

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)
Company Appeal (AT) (CH) (Ins) No.304/2025
(IA No.892/2025)

In the matter of:

M/S.PRAKASH OIL DEPOT

A Partnership Firm, having its office at
334 & 335 Sri Krupa Market, Malakpet,
Hyderabad - 500 036

...APPELLANT

V

G. MADHUSUDHAN RAO

Liquidator for M/s Sarda Agro Oils Limited
(IBBI/IPA-001/IP-P00181/2017-18/10360)
7-1-28, Flat No 103, Sri Sai Swapna Sampada Apt,
Balkampet, Hyderabad – 500 038.

...RESPONDENT NO. 1

INDIAN BANK

(erstwhile Allahabad Bank)
Himayatnagar Branch
3-6-435, Ground Floor,
Main Road, Himayat Nagar,
Hyderabad

...RESPONDENT NO. 2

Present :

For Appellant : Mr. Satish Parasaran, Senior Advocate
Mr. Pavan Kumar Gandhi &
Ms. Tanushree Arvind, Advocates
Mr. G. Madhusudhan Rao, Liquidator

With
Company Appeal (AT) (CH) (Ins) No.306/2025
(IA No.901/2025)

In the matter of:

G. MADHUSUDHAN RAO

Liquidator for M/s Sarda Agro Oils Limited
(IBBI/IPA-001/IP-P00181/2017-18/10360)

7-1-28, Flat No 103, Sri Sai Swapna Sampada Apt,
Balkampet, Hyderabad – 500 038.

...APPELLANT

Present :

For Appellant : Mr. PH Arvinth Pandian, Senior Advocate
Mr. Avinash Krishnan Ravi,
Advocate for Liquidator
Mr. G. Madhusudhan Rao, Liquidator

JUDGMENT
(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma, Member (Judicial)]

These are two company appeals, that have been preferred by the respective Appellants, being aggrieved as against the impugned order of 26.05.2025, as it was rendered by Ld. NCLT, Hyderabad, in IA(IBC/ 833/2025, that was preferred in CP(IB)/102/7/HDB/2019. By virtue of the impugned order, which was passed by the Tribunal, in the proceedings being carried under Section 7 of the I & B Code, 2016, had ultimately determined that, the extension of time as prayed for, for the purposes of completing and operationalising the scheme of arrangement proposed and submitted on 25.01.2024 by M/s. Prakash Oil Depot under Section 230 of the Companies Act, 2013, to be read with Regulation 2B of the IBBI (Liquidation Process) Regulations, 2016, cannot be granted extension owing to the failure on part of the Appellant/Liquidator, to comply with the time stipulations as it has been prescribed for completing the scheme proposed under Section 230 of the Companies Act, 2013, to be read with Regulation 2(B) of the IBBI (Liquidation Process) Regulations, 2016.

2. For the aforesaid purpose, a reference to Regulation 2B of the IBBI (Liquidation Process) Regulations, 2016, becomes inevitable, which contemplates that, a scheme of compromise or an arrangement which is proposed to be made as per the provision contained under Section 230 of the Companies Act, 2013, has to be completed within a period of 90 days from the date of order of liquidation. This has been further qualified by the proviso, to Regulation 2B(1) of the Insolvency and Bankruptcy Board of India (IBBI) (Liquidation Process) Regulations, 2016, to the effect that, a person who is not eligible under the code to submit a plan shall not be a party in any manner, to such compromise or an arrangement. Besides that, Regulation 2B(1) of the Insolvency and Bankruptcy Board of India (IBBI) (Liquidation Process) Regulations, 2016, provides that, the Liquidator shall file the proposal of compromise or a scheme of arrangement only in those cases where, such recommendation has been made by the Committee, under Regulation 39BA of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. And more importantly, it stipulates, in the light of the third proviso contained in the said Regulation, that no proposal of a compromise or of an arrangement as contemplated under Section 230 of the Companies Act, 2013, shall be entertained, if it is not filed within the expiry of 30 days from the date of the liquidation commencement date. Regulation 2B (1) IBBI (Liquidation Process) Regulations of 2016, is extracted hereunder: -

“2B. (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 2[***] 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.

Provided further that the liquidator shall file the proposal of compromise or arrangement only in cases where such recommendation has been made by the committee under regulation 39BA of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016:

Provided further that the liquidator shall not file such proposal after expiry of thirty days from the liquidation commencement date.”

