

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 144 of 2026
& I.A. No.537, 1225, 2174 of 2026**

IN THE MATTER OF:

S.A. Plywood Industry Pvt. Ltd.

...Appellant

Versus

Central Bank of India

...Respondent

Present:

**For Appellant: Mr. Abhijeet Sinha, Sr. Adv. with Mrs. Anjani A.,
Ms. Somya Dutta, Ms. Vandana K., Advocates.**

**For Respondent: Mr. Brijesh Kumar Tamber, Mr. Prateek
Kushwaha, Mr. Dhimaan Dutta, Advocates.
Ms. Pooja Agrawal, Advocate with CA Subodh Kr.
Agarwal, RP.**

And

**Company Appeal (AT) (Insolvency) No. 663 of 2026 &
I.A. No.3148, 2842, 2843 of 2026**

IN THE MATTER OF:

Ion Bio Med-Icare Pvt. Ltd.

...Appellant

Versus

Draegerwerkag and Co KGAA

...Respondent

Present:

**For Appellant: Mr. Krishnendu Datta, Sr. Advocate with Mr. Virat
K. Anand, Ms. Niharika Sharma, Mr. Kumar
Shashank, Mr. Vikalp Singh, Mr. Harish Wadda,
Ms. Roopsee Pandita, Ms. Shaivika Agarwal and
Mr. Rahul Gaur, Advocates.**

**For Respondent: Mr. Sudhir Makkar, Sr. Advocate with J.K.
Chaudhary, Mr. Nayan Mittal, Ms. Vanshika Gupta,
Advocates**

ORDER

ASHOK BHUSHAN, J.

These two appeals and the IAs filed there in raised common question, hence, are being decided by this common judgment. We need to first notice the facts and relevant dates in both the appeals:

- (i) **Company Appeal (AT) (Insolvency) No. 144 of 2026:** This appeal by M/s S. A. Plywood Industry Pvt. Ltd. (Corporate Debtor) has been filed challenging the order dated 13.11.2025 passed by NCLT, Kolkata Bench – II, Kolkata in C.P. (IB) No.174/KB/2024. By the impugned order Section 7 application filed by the Central Bank of India has been admitted and CIRP against the Corporate Debtor commenced. IRP was also appointed by the impugned order. This appeal was e-filed on 18.03.2026, thereafter being delay in filing the appeal, application I.A. No.537 of 2026 has been filed praying for condonation of delay. An I.A. No.1225 of 2026 has been on 09.02.2026 seeking leave of the Court to amend Memo of Appeal. Applicant prayed for amendment in the Memo of Appeal by permitting Mr. Arun Kumar Saha, Suspended Director of S.A. Plywood Industry Pvt. Ltd. in place of Appellant - M/s S.A. Plywood Industry Pvt. Ltd. Another I.A. No.2174 of 2026 has been filed on 19.03.2026 praying for taking certain additional documents on record.

- (ii) **Company Appeal (AT) (Insolvency) No. 663 of 2026:** This appeal has been filed by Ion Bio Med-Icare Pvt. Ltd. (Corporate Debtor) challenging the order dated 04.02.2026 passed by NCLT, New Delhi, Principal Bench admitting Section 9 application filed by the Respondent - Draegerwerkag and Co KGAA – (Operational Creditor). By impugned order dated 04.02.2026, the Adjudicating Authority admitted Section 9 application and appointed Ms. Sunita Umesh as IRP. Against the impugned order the appeal has been e-filed on 03.03.2026. An I.A. No.2843 of 2026 has been filed on 20.04.2026 seeking amendment of appeal. Another I.A. No.3148 of 2026 has been filed placing on record subsequent events.

