IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH-I, CHENNAI

CA / 1266 /2019 in CP/ 514/IB/ 2017 filed under Section 230 of the Companies Act, 2013 read with the applicable provisions of I&B Code, 2016.

In the matter of ***M/s. Servalakshmi Paper Limited***

S. Dhanapal,
Liquidator of
M/s. Servalakshmi Paper Limited

... Applicant/Liquidator

-Vs-

1. **Indian Overseas Bank**
   Asset Recovery Management Branch
   11/952 Cross Cut Road, Gandhipuram,
   Coimbatore – 641 012.

2. **M/s. Asset Reconstruction Company(India) Limited,**
   The Ruby, 10th Floor 29,
   Senpati Bapat Marg,
   Dadar (West) Mumbai – 400 028

3. **M/s. Sridhivi Asset Reconstruction and Securitization Company Limited,**
   Raja Praasadamu, 4th Floor,
   Wing No.1, Plot No.6,
   6A, 6B, Masjid Banda Raod,
   Kondapur,
   Hyderabad – 500 084

4. **M/s. Sun Paper Mill Limited**
   No.11/6, Ratnapuri, 2nd Street,
   Koyambedu,
   Chennai – 600 107

5. **M/s. Seshasayee Paper and Boards Limited**
Pallipalayam, Cauvery RS PO,
Namakkal District,
Erode – 638 007

...Respondents

Order Pronounced on 13th March 2020

CORAM:

R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

Counsel for Applicant	:	*Karthik Seshadri, Advocate* *A.M. Illango, Advocate* *S. Dhanapal, Liquidator*
Counsel for Respondents	:	*Sheela Venkatesh, Advocate* *For R1 – R3* *T.K. Bhaskar, Advocate* *For R4* *R. Sankaranarayanan, Senior Advocate* *Ravi Rajagopalan, Advocate* *For R5*

ORDER

Per: R.VARADHARAJAN, MEMBER (JUDICIAL)

While a want of alternative leaves with no choice, a problem of plenty also poses a unique challenge to choose from. Even though, in the instant case it is neither of the two, however it is the problem of only an alternative which has compelled the Liquidator to move this application seeking for directions as prayed for in the prayer portion of the application which are to the following effect: -

a) *To pass appropriate orders dispensing with holding of any meetings of unsecured Creditors and meeting of shareholders for the approval of the Scheme.*

b) *To approve either Scheme A submitted by M/s. Seshasayee Paper and Board Limited or Scheme B submitted by M/s. Sun Paper Mill Limited in the interest of the justice.*

c) *In the event Honorable Tribunal approves Scheme B, direct the Scheme Applicant viz. M/s. Sun Paper Mill Limited to pay the liquidation costs of full sum of Rs.2,73,30,264.00 in modification of liquidation cost offered in scheme B as approved by CoC and thus render justice.*

d) *To provide any other relief which may be found suitable to facilitate the Liquidator to discharge his function effectively and such further orders be passed or directions be given as your Lordships may deem fit and proper.*

Brief facts which are relevant for the consideration of this application are as follows: -

1. Based on a petition moved by one of the operational creditors of the company in Liquidation against the Corporate Debtor under the Insolvency and Bankruptcy Code, 2016 (hereinafter simply referred to as IBC,2016 or the Code) this Bench of the Tribunal on 21.06.2017 admitted the petition and initiated the Corporate Insolvency Resolution Process (CIRP) in relation to the Corporate Debtor. Curiously, during the CIRP, no resolution of the insolvency could be reached in

view of no resolution plan(s) was approved by the Committee of Creditors(COC) constituted by the Interim Resolution Professional/Resolution Professional (IRP/RP) and in the circumstances an order of Liquidation came to be passed by this Bench of the Tribunal on 24.04.2018, whereby the applicant herein came to be appointed as the Liquidator.

2. Aggrieved by the said order of Liquidation dated 24.04.2018, appeals were filed before the Hon'ble NCLAT by a promoter of the Corporate Debtor presently in Liquidation, in Company Appeal (AT)(Insolvency) No.224 of 2018 and by one of the Financial Creditors of the Corporate Debtor who happened to be one of the unsuccessful Resolution Applicant in Company Appeal (AT)(Insolvency) No.286 of 2018 and both the above said appeals came to be disposed by a common order dated 27.02.2019.

