



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

IA NO.98/2022

IN

CP (IB) NO.223/ALD/2018

In the matter of:

*An application under Section 60 of Insolvency & Bankruptcy Code,
2016 read with Rule 11 of the NCLT Rules, 2016*

In the matter of:

EMPLOYEE WELFARE TRUST

Through Yogesh Singh,
R/o Koilari, Jaunpur 222148
Trust Registered at,
B36/40, Ashirwad Apartment, Kabir Nagar, Durgakund, Varanasi

..... Applicant

Versus

MR. SUPRIYO KUMAR CHAUDHARI

Liquidator,
JVL Agro Industries Ltd.
BDO Restructuring LLP
C/O BDO India LLP, Floor 4,
Duckback House, 41, Shakespeare Sarani Kolkata

.....Respondent/liquidator

And

IA NO.89/2022

IN

CP (IB) NO.223/ALD/2018

In the matter of

An application under Rule 11 of the NCLT Rules, 2016



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IA No.89/2022 in CP (IB) No.223/ALD/2018
Satya Narayan Jhunjunwala v/s Mr. Supriyo Kumar Chaudhari
&
IA No.98/2022 in CP (IB) No.223/ALD/2018
Employee Welfare Trust v/s Mr. Supriyo Kumar Chaudhari

In the matter of:

SATYA NARAYAN JHUNJHUNWALA

S/o Dina Nath Jhunjunwala,
R/o K67/85-2 Jhunjunwala Bhawan, Naati Imli,
Varanasi 221001

..... **Applicant**

In the matter of:

STANDARD CHARTERED BANK

.....**Financial Creditor**

Versus

JVL AGRO INDUSTRIES LTD.

.....**Corporate Debtor**

Order pronounced on 01.06.2023

Coram:

Mr. Praveen Gupta. : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Mohit Chaudhary alongwith Sh. Prakhar Mithal, Sh. Neeraj Kr. Singh, Advs.

: For the Applicant in IA No.89/2022

Sh. Anand Chibbar, Sr. Adv assisted by Sh. Gautam Singh, Adv.

: For the Applicant in IA No.98/2022

Sh. Amit Saxena, Sr. Adv. assisted by Ms. Swati Dalmiya alongwith Yash Tandon, Adv.

: For the Liquidator/Res. in IA No. 98/2022, IA No. 89/2022

Sh. Bishwajit Dubey alongwith Sh. Aman Kr Dwivedi & Sh. Aishwarya Gupta, Advs.

: For the SBI/Intervenor in IA No.98/2022 & IA No.89/2022



ORDER

This common order would dispose of IA No.89 of 2022 and IA No.98 of 2022 in CP (IB) No.223/ALD/2018, as both the applications involves similar issues to be decided. Firstly, we take IA No.98 of 2022.

IA NO.98 OF 2022

1. The present application has been filed by the applicant trust i.e. Employee Welfare Trust formed for the 550 employees and 5000 families who got employed in the factory of JVL Agro Industries Limited (*the corporate debtor under liquidation*), under Rule 60 of Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 with following prayers, which is as follows :-

- (a) To declare the sale notice 24.01.2022 as invalid & nullity under law as the same was not in accordance as per Regulation 32 and Regulation 32A of Insolvency and Bankruptcy Code, 2016 & Liquidation Regulation.
- (b) To direct the liquidator to withdraw sale notice dated 04.03.2022 for mere sale of assets of corporate debtor on stand-alone basis.
- (c) To direct the liquidator to get appropriate and proper valuation of the corporate debtor before any auction/sale notice.



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- (d)** To issue necessary direction to the liquidator to provide complete details of all assets and liabilities of the corporate debtor in transparent manner in sale notice and give proper time of clear 30 days for inspection & verification before bidding process.
- (e)** To direct the liquidator to issue proper and appropriate sale notice for sale corporate debtor as going concern with clear details.
- (f)** To direct the liquidator to abide by the directions of the Hon'ble NCLAT.
- (g)** To declare the present composition & constitution of stakeholders' consultation committee improper as the same is not in consonance with Liquidation regulation & Insolvency and Bankruptcy Code, 2016.
- (h)** To direct the liquidator to constitute a proper and appropriate stakeholders consultation committee in terms of Regulation 31A of Liquidation regulation and to also to include the name of Mr. Yogesh Singh on behalf of employees.
- (i)** To direct the liquidator to issue fresh valid notice for sale of corporate debtor as a going concern as per Regulation 32 and Regulation 32A of Insolvency and Bankruptcy Code, 2016 & Liquidation regulation after duly consulting the stakeholder's consultation committee constituted appropriately.

2. It is claimed that the Employee Welfare Trust is a trust established to provide benefits to the 550 employees of JVL Agro Industries Ltd., also known as the "Corporate Debtor." The company's factory employs 5000 families. The application is being submitted by Yogesh Singh, who is both



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a settlor and a member of the Employee Welfare Trust, as well as its authorized representative.

- 3.** The aforementioned 550 employees have been working for the Corporate Debtor for a long time, and their employment with the company is their primary means of earning a livelihood and surviving.
- 4.** On 25.07.2018, the Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor. It is important to note that the company remained operational and profitable throughout the CIRP, earning hundreds of crores.
- 5.** On 19.08.2020, this Tribunal issued a liquidation order against the company. In response, the employees filed a Company Appeal (AT) (Insolvency) No.846 of 2020 on behalf of all 550 employees, challenging the liquidation order before the Hon'ble NCLAT. The Hon'ble NCLAT passed an order on 20.11.2020, directing the Liquidator to ensure that the Corporate Debtor remains operational if it is a going concern.



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6. Despite the ongoing appeal, the Liquidator attempted to sell the assets of the Corporate Debtor. When the appellants requested an ad-interim stay, the Respondent/liquidator's counsel stated that they would advise their client to defer the e-auction.
7. Subsequently, the Liquidator filed an application (IA No. 960 of 2021) in Company Appeal (AT) (Insolvency) No. 846 of 2020, seeking permission to sell the expired inventory. The NCLAT, through an order dated 10.06.2021 in Company Appeal (AT) (Insolvency) No. 846 of 2020, directed the Liquidator to deposit the sale proceeds from the sale of expired oil in a separate bank account that earns interest. The order also recorded the statement made by the Liquidator to defer the auction in 2021.
8. The Liquidator filed an application (IA No.19/2021) before this Adjudicating Authority, without disclosing the pendency of Company Appeal (AT) (Insolvency) No.846 of 2020 before the NCLAT. The Liquidator obtained an order dated 26.07.2021, to distribute an amount of Rs.61 Crores, out of



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which the Liquidator kept Rs.21.95 Crores towards liquidation cost out of profits made by the Corporate Debtor while Company Appeal (AT) (Insolvency) No.846 of 2020 was still pending.

- 9.** As a result, the employees filed a Company Appeal (AT) (Insolvency) No.565 of 2021 on behalf of all employees against the order dated 26.07.2021. The appeal was dismissed
- 10.** The employees are unhappy with the Liquidator's conduct and violation of Regulation 32 and Regulation 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, and the order dated 18.01.2022 passed by the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No.846 of 2020.
- 11.** The State Bank of India published a circular on 19.01.2020, which contained a negative list of Liquidators, and Mr. Supriyo Kumar Chaudhary's name was listed at serial no.21. The circular was based on unsatisfactory performance, review reports with respect to existing IPs and non-submission of NDAs.



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- 12.** The Liquidator issued a sale notice dated 24.01.2022 without a fresh valuation or report in a non-transparent manner, describing it as the Sale of JVL Agro Industries Limited. The sale notice did not mention all assets and liabilities, such as cash at bank, stock of raw material, finished goods, intellectual property, knowhow, reserves of cash, money in other funds, and accounts of the Corporate Debtor, as required by Regulation 32 and Regulation 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- 13.** The Liquidator appears to be acting irregularly and fraudulently as there have been no genuine efforts on the part of the Liquidator to sell the corporate debtor as a going concern.
- 14.** The argument presented is that while the sale notice dated January 24, 2022 purported to sell the corporate debtor as an operating entity but actually, it only provided information about the immovable property owned by the corporate debtor. The contents of the sale notice are given below:-



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"Sale of JVL Agro Industries Limited (in liquidation) as a Going Concern pursuant to Regulation 32(e) of the IBBI Liquidation Process Regulations, 2016 (Company primarily engaged in the business of manufacture and sale of refined edible oil and vanaspati. The company is also engaged in the business of processing and sale of rice).

It has edible oil manufacturing units at Alwar (Rajasthan); Haldia (West Bengal); Naupur (UP) and Pahleja (Bihar); Rice Mill at Akhori Gola, Dist. Rohtas (Bihar);

...freehold lands at vill. Rampara-2, adjacent to Pipavav port (Gujarat); near Guwahati (Assam) and at Mauja Baank, Jorawarpur, Ugra in Dist. Rohtas (Bihar);

two flats in a commercial building in Hyderabad and office flat in a commercial building in Kolkata."

- 15.** The sale notice dated 24.01.2022 specified that the date of inspection was 19.02.2022 until 05:00 PM, the deadline to submit an Expression of Interest (EOI) was 23.02.2022, the date for the deposit of Earnest Money Deposit (EMD) was 25.02.2022, and the time for the e-auction was 28.02.2022.
- 16.** Furthermore, the Liquidator is only selling the immovable properties of the Corporate Debtor at a very low price of Rs.298.18 crores in a hurried and rushed manner in the aforementioned sale notice.



17. Therefore, it is clear that the Liquidator intends to sell the Corporate Debtor in violation of the Code's objective and Regulation 32 and 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, by grouping the immovable properties and calling it a "Sale as going concern" whereas Regulation 32 Clause **(e) Sell the Corporate Debtor as a going concern;** is entirely different from sale of assets under Regulation 32 Clause (a) an asset on a standalone basis; or (b) the assets in a slump sale, (c) a set of assets collectively, or (d) the assets in a parcel;

18. It is further submitted that the Liquidator has failed to comply with the prerequisite of Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 which provides that:-

- 32. Sale of Assets, etc.**—The Liquidator may sell:
- a) an asset on a standalone basis; or
 - b) the assets in a slump sale,
 - c) a set of assets collectively, or
 - d) the assets in a parcel;
 - e) **Sell the Corporate Debtor as a going concern;**
or
 - f) the business(s) of the Corporate Debtor as a going concern.



19. The Regulation 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 provides that: -

32A. Sale as a going concern.

32A. (1) *Where the committee of creditors has recommended sale under clause (e) or (f) of regulation 32 or where the liquidator is of the opinion that sale under clause (e) or (f) of regulation 32 shall maximise the value of the corporate debtor, he shall endeavour to first sell under the said clauses.*

(2) *For the purpose of sale under sub-regulation (1), the group of assets and liabilities of the corporate debtor, as identified by the committee of creditors under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall be sold as a going concern.*

(3) *Where the committee of creditors has not identified the assets and liabilities under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall identify and group the assets and liabilities to be sold as a going concern, in consultation with the consultation committee.*

20. It is contended that upon reviewing the sale notice of 24th January 2022, it can be concluded that the sale merely involves the transfer of immovable property of the corporate debtor, and cannot be regarded as a sale of "JVL Agro Industries Limited (In Liquidation)" as a going concern, as it



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does not comply with Regulation 32 of the Code, 2016 and Regulation 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

21. Additionally, it is argued that a corrigendum was released by the liquidator on 3rd February 2022, which attempted to include more assets of the corporate debtor in the same reserved price. The corrigendum added the factory relating to Naupur, along with a power plant at Naupur, which has a substantial value of around 20 Crores, without adjusting the reserved price. However, the corrigendum still failed to mention the other assets and liabilities of the corporate debtor.

22. It is argued that the Stakeholders' Consultation Committee was not formed in a proper manner and is invalid. The name of Mr. P.K Mukhopadhyay was used to represent the employees and workmen without their consent and without any basis. Mr. Mukhopadhyay is not authorized or capable of representing the best interests of all employees.

