

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

IA No.5856/2026

in

COMPANY APPEAL (AT)(INS) NO.1262 OF 2026

(Arising out of judgement and order dated 01.06.2026 passed by National Company Law Tribunal, Mumbai in IA(IBC)/2044(MB)/2026 in CP(IB)/903(MB)/2019)

In the matter of:

Ms Sonal Sumit Mehta,

Through her representative Mr Vikas Jain
 (Successful Resolution Applicant in the CIRP of
 Krystal Stone Exports Limited) having residential address
 At 303, Aagam Flats, Near Sharda Mandir School
 Ahmedabad
 Mobile No.9828159568
 Email: vj1616@gmail.com

Appellant

Vs

1. Mr Chirag R Shah

Chairman of Monitoring Committee
 Having address at 208,
 Ratnaraj Spring,
 Op. HDFC Bank House,
 Beside Navniram Coop Bank,
 Navrangpura,
 Ahmedabad 380009

2. Omkara ARC Pvt Ltd

Having office address at
 Kohi9noor Square,
 47th Floor, NC Kelkar Marg,
 RG Gadkari Chowk,
 Dadar (WEST), Mumbai 400028
 Email: jeevan.kumar@omkaraarc.com

Respondents

For Appellant: Mr Ramji Srinivasan, Sr Advocatgfe with Mr Abhishek Naik, Ms Shefali Munde, Ms Gulafsha Kureshi, Ms Harshita Chaturvedi and MrAryansh Tripathi, Advocates.

For Respondent: Mr. Abhishek Anand and Mr. Karan Kohli, Advocates for R2. Mr Anurag Kalavitiya, Ms Parul Singhal and Ms Vidhi Pratap Singh, Advocates. Mr Nipun Gautam, Advocate.

ORDER

JUSTICE YOGESH KHANNA, OFFICIATING CHAIRPERSON

This application is filed under Rule 11 of the National Company Law Appellate Tribunal Rules, 2016 by Shri B.D. Agarwal, shareholder and personal guarantor of M/s Krystal Stone Exports Ltd *viz* the Corporate Debtor seeking recall of the judgement and order dated 17.07.2026 passed by this Tribunal in Company Appeal (AT)(Ins) No.1262/2026 whereby an order dated 01.06.2026 passed by the Ld. NCLT in IA No.2044/2026 was set aside in so far as it directed Respondent No.1 to deposit the balance resolution amount of Rs.14,60,56,036/- within 45 days with interest at 12% per annum and it also held any additional time required in vacation of the property bearing number SP-2, RIICO Industrial Area, Kilkipura, Shivdaspura, Jaipur shall stand excluded from the implementation period of the approved resolution plan. The order dated 17.07.2026 passed by this Tribunal is challenged on the ground it was passed at the back of the applicant who was also a stakeholder and whose opposition was recorded in the impugned order dated 01.06.2026 while dismissing his IA No.2336/2026 on the ground he was neither impleaded nor served in the appeal and the appeal proceeded, in substance, without contest. It is submitted the

relief granted herein was included in the reliefs and concessions of the plan approval order but it was never granted by the Ld. NCLT and the judgement passed by this Tribunal rather modified the resolution plan *per* order dated 17.07.2026.

2. It is argued by the learned senior counsel for the appellant the resolution plan so far filed before the Ld. Adjudicating Authority was *unconditional* wherein it was recorded the Successful Resolution Applicant shall pay the balance amount within 90 days and though the Successful Resolution Applicant also asked for certain Reliefs and Concessions *qua* the subject property, then occupied by a tenant and proceedings for its eviction were underway, but such reliefs were never granted. The Successful Resolution Applicant rather asked for the time to be granted for making balance payment till the time property was evicted and vacant possession was handed over to Successful Resolution Applicant but the Learned Adjudicating Authority rejected such relief and concession sought and the prayer in IA No.2044/2026 to exclude the time taken for evicting the tenant, but such relief was denied by the Ld. Adjudicating Authority *vide* the impugned order dated 01.06.2026 stating *inter-alia* the plan is unconditional, and despite that, in its discretion, it granted further time of 45 days to the Successful Resolution Applicant to make balance payment with interest @ 12% per annum on the delayed payment.

