

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

3rd Floor, B-1 Wing
Pt. Deen Dayal Antyodaya Bhawan
C.G.O. Complex, Lodi Road
New Delhi -110003
Dated : 17.05.2019

To

1	The Registrar National Company Law Tribunal 6 th Floor, Block-3, CGO Complex, Lodi Road, New Delhi-110003.	2.	The Registrar National Company Law Tribunal, Mumbai Bench, 6 th floor, Fountain Telecom, Mahatma Gandhi Road Fort, Mumbai- 400001.
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Sub : In the matter of – Company Appeal (AT) (Insolvency) No. 195 of 2019 (Superna Dhawan & Anr. Versus Bharti Defence and Infrastructure Ltd. & Ors.) - Company Appeals filed U/s 61 of the Insolvency and Bankruptcy Code, 2016.

Sir,

A copy of the order of the Appellate Tribunal dated 14.05.2019 on the above subject matter is forwarded herewith under Section 61 of the Insolvency and Bankruptcy Code, 2016. The Registrar, NCLT, New Delhi is requested to place the aforesaid order before the Hon'ble President, National Company Law Tribunal, New Delhi.

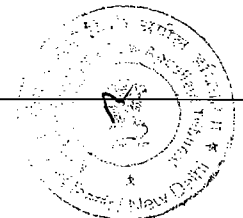
Yours faithfully

(R. Kumar)
Asstt. Registrar

Encl. As above.

Copy to :

A-1	Suprema Dhawan R/o Gurgaon One GT-1, 5B, Sector- 22, Old Jaipur Gurgaon Road Gurgaon- 122002, Haryana	A-2	Vikas Dhawan R/o Gurgaon One, GT-1, 5B, Sector- 22, Old Jaipur Gurgaon Road, Gurgaon-122002. Haryana
R-1 ✓	Bharti Defence and Infrastructure Ltd. Regd. Office at Oberio Chambers-II, Ground Floor, Link Road, Near Lakshmi Industrial Estate, Andheri West, Mumbai, Maharashtra- 400053.	R-2	Edelweiss Asset Reconstruction Company Office at Edelweiss House, Off. C.S.T. Road, Kalina Mumbai, Maharashtra- 400098.
R-3	Dhinal Shah Office at Ernst & Young LLP, 2 nd Floor, Shivalik Ishaan, Nr. C.N. Vidhyalaya Ambawadi, Ahmedabad- 380015.		



NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 195 of 2019

(Arising out of Order dated 14th January, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in CP 292/I&B/NCLT/MAH/2017)

IN THE MATTER OF:

Superna Dhawan & Anr.

...Appellants

Vs.

Bharti Defence and Infrastructure Ltd. & Ors.

...Respondents

Present: For Appellant: - Mr. Vikas Dhawan, Mr. Satyabrata Panda, Ms. Kreeti Joshi, Advocates.

For Respondents:- Mr. Aditya Wadhwa, Mr. Debopriya Moulik and Mr. Dhaval Vussonji, Advocates for R-1.

Mr. Arun Kathpalia, Senior Advocate with Mr. Atul Sharma, Mr. Sugam Seth and Ms. Arveena Sharma, Advocates for R-2 (ERAC).

Mr. Ramji Srinivasan, Senior Advocate with Ms. Srishti Kapoor, Advocate for Ex-RP.

Mr. Rajesh Chhetri and Ms. Meenakshi Raval, Advocates for Union of Workers.

Mr. Sumesh Dhawan, Ms. Vatsala Kak, Mr. Nakul and Mr. Aakarshan, Advocates for Liquidator.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

The 'Resolution Professional' of 'Bharti Defence and Infrastructure Ltd.'- ('Corporate Debtor') filed an application under Section 31 for



approval of the 'Resolution Plan' submitted by 'Edelweiss Asset Reconstruction Company Ltd.' duly approved by the 'Committee of Creditors' by a vote share of 94.3%. The Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, by impugned order dated 14th January, 2019 rejected the plan and ordered for liquidation under Section 33 read with Regulation 32(b) & (e) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, relevant portion of which reads as follows:

“ORDER

100 We direct that the Corporate Debtor be liquidated as per provisions of Regulation 32(b) & (e) of the IBBI (Liquidation Process) Regulations, 2016 **which provides for assets in a slump sale, the corporate debtor as a going concern**, in the manner as laid down in Chapter III under Part II of IBC, 2016.