23. Subsequently, the Employees Welfare Trust of JVL Agro sent



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a letter to the Liquidator on 12th February 2022, requesting the formation of a proper Stakeholders' Consultation Committee as it was not formed appropriately. The Employee Welfare Trust requested that Mr. Yogesh Singh be included in the committee as he is a settlor, member, and authorized representative of the Employees Welfare Trust, representing all the employees of JVL Agro Industries Limited.

- 24.** A second corrigendum was issued on 18th February 2022, which added more assets to the same reserve price without updating it. The corrigendum stated that all cash and cash equivalent assets, including investments in shares and mutual funds, would form part of the liquidation estate and be dealt with as per Section 53 of the IBC. However, the corrigendum failed to mention details of other current assets and any liabilities. The amount of cash or cash equivalent added was not transparent as required under Regulation 32 and Regulation 32A. Therefore, the last-minute update on 18th February 2022 does not extend the time for inspection, as the last date of inspection for interested parties was 19th



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February 2022 until 05:00 PM.

- 25.** The Employees Welfare Trust of JVL Agro wrote a letter to the Liquidator requesting the formation of a proper committee and the inclusion of Mr. Yogesh Singh who is authorized to represent all employees. The Liquidator rejected this nomination and issued a second sale notice on 04.03.2022 without making proper attempts to sell the assets of corporate debtor on stand-alone basis without constituting proper and valid Stakeholders' Consultation Committee and without including the name of authorized representative of the Employees Welfare Trust. The notice of sale issued on 04.03.2022 which followed the earlier notice dated 24.01.2022 did not make a genuine effort to sell the corporate debtor as a going concern as required by the order dated 18.01.2022 of the Hon'ble NCLAT. Furthermore, the sale notice on 04.03.2022 mentioned an expired oil stock of 9.60 Crores, which was not previously mentioned or acknowledged in the notice on 24.01.2022. The sale notice dated 04.03.2022 provided the following dates:



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Inspection - 21.02.2022
EOI submission - 22.03.2022
EMD deposit - 04.04.2022
E-auction time - 06.04.2022

26. It is further stated that the trust is committed to preserving the corporate debtor as a going concern and preventing its liquidation, aiming to revive it as a functioning company. The applicant has submitted a resolution plan to revive the company and intends to file a scheme of compromise and arrangement under Section 230 of the Companies Act. These actions aim to maximize the value of the corporate debtor and safeguard it from liquidation.

Reply on behalf of Respondent/liquidator

27. Reply to the applications have been filed on behalf of the Respondent/liquidator, Mr. Supriyo Kumar Chaudhari on 19.04.2022 before this Tribunal.

28. The liquidator states that the Corporate Insolvency Resolution Process (CIRP) for JVL Agro Industries Limited began on 25.07.2018. However, since no Resolution Plan was



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approved by the Committee of Creditors (CoC) within the specified timeline, the Liquidator filed an application before the Tribunal to initiate liquidation proceedings. The Tribunal, through its order dated 19.08.2020, commenced the liquidation proceedings for the Corporate Debtor.

29. Subsequent to the commencement of liquidation proceedings, the Liquidator issued seven notices on 20.08.2020, as per the provisions of Section 33(7) of the Code. These notices discharged all the officers, employees, and workers associated with the Corporate Debtor. The notices were specific to various plants and/or offices of the Corporate Debtor.

30. It is also submitted that the Corporate Debtor has five plants which had been non-operational either prior to the commencement of the CIRP or during the said period. The details of five plants are given below:-

- i. Naupur Plant:** - Located at Naupur in Jaunpur District, U.P. This edible oil plant had been shut down by the erstwhile management prior to commencement of CIRP.



The plant had about 115 employees, workmen on its rolls prior to commencement of liquidation.

- ii. **Alwar Plant:** - Located at Alwar, Rajasthan. This mustard oil mill had been shut down by the erstwhile management prior to commencement of CIRP. The plant had about 17 employees/workmen on its rolls prior to commencement of liquidation.
- iii. **Haldia Plant:** - Located at Haldia in West Bengal. This edible oil manufacturing plant has been non-functional since September, 2019. The plant had about 100 employees/workmen on its rolls prior to commencement of liquidation.
- iv. **Pahleja Plant:** - Located in Rohtas District, Bihar. This edible oil manufacturing plant has also been non-functional since July 2019. The plant had about 120 employees/workmen on its rolls prior to commencement of liquidation.
- v. **Rice Mill:** - Located at Dehri on Sone, District - Rohtas, Bihar. The Rice Mill was operational till lockdown was imposed by the Union Government. The plant had about 25 - 30 employees/workmen including contractual workmen prior to commencement of liquidation. That during the time of nationwide lockdown, on relaxations being allowed by the District Administration, production at the rice mill continued till



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27.05.2020, but thereafter, during the liquidation period, it could not operate due to non-relinquishment issues.

- 31.** It is further submitted that on 24.08.2020, the Liquidator issued a public announcement through a newspaper advertisement, requesting stakeholders to submit their claims or update their claims that were previously submitted during the Corporate Insolvency Resolution Process (CIRP). The deadline for claim submission was set for 18.09.2020.
- 32.** Furthermore, after verifying the claims, the Liquidator categorized stakeholders based on the proof of claim and prepared a list. Subsequently, the Liquidator received two letters on 20.09.2020 and 06.10.2020 from several employees of the Corporate Debtor, nominating Mr. P.K. Mukhopadhyay as their representative in the Stakeholders Consultation Committee (SCC). The list of stakeholders dated 30.10.2020 was then submitted to the Tribunal by the Liquidator on 02.11.2020.
- 33.** During this period, in September 2020, two appeals were filed



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before the Hon'ble NCLAT under Company Appeal (AT) (Insolvency) No.832 of 2020 in the case of Satya Narayan Jhunjhunwala v/s Supriyo Kumar Chaudhari & Anr. and Company Appeal (AT) (Insolvency) No.846 of 2020 in the matter of Ramesh Chander Garg and Ors. v/s Supriyo Kumar Chaudhari & Anr. These appeals contested the liquidation order dated 19.08.2020 issued by the Tribunal.

- 34.** On 19.01.2021, the Liquidator issued a sale notice through a newspaper publication, announcing the sale of assets belonging to the Corporate Debtor. The e-auction was initially scheduled to take place on 04.03.2021 and 05.03.2021. However, the Liquidator canceled the e-auction due to pending appeals before the Hon'ble NCLAT. During the arguments before the Hon'ble NCLAT, the applicant presented submissions stating that the Liquidator intended to sell the Corporate Debtor's assets through e-auction. Based on these submissions, the applicant sought an ad-interim stay on the sale. The Ld. Senior Counsel representing the Liquidator opposed these submissions and the Hon'ble



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NCLAT observed that if the assets were sold during the pendency of the appeals, the appeals would become ineffective. Following the advice of the Ld. Senior Counsel for the Liquidator, the e-auction was subsequently cancelled. On 18.01.2022, the Hon'ble NCLAT upheld the liquidation order dated 19.08.2020 and held as follows:-

“Hence, we do not find any infirmity in the impugned order to set it aside. However, the RP is directed to make all attempts to sell the CD as a going concern or the business of the CD as a going concern in consultation with stakeholders consultations committee as constituted under Regulation 31A of the IBBI (Liquidation Process) Regulations 2016, in order to protect the livelihood of 550 families.”

- 35.** Following the order issued by the Hon'ble NCLAT, the Liquidator organized the 7th Stakeholders Consultation Committee (SCC) meeting on 20.01.2022. During the meeting, the matter of selling the Corporate Debtor as a going concern or selling its business as a going concern was discussed.
- 36.** On 24.01.2022, the Liquidator published a sale notice in newspapers, advertising the sale of the Corporate Debtor's



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assets on a going concern basis. On the same day, the information document regarding the e-auction process was made available to all interested parties by uploading it on the Corporate Debtor's website. According to the sale notice, the e-auction was scheduled to take place on 28.02.2022.

- 37.** Two corrigendums to the said sale notice dated 24.01.2022 were issued by the liquidator. With respect to the corrigendum 1 and 2, the liquidator specifies that corrigendum 1 to the sale notice was issued by the liquidator only to correct the typographical change in the sale notice and corrigendum 2 was issued solely for the purpose of providing more clarity on the procedural aspect with regard to the sale of the corporate debtor.
- 38.** However, no interested party came forward, and the Liquidator did not receive any Expression of Interest (EOI) from potential bidders. It is further stated that in the meantime, Mr. Yogesh Singh, the applicant had filed the contempt proceedings bearing Contempt Petition No.7 of 2022 in Company Appeal (AT) (INS) No.846 of 2020 before the



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Hon'ble NCLAT on 22.02.2022 prayed *interalia*, which is as under:

"3. Issue contempt against Mr. Supriyo Kumar Chaudhuri for violation of order dated 18.1.2022; and/or

- a. Cancel the sale notice dated 24.1.22; and/or;*
- b. an inquiry and investigation must be conducted for the conduct of the liquidator; and/or*
- c. appoint a competent person to monitor the conduct of liquidator and keep the corporate debtor as going concern; and/or*
- d. any other order or direction may be passed which the Appellate Tribunal may deem fit and proper in the facts and circumstances of the case in the interest of justice. "*

39. Further, it is submitted that after the submissions made by the respective parties before the Hon'ble NCLAT in the aforesaid contempt proceedings, the Counsel appearing on behalf of the applicant sought permission to withdraw the contempt case. Therefore, the Hon'ble NCLAT vide its order dated 8th March, 2022, dismissed the said contempt case as withdrawn. The aforesaid order has been reproduced as under:

"After hearing the arguments of Mr. Gautam Singh, Learned Counsel appearing for the Applicant and also



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hearing Learned Sr. Counsel Mr. Ramji Srinivasan for the Respondent/liquidator No. 1(Liquidator), Mr. Gautam Singh seeks permission from this Tribunal to withdraw the instant contempt case. The Contempt Case (AT) No. 07 of 2022 in Company Appeal (AT) (Ins) No. 846 of 2020 is dismissed as withdrawn. No costs. All connected applications are closed.”

- 40.** The Liquidator states that since the e-auction for the sale of the Corporate Debtor as a going concern, which was originally scheduled for 28th February 2022, could not be conducted due to the absence of any Expression of Interest (EOI) from interested parties, a Stakeholders Consultation Committee (SCC) meeting was held on 28th February 2022. After thorough deliberation, the SCC members unanimously advised the Liquidator to proceed with the sale of the blocks of assets of the Corporate Debtor on stand-alone basis.
- 41.** Subsequently, on 4th March 2022, the Liquidator issued a sale notice for the sale of the blocks of assets of the Corporate Debtor on stand-alone basis. The e-auction Process Information Document was uploaded on the Corporate Debtor's website. The sale notice was scheduled for 6th April 2022. The Liquidator received Expression of Interest (EOI)



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from prospective bidders for some of the blocks of assets that were put up for e-auction.

- 42.** It is further mentioned that an interim application (IA) numbered 89/2022 was filed in the present petition by one of the former promoters, Mr. Satya Narayan Jhunjhunwala, seeking the same reliefs as requested in the current application. The IA requested an interim relief to direct the Liquidator to withdraw the sale notice dated 4th March 2022 and prevent the Liquidator from taking any steps related to the sale notice. On 4th April 2022, this Tribunal ordered the auction sale to proceed as planned. The said order is reproduced as under:

“ORDER

IA No. 89/2022

Heard the Ld. Counsel appearing for the applicant in full and the Ld. Senior Counsel appearing for the liquidator in part. List this matter on 26th April, 2022 for continuation of arguments.

IA No. 98/2022

The Liquidator directed to file reply affidavit in the matter within TEN days from today. Copies of the



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same be served on the counsel on record for the applicant. List this matter on 26th April, 2022. In the meantime, auction sale to proceed as planned. However, the same shall be subject to outcome of this IA. Further, the liquidator shall not proceed to issue sale certificate without prior approval of this Adjudicating Authority.”