2. Company Appeal (AT) (Insolvency) No. 144 of 2026 came to be listed for consideration on 27.01.2026 along with the delay condonation application. Learned counsel for the Appellant sought liberty to file an I.A. to amend the Memo of Appeal. On 27.01.2026 following order was passed:

“O R D E R
(Hybrid Mode)

27.01.2026 *Learned Counsel for Appellant seeks liberty to file an I.A. to amend the Appeal, which may be done within ten days.*

*List this Appeal on **12th February 2026.**”*

3. Company Appeal (AT) (Ins.) No.663 of 2026 came for consideration on 17.04.2026, on which date learned counsel for the Appellant sought liberty to file an IA to amend the appeal. Order dated 17.04.2026 is as follows:

“O R D E R
(Hybrid Mode)

17.04.2026: *Learned counsel for the appellant seeks liberty to file I.A. to amend the appeal, which may be done within three days.*

*List this appeal on **23rd April, 2026.***”

4. In both the Appeals, as noted above, amendment application has been filed praying for amendment of the appeal. In Company Appeal (AT) (Ins.) No.144 of 2026 by IA No.1225 of 2026 amendment is sought in Memo of Parties by substituting Mr. Arun Kumar Saha, Suspended Director of S.A. Plywood Industry Pvt. Ltd. as Appellant/Applicant. Application has been filed on 09.02.2026.

5. Similarly, in Company Appeal (AT) (Ins.) No.663 of 2026, application has been filed being IA No.2843 of 2026 on 20.04.2026 seeking amendment of appeal. In the application, the Applicant seeks to amend Memo of Parties by substituting Mr. Anil Gupta, Suspended Director of Ion Bio Med-ICare Pvt. Ltd. as Appellant.

6. The Amendment Applications came for consideration before this Tribunal. Respondents appeared and objected to the Amendment Applications. It is submitted by the Respondent that the Amendment Application has been filed beyond expiry of 45 days. The appeal which was filed challenging order admitting CIRP was incompetent after expiry of limitation which cannot be permitted to be amended, as prayed.

7. We have heard Shri Abhijeet Sinha, learned senior counsel for the Appellant in Company Appeal (AT) (Ins.) No.144 of 2026. Shri Abhijeet Sinha submits that in the present case on the first day when appeal came before the Court for consideration i.e. on 27.01.2026, the Appellant itself prayed that it may be granted leave to file application for amending memo of appeal by substituting in place of Corporate Debtor, the Suspended Director of the Corporate Debtor. Learned counsel for the Appellant has referred to recent judgment of Hon'ble Supreme Court in **Civil Appeal No.3607 of 2026, Nitendra Kumar Tomer, Suspended Director, Ambro Asia Private Limited vs. Unox S.P.A and Another** and submitted that said judgment of the Hon'ble Supreme Court which held that appeal filed in the name of Corporate Debtor after initiation of CIRP is incompetent appeal is not applicable in the facts of the present case. It is submitted that in the case before the Hon'ble Supreme Court in **Nitendra Kumar Tomer** no application was filed by the Appellant for amending the appeal and it was only after NCLAT passed order on 12.08.2025 permitting the Appellant to amend the memo of appeal, which order was passed after more than one year from filing of the appeal, whereas in the present case on the first day Appellant sought leave, hence, the said judgment is not applicable in the present case.

8. Shri Brijesh Kumar Tamber, learned counsel appearing for the Respondent submits that in the present case, the application for amendment has been filed beyond 45 days, hence, the amendment could not be allowed. Appeal filed by the Corporate Debtor against whom CIRP has already commenced is incompetent and has to be dismissed. Learned counsel for the

Respondent submits that judgment relied in **Nitendra Kumar Tomer** is fully applicable in the facts of the present case and amendment application need to be rejected as well as the memo of appeal is not maintainable.

9. In Company Appeal (AT) (Ins.) No.663 of 2026, we have heard Shri Krishnendu Datta, learned senior counsel for the Appellant. Shri Datta submits that it was on the first day when appeal was taken up i.e. on 07.04.2026, Appellant itself prayed for liberty to file an amendment application. It is submitted that appeal is fully competent appeal after liberty to amendment. Learned counsel for the Appellant submits that judgment of the Hon'ble Supreme Court in **Nitendra Kumar Tomer** is distinguishable and is not applicable in the facts of the present case.