101 However, considering the national importance attached to product line of the company, the customers explicitly Ministry of Defence, Indian Coastguard, Customs etc, order book size, advances paid by various Government Departments, the work in progress stalled at various stages of production and huge number of workforce (around 850 employees) we direct that the Liquidator shall endeavour to sell the Corporate Debtor company as a going concern.

102 Given the conflict of interest of the RP as discussed in detail above, we intend to appoint a new



Liquidator. We hereby appoint Mr. Vijay Kumar V Iyer having registration no. IBBI/IPA-001/IP-P00261/2017-18/10490; e-mail id. viyer@delbitte.com and Ph. No. 9821219493. The RP is directed to handover all the documents/records to the liquidator.

103 *The Liquidator shall issue a public notice inviting interested investors from across the globe, in National level newspaper having all India circulation, in all the editions, stating that the Corporate Debtor is in liquidation. The maximum period applicable for trying the sale on a going concern basis of the Corporate Debtor will be only six months from the date of the order.*

104 *In case the efforts to sell the company as a going concern fails during the' stipulated period of six months, then the process of the sale of the assets of the company will be undertaken by the liquidator as prescribed under Chapter- III of IBC, 2016 and the relevant regulations of IBBI.*

105 *The Designated Registrar is directed to send a copy of this order, to RoC under which this Company is registered.*

106 *All powers of the Board of Directors, key managerial persons and the partners of the Corporate Debtor shall cease to affect and at this moment vest in the Liquidator. The personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor. The Insolvency Professional appointed as Liquidator will charge fees for conduct of*



the liquidation proceedings in proportion to the value of the liquidation estate assets as specified under Regulation 4 of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016 and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.

107 *This liquidation order shall be deemed to be notice of discharge to the officers, employees and workmen of the Corporate Debtor, except to the extent of the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.*

108 *We direct the CoC/Resolution Professional for initiation of the process of the sale of the corporate debtor unit as a whole, on a going concern basis, i.e. slump sale, to extract maximum value to the assets of the company which may be in the interest of the company and its employee.*

109 *Since this liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor without prior approval of this Adjudicating Authority save and except as mentioned in sub-section 6 of Section 33 of the IBC.*

110 *Moratorium declared vide Order dated 06.06.2017 in CP No.292/2017 shall cease to exist.*

111 *Since the corporate debtor is a listed company, a copy of this order be served upon SEBI for initiating appropriate action as deemed fit.*

112 *Accordingly, the MA 170/2018 in CP 292/2017 is hereby disposed of and all connected MA 334, 473, 584/2018 & MA 377, 425, 501, 565, 602,*



549/2017 and IA 334, 420/2018 & INVP 21/018 are also hereby disposed of with a direction that the aggrieved person if any may make a claim with the Liquidator.

113 *The registry is directed to communicate this order to RP, RA and all concerned parties immediately even by way of e-mail.”*

2. The Appellant, Shareholder has challenged the order on the ground that liquidation order has been passed with “material irregularity” due to fraud committed by the ‘Resolution Professional’.

3. Learned counsel appearing on behalf of the Appellant submitted that the ‘Resolution Professional’ delegated his duties and responsibilities and outsourced the same, which is prohibited under Regulation 7(bb) of the ‘Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016’.

4. It is further alleged that the ‘Resolution Professional’ was not independent as prior to initiation of the ‘Corporate Insolvency Resolution Process’ proceedings his partnership firm was providing services to the ‘Resolution Applicant’ in relation to the ‘Corporate Debtor’.

5. The ‘Corporate Debtor’ held license from the Ministry of Defence to build defence warships and had substantial orders under execution such as, 24 vessels, 9 interceptor, 5 fast speed boats, 9 water and sewage



barges and 1 tank clearing vessels from Indian Navy, Indian Coast Guards and Defence Research and Development Organization.

