2026 INSC 732

Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No.14845 of 2025

GIR VANVASO RESORT

....APPELLANT

Versus

PANCARD CLUBS LIMITED

....RESPONDENT

J U D G M E N T

K. VINOD CHANDRAN, J.

The appellant resort is owned by Pancard Clubs Limited, the respondent herein, who was under Corporate Insolvency Resolution Process (CIRP), now taken over by the Successful Resolution Applicant (SRA) as per the approval of the Resolution Plan by the National Company Law Tribunal (NCLT) on 25/04/24. The resort is represented by the 1st party in a Memorandum of Understanding (MoU), in the present civil appeal, based on which it is asserted that the alleged authorized representative along with the 2nd party in the MoU is in possession and ownership of the resort. The Interim Resolution Professional (IRP) who was later appointed as RP sought for details of the property owned by the Corporate Debtor (CD),

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which were not fruitfully responded to in which circumstance an application was filed before the NCLT seeking vacant possession of the property and damages for usage of the property, which was a fully developed resort with rooms and amenities like pool, gym sauna etc. The NCLT by Annexure A7 order directed handing over of the peaceful and vacant possession of the property and payment of fair value of rent for usage of the property as determined by the RP, before whom the respondent was also entitled to claim their investments as set off.

2. An appeal was filed before the National Company Law Appellate Tribunal (NCLAT) unsuccessfully. The NCLAT framed five issues for its consideration:

> *i) Whether the Adjudicating Authority had the power to decide the I.A. filed by the Resolution Professional by order dated 11/09/2025 when the Resolution Plan was approved by the Adjudicating Authority on 25/04/2024?*
> *ii) Whether the Adjudicating Authority under the IBC had the jurisdiction to decide upon the rights of the parties under the MoU dated 16/12/2013?*
> *iii) Whether the benefit of Section 53A of the Transfer of Property Act claimed by the appellant based on the alleged possession on the strength of the MoU since 2020 is valid?*

iv) The sustainability of the direction to vacate the premises and handover possession?

v) The validity of the levy of usage charges of the resort directed to be computed by the RP?

3. The NCLAT in answer to the first question found that, though it was the RP who had filed an application on 25/08/2023 before the Resolution Plan came to be approved, after its approval an I.A. was filed to substitute the RP with the SRA which was allowed by order dated 19/10/2024. The objection to jurisdiction on the basis of the Resolution Plan put in motion while the matter was pending, was held to be without any substance since the SRA had prosecuted the matter after taking over the CD by substituting itself for the RP; rightly so according to us.

4. The other questions were considered together since they were interlinked and also held against the appellant herein. In considering the jurisdiction of the Adjudicating Authority to enter into contractual issues between parties, it was found that ***Gujarat Urja Vikas Nigam Limited vs. Amit Gupta & Ors.***[1] held that *"NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the corporate debtor"* if the nexus with the insolvency of

[1] (2021) 7 SCC 209

the corporate debtor exists (para -69). Therein the fact of insolvency itself constituted an event of default which led to the termination of the Power Purchase Agreement (PPA). The PPA was terminated solely on the ground of insolvency which clothes the NCLT with the jurisdiction to decide on its validity, especially since it was the only contract of sale of electricity. The termination would result in sure death of the CD while NCLT is vested with the responsibility of ensuring the continuation of the insolvency resolution process for which the CD should be preserved as a going concern. However, it was clarified that if the termination was on grounds unrelated to the insolvency of the CD, the jurisdiction of the NCLT under Section 60(5)(c) of the Act cannot be invoked. It was also held that the NCLT should be wary of exercising such jurisdiction to interfere with a legitimate termination, which merely dilutes the value of the CD and does not push it to corporate death.

