

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Ins) No. 1157 of 2025

[Arising out of the Order dated 05.05.2025, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Ahmedabad Bench, Court-I), in IA No.1520 (AHM) of 2024 in C.P. (IB) No. 459 of 2019]

IN THE MATTER OF:

Abhay Kumar Jitendra Shah,
Residing at 142/01, Opposite Jain Upashra
Main Road,
Dadra Silvassa, Opp. Canara Bank, Dadra
Nagar Haveli – 396 193

...Appellant

Versus

Sanjay B. Shah,
Liquidator of Accent Packaging Private
Limited,
Having its office at 704, King's Plaza,
Astron Chowk, Sardarnagar Main Road,
Rajkot – 360 001.

...Respondent

Present:

For Appellant : Mr. Palash S. Singhai, Mr. Harshal Sareen,
Advocates.

For Respondent : Mr. Rishabh Shah, Adv. Sogmya Jain, Mr. Arjun
Seth, Liquidator.

J U D G M E N T
(Hybrid Mode)

[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]

This instant Appeal has filed under section 61 of the Insolvency and Bankruptcy Code, 2016 [“the Code”] against Order dated 05.05.2025 passed by the National Company Law Tribunal, Ahmedabad Bench, Court – I [“Ld. Adjudicating Authority”] in I.A. No. 1520 (AHM) of 2024 moved in C.P. (IB) No. 459 of 2019 [“Impugned Order”], whereby the I.A. No. 1520 (AHM) of 2024 preferred by the Successful Auction Purchaser of the Accent Packaging

Private Limited ["Corporate Debtor"] as a going concern pursuant to Auction dated 25.04.2024, pursuant whereof Sale Certificate was also issued in favour of the present Appellant dated 20.07.2024 inter alia seeking various relief(s) and concession(s) viz-a-viz running the business of the Corporate Debtor as a going concern was disposed of by the Tribunal, for grant of following prayers:-

"16 a. Set aside the direction of the Ld. Adjudicating Authority contained in order dated 05.05.2025 wherein the Appellant has been directed to increase the Share Capital and grant relief as sought by the appellant.

b. Modify the Order dated 05.05.2025 passed by the Ld. Adjudicating Authority, in so far, as the it related to the Share Capital of the Corporate Debtor;

c. Pass any other order as this Hon'ble Appellate Tribunal may deem fit in the interest of justice."

2. The tribunal by passing impugned order rejected the request of appellant for restructuring of shareholding of the CD.

3. Ld. counsel for the appellant submits that Corporate Insolvency Resolution Process was initiated against the Corporate Debtor vide Order dated 03.01.2022 passed by the Ld. Adjudicating Authority in Company Petition (IB) No. 459 of 2019. However, since no resolution plan in relation to the Corporate Debtor was approved by the Committee of Creditors of the Corporate Debtor, an application being I.A. No. 722 of 2022 was preferred seeking liquidation of the Corporate Debtor, which was disposed on

21.12.2023 [“Liquidation Order”] and liquidation process with regard to the Corporate Debtor commenced and Respondent No. 1 was appointed as the Liquidator of the Corporate Debtor.

4. It is further submitted that in pursuance to the passing of the Liquidation Order the Respondent No. 1, on 02.04.2024 issued Auction Notice inter alia seeking sale of the Corporate Debtor as a going concern by way of an e-auction in terms of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 on 25.04.2024 with the reserve price of INR 6,67,36,000/- (INR Six Crore Sixty-Seven Lakhs Thirty-Six Thousand).

5. It is also submitted that pursuant to aforesaid Public Notice, the Appellant herein was shortlisted as a ‘qualified bidder ‘and deposited Earnest Money Deposit Rs. 50,00,000/- (Fifty Lakhs), where after the Appellant participated in the aforesaid auction and was declared as the Successful Bidder viz-a-viz the Corporate Debtor and the sale of the Corporate Debtor as a going concern was confirmed in terms of Tender Document No. APPL/24-25/001 dated 02.04.2024.

6. It is further submitted that the Appellant having purchased the Corporate Debtor as a going concern along with its all assets forming part of the ‘Liquidation Estate’ in terms of the provisions of Section 36 of the Code, free from any liability, dues, claims or obligations and the Appellant preferred I.A. No. 1520 of 2024 inter alia seeking various reliefs and concessions from the Ld. Adjudicating Authority in order to facilitate the running of operation of the Corporate Debtor.