3. Some of the facts, which are not disputed by the parties, are that,

(i) The Corporate Debtor M/s. Sarda Agro Oils Limited, was placed under liquidation by an order dated 09.01.2023, as it was passed on IA No. 1323/2022.

(ii) In the light of the Proviso as appended to Sub-Regulation (1) of Regulation 2B of the Insolvency and Bankruptcy Board of India (IBBI) (Liquidation Process) Regulations, 2016, the proposal of a scheme of Compromise/arrangement should have been preferred within 30 days from the date of the liquidation order, that is, 09.01.2023

(iii) Such scheme should have been approved within a period of 90 days, from the date of commencement of liquidation,

(iv) The Ld. Adjudicating Authority, by a series of orders passed during the proceedings, have excluded certain periods have granted an exemption by for the purposes of determination of the period prescribed under Regulation 2B, which are detailed hereunder: -

(a) Period from 09.01.2023 to 29.08.2023 by the order dated 29.08.2023.

(b) The period from 29.08.2023 to 08.03.2024 by the order dated 08.03.2024.

(c) Excluding the period from 08.03.2024 to 31.07.2024 by the order dated 31.07.2024.

(v) Even though, the period from 09.01.2023 to 31.07.2024 stood excluded by the orders of Tribunal, the Appellants could not finalise and present the scheme of compromise/arrangement within 29.10.2024, that is, 90 days from 31.07.2024.

(vi) Despite the averment of the Appellants that a cheque for an amount of Rs.4.30 crores has been submitted on 31.05.2024, towards Earnest Money Deposit, the liquidator filed application IA(IBC)833/2025 on 26.04.2025 only, inter alia praying for grant of 90 days from the date of the order on said application for completion of the scheme as per Section 230 of the Companies Act read with Regulation 2B of the Insolvency and Bankruptcy Board of India (IBBI) (Liquidation Process) Regulations, 2016.

(vii) Ld. NCLT rejected the applications vide its order dated 26.05.2025 on the grounds that it is in contravention of Regulation 2B(1) of the Insolvency and Bankruptcy Board of India (IBBI) (Liquidation Process) Regulations, 2016, and that it could find no reason to deviate from the time limit prescribed by the said Regulation.

4. In order to carve out an exception for seeking extension, of time to complete the scheme of compromise, the Appellant has contended that the period, between 31.05.2024 to 26.04.2025, deserves to be excluded because the cheque of Rs. 4.30 crore representing the EMD amount was deposited by the scheme Proponent on 31.05.2024 itself, which is within the prescribed time period and that matter remained pending till 26.04.2025 because on of the Financial Creditors gave its consent to the proposed scheme only on 22.04.2025, that the proposed scheme was approved by 100% of the secured creditors within SCC (Stake Holder Consultation Committee), that the proposed scheme offered a substantially higher value than the liquidation value and hence promised value maximisation of the Corporate Debtor and revival of the Corporate Debtor which should be the primary focus of I & B Code as per the decision of Hon'ble Apex Court in Swiss Ribbons Case, that a scheme of arrangement should be preferred over liquidation as emphasized by Hon'ble Apex Court in Arun Kumar V. Jindal Steel & Power Ltd., 2021, that due weightage must be given to the commercial wisdom of the parties as per decision of Hon'ble Apex Court in Miheer H.

Mafatlal vs. Mafatlal Industries Ltd (1997) 1 SCC 579, that the timeline of 90 days prescribed by regulation 2(B) is only directory and not mandatory as per the decision of NCLAT in Y. Shivaram Prasad Vs. S Dhanapal (2019) 214 Com. Cas 83, that the delay is merely procedural due to prolonged internal approval process of Bank of Baroda, which is neither wilful nor wanton, and that the scheme presents a realistic and better alternative to liquidation.

5. The Ld. Adjudicating Authority has proceeded to dismiss the Application for grant of extension of time on the grounds that submission of the scheme of arrangement/compromise under Section 230 of the Companies Act, 2013, before the Liquidator on 25.01.2024, by submitting a cheque for Rs. 4,30,00,000/- (Four Crores and Thirty Lakhs) dated 31.05.2024 towards the Earnest Money Deposit, that in itself would not suffice the purpose to establish any bonafides, pertaining to the delayed presentation of the scheme of arrangement under Section 230 of the Companies Act, 2013, because in the said application, there is no answer as to under what circumstances and for what valid reasons, the period from 31.05.2024 to 26.04.2025, could be excluded, more particularly when the process of obtaining the approval of the Financial Creditors was pursued at a very later stage, and the same was obtained from Indian Bank and Bank of Baroda only on 21.11.2024 and 22.04.2025 respectively.