3. This order was brought in appeal before us and we set aside the order dated 01.06.2026 *vide* our order dated 17.07.2026. Learned senior counsel for

the appellant has referred to the Resolution Plan stating *inter-alia* it never granted any such relief and concession, though asked for, before the CoC and the judgment dated 17.07.2026 passed by this Tribunal rather modified the resolution plan and it could not have been done by this Tribunal

4. The Ld. Senior Counsel referred to the resolution plan, so submitted before the Ld. Adjudicating Authority and it has the following clauses: -

SCHEDULE 2: IMPLEMENTATION ACTION (Resolution 38(3)(c))

1 to 6 xxxx

7. Possession of assets of the corporate debtor will be handed over on payment of upfront amount however charge/ NOG of the CD will be released only after the full and final payment of the approved amount of Resolution Plan.

and also to

SCHEDULE 5: RELIEFS AND CONCESSIONS

1 to 13 xxxx

14. *xxxxx Resolution Professional and/or COC shall ensure that peaceful physical possession of all properties allotted to and registered in the name of the Corporate Debtor, including but not limited to the land situated at SP-2, RIICO Industrial Area, Kilkipura; Shivdaspura, Jaipur, which is currently under the possession of any lessee, licensee, or third party, is handed over to the Resolution Applicant or the Corporate Debtor (as the case may be) free from any encumbrances, claims, or occupation. They shall take all necessary steps, including eviction or cancellation of any existing arrangements, to facilitate such peaceful possession upon approval of this Resolution Plan by the COC.*

The RP shall take necessary steps to vacate the leased premise and that peaceful possession of vacated premises shall be given to the SRA. And in case there is a delay in vacation then the RP shall take necessary legal action for expediting such

vacation. In the course of such delay if there is any rent accrued then it shall be a pass-through amount to the Secured Financial Creditor and further if the property is not vacated upto approval of plan by the AA then any additional time period/ delay in vacation of such property after the order of the NCLT' shall be excluded from the Implementation period of the Resolution plan and the Implementation schedule shall be accordingly adjusted to exclude such delay and such extension of implementation schedule shall not be construed to be a delay on part of SRA in implementing the plan.

15. *The Resolution Applicant declares that the Resolution Plan is unconditional, irrevocable, and binding on the Resolution Applicant, and is prepared in accordance with the provisions of the Code and CIRP Regulations (as amended from time to time) and is not in contravention of any provisions of the law for the time being enforce. The reliefs, concessions, waivers and exemptions, if any, sought under the plan are an integral part of the Resolution Plan and shall not be conditional to the implementation of the Resolution Plan. Therefore, any modification's and/or non-acceptance by the Adjudicating Authority of such reliefs, concessions, waivers and exemptions shall be accepted unconditionally by the Resolution Applicant, and the Resolution Plan shall be implemented by the Resolution Applicant in accordance thereto.*

5. The learned senior counsel also referred to addendum given by the Successful Resolution Applicant on dated 12.06.2025 to the Resolution Plan and it notes as under: -

Without prejudice to the above stated, the Resolution Applicant seeks the waivers, reliefs and concessions as stated in its Final Resolution Plan. While reliefs and concessions sought in the Resolution Plan are not conditions for implementation of the Resolution Plan, it is amply clarified that non-approval of any or all reliefs or concessions by the Adjudicating Authority shall not render this Resolution Plan ineffective and that the Resolution Applicant shall implement the Resolution Plan irrespective of approval or otherwise of any of the Reliefs / concessions.

6. Further reference was made to due diligence report dated 05.06.2025 which notes the Successful Resolution Applicant was hard pressed on liquidity and also referred to plan approval order dated 23.02.2026 which recorded: -

“l. The Corporate Debtor’s rights as well as rights of tenant in relation to property occupied by tenant, the subject matter of IA 5313/2025, shall be subject to the decision of this Tribunal in the said IA.

m. xxx

n. It is clarified that any relief, concession or waiver, not specifically dealt with in Paras (a) to (m) above or not permissible in terms of decision in case of Ghanshyam Mishra (supra) and Abhilash Lal (Supra) or specific provisions of the Code read with the Regulations, shall be deemed to be denied or rejected.

