

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM NO. 303 & 304

ITEM No.303 - IA/270(AHM)2023 in CP(CAA) 65 of 2020 in CA(CAA) 39 of 2020
in
CP(IB) 178 of 2017

Orders under Section 60(5)(C) IBC, 2016 r.w Sec 73 of IBC, 2016 r.w Rule 11 of NCLT, 2016

IN THE MATTER OF:

George Samuel Liquidator of Alps Leisure Holidays Pvt LtdApplicant
V/s
Mehul Thakkar & OrsRespondent

ITEM No.304 - IA/287(AHM)2023 in IA 532 of 2019 in CP(IB) 178 of 2017

Orders under Section 60(5) IBC & Rule 11 of NCLT Rules, r. w. 33 IBC, Sec. 230, 231(2) & 273 of Co. Act, 2013, Reg. 2B of IBBI, Reg. 2016

IN THE MATTER OF:

Small Industries Development Bank of IndiaApplicant
V/s
Mr. Mehul ThakkarRespondent

Order delivered on: 19/12/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

COMMON ORDER

The case is fixed for pronouncement of order. The order is pronounced in the open Court, vide separate sheet.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH -I, AHMEDABAD**

**I.A. No. 287 of 2023 in I.A. No. 532 of 2019 in C.P.(IB)
No. 178 of 2017**

(Filed under section 60(5) of the Insolvency and Bankruptcy Code, 2016 & Rule 11 of NCLT Rules read with section 33 of IBC, Section 230, 231 (2) & 273 of Companies Act, 2013 Regulation 2B of the IBBI (Liquidation Process), 2016.)

*In the matter of **Alps Leisure Holidays Pvt. Ltd.***

**Small Industries Development Bank of India
(Financial Creditor)**

1st Floor, Behind Gujarat Vidhyapith,
Navjeevan Post Office,
Ahmedabad-380014

....Applicant

VERSUS

1. Mehul Thakkar

Proprietor, Master Touch Concept
Ground Floor, Crown Chambers,
R.C. Dutt Road,
Alkapuri, Vadodara-390005

2. Alpesh Gandhi

9/2 Panchvati Society, Navjivan,
Ajwa Road, Vadodara-3900019

**3. ALPS leisure holidays Private limited
(Corporate Debtor)**

Ground Floor, Pushit Complex,
Nr.KiRTI Stambh Raj Mahal Road,
Baroda-390001, Gujrat

4. George Samuel

Liquidator, Alps Leisure Holidays Pvt. Ltd.
Office No.110, Atria B, Sargasan Circle,

Gandhinagar, Gujarat-382421

....Respondents

Along with

**I.A. No. 270 of 2023 in CP(CAA) No. 65 OF 2020 in
CA(CAA) No. 39 of 2020 in I.A. No. 532 of 2019 in CP(IB)
No. 178 of 2017**

*(Filed under section 60(5)(c) read with section 73 of the Insolvency
and Bankruptcy Code, 2016 also read with Rule 11 of the National
Company Law Tribunal Rules, 2016)*

George Samuel

Liquidator, Alps Leisure Holidays Pvt. Ltd.

Registered address at:

110, Atria B, Sargasan Circle,
Gandhinagar, Gujarat-382421

....Applicant

Versus

1. Mehul Thakkar

Proprietor, Master Touch Concept
Ground Floor, Crown Chambers,
R.C. Dutt Road,
Alkapuri, Vadodara-390005

2. Shilpaben Mukeshkumar Shah

4, Ashwin Society, Fatehpura,
Paldi, Ahmedabad-380007

3. Kalpanaben Vasudev Gandhi

9/2, Panchavati Society,
Navjeevan Ajwa Road,
Vadodara-390019

4. Chayaben Alpesh Gandhi

9/2, Panchavati Society,
Navjeevan Ajwa Road,
Vadodara-390019

5. Small Industries Development Bank of India

Navjeevan Amrit Jayanti Bhavan
First Floor, Behind Gujarat
Vidyapet, Navjeevan P.O.,
Ahmedabad-380014

