NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IA. 4229/ND/2022
IN
Company Petition No. (IB)-575(ND)/2017

IN THE MATTER OF:

Small Industries Development Bank of India

...Applicant/Financial Creditor

Versus

Delicious Coco Water Park Private Limited

...Respondent

AND IN THE MATTER OF IA. 4229/ND/2022:

Mr. K.G Somani
Liquidator for
Delicious Coco Water Park Private Limited
Having its registered office at :
3/8 K.G. Somani Insolvency Professionals
Private Limited, 3rd Floor, Asaf Ali Road,
New Delhi - 110002

...Applicant

Order Delivered on : 09.11.2022

SECTION: **Section 60(5) of IBC 2016**

CORAM :

SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant	: Adv. Alok Dhir, Adv. Jayant Chawla
For the Respondent	: Adv. Mohit Choudhary, Adv. Prakhar Mithal
For the Liquidator	: Adv. Abhishek Anand, Adv. Prateek Kushwaha, Adv. Pathik Choudhary

ORDER

PER SHRI. L. N. GUPTA, MEMBER (T)

The present IA No. 4229 of 2022 has been filed by Mr. K.G. Somani, Liquidator of the Corporate Debtor M/s Delicious Coco Water Private Limited (hereinafter referred to as the **'Applicant/Liquidator'**) under Section 60(5) of IBC, 2016, read with Rule 11 of NCLT Rules, 2016 seeking certain reliefs regarding exclusion / extension of time.

2. During the hearing, the Ld. Counsel appearing for the Liquidator informed that the Advocate, engaged earlier by the Applicant, though had taken the brief but failed to present the application for seeking extension/exclusion of liquidation period well within time. Hence, no extension/exclusion of time could be sought till date.

3. We have heard the Ld. Counsel for the Applicant and perused the documents placed on record. Since multiple reliefs have been sought in the present IA, therefore, we would like to examine each of the prayer seperately. First, we take up the Prayer (a), which is reproduced below:

> *"a) Allow the present application and condone delay of 104 days in filing the present application."*

4. The reason of delay in filing the present Application as explained by the Ld. Counsel for the Liquidator is due to non-filing of the Application by the previous counsel and engaging the new Counsel. Besides, the Applicant has relied upon the order dated 10.01.2022 passed by Hon'ble

Supreme Court in the **Miscellaneous Application No. 21 of 2022 in Suo Moto Writ Petition (C) No. 3 of 2020,** wherein the following was held:

> *"I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021,* ***it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation*** *as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings."*
>
> *(Emphasis Supplied)*

5. In view of the aforesaid averments, circumstances, submissions made by the Ld. Counsel and order of the Hon'ble Supreme Court dated 10.01.2022 passed in Suo Moto Writ Petition (C) No. 3 of 2020 (Supra), **we hereby allow the prayer (a) and condone the delay of 104 days in filing of the present Application.**

6. Now, we would like to examine the next Prayer, which is reproduced below :

> *"b) Pass an order under Regulation 44(2) of the Liquidation Process Regulations, 2016 for exclusion of 146 days from 31.05.2021 till 24.10.2021 due to prevailing lockdown in the state of NCT Delhi."*

7. It is averred by the Applicant that in terms of Regulation 47A of the Liquidation Process Regulations, 2016, the period of first lockdown imposed by the Central and State governments from 23.03.2020 to 30.06.2020 i.e., 99 days should be excluded from the liquidation period of the CD. Similarly, in view of the second wave of Covid-19, the Government

of NCT, Delhi imposed a lockdown from 20.04.2021 to 06.06.2021 and thus, seeking guidance from Regulation 47A of the Liquidation Process Regulations, the period of second lockdown shall not be counted for the purpose of computation of the timeline. Accordingly, the Applicant also seeks exclusion of 47 days of lockdown imposed from 20.04.2021 to 06.06.2021 from the computation of liquidation period.