10. Shri Sudhir Makkar, learned senior counsel appearing for the Respondent refuted the submissions of the Appellant and submitted that present is a case which is fully covered by the judgment of Hon'ble Supreme Court in **Nitendra Kumar Tomer**. Hon'ble Supreme Court has held that appeal filed by Corporate Debtor after insolvency commencement cannot be entertained since after insolvency commencement it is only IRP who can represent the Corporate Debtor. Application for amendment has been filed beyond 45 days, hence, amendment application needs to be rejected and appeal deserves to be dismissed as incompetent.

11. We have considered the submissions of learned counsel for the parties as noted above. There is no dispute between the parties regarding facts and sequence of events in both the appeals. In Company Appeal (AT) (Ins.) No.144

of 2026, which appeal was filed against the order of Adjudicating Authority admitting Section 7 application filed by Central Bank of India, CIRP has commenced on 13.11.2025 and appeal has been e-filed in this Tribunal on 27.12.2025. After initiation of CIRP against the Corporate Debtor no appeal can be filed by Corporate Debtor. Similarly, in Company Appeal (AT) (Ins.) No.663 of 2026, appeal has been filed by Corporate Debtor challenging order dated 04.02.2026 admitting Section 9 application which appeal was also filed by Corporate Debtor although CIRP has commenced.

12. Both learned counsels for the Appellants pray for permitting the memo of appeal to be amended and appeal be permitted to be filed on behalf of Suspended Director of the Corporate Debtor, which amendment is being opposed by Respondents, as noted above. The reliance of the learned counsel for the Respondent is on the judgment of Hon'ble Supreme Court in **Nitendra Kumar Tomer (Supra)**, which judgment need to be noticed first.

13. In the case of **Nitendra Kumar Tomer, Suspended Director, Ambro Asia Private Limited vs. Unox S.P.A and Another, Civil Appeal No.3607 of 2026** decided on 10.04.2026, the Company Appeal was filed by the Corporate Debtor - Ambro Asia Private Limited challenging the order dated 18.04.2024 passed by NCLT initiating CIRP against the Corporate Debtor. Against order dated 18.04.2024, appeal was e-filed on 24.04.2024 by the Corporate Debtor, which appeal was entertained. Subsequently, by order dated 12.08.2025, NCLAT gave opportunity to the Appellant to file amendment application. Therefore, amendment application was filed being

I.A. No.4983 of 2025, which was allowed on 29.08.2025 permitting appeal to be filed by Nitendra Kumar Tomer, the Suspended Director of the Corporate Debtor. Subsequently, appeal came to be dismissed by order dated 07.01.2026, which order was challenged by Nitender Kumar Tomer, Suspended Director in appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court noticed the facts and took the view that when CIRP against the Corporate Debtor has commenced on 18.04.2024, no appeal can be filed on behalf of the Corporate Debtor and appeal filed by the Corporate Debtor was incompetent and not defective appeal. It is further noted that the amendment permitting the Suspended Director to prosecute the appeal was allowed much after expiry of 30 days and 15 days which is impermissible. The Hon'ble Supreme Court in Para 8 has made following observations:

“8. Nitendra Kumar Tomer, the suspended director of the corporate debtor, could have filed an appeal against the admission order dated 18.04.2024 only within the limitation period prescribed under Section 61(2) of the Code. The misconceived appeal filed by him in the name of the corporate debtor, Ambro Asia Private Limited, professing to be its director and authorized representative, was wholly incompetent and was not an appeal with a ‘curable’ defect, which could have been attended to at a later point of time. It was, therefore, not open to the said suspended director to seek modification of the cause title in this incompetent appeal. Unfortunately, the NCLAT lost sight of this aspect and treated the wholly incompetent appeal as a merely defective one, whereby it deemed

it appropriate to grant time to the suspended director to amend the memo of the appeal. Once the prescribed limitation period under Section 61(2) expired, it was not open to the suspended director to take steps to convert the incompetent appeal and maintain an appeal in his own name in August, 2025, long after expiry of the prescribed limitation. The NCLAT ought not to have permitted him to do so, whereby a time-barred appeal in the name of the suspended director was presented and entertained.”

