

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1231 of 2026

&

I.A. No. 4752 of 2026

IN THE MATTER OF:

**Suhail Salim Sumar Suspended Partner
Sumarrow Impex LLP**

...Appellant(s)

Versus

**Drip Capital Inc & Anr.
Present:**

...Respondent(s)

For Appellant : Mr. Manu Bansal, Adv.

For Respondents : None

ORDER
(Hybrid Mode)

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

IA No. 4752 of 2026

Instant Application has been filed by the Appellant under Section 5 and 14 of the Limitation Act, read with Section 61 and Section 238A of the Insolvency and Bankruptcy Code 2016 (Code) in Company Appeal (AT) (Insolvency) No. 1231 of 2026, challenging the order dated 10-10-2025 passed by the National Company Law Tribunal Ahmedabad (Adjudicating Authority), whereby the petition filed under Section 7 of the Insolvency and Bankruptcy Code by the Respondent was admitted, with the prayer to condone the delay of 201 days which has occurred in filing the appeal.

2. Learned counsel for the applicant /appellant submits that Appellant is the suspended Director and Partner of M/s Sumarrow Impex LLP and is aggrieved by the passing of the impugned order dated 10/10/2025.

3. It is further submitted that immediately after passing of the Impugned Order and within the statutory period prescribed under Section 61 of the Code, an appeal challenging the Impugned Order dated 10/10/2025 was preferred before this Appellate Tribunal on 6/11/2025, being Company Appeal (AT) (Insolvency) No. 1995 of 2025. However, due to mistaken legal advice and inadvertent error, the caption of the appellant was used as "M/s Sumarrow Impex LLP " instead of describing the appellant as the suspended partner of the CD.

4. It is further submitted that, due to inadvertent and unintentional circumstances, the appeal came to be dismissed for non-prosecution on 19th January 2026. However, immediately upon knowledge thereof, restoration proceedings were initiated, and the appeal was restored to its original number.

5. It is next submitted that an application seeking amendment in the appeal was also moved, which was allowed by the Appellate Tribunal on 7th May 2026, and the matter was posted for admission, however, on 22nd May 2026, objection was taken by the respondent regarding the maintainability of the appeal as being filed in the wrong name. This Appellate Tribunal, relying upon the judgment passed by the Hon'ble Supreme Court in the case of **Nitendra Kumar Tomar, suspended director of Ambro Asia Private Limited, vs Unox SPA and another**, (2026) ibclaw.in 195 SC noted that the period of 45 days has already expired and dismissed the appeal as not maintainable. However immediately thereafter, the present appeal was drafted by the Counsel till 27th May 2026 and was sent for signing of the appellant and was e-filed on 28th May 2026.

CA (AT) (Ins) No. 1231 of 2026 & IA No. 4752 of 2026

6. It is further submitted that the earlier appeal was not dismissed on merits, but was dismissed solely on account of a technical defect regarding the description of Appellant in the appeal. The earlier appeal, though, was captioned in the name of the LLP but was instituted, verified, signed, and prosecuted throughout by the suspended partner of the LLP, who is the appellant in this appeal also.

7. It is also submitted that the appellant has substantial grounds in the appeal, and grave prejudice and injustice would be caused if the appellant is denied adjudication on merits merely on account of a bona fide technical defect in the earlier proceedings.

8. It is further submitted that the period spent in earlier proceedings, with effect from 6th November 2025 till 22nd May 2026, is liable to be excluded while calculating the period of limitation of the present case. As per the appellant, the delay of only 5 days has occurred in filing the instant appeal, while the registry has reported a delay of 201 days.

9. It is thus requested that the delay of 201 days, as highlighted by the registry, which, according to the applicant, is only of 5 days, may kindly be condoned and the appeal be heard and decided on merits.

10. Ld. Counsel for the Appellant has relied on the following judgments:

(i)Haldiram Bhujiawala vs. Anand Kumar Deepak Kumar, 2000 (3) SCC 250

(ii)Roshanlal Kuthiala & Ors. vs. R.B. Mohan Singh Oberoi, 1975(4) SCC 628

(iii)Consolidated Engg. Entrp. Vs. Principal Secy. Irrigation Deptt. & Ors. (2008) 7 SCC 169

CA (AT) (Ins) No. 1231 of 2026 & IA No. 4752 of 2026

11. Having heard Ld. Counsel for the Appellant and having perused the report, it is reflected that the Appellant had earlier filed the Company Appeal (AT) (Ins) No. 1995 of 2025 challenging the impugned order dated 10-10-2025 passed by the Learned Adjudicating Authority, whereby the Section 7 application moved by the Respondent against the Appellant was admitted.

12. It is further reflected that the said CA (AT) (Ins) No. 1995 of 2025 was filed in the name of the CD, i.e., Sumarrow Impex LLP, through its designated partner, Mr. Suhail Salim Sumar and during the pendency of the aforesaid appeal, objection was raised by the Respondent that the appeal has been filed in the name of the CD and therefore is not maintainable.

