of the lease agreement the liquidator of Nayak Infrastructure Pvt. Ltd. approached the appellants and being bona fide tenant appellants provided all requisite information and thereafter the appellants vacated the said premises on 10.07.2024 to avoid any legal complications and the fact of vacation of the property was informed to the recorded owners through a notarized acknowledgement dated 27.08.2024 and the lease agreement was also terminated with effect from 10.07.2024 and no dues remained outstanding against the appellants.

5. It is further submitted that vide email dated 03.09.2024, appellant no. 1 expressly informed the liquidator about the vacation of the property on 10.07.2024 but even having knowledge of the vacation of the property the liquidator filed an IA being IA(IBC)/159/GB/2024 under Section 35 of the Code against the appellants for seeking possession of the property and arrears of rent on the basis of incorrect facts.

6. It is further submitted that appellants were never served with any notice moved under Section 35 of the Code and on the basis of incorrect information given by the liquidator the Ld. Adjudicating Authority proceeded ex-parte against the appellants and passed an ex-parte order dated 13.12.2024 (ex-parte order) granting the prayers of the Respondent including the direction to the appellants to vacate the subject property and also to pay the arrears of rent without providing any opportunity of being heard to the appellants.

7. It is further submitted that a contempt application being Contempt Application No. (IBC)/2/GB/2025 was also filed for non-compliance of the order dated 13.12.2024 and when the notices issued with regard to the contempt application were published in two newspapers the appellants came to know the passing of the order dated 13.12.2024 and apart from filing their reply in contempt application they filed the recall application before the Ld. Adjudicating Authority for recalling the ex-parte order dated 13.12.2024 which has been dismissed by passing the impugned order.

8. It is submitted that no notice of Section 35 application was ever served on the appellants and the in correct addresses of the appellants were given in the application and even after knowledge that the property has been vacated by the appellants on 10.07.2024 the aforesaid application was filed by the liquidator.

9. It is further submitted that the Ld. Adjudicating Authority has not considered the submissions of the appellants in right perspective and only on the ground of limitation dismissed the recall application.

10. It is also submitted that the Ld. Adjudicating Authority has failed in its duty to dispose of the recall application on its merits.

11. Learned Counsel for the liquidator submits that the appellants were in knowledge of the proceedings pending before the learned adjudicating authority. They, after having full knowledge of the pendency of the proceedings, did not voluntarily appear before the learned adjudicating authority and therefore they have been rightly proceeded ex parte.

12. It is further submitted that the communication and notices apart from sending through speed post were also sent on the email address of the appellants and the emails have not bounced and thus the communications sent on the email address of the appellants were received by them and even thereafter they did not appear before the Ld. Adjudicating Authority.

13. It is further submitted that the appellants, in response to the email sent by the liquidator dated 18th March 2024, sent an email on 3rd September 2024 contending that they have vacated the property on 10th July 2024. Therefore, it is evident that the email address used by the liquidator and Ld. Adjudicating Authority for sending notices and communications to the appellants was valid and all communications and notices sent on this email ID have been received by the appellants.

14. It is also submitted that an affidavit was also filed by the authorized representative appointed by the liquidator wherein it was submitted that the appellants refused to accept the notices and certain photographs were also enclosed with the affidavit, along with GPS map camera with date and time.

15. It is further submitted that notices issued by the liquidator through email as well as speed post were delivered to the appellants on 3rd October

2024 and the notices issued by the registry were also delivered to the appellants on 14th October 2024. Thus the appellants were having all knowledge with regard to the pendency of the IA moved by the liquidator and of its progress. At every step they were informed by the liquidator pertaining to the proceedings taking place in that IA.

16. It is also submitted that even after getting the knowledge of the order dated 13th December 2024, the application for its recall has been moved with a long delay of about 400 days. No iota of explanation has been given for such a huge delay and thus the application for recall moved by the appellants has been rightly rejected by the Ld. Adjudicating Authority.

17. We have heard Ld. Counsels for the Appellants and Respondent liquidator and have also perused the record.

18. Perusal of the record would reveal that an IA being IA (IBC)/159/GB/2024 was moved by the liquidator before the Ld. Adjudicating Authority in CP IB/10/GB/2021 with the following prayers:

- “a) To direct the Respondents to handover the vacant and peaceful possession of the subject property i.e. bearing Bhubaneshwar Sahar, Unit No. 20, Jagamara, Khata No. 321, corresponding to Mutation Khata No. 1133/3242, Sthitiban, Plot No. 196/2276, Kisam - Gharabari-2, District - Khurda, P.S New Capital, Khandagiri, Tehsil Bhubaneshwar, Odisha, admeasuring 508.20 Sq yards, bounded by Revenue Plot No.2275 to the North, Revenue Plot No. 2277 to the South, Government Road to the East and Revenue Plot no. 2274 to the West to the Applicant/Liquidator immediately;*
- b) If the Respondents fail to handover the vacant and peaceful possession of the subject property to the Applicant, then direct the DCP, Khandagiri and/or the District Magistrate, Khandagiri to provide protection to the Applicant for taking possession of the subject property;*
- c) To direct the Respondent Nos. 1 to 3 to pay the arrears of rents of Rs. 46,50,000/- (Rupees Forty- Six Lakhs Fifty- Thousand Only) for the period of 03.01.2023 to*

30.07.2024 and Rs. 1,50,000/- (Rupees One Lakhs and Fifty Thousand Only) per month, thereafter until peaceful possession of the Subject Property to the Applicant;
d) To direct the Respondents not to create any third-party interest in the subject property till the adjudication of the present matter;
e) Pass such further and other orders and directions as the nature and circumstances of the case may require and as this Hon'ble Tribunal may deem fit and proper”.

