NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1321 of 2026

IN THE MATTER OF:

Om Prabhu Ashish Co-Operative Housing Society Limited **...Appellant(s)**

Versus

Vivaa Tradecom Ltd. & Anr. **...Respondent(s)**

Present:

For Appellant(s)	**:**	Mr. Rajiv Singh, Mr. Madhav Atul Chitale, Ms. Koninica Bose, Advocates.
For Respondent(s)	**:**	Mr. Gaurav Mitra, Sr. Advocate with Mr. Ayush Agarwalla, Mr. Amey Hadwale, Advocates for R-1 (SRA).

O R D E R
(Hybrid Mode)

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

30.10.2026: Instant amendment application being **IA No. 5534 of 2026** has been moved by the Appellant in Appeal No. Company Appeal (AT), Insolvency No. 1321 of 2026, with the request to make the following amendments: -

> ***"7. That, in order to give effect to the submissions made in paragraphs 4 to 6 above, the Appellant seeks to amend the Memorandum of Appeal minimally, by the addition of a single new ground and a minor addition to the Prayer Clause 21 (a), which is as follows:***
>
> ***(a) A new ground in Paragraph No. (9), to be numbered Ground A-1 and inserted immediately after Ground A of the Memorandum of Appeal, be added, reading as follows:***
> ***"A-1. That the order dated 16th June, 2026 does not, and cannot, exist or be given meaning in isolation, inasmuch as it is confined to a one-word correction of the order dated 23rd April, 2026, substituting the expression 'obsolete' with the***

expression 'absolute.' Where an order is rectified by the self-same authority, the original order must be read subject to the correction so made, the correction standing incorporated into the original order; the order dated 16th June, 2026 and the order dated 23rd April, 2026 therefore together constitute a single, composite, operative order, which alone is impugned herein, and the order dated 16th June, 2026 cannot be read or construed apart from the order dated 23rd April, 2026, which it corrects."

(b) In Prayer Clause 21 (a), the following words shall be added after the words "That this Hon'ble Tribunal be pleased to set aside the Impugned Order dated 16th June, 2026...":
"read with the Order dated 23rd April, 2026..."

(c) In Paragraph No. (1), replace the words "Copies of the Impugned Order dated 16th June, 2026 read with Order dated 23rd April, 2026 are hereto collectively annexed and marked as 'Annexure A-1 Colly" with the following words:

"A copy of the Impugned Order dated 16th June, 2026 is hereto annexed and marked as Annexure A-1'

(d) In Paragraph No. (7) (6) add the following words at the end of the paragraph:

"A copy of the Order dated 23rd April, 2026 is hereto annexed and marked as Annexure A-6."

2. Learned Counsel for the appellant submits that on 23.04.2026, the National Company Law Tribunal, Mumbai Bench II (Adjudicating Authority), in IA 1923/2023 moved in Company Petition (IB) 4362 (MB) of 2018, passed an order inter alia holding that the status quo order granted by it was already made "obsolete" and thereafter on 16.06.2026 Impugned Order in this appeal was passed, substituting the word "obsolete" with "absolute," rendering the interim restraint against the Appellant Society absolute and unconditional.

3. It is further submitted that the order dated 16.06.2026 cannot be read in isolation and must be read with the order dated 23.04.2026 passed by the

Adjudicating Authority, which is already annexed as Annexure A-6 to the Memorandum of Appeal.

4. It is further submitted that where an order is rectified by the same authority, the original order must be read subject to the correction so made and the correction standing incorporated into the original order; a rectification, unlike an appellate or revisional modification by a superior forum, does not create a new and independent order, but alters the original order to the extent of the correction alone and the original order will continue to subsist as so corrected. Therefore, applying the above principle, the order dated 23.04.2026 and the order dated 16.06.2026 do not survive as two independent and severable orders, as per the 'Doctrine of Merger'. The Impugned Order dated 16.06.2026 operates by correcting, and falls to be read together with, the order dated 23.04.2026, the correction made thereby standing incorporated into the original order and the two together constitute a single, composite order, namely, the Impugned Order dated 16.06.2026, which alone is impugned herein.

5. It is further submitted that the Appellant's cause of action to challenge the substance of the restraint, as opposed to a mere correction, crystallized only upon the correction dated 16.06.2026, since it was only then that the restraint took its final, operative and "absolute" character.

6. It is requested that in view of the facts and reasons set out hereinabove, this Hon'ble Tribunal may kindly allow the present application and permit the Appellant to amend the Memorandum of Appeal as set out in the amendment application and take the Amended Memorandum of Appeal annexed as Annexure P-1 with the amendment application, on record.

