NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 1227 of 2026

IN THE MATTER OF:

Vijay Kumar Agarwal **...Appellant(s)**

Versus

Balajidham Build Estate Pvt. Ltd. (In Liquidation)
Through its Liquidator Saurabh Malpani **...Respondent(s)**

Present:

For Appellant(s) : Mr. Avnish Dave, Mr. Vijit Poonia, Advocates.

For Respondent(s) :

O R D E R
(Hybrid Mode)

18.11.2026: Heard Shri Avnish Dave, learned counsel for the Appellant. The report of the office as well as the postal report available on record and tracking report suggest that the Sole Respondent has been sufficiently served, however, he is not represented.

2. In this view of the matter, we are proceeding to decide the aforesaid appeal ex-parte.

3. Learned counsel for the Appellant has drawn our attention towards the impugned order in order to canvass that an application bearing I.A. No.03 of 2026 was moved before the learned Adjudicating Authority requesting to recall the order dated 30.01.2026 passed in I.A. No.92 of 2021 which has been decided against the Appellant without providing adequate opportunity of being heard.

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3. It is further submitted that I.A. No.92 of 2021 was moved by the Liquidator against the Appellant - Vijay Kumar Agarwal for direction against the Appellant to pay an amount of Rs.18,68,288/- in the bank account of the Corporate Debtor and the case of the Liquidator was that four shops namely Shop No. 4 basement, Shop No. 4 stilt floor, Shop No. 5 basement; and Shop No. 5 stilt floor situated in the project Naryan Dham, Jaipur were sold to the respondent vide sale deed dated 03.09.2015 and the Books of Accounts of the Corporate Debtor shows that a sum of Rs. 19 lakhs were paid by the respondent and the remaining amount of Rs.18,68,288/- was not paid and the same is still pending due on the Appellant.

4. It was further the case of the Liquidator that an email dated 20.01.2021 was sent by the Appellant ensuring to make the payment within a period of six months, however, the same has not been made yet.

5. It is further submitted that on that day i.e. 30.01.2026 a counsel namely; Advocate Vidya Sharma had entered her appearance on behalf of the Appellant (Respondent before the Adjudicating Authority) only to seek time for the purpose of filing vakalatnama and reply. However, the Adjudicating Authority without assigning any genuine reason refused any opportunity to the Appellant and passed an order dated 30.01.2026 directing the Appellant to pay the amount of Rs.18,68,288/- into the bank account of the Corporate Debtor.

6. It is further submitted that an application being I.A. No.03.2026 was moved by the Appellant to recall the aforesaid order dated 30.01.2026, however, the same was dismissed due to non-representation of the Appellant.

7. It is further submitted that on 25.03.2026 when the order has been passed by which recall application of the Appellant has been dismissed for non-representation no information was given of its listing by the concerned NCLT while it is regular practice to inform the Applicant/Petitioner about listing of an application.

8. It is further submitted that an application being I.A. No. 04 of 2026 was again moved by the Appellant to restore I.A. No.03 of 2026 and set aside the order dated 25.03.2026 whereby the application being I.A. No.03 of 2026 filed by the Appellant was dismissed for non-representation, however, the same has been dismissed by passing the impugned order only on the ground that this Appellate Tribunal in Company Appeal No. 1 & 2 of 2017 has stated that the principal of natural justice deserves to be adhered to by the Adjudicating Authority and order dated 25.03.2026 suggest that the matter on that day (25.03.2026) was called out twice before disposing of the same.

9. It is vehemently submitted that the first order of date 30.01.2026 was passed in utter violation of the principles of natural justice as Advocate Vidya Sharma has appeared only for the purpose of seeking some reasonable time for the purpose of filing, vakalatnama, power of attorney and reply and in normal course a week or two should have been granted by the Adjudicating Authority and the Second order of dated 25.03.2026 whereby the recall application of the Appellant has been dismissed is only due to the fault of the office of the NCLT of which no record was provided and by the impugned order which talks about principle of natural justice too has been passed in utter violation of the same. It is submitted that if all these orders have not been

set aside, the Appellant will suffer irreparable injury without any fault on his behalf.

10. We have heard learned counsel for the Appellant and perused the record.

11. We will confine ourselves to order dated 06.05.2026 pertaining to which prayer has been made of setting aside.

12. We notice that in this order, the learned Adjudicating Authority has highlighted that this Appellate Tribunal in Company Appeal No. 1 & 2 of 2017 has emphasised about the adherence of principle of natural justice and thereafter has stated that I.A. No.03 of 2026 was disposed of after various calls were given to the learned counsel for the Appellant. It is further stated that I.A. No.92 of 2021 was disposed of only after due consideration of the arguments advanced by the learned counsel for the Respondent and after considering the documents on record.

13. Having considered all the facts and circumstances of this appeal, we are of the considered view that the first order dated 30.01.2026 was passed against the Appellant when his counsel Advocate Vidya Sharma had appeared and has requested only to seek some time to file vakalatnama and reply and the same was denied without assigning any reason and the application has been disposed of in favour of the Liquidator. So far as the disposal of second application being I.A. No.03 of 2026 is concerned, we find substance in the submissions made by learned counsel for the Appellant that the information was not provided to the Appellant of its listing and the impugned order is with

regard to restoration of I.A. No.03 of 2026. In our considered opinion, when the I.A. No.03 of 2026 was dismissed *in limine* in absence of learned counsel for the Applicant/Appellant and a genuine and acceptable reason for non-appearance of learned counsel for the Applicant/Appellant was given in the recall application, the same should have been considered in right perspective by the learned Adjudicating Authority.

14. In our considered opinion, the Adjudicating Authority has taken a very hyper-technical view. Unless and until a grave injury is caused to the other party, every effort of the Court must be to decide and dispose the lis between the parties on merits rather than on technicality.

15. In view of the above, the impugned order dated 06.05.2026, in our considered opinion, cannot sustain and hereby set aside. The matter is remanded back to the learned Adjudicating Authority to consider I.A. No.04 of 2026 afresh after providing opportunity of being heard to learned counsel for the parties. For this purpose, I.A. No.04 of 2026 is revived on the board of the Adjudicating Authority. Appeal is disposed of accordingly.

16. There is no order as to cost. All pending I.As. are also disposed of.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

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