NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

COMPANY APPEAL (AT)(INS) NO.1138 OF 2026

(*Arising out of judgement and order dated 17.06.2026 passed by National Company Law Tribunal, Ahmedabad in IA NO.678/2026 in CP CP(IB) No.269 of 2023*)

IN THE MATTER OF:

State Bank of India,
SAMB Branch III
112,115, 1 floor, Plot No. 212,
West Wing, Tulsiani Chambers,
Free Press Journal Marg, Nariman Point,
Mumbai 400021. **Appellant**

Vs

1. **Garden Court Distillieries Pvt Ltd**,
   403, 4th floor, Raaheja Plaza,
   Off. Veera Desai Road,
   Andheri (West) Mumbai 400053

2. **Mr. Akhil Ahuja**,
   Liquidator of Home Derivatives Pvt Ltd,
   Floor No.8, Flat No.803,
   Chandak Cornerstone,
   David S, Barretto Road,
   Worli, Mumbai
   Maharashtra 400018

Respondents

For Appellant: Mr. Krishnendu Datta, Sr. Advocate with Ms. Ekta Choudhary, Mr. Gaurav Raj Grover, Advocates.

For Respondent: Mr. Abhijeet Sinha, Sr. Advocate with Mr. Himanshu Satija, Ms. Ripul Swati, Mr. Suyash Shrivastava, Mr. Aridaman Raghav, Advocates for R1
Mr. Sumant Batra, Mr. Sarthak Bhandari, Ms. Riya Kaur Arora, Mr. Aditya Jain, Advocates for Liquidator.
Ms. Shreya Moondhra, Advocate

WITH

COMPANY APPEAL (AT)(INS) NO.1145 OF 2026

IN THE MATTER OF:

Garden Court Distillieries Pvt Ltd,
403, 4th floor, Raaheja Plaza,
Off. Veera Desai Road,
Andheri (West) Mumbai 400053 **Appellant**

Vs

1. **Mr. Akhil Ahuja**,
   Liquidator of Home Derivatives Pvt Ltd,
   Floor No.8, Flat No.803,
   Chandak Cornerstone,
   David S, Barretto Road,
   Worli, Mumbai
   Maharashtra 400018

2. **State Bank of India**,
   SAMB Branch III, 112-115, 1st floor,
   Plot No.212, West Wing,
   Tulsiani Chambers,
   Free Press Journal Marg,
   Nariman Point, Mumbai 400021

Respondents

For Appellant: Mr. Abhijeet Sinha, Sr. Advocate with Mr. Himanshu Satija, Ms. Ripul Swati, Mr. Suyash Shrivastava, Mr. Aridaman Raghav, Advocates

For Respondent: Mr. Sumant Batra, Mr. Sarthak Bhandari, Ms. Riya Kaur Arora, Mr. Aditya Jain, Advocates for Liquidator. Ms. Shreya Moondhra, Advocate

JUDGEMENT

JUSTICE YOGESH KHANNA, MEMBER (JUDICIAL)

The present Appeal assails the Impugned Order dated 17.06.2026 passed by the Hon'ble NCLT, Ahmedabad Bench in I.A. No. 678 (AHM) of 2026 in C.P.

(IB) No. 269 (AHM) of 2023, whereby the application filed by the Appellant, the successful auction purchaser of the Corporate Debtor as a going concern, seeking necessary reliefs and concessions for implementation of the sale was rejected. The core issue is whether, while considering such consequential reliefs, the Adjudicating Authority could have effectively revisited its earlier liquidation order dated 10.10.2025, which had admitted Corporate Debtor into liquidation under Section *33(2)* of the Code and expressly recorded the Committee of Creditor's decision to first explore its sale as a going concern.

2.I It is argued the Impugned Order proceeds on an erroneous application of the IBBI (Liquidation Process) (Second Amendment) Regulations, 2025, notified on 14.10.2025, despite the liquidation having already commenced on 10.10.2025, the liquidation order itself stipulating that it would be *"effective from the date of this order."* It is argued in the absence of any express retrospective operation, the subsequent amendment could not retrospectively invalidate a liquidation process already ordered by the Adjudicating Authority, merely because subsequent steps in the sale process were undertaken after 14.10.2025 and the auction and sale as a going concern were steps in furtherance of the liquidation process already commenced on 10.10.2025 and could not be treated as a fresh process governed by a subsequent regulatory regime.

3. The Respondents have also argued on similar lines. Heard.

4. Before coming to the facts, we need to note that prior to the Amendment Notification dated 14.10.2025, Regulation 39C of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations"), *inter alia,* contemplated that while deciding to liquidate the Corporate Debtor under Section 33 of the Code, the Committee of Creditors could recommend in the event of liquidation of the corporate debtor, the liquidator first explore the *sale of the Corporate Debtor as a going concern* under Regulation 32(e) of the IBBI (Liquidation Process) Regulations, 2016 ("Liquidation Regulations").