6. The ultimate question, which falls for consideration before us is, as to whether the stipulation as prescribed by the provisions contained under

Regulation 2B(1) of the of the Insolvency and Bankruptcy Board of India (IBBI) (Liquidation Process) Regulations, 2016, that the scheme of compromise/arrangements shall be completed within 90 days from the order of liquidation has to be rigidly followed, for the purposes of approving a compromise/arrangement, which is being proposed under Section 230 of the Companies Act, 2013.

7. The Appellant contends that there is no restriction for such compromise/arrangement being proposed under Section 230 of the Companies Act, 2013, within the Act, the only restrictions which are contemplated are contained under the three proviso as appended to Regulation 2(B) of the Insolvency and Bankruptcy Board of India (IBBI) (Liquidation Process) Regulations, 2016, laying down as to what would be the restrictions to be adopted for the purposes of acting upon a compromise or an arrangement as proposed under Section 230 of the Companies Act, 2013. Looking to the wider objective of Regulation 2(B) of the Insolvency and Bankruptcy Board of India (IBBI) (Liquidation Process) Regulations, 2016, and that though it prescribes for a restriction of time limit for the purposes of completing the compromise or arrangement, the same cannot be permitted to be applied in a rigid manner because that would frustrate the very purpose and objective of Section 230 of the Companies Act, 2013, and also the objective of I & B Code, which is resolution of insolvency and revival of the Corporate Debtor.

8. He has further contended that the provisions contained under Section 230, itself, carves out an exception, so as to meet the wider objective, of the dispute resolution/settlement of the controversy, based upon a compromise, and that is why the principal section under which the compromise is sought to be arrived at does not contemplate any stipulation or a fixation of any upper time limit for completion of such scheme of arrangement/compromise as contemplated under it. In that eventuality, where the principal section does not stipulate a maximum time period for the purposes of completion of the scheme, the same cannot be permitted to be overridden by a subordinate legislation being the liquidation Regulation as framed under Section 240 of the I & B Code, 2016.

9. It would be apt to observe that the scheme of arrangement, which is proposed by the scheme proponent already stands approved by the Secured Financial Creditors being Indian Bank and Bank of Baroda, who form part of the Stakeholders Committee, and the approval process was completed after extensive deliberation and consequent modifications in the proposed scheme, so as to ensure successful implementation of the scheme. The enforcement of 90 days time limit as prescribed under Regulation 2(B) of the Insolvency and Bankruptcy Board of India (IBBI) (Liquidation Process) Regulations, 2016, without a proper appreciation of the circumstances when extensions had already been granted in three previous occasions and refusal to grant further extension as prayed for completing the scheme of arrangement does not appeal to be sustainable, that too

when the finding, recorded by the Ld. Tribunal in the impugned order is not based upon a sound reasoning, as to why the extension as prayed for cannot be granted to meet the objectives of the code, even if it is sought for a fourth time when it is not restricted by law, and when it promises to cut short the litigation between the parties.

10. More particularly when the intention behind the application seeking extension of time, is to ensure completion of the scheme of arrangement, so as to meet the object of the I & B Code, 2016, and the Companies Act, the Tribunal ought to have taken into consideration, that the earlier extensions which had been granted, would be rendered otiose if the extension sought for in the instant case is not given and that, the extension which has been prayed for by filing of the instant IA should have been considered independently without being affected or influenced by the earlier extensions which already stood granted, because the factors governing the prayer for grant of extension in the instant case are distinct to those based on which the earlier extensions were granted.

11. Grant of extension of time to enforce the scheme of arrangement beyond 90-days period is not absolutely barred as per Regulation 2 (B) of the Insolvency and Bankruptcy Board of India (IBBI) (Liquidation Process) Regulations, 2016, as has been observed in various judgments referred to by the Appellant. The Principal Bench in ***Company Appeal (AT) (Ins) No. 1275 & 1276 of 2022***, in the matters of ***Bharat Sharma, Resolution Applicant v. Reshma Mittal, RP (Now***