7. It was argued no extension was granted to the Successful Resolution Applicant to make the balance payment till the time the property was vacated and he knew the condition to make payment within 90 days was *unconditional* and the plan was a *time bound plan* and the Successful Resolution Applicant *had no money* and hence moved an application alleging the property be handed over first but there was no such condition in the resolution plan to grant any such concession or relief.

8. To support his submissions, reference was also made to following paras of the impugned order dated 01.06.2026 as under: -

11. It is further stated that, in the 2nd meeting of the Monitoring Committee held on 27.03.2026, the Chairman updated on handover of possession and progress of plan implementation, but noted that the erstwhile RP continued to hold possession of B-5 Bapi and around 1.000 sq. m. out of 14.028 sq. m. of SP-2 Jaipur along with all plant and machinery, while 4,028 sq. m. of SP-2 had been let to Countertops and Cabinets India Pvt.

Ltd., alleged to be in illegal occupation after expiry of the rent agreement.

15. It is noted that, as per the clause 2.5 of Schedule 7 of the approved Resolution Plan, the Applicant was to infuse a total sum of Rs 18,81,00,000 (Indian Rupees Eighteen Crores Eighty-One Lakhs Only) with a period of 90 days from the date of receipt of Plan Approval Order subject to fulfilment of various terms and conditions as provided in the approved Resolution Plan, out of which Rs. 4,20,43,964/- was paid on upfront and the balance was to be paid within 90 days from the date of receipt of Plan Approval Order. The Resolution Plan was approved on 23.02.2026, accordingly, the said balance payment fell due for payment by the SRA on 24.05.2026.

17 It is clear from the bare reading of the Schedule 2 that the payment of second instalment was not link to handing over the possession of property in occupation of M/s Countertops and Cabinets India Pvt. Ltd, and an application filed by the Resolution Professional on 02.07.2025 for direction to M/s Countertops and Cabinets India Pvt. Ltd. was heard by this Tribunal after approval of the plan and order are yet to be pronounced as on date. It is pertinent to note that the said application for vacation of property under occupation of M/s Countertops and Cabinets India Pvt. Ltd. Ltd was filed by the Resolution Professional after approval of the Resolution Plan by the CoC on 29.06.2025. It follows therefrom that the CoC, in its commercial wisdom, had approved the plan knowing fully well that one of the property is in occupation of M/s Countertops and Cabinets India Pvt. Ltd on the date of the approval of the plan by CoC and no application is pending before this Tribunal in relation to vacation thereof. Further, clause 6 of Schedule 2 of the approved Resolution Plan states that Resolution Applicant shall ensure that necessary financial commitments made by under the Resolution Plan are brought in timely manner and all the required commitments are met in timely manner. Considering the above, the Resolution Applicant have assured that it would be able to implement the plan successfully and have made necessary provisions for its effective implementation". , and this clause does not contain any rider as to shifting of obligation to make payment on account of non-handing over the property in occupation of M/s Countertops and Cabinets India Pvt. Ltd, and clause 7 only requires handing over the Possession of assets of the corporate debtor on payment of upfront amount, but does not contain any

stipulation for deferment in payment schedule in case this obligation to hand over is not met.

18 xxxxxx This tribunal in the para 28.1 of its order dated 23.02.2026 passed in IA (Plan) 120 of 2025 has clearly stated that "The Corporate Debtor's rights as well as rights of tenant in relation to property occupied by tenant, the subject matter of IA 5313/2025, shall be subject to the decision of this Tribunal in the said IA". Accordingly, even if any exclusion is contemplated in Para 14 of the Schedule 5 under Reliefs and concessions, the same having not been specifically granted by this Tribunal in para 28 of its Order, stand rejected and cannot be read any longer.