13. We notice that an amendment application was earlier filed by the applicant, being IA No. 2919 of 2026, which was allowed by this Appellate Tribunal vide order dated 7th May 2026. However, on an objection taken by the respondent with regard to the maintainability of the appeal, this Appellate Tribunal, by passing order dated 22nd May 2026, dismissed the appeal. The relevant part of the said order is reproduced as under: -

“This appeal has been filed challenging order dated 10.10.2025 passed by the Adjudicating Authority admitting Section 7 application against the Appellant. The Appeal has been filed in the name of the Corporate Debtor. The appeal has been filed on 06.11.2025.

2. Ld. Counsel for the Respondent raised an objection that appeal as filed is not maintainable.

*3. The Hon’ble Supreme Court in the matter of **Nitendra Kumar Tomer, Suspended Director, Ambro Asia Pvt. Ltd. vs. Unox S.P.A. and Another, Civil Appeal No.***

3607 of 2026 has held that amendment in the memo of appeal cannot be allowed after expiry of 45 days, which is maximum period for filing the appeal including 15 days' delay which is permitted under Section 61(2) proviso. The order was passed on 10.10.2025. 45 days' period has already expired. In view of the judgment of Hon'ble Supreme Court, we are unable to accept the prayer of the Appellant to amend the memo of appeal. Appeal is not maintainable. Appeal is dismissed as not maintainable”.

14. The perusal of the aforesaid order passed by this appellate tribunal in Company Appeal No. (AT) (Insolvency) No. 1995 of 2025 would reveal that this Appellate Tribunal noticed that in **Nitendra Kumar Tomar (supra)** Hon'ble Supreme Court has held that an amendment in the memo of appeal cannot be allowed after expiry of 45 days, which is the maximum period for filing the appeal, including 15 days' delay as permitted by the proviso appended with Section 61 of the Code and after noticing that the 45-day period has already expired, the prayer to amend the memo of Appeal was declined and the appeal was also dismissed as not maintainable.

15. Thus, it is evident that the Appeal filed by the Appellant against the same impugned order of date 10/10/2025 was dismissed on account of the fact that it was filed in the name of the CD and the amendment application could not be allowed after the expiry of the 45 days of passing the impugned order. Therefore, in other words, this Appellate Tribunal has found that the amendment application moved by the Appellant in that Appeal is barred by limitation. At this juncture, it is also fruitful to recall that an amendment in the memo of appeal relates back to the institution of the appeal.

16. We also notice that it is an admitted fact that the appellant has not challenged the order dated 22nd May 2026 passed by this Appellate Tribunal

at any higher forum, therefore, the said order has become absolute and final. It is also clear that the amendment application moved by the appellant was not allowed, as the cause of action accrued to the appellant was found barred by the law of limitation. Therefore, the instant appeal filed by the appellant against the same impugned order, on the same cause of action, also appears to be not maintainable.

17. Coming to the submissions made by the Ld. Counsel for the Appellant that the Appellant is entitled to get the benefit of Section No. 14 of the Limitation Act as the period with effect from 6/11/2025 till 22/05/2026 must be excluded while calculating the period of limitation of the present appeal. We, at the outset, are not inclined to accept this submission advanced by Learned Counsel for the appellant.

18. Section 14 of the Limitation is relevant and is reproduced as under: -

“Section 14. Exclusion of time of proceeding bona fide in court without jurisdiction.

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a

fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature”.

19. From the plain language of Section 14 of the Limitation Act, it would reflect that, in computing the period of limitation for any suit, the time during which the plaintiff has been prosecuting with due diligence any other civil proceedings against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is filed in good faith in a court which, by defect of jurisdiction or other cause of a like nature, is unable to entertain it. Thus, the main ingredient for the applicability of this section is that the earlier proceeding must be with regard to the same matter in issue and be filed in good faith in a court which did not have jurisdiction to entertain that suit or application.

20. Admittedly, in the incident case, the earlier proceeding (i.e., the appeal) was filed before this Appellate Tribunal, which had jurisdiction to entertain that appeal therefore it could not be said that the earlier proceedings were filed by the appellant before a forum which was not having jurisdiction. Much emphasis has been given by Ld. Counsel for the Appellant on the language used in subsection (1) of Section 14 pertaining to "other cause of a like nature". However, we are not inclined to accept the interpretation given by Ld. Counsel for the Appellant. The words "other cause of a like nature" are to be read in relation to the defect in jurisdiction of the earlier forum and the same could not be read as any error not connected with the jurisdiction of the earlier forum.

21. We also notice that the law is well settled that this Appellate Tribunal has jurisdiction only to condone the delay of 15 days, in addition to the 30 days stipulated time available for filing the appeal, on showing sufficient explanation and reasons. However, the delay beyond 15 days could not be condoned by this Appellate Tribunal.

22. In view above, we do not find any merit in the application filed by the appellant to condone the delay of 201 days. We are of the considered view that Section 14 of the Limitation Act is also not applicable in the facts and circumstances of the case.

23. Resultantly, the application filed by the appellant for condonation of delay of 201 days is hereby **dismissed**.

24. Since the application filed by the appellant for condonation of delay has been dismissed the appeal filed by the appellant is also **dismissed**.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

New Delhi
13.08.2026
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