

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.124 of 2025

(Arising out of Order dated 20.01.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Court V, New Delhi in I.A. (Liq.) 33/ND/2024 in Company Petition No.(IB) - 264/PB/2023)

IN THE MATTER OF:

Busy Bee Airways Pvt. Ltd.

...Appellant

Versus

Dinkar T Venkatasubramanian,
Liquidator, Go Airlines (India) Ltd. & Ors.

...Respondents

Present:

For Appellant : Mr. Krishnendu Dutta, Sr. Advocate with Mr. Apoorv Agarwal, Ms. Prachi Darji, Ms. Saloni Singh, Ms. Alina Mathew, Mr. Tushar Gadia, Ms. Ritika Prasad, Mr. Kamakshraj Singh and Mr. Abhiraj Das, Advocates.

For Respondents : Mr. Ritin Rai, Sr. Advocate with Ms. Pratiksha Mishra, Mr. Shreyas Endupuganti, Advocates for R-1.

Mr. Dheeraj Nair, Mr. Angad Baxi, Ms. Vishrutyi Sahani and Ms. Fatema Kachewala, Advocates for CoC.

With

Company Appeal (AT) (Insolvency) No.175 of 2025

(Arising out of Order dated 20.01.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Court V, New Delhi in I.A. (Liq.) 33/ND/2024 in Company Petition No.(IB) - 264/PB/2023)

IN THE MATTER OF:

Bhartiya Kamgar Sena Mumbai

...Appellant

Versus

Dinkar T Venkatasubramanian,
Liquidator, Go Airlines (India) Ltd. & Ors.

...Respondents

Present:

For Appellant : Ms. Priya Singh, Mr. Gaurav Singh and Mr. Bhanukaran Singh Jodha, Advocates.

For Respondents : Mr. Ritin Rai, Sr. Advocate with Ms. Pratiksha Mishra, Mr. Shreyas Endupuganti, Advocates for R-1.

Mr. Dheeraj Nair, Mr. Angad Baxi, Ms. Vishrutyi Sahani and Ms. Fatema Kachewala, Advocates for CoC.

With
Company Appeal (AT) (Insolvency) No.244 of 2025

(Arising out of Order dated 20.01.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Court V, New Delhi in I.A. (Liq.) 33/ND/2024 in Company Petition No.(IB) - 264/PB/2023)

IN THE MATTER OF:

Capt. Arjun Dhawan & Ors.

...Appellants

Versus

Dinkar T Venkatasubramanian,
Liquidator, Go Airlines (India) Ltd. & Ors.

...Respondents

Present:

For Appellants : Ms. Priya Singh, Mr. Gaurav Singh, Mr. Bhanukaran Singh Jodha, Mr. Mrinal Dave and Ms. Shriya Agarwal, Advocates.

For Respondents : Mr. Ritin Rai, Sr. Advocate with Ms. Pratiksha Mishra, Mr. Shreyas Endupuganti, Advocates for R-1.

Mr. Dheeraj Nair, Mr. Angad Baxi, Ms. Vishrutyi Sahani and Ms. Fatema Kachewala, Advocates for CoC.

J U D G M E N T

ASHOK BHUSHAN, J.

These three Appeal(s) have been filed challenging order dated 20.01.2025 passed by National Company Law Tribunal, Court V, New Delhi allowing the Liquidation Application and directing the liquidation of the CD – M/s Go Airlines (India) Limited. The Appellant(s) aggrieved by order directing for liquidation and appointing Liquidator Dinkar T Venkatasubramanian have filed these Appeal(s).

2. Company Appeal (AT) (Ins.) No.124 of 2025 has been filed by M/s Busy Bee Airways Pvt. Ltd., who had submitted a Resolution Plan in the Corporate Insolvency Resolution Process (“**CIRP**”) of the Corporate Debtor (“**CD**”), which having been found non-compliant was not considered by the Committee of Creditors (“**CoC**”). The Appellant aggrieved by order directing for liquidation of the CD has filed the Appeal. Company Appeal (AT) (Ins.) No.175 of 2025 has been filed on behalf of Bhartiya Kamgar Sena Mumbai challenging the order of liquidation. Company Appeal (AT) (Ins.) No.124 of 2025 has been filed by Capt. Arjun Dhawan with 24 others employees of the CD challenging the order of liquidation dated 20.01.2025. It shall be sufficient to notice the facts from Company Appeal (AT) (Ins.) No.124 of 2025.