8. It is further stated by the Applicant that after considering the period of lockdown imposed by Central Government from 23.03.2020 to 30.06.2020 i.e., 99 days along with period of second lockdown imposed by Government of NCT, Delhi from 20.04.2021 to 06.06.2021 i.e., 47 days (totalling to 146 days) read with Regulation 47A of Liquidation Process Regulations, the liquidation period in the matter of Corporate Debtor after excluding the total period of 146 days expired on 24.10.2021.

9. We have been informed that till date no order has been sought or passed for excluding the lockdown period from the period of liquidation. Since the exclusions on the ground of lockdown has been granted in other cases, we are of the view the Applicant herein deserves the same treatment. **Accordingly, we hereby allow the prayer (b) and exclude the total period of 146 days from the period of Liquidation of the CD.**

10. Another prayer made by the Applicant is as follows -

> *"c) Pass an order under Regulation 44(2) of the Liquidation Process Regulations, 2016 for exclusion of 198 days from 04.10.2021 till 10.05.2022 wherein the scheme*

submitted by the ex-director was being considered by SIDBI being Secured Financial Creditor till the time Applicant filed I.A. No. 2308/2022 for approval of Scheme for Arrangement and Compromise proposed by Ex-Director of the Corporate Debtor under Section 230 of the Companies Act, 2013 before this Hon'ble Adjudicating Authority;"

11. In this context, it is stated by the Applicant that in the interregnum, this Adjudicating Authority vide order dated 04.10.2021 directed the Liquidator to place the Scheme submitted by ex-directors in accordance with Section 230 of Companies Act, 2013 before Creditors. It is submitted that as per Regulation 2B of the Liquidation Regulations, the time taken for completion of scheme of compromise or arrangement shall not be included in calculating the liquidation period. In the present case, the Applicant has already filed I.A. No. 2308/ 2022 for approval of Scheme for Arrangement and Compromise proposed by the ex-director of Corporate Debtor under Section 230 of Companies Act, 2013 before this Adjudicating Authority on 10.05.2022. Therefore, the period from 04.10.2021 till 10.05.2022 is sought to be excluded from calculating the liquidation period. It is further stated by the Applicant that That liquidation period after excluding 146 days of Covid-19 lockdown was ending on 24.10.2021. Further period from 04.10.2021 till 10.05.2022 is sought to be excluded from calculating the liquidation period in view of time lost in finalization of scheme of Compromise and Arrangement. However, after deducting period overlapping from 04.10.2021 to 24.10.2021 i.e., 20 days, time sought for

exclusion in view of the time lost in finalization of scheme of Compromise and Arrangement totals to 198 days.

12. We are aware that vide order dated 04.10.2021 this Adjudicating Authority had directed the Liquidator to place the Scheme of Compromise and Arrangement before the Financial Creditor. We have been informed that the Scheme has been approved by the Creditor and the same is placed on record in IA 2308 of 2022 for approval of this Tribunal.

13. We understand that in order to revive the Corporate Debtor and make the process of Compromise and Arrangement fruitful, it is necessary that such time taken by the Financial Creditor to approve the Scheme be excluded. **In view of the averments and submissions made by the Applicant, we hereby allow the prayer (c) and exclude the period of 198 days from the period of Liquidation of the CD.**

14. The last prayer made by the Applicant is as follows –

> "d) *Pass an order under Regulations 44(2) of the Liquidation Process Regulations, 2016 of extension of a period of six months for completing the liquidation process of the Corporate Debtor"*

15. It is submitted by the Applicant that due to pendency of Scheme of Compromise and Arrangement in terms of Section 230 of Companies Act, the Applicant could not close the liquidation process of the Corporate Debtor and thus, the current circumstances warrant that an extension of six months be granted to allow the Applicant to obtain approval for the Scheme of Compromise & Arrangement under Section 230 of the

Companies Act, 2013 and close the liquidation proceedings of the Corporate Debtor.

