

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

AT CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 205/2026

In the matter of:

Mr. B Nirmal Kumar

47, Bazaar Road,

Pallavaram,

Chennai – 600043

...Appellant

V

Mr. K J Vinod

Resolution Professional

Flat No B-602, Santha Towers-Phase-1,

Paruthipattu, Avadi, Chennai, 600 071.

...Respondent

Present:

For Appellant : Mr. Vairava Subramanian, Advocate

With

Company Appeal (AT) (CH) (Ins) No. 206/2026

In the matter of:

Mr. B Kamlesh Kumar

47, Bazaar Road,

Pallavaram,

Chennai - 600043

...Appellant

V

Mr. K J Vinod

Resolution Professional

Flat No B-602, Santha Towers-Phase-1,

Paruthipattu, Avadi, Chennai, 600 071.

...Respondent

Present:

For Appellant : Mr. Vairava Subramanian, Advocate

With

Company Appeal (AT) (CH) (Ins) No.207/2026

In the matter of:

Mr. B Anand Kumar

47, Bazaar Road,

Pallavaram,

Chennai - 600043

...Appellant

V

Mr. K J Vinod

Resolution Professional

Flat No B-602, Santha Towers-Phase-1,

Paruthipattu, Avadi, Chennai, 600 071.

...Respondent

Present:

For Appellant : Mr. Vairava Subramanian, Advocate

With

Company Appeal (AT) (CH) (Ins) No. 208/2026

In the matter of:

Ms. N Rekha

47, Bazaar Road,

Pallavaram,

Chennai - 600043

...Appellant

V

Mr. K J Vinod

Resolution Professional

Flat No B-602, Santha Towers-Phase-1,

Paruthipattu, Avadi, Chennai, 600 071.

...Respondent

Present:

For Appellant : Mr. Vairava Subramanian, Advocate

JUDGMENT

(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma, Member (Judicial)]

Heard Ld. Counsel for the Appellants, in all these Company Appeals.

1. All these Company Appeals involves consideration of a very short question, which are factually and legally based on a same footing. Hence, for the purposes of brevity they are being decided together.

- i. **Company Appeal (AT) (CH) (Ins) No. 205 / 2026**, challenges the impugned order of 10.03.2026 passed by the Ld. NCLT, Chennai - II in IA(IBC)/1884(CHE)/2025 that was preferred in CP(IB)/262(CHE)/2021.
- ii. **Company Appeal (AT) (CH) (Ins) No. 206 / 2026**, puts a challenge to the order of 10.03.2026 passed by the Ld. NCLT, Chennai - II in IA(IBC)/1983(CHE)/2025 as rendered in CP(IB)/260(CHE)/2021.
- iii. **Company Appeal (AT) (CH) (Ins) No. 207 / 2026**, puts a challenge to the impugned order of 10.03.2026, that was rendered by Ld. NCLT, Chennai – II in IA/(IBC)/1883(CHE)/2025 in CP(IB)/259/(CHE)/2021, and
- iv. **Company Appeal (AT) (CH) (Ins) No. 208 / 2026**, again puts a challenge to the order of 10.03.2026, that was rendered by the Ld. NCLT, Chennai – II in IA(IBC)/1882(CHE)/2025 in CP(IB)/261/(CHE)/2021.

2. The part of the order, which is the subject matter of challenge in the instant Company Appeal, since it happens to be common, hence, for the purposes of brevity the same is extracted here under,

*"This is an Application seeking exclusion of period of 208 days from 16.04.2025 to 10.11.2025 from PGIRP of Mr. B. Nirmal Kumar. The reasons are given at para 6 to 8 of the Application. Accordingly, **exclusion is allowed and IA(I.B.C)/1884(CHE)/2025 is disposed of.**"*

3. The effect of the impugned order, had been that the period of 208 days i.e., with effect from 16.04.2025 to 10.11.2025, was sought to be excluded in the light of the reasons, which has been taken in the Application preferred by the Respondent seeking an extension of time because of the pendency of the proceedings before this Appellate Tribunal.