Liquidator) & Anr. had considered the issue and had observed that, opportunity should be given to present a scheme of compromise/arrangement even at the stage where liquidation has been order, notice for auction has already been issued and a large number of applicants have submitted EMD and consequently directed that liberty be given to the Appellant to submit a scheme of compromise/arrangement as per Section 230 of the Companies Act and that the liquidator shall defer the proposed auction till the completion of process under Regulation 2B of the Insolvency and Bankruptcy Board of India (IBBI) (Liquidation Process) Regulations, 2016. The relevant paragraph of the said judgement is extracted hereunder: -

“5. We have heard the Learned Counsel for the parties and have perused the record. In the facts of the present case, we are of the view that ends of justice will be served in giving liberty to the Appellant to submit a scheme of compromise/arrangement as contemplated under Section 230 of the Companies Act to the Liquidator within one month from today as well as to the Financial Creditors for their approval as contemplated under Section 230 of the Companies Act. Let entire process be completed within three months’ period as has been allowed under Regulation 2B of the IBBI (Liquidation Process) Regulations, 2016 from today.”

12. The aspect pertaining to the extension of the time period for the purposes of enforcement of the scheme of arrangement, has been quite elaborately considered in a judgment reported in **2019 SCC online and NCLAT 172**, in the

matter of *Y. Shivram Prasad versus S. Dhanpal and others*. While dealing with the aforesaid issue, the Principal Bench in its para 12, while drawing its inference from the earlier judgment as rendered in the matters of *S. C. Sekaran Vs. Amit Gupta* and its conjoined implication drawn from the judgment of the *Swiss Ribbons Private Limited versus Union of India*, has observed in paragraph 12, as to what was the Legislative intent to be met under Section 230 of the Companies Act, 2013, for the purposes of making of the arrangement by way of a scheme of a settlement for it to be enforced. The ultimate conclusion has been drawn by the Principal Bench in **Para 17** of the said judgment holding thereof that, if for any reason the Liquidation process under Section 230 of the Companies Act, 2013, takes more time, the extension of the time period could still be extended thereof, where there is a chance of approval of arrangement of the scheme. Here too, the basic underlying principle is that the extension is for the purposes to meet the objective of the Act and the provisions contained therein, particularly in context here too, when it relates to the enforcement of the scheme of arrangement, that would be treated as **to be directory in nature, not mandatory**, and that could be made flexible so as to ensure that the scheme of compromise/arrangement is enforced in order to resolve the controversy, rather than the Corporate Debtor being forced to put to liquidation. The relevant paragraphs, being para 12 and 17, are extracted here under: -

“12. The aforesaid issue fell for consideration before this Appellate Tribunal in S.C. Sekaran v. Amit Gupta (Company Appeal

(AT) (Insolvency) Nos. 495 and 496 of 2018) (2019) 6 Comp Cas-OL 250 (NCLAT), wherein this Appellate Tribunal having noticed the decisions of the hon'ble Supreme Court in *Swiss Ribbons P. Ltd. v. Union of India* [2019] 213 Comp Cas 198 (SC) ; [2019] SCC Online SC 73 and *Meghal Homes P. Ltd. v. Shree Niwas Girni K.K. Samiti* (2007) 139 Comp Cas 418 (SC) observed and held (pages 252 to 257 of 6 Comp Cas-OL):

"We have heard learned counsel for the parties and perused the record. The hon'ble Supreme Court in Swiss Ribbons P. Ltd. v. Union of India (Writ Petition (Civil) No. 99 of 2018) (2019) 213 Comp Cas 198 (SC) by its judgment dated January 25, 2019, observed as follows (page 236):

*'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 India P. Ltd. v. Satish Kumar Gupta* (2018) 211 Comp Cas 369 (SC) at paragraph 83, footnote 3). (emphasis added)*

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 P. Ltd. v. Satish Kumar Gupta (2018) 211 Comp Cas 369, 464 (SC), at paragraph 83, footnote 3 is mentioned. The hon'ble Supreme Court noticed that:

'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.'

In Meghal Homes P. Ltd. v. Shree Niwas Girni K.K. Samiti (2007) 139 Comp Cas 418 (SC) ; (2007) 7 SCC 753, the hon'ble Supreme Court observed and held as follows (page 434 of 139 Comp Cas):

'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.'

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 sub-section, 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 sub-section (1), shall disclose to the Tribunal 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; 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 subsection (1) of section 7 of the Competition Act, 2002 (12 of 2003), 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 sub-section (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 (1 of 1986) 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 buyback 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.'