7. It is further submitted that the Appellant and the Respondent No. 1 during the course of hearing before Ld. Adjudicating Authority filed various affidavits as well as their written submissions in support of their contentions and vide impugned order the Ld. Adjudicating Authority has granted various concessions but has unnecessarily interfered in the prayer which was made in terms that an amount of Rs. 2,00,000/- (Rupees Two Lakhs Only) be treated as payment made towards Issue of Equity Shares wherein 20,000 shares of Rs. 10 each to be issued by the company, out of which 19999 were requested to be allotted Sri Abhay Shah and one share to Sri Asit Gulabrai Mehta and balance amount of Rs. 6,65,61,000/- (Rupees Six Crores Sixty-Five Lakh Sixty-One Thousand Only) was requested to be treated as debt infused in the Company.

8. It is also submitted that the Adjudicating Authority without any justification held that the corporate debtor is sold as a going concern, and it is the responsibility of the auction purchaser to run the corporate debtor as a going concern, therefore, it is necessary that the CD is not unnecessarily burdened with debt and interest and thereafter directed the auction purchaser to classify Rs. 3,30,00,000 as equity and the balance amount of Rs. 3,37,61,000 as debt infused in the company.

9. It is submitted that the Appellant is aggrieved by the non-grant of the relief and concession as sought by the Appellant and supplanting of the capital structure by the Adjudicating Authority as per its own wisdom without any prior notice or any issue having been raised in relation to the same either by the Appellant or by the respondent.

10. It is vehemently submitted that the Ld. Adjudicating Authority has materially erred in supplanting its own commercial wisdom in fixing the capital structure of the company, when no objections in respect of the proposed capital structure was raised by any party, more so when no clarification in respect of the same was sought from the Appellant or respondent and the Ld. Adjudicating Authority was not empowered to suo moto modify the relief / concession inter alia re-writing the terms of sale of the Corporate Debtor, as well as, substituting its own view for the discretion vested with the Successful Auction Purchaser, more so without any prior notice or intimation in relation to the same, despite no objection having been raised in relation to the same by the Respondent.

11. It is also submitted that Adjudicating Authority does not have the statutory or regulatory power to modify the relief or concession sought by the Appellant herein and the Impugned Order has been passed in apparent error of jurisdiction, in as much as, the modification amounts to imposition of unnecessary conditions upon to the Appellant who is a Successful Auction Purchaser of the Corporate Debtor and the modification of relief sought viz-a-viz Shareholding of the Company is impermissible under the provisions of the Code, as well as, the various regulations made there under.

12. It is further submitted that Ld. Adjudicating Authority failed to consider that no such power has been conferred on it to change or modifying the commercial terms, while the Ld. Adjudicating Authority is only supposed to ensure that proposed terms are not contrary to the provisions of any law and Ld. Adjudicating Authority has also failed to appreciate the ratio laid down by the Hon'ble Supreme Court in **Jaypee Kensington Boulevard**

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(12) SCR 603 wherein the scope of interference of Ld. Adjudicating Authority with the commercial aspects of Resolution Plan has been restricted and the same ratio would be applicable on auction purchaser with equal force.

13. It is also submitted that there is no scope with the Adjudicating Authority to interfere with the commercial aspects of the decisions of the Committee of Creditors (CoC) or the Stakeholders Consultation Committee; and there is no scope for substituting any commercial term of the resolution plan or plan for taking over the Corporate Debtor as a going concern and within its limited jurisdiction, the Adjudicating Authority, if, finds any shortcoming in the resolution plan vis-à-vis the specified parameters, it would only then exercise its jurisdiction accordingly, however the same will not allow the Ld. Adjudicating Authority to step into the shoes of CoC or SCC or Successful Bidder to substitute the approved commercial aspects of the company with its own.

14. It is also submitted that Ld. Adjudicating Authority has failed to appreciate that the Corporate Debtor has not been having any ongoing business for years and the Auction Purchaser cannot be imposed with fresh new considerations after completing the auction sale and has a right to fix capital structure of the Company as per its own business consideration, more so, when no objection have been raised by any of the concerned stakeholders in respect of the same and Ld. Adjudicating Authority has imposed conditions which are even beyond the scope of the terms and conditions of the tender document, is also beyond the jurisdiction of the Ld.