4. A batch of Company Appeals, had come up for consideration before this Tribunal, with the leading Company Appeal being Company Appeal (AT) (CH) (Ins) No. 195/ 2025, Mr. B. Nirmal Kumar vs LIC HFL Trustee Company Pvt. Ltd. and Ors. The same was decided by this Ld. Tribunal along with other three Company Appeals by a common judgment rendered by us on 10.11.2025. While parting with the judgment and dismissing the same, we in Para 30 have observed as under,

"...30. Having said so, we have to observe that the said Agreements refer to the financial creditor as investor. This is also borne out by clause 12.2 which says that the investor should receive a minimum of 32% IRR on the investment amount. This, to some extent, dilutes the claim of the respondent that he is a financial creditor and the amount extended by them to the CD is a debt. Though debenture has been included within the definition of financial debt, OFCD is a hybrid instrument, part equity and part debt and in the instant case, it must be determined as to how much of the same will have to be treated as debt, which has not been done. Further, the claim of Rs. 98.64 crore as against the original financial assistance/investment of Rs. 18.40 crore shows that the amount has been compounded by a rate hovering around 30-32% which is an expected equity rate of return. The

expected rate of return in debt instruments, especially when it is secured by assets and guarantees, is much lower. Further, the assets of the CD might have been disposed of by now. Therefore, while admission of the application under section 100 of the Code is not incorrect, Ld. NCLT may direct the RP to determine what is the actual amount due to be paid by the PGs in view of the above during preparation of payment plan. Further, while Non-convertible Debentures (NCD) has been held to be a financial debt and Compulsorily Convertible Debentures (CCD) has been held to be a kind of equity as per the judgement of Hon'ble Apex Court in the matter of IFCI Limited vs. Sutanu Sinha & Ors in Civil Appeal No. 4929/2023, no such clear cut findings have been made in respect of OFCD which is as per existing financial literature is part-equity and part-debt and the extent of each will have to be worked out by the specific terms of Agreement in each individual case. Ld. NCLT may also determine the said aspect during the further proceedings of these company petitions."

5. If we take into consideration the observations made by us in Para 30 of the judgment as extracted above, what we observed is that the Ld. Tribunal will work out, as regards to pre-existing financial literature, as regards to the part equity and part debt and the extent of which will have to be worked out by these specific terms of agreement in each individual cases. Accordingly, we observed that the Ld. NCLT, was required to determine this aspect during the further proceedings of the Company Petitions, which was to be taken up by the Ld. Tribunal after passing of the judgment by us on 10.11.2025.

6. Accordingly, in the corresponding Company Petitions, the Respondents/Financial Creditor filed the respective IAs viz,

IA(IBC)/1884(CHE)/2025, IA(IBC)/1983(CHE)/2025, IA(IBC)/1883(CHE)/2025 and IA(IBC)/1882(CHE)/2025, in November, 2025, where in they prayed for, to exclude the period of 208 days from 16.04.2025 to 10.11.2025 from the statutory time period prescribed for completing Insolvency Resolution Process for the Personal Guarantor, as applicable under the Code. The reason which has been taken by the Respondent/RP, in the respective IAs preferred by invoking the provisions contained under Rule 11 of the NCLT Rules, was that, the proceedings of the Company Appeal was taken up on 16.04.2025, that after hearing the arguments, the judgment was reserved on the same, that the judgment was delivered by this Appellate Tribunal on 10.11.2025 by common order and that they could pursue further action in the respective Company Petitions only after the judgment was delivered and hence the period spent in litigation in the Appellate Tribunal from 16.04.2025 to 10.11.2025 should be excluded because the judgement was reserved both on the Company Appeals as well as on the stay application and that the judgment of NCLAT required the RP to determine, as to what would be the actual amount due to be paid by the Personal Guarantor, which required a determination to be made by the Ld. Tribunal after passing of a judgement by us on 10.11.2025.