In view of the provision of section 230 and the decisions of the hon'ble Supreme Court in Meghal Homes P. Ltd. v. Shree Niwas Girni K.K. Samiti (2007) 139 Comp Cas 418 (SC) ; (2007) 7 SCC 753 and Swiss Ribbons P. Ltd. v. Union of India [2019] 213 Comp Cas 198 (SC), 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 and 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.”

“17. Normally, the total period for liquidation is to be completed preferably within two years. Therefore, in S.C. Sekaran v. Amit Gupta 1 (2019) 6 Comp Cas-OL. .. (NCLAT), 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.”

13. In the matter of **Sanjeev Mitla vs Mr. Madhusudhan Rao Gonugunta** as reported in **Manu/NL/0951/2023**. The Ld. Tribunal has laid down the following principles to be governing for the purposes of considering the scheme of arrangement by way of granting of an extension of time in order to meet out the purpose of enforceability of the scheme. The relevant paragraph being para 26 is extracted hereunder: -

“After hearing the matter for some time, we put this question to the Counsel for the Respondent, who asked for a pass over in order to seek instructions from the liquidator and after taking the instructions he has submitted that the proposed scheme of the appellant may be put to the SCC on 01.12.2023 which shall be considered by the SCC on that day and take the decision accordingly. Counsel for the Appellant has not shown any averseness to this proposal made by the Counsel for the Respondent. As a result, thereof, while disposing of this appeal, we direct, as per the agreement between the parties, that the scheme propounded by the appellant, in terms of the Section 230 of the act, shall be presented before the SCC on 01.12.2023. the meeting shall be convened by the liquidator on 01.12.2023 by giving time, date and place to the parties concerned and in that meeting

the scheme shall be considered by the SCC a decision shall be taken in accordance with law.”

14. In view of the ratio, that has been laid down by the various judgments settled by NCLAT, it could very well be established and concluded, that since the statute doesn't create any specific bar under law from seeking an extension of time for enforcement of the scheme of arrangement, the decision to grant such extensions, if it facilitates the enforcement of the scheme, ought to be made permissible, because the provision under Regulation 2(B) of the Insolvency and Bankruptcy Board of India (IBBI) (Liquidation Process) Regulations, 2016, has been held to be directory in nature and not mandatory. At this juncture, it will be always the commercial wisdom of the parties, which has to come into play, in order to take a decision, after considering the viability, benefits and the propriety of the scheme by the requisite majority regarding grant of an extension of time. Though this Appellate Tribunal at this point of time may not have that equivalent powers to manually scrutinize the viability of the scheme, it has to give due respect to the commercial wisdom of the parties to the scheme while determining the usefulness of the scheme. Further, the Ld. Tribunal is not supposed to act, as a court of appeal, at the stage when the implications of Regulation 2(B) of the Insolvency and Bankruptcy Board of India (IBBI) (Liquidation Process) Regulations, 2016, is being taken into consideration limited for the purposes of extension of time, for the enforcement of the scheme of arrangement, and that

too, particularly in the given set of circumstances, when the scheme stands approved by the Stakeholders Consultation Committee, by a majority decision after the rectification of minor defects.

15. It is being made clear that in the instant case, the scheme proposed under Section 230 of the Companies Act, 2013, is being considered by this Appellate Tribunal only in the context of the time limit prescribed under Regulation 2(B) of the Insolvency and Bankruptcy Board of India (IBBI) (Liquidation Process) Regulations, 2016, of the stipulation to complete it within a period of 90 days and that while sitting on judgement over the Impugned Order of the Ld. Tribunal, denying the extension of time, is not exercising its Appellate Jurisdiction to judicially scrutinize the ingredients of the appeal or the terms of settlement or the contents of the scheme, because the same falls to be within the realm of the commercial wisdom of the parties and that it is of the view that the scheme, once having been arrived at, should have been given a pragmatic treatment and an effective conclusion for making the scheme effective particularly when it is not prejudicial to the interest of any of the parties to the proceedings.

16. We are of a considered view that Regulation 2B of the Insolvency and Bankruptcy Board of India (IBBI) (Liquidation Process) Regulations, 2016, it is only for the purposes of exclusion of time consumed for considering the scheme under Section 230, from the total time provided to complete the liquidation process and there is no specific or an absolute bar under law to consider such a

scheme of compromise/arrangement, at any time within the time period allowed for completion of the liquidation process, and that even if the said time period as stipulated for completion of the scheme is exhausted, then too the time period granted by the Ld. Tribunal, could be further extended, so as to bring the scheme of compromise/arrangement to its logical conclusion to shorten the litigation and to revive the Corporate Debtor. In the instant case, the approval of the scheme of compromise/arrangement by a requisite majority of the Stakeholders Consultation Committee, doesn't suffer from any absolute legal disability in proceeding to enforce the scheme even beyond the prescribed time period.

