

**Nitendra Kumar Tomer, Suspended Director,
Ambro Asia Private Limited**

v.

Unox S.P.A. and Another

(Civil Appeal No. 3607 of 2026)

10 April 2026

[Sanjay Kumar* and K. Vinod Chandran, JJ.]

Issue for Consideration

Once the prescribed limitation period u/s.61(2) of Insolvency and Bankruptcy Code, 2016 expired, whether it was open to the suspended director to take steps to convert the incompetent appeal and maintain an appeal in his own name.

Headnotes[†]

Insolvency and Bankruptcy Code, 2016 – ss.16, 17, 61 – A suspended director of Ambro Asia Private Limited, the corporate debtor, filed the present appeal u/s.62 of the Insolvency and Bankruptcy Code, 2016, aggrieved by the judgment dated 07.01.2026 passed by the NCLAT – By the said judgment, the NCLAT confirmed the order dated 18.04.2024 passed by the NCLT, admitting CP (IB) No. 722/ND/2021, an application filed u/s.9 of the Code by Unox S.P.A., an operational creditor, respondent no.1 – Earlier, the NCLAT had permitted the appeal to be prosecuted by the suspended director of the corporate debtor – Correctness:

Held: Once the interim resolution professional was named by the NCLT in the admission order, s.17(1)(a) of the Code would become operative – Therefore, with effect from the date of admission in the case on hand, *i.e.*, 18.04.2024, the management of the affairs of the corporate debtor, Ambro Asia Private Limited, stood vested in Interim Resolution Professional, and it was not open to the suspended director of the corporate debtor to file an appeal in the name of the corporate debtor, Ambro Asia Private Limited, claiming to be its director and authorized representative – The appeal as framed and filed on 24.04.2024 before the NCLAT was, therefore, wholly incompetent – It was not merely a ‘defective’ appeal as it was not maintainable in its very inception – The normal period of limitation

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prescribed u/s.61(2) is 30 days but the proviso thereto permits the NCLAT to condone the delay of up to 15 days, if sufficient cause is shown for not filing the appeal within the prescribed period of 30 days – This being the legal position, the indulgence shown by the NCLAT on 12.08.2025 completely desecrated the aforestated statutory prescription – 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 u/s.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 u/s.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 – 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. [Paras 6, 7, 8]

Case Law Cited

Uday Shankar Triyar v. Ram Kalewar Prasad Singh and another [2005] Supp. 5 SCR 157 : (2006) 1 SCC 75; *Varun Pahwa v. Renu Chaudhary* [2019] 4 SCR 128 : (2019) 15 SCC 628; *Innovators Cleantech Pvt. Ltd. v. Pasari Multi Projects Pvt. Ltd.*, 2024 SCC OnLine NCLAT 909 – held inapplicable.

List of Acts

Insolvency and Bankruptcy Code, 2016.

List of Keywords

Corporate debtor; Operational creditor; Interim resolution professional; Limitation; Curable defect; Maintainability; Modification of cause title; Incompetent appeal; Suspended director; Amended memo of appeal; Section 61(2) of Insolvency and Bankruptcy Code, 2016.

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Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3607 of 2026

From the Judgment and Order dated 07.01.2026 of the National Company Law Appellate Tribunal in CAAT(I) No. 931 of 2024.

Appearances for Parties

Advs. for the Appellant(s):

Rakesh Kumar Khanna, Sr. Adv., Abhishek Swarup, Manoj Swarup, Aditya Pushkar Khanna, Ms. Arushi Jindal, Govind Kashyap, S.S. Nehra, Chetan Sharma, M/s. Manoj Swarup And Co.

Advs. for the Respondent(s):

Rahul Chitnis, Savinder Singh, Parth Awasthi, Ms. Barnali Mukherjee, Hersh Desai, M/s. F.M. Associates.

Judgment / Order of the Supreme Court

Judgment

Sanjay Kumar, J.

1. Nitendra Kumar Tomer, a suspended director of Ambro Asia Private Limited, the corporate debtor, filed the present appeal under Section 62 of the Insolvency and Bankruptcy Code, 2016¹, aggrieved by the judgment dated 07.01.2026 passed by the National Company Law Appellate Tribunal, Principal Bench, New Delhi (*hereinafter*, 'the NCLAT'), in Company Appeal (AT) (Insolvency) No. 931 of 2024. By the said judgment, the NCLAT confirmed the order dated 18.04.2024 passed by the National Company Law Tribunal, New Delhi Bench (*hereinafter*, 'the NCLT'), admitting CP (IB) No. 722/ND/2021, an application filed under Section 9 of the Code by Unox S.P.A., an operational creditor, respondent No. 1 herein.
2. At the outset, we entertained a doubt as to how the appeal before the NCLAT had been filed in the name of the corporate debtor, Ambro Asia Private Limited, after admission of the Section 9 application by the NCLT, *vide* order dated 18.04.2024. Thereupon, we were informed that this aspect was taken note of by the NCLAT. Our attention was

¹ For short, 'the Code'

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drawn to the order dated 12.08.2025 passed by the NCLAT. Therein, the NCLAT noted that the appeal had been filed in the name of the corporate debtor whereas, after admission of the application under Section 9, the corporate debtor could be represented only by the interim resolution professional but the appeal, as instituted, was verified by Nitendra Kumar Tomer, a suspended director of the corporate debtor. The NCLAT further noted that an appeal in the name of the corporate debtor was not maintainable against an order of admission of an application under Section 9.