3. While disposing of the appeals, the Hon'ble NCALT after elaborate consideration of the erstwhile provisions of Section 391 of the Companies Act, 1956 as well as the present Section 230 of the Companies Act, 2013 and decided case laws of the Hon'ble Supreme Court in relation to the power

vested in this Tribunal under the provisions of Companies Act, 2013 to consider and deal with a compromise or make arrangements that may be proposed with creditors and members of a company including in relation to a company in liquidation, as is the case in the present instance, had directed the Liquidator in paragraph 8 in the said order-in-appeal, the applicant herein, to take steps in terms of Section 230 of the Companies Act, 2013 based on its earlier decision passed as follows:-

> *In, "**S.C. Sekaran v. Amit Gupta & Ors.** Company Appeal (AT) (Insolvency) Nos. 495 & 496 of 2018, holding as follows;*
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> > *8. In view of the provision of Section 230 and the decision of the Hon'ble Supreme Court in 'Meghal Homes Pvt. Ltd.' and 'Swiss Ribbons Pvt. Ltd.', we direct the 'Liquidator' to proceed in accordance with law. He will verify claims of all the creditors; take into custody and control of all the assets, property, effects and actionable claims of the 'corporate debtor', carry on the business of the 'corporate debtor' for its beneficial liquidation etc. as prescribed under Section 35 of the I&B Code. The Liquidator will access information under Section 33 and will consolidate the claim under Section 38 and after verification of claim in terms of Section 39 will either admit or reject the claim, as required under Section 40. Before taking steps to sell the assets of the 'corporate debtor(s)' (companies herein), the Liquidator will take steps in terms of Section 230 of the Companies Act, 2013. The Adjudicating*

Authority, if so required, will pass appropriate order. Only on failure of revival, the Adjudicating Authority and the Liquidator will first proceed with the sale of company's assets wholly and thereafter, if not possible to sell the company in part and in accordance with law."

4. Going further, the Hon'ble NCLAT had also chosen to issue guidelines if a Scheme contemplated under Section 230 of the Companies Act, 2013 gets placed before this Tribunal in relation to a company in liquidation under the Code at paragraph 18 and 19 of the order-in-appeal dated 27.02.2019 as follows:

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

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

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

5. With a view to give effect to the order of the Hon'ble NCALT, the applicant submits that advertisements were issued by him in the newspapers Business Standard and Malai Murasu calling for Expression of Interest (EOI) for the submissions of a Scheme and pursuant to the same two Schemes came to be propounded by two Scheme Applicants, namely, M/s. Seshayee Paper and Boards Limited (for brevity called

hereinafter as `SPBL' or `SPB' as the case may be), the 5th Respondent herein and the said Scheme of SPBL designated for ease of reference as Scheme A by the applicant/liquidator and the other one by M/s. Sun Paper Mill Limited (for brevity called hereinafter as `SPML' or SPM as the case may be), the 4th Respondent herein and the said Scheme of SPML being designated for ease of reference as Scheme B by applicant/Liquidator, both of which are adopted in the instant order as well, for our ease of reference. Hence, in the circumstances of obtaining two Schemes pursuant to paper publications, the Liquidator had sought for directions of this Tribunal in MA/678/2019to constitute a committee of creditors (COC) and for placing the said two Schemes before the COC for the purpose of ascertaining their opinion as to its viability, feasibility and having appropriate financial matrix for the revival of the Corporate Debtor in liquidation.

6. Directions as sought for, it is averred, was issued by this Bench on 31.07.2019, and consequently on COC being constituted, the Liquidator intimated the members of the COC in relation to a meeting proposed to be held on 19.08.2019 inter-alia to discuss about the Liquidation costs

reserved in the respective Schemes and of the opinion of the COC in relation to the Schemes of Arrangement or Compromise proposed by the proponents in relation to its viability, feasibility and having appropriate financial matrix as ordered by this Tribunal.