7. The Respondent has submitted that, immediately after passing of the judgement on 10.11.2025 finally deciding the Appeal in the light of the observations made in Para 30 and 31, a meeting of Creditors and Personal

Guarantors was conducted by serving a short notice and the process was undertaken for the purposes of facilitating the Personal Guarantors to submit a Repayment plan, and the minutes to the said effect were recorded on 12.11.2025. Further, the Application was preferred by the Respondent/RP seeking an exclusion of a period of 208 days during, which the Appeal and the Stay Application before the NCLAT were reserved for final delivery of judgment. Primarily, the ground on which the Application was pressed in by the Respondent/RP was that for the lapse of Time between 16.04.2025 (day on which judgement was reserved) and 10.11.2025 (the date of delivery of judgement) the Respondent/RP is not to be blamed for the reason being that, after reserving of the judgment if the matter remained pending till the delivery of judgement on 10.11.2025, the Party to the Proceedings should not be prejudiced of their rights because of delayed delivery of judgment under the Principle of '*Actus curiae neminem gravabit*', which lays down that no right of the parties are to be affected because of the act of the court. Based upon the aforesaid pleading raised in Para 6, 7 and 8 of the Application as respectively preferred in each of the respective Company Petitions, the IAs seeking exclusion of time has been allowed by the Ld. Tribunal and an exclusion of 208 days has been granted.

8. The Ld. Counsel for the Appellants has argued the controversy from various perspectives. First, he submitted that he didn't have an opportunity, to object to the said IAs because of the fact that he was not made as a party to the IA

itself and that he could not file his objection to the said IA, when the matter was taken up on 10.03.2026, because the Appellants didn't have any knowledge of consideration of the IAs as detailed above.

9. We have called the cause list of the Ld. Tribunal of 10.03.2026, as against each of the Company Petitions for the said date i.e., 10.03.2026. We find that besides the above Interlocutory Applications, which were listed for consideration, there were other Interlocutory Applications too, which were listed on the said date for consideration. The proceedings of the 10.03.2026, which was held before the Ld. Tribunal, we could see from the cause list as downloaded from the site of the Tribunal, that the Counsel for the Appellants was representing the cause and in accordance with the observations made by the Ld. Tribunal, they were represented by their Counsels and were heard, and that too particularly, when none other than the Counsel who continues to be the Counsel in the instant Appeal was present of 10.03.2026. If that be the situation where in the proceedings before the Ld. Tribunal, when various other Applications were also being taken into consideration, including the Applications in question, there would be a deeming presumption that the Appellant had the knowledge of the proceedings, being carried on 10.03.2026, in relation to the IAs as detailed above, and in that eventuality if the Appellant has chosen not to object to the same, the Appellant now at this stage of an Appeal cannot come forward and submit that since they were not made party to the proceedings, they could not object to the said

Applications. We are of the view that, because the option to file objection was always open to the Appellants, particularly when they were participating in the proceedings of 10.03.2026, and because they themselves have chosen not to do so, they are to blame themselves only and not the proceedings of the Tribunal where the Ld. Tribunal has proceeded to decide the IAs on their own merits.

10. In order to support their contention that permitting exclusion of the period of 208 days from PGIRP is bad in law, the Ld. Counsel of the Appellants has referred to Section 100 and Section 101 of the I & B Code, 2016, and particularly, he has drawn our attention to the provisions contained under Subsection (1). Section 101 of the I & B Code, 2016, Section 100 of the Code, stipulates that the Ld. Tribunal upon being satisfied, will pass an order rejecting or allowing the Application filed under Section 94/95 as the case may be, within 14 days from the date of submission of the report by the RP under Section 99 of the Code. The provisions contained under Subsection (1) of Section 100 of Code prescribes that whenever an Application is admitted under Section 100, there would be a commencement of moratorium in relation to all the debts of the Personal Guarantor which shall cease to have effect at the end of the period of 180 days beginning from the date of admission of Application or the date on which the Adjudicating Authority passes an order on the repayment plan under Section 114 whichever is earlier. Ld. Counsel for the Appellants argues that the time limit of 180 days is statutory in nature and it cannot be extended by Ld. NCLT by