17. The Hon'ble Apex Court, in judgment ***reported in 2021, volume 7, SCC, page 474, Arun Kumar Jagatramka versus Jindal Steel and Power Limited and Another***, while considering the implications of Regulation 2B of the Insolvency and Bankruptcy Board of India (IBBI) (Liquidation Process) Regulations, 2016, in form of the restrictions imposed in the enforcement of the scheme of arrangement, has observed in paragraph 69, that the statutory scheme underlying I & B Code and its linkage with Section 230 of the Companies Act has important consequences in the process of liquidation and that the liquidator appointed under the Code is to attempt the revival of the Corporate Debtor so as to save it from Corporate death and that the scheme, once approved and sanctioned by the Ld. Tribunal becomes binding on the stakeholders, including the liquidator. The relevant paragraph 69 extracted hereunder: -

“69. The statutory scheme underlying the IBC and the legislative history of its linkage with Section 230 of the 2013 Act, in the context of a company which is in liquidation, has important consequences for the outcome of the controversy in the present case. The first point is that a liquidation under Chapter III IBC follows upon the entire gamut of proceedings contemplated under that statute. The second point to be noted is that one of the modes of revival in the course of the liquidation process is envisaged in the enabling provisions of Section 230 of the 2013 Act, to which recourse can be taken by the liquidator appointed under Section 34 IBC. The third point is that the statutorily contemplated activities of the liquidator do not cease while inviting a scheme of compromise or arrangement under Section 230. The appointment of the liquidator in an IBC liquidation is provided in Section 34 and their duties are specified in Section 35. In taking recourse to the provisions of Section 230 of the 2013 Act, the liquidator appointed under the IBC is, above all, to attempt a revival of the corporate debtor so as to save it from the prospect of a corporate death. The consequence of the approval of the scheme of revival or compromise, and its sanction thereafter by the Tribunal under sub-section (6), is that the scheme attains a binding character upon stakeholders including the liquidator who has been appointed under the IBC. In this backdrop, it is difficult to accept the submission of Mr Bajaj that Section 230 of the 2013 Act is a standalone provision which has no connect with the provisions of the IBC.”

18. Thus, it enjoins that a concerted attempt should be made for the revival of the Corporate Debtor, so as to save it from the prospect of a corporate death and that the consequences of the approval of the scheme of revival, or the compromise and the sanction thereafter by the Ld. Tribunal, is that the scheme attains a binding character upon the stakeholders including the Liquidator, who has been appointed

under the I & B Code, 2016, who then will have to ensure the enforceability of the scheme of arrangement even after the expiry of the time period as provided therein, owing to the provisions contained under Section 230(6) of the Companies Act, 2013.

19. Owing to the above, the impugned order denying to grant the extension of time as sought for, merely because of the fact that there had been earlier extensions granted and the scheme was not implemented which does not create an absolute restriction or a legal bar against grant of further extension of time especially when the scheme has been approved by SCC by majority and merely because of the fact, that the Liquidator despite being aware of the applicable provisions of law has engaged with the individuals connected with the Suspended Directors of the Corporate Debtor, is not sustainable in the face of law and the judicial precedents as laid down by the NCLAT, as well as the Hon'ble Apex Court especially when the proposed scheme of arrangement, promises to meet the objective of the Code, coupled with the fact that there is no absolute bar is grant of the extension of time and that, the same could be granted subject to the restrictions to be imposed by exercise of a judicial wisdom by the Ld. Tribunal.

20. Owing to the aforesaid facts and circumstances as dealt with above, the impugned order is quashed. A further period of 90 days is granted from the date of uploading of the order to the Appellant to complete the scheme of Arrangements subject to the Appellants complying with the provisions contained

under Section 230(5) of the Companies Act, 2013, to be read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. Owing to the aforesaid reasons, the **Company Appeal (AT) (CH) (Ins) No.304/2025**, would too stand, 'allowed' under the same terms and conditions.

All pending interlocutory applications would stand 'closed'.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

01/08/2025
SN/MS/RS