7. After receiving the opinions of the individual members of the COC in relation to the Schemes prior to the meeting and also circulating it, the COC it is stated by the applicant/liquidator had expressed its opinion favorably in relation to Scheme B as propounded by SPML, subject to certain changes being accepted by the said SPML as suggested by the individual members of the COC and of which changes as sought for had also been communicated to the said SPML by the applicant/liquidator, while at the same time also communicating to SPBL, the unfavourable opinion expressed by the COC in relation to the Scheme propounded by it, namely Scheme A.

8. In response to the said communication sent to both SPML as well as SPBL, both the proponents of their respective Schemes desired a meeting with the members of the COC,

which it is averred was also arranged by the applicant thereby giving an opportunity to the proponents of the respective Schemes to discuss their issues/concerns in person on 09.09.2019 and subsequently based on their individual discussions with the members of the COC, both the proponents of the Scheme have also filed their modifications to the original Scheme propounded respectively by them, which modifications were also duly circulated to the members of the COC by the applicant and asking them to come forward with their final opinion. The individual opinions forwarded as their response it is seen has been extracted in detail by the applicant in the application which may not be material for being reproduced in entirety for sake of brevity, however, at the same time, observing the fact that after the above exercise, the members of the COC had once again expressed their opinion favourably to the Scheme B as propounded by SPML as compared to the Scheme A as propounded by SPBL.

9. The synopsis of the respective Schemes, namely of Scheme A and Scheme B have also been given by the Liquidator/Applicant which is required to be captured for ease of reference and which is to the following effect:

Synopsis of Scheme A submitted by M/s. Seshasayee Paper and Boards Limited:-

a. *This Scheme A submitted by M/s. Seshasayee Paper and Boards Limited (SPB) is a Composite Scheme of Compromise / Arrangement with and between the Company, Creditors and Shareholders of Corporate Debtor and the proposed Scheme of Amalgamation of Corporate Debtor with SPB under Sections 230-232 of the Companies Act, 2013.*

b. *This Composite Scheme, subject to such terms, conditions, assumptions and approvals, proposes that the Corporate Debtor, represented by its Liquidator enters into a Compromise or an Arrangement with its Secured Creditors. Unsecured Creditors and the Members/Equity Shareholders, separately so as to deal with the twin causes/consequences of the Insolvency of the Company/Corporate Debtor, namely the excessive and expensive debt burden and accumulated losses and eroded equity capital are addressed.*

c. *This Composite Scheme, proposes a Comprehensive Total Scheme Settlement Amount taking care of the interest of all stakeholders of the Corporate Debtor, including Employees.*

d. *This Composite Scheme, considers the overall interests of quick revival of the Unit and also considering the huge funds that needs to be brought in for refurbishment/restart of SPL's plant, hereby proposes a one-time settlement and seeks full waiver of the interest due till date and remaining unpaid.*

e. *The Scheme A mentions the following table under its Composite Scheme providing the details of the mode of discharge of accepted Financial/Secured Creditors Claims and the proposed Arrangement/Compromise with them.*

(Rs in Lakhs)

Secured Creditor	**Claim Admitted and Proportion to the total claim for the class**	**Amount paid in Compromise / Arrangement**
Indian Overseas Bank	33804.70 (49.57%)	7931.23 (49.57%)
Prithvi Asset Reconstruction & Securitization Company Ltd	15830.90 (23.21%)	3713.62 (23.21%)
Asset Reconstruction Company India Ltd.	18557.60 (27.22%)	4355.22 (27.22%)
Total	**68193.20 (100.00%)**	**16000.07 (23.46%)**

f. *The Scheme A considering the interest of the existing shareholders of Corporate Debtor, the SPB intends to value the Corporate Debtor's Equity Share at* ***Rs. 1 per share****, though not obliged to do so. Based on the fair value estimation of the Equity Shares of SPB as on the cut-off date, the Shareholders of Corporate Debtor will be allotted Equivalent number of Equity Shares of SPB.*

g. *This Composite Scheme puts both the Company as well as the Scheme Proposer completely discharged of all liabilities due towards Claims by Secured Creditors upon payment of the said Scheme Settlement Amount in accordance with this proposed Scheme, including discharge as against claims by Guarantors by way of subrogation.*