14. Further in Paras 11 and 13, the Hon’ble Supreme Court laid down following:

“11. Presently, we find that the appeal, as framed and filed in the name of the corporate debtor by a suspended director claiming to be its authorized representative, was contrary to the mandate of the Code and was, therefore, not at all maintainable. Permitting it to be converted to an appeal by the suspended director at a later point of time, throwing the prescription of limitation to the winds, was a further violation of the Code. The question of rectifying or modifying a wholly incompetent appeal in violation of the mandate of the Code did not arise and the NCLAT, therefore, ought not to have extended indulgence in that regard. Varun Pahwa (supra), therefore, does not further the appellant’s case.

13. Though, the order dated 12.08.2025 passed by the NCLAT and its later order dated 29.08.2025, permitting the amendment of the appeal, 4 2024 SCC

OnLine NCLAT 909 were not subjected to challenge by Unox S.P.A., the operational creditor, or by Piyush Moona, the Interim Resolution Professional, we are of the opinion that, despite such failure on their part, we must give primacy to the provisions of the Code, which lay down strict mandates in terms of time, which are sacrosanct and cannot be lightly discarded. Therefore, notwithstanding the aforesaid orders attaining finality, the legal position obtaining under the Code is that the appeal, as framed and filed, was not maintainable being wholly incompetent and it could not have been converted into a 'maintainable appeal' after expiry of the period of limitation under Section 61(2) of the Code. The NCLAT erred grievously in permitting such an exercise to be undertaken and adjudicating the appeal on merits thereafter. Though the decision finally rendered by the NCLAT in the said appeal went against the suspended director, whereby he is now before this Court, we are not prepared to look into the merits of the said order, as the said appeal ought not to have been entertained."

15. The ratio which is culled out from the above judgment is that the appeal filed by Corporate Debtor after initiation of CIRP is incompetent and after expiry of limitation; $30 + 15 = 45$ days, no amendment can be permitted, permitting appeal to be prosecuted by Suspended Director of the Corporate Debtor. In case before the Hon'ble Supreme Court, the appeal was filed by the Corporate Debtor within limitation challenging the order initiating CIRP, however, after more than one year NCLAT granted liberty to the Appellant to file application for amendment in memo of appeal. Consequently, an

application was filed by Suspended Director which was allowed. The Hon'ble Supreme Court took the view that the Suspended Director of the Corporate Debtor could have filed an appeal against the admission order only within the limitation period prescribed and after expiry of limitation, the appeal was incompetent and was not an appeal with a curable defect.

16. Learned counsel for the Appellant has relied on various orders of this Tribunal where amendment in memo of parties was allowed. Reference has been made to the order passed by this Tribunal in ***Sanya Hospitality Pvt. Ltd. vs. Kaliber Associates Pvt. Ltd., Company Appeal (AT) (Ins.) No. 498 of 2026, Rajesh Jeevan Uttamchandani Erstwhile Director of Shree Sant Kripa Appliances Pvt. Ltd. vs. HDFC Bank Ltd. & Anr., Company Appeal (AT) (Ins.) No.1867 of 2025 and Anup Kumar Singh, Chairman of the Monitoring Committee & the erstwhile RP of E.R. Textile Ltd., Company Appeal (AT) (Ins.) No.911 of 2024.*** From the orders as relied by the Appellant, it is clear that this Tribunal has allowed amendments in memo of parties in several cases, however, the judgment of the Hon'ble Supreme Court in ***Nitendra Kumar Tomer, Suspended Director, Ambro Asia Private Limited vs. Unox S.P.A and Another*** decided on 10.04.2026 is a judgment of Supreme Court declaring the law which is binding under Article 141 of the Constitution of India. In view of the pronouncement of the Hon'ble Supreme Court dated 10.04.2026, we are bound to follow the judgment of Hon'ble Supreme Court and the earlier orders passed by this Tribunal, as relied by the Appellant, are of no avail to the Appellant.