19. It is also reflected that vide order dated 26.08.2021 insolvency process was initiated against the CD i.e. Nayak Infrastructure Pvt. Ltd. and Mr. Vishal Ghisulal Jain was appointed as IRP and was confirmed later on as RP.

20. It is also reflected that vide order dated 07.12.2023, passed in IA No. 86 of 2023 in the aforesaid petition the liquidation process was initiated and Ms. Sudha Sarma was appointed as the liquidator of the CD.

21. It is contended in the application moved by the liquidator that on perusing the record it was discovered that the erstwhile RP had attempted to take possession of the subject property but remained unsuccessful due to the action of Prakash Chand and Subhendra Kumar and on visiting the subject property it is discovered that the same has been illegally rented to the International Institute of Rehabilitation Sciences and Research (IIRSR) by aforesaid Prakash Chand and Subhendra Kumar and when the RP attempted to deploy the security guards on the property he was resisted by the aforesaid persons. On 12.07.2022, RP visited the subject property for taking possession as the same was vacated by IIRSR on 10.06.2022 however the aforesaid persons manhandled RPs team with the help of local goons.

22. It is also reflected that on 12.09.2022, the erstwhile RP filed an application under Section 66 of the Code against the aforesaid two persons namely Prakash Chand and Subhendra Kumar which is stated to be pending till now.

23. It is further reflected that on 17.02.2024 and 19.02.2024 liquidator visited the property to take control and custody of the same however discovered that appellants were illegally occupying the same and on the insistence of the liquidator, instead of vacating the property appellants produced a illegal lease agreement dated 03.01.2023 executed between appellant SAR Welfare Trust and aforesaid two persons i.e. Prakash Chand and Subhendra Kumar and appellants claimed themselves to be the tenants of the property.

24. It is further reflected that appellants also claimed to be paying a monthly rent of Rs. 1,50,000 to aforesaid two persons but no proof of such payment was provided to the liquidator. On 18.03.2024, the liquidator issued a notice to the appellants demanding to vacate the premises which was delivered through email however even after receiving the notice the Respondents did not reply nor handed over the possession of the property to the liquidator.

25. It is further reflected that Appellant No. 2 and 3 were Respondents before the Ld. Adjudicating Authority in the application filed by the liquidator under Section 35 of the Code.

26. Perusal of the order dated 13.02.2024 would reflect that the subject property was sold by the aforesaid Prakash Chand and Subhendra Kumar to the CD and they were not having any right of any kind over the property and

the property belongs to the CD. Ld. Adjudicating Authority found the possession of the appellants as wrongful and stated to have been made to defeat the objectives of the Code. The application filed by the liquidator was allowed and appellants were directed to vacate the aforesaid premises failing which the Police Authorities were commanded to help the liquidator in taking possession of the property and the appellants were further directed to pay arrears of rent of Rs. 46,50,000/- for the period from 03.01.2023 to 30.07.2024 @ Rs. 1,50,000/- and thereafter until peaceful possession of the property.

27. It is also evident that the IA No. 42/GB/2026 was filed by the appellants for recalling the aforesaid order dated 13.12.2024 passed in IA No. 159/GB/2024 and also to pass an order of staying the contempt proceedings.

28. Perusal of the impugned order of date 13.05.2026 would reflect that the Ld. Adjudicating Authority found that it is admitted to the appellants that they have communicated with the liquidator through email id i.e. iims.khandagiri@gmail.com and on this email id repeated notices and reminders were issued by the liquidator, Counsel for the liquidator and also by the Registry of the Ld. Adjudicating Authority. We have also very categorically put a query to Ld. Counsel for the Appellant as to whether the aforesaid email is owned by the appellants and it has been very fairly replied that the aforesaid email is of the appellants. Thus, it is evident that apart from sending the notices through post the notices were also sent to the appellants by the Registry of the Ld. Adjudicating authority as well as by the liquidator on aforesaid email of the appellants and since the emails have not

CA (AT) (Ins) No. 1221 of 2026

bounced there is every presumption that the email has been served on the appellants. No doubt there was a rebuttable presumption of receiving the emails sent by the liquidator and the Registry of Ld. Adjudicating Authority to the appellants, however nothing has been produced before Ld. Tribunal or before us by the appellants which may rebut this presumption and the acknowledgment of the Ld. Counsel for the Appellant with regard to the authenticity of the aforesaid email address fortifies that all the communication sent by the liquidator and the Registry of the Ld. Adjudicating Authority were received by the appellants. Thus, we are in agreement with the conclusions drawn by the Ld. Adjudicating Authority that the appellants now cannot claim that they were not having any knowledge of the application moved by the liquidator under Section 35 of the Code in pursuance of which the order dated 13.12.2024 has been passed.