Synopsis of Scheme B submitted by M/s.Sun Paper Mill Limited:-

a. *This Scheme B submitted by M/s.Sun Paper Mill Limited (SPM) is an Scheme providing only for Compromise/Arrangement with and between the Company and its creditors and shareholders of Corporate Debtor.*

b. The Scheme B proposes to take over the Corporate Debtor by way of acquiring the entire assets of the Corporate Debtor as per the information provided by the liquidator / Financial Statements along with all other encumbered assets provided as security to financial creditors.

c. The envisaged Arrangement scheme is to ensure the revival and continuity of business along with most effective use of the factory Building, Plant and machineries, and other assets of the corporate Debtor.

d. The Scheme B opts to write off the present equity share capital of the Corporate debtor and will there after infuse fresh equity share capital after complying with all applicable laws of the land within 90 days from the date of NCLT approving the Arrangement Scheme.

e. The Scheme B envisage issue of shares for the funds infused in the form of capital and the balance amount infused by the SPM as a part of the arrangement Scheme will be treated as secured / unsecured loans. Apart from this the SPM will be infusing sufficient amount as working capital for the smooth functioning of the business in the form of Secured and Unsecured Loan.

f. The Scheme B mentions the following table under the Composite Scheme providing the details of the mode of discharge of accepted Financial/Secured Creditor Claims and the proposed Arrangement/Compromise with them.

(Rs in Lakhs)

Secured Creditor	**Claim Admitted & proportion to the total claim for the class**	**Amount paid in Compromise / Arrangement**
Indian Overseas Bank	33804.70 (49.57%)	76833.50 (49.57%)
Prithvi Asset Reconstruction & Securitization Company Ltd	15830.90 (23.21%)	42175.50 (23.21%)
Asset Reconstruction Company India Ltd.	18557.60 (27.22%)	35991.00 (27.22%)
Total	**68193.20 (100.00%)**	**15500.00 (22.73%)**

* *However there seems to be some error in the figures in the addition*

g. *As per Scheme B, the SPM shall take over the business of the company and run the factory so as to reach its full capacity for manufacture of News Print and other grades of paper.*

10. **Thus it can be discerned from the application and which is also material to note that the Liquidator/Applicant has come to a conclusion expressing his opinion in favour of Scheme A as propounded by SPBL in contrast to the opinions of the COC expressing in favour of Scheme B as propounded by SPML, based on the yard stick allegedly of Asset Maximization said to be satisfied from his point of view as expressed by the Hon'ble NCLAT in its order dated 27.02.2019 at paragraph 18, of which paragraph also**

stood extracted in full in paragraph supra of this order, and thereby seeking for the prayers as sought for in the application in light of the contrasting opinions of the Liquidator on the one hand and the COC on the other.

11. Guided by the decision of the Hon'ble NCLAT in a plethora of judgements passed by it taking into consideration the avowed objectives of IBC, 2016 as given in its `Statement of objects and Reasons', including the one in relation to the company in liquidation on hand, it is seen that instead of dissolution of a corporate debtor, in case of a viable Scheme proposed, the Adjudicating Authority is required to consider the same by wearing in effect dual hats, one as the adjudicating authority named under IBC, 2016 in the matter of Liquidation and the other as a Tribunal functioning as such in relation to approval of a Scheme as envisaged under Section 230 of the Companies Act, 2013. However, in relation to the company in liquidation acting under Section 230 of the Companies Act, 2013, the Liquidator has placed not one, but two Schemes before this Tribunal for its consideration and has sought the directions of this Tribunal to decide which of the Schemes, namely Scheme A or Scheme B is to be approved. Further

curiously dispensation of the meetings of the stakeholders and unsecured creditors are also sought for by the Liquidator without seeking for any commensurate prayer in relation to secured creditors or other creditors if any of the company in liquidation. During the course of oral submissions in this regard, it was submitted by Ld. Counsel for the Liquidator that even the convening and holding of meetings of the Secured Creditors can also be dispensed with, in view of the opinion already expressed by the members of the COC in favour of Scheme B and with a view to obviate time delay. In any case, however it is also argued that his decision, namely that of Liquidator is required to prevail over that of the COC in relation to the Scheme preference. On this count, it is fairly conceded by the Ld. Counsel for the Liquidator that his preference is with Scheme A as the liquidation costs which also includes his fees is fully provided for in Scheme A as compared to that of Scheme B in relation to which a favourable opinion has been given by the COC.