3. Brief facts of the case necessary to be noticed for deciding the Appeal(s) are :

- (i) Go Airlines (India) Ltd. was a Company incorporated on 29.04.2004. The CD was engaged in the airlines business and has been running the low cost airlines under the brand name “GoAir” for the last 17 years. Since May 2021, it was renamed as “GoFirst”.
- (ii) Since year 2022 the CD started defaulting towards payment to vendors and aircraft lessors. Thirty four percent of aircraft were grounded in the year 2022. The CD stopped operations and passed a Resolution on 30.04.2023 to file an Application before the NCLT under Section 10 of the Insolvency and Bankruptcy

Code, 2016 (hereinafter referred to as the “**IBC**”). Section 10 Application was filed being Company Petition No. (IB) – 264/PB/2023 by the CD, which Application was allowed by NCLT, New Delhi by order dated 10.05.2023.

- (iii) Public announcement was made on 13.05.2023. On 10.07.2023, RP published Form-G inviting Expression of Interest (“**EoI**”) The EoIs were received from only three entities including M/s. Busy Bee Airways Pvt. Ltd.
- (iv) The lessors, who had granted lease of aircraft to the CD had filed a Writ Petition in Delhi High Court being Writ Petition (C) No.6569 of 2023, where High Court of Delhi directed the Director General of Civil Aviation (“**DGCA**”) to process the deregistration of the aircrafts of the Lessor Company and permitted the Lessor Company to export the aircrafts in accordance with law.
- (v) On 07.05.2024, the Resolution Professional (“**RP**”) had sent an email to M/s. Busy Bee Airways Pvt. Ltd. (“M/s. Busy Bee”), the Consortium to submit a revised Resolution Plan by 14.05.2024. The Resolution Applicant – M/s Busy Bee asked for certain information from the RP. On 09.07.2024, the RP sent an email to the Resolution Applicant – M/s Busy Bee informing that the Consortium no longer meet the eligibility criteria to submit a Resolution Plan for the CD. On 29.07.2024, a request was sent by Resolution Applicant to refund of the EMD.

(vi) The CoC in 37th Meeting held on 23.07.2024 deliberated and resolved to liquidate the CD. The CoC found that no compliant Resolution Plan have been received, in pursuance of which, voting on the Resolution took place from 24.07.2024 to 31.07.2024 and the Resolution for liquidation of the CD was passed with 100% vote share. The CoC of the CD consisted of Central Bank of India, Bank of India and IDBI Bank.

(vii) In pursuance of the Resolution passed by the CoC in its 37th Meeting, the erstwhile RP filed an Application being IA(Liq.) 33/ND/2024 praying for passing an order of liquidation. Liquidation Application was heard by NCLT on 18.12.2024 and was reserved for orders. The Appellant – M/s Busy Bee on 17.01.2025 filed an Application being IA (IBC) 358 of 2025 in Company Petition seeking an opportunity to put forth the revised Resolution Plan and reconsideration of revised Resolution Plan.

(viii) The Adjudicating Authority by the impugned order dated 20.01.2025 allowed the IA (Liq.) 33/ND/2024 and appointed Mr. Dinkar T Venkatasubramanian as Liquidator.

4. On 31.01.2025, Company Appeal (AT) (Ins.) No.124 of 2025 came for consideration, on which date learned Senior Counsel appearing on behalf of M/s Busy Bee submitted that before the next date, the Appellant shall try to reach out the lenders. Order dated 31.01.2025 is as follows:

“31.01.2025: Shri Ritin Rai, Learned Senior Counsel appearing for the Liquidator seeks time to bring on record the copy of the 37th CoC meeting’ minutes dated 23.07.2024 which may be filed along with the Additional Affidavit. He may do so.

2. Shri Krishnendu Datta, Learned Senior Counsel appearing for the Appellant in Company Appeal (AT) (Insolvency) No.124 of 2025 submits that before the next date, he shall try to reach out to the lenders.

