IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH

IA (C/Act)/102/KOB/2025
In
IA(C/Act)/45/KOB/2024
In
CP(C/Act)/26/KOB/2023

(Under Rule 11 of the NCLT Rules 2016)

Date of Institution: 10.06.2025
Order delivered on: 06.05.2026

In the matter of:

M/S Green Hearts Private Limited

Memo of parties:

SANDEEP SADANANDAN
11F, Aiswarya Near Govy
Guest House, Kannur.

...Applicant 1

KOLLANNUR JOSE LIGI MARIYA
Vadakelan House, Chettikulam,
Near Lakshmana Temple,
Vattaparambu Aluva,
Ernakulam - 683579
Kerala, India.

...Applicant 2

SMITHA KUIRAN
Sreenilayam, Near Telephone Bhavan.
Taliparamba. Kannur - 670 141
Kerala, India.

...Applicant 3

PURANDOD SHANIBAN
Shanavas Manzil. Chalil Vayal,
Thaliparamba. Kannur-670 142 Kerala,
India.

...Applicant 4

-Vs-

VIVEK MENON P K
S/o Viswanatha Menon P.K
1479(14/1479), Padinjattil,
Kadakampalli,
Trivandrum – 695011

... Respondent 1

GREEN HEARTS PVT.LTD
Having its registered office at,
CC49/1124A Hose No. CRA 45,
Changampuzha Road Edappally,
Ernakulam, Kochi, Kerala.
India -682024

.... Respondent 2

REGISTRAR OF COMPANIES
Registrar of companies, Kochi,
Company Law Bhawan, BMC Road,
Thrikkakara, Kochi 682021

... Respondent 3

AXIS BANK
Represented by its Branch Manager
Vithayathil Building, Nelson Mandela
Road, Edappally, Kochi, Kerala 682024

... Respondent 4

Coram:

HON'BLE MEMBER (JUDICIAL) **SHRI. VINAY GOEL**

Appearances:

For the Applicants : Mr. Ahamed Iqbal, Advocate.
For the Respondent R1 : Mr. Akhil Suresh, Advocate.
For the Respondent R3 : Representative of RoC.
For the Respondent R4 : Respondent No. 4 has not entered appearance, and no relief has been sought against Respondent No. 4; therefore, this case can be effectively decided even in the absence of Respondent No. 4.

O R D E R

1. The application IA (C/Act)/102/KOB/2025 has been filed under Rule 11 of the NCLT, Rules, 2016, seeking the following relief: -

   i. *Hon'ble Tribunal may be pleased to recall the ex-parte order dated 25.11.2024 passed in IA (C/ACT)/45/KOB/2024-IN CP (C/ACT)/26/KOB/2023 and a fresh opportunity of hearing is granted to the Applicants herein.*

2. The present Company Application has been filed by Respondents 2 to 5 in Company Petition CP(C/Act)/26/KOB/2023 seeking recall of the order dated 25.11.2024 passed by this Tribunal and for grant of permission to file their counter affidavit in the main Company Petition. The Applicants contend that the said order was passed in their absence due to circumstances beyond their control, including alleged non-representation on account of medical exigencies suffered by their earlier counsel, and that they became aware of the said order only subsequently. The application is opposed by Respondent No.1, who contended that the Applicants were duly represented, had sufficient opportunity to participate in the proceedings, and that the present application is an impermissible attempt to seek review of a final order under the guise of recall, without satisfying the legal requirements for invocation of Rule 11 of the NCLT Rules, 2016.

Brief facts of the case: -

3. The Applicants, being Respondents 2 to 5 in Company Petition (CP(C/Act)/26/KOB/2023), submitted that the petition was filed by the 1st Respondent under Sections 241 and 242 of the Companies Act, 2013, alleging acts of oppression and mismanagement on the part of the Applicants herein. Upon receipt of notice, they engaged an advocate, Mr. Prateesh Chacko, and

entrusted him with complete conduct of the case, remaining under a bona fide belief that the matter was being properly handled.

4. They further contended that they were unaware of the order dated 25.11.2024 and the subsequent proceedings until January 2025, when the same was brought to their notice by the Registry. They explained that the said orders, which carried significant and adverse directions against them, were passed without their knowledge of any lapse in representation.