16. Since the Scheme is already pending Adjudication and its final approval may take some more time in terms of further statutory steps under Section 230-232 of Companies Act 2013, **we consider it just and appropriate to extend the period of liquidation by another six months from the date of this order and hereby allow the prayer (d).**

17. **The Application is allowed in the aforesaid terms.**

Sd/-

(L. N. GUPTA)
MEMBER (T)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (J)

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IA. 2308/ND/2022
IN
Company Petition No. (IB)-575(ND)/2017

IN THE MATTER OF:

Small Industries Development Bank of India

...Applicant/Financial Creditor

Versus

Delicious Coco Water Park Private Limited

...Respondent

AND IN THE MATTER OF IA 4229/ND/2022:

Mr. K.G Somani
Liquidator for
Delicious Coco Water Park Private Limited
Having its registered office at:
4th Floor, Asaf Ali Road,
New Delhi - 110002 **...Applicant**

VERSUS

1. Mr. Rajnish Gupta
Scheme Propounder
Suspended Director of
Delicious Coc Water Private Limited
Registered office at :
House No. 3, New Rohtak Road,
Karol Bagh, New Delhi – 110055

...Respondent No. 1

2. Small Industries Development Bank of India
Registered office at :
SIDBI Tower, 15 Ashok Marg,
Lucknow, Uttar Pradesh–226001
Also at :
Atma Ram House, 1 Tolstoy Marg,
New Delhi – 110001 **...Respondent No. 2**

Order Delivered on : 09.11.2022

SECTION: **Section 60(5) of IBC 2016**

CORAM :

SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant	: Adv. Alok Dhir, Adv. Jayant Chawla
For the Respondent	: Adv. Mohit Choudhary, Adv. Prakhar Mithal
For the Liquidator	: Adv. Abhishek Anand, Adv. Prateek Kushwaha, Adv. Pathik Choudhary

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The present IA No. 2308 of 2022 is filed by Mr. K.G. Somani, Liquidator of the Corporate Debtor M/s Delicious Coco Water Private Limited (the '**Applicant/Liquidator**') under Section 230 of the Companies Act 2013 read with Section 60(5) of IBC, 2016, read with Regulation 2B of IBBI (Liquidation Process) regulations, 2016 seeking the following reliefs :

"a) *Allow the present application and to pass appropriate orders dispensing with holding of any meetings of the creditors and meeting of shareholders for the approval of scheme in view of affidavit executed by Small Industrial Development Bank of India in terms of Section 230(() of Companies Act, 2013;*

b) *Allow the Scheme for Arrangement and Compromise proposed by Mr. Rajnish Gupta under Section 230 of Companies Act, 2013 in the liquidation process of Delicious Coco Water Private Limited;*

c) *Pass an order directing that the Liquidator fee to be paid in accordance with Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 as applicable; and*

d) *Pass an order directing the Proposer of the Scheme to pay the Liquidation Costs in priority as per Section 53 of the Insolvency and Bankruptcy Code 2016;"*

2. The brief background of the case is that this Adjudicating Authority had passed the Liquidation order and appointed the applicant Mr. K.G. Somani, as Liquidator of the corporate debtor to conduct the Liquidation process. Pursuant to the liquidation order, the Liquidator made public announcement on 11.06.2019 and after receiving the claims, it held the 1st Stakeholders Consultation Committee (SCC) meeting on 11.03.2020. In the meantime, an appeal was filed by Mr. Rajnish Gupta (the "Propounder/Respondent No.1") against the order dated 24.04.2019 passed by this Hon'ble Adjudicating Authority. The Hon'ble NCLAT vide order dated 05.09.2019, while reversing the order dated 24.04.2019 allowed the Propounder to approach the Liquidator under Section 230 of the Companies Act, 2013. The Propounder, thereafter, submitted a proposal on 09.09.2019 and requested the Liquidator to convene a meeting of Creditors, members, shareholders of the Corporate Debtor.