19. Further, this tribunal at para 28.m clarified that any relief, concession or waiver, not specifically dealt with in the said order shall be deemed to be denied or rejected. Indubitably, the applicant, herein, has proceeded to implement the resolution plan approved in terms of said order, hence the terms of approval as contained therein binds the applicant herein. In this regard, it is pertinent to note that the applicant at Para 15 of Schedule 5 of the approved Resolution Plan has declared that "the Resolution Plan is unconditional, irrevocable, and binding on the Resolution Applicant, and is prepared in accordance with the provisions of the Code and CIRP Regulations (as amended from timeThe reliefs, concessions, waivers and exemptions, if any, sought under the plan are an integral part of the Resolution Plan and shall not be conditional to the implementation of the Resolution Plan. Therefore, any modifications and/or non-acceptance by the Adjudicating Authority of such reliefs, concessions, waivers and exemptions shall be accepted unconditionally by the Resolution Applicant, and the Resolution Plan shall be implemented by the Resolution Applicant in accordance thereto."

20. Clause 2.5 of Schedule 7 of the approved resolution plan does not contain any condition precedent for payment of balance resolution money, and requires payment of Rs. 14,60,56,036/- to secured financial creditors within 90 days without any string attached to it. Further, clause 4 of Schedule 7 provides for Infusion of funds in the Company within 90 days from the approval of Resolution Plan by the Hon'ble NCLT.

21. It is further noted that the applicant herein, being SRA in case of another corporate debtor's CIRP has filed an affidavit dated 01.05.2026 in IA (Plan) 21 of 2026 In CP IB 1158 of 2022, stating as follows:

10. The SRA had submitted a Resolution Plan in the CIRP of Krystal Stones Exports Limited for a total consideration of Rs. 18,81,00,000/- (Rupees Eighteen Crores Eighty-One Lakhs Only).

11. The SRA has duly complied with the upfront payment requirement of Rs 4,20,43,964/- (Rupees Four Crore Twenty Lakhs Forty-Three Hundred Sixty-Four Rupees only) and has made payment within the stipulated period of 30 days according to the Resolution Plan. Copy of Minutes of Third Meeting of Monitoring Committee evidencing amount deposited is attached herewith as Annexure-C.

12. The balance amount is required to be paid in within 90 days which the Deponent would be arranging by way of issuance of equity shares and Quasi Capital/Unsecured Loan by SRA.

22. The above statement also clarifies that the applicant on 1.5.2026 was conscious of his obligation to pay the amount within 90 days de hors possession of the property in occupation of M/s Counrter Top India Pvt. Ltd., hence, the contention of the applicant that the balance money was payable after handing over the possession of property in occupation of M/s Counrter Top India Pvt. Ltd. is incorrect and misleading.

9. On the other hand the Learned senior counsel for the Respondent argued on the locus of the applicant stating *inter alia* the applicant has no right to be heard on an application for recall since he is a suspended director/personal guarantor of the corporate debtor and is not a necessary or proper party in the proceedings concerning implementation of an already approved plan. It was argued the subject property is rather in possession of the family members of the applicant and hence he is more interested in delaying the matter and is finding technicalities to extend the date of handing over of the possession of the subject property on the one hand and is creating obstructions in implementation and is

insisting on the Successful Resolution Applicant to make payment of Rs. 18 crores, without an inch of the subject property in his possession.

10. Heard.

11. It appears the present I.A. No. 5856 of 2026 is not an isolated, bona fide recall application, but it is a step to obstruct, delay and, if possible, unwind implementation of a Resolution Plan that was approved on 23.02.2026 by the Ld. NCLT Mumbai Bench and continues to remain operative and binding, there being no stay of its operation. Till date the possession of an inch of land has not been handed over to the Successful Resolution Applicant (Appellant) of Plot No. SP-2, RIICO Industrial Area, Kiliki Pura Village (also referred to in the records as Shivdaspura), Tehsil Shivdaspura, District Jaipur, Rajasthan, admeasuring 14,028 sq. mtrs. and is in the illegal possession of a tenant named "**Countertops & Cabinets Pvt. Ltd.**" (related party of B.D. Agarwal).

12. It is well settled a suspended board/erstwhile management has no unqualified right to participate in, or be heard on, matters concerning implementation of a resolution plan once the CoC's commercial wisdom has been exercised. It is settled principle of law procedural rights of suspended directors are "*subservient to the primary objectives of the IBC and are "not intended as a tool for the former management to delay or frustrate the process"*.

