GAHC010204132026

2026:GAU-AS:17531

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5086/2026

SADGURU ENGINEERS AND ALLIED SERVICES PVT LTD
A COMPANY INCORPORATED UNDER THE COMPANIES ACT 1956 AND EXISTING UNDER THE COMPANIES ACT 2013 HAVING ITS REGISTERED OFFICE AT HANUMAN TOWER 406, 4TH FLOOR, SATI JAYMATI ROAD, ATHGAON GUWAHATI KAMRUP METRO ASSAM 781001 REPRESENTED HEREIN THROUGH ITS DIRECTOR, MR MUKESH JALAN

VERSUS

YOJANA BAJORIA AND 2 ORS
WIFE OF RAJESH BAJORIA RESIDENT OF B 3 KAILASH APARTMENT HS ROAD PALTAN BAZAR REHABARI KAMRUP METRO ASSAM GUWAHATI 781008 ASSAM BEING THE FINANCIAL CREDITOR APPLICANT IN CP(IB)/11/GB/2026

2:NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
THROUGH ITS REGISTRAR HAVING ITS OFFICE AT 1ST FLOOR BSNL BHAWAN BUILDING
ANANDA RAM BARUAH ROAD
PAN BAZAR GUWAHATI 781001 ASSAM
BEING THE ADJUDICATING AUTHORITY WHICH HAS PASSED THE ORDER IMPUGNED HEREIN

3:UNION OF INDIA
REPRESENTED BY THE SECRETARY TO THE GOVT OF INDIA MINISTRY OF CORPORATE AFFAIRS
SHASTRI BHAWAN DR RAJENDRA PRASAD ROAD NEW DELHI 110001
BEING THE AUTHORITY RESPONSIBLE FOR ADMINISTRATION OF THE INSOLVENCY AND BANKRUPTCY CODE 2016 AND CONSTITUTION OF THE NATIONAL COMPANY LAW TRIBUNAL

Advocate for the Petitioner : DR. ASHOK SARAF, MR P BARUAH,MR. N N DUTTA,MR P K BORA,B SARMA,MR. A. KAUSHIK

Advocate for the Respondent : DY.S.G.I., MR P KALITA (R1),MR. D DOLEY(C.G.C.)R3

Linked Case : WP(C)/4925/2026

SADGURU ENGINEERS AND ALLIED SERVICES PVT LTD
A COMPANY INCORPORATED UNDER THE COMPANIES ACT
1956 AND EXISTING UNDER THE COMPANIES ACT
2013
HAVING ITS
REGISTERED OFFICE AT HANUMAN TOWER
406
4TH FLOOR
SATI JAYMATI ROAD
ATHGAON
GUWAHATI

KAMRUP (M)
ASSAM 781001
REPRESENTED HEREIN THROUGH ITS DIRECTOR
MR MUKESH JALAN

VERSUS

RAJESH BAJORIA AND 2 ORS.
R/O 3RD FLOOR
CASARIO ENCLAVE
KHARGULI
GHY 781004
ASSAM
AND ALSO AT B-3
KAILASH APARTMENT
H.S. ROAD
PALTAN BAZAR
REHABARI
KAMRUP (M)
GUWAHATI- 781008
ASSAM BEING THE FINANCIAL CREDITOR/APPLICANT IN
CP(IB)/10/GB/2026

2:NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
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BEING THE ADJUDICATING AUTHORITY WHICH HAS PASSED THE ORDER IMPUGNED HEREIN.

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SHASTRI BHAWAN
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NEW DELHI 110001
BEING THE AUTHORITY RESPONSIBLE FOR ADMINISTRATION OF THE INSOLVENCY AND BANKRUPTCY CODE
2016 AND CONSTITUTION OF THE NATIONAL COMPANY LAW TRIBUNAL

- B E F O R E -

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

For the petitioner : Dr. A Saraf, Sr. Adv
Assisted by Mr. B Sarma, Adv

For the Respondents : Mr. SC Keyal, Adv,

Date of hearing and judgment : 26.11.2026

Whether the pronouncement is of the operative part of the judgment? : N/A

Whether the judgment has been pronounced? : N/A

JUDGMENT & ORDER (ORAL)

1. Both these writ petitions filed by the same petitioner arise out of separate proceedings instituted under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") before the National Company Law Tribunal, Guwahati (hereinafter

referred to as "the Tribunal").

As the controversy involved is substantially identical, both the writ petitions are heard together and disposed of by this common judgment and order.

2. In **WP(C) 4925/2026**, the petitioner challenges the order dated 19.08.2026, passed in **I.A.(IBC)/125/GB/2026**, arising out of **C.P.(IB)/10/GB/2026** instituted by one Rajesh Bajoria, whereby the application seeking recall of the order dated **30.03.2026** was rejected, as well as the subsequent order dated 01.09.2026 reserving the company petition for final orders.

In **WP(C) 5086/2026**, a similar challenge has been made to the order dated 19.08.2026 passed in **I.A.(IBC)/124/GB/2026**, arising out of **C.P.(IB)/11/GB/2026,** filed by one Yojana Bajoria.