43. In compliance with the aforementioned order, the Liquidator conducted the e-auction process on 6th April 2022. Except for two blocks of assets, which were successfully bid on by two bidders, no bids were received for the remaining blocks of assets on the scheduled sale date. Details of two successful bidders are as under:-

- i.** BRS Refineries, S.Y. No. 190/1A, 190/1E, 190/3, Annaram Village, Farooqnagar Mandal, Mahoobnagar District, Telangana - 509228 represented by one Mr. Sunil Kumar Sarda emerged as the successful bidder offered the highest amount in respect of Block No.A-11 comprising of old expired stocks of more or less 1000 tons of packed Refined Edible Oil, not fit for human consumption, lying at JVL's Plant at Debhog, District Purba Medinipur, Haldia, West.
- ii.** Nifra Developers Private Limited, Gram+Post- Jamuhar,



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Thana-Dehri on Sone, Sasaram, Rohtas, Bihar- 821305, represented by Mr. Govind Narayan Singh emerged as the successful bidder offered the highest amount in respect of Block No.A-8 comprising of Freehold Land in District Rohtas, Bihar.

- 44.** Prior thereto, two appeals were filed before the Hon'ble Supreme Court challenging the final order dated 18th January 2022 passed by the Hon'ble NCLAT, which upheld the liquidation order issued by this Tribunal. One of the appeals was filed by Satya Narayan Jhunjhunwala, the applicant in IA No.89 of 2022, bearing Supreme Court Civil Appeal Diary No.4692 of 2022. The other appeal was filed by the alleged Employee Welfare Trust, represented by Yogesh Singh, the applicant in the present application, bearing Civil Appeal Diary No.8496 of 2022. The same issue regarding the sale notice and non-compliance with Regulations 32 and 32A of the Liquidation Regulations has been raised by the present applicant in the Appeal filed before the Hon'ble Supreme Court, which are as follows :-

"3.61 That a sale notice dated 24.1.2022 was issued by the Liquidator for an undervalue and in violation of



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the provisions of the Regulation 32A of the insolvency and Bankruptcy Code, 2016. The sale notice was claimed to be under a Going Concern pursuant to Regulation 32(e) of the IBBI Liquidation Process Regulations, 2016, however, the sale notice suppressed the value other current assets and did utter about any liabilities

.....

3.63 That a letter dated 15.2.2022 was issued by the Appellant to cancel the sale notice dated 24.1.2022 as the same in not in terms of sale as a going concern.

3.64 That the liquidator has issued another sale notice dated 4.3.2022 was issued by Liquidator to sale assets of CD on stand-alone basis.

3.68 Further Liquidator is acting in manner to confuse and not give a clarity about the total assets and its value and has suppressed the true value of corporate debtor as no mention value cash and cash equivalent has been mentioned in sale notice nor even in any Corrigendum issued by the liquidator."

- 45.** It is stated that the Hon'ble Supreme Court had declined to entertain the aforementioned two Civil Appeals and dismissed them on 13th April 2022. The order of the Supreme Court is in the following terms:-

“O R D E R

Permission to file appeal is granted. We have heard learned senior counsel/counsel for the parties and perused the record. We do not see any cogent reason to entertain the Appeals. The judgment impugned does not warrant any interference. The Appeals are



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dismissed

-Sd-

J. (S. ABDUL NAZEER)

NEW DELHI APRIL 13, 2022”

-Sd-

J. (VIKRAM NATH)

46. The Liquidator denied the claim that the Applicant Trust is an Employee Welfare Trust consisting of 550 employees of the Corporate Debtor and 5000 families who obtained employment at the Corporate Debtor's factory. It is further asserted that the Corporate Debtor has never had any such Trust representing its employees. It is disputed that Mr. Yogesh Singh, the alleged authorized representative of the Trust, is a settler or member of the Employee Welfare Trust, as no supporting document has been presented to substantiate his status as the settler, member, or authorized representative of the purported Trust.

47. Regarding the 550 employees of the Corporate Debtor represented by the Trust, it is explained that the Liquidator received letters on 20th September 2020 and 6th October 2020 from several employees of the Corporate Debtor nominating Mr. P.K. Mukhopadhyay as their representative.



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Upon receiving the nomination, Mr. P.K. Mukhopadhyay was inducted as a member of the SCC and has been representing the employees of the Corporate Debtor. There have been no objections raised by any other employees regarding his representation. Therefore, apart from Mr. P.K. Mukhopadhyay, there is no other authorized representative appointed by the employees to represent them in the ongoing Liquidation proceedings.

- 48.** The Liquidator denied the allegation that they filed an application (IA No.19/2021) before this Tribunal without disclosing the pendency of Company Appeal (AT) (Insolvency) No.846 of 2020 before the Hon'ble NCLAT and obtained an order dated 26th July 2021 from this Tribunal to distribute an amount of Rs.61 crores, keeping Rs.21.95 crores towards liquidation costs. It is stated that the Applicant's statements are baseless and made with a malicious intent. The distribution was made in accordance with the directions issued by this Tribunal.



- 49.** The Liquidator denied that the negative list of Liquidators published by the State Bank of India through a circular dated 19th January 2020 is solely based on unsatisfactory performance review reports or non-submission of Non-Disclosure Agreements (NDAs). It is submitted that the circular issued by one of the creditors does not reflect the Liquidator's performance and has no bearing on the present proceedings. The Applicant's submissions are made with the intention to defame the Liquidator and prejudice this Tribunal against him.
- 50.** The Liquidator denied the claim that the sale notice dated 24th January 2022 did not provide the complete details of all the assets and liabilities of the corporate debtor and cannot be considered a sale notice for selling the corporate debtor as a going concern as per Regulation 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations. It is explained that the sale notice was issued in compliance with the Hon'ble NCLAT's order dated 18th January 2022 pursuant to Regulation 32(e) read with Regulation 32A(3) of



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the Liquidation Regulations. The sale notice included all the necessary details of the assets proposed to be sold as a going concern. The Corporate Debtor was intended to be sold as a going concern in its entirety with its liabilities to be dealt with from the proceeds of the sale under Section 53 of the Code. The details of all the liabilities are available on the website of the Corporate Debtor and the Virtual Data Room (VDR). The e-auction process document which was uploaded along with the sale notice explicitly mentioned that any serious bidder interested in participating in the e-auction process could seek further details regarding the assets and liabilities of the Corporate Debtor.

- 51.** The Liquidator states that all the details of the assets and liabilities have been disclosed in accordance with Regulation 32 and 32A of the Liquidation Regulations. He denied the allegation that the sale notice dated 24th January 2022 only involved selling the immovable properties of the Corporate Debtor at a throwaway price of Rs.298.18 crores in haste and hurry.



- 52.** The Liquidator asserts that the list of stakeholders dated 30th October 2020 filed with the Tribunal on 2nd November 2020 and the formation of the SCC have been done within the required timelines and in a proper manner, making them valid. It is also argued that Mr. P.K. Mukhopadhyay has been nominated and authorized by several employees of the Corporate Debtor, and therefore, he is capable of representing the interests of all the employees. It is also denied that Mr. P.K. Mukhopadhyay's name was not proposed by the employees.
- 53.** The Liquidator denied the allegation that the value of all cash and cash equivalent assets, including investments in shares, mutual funds, etc., would be in hundreds of crores excluding other assets and liabilities. He ensures that cash and cash equivalent assets would be distributed according to the order of priority outlined in Section 53 of the Code.
- 54.** The Liquidator denied the assertion that the Employees Welfare Trust is inclined towards the resolution of the Corporate Debtor and committed to keeping it as a going



concern, reviving it as a working company. He also denies the claim that the Trust has filed a Resolution Plan to revive the company and intends to file a scheme of compromise and arrangement under Section 230 of the Companies Act to maximize the value of the Corporate Debtor and prevent liquidation.

Written submission on behalf of applicant

- 55.** The applicant submits that the contempt application was filed due to the lack of mention of specific details in the initial sale notice. However, this issue was later addressed through subsequent corrections. Once the corrections were made, the contempt charges were withdrawn. Therefore, there is no evidence of any collaboration to invoke the same jurisdiction or seek similar relief. It was submitted that the jurisdiction of contempt is narrow and specific.
- 56.** The appeal filed in the Supreme Court challenged the order issued on January 18, 2022, by the Honorable NCLAT. The purpose of the appeal was to seek approval and consideration of the Resolution Plan by the employees, as it had not been



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approved by the Honorable NCLAT.

- 57.** This application is in compliance with Regulation 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. The intention behind this submission is to assert that this Honorable Tribunal possesses the authority and power to thoroughly examine the entire liquidation process and ensure that all efforts have been made in the true spirit of the code. The objective of the code is to maximize the value of the corporate debtor and maintain the company as a going concern.
- 58.** The Ld. Counsel for the applicants in both the IAs also raised an objection against the Liquidator of including the Rohtas land situated in Bihar in the assets of the Corporate Debtor to enhance the cumulative valuation of the assets of the Corporate Debtor. It is contended by the Ld. Counsel for the applicants by including the said land, the value of auction has been artificially inflated, which speaks of lack of bonafide on the part of the Liquidator.



59. A supplementary affidavit has also been filed by the applicant in IA 98/2022 placing on record some of the previous proceedings before different forums. We have perused the same.

Written submission on behalf of liquidator/respondent

60. The Respondent/Liquidator has given the sequence of events. It is submitted that on 18.01.2022, NCLAT upheld the liquidation order dated 19.08.2020 passed by this Adjudicating Authority. It also directed to sell the corporate debtor as a going concern in consultation with SCC and for compliance of the same, the Liquidator called for 7th SCC meeting held on 20.01.2022 wherein he was advised to sell the corporate debtor as a going concern. Thereafter, on 24.01.2022, he published first sale notice for the sale of assets of the corporate debtor as a going concern, in compliance with Regulation 32(e) and 32A (3) of Liquidation Regulations. The same was widely published in Economic Times (all India edition), Dainik Bhaskar (Patna and Varanasi editions), Dainik Jagran (Alwar edition), Bartaman (West



Bengal edition). It is also submitted that the sale notice and E-Auction Process Document containing all the details of assets of the corporate debtor were also published on the website of the corporate debtor on the same date. The scheduled date for the auction was 28.02.2022.

- 61.** It is further submitted that Regulation 32A (3) of Liquidation Regulations is being misinterpreted by the applicant. The said Regulation 32A(3) is to be read with Regulation 39C(2) of the CIRP Regulations which is as follows: -

“39C. Assessment of sale as a going concern...

(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.

- 62.** The above Regulation applies in cases where the Corporate Debtor has several units and several assets and liabilities out of which the committee recommends certain units of the Corporate Debtor to be sold as a going concern. Then the assets and liabilities of those units which are to be sold as going concern are to be grouped together. However, in the



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present case under the sale notice dated 24.01.2022 the units were not envisaged to be sold individually but the entire corporate debtor was proposed to be sold as a going concern, therefore, the grouping of assets and liabilities was not required to be done. It is stated that in any event, all the details relating to the assets and liabilities of the corporate debtor had been uploaded on the VDR. No prospective bidder has ever raised any issue with regard to the assets and liabilities not being available.

- 63.** Further, it is submitted that in the subsequent sale made by the Liquidator on a stand-alone basis, 2 out of 11 blocks of assets have been successfully sold by the Liquidator. No complaint from any bidder regarding grouping has been received. It is stated that the applicant, without any locus, to scuttle the Liquidation proceedings has raised frivolous issues.
- 64.** With respect to the applicant's objection against the Liquidator of including the Rohtas land situated in Bihar in the assets of the Corporate Debtor, the Ld. Sr. Counsel



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representing the Liquidator submitted that earlier an order dated 08.09.2011 had been passed by the Hon'ble Patna High Court, whereby the said land, which was purchased by the Corporate Debtor in auction from the Official Liquidator, was directed to be handed over to the Corporate Debtor. The order dated 08.09.2011 passed by the Hon'ble Patna High Court as relied upon by the Ld. Sr. Counsel representing the Liquidator is as under :-

“The report has been filed by the O.L. stating that the purchaser of 500.66 acres of land situated at Mauza-Bank, Jorabarpur and Ugra, namely, M/s. JVL Agro Industries Limited has paid the balance amount of Rs.13,69,00,000/- with respect to total purchase amount of Rs.18,25,00,000/- through cheque No. 008289 dated 30.8.2011 drawn on Bank of Baroda. It is further stated that the purchaser of 79.46 acres of land situated at village Suara, namely, M/s. Infrastructure Development Authority for a sum of Rs.17,00,00,000/- has also deposited the balance amount of Rs.10 crores through its letter dated 26.8.2011.