13. Admittedly, the Applicant is neither a financial nor an operational creditor of the Corporate Debtor. Mr. B.D. Agarwal was not a party to I.A. 2044/2026; paragraph 13 of the order dated 01.06.2026 merely records his counsel appeared

and sought time to intervene. No order allowing intervention was passed. Thus, without being impleaded as the proper party, his application to recall is non-est and devoid of any merit.

14. Mr.B.D. Agarwal's subsequent I.A. No. 2336/2026 was expressly dismissed as a "frivolous application" on 09.06.2026, and he was directed to pursue the grounds in his appeal against the plan-approval order.

15. It is an evident fact on 09.01.2024, the suspended director Mr. BD Agarwal acting as Director of the Corporate Debtor executed a rent agreement leasing the entire subject property viz Plot No. SP-2, RIICO Industrial Area, Kiliki Pura, Village Shivdaspura, Tehsil Shivdaspura, District Jaipur, admeasuring 14028 sq. mtrs to a tenant namely *M/s Countertops Device and Activities Pvt. Ltd.* The common ownership and control of the Countertops is of the applicant and his immediate family members as is evident from the chart given bellow:

Counter Tops (supra)

Shareholder	Relationship to B.D. Agarwal	Shareholding in Countertops & Cabinets (India) Pvt. Ltd.
Samradh Bansidhar Agarwal	Son (Director/Promoter of Countertops)	50% (5,000 shares of Rs. 10 each)
Sangeeta Bansidhar Agarwal	(Wife of BD Agarwal)	49% (4,900 shares of Rs. 10 each)
Bansidhar (B.D.) Agarwal	Applicant himself/erstwhile promoter of the Corporate Debtor	1% (100 shares of Rs. 10 each)
Total		100%

16. It is pertinent to mention the Hon'ble Rajasthan High Court, Jaipur Bench *vide* the Order dated 11.03.2024 has observed that Mr. B.D. Agarwal was never a director of the Corporate Debtor.

17. Now on 03.05.2024 the corporate debtor was admitted into CIRP. Section 14 of IBC came into force on 20.11.2024. As per the Information Memorandum, the Resolution Professional secured possession of the subject property but with the approval of the CoC granted a short term lease of only 4028 sq. mtrs out of 14028 sq. mtrs *viz* a part of the property to M/s Countertops at the market rent of Rs.1,20,000/- per month. The balance property continued to be in possession of the Resolution Professional. On 29th March, 2025, the notices for vacation of such part were sent by the Resolution Professional to M/s Countertops but since it was also one of the resolution applicant it was allowed to stay till the decision on its plan was taken by COC. However, its plan was not approved and on 26.05.2025 a final resolution plan as was submitted by the Successful Resolution Applicant was approved by the CoC. Instead of vacating the premises i.e. 4028 sq mtrs, the tenant went to Rent Tribunal under the Rent Control Act 2001 and obtained certain orders from there to stick to possession without informing the Rent Tribunal of the ongoing CIRP. The Resolution Plan was approved on 23.02.2026. An appeal filed by the suspended management and M/s Counter Top is pending before this Tribunal. Admittedly as per the Resolution Plan, the Successful Resolution Applicant was to make an upfront payment of Rs.4,20,43,964/- and the Resolution Professional was to give possession of the subject property, *i.e.* 10000 sq. mtrs of land which remained

with the erstwhile Resolution Professional and 4028 sq. mtrs which continued to be in unauthorized occupation of M/s Countertops. On 03.04.2024 when the Monitoring Committee and Resolution Professional went to the subject plot an obstruction was created by the applicant's family as they took over possession of the entire piece of land. It was in this context an application was moved by the Successful Resolution Applicant to defer the balance payment, decided *per* impugned order dated 01.06.2026. Admittedly on 03.06.2026 the tenant was directed to hand over the vacant possession within 15 days but it has not handed over the land till date.