Adjudicating Authority as the modification tantamount to post facto imposition of stipulation upon the Appellant which is beyond the jurisdictional purview of the Code and regulations made thereunder and the same deserves to be modified.

15. Ld. Counsel for the Liquidator of the CD submits that submits that order dated 26.08.2025 and discussion with regard to this appeal was held in the 21st meeting of the SCC held on 08.09.2025 and it was apprised to the members of the SCC no objection to the reliefs and concessions as sought by the appellant was given by the respondent before the Adjudicating Authority.

16. It is also submitted that after discussion with the SCC members it was decided in the said meeting that the liquidator shall comply with the order dated 26.08.2025 passed by the tribunal.

17. It is further submitted that it has been stated in the reply filed that no objections to the certain reliefs and concessions was already given before the Ld. tribunal. It is submitted that the liquidator is not having any objection if the prayers as sought by the appellant are granted by this appellate tribunal.

18. We have heard Ld. Counsels for the parties and perused the record as well written submissions filed by them and find that the tribunal in the impugned order has recorded that the corporate debtor was sold as a going concern. Some assets were excluded from the liquidation estate and sold separately. It has been recorded in para no. 22 of the impugned order that the Corporate Debtor was sold "As is where is basis", "As is what is basis", "Whatever there is basis" and therefore the successful bidder or the

corporate debtor cannot claim or be allowed all the reliefs and concessions. However, all the reliefs and concessions have been analysed by the Tribunal and only those reliefs which according to the tribunal were consistent with the “clean slate theory” were allowed which will enable the successful bidder to run the corporate debtor as a going concern in good faith. The reliefs and concessions allowed, as discussed by the tribunal were not meant to allow any unintended benefits not allowed under the IBC Code, 2016 or under any law. Thereafter the tribunal granted the relief with regard to many concessions and prayers of the appellant in a tabular form, modifying the relief with regard to restructuring of shareholding of the Company.

19. The appellant appears to be satisfied with the conclusions drawn by the tribunal with regard to all its prayers except the prayer with regard to restructuring of shareholding of the company.

20. The appellant with regard to shareholding of the company had requested in terms that an amount of Rs. 2,00,000/ - (Rupees Two Lakhs Only) be treated as payment made towards Issue of Equity Shares wherein 20,000 shares of Rs. 10 each to be issued by the company out of which 19999 shares were proposed to be issued to Shri Abhay Shah and only one share was proposed to be issued to Shri Asit Gulabrai Mehta 1 and balance amount of Rs. 6,65,61,000/ - (Rupees Six Crores Sixty-Five Lakh Sixty-One Thousand Only) was proposed to be treated as debt infused in the Company. Ld. Adjudicating Authority however modified this relief and granted the same as under: -

"Regarding (ii), the corporate debtor is sold as a going concern, and it is the responsibility of the auction purchaser to run the corporate debtor as a going concern.

Therefore, it is necessary that the CD is not unnecessarily burdened with debt and interest. Therefore, the auction purchaser is directed to classify Rs.3,30,00,000/- as equity and the balance amount of Rs. 3,37,61,000 as debt infused in the company."

21. Aforesaid modification made by Ld. tribunal has been assailed by Ld. counsel for the appellant on the ground that at first it was not within the jurisdiction of the Ld. tribunal to modify these terms as it was a commercial decision of the auction purchaser, whose position is akin to a successful Resolution Applicant and secondly this has the approval of the Stakeholders Consultation Committee (SCC), which is also akin to COC and thirdly the modification has been made without providing opportunity of being heard to the parties on these modifications.

22. It is worthwhile to record here that the respondent liquidator has stated categorically in his reply that the impugned order was discussed in the 21st meeting of SCC held on 08.09.2025 and the Liquidator has communicated the SCC that no objection to the reliefs and concessions as claimed by the Appellant was raised by him before the Adjudicating Authority. Thus the SCC or the Liquidator was not having any objection to the restructuring of the shareholding/ share capital of the company as proposed by the appellant.

23. Having considered all the facts and circumstances in detail it is reflected that the appellant is a successful auction purchaser and he has paid all the consideration what was required to be paid and has acquired the CD as a clean slate.