6. Punjab National Bank

(Erstwhile Oriental bank of Commerce)
B-7/7/1 Ground Floor,
Shaswat Hospital
Raopur, Voadodara-390001

....Respondents

Order pronounced on: 19.12.2023

CORAM:

SHAMMI KHAN (Member Judicial)

SAMEER KAKAR (Member Technical)

APPEARANCE:

For the Applicant : Mr. Vishal Raval, Ld. Adv
(For Applicant in I.A. No. 287 of 2023)
Mr. Kuldeep Adesara, Ld. Adv. For Mr.
Atul Sharma Ld. Adv.
(For Applicant in I.A. No. 270 of 2023)

For the Respondent: Mr. Alpesh Gandhi, Ms. Shilpa M
Shah, Ms. Chhaya Gandhi, Ms.
Kalpana V. Gandhi on behalf of Mehul
Thakkar.

(For Respondents in I.A. No. 287 of
2023 and I.A. No. 270 of 2023)
Mr. Vishal Raval, Ld. Adv (for SIDBI in
I.A. No. 270 of 2023)

COMMON ORDER

IA 287/2023

1. I/A 287 of 2023 is an application filed by the Applicant seeking the following prayers :-
 - a) Order allowing the liquidation process of the corporate debtor in accordance with the provisions of Company Act 2013 and IBC Code 2016.
 - b) Order allowing appointment of Mr. Vinodkumar Surendralal Shah.
 - c) Order setting aside the scheme as approved vide order dated 21.12.2022 in CP (CAA) 65 of 2020 in CA (CAA) 39 of 2020.
 - d) Order forfeiting the amount deposited by the respondent no. 1 in the scheme.
 - e) Payment of all cost and expenses payable from the date of submission of the scheme till passing of order recommendation of liquidation process and also the damages and depreciation of cost to the assets of the Company, if any, due to delay in liquidating the company because of the time taken in compromise scheme.

f) Any such order and or other further relief as the Hon'ble Tribunal deems fit and proper in the interest of justice.

Further the applicant has sought the following interim reliefs :-

a) Respondent No. 4 be allowed to take charge of the corporate debtor as liquidator.

b) Respondent No. 1 to 3 be directed to handover everything as mentioned in the handing over report dated 19.01.2023.

2. In the present application the Applicant is the Financial Creditor. R-1 is proprietor of Master Touch Concepts, POA holder of three shareholders of Corporate Debtor and also proposer of scheme, holding 56.79% of share post approval of the scheme. R-2 is the erstwhile promoter and holding 43.21% of share post approval of the scheme. R-3 is the Corporate Debtor which was under liquidation and w.r.t. whom a scheme under section 230 of Companies Act, 2013 was approved by this Tribunal vide order dated 21.12.2022. R-4 acted as liquidator of the Corporate Debtor and filed

Company Petition under which order dated 21.12.2022 was passed by this Tribunal.

3. Brief Background

- a. Corporate Debtor was admitted to insolvency in CP (IB) 178/7/NCLT/AHM/2017 vide order dated 13.11.2018.
- b. No resolution plan was approved by the COC and the Resolution Professional (RP) filed IA 178 of 2017 seeking liquidation of the Corporate Debtor. The said IA was allowed vide order dated 01.10.2019 and the Respondent No. 4 herein was appointed as the Liquidator.
- c. Post the liquidation order, R-4 received scheme of arrangement in nature of compromise which was placed before the Stakeholders Consultation Committee (SCC) on 12.12.2019. The scheme could not be voted and thereafter, Covid-19 intervened and lockdown was imposed.
- d. R-4 filed CA (CAA) No. 39 of 2020 before this Tribunal which was allowed vide order dated 23.07.2020 and directions were given for holding and convening the

meetings of Equity Shareholders, Secured Creditor and Unsecured Creditors and time was extended.