On a consideration of the aforesaid facts and circumstances, the sales in favour of both the parties are finally confirmed. Let the O.L. handover the possession of the properties to the respective purchasers. Steps may also be taken to ensure that the sale-deed is executed in favour of both the parties within two months from today. OLR No.62 of 2011 along with the OLR No.55 of 2011 are, accordingly, disposed of.”



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65. In regard to valuation, it is submitted that as per Regulation 35(2), within 7 days from the date of commencement of the liquidation process i.e. on 19.08.2020, the Liquidator shall appoint two registered valuers. It is further submitted that on 25.08.2020 and 26.08.2020 Liquidator appointed the following valuers;

(i) for Plant & Machinery & other assets – Anil Pai & Kakode, and Lakshya Malhotra,

(ii) for Land & Building – Deepak Bansal and Sunil Apte and Securities and Financial Assets – Prateek Mittal and Vishnu Upadhyay.

66. In this regard, Liquidator filed assets memorandum dated 30.10.2020 on 02.11.2020 including the valuation report submitted by the valuers with the Hon'ble NCLT as per Regulation 34(4) of Liquidation Regulations.

67. It is further submitted that e-auction of the Corporate Debtor as going concern was unsuccessful. Even no Expression of Interest was received. Therefore, SCC unanimously advised in the 8th SCC meeting held on 28.02.2022 to sell the assets on a standalone basis.



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- 68.** In regard to the rejection of claim, it is submitted that the liquidation commenced on 19.08.2020. Thereafter, a public announcement calling for claims was made on 24.08.2020 and the last date of receipt of the claim was on 18.09.2020. Thereafter, on 02.11.2020, a list of stakeholders dated 30.10.2020 was filed before NCLT. The applicant has filed his claim on 16.02.2022 with a delay of 17 months. Therefore, his claim was rejected. The Liquidator had received representation from several employees of the corporate debtor nominating Mr. P.K. Mukhopadhyay as their representative in the SCC vide two letters dated 20.09.2020 and 06.10.2020. Therefore, Mr. P.K. Mukhopadhyay was inducted as a member of the SCC by the Liquidator
- 69.** It is also submitted that the Liquidator rejected the nomination of Mr. Yogesh Singh by email dated 21.02.2022 as no trust deed or authorization from employees to the aforesaid alleged trust has ever been produced.

Written submission on behalf of SBI

(Vide order dated 06.09.2022, SBI sought permission to file Written submissions before this Adjudicating Authority. Permission was granted.)



- 70.** At the outset, it has been stated that written statement by SBI has been submitted because SBI is a financial creditor of the Corporate Debtor with an admitted claim of INR 658,02,55,360/- Therefore, it has a substantial stake in reliefs sought in the captioned Application. The said reliefs, if granted shall have an impact on the distribution of the proceeds to the creditors of the Corporate Debtor including distribution to SBI from the liquidation estate.
- 71.** It is contended that the current Application is a mere attempt to deceive this Adjudicating Authority and impede the liquidation process of the Corporate Debtor which cannot be permitted. In reality, the Applicant has filed numerous frivolous lawsuits in various forums with the sole purpose of delaying the liquidation of the Corporate Debtor.
- 72.** It is argued that the Application lacks any legal foundation and there is no legal provision that allows the Applicant to challenge the sale notices issued by the Liquidator. Moreover, it is submitted that the present Application contains several baseless and inaccurate statements/allegations that



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question the integrity of the lenders and the Liquidator. These allegations are unsubstantiated by any supporting evidence or documents.

73. It is stated that the Liquidator has duly complied with the order dated January 18, 2022, of the Hon'ble Appellate Tribunal, and has followed Regulation 32 and 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("Liquidation Regulations"). As per the regulations, the Liquidator published a sale notice on January 24, 2022, to sell the assets of the Corporate Debtor as a going concern. However, no interested bidders came forward. Furthermore, it is submitted that due to the lack of interest in the sale of the Corporate Debtor as a going concern in the e-auction held on February 28, 2022 and based on the recommendation of the SCC in its 7th meeting, the sale of the assets of the Corporate Debtor was conducted on a standalone/piecemeal basis. Hence, there is no illegality in the sale notice issued by the Liquidator. In fact, the provisions of the Liquidation Regulations also stipulate that



if the sale as a going concern is not achieved within a specified timeframe, the liquidation through the sale of assets should proceed, which has been duly followed in this case.

74. Additionally, it is respectfully argued that the Application should be dismissed based on the following reasons outlined in these submissions:

(i) The assets of the Corporate Debtor have already been auctioned through the e-auction process, and the successful bidders have complied with the requirements by submitting Earnest Money Deposits (EMDs) as per the auction's process note and the obligations under the Liquidation Regulations. Any delay in issuing sale certificates would threaten the interests of all stakeholders involved in the Corporate Debtor.

(ii) The successful bidders are eager to take immediate possession of the assets. If there is further delay in issuing the sale certificate, the bidder may withdraw from the auction process, and the liquidator would have to re-auction the property, resulting in a decline in the value of the assets thus, negatively impacting the proceeds from their sale.

(iii) There has been significant delay in completing



the liquidation proceedings of the Corporate Debtor, as nearly two years have elapsed since the initiation of liquidation on August 19, 2020. The root cause of this delay are the numerous baseless litigations initiated by former employees and the promoters in various forums. Such delays contradict the fundamental objective of the Code which aims for the completion of the process within a specified timeframe.

- 75.** Considering the aforementioned points and in order to safeguard the creditors' interests, it is imperative to promptly proceed with the issuance of sale certificates. Any further delay would not only hamper the smooth liquidation process but also have adverse effects on the recovery from the sale of assets.

IA NO.89 OF 2022

- 76.** The present application has been filed by the applicant Mr. Satya Narayan Jhunjunwala, Ex-Director of JVL Agro Industries Limited (the corporate debtor under liquidation) under Rule 11 of the NCLT Rules, 2016 with following prayers:-



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- A.** To direct the Liquidator to withdraw the impugned sale notice dated 04.03.2022 and restrain him from taking any steps pursuant to the illegal notice.
- B.** To direct the Liquidator to constitute proper SCC in terms of Regulation 31A of IBBI (Liquidation Process) Regulation, 2016 and act as per the directions of Hon'ble NCLAT mentioned in the order dated 18.01.2022 thereby clearly identifying the 'group of assets and liabilities' to be sold as 'going concern' by including Rs.100 Crore plus interest accrued thereon as required in terms of Regulation 32A (3) of the IBBI (Liquidation Process) Regulation, 2016.
- C.** To direct that the constitution of SCC as done by Liquidator is not in consonance with Regulation 31A of IBBI (Liquidation Process) Regulation, 2016.
- D.** To direct the Liquidator by constituting proper SCC putting the names of the nominated persons and strength in terms of Regulation 31A of the IBBI (Liquidation Process) Regulation, 2016.
- E.** To direct the Liquidator to abide by the directions of Hon'ble NCLAT in its true letter and spirit and to bring on record the discussion note before SCC and the valuation of the assets made by him before putting up the sale/ auction notice.



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F. To direct the Liquidator to get valuation done for such 'group of assets' which is being put for auction in terms of Regulation 35 of the IBBI (Liquidation Process) Regulation, 2016.

G. To direct the Liquidator to publish full details of the 'group of assets and liabilities' by giving notice of at least 30 days to prospective parties.

77. The applicant, namely, Mr. Satya Narayan Jhunjhunwala, the former director and shareholder of JVL Agro Industries Limited, has filed a claim with the Liquidator and requested permission to join the Stakeholders Consultation Committee (SCC). The formation of the SCC was directed by the order dated 18.01.2022 issued by the Honorable NCLAT, in accordance with Regulation 31A of the IBBI (Liquidation Process) Regulation, 2016.

78. The applicant states that the primary petition, CP (IB) No.223/ALD/2018, was filed under Section 7 of the Insolvency and Bankruptcy Code, 2016, by Standard Chartered Bank, seeking the initiation of the Corporate Insolvency Resolution Process against M/s JVL Agro



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Industries Ltd., the Corporate Debtor. This Tribunal admitted the petition and imposed a moratorium under Section 14 of the Code as stated in the order dated 25.07.2018. Subsequently, this Tribunal issued the liquidation order against the Corporate Debtor on 19.08.2020. In response to the said order, the Suspended Directors filed an appeal, Appeal No.832/2020, under Section 61 of the Code before the Hon'ble NCLAT. Therefore, as an interim measure, a statement of the Ld. Sr. Counsel representing the Liquidator was taken on 02.03.2021 wherein he stated that he would advise his client i.e. the Respondent/liquidator no. 1 to defer the E – Auction.

79. Furthermore, it is stated that while Appeal No. 832 of 2020 was still pending, the Respondent/Liquidator filed an application, IA No. 19 of 2021, before this Tribunal without providing a copy to the Ex-Management/Applicant. The application was made based on the fact that the Liquidator had access to the funds of the Corporate Debtor, specifically the credit balance of approximately Rs.100 crores (Rs. 99.35



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crores + accrued interest) in the Corporate Debtor's bank account. The Liquidator did not treat the Corporate Debtor as a going concern and therefore, sought to distribute Rs. 61 crores (after deducting TDS) to the stakeholders in accordance with Section 53. On 26.07.2021, this Tribunal granted permission for the said IA No. 19/2021. Subsequently, an appeal was filed before the Hon'ble NCLAT, bearing Appeal No. 594/2021, to challenge the order dated 26.07.2021.

- 80.** Further, it is stated that the Hon'ble NCLAT disposed of the Appeal No. 832 of 2020 vide order dated 18.01.2022. The NCLAT, in its order, directed the RP to make all attempts to sale the CD as a going concern or the business of the CD as a going concern in consultation with stakeholders' consultations committee as constituted under Regulation 31A of the IBBI (Liquidation Process) Regulations 2016, in order to protect the livelihood of 550 families.
- 81.** Additionally, it is argued that the Liquidator hastily issued a Sale Notice dated 24.01.2022 without properly constituting



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the Stakeholders Consultation Committee (SCC) as required by Regulation 31A. Furthermore, there was no proper consultation within the existing SCC. The Liquidator also published the E-Auction Process Information in accordance with the Sale Notice dated 24.01.2022. The Sale/ Auction Notice would indicate that:-

- i.** It is in complete breach of the directions of NCLAT,
- ii.** It is without appreciating the concept of '*sale of the CD as a going concern*', in as much as there is no identification of 'group of assets and liabilities' to be sold as going concern. Being violative of Reg. 32A (3).
- iii.** Value of Rs. 298.18 Cr. is fixed as reserve price, in stark contravention of the Liquidation Value earlier determined to be that of Rs. 385 Cr. (See 12th COC meeting)
- iv.** Status of Credit Balance lying in the bank account of CD to the tune of about Rs.100 Crores is not made explicitly clear in the notice. In all probabilities, if the sale is '*as a going concern*', then the same has to be clearly spelled out in Sale Notice and the effect of this cash amount of Rs. 100 Cr is to be reflected in the Valuation.
- v.** In addition to the above, as on 25.07.2018, a sum of Rs. 165 Cr. was kept in FDRs of the Company as on the date of CIRP. This amount was wrongly credited by the Banks and the NCLT was pleased to direct the said amount to be returned to the account of CD. If company is to be sold as going concern, this value of Rs. 165 Cr. has to be along with the company as a '*going concern*'.