3. The common grievance is that the Tribunal forfeited the petitioner's right to file reply affidavits, declined to recall such orders, and proceeded with the applications under Section 7 of the Code without taking its defence on record.

4. The facts in brief are that the respective applications under Section 7 of the Code were instituted on 31.01.2026 and 28.01.2026. On 06.02.2026, the Tribunal granted 10 days for filing reply affidavits from receipt of notice.

On 23.02.2026, upon the petitioner's request, citing the judicial custody of its Managing Director, the Tribunal granted a further 18-day period. Thereafter, the Managing Director was released on bail on 27.02.2026.

On 30.03.2026, the Tribunal granted another 10 days, specifically

stipulating in the order that failure to file the replies within that period would result in forfeiture of the right to file them. Admittedly, the petitioner failed to file the replies; accordingly, the right to file the reply/affidavit was forfeited.

Thereafter, applications recalling such orders were filed and were also dismissed by the learned Tribunal, as recorded hereinabove.

5. Dr Saraf, learned Senior Counsel for the petitioner, submits that its Managing Director, Mukesh Jalan, who was conversant with the affairs of the company, remained in judicial custody from 28.12.2025 to 27.02.2026, and again from 28.05.2026 to 17.06.2026 in connection with certain GST investigations. During the intervening period, he was also suffering from serious illness, including clinical depression.

These circumstances, according to the learned Senior Counsel for the petitioner, prevented the petitioner from furnishing necessary instructions for preparation and filing of reply affidavits.

6. It is also contended that the proposed defence raises substantial questions regarding the existence of financial debt and the status of respective applicants as financial creditors within the meaning of Section 5(8) and Section 5(7) of the Code. Refusal to accept such a defence, it is argued, amounts to a denial of a reasonable opportunity of hearing, particularly having regard to the consequences of admitting an application under Section 7 of the Code.

7. Dr Saraf further argues that the Tribunal possesses inherent power under Rule 11 of the National Company Law Tribunal Rules,

2016 (hereinafter referred to as "the Rules 2016"), to recall its orders.

8. In support of his arguments, Dr. Saraf placed Reliance upon the decisions of the Hon'ble Apex Court in: ***State of Punjab vs. Davinder Pal Singh Bhullar*, (2011) 14 SCC 770, *S. Nagaraj vs. State of Karnataka*, 1993 Supp (4) SCC 595, *Budhia Swain vs. Gopinath Deb*, (1999) 4 SCC 396, *Indian Bank vs. Satyam Fibres (India) Pvt. Ltd.*, (1996) 5 SCC 550 , *Kailash vs. Nanhku*, (2005) 4 SCC 480 , *Lily Thomas vs. Union of India*, (2000) 6 SCC 224**

9. The arguments advanced by the learned Senior Counsel have been duly considered.

10. The Code has been enacted with the object of providing a time-bound mechanism for insolvency resolution, maximisation of value of assets, and balancing the interest of the stakeholders.

A proceeding under Section 7 is not merely a proceeding of recovery of debt; upon admission, it assumes the character of a collective insolvency resolution process.

The prescription under Section 7(4) requiring ascertainment of default within 14 days, though directory, reflects the legislative emphasis upon expeditious adjudication. Delay in such proceedings may, therefore, affect the very object of the enactment.

11. Section 424 of the Companies Act, 2013 provides that the Tribunal, though not bound by the procedure prescribed under the Code of Civil Procedure, 1908, shall be guided by the principles of natural justice and shall have the power to regulate its own procedure.

Rule 11 of the National Company Law Tribunals Rules, 2016 (for

short, Rules'2016) preserves its inherent power to secure the ends of justice, while Rule 15 specifically empowers it to enlarge the time fixed for doing any act, even after the expiry of the period initially granted.

12. Thus, the Tribunal undoubtedly possesses the power to enlarge time for filing reply affidavits. However, the existence of such power does not confer upon a litigant an indefeasible right to insist upon its exercise. The discretion must be exercised having regard to the explanation offered, the party's conduct, the opportunities already granted, and the nature and object of the proceeding.

13. The judgments relied upon by Dr Saraf, learned senior counsel for the petitioner, do not lay down any contrary proposition.

In ***Davinder Pal Singh Bhullar*** (supra), the Hon'ble Supreme Court, while recognising the power of recall in appropriate circumstances, also emphasised the relevance of the conduct of the party seeking such relief.

In ***S. Nagaraj*** (supra), the power to correct an error to prevent miscarriage of justice was recognised.

In ***Budhia Swain*** (supra) and ***Indian Bank*** (supra), the inherent power of recall was considered in the context of circumstances such as lack of jurisdiction, fraud, mistake attributable to the Court, and other fundamental infirmities affecting the adjudicatory process.

Lily Thomas (supra) explains the scope and limitation of review jurisdiction. These decisions recognise the power to prevent miscarriage of justice, but do not dispense with the requirement of establishing sufficient grounds for its exercise.