5. The Applicants explained that, upon inquiry, they discovered that their counsel had suffered a severe medical condition during the relevant period, resulting in lack of proper representation before the Tribunal. They stated that they were initially reassured that necessary steps had been taken, including filing of replies, and an order dated 13.02.2025 recording the same further strengthened their belief that the matter was being effectively defended.

6. It was further submitted that they were thereafter informed that steps would be taken to file the counter and recall the adverse order, and they were under the impression that appropriate pleadings had already been filed. This belief, according to them, was reinforced when an order dated 13.02.2025 recorded that their reply had been taken on file and that pleadings stood completed, with the matter being posted for final hearing.

7. The Applicants further stated that only upon receipt of a communication in May 2025 regarding contempt proceedings initiated for non-compliance of the order dated 25.11.2024 did they realise the actual procedural status of the case. Upon consulting another counsel, they were advised that no effective steps had been taken to recall the *ex parte* order and that the earlier pleadings were incomplete and inadequate. They thereafter engaged a new counsel and initiated steps to

file an additional counter along with an application for recall of the *ex parte* order.

8. It is asserted by the Applicants that there was no negligence or wilful default on their part, as they had acted promptly by engaging counsel and had proceeded on a bona fide belief that their defence was being properly conducted. They contended that they were unaware of the medical condition of their earlier counsel and acted immediately upon discovering the true facts. The Applicants further contended that the Petitioner had suppressed material facts in the Company Petition and that the allegations of oppression and mismanagement were baseless. They asserted that, in fact, it is the Petitioner who had indulged in oppressive conduct, details of which were set out in their additional counter.

9. The applicants prayed that the *ex parte* order dated 25.11.2024 required to be recalled in the interest of justice, and they be permitted to file a detailed counter in the Company Petition. Reliance was placed on the principle that Courts and Tribunals possess inherent powers under Rule 11 of the NCLT Rules, 2016, as well as the decision of the Hon'ble Supreme Court in *Greater Noida Industrial Development Authority v. Prabhjit Singh Soni & Ors.*, to recall orders to prevent miscarriage of justice. Finally, the Applicants assured this Tribunal that they would fully cooperate in the proceedings, appear on all future dates, and not cause any delay.

Reply filed by R1:

10. The Respondent No.1 stated that the Company Petition was filed under Sections 241 and 242 of the Companies Act, 2013, alleging oppression and mismanagement against Respondents 2 to 5. It is explained that the Company was incorporated in 2016 and thereafter the 1st Applicant was inducted as

Director in 2017 after acquiring shares, with an understanding that both parties would actively participate in the management of the Company.

11. The Respondent No.1 averred that, contrary to the understanding, the 1st Applicant abstained from active participation in the affairs of the Company and failed to contribute to its development. It is further stated that the entire management was being handled by the 1st Respondent, while the 1st Applicant consistently avoided involvement and did not discharge his responsibilities as Director.

12. It is specifically stated that the 1st Applicant failed to sign the Company's financial statements since 2019, despite having no objections, and had acknowledged liability for resultant delays. It is further alleged that he acted independently by approaching investors without authority, removed Company records during the Petitioner's absence, and attempted to restructure the Company without Board approval.

13. The Respondent No.1 further submitted that the 1st Applicant caused loss of Company property, including missing goods worth Rs. 1.5 lakhs, and deliberately avoided Board Meetings, thereby frustrating quorum requirements and obstructing corporate functioning. It is also stated that he unlawfully inducted Respondents 3 to 5 as Directors without notice or approval, constituting fraud and statutory violations, including under Sections 447 and 448 of the Companies Act, 2013.

14. It is further explained that records revealed irregular Board Meetings and defective appointments made without a valid quorum or statutory notice, rendering such actions *void ab initio*. It is also alleged that there was an apprehension of dilution of the Petitioner's shareholding through unauthorized

issuance of shares, and that the conduct of the Applicants reflected a sustained pattern of oppressive behaviour.

15. Respondent No.1 stated that in view of such acts, the Tribunal granted interim protection restraining Respondents 2 to 5 from acting on behalf of the Company, staying disputed appointments, and regulating bank operations. It is further submitted that despite such directions, the Applicants allegedly continued to interfere with the Company's affairs, removed records, shifted assets worth Rs.35 lakhs, and altered the Company's premises, including the use of the name of another entity under their control.

16. It is also alleged that the Applicants floated a parallel venture under the name "Green Bacto" using the Company's resources without consent, thereby further excluding the Petitioner from participation in the business. Respondent No.1 thus stated that there is wilful disobedience of Tribunal's orders and continued mismanagement of the Company.