7. Ld. Sr. Counsel appearing for the Respondent No. 1, however, submits that the instant amendment application may not be allowed for want of limitation, as the same has been preferred after the prescribed limitation period of 30 days from the order dated 23/4/2026. Elaborating further, it is submitted that the appeal has been filed by the appellant being aggrieved against the order dated 16/6/2026, and by that time the order dated 23/4/2026 was already passed. Had the appellant been aggrieved by the order dated 23/4/2026, he might have filed an appeal against the same. Therefore, any amendment with regard to the order dated 23/4/2026 is time-barred and could not be allowed. Reliance in this regard has been placed on **V. Nagarajan versus S. K. S. Spat and Power Limited, (2022) 2 SCC 244**.

8. It is further submitted that in **Himatlal J. Vakaria vs Urban Land Tribunal 1987 SCC Online Gujarat 83**, the Hon'ble Gujarat High Court has distinguished rectification from review, therefore, the cause of appeal remains the original order, and a subsequent correction cannot reopen the merits after limitation has expired. The said principle applies directly to the instant case. Likewise, the Hon'ble Allahabad High Court in **Ramchandar vs. Jamal, 1922 SCC Online Allahabad 399**, held that a mere clerical correction does not create a fresh decree or postpone limitation. The law laid down by the Hon'ble Karnataka High Court in **Kothari Industrial Corporation Limited vs Agricultural Income Tax Officer, MANU/KA/0147/1995**, has also been placed.

9. It is further submitted that the amendment sought by the appellant is neither necessary nor required for the final disposal of the case, and thus the amendment application moved by the appellant is liable to be dismissed.

10. Having heard learned counsel for the parties and having perused the report, it is reflected that as per the averments made in the appeal the Appellant, a Co-operative Housing Society had signed, executed and registered a Development Agreement dated 12th December, 2014 in favour of the Corporate Debtor. However, since the Corporate Debtor had allegedly breached, violated and unilaterally reduced the terms, conditions and obligations of the Appellant and its members, the Appellant had terminated the Development Agreement dated 12th December, 2014 vide its Termination Notice dated 18th February, 2021 and the same is stated to have been voluntarily accepted by the Corporate Debtor vide its Letter dated 19th November, 2021.

11. The Adjudicating Authority vide its Order dated 3rd February, 2022 in Company Petition No. CP (IB) - 4362/ (MB)/ 2018, admitted the petition filed by one of the Financial Creditors viz., Hindustan Candle Manufacturing Co. Pvt. Ltd. under Section 7 of the Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor under Section 7 of the Insolvency & Bankruptcy Code, 2016 and Mr. Kinjal Madhubhai Chaudhary was appointed as the Interim Resolution Professional.

12. The Resolution Professional after collating and verifying the claims of the creditors constituted the Committee of Creditors of the Corporate Debtor, including the Respondents herein viz., Vivaa Tradecom Limited and Hindustan Candle Manufacturing Co. Pvt. Ltd. i.e., the Respondent Nos. 1 and 2. On 12th December, 2025 the Respondent No. 1 filed Rectification Application No. 182/ 2026 as well as an Additional Application in Company

Petition being CP (IB)-4362/ (MB)/ 2018 against the Appellant (Original Respondent) with the request to modify/ clarify/ rectify the Order dated 31.10.2025 passed in IA No. 1923/ 2023. The Adjudicating Authority on 21.01,2026 passed the following order;

> *"IA 182/2026*
>
> *1. This application has been filed by the Applicant. The following reliefs are sought:*
>
> *a. Modify/ Clarify/ Rectify the order dated 31.10.2025 passed in IA 1923/ 2023 to incorporate the following directions:*
>
> *"All actions of the Society shall be subject to the final outcome of the proceedings in IA 1923 of 2023. Issue notice to the Respondent Society. Applicant is at liberty to file an Additional Affidavit to place relevant documents"*
>
> *b. Grant such interim protection as deemed fit, including restraining the Respondent Society from giving effect to the purported Development Agreement dated 16.11.2025, ^ pending clarification.*
>
> *2. The present application has been filed for seeking rectification of the order dated 31st October 2025 passed by this Tribunal, as per the oral submissions made by the Ld. Counsel for the Applicant, It observed that all proceedings will be subject to the outcome of this Petition.*
>
> *3. However, inadvertently, it is not recorded in the order, on being questioned what are the rights of the present Applicant under these applications are. Ld. Counsel for the Applicants has drawn our attention to page No.164 whereby a Resolution Plan has been ordered in favour of Vivaa Tradecom Private Limited, as reflected in paragraph No.7 at page No.155.*
>
> *4. It is observed that Vivaa Tradecom Private Limited is a Successful Resolution Applicant which is demerged to Shishir Energy Private Limited, as depicted in page No.164, Para No. ii. Now it is alleged that Respondent society has already given this development right to some third party.*
>
> *5. Ld. Counsel appearing for the Respondent submits that he needs some time to file detailed reply. Let him do so he may file detailed reply to this application as well as application No.1921/2023, where he is Respondent Nos.1 to 3. In the meantime, we direct that till next date of hearing,*