12. With a view to buttress the arguments of the Liquidator that his opinion should prevail in the matter of Liquidation as compared to the opinion of COC he seeks to rely on the provisions of sub-section 2 of Section 35 of IBC, 2016 and

the two provisos contained thereunder. It is also sought to be highlighted by the Ld.Counsel for the applicant/liquidator in relation to his powers vested on him under IBC, 2016, by trying to make a distinction that of a liquidator and a Resolution Professional, that while in relation to the latter during the CIRP proceedings and consideration of a Resolution Plan during its course, the decisions of the COC will prevail, however in the case of liquidation proceedings the COC can only express its opinion whereas the decision in relation to the Liquidation Estate is required to be taken only by the Liquidator.

13. If that were so, the Liquidator should have placed before this Tribunal only Scheme A and sought for the approval of the said Scheme in terms of Section 230 of the Companies Act, 2013 and should not have placed the alternative Scheme as well before this Tribunal seeking for its approval of either of one of the Schemes and in this we find a paradox.

14. On the other hand the members of the COC arrayed as Respondents 1 to 3 with Respondent No.4 contends that only Scheme B as propounded by SPML and for which a favourable opinion has been expressed by all the members of the COC is

alone required to be placed before the different stakeholders as specified under Section 230 of the Companies Act, 2013 for their consideration, thereby drawing a parallel to the proceedings in relation to CIRP and the powers of the COC vested under the law and as well as the interpretation given by the Hon'ble Supreme Court that the commercial decision of the COC is to prevail absolutely brooking no interference in the approval or rejection of a resolution plan and that the Resolution Professional therein does not have any say in the decision making in relation to a plan other than scrutiny that the Scheme is within parameters and ascertaining that the proponents do not suffer any disqualification and performing the administrative functions of placing it before the COC. From the submissions made during the course of arguments of respondents 1 to 3 it is evident that even though both the Schemes are almost proximate to each other in their financial outlay, save certain differences in the allocation of funds to the different stakeholders, however, in relation to disbursal of the consideration as contemplated in the Schemes, since there are no preconditions laid down by SPML as compared to SPBL and the time for disbursal seems to be speedier and quicker to the secured creditors under Scheme B, their preference seem to lay with the Scheme B formulated and propounded by SPML.

15. Further Ld. Counsel for the 4th respondent also submits that taking into consideration the provisions of Section 230 of the Companies Act, 2013 as well as the law enunciated by the Hon'ble NCLAT at paragraph 18 of the judgment passed in Company Appeal (AT) (Insolvency)No.224 of 2018 extracted in paragraph supra, it becomes incumbent for this Tribunal to call for a meeting of the members and creditors and ascertain their decisions in relation to the Scheme ordered to be placed before them prior to its approval. In any case it is also pointed that it will also enable compliance with the provisions of Section 230 of the Companies Act, 2013 and since the above noted judgment at paragraph 18 has also provided for this Tribunal for playing a dual role as well as to overrule irrelevant objections as may be raised by one or the other creditor or member keeping in view the object of IBC, 2016 the exercise can play a crucial role in ascertaining the views of the different stakeholders. However, all the parties are of the unanimous view that it is only one Scheme either A or B, even if this Tribunal decides to convene the meetings of the members and creditors as contemplated under Section 230 of

the Companies Act, 2013 is required to be placed for consideration and voting.

16. Before going into the Schemes propounded by the parties since this Tribunal is directed to play a dual role both as an adjudicating authority under IBC, 2016 and as a Tribunal vested with the power to sanction a Scheme of Compromise or Arrangement by virtue of Section 230 of the Companies Act, 2013 a reference to the provisions it is considered will be necessary as extracted in paragraph 19 infra.