In ***Kailash vs. Nanhku*** (supra), the Hon'ble Supreme Court, while recognising the directory nature of the procedural prescription for filing a written statement under Order VIII Rule 1 CPC, also cautioned that enlargement of time is not to be granted routinely, but only upon satisfactory reasons.

Similarly, in ***Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni*****, (2024) 6 SCC 767**, the inherent power of the Tribunal to recall its order under Rule 11 of the NCLT Rules, 2016 was recognised, subject to the limitations governing its exercise.

14. The principles emerging from these decisions are that procedural flexibility is intended to advance justice, and not to confer an unrestricted entitlement to disregard procedural requirements.

15. In the present cases, the applications seeking recall could also be considered as applications for enlargement of time under Rule 15 of the Rules, 2016. Therefore, the Tribunal has the power to recall its earlier order, but this Court need to consider whether, in the present litigation, the refusal to exercise such power warrants interference by this Court in exercise of its power of judicial review under Article 226 of the Constitution of India.

16. Coming back to the facts, the respective applications under Section 7 of the Code were instituted on 31.01.2026 and 28.01.2026. On 06.02.2026, the Tribunal granted 10 days from receipt of notice for filing reply affidavits. On 23.02.2026, upon the petitioner's request, citing the judicial custody of its Managing Director, the Tribunal granted a further 18 days.

17. Although the Managing Director was released on bail on

27.02.2026, no reply affidavits were filed. On 30.03.2026, the Tribunal granted another 10 days, specifically stipulating that failure to file the replies within that period would result in forfeiture of the right to file them. Admittedly, the petitioner failed to comply.

18. The important material fact in the present case, as reflected in the petitioner's pleadings, is that the draft reply affidavits were finalised on 18.04.2026. Nevertheless, no application seeking enlargement of time was filed immediately thereafter.

The company petitions were taken up on 05.05.2026 and 01.06.2026, whereas applications seeking recall and condonation of delay of 89 days were filed only on 07.07.2026.

The Managing Director's subsequent judicial custody commenced on 28.05.2026, well after the expiry of the period granted and the finalisation of the draft replies.

19. Though his illness may constitute sufficient cause in an appropriate case, the petitioner has not satisfactorily explained its failure to approach the Tribunal with reasonable promptitude, despite being continuously represented through learned counsel.

The recall applications were also heard on merits before being rejected on 19.08.2026.

20. Thus, the present cases are not instances of denial of opportunity, but of failure to avail opportunities afforded.

21. The principles of natural justice require a reasonable opportunity of hearing, but do not oblige an adjudicating authority to grant successive opportunities irrespective of the conduct of the party concerned.

This distinction assumes greater significance under the Code, where expeditious adjudication is an essential legislative object. While such an object cannot justify denying a reasonable opportunity, the principles of natural justice cannot be invoked to defeat the statutory scheme where sufficient opportunities have already been granted. The discretion under Rule 11 and Rule 15 must, therefore, be exercised consistently with the object of the Code and the interest of all stakeholders.

22. The contention that the proposed defence of the petitioner raises substantial questions regarding existence of financial debt and the status of applicants as financial creditors does not alter the aforesaid position.

Even in the absence of reply affidavits, the Tribunal is duty-bound under the Code to satisfy itself as to the requirements for admission under Section 7 of the Code. Failure to file a reply does not automatically entitle an applicant to an order of admission. The merits of the proposed defence, however, cannot by themselves dispense with the requirement of explaining the failure to avail the opportunities granted.

23. The limited scope of interference under Article 226 of the Constitution of India must also be borne in mind. The Code provides a statutory appellate mechanism under Section 61.

In ***Embassy Property Developments Pvt. Ltd. vs. State of Karnataka, (2020) 13 SCC 308,*** the Hon'ble Supreme Court explained the limitation on the High Court's interference with orders passed by the Tribunal in matters of erroneous exercise of jurisdiction,

distinguishing it from an inherent lack of jurisdiction.

24. In the present cases, the grievance essentially concerns the exercise of procedural discretion by the Tribunal. Even if another view regarding enlargement of time were possible, that may not justify substitution of discretion exercised by the Tribunal. No jurisdictional error or denial of reasonable opportunity warranting interference under Article 226 of the Constitution of India has been established.

25. Having regard to the object and scheme of the Code, the successive opportunities granted by the Tribunal to the petitioner, the conduct of the petitioner and the absence of satisfactory explanation for the delay, this Court finds no ground to interfere with the impugned orders in exercise of jurisdiction under Article 226 of the Constitution of India.

26. Accordingly, both the writ petitions stand dismissed. The interim order(s) passed earlier stands vacated. The Tribunal shall proceed in accordance with law.

27. It is made clear that no opinion has been expressed on the existence of financial debt or the status of respective applicants as financial creditors, and all such questions are left open to the consideration of the Tribunal in accordance with the provisions of the Code.

28. No order as to costs.

JUDGE

Comparing Assistant