3. As prayed, list both the Appeals on 10.02.2025.”

5. The RP in pursuance of the order dated 31.01.2025 has filed an additional affidavit bringing on record the Minutes of 37th Meeting of CoC held on 23.07.2024. The Appellant in Company Appeal (AT) (Ins.) No.124 of 2025 has also filed an affidavit bringing additional documents on the record. Another affidavit was filed on 18.02.2025 by the Appellant in Company Appeal (AT) (Ins.) No.124 of 2025, bringing on record commercial offer dated 09.02.2025 submitted to Financial Creditor.

6. We have heard Shri Krishnendu Dutta, learned Senior Counsel appearing for Appellant in Company Appeal (AT) (Ins.) No.124 of 2025; Ms. Priya Singh, Learned Counsel appearing for Appellant(s) in Company Appeal (AT) (Ins.) Nos.175 and 244 of 2025; Shri Ritin Rai, learned Senior Counsel appearing for Respondent No.1; and learned Counsel appearing for CoC.

7. Shri Krishnendu Dutta, learned Senior Counsel appearing for the Appellant submits that liquidation of the CD is a last resort. All steps need to be taken to revive the CD. The CD was low cost airline, which has valuable assets, including air operation certificate. It is submitted that the CoC, ought to have taken a decision to sell the CD as a going concern. Learned Counsel submits that air operation certificate, which was granted

to the CD is valid till 27.10.2027. The CD has also been allotted various slots for running its aircrafts. The CD has also made advance payment for purchase of additional 72 aircrafts by Purchase Agreement and an Amendment N5 dated 29.12.2016 to the Purchase Agreement dated 23.12.2011. The CD has maintained the USD 200 million, out of which USD 92 million was still available as on the date of commencement of CIRP. It is submitted that arbitration proceedings were initiated by the CD against P&W, who had provided defective engines, which arbitration proceedings have been initiated at the Singapore International Arbitration Center, which is pending adjudication. The CD has also land admeasuring 94.71 situated at Thane, District Maharashtra in the name of Wadiya Reality Pvt. Ltd. Learned Counsel for the Appellant submits that Regulation 32 and 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (“**Liquidation Process Regulation**”) provide for sale of assets as a going concern and Liquidator is obliged to endeavour to first sell the CD and its business as a going concern. It is submitted that Resolution passed in 37th CoC Meeting, the CoC also recognised that if the Liquidator receives a suo-moto proposal for acquiring the company or its business as a whole, it may be discussed with the Stakeholders Consultation Committee. It is submitted that the Appellant – M/s Busy Bee Airways Pvt. Ltd. is desirous of acquiring the CD as a going concern and has also submitted a commercial offer dated 02.02.2025 during pendency of this Appeal.

8. Learned Counsel for the Appellant appearing in Company Appeal (AT) (Ins.) Nos.175 and 244 of 2025 has adopted the submissions advanced by Shri Krishnendu Dutta.

9. Shri Ritin Rai, learned Senior Counsel appearing for the Respondent No.1 contends that no compliant Resolution Plan having been received, the CoC in its commercial wisdom decided to liquidate the CD with 100% vote share. It is submitted that approx Rs.3600 crores were the admitted claim. It is submitted that the Appellant – M/s Busy Bee immediately sought for return for the EMD and EMD was returned. The Appellant did not submit a compliant Resolution Plan, hence, their Plan was not considered. The Appellant withdrew from CIRP and EMD was returned. The liquidation Application remained pending from July 2024 to January 2025. The commercial offer sent by the Appellant is a non-binding commercial offer. The CD is not in operation since last two years. Insofar as Purchase Agreement for additional aircrafts as contended by learned Counsel for the Appellant is concerned, it is submitted that the said Purchase Agreement was terminated and the slots allotted to the CD has been revoked. The COC considered the issue of sale as a going concern and decided not to opt for going concern sale for the valid reasons. It is submitted that it is always open for the Appellant – Busy Bee to approach the Liquidator.

10. Shri Krishnendu Datta in his rejoinder submission submits that Liquidator has to explore regarding revival of the CD. Learned Counsel for the Appellant has also relied on judgment of the Hon'ble Supreme

Court in ***Arun Kumar Jagatramka vs. Jindal Steel and Power Limited and Anr. – (2021) 7 SCC 474*** for the proposition that Regulation 32A(1) emphasises the importance placed on the transfer of the CD or its business as a going concern basis.