5. In ***TATA Consultancy Services Limited vs. Vishal Ghisulal Jain[2],*** the CD had entered into a build phase agreement followed by a facilities agreement which obligated the CD to provide premises with certain specifications and facilities, with option available to

[2] (2021) ibclaw.in 167 SC

either party to terminate the agreement. TCS Limited terminated the agreement on 10.06.2019 and the CIRP was initiated on 29.03.2019. The termination was on multiple breach in facilitation and after repeated notices, prior to the CIRP, independent of the insolvency proceedings, in which context it was held that the Adjudicating Authority had no jurisdiction to enter into contractual issues between the parties especially when the TCS was not supplying goods and services to the CD. While finding lack of jurisdiction on the NCLT in the facts of the case, it was cautioned that *"even if contractual disputes arise in relation to the insolvency, a party can be restrained from terminating the contract only if it is central to the success of the CIRP" (para-27).*

6. In the present case, the resort admittedly belonged to the CD and the possession and ownership claimed by the parties No.1 and 2 to the MoU was based on that document. The ownership of the property is crucial and central to the insolvency of the CD and hence the Adjudicating Authority has the jurisdiction to decide on the dispute raised on the strength of the MoU; on its interpretation as also the statutory benefit claimed under Section 53A of the TP Act. The exclusion of the property from the resolution plan would dilute the valuation of the CD and not push it to corporate death but the crucial

issue is whether the contract itself was legitimate or a devise employed to absolve the property from the resolution process.

7. As rightly found by the NCLAT, the RP had repeatedly issued notices on the strength of the CD's ownership of the resort, which was responded to at first, by questioning the authority to call for the details and then far later by production of the MoU in the reply filed before the NCLT, which takes us to the interpretation of the MoU. The NCLAT in addition to the adamant failure of the parties in possession of the resort to respond to the various queries of the RP also emphasized that the contention was of Rs.80,00,000/- having been paid by cash to the Director; the 3rd Party in the MoU, of Pancard Clubs Limited, as per the MoU dated 04.12.2013. We also read the MoU to understand what it entails.

8. Parties No.1 and 2 were said to be engaged in partnership, the details of which are not coming forth in the MoU. Party No.3 was said to have the status of Director in Pancard Clubs Limited. Party No.3, the Director of Pancard Clubs Limited is said to have invited parties No.1 and 2 to participate in a scheme running in the company to which end Rs.80,00,000/- was handed over to the Director, by cash. The terms of the agreement were that Rs.1,60,00,000/-; double the amount handed over, would be reimbursed in a period of 6 years 3

months. On failure, there are terms indicated, facilitating both a right to ownership of the resort and for administration of the resort to recoup the invested amount with interest from the proceeds of its operation. The alternative stipulation was for recouping the amounts invested by parties No.1 and 2 fully, with yield at 11% per annum, derived from the profits of the resort, till which time the resort will continue in the possession of parties No.1 and 2. Even if the above terms are deemed to be options available to the parties 1 & 2, there is nothing on record to show such option having been exercised.

9. We cannot but notice that the agreement is neither here nor there; with no clarity as to whether, on failure to repay double the investment in 6 years and three months, the ownership would stand transferred by due execution of a sale deed or whether the possession alone would be conceded so as to recoup the investment, with interest from the proceeds of the operation of the resort. More importantly, the MoU; which spoke of investment of Rs.80,00,000/- with a promise to return double the amount within the stipulated time and on failure a transfer of ownership or possession for the purpose of operation to recoup the investment with interest, was not registered. The NCLAT noticed Act 7 of 1982 of the State of Gujarat, which introduced clause (aa) of Section 17 of The Registration Act,

1908 mandating compulsory registration of '*instruments which purport or operate to effect any contract for transfer of immovable property'*. The above amendment required the MoU to be compulsorily registered, in which event the parties in possession claimed the benefit of Section 53A of the TP Act.

10. Section 53A protects any transferee, who in part performance of a contract takes possession of a property or part thereof and has done some act in furtherance of the contract and has also performed or is willing to perform his part of the contract. The party found in such possession is absolved from the provisions of the TP Act and the Registration Act to facilitate the defense of part performance to be established as held in ***Giriyappa and Anr. vs. Kamalamma and Ors.***[3]. As rightly found by the NCLAT the pre-condition under Section 53A is that there should be a contract to transfer for consideration any immovable property and the protection under Section 53A, despite the instrument of transfer or the transfer having not been completed in the manner prescribed therefor by the law for the time being in force, can only inure when part performance is established.