3. It is submitted by the applicant that the Propounder eventually submitted a Scheme, which was put up before the SCC held on 27.07.2020, where the sole financial creditor, SIDBI, expressed their reservations. Thereafter, the Liquidator issued an advertisement dated

28.03.2020 for sale of the sole asset situated at Peera Garhi, however due to COVID wave, the same could not be completed. Subsequent auctions also failed. Subsequently, this Adjudicating Authority, vide order passed on 04.10.2021 in the IA-412/2021, directed the Liquidator to place the Scheme proposed by the Propounder under Section 230-232 of Companies Act, 2013 before the Creditors. In compliance of the said direction, the Liquidator placed the scheme before SIDBI. It is submitted that after multiple rounds of negotiations, the revised Scheme dated 28.10.2021 submitted by the Propounder was accepted by SIDBI, which specifically stated that there is no objection to the present scheme. That in the meeting dated 30.10.2021, the sole financial creditor SIDBI gave consent to the Scheme.

4. Through the present IA, the Liquidator/Applicant has sought approval of the said Scheme presented by the ex-Director of the Corporate Debtor, under Section 230-232 of Companies Act, 2013. It is stated by the Applicant that the Corporate Debtor is a MSME unit and the Promoter/Scheme proposer, who has submitted the Scheme is not barred under Section 29A of IBC, 2016 to propose a Scheme. It is further stated by the Applicant that SIDBI is the Sole Creditor of the Corporate Debtor, which has approved the Scheme. The Affidavit approving the Scheme under Section 230(9) of the Companies Act, 2013 is placed on record. The relevant para from the convenience compilation submitted by Applicant is reproduced overleaf :

7. That in terms of the S.230(2)(c) of the Companies Act, 2013, secured creditor consent to the scheme is provided with the present application. (**Consent form CAA @ Page 94**). The requirement of dispensing with the meeting of Creditors under Section 230(9) of the Companies Act, 2013 was also made as SIDBI by way of an affidavit has sought for dispensation of the meeting. (**Page 95-98 of Application**). Further notable to add that the Propounder has produced a certificate under S.29A of the Code proving its eligibility to propose a scheme under Section 230 of the Companies Act(**At Page 100-101 of Application**). Important to mention that Corporate Debtor is an MSME enterprise and Propounder is not barred under Section 29A of the Code.

5. The applicant has submitted that the Scheme envisages entire payment within a maximum period of six months from the date of approval by this Adjudicating authority. The financial outlay of the Scheme, as proposed, is reproduced below:

PARTICULAR	RS. CRORE
CIRP and Liquidation Cost:	The CIRP Expenses in the case amounted to Rs. 44.09 Lakh, and the liquidation cost incurred by the Liquidator without his fees works out to Rs. 26.04 Lakh (Approximately) till 30th Sep 2021
Financial Creditor	36.50 Crores
Payment Claims and dues of various creditors other than Financial Creditor	Nil
Total	36.50 Crores

6. The Applicant has also placed on record, the Auditor's Certificate issued under Section 133 of the Companies Act, 2013.

7. Basing on the aforesaid facts, the Applicant has prayed for approval of the Scheme proposed under Section 230-232 of the Companies Act at this very stage i.e., the stage of first motion.

8. During the course of hearing on 11.10.2022, Ld. Counsel appearing for the Applicant contended that neither there is a need of filing any Second Motion application nor notice is required is to be issued to the Sectoral Regulators as no other person has filed any claims and no claims can be entertained at this stage.

9. Further, Ld. Counsel appearing for the applicant emphasised on the provision under Regulation 2B (1) of IBBI (Liquidation Process) Regulations, 2016, which states that the entire process is meant to be completed within 90 days and therefore, it will not be possible to complete the process, if the Second Motion application is asked to be filed.

10. We have heard the Ld. Counsel appearing for the Applicant and perused the documents placed on record. The issue which emerges before us for adjudication is - "**Whether there is any requirement to file the Second Motion application, where the Scheme for Compromise and Arrangement is proposed at the Liquidation stage under the proceedings of IBC, 2016 and whether there is any requirement for issuing notice to the Sectoral Regulators?**