17. The submission of learned counsel for the Appellant that facts and sequence of events in **Nitendra Kumar Tomer's case** is different where the amendment was permitted after more than one year after filing of the appeal whereas in the appeals before us on the first date of listing of the appeals leave was sought by the Appellant to amend the memo of appeal. What is binding in the judgment is ratio of the judgment which is already noticed in the judgment of Hon'ble Supreme Court in **Nitendra Kumar Tomer** where it was categorically held that after expiry of 45 days from the impugned order appeal in the name of Corporate Debtor cannot be allowed to be amended, the appeal being incompetent and not maintainable.

18. Learned counsel for the Appellant has also relied on judgment of the Hon'ble Supreme Court in **Union of India vs. Amrit Lal Manchanda & Anr., (2004) 3 SCC 75** lays down that judicial precedent must be applied with caution, as every case depends on its own facts and even a minor factual difference can change the outcome. There can be no dispute to the above proposition laid down by the Hon'ble Supreme Court but the judgment of Hon'ble Supreme Court in **Nitendra Kumar Tomer** was law on the provision of Section 61 of I&B Code which provides an appeal to this Tribunal and the Appeals which have been filed in the present case were appeal under Section 61. As noted above, we clearly bound by the said judgment.

19. Learned counsel for the Appellant has relied on another judgment of Hon'ble Supreme Court in **Union of India & Ors. vs Sajib Roy, 2025 SCC OnLine SC 1943** where in Para 16 and 17 following has been laid down:

“16. It is trite the ratio in a judgment must be read in the facts of a particular case and cannot have universal application. In Quinn v. Leatham, Lord Halsbury remarked:-

“...there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, 11 [1901] AC 495 (HL) since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.”

17. In Haryana Financial Corporation & Anr v. Jagdamba Oil Mills & Anr, the Court held:-

“21. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

22. The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR p. 688, para 19)

“19. ... Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the

line a case falls, the broad resemblance to another case is not at all decisive.”

*** **

“Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.”

20. There cannot be any dispute to the proposition laid down by the Hon’ble Supreme Court in the above case, however, the proposition laid down by the Hon’ble Supreme Court in **Nitendra Kumar Tomer** is fully applicable in the facts of the present appeals.

21. We need to recapitulate relevant dates in both the appeals which are as follows:

Company Appeal (AT) (Insolvency) No. 144 of 2026

Date of impugned order	Date of filing of appeal	Date on which request was made for filing amendment application	Date of filing of amendment application
13.11.2025	27.12.2025	27.01.2026	09.02.2026

Company Appeal (AT) (Ins.) No.663 of 2026

Date of impugned order	Date of filing of appeal	Date on which request was made for filing amendment application	Date of filing of amendment application
04.02.2026	03.03.2026	17.04.2026	20.04.2026

22. When we look into the dates with respect to above two appeals, it is clear that both the appeals were filed by the Corporate Debtor and application

for amendment was filed admittedly after expiry of 45 days from the impugned order. Thus, amendment application which were filed were beyond 45 days and as per the ratio of judgment of Hon'ble Supreme Court in **Nitendra Kumar Tomer** after expiry of limitation, amendment permitting Suspended Director to file appeal cannot be allowed. Appeal was wholly incompetent and was not an appeal with a curable defect which could not have been amended at later point of time. Following the judgment of Hon'ble Supreme Court, we are of the view that amendment as prayed by the Appellants cannot be allowed. Amendment Applications being I.A. No.1225 of 2026 in Company Appeal (AT) (Insolvency) No. 144 of 2026 and I.A. No.2843 of 2026 in Company Appeal (AT) (Ins.) No.663 of 2026 are dismissed. Consequently, both memo of appeals are dismissed as incompetent appeals.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

18th May, 2026

Archana