6. In view of the fact that the order of liquidation has been passed, the shareholders alleged bias against the 'Resolution Professional' and request to pass appropriate order.

7. The employees and workmen of 'Bharti Defence and Infrastructure Ltd.'- ('Corporate Debtor') have appeared and taken plea that there are more than 850 employees working whose salaries have not been paid.

8. It was submitted that on the one hand 'Resolution Applicant' is proposing to right size the workforce by cancelling all the existing contracts with employee/ workmen/ consultants and in addition to it, the 'Resolution Applicant' sought permission from the Adjudicating Authority for deemed dispensation from compliance with labour laws without offering anything to the employees/ workmen.

9. According to employees and workmen, as matter relates to National Importance attached to product line of the company, having defence ship building licence, licence to manufacture warships, submarines, destroyers and other warships, the customers explicitly Ministry of Defence, Indian Coast Guard, Order Book size, Advances paid by various Government Departments, the work in progress is stalled at various stages of production and huge no. of workforce of more than 850 employees are involved and the liquidator should be directed to sell the



'Corporate Debtor' (Company) as a going concern in the interest of the Company and the workmen and employees, thereby, to safeguard their interest.

10. Learned counsel appearing on behalf of 2nd Respondent- 'Edelweiss Asset Reconstruction Company Ltd.' submitted that they are no more interested in pursuing the 'Resolution Plan'.

11. The Adjudicating Authority considered the 'Resolution Plan' as was approved by the 'Committee of Creditors' and on close scrutiny observed:

"46. On a close scrutiny of the Resolution Plan of EARC, it appears that the plan provides for generation of income from its ongoing operations, from the 'existing liquid investment, existing cash balance, release of margin money, receipt from debtors, sale of Kolkata Yard, sale of Andheri Office & other identified assets, sale of scrap, sale of land etc. and no upfront money is brought in by the Resolution Applicant.

47. It is provided in the plan that after approval of the plan, the company seeks to cancel the Defence order and further relief has been sought regarding the release of margin money and Bank Guarantee in favour of the company. Resolution



Applicant is not infusing any cash in the company, but Resolution Applicant's investment is only by way of refund of SBI margin money, by the sale of Kolkata Yard, the sale of Andheri Office or Bank Guarantee Margin Money for executed vessels, the sale of land at Alibaug etc. The entire cash inflow is by way of sale of assets of the company and by getting the refund of SBI margin money and release of Bank Guarantee Money. The plan is against the contrast terms, which has been executed by the company with Govt. Of India for getting defence contracts from Gov.t of India. It is also proposed in the plan that any corporate guarantee provided by the company shall turn null and void on approval of this plan.

48. *It is pertinent to mention that in the proposed plan, it is stated that the company shall continue with the existing defence warship license in its current form. The company would also bid for new orders from Indian Coast Guard and Ministry of Defence depending on its operational and financial strength. In the plan, it is also provided that all existing registration with*



Director General Foreign Trade, Ship Builders Association shall continue in its normal course. It is important to point out that Defence Warship License is itself a Premium asset and can be a tradable commodity, and value of that has not been taken into consideration for determination of liquidation value.

49. *It is also proposed that various shell companies, details of which are given in Schedule 9 of this plan, primary asset and liabilities of these company are loans to and loans from the company and other related parties of the company. There is no disclosure of the amount of loan to and from the subsidiary company in the plan. It is proposed to liquidate these companies and transfer to itself, shares in Tebma Shipyard held by Nirupam Energy Projects Private Limited, against advance made to Nirupam Energy Projects Private Limited.”*

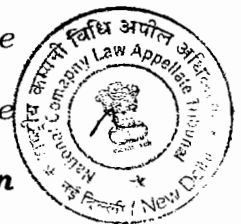
12. The Adjudicating Authority rightly observed that the ‘Resolution Plan’ should be planned for ‘Insolvency Resolution’ of the ‘Corporate Debtor’ as a going concern and not for addition of value with intent to sell the ‘Corporate Debtor’. The purpose to take up the company with intent to sell the ‘Corporate Debtor’ is against the basic object of the ‘I&B Code’.