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- vi.** This Notice is without constituting proper SCC in terms of Regulation 31, 31A of the Regulations. It is without any consultation with SCC.
- vii.** By issuing subsequent Corrigendum(s), Liquidator has introduced assets of more value i.e. of more than Rs. 120 Crores, without increasing Reserve Price.
- viii.** Issuance of Corrigendum on 18.02.2022 (uploaded on 22.02.2022), so as to include cash of Rs. 100 Cr. into the 'group of assets' which is to be sold as 'going concern' is not enough and good notice to prospective bidders, thus hampering the real recovery.

82. It is stated that the entire process is vitiated inter-alia due to abovementioned fundamental errors made by Liquidator. The other highlights of the Sale Notice are :-

Date of Submission of EOI is	23.02.2022
Date of Deposit of EMD is	25.02.2022
Time of E-Auction is	28.02.2022

83. Furthermore, it is mentioned that a Corrigendum 1 was issued to the Liquidator on 03.02.2022, where a 3 MW Captive Power Plant with an estimated value of around Rs. 20 crore was surreptitiously included.

84. Subsequently, a Corrigendum 2 was issued on 18.02.2022, wherein 'Cash and Cash Equivalent' with a value of Rs. 100 crore plus interest was clandestinely added.



85. Additionally, it is alleged that the Liquidator, in complete violation of Regulation 31(3) of the Liquidation Regulations, rejected the claim and nomination submitted on behalf of all the Shareholders. This approach of Liquidator is in breach of Regulation 31A, which provides as under:

“(3) The liquidator may facilitate the stakeholders of each class to nominate their representatives for inclusion in the consultation committee.”

86. It is also submitted that without following mandate as mentioned in order of Hon’ble NCLAT, in complete disobedience of the Regulations and without there being proper SCC constituted under Regulation 31A and without any proper consultation in existing SCC, Liquidator had issued another Sale Notice dated 04.03.2022 putting the auction of assets as a ‘stand-alone’ sale. Other Highlights of the Sale Notice are :-

Date of Submission of EOI is 22.03.2022

Date of Deposit of EMD is 04.04.2022 (4PM)

Time of E-Auction is 06.04.2022 (11AM to 1 PM)

The E-Auction Process information document was also uploaded.



Reply on behalf of Respondent / Liquidator

- 87.** Reply to the application has been filed on 02.04.2022 on behalf of the Respondent/ Liquidator Mr. Supriyo Kumar Chaudhari vehemently opposing this application.
- 88.** The liquidator states that the Corporate Insolvency Resolution Process (CIRP) for JVL Agro Industries Limited began on 25.07.2018. However, since no Resolution Plan was approved by the Committee of Creditors (CoC) within the specified timeline, the Liquidator filed an application before the Tribunal to initiate liquidation proceedings. The Tribunal, through its order dated 19.08.2020, commenced the liquidation proceedings for the Corporate Debtor.
- 89.** Subsequent to the commencement of liquidation proceedings, the Liquidator issued seven notices on 20.08.2020, as per the provisions of Section 33(7) of the Code. These notices discharged all the officers, employees, and workers associated with the Corporate Debtor. The notices were specific to various plants and/or offices of the Corporate Debtor.



90. It is also submitted that the Corporate Debtor has five plants which had been non-operational either prior to the commencement of the CIRP or during the said period. The details of five plants are given below:-

- i. Naupur Plant: - Located at Naupur in Jaunpur District, U.P. This edible oil plant had been shut down by the erstwhile management prior to commencement of CIRP. The plant had about 115 employees, workmen on its rolls prior to commencement of liquidation.
- ii. Alwar Plant: - Located at Alwar, Rajasthan. This mustard oil mill had been shut down by the erstwhile management prior to commencement of CIRP. The plant had about 17 employees/workmen on its rolls prior to commencement of liquidation.
- iii. Haldia Plant: - Located at Haldia in West Bengal. This edible oil manufacturing plant has been non-functional since September, 2019. The plant had about 100 employees/workmen on its rolls prior to commencement of liquidation.
- iv. Pahleja Plant: - Located in Rohtas District, Bihar. This edible oil manufacturing plant has also been non-functional since July 2019. The plant had about 120 employees/workmen on its rolls prior to commencement of liquidation.



v. Rice Mill: - Located at Dehri on Sone, District - Rohtas, Bihar. The Rice Mill was operational till lockdown was imposed by the Union Government. The plant had about 25-30 employees/workmen including contractual workmen prior to commencement of liquidation. That during the time of nationwide lockdown, on relaxations being allowed by the District Administration, production at the rice mill continued till 27.05.2020, but thereafter, during the liquidation period, it could not operate due to non-relinquishment issues

91. It is further submitted that on 24.08.2020, the Liquidator issued a public announcement through a newspaper advertisement, requesting stakeholders to submit their claims or update their claims that were previously submitted during the Corporate Insolvency Resolution Process (CIRP). The deadline for claim submission was set for 18.09.2020.

92. Furthermore, after verifying the claims, the Liquidator categorized stakeholders based on the proof of claim and prepared a list. The list of stakeholders, dated 30.10.2020, was then submitted to the Tribunal by the Liquidator on 02.11.2020.



- 93.** The liquidator further states that only 6 shareholders had filed their claims with the liquidator and the applicant's claim was not present in these six claims. After the preparation of the list of stakeholders, the liquidator constituted the Stakeholder's Consultation Committee on 17th October, 2020 and the SCC was constituted in compliance with the provisions of the Code and the Regulations thereunder.
- 94.** During this period, in September 2020, two appeals were filed before the Hon'ble NCLAT under Company Appeal (AT) (Insolvency) No.832 of 2020 in the case of Satya Narayan Jhunjhunwala v/s Supriyo Kumar Chaudhari & Anr., and Company Appeal (AT) (Insolvency) No.846 of 2020 in the matter of Ramesh Chander Garg and Ors. V/s Supriyo Kumar Chaudhari & Anr. These appeals contested the liquidation order dated 19.08.2020 issued by the Tribunal.
- 95.** On 19.01.2021, the Liquidator issued a sale notice through a newspaper publication, announcing the sale of assets belonging to the Corporate Debtor. The e-auction was initially scheduled to take place on 04.03.2021 and 05.03.2021.



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However, the Liquidator cancelled the e-auction due to pending appeals before the Hon'ble NCLAT. During the arguments before the Hon'ble NCLAT, the applicant presented submissions stating that the Liquidator intended to sell the Corporate Debtor's assets through e-auction. Based on these submissions, the applicant sought an ad-interim stay on the sale. The Ld. Senior Counsel representing the Liquidator opposed these submissions, and the Hon'ble NCLAT observed that if the assets were sold during the pendency of the appeals, the appeals would become ineffective. Following the advice of the Ld. Senior Counsel for the Liquidator, the e-auction was subsequently cancelled. On 18.01.2022, the Hon'ble NCLAT had upheld the liquidation order dated 19.08.29020 and held as follows:-

“Hence, we do not find any infirmity in the impugned order to set it aside. However, the RP is directs to make all attempts to sale the CD as a going concern or the business of the CD as a going concern in consultation with stakeholders consultations committee as constituted under Regulation 31A of the IBBI (Liquidation Process) Regulations 2016, in order to protect the livelihood of 550 families.”



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- 96.** Following the order issued by the Hon'ble NCLAT, the Liquidator organized the 7th Stakeholders Consultation Committee (SCC) meeting on 20.01.2022. During the meeting, the matter of selling the Corporate Debtor as a going concern or selling its business as a going concern was discussed.
- 97.** On 24.01.2022, the Liquidator published a sale notice in newspapers, advertising the sale of the Corporate Debtor's assets on a going concern basis. On the same day, the information document regarding the e-auction process was made available to all interested parties by uploading it on the Corporate Debtor's website. According to the sale notice, the e-auction was scheduled to take place on 28.02.2022. However, no interested party came forward, and the Liquidator did not receive any Expression of Interest (EOI) from potential bidders. It is further stated that in the meantime, Mr. Yogesh Singh, the applicant had filed the contempt proceedings bearing Contempt Petition No.7 of 2022 in Company Appeal (AT) (INS) No.846 of 2020 before the Hon'ble NCLAT on 22.02.2022 prayed *interalia*, which is as under:



"3. Issue contempt against Mr. Supriyo Kumar Chaudhuri for violation of order dated 18.1.2022; and/or

- a) Cancel the sale notice dated 24.1.22; and/or;*
- b) an inquiry and investigation must be conducted for the conduct of the liquidator; and/or*
- c) appoint a competent person to monitor the conduct of liquidator and keep the corporate debtor as going concern; and/or*
- d) any other order or direction may be passed which the Appellate Tribunal may deem fit and proper in the facts and circumstances of the case in the interest of justice. "*

98. Further, it is submitted that after the submissions made by the respective parties before the Hon'ble NCLAT in the aforesaid contempt proceedings, the Counsel appearing on behalf of the employee sought permission to withdraw the contempt case. Therefore, the Hon'ble NCLAT vide its order dated 8th March, 2022 dismissed the said contempt case as withdrawn.

99. Meanwhile the applicant submitted his claim as a shareholder on 12th February, 2022 with the liquidator. It is to be noted that the SCC had been formed long ago on 17th October, 2020 within the stipulated timeline under the



Regulation. Thus, the purported claim was rejected by the liquidator and the same was communicated to him vide letter dated 19.02.2022.

100. The Liquidator states that since the e-auction for the sale of the Corporate Debtor as a going concern, which was originally scheduled for 28th February 2022, could not be conducted due to the absence of any Expression of Interest (EOI) from interested parties, a Stakeholders Consultation Committee (SCC) meeting was held on 28th February 2022. After thorough deliberation, the SCC members unanimously advised the Liquidator to proceed with the sale of the blocks of assets of the Corporate Debtor on a stand-alone basis.

101. Subsequently, on 4th March 2022, the Liquidator issued a sale notice for the sale of the blocks of assets of the Corporate Debtor on a stand-alone basis. The e-auction Process Information Document was uploaded on the Corporate Debtor's website. The sale notice was scheduled for 6th April 2022. The Liquidator received Expression of Interest (EOI) from prospective bidders for some of the blocks of assets that



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were put up for e-auction.

- 102.** The liquidator states that the applicant has misinterpreted the directions passed by the Honorable NCLAT since the SCC was not directed to be constituted in terms of the order dated 18 January, 2022 but the SCC was constituted long back on 17th October, 2020. Hence, the liquidator had rightfully rejected the claim of the applicant.
- 103.** The liquidator also denied the assertion by the applicant that IA 19 of 2021 had been filed by the liquidator without any knowledge of the applicant as he states that all members of the SCC had been arrayed as parties in the said application.
- 104.** The liquidator also denied that the distribution of Rs.61 crores to the financial creditors was done in an illegal or unlawful manner. The distribution had been made according to the directions passed by the Hon'ble Tribunal vide order dated 26.07.2021

Written submission on behalf of applicant

- 105.** It is further submitted that in regard to publication of sale notice, entire process has been carried out fraudulently



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without giving wide publication and the corrigendum was issued till 18.02.2022, one day prior to inspection which was 19.02.2022.

106. In regard to valuation in sale notice dated 24.01.2022, it is submitted that Reserve Price valued at Rs.298.18 Cr. which was earlier determined to be 400 Crore (approx.). The Cash amount of 100 Crore is not reflected in the Sale Notice. A sum of 165 Crore kept in FDRs of the Company as on 25.07.2018 (CIRP). The said amount is directed to be returned to the corporate debtor vide order dated 06.02.2020. It is also submitted that in regard to corrigendum-1 dated 03.02.2022, 3 MW Captive Power Plant and corrigendum-2 dated 18.02.2022 in liquidation estate words 'Cash and Cash equivalent' were clandestinely added (*valued at about Rs.20 Crore and value Rs.100 Crore + interest respectively*).