17. The Respondent No.1 further submitted that IA No. 45/KOB/2024 was filed seeking restraint against the Applicants, return of records and stock, and protection of the Company's assets. It is stated that despite repeated opportunities, the Applicants failed to appear or file a counter, resulting in an *ex parte* order dated 25.11.2024. It is also pointed out that no appeal was preferred and the order has attained finality.

18. On maintainability, Respondent No.1 contended that the present application under Rule 11 of the NCLT Rules, 2016 is an impermissible attempt to seek review of a final order, which is not contemplated under the statute except for correction of clerical or accidental errors. Reliance was placed on the statutory provisions under Section 420 of the Companies Act, 2013 and Rule 154 of the NCLT Rules, 2016, as well as judicial precedents, to submit that the Tribunal's

power is limited to rectification of clerical or accidental errors and does not extend to review, reconsideration, or substitution of its earlier view on merits.

19. It is further submitted that the application is a disguised attempt to bypass the limitation period for filing an appeal. Respondent No.1 further asserted that the plea regarding medical incapacity of counsel is an afterthought unsupported by records, and that the Applicants were fully aware of proceedings, having filed a counter-affidavit and participated earlier. It is also pointed out that they were repeatedly represented and had even contemplated filing an appeal, but failed to do so.

20. It is additionally stated that the Applicants are now attempting to introduce new allegations and inconsistent pleas, which are not part of the original record and amount to an abuse of process. It is contended that such belated and contradictory claims cannot form the basis for recall of a reasoned order passed on merits. Finally, Respondent No.1 submitted that the application is devoid of merit, lacks bona fides, and has been filed only to delay proceedings and frustrate enforcement of Tribunal's orders. It is therefore prayed that the application be dismissed with exemplary costs and that liberty be granted to proceed with contempt action for non-compliance of the Tribunal's directions.

Findings: -

21. I have heard both sides and also gone through the records. Before proceeding further, it would be appropriate to reproduce the summary of case proceedings of IA(C/Act)/45/KOB/2025: -

Date	Reason for adjournment
22.02.2024	Applicant, i.e., Respondent Nos.2to5 in IA(C/Act)/45/KOB/2025, put their appearance. Case is adjourned to 11.03.2024 for filing reply affidavit and report of RoC.

12.03.2024	Case is adjourned to 04.04.2024. R2 to R5 have not filed their reply affidavit; last and final opportunity of two weeks granted.
04.04.2024	At request of the parties, case is adjourned to 18.04.2024
18.04.2026	For further consideration, case is adjourned to 02.05.2024
02.05.2024	R2 to R5 sought further time; two weeks granted; adjourned to 10.06.2024.
10.06.2024	Case adjourned for further consideration to 25.06.2024
25.06.2024	Adjourned along with main case to 30.07.2024 for final hearing.
30.07.2024	None appeared for respondents; adjourned to 19.08.2024.
19.08.2024	No reply filed; final opportunity of three weeks granted; adjourned to 09.09.2024.
10.09.2024	No appearance; reply not filed; right to file reply closed; adjourned to 29.10.2024 for final hearing.
29.10.2024	Counsel for the respondent sought further time to file reply affidavit. However, the right of respondents to file reply affidavit is already forfeited. Pleadings are treated as complete. Case is adjourned for final hearing on 21.11.2024.

22. The above table reflects the sequence of hearings and adjournments in the present matter. It is evident that despite several opportunities, the Applicant/Respondent Nos. 2 to 5 in IA(C/Act)/45/KOB/2025 failed to file their reply affidavit, and their right to do so was ultimately closed. The pleadings were thereafter treated as complete and the matter was listed for final hearing.