17. Reference to Schedule XI of IBC, 2016 in relation to the amendments made to the Companies Act, 2013 therein and Section 230 read with Section 343 of the Companies Act, 2013, both as amended by IBC, 2016 empowers a Company Liquidator to approach this Tribunal for sanction of a Scheme of Compromise or Arrangement with the creditors when the company is being wound up and the definition clause contained under Section 2(94A) of the Companies Act, 2013 defines a "winding up" to mean winding up under the Companies Act, 2013 or liquidation under IBC, 2016 as may be applicable. Proceeding onwards to the regulations framed by IBBI in relation to liquidation process, Regulation 2B of the

Liquidation process Regulations as amended effective from 06.01.2020 provides for the onus of paying the liquidation cost in relation to a compromise or arrangement proposed. Even though the Regulation seems to be prospective in its application, however it is pertinent to note that a classification is sought to be made in relation to the onus of payment of the liquidation cost based as to whether the approval of this Tribunal of the Scheme is under sub-section 230(6) of the Companies Act, 2013 or otherwise than under Section 230(6) of the Companies Act, 2013. While in the former case it is the Corporate Debtor which is required to bear the liquidation cost, while in the latter it is the Scheme proponents. Thus, a distinction is sought to be drawn by the Regulator, namely IBBI while framing the concerned regulations in relation approval granted under Section 230(6) of the Companies Act, 2013 and the approval when it is not granted under Section 230(6) of the Companies Act, 2013. Even though as already stated it may not be material as Regulation itself came into effect after the initiation of the Liquidation Process and the law which is required to govern is the one which was in vogue at the relevant point of time, however it gives a pointer to the intent of the Regulator. It is also pertinent to note at this stage while still on the subject of Liquidation Cost, the regulation governing the Liquidator's fees under Regulation 4 of the Liquidation Process Regulations there seems to be some apprehension in the minds of the Liquidator which has induced the Liquidator to prefer Scheme A as compared to Scheme B as already dealt with in the earlier paragraph of this order. Be that as it may, now turning to the substantive provisions of Section 230 of the Companies Act, 2013 in relation to the approval of a Scheme it reads as follows: -

> ***230. Power to compromise or make arrangements with creditors and members.—*** *(1) Where a compromise or arrangement is proposed—*
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> *(a) between a company and its creditors or any class of them; or*
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> *(b) between a company and its members or any class of them,*
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> ***the Tribunal may, on the application of the company or of any creditor or member of the company, <u>or in the case of a company which is being wound up, of the liquidator</u>,*** *order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.*
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> *Explanation.—For the purposes of this sub-section, arrangement includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.*

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

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

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

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

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

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

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

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

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

(3) ***Where a meeting is proposed to be called in pursuance of an order of the Tribunal under subsection (1), a notice of such meeting shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company, individually at the address registered with the company*** *which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material*

interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed:

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

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

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

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

(5) A notice under sub-section (3) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India established under sub-section (1) of section 7 of the Competition Act, 2002 (12 of 2003), if necessary, and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.

(6) Where, at a meeting held in pursuance of sub-section (1), majority of persons representing three fourths in

value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company being wound up, on the liquidator and the contributories of the company.

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

(a) where the compromise or arrangement provides for conversion of preference shares into equity shares, such preference shareholders shall be given an option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable;

(b) the protection of any class of creditors;

(c) if the compromise or arrangement results in the variation of the shareholders 'rights, it shall be given effect to under the provisions of section 48;

(d) if the compromise or arrangement is agreed to by the creditors under sub-section (6), any proceedings pending before the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) shall abate;

(e) such other matters including exit offer to dissenting shareholders, if any, as are in the opinion of the Tribunal necessary to effectively implement the terms of the compromise or arrangement:

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

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

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

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

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

(12) An aggrieved party may make an application to the Tribunal in the event of any grievances with respect to the takeover offer of companies other than listed companies in such manner as may be prescribed and the Tribunal may, on application, pass such order as it may deem fit.

Explanation.—For the removal of doubts, it is hereby declared that the provisions of section 66 shall not apply to the reduction of share capital effected in pursuance of the order of the Tribunal under this section.