- e. Post the said order meetings were held and the scheme was negotiated by the secured creditors with the scheme proposers and after approval of the stakeholders R-4 filed CP (CAA) 65 of 2020 in CA (CAA) 39 of 2020 seeking approval of the scheme.
- f. This Tribunal approved the scheme vide order dated 21.12.2022.
- g. The salient features of the scheme as per the order dated 21.12.2022 were as under :-
 - i. Legal fee/expenses to be paid to Regional Director and Official Liquidator of Rs. 10000/- each.
 - ii. On 7th day after the order, scheme proposer to pay an amount of Rs. 35 Lakh towards first instalment of CIRP and Liquidation cost and out of the said amount Rs. 32,40,759 to be paid to the Applicant and Rs. 2,59,241 to be paid to Liquidator.
 - iii. As per para iv of the said order an amount of Rs. 65 Lakh towards provisions for costs indicated in

the compromise cum arrangement offered shall be received in two tranches viz. Rs. 50 lakh immediately but not later than 7 days from the date of the order of the NCLT and balance amount to be payable within 30 days from the date of order of NCLT. A total amount of Rs. 1,02,42,728/- was incurred towards CIRP and liquidation cost and after adjusting all the payment made by the Respondent, an amount of Rs. 51,10,700/- was payable as second instalment of reimbursement of the cost to the applicant within 30 days from the date of order.

- iv. All the above compliances were to be made by the respondent 1 to 3 jointly or severally before commencing the payment of compromise amount of Rs. 8.05 Crore.
- v. It is stated that no amount was received except Rs. 15 lakh deposited in liquidation account at the time of submission of scheme.
- vi. Respondent No. 4 duly conveyed the Respondent No. 1 through email dated 28.12.2022 draft

handing over documents and sought compliance. After due corrections in the said draft, company was handed over to Respondent No. 1 for and on behalf of 3 shareholders by Respondent No. 4 on 19.1.2023 upon receipt of the postdated cheques and assurance to honor the same. The handing over report is attached at Annexure-10.

vii. The Respondent 1 to 3 thereafter didn't make any further payments though R-4 reminded them several times. The 3 cheques i.e. (i) for Rs. 259241/- (ii) Rs. 23062/- and (iii) Rs. 3240759/- bounced due to "Funds Insufficient" copy of the cheque returning memo and cheques attached at Annexure-11.

viii. Applicant took up the matter regarding payment with the Respondents through email dated 01.02.2023. Respondent No. 1 sent an email dated 8.2.2023 informing the decision to withdraw from the scheme stating the reasons non acceptable and out of

commercial/professional practice. Such email of R-1 is attached as Annexure-12.

- ix. Based upon the reply, Applicant states that R-1 to 3 are not willing to honour the compromise scheme approved by this Tribunal and hence the present application.
- x. As R-4 has attained age of 70 years, applicant has proposed another person Mr. Vinodkumar Surendralal Shah as Liquidator.
- xi. AOS was filed under diary no. 2681 dated 18.07.2023, it is seen that R-1 could not be served, however respondent No. 2 to 3 were duly served.

4. No reply was filed by any of the respondents to IA 287/2023.

IA 270/2023

5. IA 270/2023 is an application filed under the provisions of Section 60 (5) (c) with Section 73 of IBC, 2016 read with Rule 11 of NCLT Rules, 2016 filed by the Liquidator of Alps Leisure Holidays Pvt. Ltd. seeking the following prayers :-

- a. This Tribunal may be pleased to allow the present application.
- b. This Tribunal may be pleased to pass an order directing the restoration of the Liquidation Proceedings by excluding the time that has lapsed in the course of the said scheme.
- c. This Tribunal may be pleased to pass an order recalling and setting aside the order dated 21.12.2022 on the grounds of the scheme becoming frustrated at the instance of the Respondent No. 1 to Respondent No. 4.
- d. This Tribunal, pending the present application, may be pleased to pass an order directing a stay over the operations, implementation and execution on the said approval order.
- e. This Tribunal, pending the present application, may be pleased to direct the Respondent No. 1 to Respondent No. 4 to hand over the possession of the documents, assets and premises of the Corporate Debtor to the Liquidator.