13. In view of the aforesaid position and as more than 270 days have passed, the Adjudicating Authority having passed order of liquidation, we find no ground to interfere with the impugned order dated 14th January, 2019. The Adjudicating Authority directed that the liquidator to ensure that the company remains a going concern and certain other direction has been issued. In addition to such direction, we also direct the liquidator to follow the decision and direction of this Appellate Tribunal in **“Y. Shivram Prasad Vs. S. Dhanapal & Ors. – Company Appeal (AT) (Insolvency) No. 224 of 2018 etc.”** wherein this Appellate Tribunal by its judgment dated 27th February, 2019 observed and held as follows:

“12. The aforesaid issue fell for consideration before this Appellate Tribunal in **“S.C. Sekaran v. Amit Gupta & Ors.– Company Appeal (AT) (Insolvency) Nos. 495 & 496 of 2018”** wherein this Appellate Tribunal having noticed the decision of the Hon’ble Supreme Court in **“Swiss Ribbon Pvt. Ltd. & Anr. v. Union of India & Ors. (Supra) and “Meghal Homes Pvt. Ltd.”** observed and held:

“5. We have heard the learned counsel for the parties and perused the record. The Hon’ble Supreme Court in **‘Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors. – Writ Petition (Civil) No. 99 of**



2018' by its judgment dated 25th January, 2019, observed as follows:

“11.What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. **Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern.** [See **ArcelorMittal** (supra) at paragraph 83, footnote 3]. (Emphasis added)

12. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters /those who are in management. Thus, the resolution process



is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends."

In 'Arcelormittal India Pvt. Ltd. vs. Satish Kumar Gupta & Ors.' at paragraph 83, footnote 3 is mentioned. The Hon'ble Supreme Court noticed that :

"3. Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, states that the liquidator may also sell the corporate debtor as a going concern."



6. In **'Meghal Homes Pvt. Ltd. vs. Shree Niwas Girni K.K. Samiti & Ors. - (2007) 7 SCC 753'** the Hon'ble Supreme Court observed and held as follows:

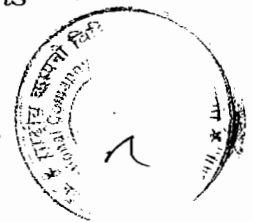
"33. The argument that Section 391 would not apply to a company which has already been ordered to be wound up, cannot be accepted in view of the language of Section 391(1) of the Act, which speaks of a company which is being wound up. If we substitute the definition in Section 390(a) of the Act, this would mean a company liable to be wound up and which is being wound up. It also does not appear to be necessary to restrict the scope of that provision considering the purpose for which it is enacted, namely, the revival of a company including a company that is liable to be wound up or is being wound up and normally, the attempt must be to ensure that rather than dissolving a company it is allowed to revive. Moreover, Section 391(1)(b) gives a right to the liquidator in



the case of a company which is being wound up, to propose a compromise or arrangement with creditors and members indicating that the provision would apply even in a case where an order of winding up has been made and a liquidator had been appointed. Equally, it does not appear to be necessary to go elaborately into the question whether in the case of a company in liquidation, only the Official Liquidator could propose a compromise or arrangement with the creditors and members as contemplated by Section 391 of the Act or any of the contributories or creditors also can come forward with such an application.”

7. Section 391 of the Companies Act, 1956 has since been replaced by Section 230 of the Companies Act, 2013, which is as follows:

“230. Power to compromise or make arrangements with creditors and members



(1) Where a compromise or arrangement is proposed—

(a) between a company and its creditors or any class of them; or
 (b) between a company and its members or any class of them, the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator appointed under this Act or under the Insolvency and Bankruptcy Code, 2016 as the case may be, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

Explanation.— For the purposes of this subsection, arrangement includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of



shares into shares of different classes, or by both of those methods.