107. It is also submitted that the Rohtas Land of 400 Acres is formally not with the company. Execution of sale deed in favour of the Company (JVL) is not complete and till date the owner as per the revenue record and other record is 'Official



Liquidator attached with the Patna High Court'. The Liquidator did not undertake any measures to get the proper valuation done.

108. It is further submitted that no proper identification of 'group of assets and liabilities' to be sold as going concern was done which is in contravention to Regulation 32A(3) of Liquidation Regulations despite the direction passed by the Hon'ble NCLAT *vide* order dated 18.01.2022.

109. It is also submitted that the Liquidator would be entitled to a larger sum of money on realization or distribution of assets of the corporate debtor in a standalone manner than selling the Corporate Debtor "*as a Going concern*". Therefore, he is trying to ensure assets of corporate debtor are sold on standalone basis.

110. It is further submitted that the Liquidator earlier also distributed the underlying cash proceeds of the corporate debtor amounting to Rs.61 crores to the financial creditors of the corporate debtor in an illegal and unlawful manner and must have received an estimated amount of Rs.1.7 crore for



such distribution.

- 111.** It is further submitted that the prayers of the Appeal in the Hon'ble Supreme Court i.e. Civil Appeal No.2730/ 2022 were entirely different to the prayers in the present Application. The same has no bearing on the present case. The prayer in the Civil Appeal bearing No. 2730/ 2022 preferred before the Hon'ble Supreme Court has been reproduced herein, along with the grounds on which the Appeal was preferred-

1. To set aside Order dated 18.01.2022 passed by the Hon'ble NCLAT, New Delhi in Company Appeal (At) No. 832 of 2020.

GROUND(S):

a. Liquidator has unauthorisedly made Liquidation Application

- *False statement- Non availability of Resolution Plan.*
- *False statement- That the CIRP period is over.*
- *In Contravention of mandate recorded in 13th COC Meeting.*

b. Lack of proper reasoning in the impugned Order dated 18.01.2022.

- 112.** The Contempt Petition bearing no.07/ 2022 in Company Appeal (AT) (Ins.) No.846/ 2020 by the workers of the corporate debtor was dismissed as withdrawn. Thus, the Hon'ble Court was not in a position to give any finding on any



of the issues raised. Be that as it may, the prayers in the Contempt petition were completely alien to the ones in the present Application.

113. Ld. Counsel for the applicant has placed reliance of para no.37 in the case of *“Bhuwalka Steel Indus. Ltd. and Ors. v/s Bombay Iron and Steel Labour Bd. and Ors., (2010) 2 SCC 273”* and of para no.31 in the case of *“Subramanian Swamy v/s State of Tamil Nadu and Ors., (2014) 5 SCC 75”*, wherein precedent is an authority only for what it actually decides and not for what may remotely or logically follows from it. Thus, the contentions/ objections raised by the Liquidator are devoid of any merit. The Liquidator has failed to cater to any of the objections raised by the applicant in the present Application.

Written submission on behalf of Liquidator/ Respondent

114. The Respondent/liquidator/ Liquidator has filed common written submission in both IAs (IA No.89/2022 and IA No.98/2022)



- 115.** As per order dated 13.12.2022, this Adjudicating Authority directed the liquidator to file supplementary affidavit regarding the steps taken to liquidate the assets of the Corporate Debtor as a going concern. In response to it, the liquidator filed a supplementary affidavit in IA 89/2022. We have perused the same.

Findings & conclusion

- 116.** We have considered the rival submissions and carefully perused the record.
- 117.** The matter concerning the liquidation process has seen multiple rounds of litigations from time to time. The present IA No.98/2022 filed on behalf of ex-employees through Employee Welfare Trust is for challenging the sale notice dated 24.01.2022 and the consequential proceedings arising therefrom. While considering the present IA, this Adjudicating Authority vide order dated 04.04.2022, allowed the liquidation process to continue, however, has ordered that the sale certificate shall not be issued without prior approval of this Tribunal.



118. The grievances of the applicant in the present IA hinges around the contention that the Liquidator has not taken bonafide steps to ensure that the liquidation process is carried forward by selling the assets of the Corporate Debtor as a going concern. In support of the contention made on behalf of the Ld. Counsel representing the Applicant, the order dated 18.01.2022 passed by the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No.846 of 2020 has been relied upon. The order dated 19.08.2020 passed by this Adjudicating Authority was an order for the liquidation of Corporate Debtor whereby the liquidation process was set into motion, was challenged by the applicant earlier before the Hon'ble NCLAT in pursuance of which the above order was passed by the NCLAT. In the said order, NCLAT directed that all attempts may be made to sell the corporate debtor as a going concern. Citing this order, the Ld. Counsel of the applicant argued that whatever steps were shown to have been taken by the Liquidator to sell the Corporate Debtor as a going concern lacked bonafide.



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- 119.** Per contra, the Ld. Sr. Counsel representing the Liquidator has vehemently argued that the order passed by the Hon'ble NCLAT as referred above has been complied in a bonafide manner by taking adequate steps. After passing of the order dated 18.01.2022 by the Hon'ble NCLAT, the Liquidator had called an SCC meeting on 20.01.2022, whereby the SCC had advised the Liquidator to sell the Corporate Debtor as a going concern and as a result thereof, the Liquidator had published the first notice on 24.01.2022 for sale of the assets of the Corporate Debtor as a going concern.
- 120.** It is also contended that the said notice was widely published in several national newspapers of different languages having a wide coverage as well as the details were also published on the website of the Corporate Debtor and the auction was scheduled for 28.02.2022.
- 121.** A perusal of the auction notice, which has been placed as Annexure R/5 in the reply affidavit filed on behalf of the Liquidator at page 85 of the paper book, would show that the



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manner of sale at column 2 was clearly depicted as “Sale as a going concern”.

- 122.** Two corrigendums were also issued after the sale notice, however, it is clarified by the Ld. Sr. Counsel representing the Liquidator that these corrigendums were issued to correct and explain certain errors/ambiguities and not to disclose any new fact relating to assets of corporate debtor under liquidation. The first corrigendum is placed as Annexure R/7 at page 152 in which it has been mentioned that an inadvertent error has occurred in the column giving brief description of the factory relating to Naupur factory of the Corporate Debtor and the same has been corrected as per the table furnished in the said corrigendum. The second corrigendum has been issued on 18.02.2022 and placed at Annexure R/8 at page 154, whereby it has been clarified that all cash and cash equivalent assets including investments in shares, mutual funds etc. will form part of the liquidation estate and will be dealt with as per Section 53 of IBC.



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123. We find that the said corrigendums are clarificatory in nature and were required due to some inadvertent mistakes occurred in the main notice. However, these corrigendums did not alter the original status of the auction notice, whereby the sale of Corporate Debtor was intended to be made as a going concern, as already discussed above.

124. We further find that there were no EOIs received in pursuance of the sale notice issued by the Liquidator dated 24.01.2022. Thus, the liquidator convened 8th SCC meeting on 28th February, 2022 to discuss the matter regarding further course of action. The SCC unanimously advised sale of blocks of assets of Corporate Debtor to be made on piecemeal basis. The relevant excerpt of the SCC meeting wherein the Liquidator discussed his efforts to ensure sale as a going concern and thereafter, the SCC advising him for block sale of assets of Corporate Debtor has been reproduced hereunder:-

“Mr. Rahuljee Gautam, representative of State Bank of India inquired whether any interest was shown pursuant to the last E-Auction notice.



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The Chairman responding to the above stated that few telephone calls had been received. He mentioned that calls were received from few chartered accountants inquiring briefly, however they did not mention who they were representing and no serious enquiries were made. He informed the Committee that one person contacted, claiming himself to be from an Asset Management Company who mentioned that if the value was around Rs. 240 or 250 crores they would be interested. The said person mentioned that he will ring up in another 15 minutes time, however no call was received

Mr. Rahuljee Gautam further inquired about the marketing efforts that were undertaken by the liquidator

Mr. Abhishek Kumar, member of Liquidator's team replied that emails were sent out to parties who had earlier shown interest in the E-Auction and also to many other prospective interested parties.

The Chairman stated that more than 70 emails were sent, and important parties were contacted. He further informed that overseas investors were also approached.

Mr. Abhishek Kumar also mentioned that no interest was received for acquiring the corporate debtor as a going concern, however, a few parties had telephonically expressed their interest for acquiring certain plants of the corporate debtor in case of e-auction for individual plants.

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It was therefore unanimously decided by the Committee that sale on piecemeal basis by auction would be attempted by the Liquidator and in case any objection is raised in this regard by anyone, the



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aggrieved may approach the legal forum where it should be defended by the Liquidator

The Chairman at this point expressed that he needs to be sure about the compliance part of the NCLAT order dated 18th January, 2022 which states that all attempts should be made. He expressed that he is not clear whether one attempt would suffice.

Mr. Roy clarified that the order says all efforts and not all attempts.

The Chairman requested that the order be shared to check the language of the same.

Mr. Chatterjee concurred with the view of Mr. Roy and stated that it should be justified at a later date that the liquidator has given all efforts. He further expressed that even one attempt can be justifiable as reasonable effort considering the timeline within which liquidation has to be completed. He thereafter requested Ms. Dalmia to read out the order.

Ms. Dalmia shared the order on screen for the convenience of all the members of the Committee.

The Chairman read out the relevant portion of the order as follows:-

"However RP is directed to make all attempts".

The Chairman asked Mr. Chatterjee if in his view one attempt would suffice.

Mr. Chatterjee responding to the above read out the relevant portion of the order:-



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"all attempts to sale the CD as a going concern or the business of the CD as a going concern in consultation with stakeholders consultations committee".

He stated that the consultation result today is that the stakeholders are worried and anxious and they are saying that all attempts have been made and therefore attempt should be made today for sale of the assets individually and let whoever feels aggrieved or is affected, approach the court. He stated that it is the unanimous majority verdict coming from the SCC and the liquidator has to act in accordance with that."

- 125.** It is also worthwhile to take note that the composition of SCC included large financial creditors/banking institutions as under:

Sl. no.	Name of Financial Creditor	Nature of claim	Amount claimed (Rs)	Claim admitted by the Liquidator (Rs)
1.	Indian Bank (E-Allahabad Bank)	Secured	77,41,00,453	77,41,00,453
2.	State Bank of India	Secured	6,58,79,74,873	6,58,02,55,360
3.	Union Bank of India	Secured	96,09,28,124	96,09,28,124



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4.	Union Bank of India (E-Corporation Bank)	Secured	1,55,25,21,840	1,55,23,45,650
5.	Punjab National Bank (E-OBC)	Secured	23,05,67,577	23,05,67,577
6.	Punjab National Bank	Secured	6,76,09,00,000	6,76,09,00,000
7.	Indian Overseas Bank	Secured	99,31,00,870	99,31,00,870
8.	Bank of Baroda (incl. Vijaya Bank)	Secured	6,74,47,16,001	6,74,47,16,001
9.	Standard Chartered Bank (UK)	Secured	61,82,39,160	61,82,39,160
10.	Standard Chartered Bank (India)	Secured	85,91,27,812	85,91,27,812



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- 126.** Thus, in accordance with the decision taken in 8th SCC meeting, the liquidator issued sale notice dated 04.03.2022 inviting EOIs for block sale of assets of corporate debtor. This decision to sell the assets of the corporate debtor was not a decision taken by the liquidator but was duly deliberated in the 8th SCC meeting when the Sale of the corporate debtor as a going concern was found to be unsuccessful. It was thus a conscious decision taken in the aforesaid meeting of SCC to sell the assets of the Corporate Debtor on a piecemeal basis and thus, the same is liable to be upheld.
- 127.** There was an objection also raised by the Ld. Counsel representing applicants that the Liquidator has erroneously included Rohtas land situated at Bihar in the total assets of the Corporate Debtor, while putting them on auction with a view to artificially inflate the total valuation of the assets of the Corporate Debtor.
- 128.** It was contested on behalf of the Liquidator that this land had to be included in the assets of the Corporate Debtor in compliance of the order dated 08.09.2011 passed by the



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Hon'ble Patna High Court, whereby the sale of the aforesaid Rohtas land in favour of the Corporate Debtor was confirmed and the O.L. was directed to handover the possession of the properties to the concerned purchaser.