3. Having stated so, the NCLAT surprisingly went on to state that for the ends of justice, it deemed it appropriate to provide an opportunity to the appellant to amend the memo of appeal by filing an appropriate application and granted time. Thereafter, IA No. 4983 of 2025 was filed seeking amendment of the memo of appeal and the NCLAT allowed that application on 29.08.2025, permitting the appeal to be prosecuted by Nitendra Kumar Tomer, the suspended director of the corporate debtor. The appeal memo was taken on record, but we find that the final judgment dated 07.01.2026, presently under challenge before us, did not take note of the amended appeal memo and the judgment, as it stands, reflects the name of the corporate debtor as the appellant.
4. Having given thoughtful consideration to the matter, we are of the considered opinion that the NCLAT grossly erred in permitting a wholly incompetent appeal to be converted in the manner it was done. We may note that this incompetent appeal was filed on 24.04.2024 or thereabouts, assailing the order of admission dated 18.04.2024, and it was verified in the name of the corporate debtor, viz., Ambro Asia Private Limited, by Nitendra Kumar Tomer, claiming to be its director and authorized representative. However, respondent No. 2 in the appeal was none other than Piyush Moona, Interim Resolution Professional, who was appointed by the NCLT, *vide* the admission order dated 18.04.2024.
5. In this regard, reference may be made to Section 16 of the Code, titled 'Appointment and tenure of interim resolution professional'. Insofar as an application under Section 9 of the Code is concerned, Section 16(3) is of relevance and it reads as under: -

'(3) Where the application for corporate insolvency resolution process is made by an operational creditor and –

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(a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;

(b) a proposal for an interim resolution professional is made under sub-section (4) of section 9, the resolution professional as proposed, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.'

6. Section 17(1)(a) of the Code provides that, from the date of appointment of the interim resolution professional, the management of the affairs of the corporate debtor shall vest in the interim resolution professional. In the case on hand, it is clear that the application filed by Unox S.P.A. under Section 9 of the Code itself named the proposed interim resolution professional, as the order dated 18.04.2024, which is conveniently not placed on record along with this appeal, named Piyush Moona as the Interim Resolution Professional and he was, accordingly, shown as respondent No. 2 in the appeal filed before the NCLAT. Once the interim resolution professional was named by the NCLT in the admission order, Section 17(1)(a) of the Code would become operative. Therefore, with effect from the date of admission in the case on hand, i.e., 18.04.2024, the management of the affairs of the corporate debtor, Ambro Asia Private Limited, stood vested in Piyush Moona, Interim Resolution Professional, and it was not open to the suspended director of the corporate debtor to file an appeal in the name of the corporate debtor, Ambro Asia Private Limited, claiming to be its director and authorized representative. The appeal as framed and filed on 24.04.2024 was, therefore, wholly incompetent. It was not merely a 'defective' appeal as it was not maintainable in its very inception.
7. In this regard, the limitation prescribed under Section 61(2) of the Code assumes importance. In terms thereof, an appeal before the NCLAT must be filed within the time frames fixed thereunder. The normal period of limitation prescribed under Section 61(2) is 30 days but the *proviso* thereto permits the NCLAT to condone the delay of up to 15 days, if sufficient cause is shown for not filing the appeal within the prescribed period of 30 days. Notably, no discretion is left

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in the NCLAT to condone delay beyond the prescribed condonable period of 15 days. This being the legal position, the indulgence shown by the NCLAT on 12.08.2025 completely desecrated the aforesaid statutory prescription.

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.
9. Though, the learned senior counsel appearing for the suspended director placed reliance on case law in support of his contention that the NCLAT was justified in permitting the amendment of the memo of appeal, we find the decisions relied upon to be wholly inapplicable. In **Uday Shankar Triyar vs. Ram Kalewar Prasad Singh and another²**, this Court was dealing with a defective appeal, wherein two appellants were shown in the appeal memo but the vakalatnama was signed by only one of them. The High Court permitted the other appellant to come on record and pursue the appeal before the appellate Court. The said decision was subjected to challenge before this Court. In this context, this Court observed that any defect in signing the memorandum of appeal or any defect in the authority

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of the person signing the memorandum of appeal or the omission to file the vakalatnama executed by the appellant along with the appeal would not invalidate the memorandum of appeal, if such omission or defect is not deliberate. These observations were made in the context of an omission or defect, being one relatable to procedure which could be corrected subsequently. As already noted, the appeal in the case on hand was not a merely defective appeal but a wholly incompetent appeal, having been presented in the name of the corporate debtor by a suspended director even though he had no right to file such an appeal after the interim resolution professional was appointed. Therefore, the observations in the aforesaid decision have no application.

10. In **Varun Pahwa vs. Renu Chaudhary**³, the plaint was not properly drafted inasmuch as, in the memo of parties, the plaintiff was described as Varun Pahwa through director of Siddharth Garments Private Limited, though it should have read as Siddharth Garments Private Limited through its director, Varun Pahwa. Holding this to be an inadvertent mistake in the plaint, which the trial Court should have allowed to be corrected so as to permit the company to sue as a plaintiff, this Court set aside the order declining to correct the memo of parties. Reference was made to the earlier decision in **Uday Shankar Triyar** (*supra*), wherein it was held that procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Significantly, this Court had also observed therein that non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates.
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

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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.

12. Lastly, reliance is placed on **Innovators Cleantech Pvt. Ltd. vs. Pasari Multi Projects Pvt. Ltd.**⁴. This was a case involving defects in an appeal filed before the NCLAT and the curing of such defects within the time prescribed under the rules. This decision also does not further the case of the appellant, as we have already held that this was not a defective appeal that the NCLAT was dealing with but a wholly incompetent appeal.
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, 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 aforestated 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.

The appeal is dismissed on the aforestated grounds.

Result of the case: Appeal dismissed.

⁴Headnotes prepared by: Ankit Gyan