(2) The company or any other person, by whom an application is made under subsection (1), shall disclose to the by affidavit—

(a) all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company and the pendency of any investigation or proceedings against the company;

(b) reduction of share capital of the company, if any, included in the compromise or arrangement;

(c) any scheme of corporate debt restructuring consented to by not less than seventy-five per cent. of the secured creditors in value, including—

(i) a creditor's responsibility statement in the prescribed form;

(ii) safeguards for the protection of other secured and unsecured creditors;



(iii) report by the auditor that the fund requirements of the company after the corporate debt restructuring as approved shall conform to the liquidity test based upon the estimates provided to them by the Board;

(iv) where the company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect; and

(v) a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.

(3) Where a meeting is proposed to be called in pursuance of an order of the Tribunal under sub-section (1), a notice of such meeting shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company, individually at the address registered with the company



which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed:

Provided that such notice and other documents shall also be placed on the website of the company, if any, and in case of a listed company, these documents shall be sent to the Securities and Exchange Board and stock exchange where the securities of the companies are listed, for placing on their website and shall also be published in newspapers in such manner as may be prescribed:

Provided further that where the notice for the meeting is also issued by way of an advertisement, it shall indicate the time within which copies of the compromise or arrangement shall be made available to the concerned persons free of charge from the registered office of the company.



(4) A notice under sub-section (3) shall provide that the persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot to the adoption of the compromise or arrangement within one month from the date of receipt of such notice:

Provided that any objection to the compromise or arrangement shall be made only by persons holding not less than ten per cent. of the shareholding or having outstanding debt amounting to not less than five per cent. of the total outstanding debt as per the latest audited financial statement.

(5) A notice under sub-section (3) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India established under sub-section (1) of section 7 of the Competition Act, 2002, if necessary, and such other sectoral



regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.

(6) Where, at a meeting held in pursuance of subsection (1), majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company being wound up, on the liquidator appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be, and the contributories of the company.



(7) An order made by the Tribunal under sub-section (6) shall provide for all or any of the following matters, namely:—

- (a) where the compromise or arrangement provides for conversion of preference shares into equity shares, such preference shareholders shall be given an option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable;
- (b) the protection of any class of creditors;
- (c) if the compromise or arrangement results in the variation of the shareholders' rights, it shall be given effect to under the provisions of section 48;
- (d) if the compromise or arrangement is agreed to by the creditors under sub-section (6), any proceedings pending before the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall abate;
- (e) such other matters including exit offer to dissenting shareholders, if any, as are in the



opinion of the Tribunal necessary to effectively implement the terms of the compromise or arrangement:

Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.

(8) The order of the Tribunal shall be filed with the Registrar by the company within a period of thirty days of the receipt of the order.

(9) The Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety per cent. value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement.

(10) No compromise or arrangement in respect of any buy-back of securities under this section shall be sanctioned by the Tribunal unless such buy-back is in accordance with the provisions of section 68.



(11) Any compromise or arrangement may include takeover offer made in such manner as may be prescribed: Provided that in case of listed companies, takeover offer shall be as per the regulations framed by the Securities and Exchange Board.

(12) An aggrieved party may make an application to the Tribunal in the event of any grievances with respect to the takeover offer of companies other than listed companies in such manner as may be prescribed and the Tribunal may, on application, pass such order as it may deem fit. Explanation.—For the removal of doubts, it is hereby declared that the provisions of section 66 shall not apply to the reduction of share capital effected in pursuance of the order of the Tribunal under this section.

8. In view of the provision of Section 230 and the decision of the Hon'ble Supreme Court in 'Meghal Homes Pvt. Ltd.' and 'Swiss Ribbons Pvt. Ltd.', we direct the 'Liquidator' to proceed in accordance with law. He will verify claims of all the creditors; take into custody and control of all the assets, property, effects and actionable claims of the



'corporate debtor', carry on the business of the 'corporate debtor' for its beneficial liquidation etc. as prescribed under Section 35 of the I&B Code. The Liquidator will access information under Section 33 and will consolidate the claim under Section 38 and after verification of claim in terms of Section 39 will either admit or reject the claim, as required under Section 40. Before taking steps to sell the assets of the 'corporate debtor(s)' (companies herein), the Liquidator will take steps in terms of Section 230 of the Companies Act, 2013. The Adjudicating Authority, if so required, will pass appropriate order. Only on failure of revival, the Adjudicating Authority and the Liquidator will first proceed with the sale of company's assets wholly and thereafter, if not possible to sell the company in part and in accordance with law."