18. Armed with the above provisions of law as well as guided by the principles laid down by the Hon'ble NCLAT in a catena of decisions, including the one in relation to the corporate debtor in Y. Shivram Prasad case, it is required to be seen that while keeping the objectives of IBC, 2016 in mind this Tribunal is required to approach and look into the Scheme propounded by the proponents keeping the well-established principles laid down by the courts in India in relation to consideration and approval of such Schemes, conscious of the fact that the

corporate debtor is not in the process of CIRP and of approval of a resolution plan, but rather in the stage of liquidation process and is confronted with a Scheme of Compromise or Arrangement which in its sweep also includes a Scheme of Amalgamation. The common objective to be achieved, in any case whether it be during the CIRP or during the liquidation process while considering a Scheme of the nature on hand is for re-organisation of the corporate debtor in a time bound manner for maximization of value of assets of such persons and to promote entrepreneurship by balancing the interest of all the stakeholders, however the procedural approach between the two differs in view of the position that there is no prescribed procedure laid down in IBC, 2016 as well as the attendant rules and regulations framed thereunder for the consideration of Schemes on hand as compared to the well laid down legal mechanism provided in IBC, 2016 for the consideration of a resolution plan and under the circumstances IBC itself provides for recourse to be taken to the provisions for consideration of the Scheme under Section 230 of the Companies Act, 2016 in this regard. This might lead to differential yardstick being adopted while considering a Scheme as compared to a Resolution Plan, eg., while in relation to the approval of a Resolution Plan, the commercial decision of the COC with 66% majority prevails, however, in relation to a Scheme of compromise or arrangement the threshold limit for approval which is fixed, is to the extent of three-fourth in value of the creditors or class of creditors or members or class of members as the case may be voting in accordance as provided for under Section 230(6) of Companies Act, 2013.

19. Further, the guiding force which drives the CIRP is the COC with the assistance of Resolution Professional, however in relation to Liquidation Process, the guiding force is required to be the Liquidator with the Stakeholders Committee comprising of the stake holders as mentioned in Section 35(2) of IBC, 2016 read with Regulation 31A of the Liquidation Process Regulations framed by IBBI having the role of only an advisory committee and that too not having a binding effect. Of course, Regulation 2B of the Liquidation Process Regulations provides for a time period of 90 days for completion of a Scheme of compromise or arrangement from the date of the order of liquidation during which time the clock is required to hold its hand still in relation to liquidation

process, in view of the said 90 days period not required to be taken for the calculation of the liquidation period however, in this case it is to be noted that the order of Liquidation was passed by this Tribunal on 24.04.2018 which came to be challenged before the appellate authority and the appeal which came to be disposed of on 27.02.2019. After such disposal, the Schemes were presented only in the month of October 2019 for the approval vide the above application and in the circumstances, even assuming that during the 90 days period the writ of the COC is required to take precedence it cannot be so in the instant case unless the delay in placing the Scheme before this Tribunal is excluded. Thus in relation to a liquidation process there seems to be a conflict as to whether the writ of the COC will prevail or that of the Liquidator who has been granted the power to deal with the Liquidation Estate, however, subject to the directions of this Tribunal as provided under the substantive provisions of Section 35(2) read with the Regulations for which approval of this Tribunal is required, one being the approval of the Schemes.

20. Alternatives even though welcome, however places a difficulty of choice and the same can be achieved only by comparing the two Schemes available on hand by looking into the Schemes in further detail reading in light of the synopsis. Scheme A in this regard as propounded by SPBL is taken up first. The important and salient clauses with the clause number given in the Schemes itself being maintained in relation to the Schemes for this purpose is extracted for analysis: -

a) *The nature of the Scheme is given in Clause 1(b) of the Scheme A which is as follows:-*

> ***A scheme of amalgamation with Seshasayee Paper Boards Ltd ("SPB") under Sections 230-232 and other applicable provisions of the Companies Act, 2013, (with SPL being the "Transferor" or "Amalgamating" Company and the SPB being the "Transferee" or "Amalgamated" Company).***

b) *The objective of the Scheme A is detailed in clause 10 of Part IV of the Scheme which reads as follows: -*
The proposed draft Composite Scheme has been formulated keeping in mind the overarching objective to revive SPL, maximize the value of its assets and balance the interests of all stakeholders in consonance with the objectives of the Code while at the same time recovering the capital which has already been sunk, to be productively redeployed for the betterment of the local economy and regenerate employment.