29. It is also reflected that on 17.02.2024 and 19.02.2024 the liquidator has visited the property to take possession of the same and found the appellants illegally occupying the same, claiming themselves to be the tenants of the property on the basis of unregistered lease agreement.

30. A report has been submitted by the Professional appointed by the liquidator of date 05.08.2024 informing that the possession of the premises could not be taken. In response to the email dated 18.03.2024 send by the liquidator, appellants have also sent an email on 03.09.2024 to the liquidator contending that they have vacated the property on 10.07.2024. However, on 04.09.2024 Mr. Ajay Kumar Mohapatra who was appointed by the liquidator attempted to serve the copy of IA no. 159 of 2024 on the

appellants however they refused to accept the copy, which shows that the appellants were still in possession of the premises. In the order dated 05.09.2024 of the Ld. Adjudicating Authority it is recorded that the notices send by the Registry have been received by the appellants however they did not appear. The liquidator on 19.09.2024 also sent an email to the appellants informing of the next date fixed in the IA No. 159/2024. The email was also sent by the liquidator on 03.10.2024 intimating the pendency of the aforesaid IA No. 159/2024 and when the appellants did not appear before the Ld. Adjudicating authority they were proceeded ex-parte on 18.10.2024.

31. We have also asked Ld. Counsel for the Appellant to provide us any proof of the payment of the rent to the aforesaid two persons i.e. Prakash Chandra and Subhendra Kumar in pursuance of lease agreement and it is replied that the appellant is not having any proof of the payment of rent to the aforesaid two persons who were claiming to be the owners of the property.

32. We also notice that the Ld. Adjudicating Authority has also made observations with regard to the knowledge of the proceedings of IA No. 159 of 2024 to the appellants and the relevant portion of the observation of the Ld. adjudicating authority is reproduced as under:

“8. This Tribunal, upon perusal of the records, observes as follows:

- On 22.08.2024, an advance copy of I.A(IBC)/159/GB/2024 was served through Email by the Respondent's Counsel.*
- Thereafter, on 30.08.2024, the Respondent's Counsel informed the Applicants that the matter was listed on 29.08.2024 before this Tribunal and further took note that*

this Tribunal was to issue notice. The matter was listed on 05.09.2024.

- *On 29.08.2024, this Tribunal directed the Liquidator as well as the Registry to issue notice to the Respondents.*
- *Pursuant thereto, notice issued by the Registry of this Tribunal was delivered on 03.09.2024 and notices were also served by the Liquidator.*
- *Thereafter, on 03.09.2024, the Applicants sent an Email contending that they had vacated the property.*
- *Thereafter, an affidavit was filed by the authorised representative appointed by the Liquidator wherein it was submitted that the Applicants/Respondent No. 1 to 3 in I.A(IBC)/159/GB/2024 refused to accept the notices, which is also evidenced from photographs duly taken from GPS Map Camera with date and time.*
- *On 05.09.2024, this Tribunal recorded that the notices sent through the Registry to Respondent No. 1 to Respondent No. 4 were duly received by them.*
- *Thereafter, on 19.09.2024, the Liquidator informed the next date of hearing vide Email.*
- *Thereafter, again on 20.09.2024, the Registry as well as the Liquidator were directed to issue notices to the Respondents.*
- *Pursuant thereto, the Liquidator issued notices through Email as well as Speed Post, which were delivered on 03.10.2024, while the Registry also issued notices through Speed Post which were delivered on 14.10.2024.*
- *Thereafter, on 18.10.2024 it was observed that Respondents were served by speed post and further notices were issued through the Registry and since they are not participating in the proceedings and were wilfully disobeying the notices sent by this Tribunal, ex parte proceeding was initiated against the Respondent Nos. 1, 2, 3, and 4”.*

33. Keeping in view the aforesaid facts we are in full agreement with the conclusions drawn by the Tribunal that sufficient and adequate opportunities were provided to the appellants in disposal of IA No. 159/2024 and due communications were sent on the email of the appellants which has not been denied by the appellants.

34. We are also in agreement with the conclusions drawn by the Ld. Adjudicating Authority that the recall application has been filed with delay of 400 days and keeping in view the time bound proceedings to be undertaken under the IBC framework this delay of 400 days could not be condoned or ignored in absence of any cogent reasons provided by the appellants for their non-appearance before the Ld. Adjudicating Authority during the course of proceedings of IA No. 159/2024.

35. Admittedly, there is no element of fraud or misrepresentation in order dated 13.12.2024 and in our considered opinion also no sufficient cause has been shown by the appellants for not contesting the application no. 159/2024 wherein the order dated 13.12.2024 was passed and thus for the reasons given herein before we do not find any illegality in the impugned order passed by the Ld. Adjudicating authority.

36. Resultantly, appears to be devoid of merits and is **dismissed** as such.

37. There is no order as to costs.

38. Pending IA's if any are also closed.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

New Delhi
27.07.2026
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