18. Now it is an undisputed fact despite prompt and complete payment of the entire upfront amount of Rs. 4,20,43,964/- within 30 days of Plan approval, the Subject Property is still not handed over to the Successful Resolution Applicant and the delay is occasioned entirely by M/s Countertop's continued occupation and not upon any default of the Successful Resolution Applicant. Thus, the extension of time in implementation of Resolution Plan was necessarily to be granted in compliance with Schedule 2 Clause 7 of the Resolution Plan.

19. The same stance was recorded in the Minutes of the Monitoring Committee itself at the 2nd Meeting (27.03.2026), the 3rd Meeting (15.04.2026), and, most importantly, the Monitoring Committee's own deliberations dated 26.05.2026, where the Monitoring Committee expressly acknowledged the delay in fulfilment of obligations on the part of the Resolution Professional /CoC in handing over

possession after timely payment and recorded any extension/exclusion of time would follow the Plan's own terms, without insisting on interest.

20. The exclusion of time granted on 17.07.2026 was made precisely because the Subject Property (which was not under any valid tenancy) and despite the Successful Resolution Applicant having promptly paid the entire upfront amount, could not be handed over due to the *continued and unauthorized occupation* by M/s Countertops; infact by applicant's own family.

21. Hence the Applicant cannot now contend the Successful Resolution Applicant should be made liable for interest. In effect, the Applicant seeks to penalise the Successful Resolution Applicant for a delay arising from the continued occupation by a company, owned and controlled by the Applicant and his immediate family.

22. The sole financial creditor was represented in Appeal No. 1262/2026 and did not oppose the appeal. B.D. Agarwal, the applicant cannot assert a superior right to insist upon interest or a payment schedule that the beneficiary creditor itself did not seek to protect.

23. The recall application does not fairly address the subsequent NCLT order dated 03.06.2026 directing M/s Countertops to vacate within 15 days; the continued non-compliance, and the absence of a stay against that direction. Additionally, this is not the case of either the Suspended Management or any of the parties that the appellant is not ready and willing to make the balance payment and rather the implementation is being seriously hampered by the

conduct of the Suspended Management of the Corporate Debtor i.e. the applicant.

24. The obligation to hand over possession does not require any concession from the Ld. NCLT or a statutory authority. It is an obligation of the RP/CoC arising upon receipt of the upfront payment. Paragraph 28(1) of the Impugned Order also does not reject the possession obligation. It merely made the respective rights of the Corporate Debtor and tenant subject to the decision in the pending application. Even in that pending application, vide order dated 03.06.2026 passed by Ld. NCLT Mumbai Bench, it directed M/s Countertops to hand over possession within 15 days. Thus, we are of the considered opinion the Applicant has no right on merit to seek recall of an order/judgement passed by us and/or to challenge the extension given by us. Even, otherwise, it is settled legal principle that the extension/exclusion of timelines for complying with financial obligations under the Resolution Plan is not modification of the Plan. In GP Global Energy Pvt Ltd Vs. Mr. Sandeep Mahajan & Anr, Company Appeal (AT)(Ins) No.054/2021 decided on 06.05.2022, this Tribunal rather set aside the order of the Ld. NCLT denying the extension, while stating it was not within its power to cause amends to approved Resolution Plan. This Tribunal held the Ld. NCLT has jurisdiction to grant extension of timeline in making the payment in a Resolution Plan, and the view of the Ld. NCLT that such extension would amount to modification was held to be not correct.

25. The same law was reiterated by this Tribunal in Ashok Dattaray Atre & Ors V State Bank of India & Ors, Company Appeal (AT)(Ins) No.221/222 of 2024

decided on 08.04.2024 and it was further held the concurrence of the CoC is not necessary, and the Ld. NCLT can exercise its jurisdiction while allowing extension, even in cases where CoC's express concurrence is not present.

26. Therefore, the plea urged by the Applicant is contrary to the settled legal principles and also, runs counter to the general rule that the extension/exclusion is between the party seeking such extension and the Court. The Applicant has been caused no legal injury, and the Applicant cannot seek review of the order passed by this Tribunal on 17.07.2026.

27. The application is thus dismissed.

**[Justice Yogesh Khanna]
Officiating Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Ajai Das Mehrotra]
Member (Technical)**

Dated:05-10-2026

Bm