11. We have considered the submissions of Learned Counsel for the parties and have perused the records.

12. The present is a case where the CIRP against the CD commenced on an Application filed under Section 10 by the CD itself. The RP continued the CIRP by inviting Resolution Plans. In response to the invitation of EoI, only three entities have submitted the EoIs, out of which one was M/s. Busy Bee in Consortium. Only two Resolution Plans were received by the RP and both Resolution Plans, which were received, were not found compliant. The RP, thus, has communicated the Resolution Applicants, including the Appellant that their Resolution Plans cannot be considered. In the 37th Meeting of the CoC held on 23.07.2024, under the heading 'Update on Resolution Process', following was minuted:

"Update on Resolution Process:

The RP informed the CoC Members that pursuant to the discussions in the 36th CoC meeting, the Resolution Professional had informed the Prospective Resolution Applicants ("PRAs") that the Resolution Plans submitted by them did not address the various non-compliances which were brought to their attention by way of various compliance reports (as prepared by the CoC and RP Counsel) as a result of which the resolution plans submitted by them continued to remain non-compliant with the applicable requirements set forth under the provisions of the Insolvency and Bankruptcy Code (IBC) and the Regulations made thereunder. The PRAs were accordingly informed that the CoC has decided not to give additional time for submission of revised resolution plan beyond this point

considering that multiple chances have been provided to the PRAs to enable them to submit compliant resolution plans.

The CoC Members inquired if the PRAs had contested the above decision to not give additional time for submission of a compliant resolution plan to which the RP stated that no such communication has been received from the PRAs till date

The RP team informed the CoC Members that multiple communications and reminders have been received from the Skyone Consortium requesting a return of their EMD. The CoC was also informed that previously Busy Bee Airways Private Limited, had also asked for refund of their EMD on 27th May 2024, pursuant to a request made by Mr. Nishant Pitti, their majority shareholder.

The CoC Members informed that the RFRP stipulated that the "Earnest Money Deposit of the Resolution Applicant who has not been selected as the Successful Resolution Applicant, shall be returned within 30 (thirty) Business Days of the date of declaration of the Successful Resolution Applicant or within 7 (seven) days from end of CIRP Period, whichever is earlier". The CoC Members deliberated on the request, and decided to allow the return of the EMD considering that no compliant resolution plan has been received and that the CIRP last date is also approaching shortly. The CoC Members stated that an appropriate communication allowing refund of EMD can be sent to the PRAs in consultation with the legal counsel. The CoC counsel stated that the communication can appropriately include that the refund of EMD is without any liability. The CoC Members were informed that the signed legal compliance reports have received from the legal counsel and the same will be shared with the CoC Members. The RP team also briefly presented the valuation reports and the findings of the transaction audit for the benefit of the CoC Members. The RP team stated that the same will also be shared with the CoC Members.

The CoC Members accordingly proposed that the resolution to place the Corporate Debtor under liquidation be placed before the CoC Meeting for its approval."

13. The submission which has been pressed by Learned Counsel for the Resolution Applicant – M/s. Busy Bee, is not questioning the decision of the CoC for not considering the Resolution Plan of the Resolution

Applicant, rather the submission is pressed that CD needs to be sold as a going concern basis with object to revive the CD. Learned Counsel for the Appellant has submitted that the CD has valuable assets, including air operation certificate, slots allotted by the DGCA and contract for purchase of 72 additional aircrafts as well as land. The submission is that revival of CD is of utmost importance and liquidation is the last resort.

14. From the facts as noticed above, it is clear that there was no compliant Resolution Plan received in the CIRP. The CIRP has run its full course, giving enough opportunity to the RP to revive the CD and it was only on 23.07.2024, after more than 14 months of initiation of CIRP, a Resolution was passed by the CoC to liquidate the CD. Section 33, sub-section (2) of the IBC provides as follows:

“**33(2)** Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six per cent. of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

Explanation. – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.”