the transfer of development rights will be subject to outcome of this Petition.

6. The Respondent Society is further restrained till the next date of hearing from taking any steps towards the new Development Agreement de hors the Resolution Plan.

7. List this matter with other applications on 13.02.2026."

13. The said Rectification Application No. 1923 of 2023 was listed on 23rd April, 2026, when the Ld. Adjudicating Authority passed the order and it is submitted by the Appellant that by passing that order the status quo earlier granted vide order dated 20th January, 2026 made 'obsolete' against the Appellant from giving effect to the Development Agreement dated 16th November, 2025 signed, executed and registered with the new Developer. The relevant part of the order dated 23.04.2026 is reproduced as under; -

"IA 1923/2023

1. Ld. Counsel appearing for the Applicant, Mr Shadab Jan submits that the SRA has got the property by way of CIRP proceedings under the IBC Act.

2. Ld. Counsel for the further Applicant submits that the Society's redevelopment Residential Project of Om Prabhu Ashish CHS Ltd. (The Amethyst) is contemplated to be developed by SEPL on land parcels of 881.40 sq. mtrs. 85 TDR admeasuring 617 sq. mtrs. (valued at approx. Rs.3 Crores) planned to be loaded on this project, had, inter alia, been stipulated as security for Credit Facilities of Rs.52 crores sanctioned in March 2018 to SEPL by M/ s Piramal Finance Ltd. (PFL). It had been stated in the Sanction Letter of PFL that while TDR Certificates for 380 sq. mtrs. worth Rs.1.55 Crores were in place, Certificates for balance 237 sq. mtrs. were to be arranged by SEPL within 3 months from the date of the first disbursement.

3. It is further submitted that due to the inordinate delay on the part of SEPL in execution of

redevelopment project, the Society/ Respondent No.7, vide its letter dated 18.02.2021, had intimated SEPL about termination of Development Agreement executed on 12.12.2014. SEPL had allegedly conveyed its acceptance of termination vide letter dated 19.11.2021 addressed to the Society/ Respondent No.7. We have been informed that the Society has placed Boards (at its Building) indicating that M/ s AV REALTY LLP have been appointed as Developers and that SEPL's development rights have been terminated. However, the Deed of Cancellation of Development Rights does not seem to have been executed, as the records at the Sub Registrar's Office still manifest that SEPL has development rights.

4. It is further submitted that the development rights of Om Prabhu Ashish CHS Ltd (The Amethyst) were already mortgaged with Piramal Finance Ltd, who had extended financial assistance to the tune of Rs.52 Crore. Vide letter dated 19.11.2021, M/ s Shamik Enterprises Pvt Ltd had deliberately agreed to terminate the project, though the development rights were mortgaged with the Bank. Before extending consent for termination of Development Rights, approval from Piramal Finance Ltd could have been obtained.

5. It is further submitted that when the Corporate Debtor/ Shamik Enterprises Private Limited has invested a huge amount of Rs.8,78,19,287/ - (Rupees Eight Crores Seventy-Eight Lakhs Nineteen Thousand Two Hundred and Eighty-Seven Only) in the said project, it is totally unbelievable that the Society has taken such a step which is prima facie against the law.

6. It is further submitted that the said termination is considered as a fraudulent transaction as a huge loss of Rs.8,78,19,287/- has been suffered by the Corporate Debtor and further, the said termination has taken place without the consent of Piramal Finance Limited or no board resolution in relation to the same has been passed by the Corporate Debtor.

7. It is further stated that no TDR Certificate for an area admeasuring 380 sq. mtrs. worth Rs.1.55 crores, which was purchased by the Corporate Debtor/

Shamik Enterprises Private Limited from market for construction of a high-rise building on society land is being provided by the said Respondents, which has resulted in a loss of Rs.1.55 crores. Thus, this raises a concern regarding the termination of the said agreement.