- f. That this Tribunal may be pleased to impose exemplary cost/penalty upon Respondent No. 1-4.
 - g. That this Tribunal may be pleased to pass appropriate orders against Respondent No. 1-4 as per Section 73 of the Code.
 - h. Such other and further relief as this Tribunal may deem fit in the interest of justice.
6. The description of R-1 to R-4 is same as per IA 287 of 2023, R-5 and R-6 are the Financial Creditors of the Corporate Debtor.
7. The facts of the matter are almost similar to as that of IA 287/2023 and hence we are reproducing the same here for the sake of brevity. The additional facts are narrated below :-
- a. R-5 vide email dated 23.1.2023 requested the Applicant to prefer an application before this Tribunal since R-1 had failed to adhere to the agreed timeline and consequently, the proposed scheme ought to be considered as failed for non-adherence and that the Liquidation cost remained unpaid as on the said date.

b. On being informed by the Applicant that certain cheques have returned, R-1 responded to the Applicant vide email dated 30.01.2023 and made clear his intention to withdraw from the scheme. Under para 5.11 the Applicant has given excerpt of the said mail which are reproduced below :-

“hope we all understand that the expected judgement & result has come to us all after more than 18 months of actual proposal. I truly appreciate the efforts put in by the legal entities in bringing this solution, however, my only concern is that I myself have not been given sufficient time for making the arrangements for payment.” Email is attached as Annexure-I.

8. It is stated by the Application that R-1 never intended to make the payments to the stakeholders or to honor the said scheme, that R-1 to R-4 have violated the scheme under Section 230 of Companies Act, 2013 read with Regulation 2B of the IBBI Liquidation Regulations and that powers are vested with Tribunal under Section 231 of Companies Act to pass an order of liquidation in case of failure to implement the scheme has filed the present application.

9. Affidavit in reply for Respondent No. 5 was filed vide diary no. 2786 on 27/07/2023 signed by Asst. General Manager of SIDBI who according to the affidavit is holding 99.697% voting share. R-5 states more or less the same things as were stated in IA 287 of 2023, alleges breach of the scheme due to non-payment and supports the prayers in the present application.
10. R-2 to 4 have filed undertaking cum power of attorney dated 29/07/2023 authorizing Mr. Alpesh Vasudev Gandhi to submit on their behalf. Respondent No. 2 to 4 have filed a common reply vide affidavit dated 30/7/2023 through Mr. Alpesh Vasudev Gandhi, POAH of Respondent No. 2 to 4. It is stated in reply that Mr. Mehual Thakkar (R-1) was supposed to infuse equity worth Rs. 11 Crores as per the proposed scheme of compromise. Cheques were also provided by him and later on he failed to honour the payment liability. In Para 6 of the affidavit, R2 to R 4 have expressed willingness to hand over all the control to the Liquidator. Thereafter they seek more time till September, 2023 to comply the scheme.

11. Upon directions given vide interim order dated 23.11.2023, Respondent 2 to 4 have filed additional affidavit affirmed on 2.12.2023, through POAH Alpesh Vasudev Gandhi. It is stated by the said POAH that R-1 has also given his consent to the said additional affidavit through email dated 2.12.2023 attached as Annexure-3.
12. All the respondents admit that the payment plan as approved by this Tribunal has since been violated. The Respondents have proposed a revised payment plan which in brief is as under :-
- a. Payment to SIDBI increased from Rs. 6.26 Crores to 7.40 Crores and including other cost as Rs. 8.05 Crores. The said payment is in a staggered manner with Rs. 50 lakh in 15 days, Rs. 200 lakh in 90 days, Rs. 200 lakh in 180 days, Rs. 200 lakh in 270 days, Rs. 155 lakh in 360 days and Rs. 60 lakh in 400 days from the date of receiving NCLT order in this regards.
 - b. Payment to OBC of Rs. 2.87 lakh within one week of NCLT order.