15. The present is a case where no Resolution Plan was considered or approved and a decision was taken by the CoC with 100% vote share to liquidate the CD. The Adjudicating Authority in the impugned order has referred to the judgment of this Tribunal in **Sreedhar Tripathy vs.**

Gujarat State Financial Corporation and Ors. (Company Appeal (AT) (Insolvency) No. 1062 of 2022) decided on 12.10.2022, where this Tribunal considering scope, ambit and power of CoC has made following observation:

“The Explanation under Section 33(2) has been inserted by Act of 26 of 2019 contains the legislative declaration and intention. The CoC in the Legislative Scheme has been empowered to take decision to liquidate the Corporate Debtor, any time after its constitution and before confirmation of the resolution plan. The power given to the CoC to take decision for liquidation is very wide power which can be exercised immediately after constitution of the CoC. The reasons which has been given in Agenda Item 1, it is made clear by the CoC that the Corporate Debtor is not functioning for last 19 years and all machinery has become scrap, even the building is in dilapidated condition and the CIRP will involve huge costs. We are not convinced with the submission of learned counsel for the Appellant that the CoC's decision is an arbitrary decision. CoC is empowered to take decision under the statutory scheme and when in the present case the decision of the CoC for liquidation has been approved by the Adjudicating Authority, we see not good ground to interfere at the instance of the Appellant. However, we make it clear that the decision taken by the CoC was in the facts of the present case and it cannot be said that whenever decision is taken for liquidation the same is not open to judicial review by the Adjudicating Authority and this Appellate Tribunal. It depends on the facts of each case as to whether the decision to liquidate the Corporate Debtor is in accordance with the I & B Code or not. With these observations, the Appeal is dismissed.”

16. The decision of the CoC taken in 37th Meeting was clearly in exercise of powers vested in the CoC under Section 33, sub-section (2) and we do not find any error in the decision taken by the CoC to liquidate the CD.

17. Learned Counsel for the RP has submitted that after the judgment of the Delhi High Court dated 24.04.2024, lenders have taken back all

aircrafts and as on date, no aircraft is left with the CD. It is further submitted that all slots, which was allotted to the CD, have been revoked and the only asset left is arbitration proceedings with regard to arbitration, which is initiated by the CD against P&W in the Singapore International Arbitration Center. It is submitted that present was a case where CoC has rightly taken a decision to liquidate the CD. After considering the submissions of the parties and materials on record, we do not find any error in the Resolution of the CoC, taken in its 37th Meeting on 23.07.2024 to liquidate the CD. The Adjudicating Authority has not committed any error in allowing the Liquidation Application filed by the RP.

18. The second limb of submission, which has been pressed by Shri Krishnendu Datta is with regard to sale of the CD as a going concern. Learned Counsel for the Appellant has referred to Regulation 39B and 39C of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulation**”). Regulation 39BA, which has been inserted in the Regulation with effect from 16.09.2022 and Regulation 39C, are as follows:

“**39BA. Assessment of Compromise or Arrangement.** (1) While deciding to liquidate the corporate debtor under section 33, the committee shall examine whether to explore compromise or arrangement as referred to under sub - regulation (1) of regulation 2B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 and the resolution professional shall submit the committee’s recommendation to the Adjudicating Authority while filing application under section 33.

(2) Where a recommendation has been made under sub-regulation (1), the resolution professional and the committee shall keep exploring the

possibility of compromise or arrangement during the period the application to liquidate the corporate debtor is pending before the Adjudicating Authority.

39C. Assessment of sale as a going concern. (1) While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may recommend that the liquidator may first explore sale of the corporate debtor as a going concern under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or sale of the business of the corporate debtor as a going concern under clause (f) thereof, if an order for liquidation is passed under section 33.

(2) Where the committee recommends sale as a going concern, it shall identify and group the assets and liabilities, which according to its commercial considerations, ought to be sold as a going concern under clause (e) or clause (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(3) The resolution professional shall submit the recommendation of the committee under subregulations (1) and (2) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.”

19. Regulation 39C also provides for ‘Assessment of sale as a going concern’. Regulation 39C(1) require the CoC while deciding to liquidate the CD, the Committee may recommend that the Liquidator may first explore sale of the CD as a going concern under Clause (e) Regulation 32 of IBBI (Liquidation Process) Regulation 2016 or sale of the business of the CD as a going concern. Regulation 32 of the Liquidation Process Regulations, provides as follows:

“32. Sale of Assets, etc.