129. We find force in the contention of the Ld. Sr. Counsel representing the Liquidator that once an order had been passed by the Hon'ble Patna High Court on 08.09.2011, which has also been extracted in earlier part of this order, the Liquidator was duty bound to include the said land in the assets estate of the Corporate Debtor as in the event of the land having not been included, the objection by the opposition could have been that the Liquidator lacked bonafide in not including the said land in the assets of the Corporate Debtor, and thereby caused depletion of the total assets of the Corporate Debtor. The increase in the value of the assets of the Corporate Debtor by including the said land in the total assets required to be made by the Liquidator for the purpose of consolidation of assets and for value maximization.



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130. The applicant has also alleged that the sale notice dated 24.01.2022 was issued without a fresh valuation report which was a violation of Regulation 35 of Liquidation Regulations. Additionally, the said sale notice did not declare all assets and liabilities of the corporate debtor. However, the liquidator has retorted by stating that two valuers were appointed within 7 days of the commencement of liquidation as is mandated under Regulation 35 of Liquidation Regulations. It has been submitted that the applicant seems to have misconstrued the order of the Hon'ble NCLAT dated 18.01.2022. The order has nowhere modified the liquidation commencement date or granted an opportunity for fresh valuation. A valuation report annexed to the asset memorandum dated 30.10.2020 has already been submitted before this adjudicating authority on 02.11.2020.

131. Another plea raised is non-disclosure of all assets and liabilities of the Corporate Debtor in the sale notice dated 24.01.2022. However, a perusal of the auction notice which has been placed as Annexure R/5 in the reply affidavit filed



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on behalf of the Liquidator at page 85 of the paper book, would show that the details at column 1 clearly mention the assets of the CD. The liabilities would be dispensed with by complying with section 53 of the Code. Details of the liabilities were available on the website as well as (Virtual Data Room) VDR as mentioned in the E-auction document issued subsequent to the aforesaid sale notice.

- 132.** During the course of arguments, the Applicant has also raised an objection that the outer limit of 90 days period as contemplated under Regulation 32A(4) has elapsed. It is noted that the said Regulation had been amended w.e.f 16.09.2022. Prior to the said amendment, the Regulation 32A(4) as it stood unamended, stipulated that if the Liquidator is unable to sell the Corporate Debtor within 90 days from the liquidation commencement date, he shall proceed to sell the assets of the Corporate Debtor under clauses (a) to (d) to the Regulation 32. However, w.e.f. the date of amendment i.e. 16.09.2022, the amended provisions stipulated that the Liquidator may sell the assets of the



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Corporate Debtor under clause (e) of Regulation 32 exclusively only at the first auction. It is therefore submitted on behalf of the liquidator that the emphasis has been laid on time adherence.

133. It has been contended on behalf of the Liquidator that the employees/ workmen of the Corporate Debtor had been discharged as per Section 33(7) of the Code and the business of the Corporate Debtor had not been in operation as on the liquidation commencement date. As we have already observed above, in the foregoing paragraphs that after passing of the order dated 18.01.2022 by the Hon'ble NCLAT, the Liquidator had called an SCC meeting on 20.01.2022, whereby the SCC had advised the Liquidator to sell the Corporate Debtor as a going concern, and as a result thereof, the Liquidator had published the notices. The situation however had turned around in view of the fact that no Expression of Interest had been received in pursuance of the sale notices issued by the Liquidator, and it was in the subsequent meeting of the SCC held on 28.02.2022 that the



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SCC unanimously advised sale of the assets of the Corporate Debtor on piecemeal basis.

134. The Applicant in IA No.89/2022 has already raised an objection that the SCC has not been properly constituted in terms of Regulation 31A of the Regulations, 2016, and therefore, also has sought direction for constitution of proper SCC. The Liquidator in his reply to the said IA has stated that for constitution of the SCC there was no claim of the Applicant/ Shareholder. It has been stated by the Liquidator that there were claims received by him from six numbers of the shareholders only and there was no other claims received till 18.09.2020, which was the last date of receipt of claims as per the provision of Regulation 31A(2) of the Liquidation Process Regulations. The provision of Regulation 31A(2) is as under :-

“(2) The voting share of a member of the consultation committee shall be in proportion to his admitted claim in the total admitted claim:

Provided a secured creditor who has not relinquished his security interest under section 52 shall not be part of the consultation committee;



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Provided that the promoters, directors, partners or their representatives may attend the meeting of the consultation committee, but shall not have any right to vote.

Provided further that a financial creditor or his representative, if he is a related party of the corporate debtor, shall not have right to vote.”

135. The objection of the applicant in IA No.89/2022 would not thus, be tenable in view of the fact that no claim was lodged by him till the last date of receipt of claims, and moreover, the decision taken in the SCC meeting in any case would not be adversely impacted in view of the fact that the applicant would have no right to exercise his vote.

136. Another grievance of the applicant pertains to the formation of the SCC. The applicant contends that the employees never consented to Mr. P.K. Mukhopadhyay representing them nor is his claim is the highest among employees' admitted claims. In reality, he merely follows the orders of the respondent/liquidator and has therefore, been inducted deliberately into the SCC by the liquidator. This has been fervently denied by the Respondent/liquidator who states that it was only after two letters dated 20.09.2020 and



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06.10.2020 were received by the liquidator from several employees of the corporate debtor that Mr. PK Mukhopadhyay was elected as their representative in the SCC.

137. The applicant in order to substantiate his claim, annexed a letter dated 12.02.2022 alongwith the said IA. This letter allegedly has been written by employees to the Liquidator requesting the Applicant to represent the Employees Welfare Trust. However, the liquidator took a stand to reject this said claim of the applicant in view of the fact that the SCC had already been formed prior in point of time in October, 2020. Therefore, the alleged claim of the applicant to represent the employees was rejected by the liquidator owing to unexplained delay on his part.

138. We have also taken due care in finding that the applicant in IA No.98/2022 as well as in IA No.89/2022 have been pursuing unwarranted, vexatious litigations one after the other before different forums and in several of them with overlapping prayers & reliefs being sought. Initially, they have



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filed a Company Appeal No.832 of 2020 challenging the order dated 19.08.2020 passed by this Tribunal, whereby the liquidation process was set into motion. The Hon'ble NCLAT has declined to interfere against the said order observing that no infirmity in the said impugned order dated 19.08.2020 has been found. Thus, the liquidation order has been found to be legally valid and upheld by the Hon'ble NCLAT, while however, directing that all attempts to sell the Corporate Debtor as a going concern or the business of the Corporate Debtor as a going concern in consultation with the Stakeholders Consultation Committee (SCC) shall be carried out.

139. While the Liquidator was taking steps for the purpose of selling the assets of the Corporate Debtor as a going concern by issuing publications in the newspapers, as already mentioned in our earlier part of the order, the Liquidator found no Expression of Interest being received in pursuance of such advertisements and therefore, as per the observations and instructions of the SCC, he decided to go for piecemeal



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sale of the assets. A Contempt Petition No.846/2020 was initiated before the Hon'ble NCLAT, *inter alia* praying as under:-

"3. Issue contempt against Mr. Supriyo Kumar Chaudhuri for violation of order dated 18.1.2022; and/or

a) Cancel the sale notice dated 24.1.22; and/or;

b) an inquiry and investigation must be conducted for the conduct of the liquidator; and/or

c) appoint a competent person to monitor the conduct of liquidator and keep the corporate debtor as going concern; and/or

d) any other order or direction may be passed which the Appellate Tribunal may deem fit and proper in the facts and circumstances of the case in the interest of justice. "

140. It is worth noticing that in the contempt petition, whereas the violation of the order dated 18.01.2022 was alleged, the cancellation of the sale notice dated 24.01.2022 was also sought. It is clear that such prayers made by the applicants were also not entertained by the Hon'ble NCLAT and ultimately on 08.03.2022, the aforesaid contempt petition was sought to be withdrawn and accordingly, the Hon'ble NCLAT ordered the contempt case to be dismissed as withdrawn. In addition to the aforesaid contempt petition, the



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applicants had also filed two appeals in Hon'ble Supreme Court bearing Civil Appeal Diary No.4692 of 2022 and Civil Appeal Diary No.8496 of 2022 against the order of NCLAT dated 18.01.2022. Both the appeals were dismissed.

- 141.** Even another attempt was made by the applicants before the Hon'ble NCLAT, where challenge was laid for setting aside the order dated 26.07.2021, whereby this Tribunal on an application filed by the Liquidator had allowed the application for distribution of an amount of Rs.61 Crore out of the accumulated cash profits lying in the bank accounts of the Corporate Debtor. Though the cause as propounded by the applicants before the Hon'ble NCLAT in these appeals concerning challenging the order dated 26.07.2021 passed by this Tribunal is distinct, however, the Hon'ble NCLAT while perusing the entire background of the matter held that it is a glaring case of abuse of process of court and even imposed costs upon the applicants of Rs.2 Lakh and Rs.5 Lakh respectively. The appeals were thus, dismissed in terms of an order dated 30.08.2022 passed by the Hon'ble NCLAT.



142. Now, by way of the present application, similar/ overlapping prayers have been made as made in the contempt petition for challenging the sale notice dated 24.01.2022; thus, pursuing vexatious litigations. It has been held by the Hon'ble Courts to be an abuse of process of law.

143. To cite a case, it is relevant to refer the judgement of the Hon'ble Supreme Court in **K.K. Modi vs K.N. Modi & Ors (1998) 3 SCC 573** wherein the Court opined :

“One of the examples cited as an abuse of the process of court is re-litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. The re-agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of courts' discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with



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circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding.

*In the case of **Greenhalgh v. Mallard** [19147 (2) AER 255] the e court had to consider different proceedings on the same cause of action for conspiracy, but supported by different averments. The Court, held that if the plaintiff has chosen to put his case in one way, he cannot thereafter bring the same transaction before the court, put his case in another way and say that he is relying on a new cause of action. In such circumstances he can be met with the plea of res judicata or the statement or plaint may be struck out on the ground that the action is frivolous and vexation and an abuse of the process of court.*

*In **McIlkenny v. Chief Constable of West Midlands Police Force and another** [1980 (2) AER 227], the Court of Appeal in England struck out the pleading on the ground that the action was an abuse of the process of the court since it raised an issue identical to that which had been finally determined at the plaintiffs' earlier criminal trial. The court said even when it is not possible to strike out the plaint on the ground of issue estoppel, the action can be struck out as an abuse of the process of the court because it is an abuse for a party to re-litigate a question or issue which has already been decided against him even though the other party cannot satisfy the strict rule of res judicata or the requirement of issue estoppel.”*

- 144.** A similar opinion has been expressed in **M. Nagabhushana vs State Of Karnataka & Ors 2011 SCC ONLINE SC 277:**



“29. In coming to the aforementioned finding, this Court relied on the Supreme Court Practice 1995 published by Sweet & Maxwell. The relevant principles laid down in the aforesaid practice and which have been accepted by this Court are as follows: "This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation. ... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material."

30. In the premises aforesaid, it is clear that the attempt by the appellant to re-agitate the same issues which were considered by this Court and were rejected expressly in the previous judgment in All India Manufacturers Organisation (supra), is a clear instance of an abuse of process of this Court apart from the fact that such issues are barred by principles of Res Judicata or Constructive Res Judicata and principles analogous thereto.”