5. It is pertinent to mention *Section 33(2)* of the Code provides Committee of Creditors may at any time during CIRP but before confirmation of resolution plan, decide to liquidate the corporate debtor by 66% voting share. The *Regulation 39C* also casts a duty on the RP to place the decision of the Committee of Creditors before the Adjudicating Authority while filing an application for liquidation under Section 33.

6. The unamended *Regulation 39C(1)* expressly provided as follows:

> *"**39C.** (1) While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may recommend that the liquidator may first explore sale of the corporate debtor as a going concern under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or sale of the business of the corporate debtor as a going concern under clause (f) thereof, if an order for liquidation is passed under section 33.*
>
> *(2) Where the committee recommends sale as a going concern, it shall identify and group the assets and liabilities, which according to the commercial considerations, ought to be sold as a going concern under clause € or clause (f) of regulation 32 of*

> *the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.*
>
> *(3) The resolution professional shall submit the recommendation of the committee under sub-regulations (1) and (2) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be."*

7. Now, in the present case, the Committee of Creditors had, in its commercial wisdom, vide Resolution No. 5, specifically resolved the Liquidator should first explore the sale of the Corporate Debtor as a going concern under Regulation 32(e) of the Liquidation Regulations, in accordance with Regulation 39C of the CIRP Regulations. The said decision of the CoC was taken pursuant to a duty cast on it by Regulation *39C*. The decision of the CoC was specifically placed before the Adjudicating Authority in I.A. No. *5/AHM/2025* filed by the RP under section 33 of the Code. It was duly considered by the Adjudicating Authority while passing the liquidation order dated 10.10.2025.

8. The liquidation order dated 10.10.2025 records the decision of the Committee of Creditors taken under *Regulation 39C*, *inter-alia*, as follows:

> *"….XIX. In compliance of Regulation 39B of the CIRP Regulations, the Applicant had placed before the CoC a best estimate of liquidation cost, which was duly approved by the CoC in terms of Resolution No. 6.*
>
> *XXI. Further, in terms of Resolution No. 5, the CoC resolved that the Liquidator shall first explore the sale of the Corporate Debtor as a going concern under Regulation 32(e) of the IBBI (Liquidation Process) Regulations, 2016, in accordance with Regulation 39C of the IBBI (Resolution Process for Corporate Persons), Regulations 2016….."*

9. The Adjudicating Authority thereafter expressly ordered:

> *"17. In view of the above findings, it is hereby ordered as follows: -*
>
> *a) The Corporate Debtor - M/s Honest Derivatives Private Limited is admitted into liquidation in terms of the provisions of 33(2) of the Insolvency and Bankruptcy Code, 2016, to be conducted in accordance with Chapter III of the Code and the IBBI (Liquidation Process) Regulations, 2016 which <u>shall be effective from the date of this order."</u>*

10. Thus, the order dated 10.10.2025 is a substantive order admitting the Corporate Debtor into liquidation under *Section 33(2)* of the IBC, with the liquidation expressly made effective from the date of the order.

11. The decision of the Committee of Creditors taken under Regulation 39C was a part of the liquidation order as contemplated by Section *33* read with Regulation *39C*. In other words, with Adjudicating Authority taking on record the decision of the Committee of Creditors under Regulation *39C* to sell the Corporate Debtor as a going concern, and passing an order of liquidation; the *sale of Corporate Debtor as a going concern commenced on the date when liquidation order was passed* by the Adjudicating Authority.

12. The subsequent steps undertaken by the Liquidator, including the exploration and conduct of the sale of the Corporate Debtor as a going concern, were therefore *steps taken in implementation of an already existing liquidation order* and the Committee of Creditors decision taken under Regulation 39C, pursuant to the course of action approved by the Committee of Creditors and expressly noticed by the Adjudicating Authority.

13. The auction process cannot be viewed in isolation from the liquidation order dated 10.10.2025. The auction was not the commencement of liquidation; rather, it constituted a subsequent step in the liquidation process, undertaken pursuant to the Committee of Creditors's decision and the express recognition thereof in the liquidation order.

14. Thus the principal error in the Impugned Order lies in treating the Amendment Notification dated 14.10.2025 as though it retrospectively governed a liquidation process which had already commenced on 10.10.2025.