- c. Similarly for payment to sundry creditors time lines have been given which range from one week to 60 days.
 - d. As regards the unsecured loans of Rs. 73.45 lakh it is stated that the same to be paid within 24th to 36th month from the date of NCLT order.
 - e. As regards employees amount of Rs. 4.85 lakh to be paid within one week of the order of NCLT.
13. We have heard the counsel for the Applicants and the Respondents in the matter of these two IA's being IA 287 of 2023 and IA 270/2023.
14. It is seen form the order dated 31.07.2023 that scheme proposers were directed to hand over back the control of the corporate debtor to the liquidator. Order dated 19/09/2023 records that liquidator reported to the Tribunal that possession of assets has been taken back from the scheme proposers and as per the inventory drawn on the spot some of the items are missing. As such interim relief as sought by the Applicant in IA 287 of 2023 has already been granted and acted upon.

15. As regards the implementation of the scheme, enough and more material has been placed by the Applicants in the two IA's to bring on record that the scheme has since been violated by the Scheme Proposers. Not even first stage payments have been made by the scheme proposers and in our view the scheme was a non-starter.
16. The bounced cheques placed on records are evidence to non-payment.
17. The affidavit dated 2.12.2023 filed by R-1 to 4 where the respondents are seeking more time lasting upto 400 days is the testimony that the scheme has been completely violated and not acted upon by the scheme proposers for reasons best known to them. It is seen as per the scheme approval order, the last payment was to be made within 365 days of the order. The allegations of the scheme proposers that this Tribunal took longer time to approve the scheme are sham and baseless, nothing stopped the scheme proposers to withdraw from the scheme before it was finally approved by this Tribunal.

18. As such we have no hesitation to hold that the scheme as approved and the order of this Tribunal dated 21/12/2023 has been violated.

19. The scheme has failed due to non-implementation of obligations under the scheme by the scheme proposers hence, we exercise power under section 231 of Companies Act, 2013 which is reproduced below:

“231. Power of Tribunal to enforce compromise or arrangement.— (1) *Where the Tribunal makes an order under section 230 sanctioning a compromise or an arrangement in respect of a company, it—*

(a) *shall have power to supervise the implementation of the compromise or arrangement; and*

(b) *may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for*

the proper implementation of the compromise or arrangement.

(2) If the Tribunal is satisfied that the compromise or arrangement sanctioned under section 230 cannot be implemented satisfactorily with or without modifications, and the company is unable to pay its debts as per the scheme, it may make an order for winding up the company and such an order shall be deemed to be an order made under section 273.

(3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act sanctioning a compromise or an arrangement.”

20. In view of the above, we hold as under :-

- a. Order dated 21.12.2023 approving the scheme w.r.t. Corporate Debtor is recalled.
- b. All relief and concessions extended in the said order are also recalled.

- c. Liquidation process of the corporate debtor stands restored as status qua ante as on the date of the Liquidation commencement date.
- d. Mr. Vinodkumar Surendralal Shah having registration number IBBI/IPA-002/IP-N00610/2018-2019/11857 is hereby appointed as the Liquidator of the Corporate Debtor who should take the liquidation process further in terms of the IBC, 2016 and attended regulations.
- e. Existing Liquidator to handover the charge, property, assets and documents pertaining to this Corporate Debtor to the new Liquidator within a period of 3 days of this order, who in turn will carry forward the liquidation process.
- f. As a consequence of the above, the liquidation period of the corporate debtor is suo moto, hereby extended by a further period of 1 year from the date of this order.
- g. All the amounts received by the Liquidator, thus far, from the scheme proposers, including but not limited to the EMD, Performance Security or subsequent

payments in terms of the order dated 21.12.2022 shall stand forfeited forthwith.

- h. A copy of this order to be forwarded by the Registry to IBBI for taking further action, if any in terms of Section 73 of the Code against R-1 to R-4.

21. With above directions the IA 287 of 2023 and 270 of 2023 are disposed.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)