The liquidator may sell-

- (a) an asset on a standalone basis;
- (b) the assets in a slump sale;

- (c) a set of assets collectively;
- (d) the assets in parcels;
- (e) the corporate debtor as a going concern; or
- (f) the business(s) of the corporate debtor as a going concern:

Provided that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security interest therein has been relinquished to the liquidation estate.”

20. The CoC in its 37th Meeting has adverted to the question as to whether the CD be sold as a going concern. The Minutes notice consideration under Regulation 39B, 39BA and 39C and 39D. With regard to 39BA and 39C, the 37th Minutes of CoC records following:

“39BA (Assessment of Compromise or Arrangement)

The RP informed the CoC Members that Regulation 39BA of the CIRP Regulations stipulate that while deciding to liquidate the CD under section 33 of the IBC, the CoC shall examine whether to explore compromise or arrangement under Section 230 of the Companies Act, 2013 and that the RP is required to submit the CoCs recommendation to the Adjudicating Authority while filing application under section 33 of the Code.

The CoC Members proceeded to deliberate the same and proposed that in the event any proposal is suo-moto received the same can be taken forward by the RP/Liquidator.

39C. Assessment of sale as a going concern.

The RP informed the CoC that regulation 39C of the CIRP Regulations provides that while approving a resolution plan or deciding to liquidate the corporate debtor, the CoC may recommend that the liquidator may first explore sale of the corporate debtor as a going concern under clause (e) of regulation 32 of the Liquidation Regulations or sale of the business of the corporate debtor as a going concern under clause (1).

The CoC Members deliberated on the requirement to first sell the Corporate Debtor as a going concern. In this regard they took into

consideration that only 2 resolution plans were received, both of which were not commercially viable and also non-compliant. Additionally, the CoC Members also considered that post the Order of the Delhi High Court dated April 26, 2024 all aircrafts have been de-registered and presently the Corporate Debtor does not have any aircrafts and additionally, the operations are also at a standstill for more than a year. The RP team informed the CoC Members that the slots have been revoked and also various airport authorities are also seeking vacation of the premises leased to Go First as there are no operations and revenue. The CoC Members accordingly were of the view that the Liquidator may sell- (a) asset on a standalone basis; (b) assets in a slump sale; (c) a set of assets collectively; (d) the assets in parcels; as provided for under the liquidation regulations and not wait for selling the corporate debtor or its business as a whole. However, in the event a suo-moto proposal is received from any person by the Liquidator for taking the company or its business as a whole the same can be explored in discussions with the Stakeholders Consultation Committee.”

21. With respect to going concern sale, the CoC was of the view that the Liquidator may sell assets on a standalone basis; assets in a slump sale; a set of assets collectively; and the assets in parcels and not wait for selling the CD or its business as a whole. The CoC has further observed *“However, in the event a suo-moto proposal is received from any person by the Liquidator for taking the company or its business as a whole the same can be explored in discussions with the Stakeholders Consultation Committee”*. The above decision of the CoC, thus, fully empowers the Liquidator to place any suo-moto proposal, if received for taking the company or its business as a whole and the same was to be placed for discussion before the Stakeholders Consultation Committee. In the above Resolution, the CoC also took a decision that all aircrafts having been deregistered and presently the CD does not have any aircrafts and operations of the CD are also standstill for more than a year, the

Liquidator was authorised to sale assets on standalone basis and in a slump sale. Thus, the CoC has adverted to the provisions of 39C and has taken a decision as noted above. Regarding the submission of the Appellant that CoC ought to have taken a decision for sale as a going concern, the CoC was well aware of all details of the assets and facts and the decision taken by the CoC as cited above is based on the commercial wisdom of the CoC, which needs no interference in exercise of appellate jurisdiction. The above decision of the CoC is based on consideration of relevant facts and materials and cannot be said to be arbitrary. However, the Liquidator was clearly permitted to place any suo-moto proposal before the Stakeholders Consultation Committee. The Learned Counsel for the Liquidator has submitted that it is always open for the Appellant M/s Busy Bee Airways Pvt. Ltd. to submit its proposal before the Liquidator providing for scheme of compromise or arrangement.

22. The Liquidation Process Regulation 2B, provides as follows:

“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 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.

(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.”