8. Prima facie, we can observe that the society has no locus standi to intervene in the matter once the CIRP proceedings start, by giving development rights to some third party without following the due procedure of law. The development rights under the immovable property earlier created by the said society cannot be abruptly cancelled and it is void-ab inito.

9. Ld. Counsel appearing for the Respondent No.7/Om Prabhu Ashish CHS Ltd is directed to place on record written submissions describing the legal position relied upon and also as to why action should not be taken against the defaulting society. The same is considered on the next date of hearing. Interim order already made obsolete.

10. List this matter for further consideration on 16.06.2026."

(Emphasis Ours)

14. On 16.06.2026 the Adjudicating Authority has passed the following order in IA 1923/ 2023: -

"IA 1923/ 2023

l. Ld. Counsel appearing for the Applicant has drawn our attention to the previous order dated 23.04.2026 passed in this case, wherein a typographical error at page no.4, para no.9, last line, wherein the mentioned "Interim order already made ***obsolete****" should be read as "Interim order already made* ***absolute".*** *The same is hereby corrected.*

2. Accordingly, the order dated 23.04.2026 is corrected as stated above. The rest of the order shall remain unchanged.

3. List this matter for further consideration on 06.08.2026."

15. The aforesaid appeal has been filed by the Appellant for setting aside this order dated 16/06/2026. The reliefs claimed by the Appellant in the Appeal are also placed below: -

> ***"21. RELIEFS SOUGHT:***
>
> *In view of the facts mentioned in paragraph 7 hereinabove, points in the issue mentioned in paragraph 8 (a), and questions of law set out in paragraph 8 (b), the Appellants pray for the following reliefs:*
>
> *a. That this Hon'ble Tribunal be pleased to set aside the 1st Impugned Order dated 23rd April, 2026 read with 2nd Impugned Order dated 16th June, 2026 passed in Rectification Interlocutory Application No. 1923/ 2023 in Company Petition No. CP (IB) -4362/ (MB)/ 2018 passed against the Appellant and holding that the transfer of Development Rights to a new Developer under the Development Agreement dated 16th November, 2025 is void ab-initio;*
>
> *b. That this Hon'ble Tribunal be pleased to exempt the Appellant's 'Development Rights' and property from the list of 'assets' of the Corporate Debtor, wrongly incorporated by the Resolution Professional and otherwise from the CIRP proceedings of the Corporate Debtor, in view of the termination and acceptance of termination by the Corporate Debtor prior to the initiation of CIRP proceedings against the Corporate Debtor;*
>
> *c. For Costs;*
>
> *d. For such further and other reliefs, as this Hon'ble Tribunal may deem fit and proper in the nature and circumstances of the case"*

16. Thus, it is reflected that the appeal has been filed by the appellant challenging the order dated 23.04.2026 as well as order dated 16.06.2026. The grievance of the appellant with regard to the order dated 23.04.2026 is also evident from the paragraph No. 12 and 13 of the Appeal. We are also in agreement with the submission of Ld. Counsel for the Appellant that the order dated 23.04.2026 has merged in the order dated 16.06.2026, as the same has

been corrected by the subsequent order. The amendments sought by the appellant appears to be consequential and would not result in any hardship to the Respondents before us and since both the orders dated 23.04.2026 and 16.06.2026 have been challenged by filing the instant appeal and in view of the doctrine of merger the order dated 23.04.2026 has merged with order dated 16.06.2026 we do not find the amendment application barred by limitation and in our considered opinion the amendment application moved by the appellant may be allowed.

17. Since both the orders i.e. order dated 23/04/2026 and the order dated 16/06/2026, whereby some correction has been made in the order dated 23/04/2026, have been challenged before us by filing the instant appeal, the case laws relied on by the respondent passed in **V. Nagarajan versus S. K. S. Spat and Power Limited, (2022) 2 SCC 244**, **Himat Lal J. Vakaria vs Urban Land Tribunal 1987 SCC Online Gujarat 83, Ramchandar vs. Jamal, 1922 SCC Online Allahabad 399** and in **Kothari Industrial Corporation Limited vs Agricultural Income Tax Officer, MANU/KA/0147/1995** are not applicable to the facts of this case.

18. In result the amendment application moved by the appellant is **allowed**.

19. The amended memo of appeal enclosed with the application is taken on record.

20. List on **20.11.2026** under the caption 'Fresh Cases'.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Arun Baroka]
Member (Technical)

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