23. Subsequently, this Tribunal passed an order dated 25.11.2024. The said order is reproduced below for ready reference:

> *Learned counsel, Mr. Akhil Suresh appears on behalf of the applicant through virtual mode. None appears on behalf of the respondents.*
> *In this application, the Applicant has sought for the following prayers: -*
> 1. *Restrain the Respondents 2 to 5 and 8 from representing the 1st Respondent company in any manner whatsoever;*
> 2. *Direct the Respondents 2 to 5 to handover all the records pertaining to the Company illegally removed from the premises of the Company;*

3. *Direct the Respondents 2 to 5 to handover to the Applicant all the stocks worth Rs. 35,00,000/- or an amount equivalent to Rs. 35,00,000/- into the account of the 1st Respondent Company.*

The respondents have not filed the reply, in spite of reasonable opportunities given to them and subsequently, their right to file reply in this matter was closed. Today also, there is no representation for the respondents, accordingly, the respondents in this application are set ex-parte. Therefore, the case is heard on merits and decided as follows: -

1. *Respondents 2 to 5 and 8 are restrained from representing the 1st Respondent company.*
2. *Respondents 2 to 5 to handover all the records pertaining to the Company to the applicant.*
3. *Respondents 2 to 5 to handover to the Applicant all the stocks worth Rs. 35,00,000/- or an amount equivalent to Rs. 35,00,000/- into the account of the 1st Respondent Company.*

With the above directions this IA is disposed of with a liberty to the applicant to file an application at a later date. Respondents are directed to comply the above directions within four weeks from today. The compliance memo be filed by both the parties in the main CP(C/ACT)/26/KOB/2023 at least two days before the next date of hearing of the main CP.

24. It is noted that the Applicants entered their appearance on 22.02.2024 and were granted multiple opportunities to file their reply affidavit. However, despite sufficient opportunities, no reply was filed within the time granted by this Tribunal, resulting in closure of their right to file reply on 10.09.2024. The matter was thereafter proceeded with for final disposal.

25. The present application seeks recall of the order dated 25.11.2024 passed in IA(C/Act)/45/KOB/2025. It is the case of the Applicants that they were unable to effectively participate in the proceedings due to alleged non-representation by their earlier counsel on account of medical reasons, and that they became aware of the order only subsequently. However, it is noted that the plea regarding alleged lapse on the part of counsel has not been substantiated by any documentary evidence. Even vide order dated 10.09.2024, the rights of Respondent Nos. 2 to 5 to file a reply affidavit in IA(C/ACT)/45/KOB/2024 were closed. The said order has not been questioned till date. In the absence of a formal reply, there would not be any defence. So, even otherwise, the applicant

would not have benefited in any manner. The change of counsel, by itself, cannot constitute sufficient ground for recall of a concluded order, particularly in the absence of material demonstrating due diligence or sufficient cause.

26. The litigant is under a bounden duty to remain vigilant and diligent in pursuing his/their cause and the proceedings arising therefrom. The Applicant has sought to shift the entire burden upon the previous counsel without placing on record any cogent, credible, or substantive material in support of such allegations. Mere attribution of blame to the erstwhile counsel cannot absolve the Applicant of their own responsibility and obligation to prosecute the matter diligently. Consequently, the Applicant is liable to suffer the consequences arising from their negligence, inaction, and laches.

27. It is further observed that subsequent to the order dated 25.11.2024, the Applicants entered appearance through counsel on 13.02.2025 in the main Company Petition, and thereafter engaged a new counsel who also entered appearance on 28.03.2025. The conduct of the Applicants thus indicates that they were aware of the proceedings and the order in question, yet no appeal was preferred before the Hon'ble NCLAT within the period of limitation.

28. It is a settled principle that where a statutory remedy of appeal is available, a party cannot ordinarily invoke the inherent jurisdiction of this Tribunal to reopen or re-agitate matters already decided. The order dated 25.11.2024 was passed after granting sufficient opportunity and has attained finality in the absence of any challenge before the appellate forum. The jurisdiction under Rule 11 of the NCLT Rules, 2016 is limited and cannot be exercised as a substitute for appellate remedy.

29. The present recall application is nothing but an abuse of the process of law. In the facts and circumstances of the present case, this Tribunal is of the view that

the Applicants availed more than eight months to file a reply affidavit; however, they failed to do so, resulting in closure of their right to file a reply and the matter being proceeded *ex parte*. The present recall application does not disclose sufficient cause warranting interference with the order dated 25.11.2024.

30. I find no merit in the present application for recall. Accordingly, the same is **dismissed with costs of Rs. 25,000/-, to be deposited with the National Defence Fund.**

31. The Registry is hereby directed to send e-mail copies of this order forthwith to all the parties and their counsel for information and to take necessary steps.

32. Let the certified copy of this order be issued upon compliance with requisite formalities.

33. File be consigned to records.

Sd/-
VINAY GOEL
(MEMBER JUDICIAL)

Signed on this the 06th day of May, 2026.

Steno/Anjali