23. The compromise or arrangement under Section 230 of the Companies Act, 2013 can be considered within the period of 90 days from order of liquidation. The order of liquidation has been passed on 20.01.2025. Hence, still there is an opportunity to M/s Busy Bee Airways Pvt. Ltd. and any other interested party to submit a compromise or arrangement and it can be considered in accordance with statutory requirement as provided under Regulation 2B of the Liquidation Process Regulation and Section 230 of the Companies Act.

24. The challenge in the present Appeal is to the order dated 20.01.2025 allowing IA (Liquidation Application) filed by the RP and directing for liquidation of the CD. Learned Counsel for the RP has submitted that Resolution, which was proposed in 37th CoC Meeting was passed with 100% vote share of the CoC. The Resolution has been passed by the CoC after considering all relevant facts and statutory provisions, including Regulation 39BA and 39C, as noted above. We, thus, do not find any infirmity in the Resolution of the CoC taken in its 37th CoC

Meeting on 23.07.2024 and the order passed by the Adjudicating Authority dated 20.01.2025 allowing the Liquidation Application. As per statutory provisions of Regulation 2B of Liquidation Process Regulation, it is open for the Appellant – M/s. Busy Bee Airways Pvt. Ltd. or any other eligible Applicant to submit a scheme for compromise and arrangement before the Liquidator, which needs to be considered in accordance with law.

25. Learned Counsel for the Appellant has relied on judgment of the Hon'ble Supreme Court in ***Arun Kumar Jagatramka vs. Jindal Steel and Power Ltd. and Ors. – (2021) 7 SCC 474***. Reliance has been placed on paragraph 55 of the judgment, where Regulation 32 of the Liquidation Process Regulation was noticed and in paragraph 55 of the judgment, following was observed:

“**55.** The prohibition which has been enacted under Section 29-A has extended, as noted above, to Chapter III while being incorporated in the proviso to Section 35(1)(f). Under the Liquidation Process Regulations, Chapter VI deals with the realisation of assets. Regulation 32 is in the following terms:

“**32. Sale of assets, etc.**—The liquidator may sell—

- (a) an asset on a standalone basis;
- (b) the assets in a slump sale;
- (c) a set of assets collectively;
- (d) the assets in parcels;
- (e) the corporate debtor as a going concern; or
- (f) the business(s) of the corporate debtor as a going concern:

Provided that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security interest therein has been relinquished to the liquidation estate.”

Clauses (a) to (d) of Regulation 32 deal with the sale of assets on a stand-alone basis in a slump sale collectively or in parcels. Clauses (e) and (f) deal with the sale of the corporate debtor or its business as a going concern.”

26. There can be no quarrel to the statutory prescription as contained in Regulation 32 and 32A(1), but in the present case as noticed above, the CoC has applied its mind with regard to sale of the CD, mode and manner of sale of the CD, in which decision, we do not find any infirmity. The Learned Counsel for the Appellant has further relied on paragraphs 65, 67 and 68 of the above judgment, which are as follows:

“**65.** Now, there is no reference in the body of the IBC to a scheme of compromise or arrangement under Section 230 of the 2013 Act. Sub-section (1) of Section 230 was however amended with effect from 15-11-2016 so as to allow for a scheme of compromise or arrangement being proposed on the application of a liquidator who has been appointed under the provisions of the IBC. The substratum of the submission of Mr Sandeep Bajaj, learned counsel for the appellants, is that Section 230 is not regulated by the IBC but is a provision independent of it, though after the amendment of sub-section (1), a compromise or arrangement can be proposed by the liquidator appointed under the IBC. Aligned to this submission, he urged that the decision in Meghal Homes [Meghal Homes (P) Ltd. v. Shree Niwas Girni K.K. Samiti, (2007) 7 SCC 753] recognises that the liquidator is an additional person who may submit an application under Section 391 of the 1956 Act (corresponding to Section 230 of the 2013 Act). The submission of Mr Bajaj however misses the crucial interface between the provisions of Section 230 of the 2013 Act in their engagement with a company in respect of which the provisions of the IBC have been invoked, resulting in an order of liquidation under Section 33 IBC. Liquidation of the company under the IBC, as emphasised by this Court in its previous decisions, is a matter of last resort. Section 33

requires NCLT, acting as the adjudicating authority, to pass an order for the liquidation of the corporate debtor where:

(i) before the expiry of the insolvency resolution process period or the maximum period contemplated for its completion a resolution plan has not been received under sub-section (6) of Section 30; or

(ii) the resolution plan has been rejected under Section 31 for non-compliance with the requirements of the provision.