15. This Appellate Tribunal in Company Appeal (AT) (Ins) No. *786 of 2023* titled *"Ashok Kumar Gulla vs State Bank of India & Ors."*, while examining the applicability of successive amendments introduced during the pendency of the liquidation, categorically held that, while deciding the issue arising in the liquidation, it was necessary to examine the Regulations *"as they stood on the date when the liquidation order was issued."* The Tribunal accordingly applied the provision existing on the date of the liquidation order and declined to apply subsequent amendments so as to alter the rights and obligations arising from the liquidation process. The relevant portion of the judgment is extracted herein below:

> *"13. In the subsequent amendments to the 'Liquidation Process Regulations', Stakeholders Consultation Committee has been provided a role in fixation of fees of liquidator. <u>While deciding the issue of liquidation fees, we have to restrict ourselves to examination of Liquidation Process Regulations as they stood on the date when the liquidation order was issued in this case.</u> The liquidation order was issued on 15.10.2019…..*

> *14. From perusal of the regulations as they existed on the date of liquidation order, it appears that the fees of the liquidator was to be either the fees decided by the CoC under Regulation 39D of IBBI (CIRP) Regulations, 2016 or a percentage of fee on the amount that is realised/ distributed during the liquidation process. The Regulations, as it existed at the time on the date of the liquidation order, do not envisage payment of any fees or remuneration to the liquidator on a monthly basis, if such fee is not fixed by the CoC under Regulation 39D of IBBI (CIRP) Regulations, 2016.*
>
> *15. Considering the regulations as they existed at the time when liquidation order was issued in this case, and that no fees was fixed by the CoC, we are of the opinion that fees to be paid to the Liquidator in this case shall be as per the percentage prescribed in Regulation 4(2)(b) of IBBI (Liquidation Process) Regulations, 2016 on realization and distribution of proceeds from auction of assets. We find no reason to interfere in the order of the Adjudicating Authority. The appeal is dismissed. All pending IAs, if any, are closed. No order as to cost."*

16. In the present case, therefore, the rights and obligations arising from the liquidation process are required to be determined with reference to the regulations prevailing on 10.10.2025, when Corporate Debtor was admitted into liquidation. Significantly, the liquidation order itself records the Committee of Creditors's Resolution No. 5 resolving that the Liquidator shall first explore the sale of the Corporate Debtor as a going concern under Regulation 32(e) of the Liquidation Regulations, in accordance with Regulation 39C of the CIRP Regulations. The Adjudicating Authority thereafter expressly ordered the Corporate Debtor be admitted into liquidation under Section 33(2) of the IBC and that the liquidation *"shall be effective from the date of this order."* Thus, the subsequent amendment dated 14.10.2025 cannot retrospectively alter the legal character or foundation of a liquidation process which had already commenced and had received the imprimatur of the Adjudicating Authority on 10.10.2025.

17. It is pertinent to note IBC proceedings are beneficial legislations i.e. for the benefit of the creditors and stakeholders. IBC being a commercial wisdom driven process with a primary goal of resolution and putting the Corporate Debtor back on its feet, then in the facts and circumstances of this case, non-sale as going concern would lead to loss of employment of 800+ employees if the factory is not restarted; and the farmers are primarily the operational creditors in the area, would lose significantly, who rely on selling their produce locally at high rate and low transport cost. Non grant of reliefs and attempt to unsettle any sale, has prejudiced not only the creditors but also these persons who are most affected.

18. The corporate debtor has been sold as a going concern with sole objective of value maximization and on the basis of the legal understanding that the sale of the corporate debtor as a going concern commenced from the date of the liquidation order, wherein the Hon'ble Adjudicating Authority specifically directed commencement of liquidation in terms of the provision of Section 33(2) of the IBC, to be conducted in accordance with Chapter III of the Code and IBBI(Liquidation Process), Regulations, 2016 which shall be effective from the date of this order. Hence, the Respondent No. 1 is entitled to relief and concessions as prayed.

19. Thus we hold that liquidation by sale as a going concern commenced on 10.10.2025 i.e., the date on which the Hon'ble Adjudicating Authority passed the liquidation order in terms of Section 33 of the Code. In this regard, reliance can be placed on the definition provided under Section 5(17) of the IBC which is

reproduced here as “liquidation commencement date” means the date on which proceedings for liquidation commence in accordance with section 33 or section 59, as the case may be”.

20. Thus, the Impugned Order so far as it wrongly interprets that liquidation by sale of Corporate Debtor as a going concern had not commenced prior to the coming in force of IBBI (Liquidation Process) (Second Amendment) Regulations, 2025, notified on 14.10.2025 thereby frustrating the commercial decision of the CoC and jeopardizing a lawful concluded sale undertaken in accordance with liquidation order dated 10.10.2025, stands set aside.

21. Thus we remand the matter before the Ld. NCLT to examine the reliefs and concessions, if any, to be granted to the SRA in accordance with law, within two weeks of receipt of this order.

22. With these observations the appeals stand disposed of. Pending applications, if any, are also disposed of.

(Justice Yogesh Khanna)
Officiating Chairperson

(Mr. Barun Mitra)
Member (Technical)

(Mr. Ajai Das Mehrotra)
Member (Technical)

Dated:10-09-2026
bm