[3] 2024 SCC OnLine SC 3849

11. As we noticed from the MoU the payment of Rs.80,00,000/- is said to be in cash, clearly in violation of the provisions of the Income Tax Act, 1961. The receipts produced of cash payments are at best collusive self-serving receipts issued by the CD, not reflected in its accounts. The property was also under attachment of the Securities and Exchange Board of India (SEBI), which order categorically refers to and relies on the Second Schedule of the Income Tax Act, specifically Rule 48, which prohibits any defaulter from transferring or charging the property in any way and prohibiting all persons from taking any benefit under the transfer or charge. The MoU was in the year 2013 and the time stipulated for refund without any scheme of installment specified is of six years and three months. The expiry, if at all, can only be in the year 2019, before which the attachment order of the SEBI came into force in 2016.

12. It is also not clear as to when the agreement was terminated and the possession was taken over. The parties to the MoU do not speak of any default having been notified or a termination notice having been effected as per the terms of the MoU. Pertinent is also the fact that there is neither any statement as to the date on which possession was taken over and the management commenced of the resort as also

the proceeds obtained from the resort having been applied to the alleged investment made of Rs.80 lakhs.

13. The Tribunal has also looked into the resolution accompanying the MoU to find that it does not authorize the 3rd party to execute the MoU with private individuals or corporate entities or accept money, charging the property of the Company. The resolution as extracted in the impugned order speaks only of dealing with the statutory authorities in obtaining approvals, permissions, no objections etc. from any such statutory or departmental authorities.

14. In addition to the above, we cannot but notice that though there was a stipulation for transfer of ownership by execution of a deed, there is no attempt made by the parties No.1 and 2 to the MoU to sue for specific performance of the agreement to sell; if it can be so styled. More particularly, the terms on default clearly indicate that on such claim of ownership being exercised the balance amounts; purportedly the balance of the sale consideration, after deducting the invested amounts as per the MoU would be paid to party No.3, the willingness and readiness to which has not at all been pleaded by parties No.1 and 2 on whose behalf party No.1 is allegedly representing the appellant as an authorized representative. There is absolutely no cause to find the benefit of Section 53A of the TP Act

and we concur with the decision of the NCLT and NCLAT that the MoU is suspect and is not contemporaneous to the date on which it is said to have been executed or alleged to be in operation.

15. The CIRP having culminated in the appointment of the SRA, the NCLT was perfectly within its jurisdiction to order handing over of the vacant possession of the property to the SRA. The possession admittedly in the hands of the parties No.1 and 2 to the MoU, which as rightly found by the NCLAT puts the entity in possession, liable to pay usage charges akin to rental value to the rightful owner, which even a rank trespasser asserting possession would be liable.

16. We find absolutely no reason to interfere with the order of the NCLAT. Before we leave the matter, we have to notice that though the MoU speaks of handing over of Rs.80,00,000/- as per Clause (1), it is affixed with only a stamp of Rs.300/-, evident from Clause (I), which we are sure would be gross undervaluation under the Stamp Act. The undervalued instrument having been produced before the NCLT we direct the NCLT to take up the matter and peruse the document with reference to the Stamp Act applicable to the State of Gujarat and take appropriate proceedings for defective stamping, if it is found undervalued, which any Authority/Court/Tribunal is obliged to do when a defectively stamped instrument is produced

before it. If stamping is found to be undervalued, then the same shall be referred to the District Collector or the concerned Adjudicating Authority for proper stamping, with penalty if any. Party No.1 who allegedly represented the appellant before the NCLAT shall be entitled to appear before the NCLT to raise his contentions before the Tribunal confined to the defective stamping or undervaluation of the instrument.

17. The appeal stands rejected with the above observations.

18. Pending applications, if any, shall stand disposed of.

..... J.
(J. B. PARDIWALA)

..... J.
(K. VINOD CHANDRAN)

NEW DELHI;
JULY 22, 2026.