67. What emerges from the above discussion is that the provisions of the IBC contain a comprehensive scheme, first, for the initiation of CIRP at the behest of financial creditor under Section 7 or at the behest of the operational creditor under Section 9 or the corporate debtor under Section 10. Chapter II provides for the appointment of an interim resolution professional (“IRP”) in Section 17 and the constitution of a CoC under Section 21. Chapter II contemplates the submission of a resolution plan in Section 30 and the approval of the plan in Section 31. Liquidation forms a part of a distinct Chapter — Chapter III. Liquidation under Section 33 is contemplated in specific eventualities which are adverted to in sub-section (1) and sub-section (2) as noted above.

68. Now, it is in this backdrop that it becomes necessary to revisit, in the context of the above discussion the three modes in which a revival is contemplated under the provisions of the IBC. The first of those modes of revival is in the form of CIRP elucidated in the provisions of Chapter II IBC. The second mode is where the corporate debtor or its business is sold as a going concern within the purview of clauses (e) and (f) of Regulation 32. The third is when a revival is contemplated through the modalities provided in Section 230 of the 2013 Act. A scheme of compromise or arrangement under Section 230, in the context of a company which is in liquidation under the IBC, follows upon an order under Section 33 and the appointment of a liquidator under Section 34. While there is no direct recognition of the provisions of Section 230 of the 2013 Act in the IBC, a decision was rendered by Nclat on 27-2-2019 in *Y. Shivram Prasad v. S. Dhanapal* [*Y. Shivram Prasad v. S. Dhanapal*, 2019 SCC OnLine NCLAT 172] (herein referred to as “*Y. Shivram Prasad*”). Nclatin the course of its decision observed that during the liquidation process the steps which are required to be taken by the liquidator include a compromise or arrangement in terms of Section 230 of the 2013 Act, so as to ensure the revival and continuance of the corporate debtor by protecting it from its management and from “a death

by liquidation”. The decision by Nclat took note of the fact that while passing the order under Section 230, the adjudicating authority would perform a dual role : one as the adjudicating authority in the matter of liquidation under the IBC and the other as a tribunal for passing an order under Section 230 of the 2013 Act. Following the decision of Nclat, an amendment was made on 25-7-2019 to the Liquidation Process Regulations by IBBI so as to refer to the process envisaged under Section 230 of the 2013 Act.”

27. The Hon'ble Supreme Court in the above paragraph has noticed the amendment made in Section 230 of the Companies Act, which provides for compromise and arrangement, which can be proposed by the Liquidator appointed under the IBC. Regulation 2B in the Liquidation Process Regulation added subsequently provided for submission of scheme of compromise and arrangement to the Liquidator. The Hon'ble Supreme Court in the above case has also noticed the third eventuality, when a revival is contemplated through the modalities provided in Section 230 of the Companies Act. There can be no quarrel to the proposition laid down by the Hon'ble Supreme Court in the above case, which provides that revival of the CD can also be done by mode of compromise and arrangement. We have also observed above that it is always open for the Appellant – M/s. Busy Bee or any other eligible Applicant, to submit a scheme for compromise and arrangement before the Liquidator as per Regulation 2B of the Liquidation Process Regulation. The above judgment of the Hon'ble Supreme Court does not support the submission of the Appellant with respect to any error committed by Adjudicating Authority in allowing liquidation application by the impugned order dated 20.01.2025.

28. In view of foregoing discussions and our conclusions, we do not find any error in the order of the Adjudicating Authority dated 20.01.2025 allowing the Liquidation Application. Subject to liberty to the Appellant – M/s. Busy Bee Airways Pvt. Ltd. and any other eligible Applicant to submit a scheme for compromise and arrangement as per Regulation 2B of the Liquidation Process Regulation, these Appeal(s) deserve to be dismissed. Subject to above, all the Appeal(s) are dismissed. Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

4th April, 2025

Ashwani