11. At this juncture, we refer to Regulation 2B of the Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 :

> ***2B. Compromise or arrangement.***
>
> *(1) Where a compromise or arrangement is proposed under section 230 of the Companies Act, 2013 (18 of 2013), it shall be completed within ninety days of the order of liquidation under sub-sections (1) and (4) of section 33.*
>
> > *[Provided that a person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor, shall not be a party in any manner to such compromise or arrangement.]*
>
> *(2) The time taken on compromise or arrangement, not exceeding ninety days, shall not be included in the liquidation period.*
>
> *(3) Any cost incurred by the liquidator in relation to compromise or arrangement shall be borne by the corporate debtor, where such compromise or arrangement is sanctioned by the Tribunal under sub-section (6) of section 230:*
>
> > *Provided that such cost shall be borne by the parties who proposed compromise or arrangement, where such compromise or arrangement is not sanctioned by the Tribunal under sub-section (6) of section 230."*

12. From perusal of the aforesaid provision, we do not find any provision which exempts the Scheme proposer under IBC from filing any Second Motion application.

13. As regards notice to the Regulators, in our view, the role of Sectoral Regulators, under Section 230-232 of Companies Act, 2013, is not of a claimant, rather of being a watch dog, who shall examine the Scheme if the same is not violative of any law or is not against public interest. Therefore, the statutory requirement of sending notices to them cannot be dispensed with by this Adjudicating Authority.

14. Further, the timeline for completing the process of compromise and arrangement within Regulation 2B.(2) of IBBI (Liquidation Process) Regulations, 2016 is directory in nature as already held by this Tribunal in this very case vide order dated 04.10.2021. The relevant extracts of the said order are reproduced below –

> *"11. That in the same order, the Hon'ble NCLAT has also held that the Liquidator shall follow the procedure laid down under* ***Y. Shivram vs. S. Dhanpal & Ors. Company Appeal (AT) (Insolvency) No. 224 of 2018 dated 27.02.2019 case****. Therefore, it is necessary to visit the Judgement dated 27.02.2019 in Y. Shivram vs. S. Dhanpal & Ors. Company Appeal (AT) (Insolvency) No. 224 of 2018, wherein the following is observed with regard to timeline for taking steps under Section 230 of the Companies Act, 2013.*
>
> > *"17. Normally, the total period for liquidation is to be completed preferably within two years. Therefore, in "S.C. Sekaran v. Amit Gupta & Ors." (Supra), this Appellate Tribunal allowed 90 days' time to take steps under Section 230 of the Companies Act, 2013. In case, for any reason the liquidation process under Section 230 takes more time, it is open to the Adjudicating Authority (Tribunal) to extend the period if there is a chance of approval of arrangement of the scheme."*
>
> *12. Here, we observe that the IBC does not prescribe any such timeline as prescribed in the Regulations for submission of the Scheme. However, the judgement in the case of Y. Shivram vs. S. Dhanpal & Ors. (Supra) allows the Adjudicating Authority (Tribunal) to extend the period/timeline if there is a chance of approval of arrangement of the scheme.* ***Thus, it could be inferred that the timeline prescribed in the Liquidation regulations is directory in nature."***
>
> *(Emphasis placed)*

15. **Hence, we conclude that in the absence of any express provision in law for exempting the Scheme proposer from filing of the Second Motion application and dispensing with the requirement of sending notices to the Sectoral Regulators, we are not inclined to approve the Scheme at this stage.**

16. **In the light of the aforesaid discussion, we direct the Applicant to file the Second Motion Application for approval of the Scheme.**

17. **Since the Corporate Debtor is under Liquidation and the power of Director and Shareholders to take commercial decisions on behalf of the Corporate Debtor is under suspension, therefore, the question of convening meeting of Shareholders does not arise, especially when the Scheme has the assent of the Liquidator. In view of the approval/consent affidavit of the Sole Creditor SIDBI, the meeting of the Creditor is, however, dispensed with and the First Motion is allowed.**

18. **Accordingly, the prayer (a) of the present IA-2308/ND/2022 is Allowed with the aforesaid directions. The Applicant is at liberty to raise the other prayers at the time of filing the Second Motion Application.**

(L. N. GUPTA)
MEMBER (T)

(BACHU VENKAT BALARAM DAS)
MEMBER (J)