145. The Hon’ble Delhi HC in its judgement of **Deepak Khosla vs Montreaux Resorts Pvt Ltd & Ors 2012 SCC Online Del 2338** discussed in great detail about vexatious litigation. The relevant excerpts have been produced hereunder:

“28. ... Similarly, baseless, frivolous or vexatious filing puts the machinery of justice under burden and puts opposite party to needless expense and delay. It is not absolutely unknown that litigants can file cluster of



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cases, enclose reams of paper in the name of pleadings, move repeated motions or briefs/applications to delay and stall proceedings. Courts when inundated with applications/petitions suffer immense pressure and burden, as each matter even when frivolous and vexatious takes time, has to be heard and then dictated/decided. The cause of justice is defeated and justice is denied to other litigants in good faith, who are denied prompt and quick justice because of the delay caused by vexatious, frivolous or even repetitive litigation. Judicial or court time is precious and it is the duty of the parties also to ensure that judicial time is not diverted and spent on pointless repetitive, frivolous or vexatious litigation at the expense of time, and justice due to other litigants is not delayed.

...

30. It is important to understand the terms "vexatious" or "vexatious litigant" and persons who indulge in vexatious or frivolous litigation. The term "vexatious" in common parlance means "To vex" means anger by a slight or a petty annoyance; irritate. "Vexation" means the Act or an instance of vexing or annoying or distressing thing. "Vexatious" means such as to cause vexation. (See The Oxford English Reference Dictionary, Edition-1995). The term "vexatious", when used in law, signifies an action not having sufficient ground therefore and seeking only to annoy the adversary. In Attorney General versus Barker [2000] 1 FLR 759, it was observed:-

"Vexatious is a familiar term in legal parlance. The hallmark of a vexatious proceeding is, in my judgement that it has little or no basis in law (or at least no discernible basis); that whatever the intention of the proceeding may be, its effect is to subject the defendant to inconvenience, harassment and expense, out of all proportion to any gain likely to accrue to the claimant; and



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that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process."

31. *The term "vexatious" not only applies to vexatious litigation but also to vexatious litigants. Vexatious litigant indulges in frivolous litigation which has the effect to put the other side to inconvenience and harassment. In other words, the judicial process is used in a way, which is significantly different from its ordinary and proper use. Whether a person is a vexatious litigant, therefore, depends upon the nature and character of the litigation, which is initiated. It also relates to the manner in which litigation is conducted.*

...

35. *In a given case, Court can opine that the litigant has become a vexatious litige or litigant even when there is no final decision in the earlier proceedings because of repetitive or habitual filing i.e. when the proceedings are repeatedly and habitually initiated on virtually identical cause of action with the object and purpose to cause prejudice or obstruct or interfere with the due course of the judicial proceedings. The conduct should be highly unreasonable to fall under the said category. Thus, manner by which proceedings are conducted may be relevant in determining whether the pro se litigant is indulging in frivolous litigation or is a vexatious litigant.*

36. *Rarely, but in exceptional cases, a quarrelsome, belligerent and combative litigant can be categorized as a vexatious litigant. Normally courts/judges are able to deal with and handle pro se litigants, but sometimes litigants demonstrate that they are completely uncontrollable and if audience is given to them the proceedings cannot continue. They perceive*



themselves to be right, no matter what the Judge does. They dictate. Nothing is acceptable unless the view or contention of the pro se litigant is accepted. When such litigants persistently indulge in intimidation or making gross imputations and cast aspirations causing breakdown or frequent adjournments of the judicial proceedings, inherent power to control the proceedings in an appropriate manner should be exercised. A persistent argumentative litigant, when in spite of the latitude, oversteps and becomes an obstacle, uses vague threats and abrasive behaviour or disrespectful language, the brazenness may not require the contempt, but injunction or a sanction under the inherent powers vested with the courts. Appropriate and deserving injunction or sanction, as may be necessary and required, should be given. These litigants for the sake of convenience can be called habitual contumelious litigant. The word "habitual" has been interpreted and explained above. The word "contumelious" postulates insolent and stubborn pervasiveness; incorrigible obstinacy; scornfully insolence and/or insulting rudeness in speech or manners in the court proceedings or conduct.

- 146.** Thus, such an act of multiplicitous litigation on the part of the applicant also delays the CIRP process, which in turn defeats the very purpose of IBC. Such delays contradict the fundamental objective of the Code, which aims for the completion of the process within a specified timeframe.
- 147.** An objection on the contrary have been raised on behalf of the liquidator that the applicant in IA No.98/2022 does not



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have locus to file the present application. The said IA has been filed purportedly by one Sri Yogesh Singh claiming to be representative of all the employees and the said IA has been instituted under the name and style of “Employees Welfare Trust through Yogesh Singh”. A supplementary affidavit was filed on 28th March, 2023 by Sri Yogesh Singh wherein also no trust deed has been attached. Only one page of the trust document has been attached at Page 144 alongwith the said supplementary affidavit. There is no complete document concerning the terms and conditions or objective of the creation of the trust. Further, neither any list of the trustees nor any list of the member employees that it has made under the said trust, has been attached. The said document, therefore, does not inspire confidence and thus, we find that entitlement of Sri Yogesh Singh to initiate the litigation by way of the present IA is not without doubts.

148. Ld. Sr. Counsel while arguing the matter on behalf of the Liquidator also challenged the maintainability of the IAs on the ground that the same suffer from resjudicata. It is argued



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by him that upon passing of the order dated 18.01.2022 by the Hon'ble NCLAT, the Liquidator had initiated steps for sale of the Corporate Debtor as a going concern and subsequently finding no Expression of Interest, the Liquidator had no option but to go for piecemeal sale of the assets on a stand alone mode. The applicants have chosen to file contempt petition before the Hon'ble NCLAT, wherein apart from raising an allegation that there is a violation of the order dated 18.01.2022, even a prayer was made for a cancellation of the sale notice dated 24.01.2022. The said contempt petition was, however, dismissed as withdrawn in terms of an order dated 08.03.2022 passed by the Hon'ble NCLAT.

149. It has been argued on behalf of the Liquidator that the prayer with respect to the challenge to the sale notice has been also raised in the present IAs, and therefore, once the contempt petition having been withdrawn, the present proceedings are barred by res-judicata.

150. We are in partial agreement with the contention of the Ld. Sr. Counsel representing the Liquidator as the contempt



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proceedings are *per se* of a different nature and are not the substantial proceedings on the original side of the petition/appeal. However, in the contempt petition, a prayer made to the effect of challenge to the sale notice dated 24.01.2022 having been made and the same is ordered to be dismissed as withdrawn without there being any liberty to pursue the said prayer with respect to the challenge to the sale notice dated 24.01.2022 in the present IA would be a repeated prayer and to that extent would be falling within the ambit of res-judicata.

- 151.** The principle of res-judicata has also been applied to the proceedings under IBC and in the case of Company Appeal (AT) (Ins) No. 699 of 2022 [*Vikas Dahiya vs. Arrow Engineering Limited & Anr.*] & Company Appeal (AT)(Insolvency) No. 812 of 2022 [*Oval Investment Private Limited vs. Arrow Engineering Limited & Anr.*]

“30. The Hon’ble Apex Court, recently held that doctrine of resjudicata is applicable to proceedings under IBC also in ***Ebix Singapore Pte Ltd. Vs Committee Of Creditors Of Educomp***⁶ held that the doctrine of resjudicata is applicable to the proceeding of IBC. In



paragraph-63, the Apex Court dealt with the doctrine of resjudicata adverting to the judgment in the **in Satyadhyan Ghosal v. Deorajin Debi** (1960) 3 SCR 590, the Apex Court held:

“7. The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a resjudicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter — whether on a question of fact or a question of law — has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in Section 11 of the Code of Civil Procedure; but even where Section 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct.”

From the above extract, it is clear that while res judicata may have been codified in Section 11 that does not bar its application to other judicial proceedings, such as the one in the present case.

31. In view of the principle laid down in the above judgment strictly doctrine of resjudicata is applicable even to the proceedings under IBC and challenge to the findings in incidental or collateral proceedings amounts to an abuse of process of Court. In any view of the matter, when the Appellant raised a specific ground before the Adjudicating Authority and before this Tribunal in the first round of litigation as narrated above, against the order passed by this Tribunal in judgment passed in



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Company Appeal (AT)(Ins) No. 183 of 2021, affirmed by the Hon'ble Apex Court in Civil Appeal No. 7715 of 2021 dated 05.05.2022, again raising such grounds in the second round of litigation in incidental proceedings is nothing but an abuse of process of Court.

...

39. In view of the principle laid down in the above judgements, the principle of res-judicata, though a part of CPC, it would be applicable to the proceeding of this Tribunal and IBC. Only to prevent the abuse of process of law and give a finality to any proceeding, or orders, and to avoid an endless litigation to frustrate the very object of enacting IBC, the claim of appellants is liable to be rejected”

From above it is clear that the principles of resjudicata clearly apply to the proceedings under IBC and the judgment quoted on behalf of the applicant is based upon different factual matrix.

- 152.** Further, so far as challenge to the sale notice dated 24.01.2022 is concerned, we are conscious of the limitations of this Tribunal acting under the provisions of IBC to interfere in such matters where a conscious decision has been taken by the Stakeholder Consultation Committee (SCC) to sell the assets of the Corporate Debtor on a piecemeal basis. It may be worthwhile to refer the case of R. K. Industries (Unit - II) LLP vs. H. R. Commercials Private Limited [2022 SCC Online SC 1124]:



“64. ... The jurisdiction bestowed upon the Adjudicating Authority [NCLT] and the Appellate Authority [NCLAT] are circumscribed by the provisions of the IBC and borrowing a leaf from *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta*, they cannot act as a Court of equity or exercise plenary powers to unilaterally reverse the decision of the Liquidator based on commercial wisdom and supported by the stakeholders. The Court has also observed in the captioned case that “from the legislative history, there is contra-indication that the commercial or business decisions of the financial creditors are not open to any judicial review by the adjudicating authority or the appellate authority.” A similar reasoning has prevailed with Respondent/liquidator in *K. Sashidhar v. Indian Overseas Bank, Committee of Creditors of Amtek Auto Limited v. Dinkar T. Venkatasubramanian, Kalpraj Dharamshi v. Kotak Investment Advisors Limited, Ghanashyam Mishra And Sons Private Limited through the Authorized Signatory v. Edelweiss Asset Reconstruction Company Limited through the Director and Jaypee Kensington Boulevard Apartments Welfare Association (Supra)*. The aforesaid view will apply with equal force to any commercial or business decision taken by the Liquidator for conducting the sale of the movable/immovable assets of the Corporate Debtor in liquidation. The Appellate Authority cannot don the mantle of a supervisory authority for overseeing the validity of the approach of the respondent/liquidator No. 2 - Liquidator in opting for a particular mode of sale of the assets of the Corporate Debtor.”

- 153.** A similar view has also been taken in *Pratap Technocrats Private Limited & Ors. Vs. Monitoring Committee of Reliance Infratel Limited & Anr* wherein it is stated :



“44. *These decisions have laid down that the jurisdiction of the Adjudicating Authority and the Appellate Authority cannot extend into entering upon merits of a business decision made by a requisite majority of the CoC in its commercial wisdom. Nor is there a residual equity based jurisdiction in the Adjudicating Authority or the Appellate Authority to interfere in this decision, so long as it is otherwise in conformity with the provisions of the IBC and the Regulations under the enactment.*

...

47. *Hence, once the requirements of the IBC have been fulfilled, the Adjudicating Authority and the Appellate Authority are duty bound to abide by the discipline of the statutory provisions. It needs no emphasis that neither the Adjudicating Authority nor the Appellate Authority have an unchartered jurisdiction in equity. The jurisdiction arises within and as a product of a statutory framework.”*



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- 154.** In view of the foregoing discussions, the IA No.98/2022 and IA No.89/2022 are dismissed. The interim order dated 4th April, 2022 passed in IA No.98/2022 stands discharged accordingly.
- 155.** Certified copy of the order may be issued to all the concerned parties, if applied for, upon completion of requisite formalities in the Registry.

-Sd-

(Ashish Verma)
Member (Technical)

-Sd-

(Praveen Gupta)
Member (Judicial)

Aditi Kharbanda
(LRA)