24. It is to be recalled that the IBC is a complete code designed for expeditious resolution and maximisation of value, with liquidation as a measure of last resort. Sale as a going concern of the CD under Section 35(1)(f) of the Code prioritises business continuity over piecemeal asset sales, fostering revival/resolution which is one of the object of Code. Once the e-auction concludes, consideration is deposited, and the sale is confirmed with a sale certificate issued in favour of the auction purchaser, the transaction attains irrevocable finality, vesting unencumbered title in the purchaser. The Adjudicating Authority's powers under Section 35 of the Code are supervisory and circumscribed to ensure compliance during liquidation - including sale confirmation and distribution as per Section 53 of the Code and after the issuance of the sale certificate, its role extinguishes, and it cannot engraft ex post facto conditions on the purchaser's operational autonomy, if the commercial wisdom of the same is not in contradiction of any legal provision. The impugned modification prima facie exceeds this supervisory powers granted to the Adjudicating authority under the code, more so when the proposed restructuring of share capital by the appellant auction purchaser has not been opposed by SCC or the liquidator and not stated to be in violation of any law.

25. It is also to be recalled that in the sale of the Corporate Debtor as a 'Going Concern' the Corporate Debtor is retained and it is dissolved and the

CD will be transferred along with the assets to the auction purchaser. So, the Corporate Debtor as a legal entity remains as such. Therefore, in such sale the equity shareholding of the Corporate Debtor is extinguished and the auction purchaser takes over the CD with the assets, licenses, entitlements including the business of the Corporate Debtor, assets, properties and rights etc. excluding the liabilities. No need to say that in such sale the assets that are included in the E- Auction Memorandum only have to be taken over by the Auction Purchaser. Thus the Corporate Debtor survives and the ownership including the legal entity is transferred to the purchaser and in the sale as a 'going concern', the purchaser will be carrying on the business of the Corporate Debtor according to its commercial wisdom and could not be guided or controlled by the Adjudicating Authority.

26. So when the whole sale consideration is received from the bidder/purchaser, the same has been distributed to the Creditors in accordance with Section 53 of the Code and since the amount of sale consideration has paid fully by the purchaser which in turn has to be paid to the Creditors in terms of the Code, the liabilities of the Corporate Debtor (Going Concern) towards the Creditors would be deemed to have been settled and the auction purchaser will take the CD free from any encumbrances.

27. Therefore, after the auction sale and deposit of whole consideration unless there is nothing specific in the information memorandum the purchaser receives the CD as a concern free from any liability and the purchaser is free to run it as per its preferences and it is also free to keep the shareholding structure of its choice unless it is not contravening any law

and in this regard the adjudicating authority could not control the wisdom of the purchaser.

28. Thus for the above mentioned reasons the impugned order appears to be bad, so far as the same is concerned only with regard to the Column no. 3 (ii) of the table under the heading "Shareholding of the Company" whereby the proposed shareholding of the appellant has been modified by the Adjudicating Authority in response to the prayer mentioned at para no. 11(iv) of the impugned order.

29. We are of the considered view that the Adjudicating Authority has committed manifest illegality in modifying the proposal made by the appellant with regard to the share capital/ shareholding of the company as Going Concern and there was no jurisdiction vested in the adjudicating authority to impose his decision on the appellant, when no objection has been raised by the SCC on this structuring of share capital. Moreover, no opportunity appears to have been given to the parties to address the tribunal on the modifications incorporated by it. It is to be recalled that on the principle of clean slate the commercial wisdom of the appellant should have been respected, unless it is not in violation of any law.

30. Resultantly the Appeal is allowed and direction whereby the Appellant has been directed to increase the Share Capital passed in impugned order so far it is concerned **only** with the prayer of the appellant for structuring of the share capital of the Company, which has been mentioned by the Adjudicating Authority in the impugned order at para No.11(iv) and adjudicated/ modified at Column no. 3 (ii) of the table, under the heading "

Shareholding of the Company" (Wherein the Prayers of the appellant have been adjudicated), is **set aside**.

31. The matter is remanded back to the adjudicating authority to adjudicate the afore stated prayer of the applicant/ appellant (mentioned by the Adjudicating Authority in the impugned order at para No.11(iv) and adjudicated/ modified at Column no. 3 (ii) of the table, under the heading " Shareholding of the Company") afresh after providing opportunity of being heard to the parties, strictly in accordance with law.

32. There is no order as to the Costs.

33. The pending IA's if any is accordingly disposed of.

34. Interim stay order if any is also vacated.

35. The parties will appear before the Ld. Adjudicating Authority on 07.12.2025.

[Justice Mohd. Faiz Alam Khan]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi.
20.11.2025.

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