13. Therefore, it is clear that during the liquidation process, step required to be taken for its revival and continuance of the 'Corporate Debtor' by protecting the 'Corporate Debtor' from its management and from a death by liquidation. Thus, the steps which are required to be taken are as follows:

- i. By compromise or arrangement with the creditors, or class of creditors or members or



class of members in terms of Section 230 of the Companies Act, 2013.

ii. On failure, the liquidator is required to take step to sell the business of the 'Corporate Debtor' as going concern in its totality along with the employees.

14. *The last stage will be death of the 'Corporate Debtor' by liquidation, which should be avoided.*

15. *Learned counsel appearing on behalf of the Appellant (Promoter) submitted that the provisions under Section 230 may not be completed within 90 days, as observed in "S.C. Sekaran v. Amit Gupta & Ors." (Supra).*

16. *It is further submitted that there will be objections by some of the creditors or members who may not allow the Tribunal to pass appropriate order 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.

18. *During proceeding under Section 230, if any, objection is raised, it is open to the Adjudicating Authority (National Company Law Tribunal) which has power to pass order under Section 230 to overrule the objections, if the arrangement and scheme is beneficial for revival of the 'Corporate Debtor' (Company). While passing such order, the Adjudicating Authority is to play dual role, one as the Adjudicating Authority in the matter of liquidation and other as a Tribunal for passing order under Section 230 of the Companies Act, 2013. As the liquidation so taken up under the 'I&B Code', the arrangement of scheme should be in consonance with the statement and object of the 'I&B Code'. Meaning thereby, the scheme must ensure maximisation of the assets of the 'Corporate Debtor' and balance the stakeholders such as, the 'Financial Creditors', 'Operational Creditors', 'Secured Creditors' and 'Unsecured Creditors' without any discrimination. Before approval of an arrangement or Scheme, the Adjudicating Authority (National Company Law Tribunal) should follow the same principle and should allow the 'Liquidator' to constitute a 'Committee of*



Creditors' for its opinion to find out whether the arrangement of Scheme is viable, feasible and having appropriate financial matrix. It will be open for the Adjudicating Authority as a Tribunal to approve the arrangement or Scheme in spite of some irrelevant objections as may be raised by one or other creditor or member keeping in mind the object of the Insolvency and Bankruptcy Code, 2016.

19. *In view of the observations aforesaid, we hold that the liquidator is required to act in terms of the aforesaid directions of the Appellate Tribunal and take steps under Section 230 of the Companies Act. If the members or the 'Corporate Debtor' or the 'creditors' or a class of creditors like 'Financial Creditor' or 'Operational Creditor' approach the company through the liquidator for compromise or arrangement by making proposal of payment to all the creditor(s), the Liquidator on behalf of the company will move an application under Section 230 of the Companies Act, 2013 before the Adjudicating Authority i.e. National Company Law Tribunal, Chennai Bench, in terms of the observations as made in above. On failure, as observed above, steps should be taken for outright sale of the 'Corporate Debtor' so as to enable the employees to continue.*



20. Both the appeals are disposed of with aforesaid observations and directions. No cost.”

14. For the reasons aforesaid, while we are not interfering with the impugned order dated 14th January, 2019 we dispose of the appeal with direction to the Liquidator to act in accordance with observations and decision of this Appellate Tribunal. The work should be taken from existing employees and workmen to ensure that the company remains a going concern.

15. The appeal stands disposed of with aforesaid observations and directions. No costs.



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OF THE ORIGINAL

Sellor
(Justice S.J. Mukhopadhaya)
Chairperson

Sellor
(Justice A.I.S. Cheema)
Member(Judicial)

NEW DELHI
14th May, 2019

AR

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Deputy Registrar
National Company Law Appellate Tribunal
New Delhi