permitting exclusion of Time spent in litigation at NCLAT. However we are of the view that under the given circumstances, the time limit set under Section 101(1) of the Code relates to operation of moratorium only and would not be of any relevance for grant of exclusion of time because of the pendency of the proceedings before this Appellate Tribunal, particularly when, the exclusion of time is only a facilitator to effectively decide the PGIRP proceedings initiated under Section 95 of the Code, in the light of the directions contained in Para 30 of the judgment rendered by us in the Company Appeals, referred to herein above. Further, section 101 is titled as a 'moratorium' and any time stipulations as it has been given therein is not to be read for any purposes, other than the aspect of moratorium alone, because all other independent actions/processes, are required to be governed either by the limitations prescribed under the provisions itself or by the General Law of Limitations as applicable in the light of the provisions contained under Section 238(A) of the I & B Code, 2016.

11. It is not the case of the Appellant that the time period prescribed for completion of process cannot be extended after grant of an exclusion for the period during which the proceedings were being carried before this Appellate Tribunal, for the reason being that the Respondent/RP did not have any role or control over the proceedings before the Appellate Tribunal after the judgment was reserved on the same on 16.04.2025. Mere pendency of the proceedings after reserving of the judgment of 16.04.2025, will not amount to that the opportunity to effectively

contest the case by the party to the proceedings has shrunk by the said period of exclusion, particularly when the said judgement on account of which exclusion was granted, has contemplated a resort to the process for determination of a repayment plan, as it was directed to be considered by the observations made in Para 30 of the judgment rendered by us. Hence, the manner in which Section 101(1) has been sought to be interpreted by the Ld. Counsel for the Appellants, that there are the restrictions on extension of the moratorium, may not be correct and it cannot be borrowed to applied to challenge the exclusion granted in the impugned order under the given circumstances.

12. The Ld. Counsel for the Appellants has referred to Insolvency and Bankruptcy Board of India (Bankruptcy process for Personal Guarantors to the Corporate Debtors) Regulations, 2019, and particularly he has referred to Regulation 19 Sub regulation (1). Sub regulation (1) of Regulation 19 is extracted here under,

"Where a creditor assigns or transfers the debt to any person during the bankruptcy process period, both parties shall provide the bankruptcy trustee the terms of such assignment or transfer, and the identity and details of the assignee or transferee."

If we consider the language used under Sub regulation (1) of Regulation 19, it is altogether alien provision to the issue involved herein which is grant of exclusion of 208 days and has got no applicability in the instant case. Under the circumstances of the present case, the provisions contained under Section 100 (4),

which contemplates the modalities for rejection of Application under Section 94 and 95 on the basis of the report of the RP will also have no applicability contrary to the submissions of the Appellant. For that purpose, even the provisions of Section 104(2) will also have no applicability as both the provisions are only procedural in nature and that, they do not substantively determine a right or liability or govern the proceedings in a manner that can be detrimental to a party to the proceedings.

13. Since, the impugned order of 10.03.2026, aims to meet out the objective of the directions given by this Appellate Tribunal in the judgment of 10.11.2025, the exclusion of a period of 208 days granted by the impugned order of 10.03.2026, has to be construed as merely facilitating an effective adjudication and no material rights of the Appellants are being affected adversely by the grant of extension, which is otherwise permissible under law.

Thus, the Company Appeals lacks merits and the same is accordingly dismissed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

27/04/26
DD/MS/AK