c) *The proposer of Scheme A confirms compliances with the terms and conditions of the invitation calling for EOI and its response in clause 14 and 15 of the said Scheme*

d) *The need for SPBL to go in for the Scheme propounded by it is detailed, interalia in clauses 18 to 22, 26 and 28 of the Scheme and also demonstrating its turn around ability of sick companies like the company in liquidation which are as follows:-*

<u>Background capabilities of SPBL as given in the Scheme</u>

18. SPB has established itself as one of the leading Integrated Paper and Paper Boards manufacturers in the Indian market. SPB has successfully countered the various market upheavals over the past 6 decades and has continued to show steady performance till date.

19. SPB is active both in Domestic and Export markets. In the Domestic market, SPB caters to Customers pan-India. The cyclical nature of the industry has not affected the marketing ability of the SPB, thanks to able and strong marketing network set-up over the past. The Company, in fact, has been achieving ZERO Stock position of Finished Goods, at the end of each financial year, for over the last 20 years. This indeed is unique in the paper industry.

20. SPB's existing channel and customer network can be leveraged to market the products of SPL in a better way, which can manufacture various varieties of writing and printing paper. In addition to the above, considering that the marketing policies and the strategies of SPB having withstood the test of time, SPB will be at a better footing when compared to its competitors in marketing SPL's products.

21. Both the units of SPB (Erode Unit and Tirunelveli Unit) are acknowledged producers of High Quality Printing and Writing paper. SPB will bring required technology and expertise and help reengineer SPL's product line and production facility so as to manufacture high quality Printing and Writing paper, hitherto not being done in SPL.

22. SPB's strength is its ability to work with all the four sources of pulp (input for paper manufacture) namely, Wood pulp, Bagasse pulp, Imported Pulp and De-inked pulp. This strategic advantage helps SPB not only manage costs but also enables it to manufacture a varied set of paper products. This strategic strength is currently enjoyed only by very few mills in India. SPB will be able to extend this strength to SPL and thus ensure that it quickly revives and achieves faster financial turnaround of the operations.

26. SPB has not yet been able to meet the full requirements of all its customers in Printing and Writing Paper segments considering the limited quantities that are available in its existing capacity. With SPL and its refurbished product mix, SPB will be in a position to open up and expand its Markets.

28. Further SPB has proven credentials in turnaround of stressed/sick units utilizing its unique and superior technical skills and financial prudence. In the year 2011, SPB acquired a sick unit located in Tirunelveli originally incorporated as "Subburaj Papers Pvt. Ltd. (SPMPL)". This unit was under severe financial stress and was then on the verge of liquidation. SPB, through a One Time Settlement with SPMPL's Bankers, took control of this asset and implemented the turnaround program with its senior team and the judicious management of cost and product profiles. The said turnaround is a case study which would demonstrate SPB'S prowess in managing and turning around stressed Paper manufacturing Units. The same would bear relevance to SPL'S case as well, considering the similar Plant & Machinery, Size and Capacities of the said SPMPL Unit and the SPL Unit.

e) The objective of the Scheme is detailed in paragraph 34 of the Scheme which for sake of brevity is not reproduced and not necessary for the disposal of the application being a commercial call taken by SPBL.

f) *The crucial part of the compromise/arrangement proposed by SPBL with the secured, unsecured creditors and other stake holders are dealt with in Section B, C and D of the Scheme and the tabulation encapsulating the figures proposed to be paid out vis-à-vis their admitted claim to each of them by SPBL is extracted hereunder:-*

TABLE A

(Rs. Lakhs)

Secured Creditor	*Claim Admitted & Proportion to the total claim for the class*	*Amount paid in Compromise / Arrangement*
Indian Overseas Bank	*33804.70 (49.57%)*	
Prithvi Asset Reconstruction & Securitisation company Ltd	*15830.90 (23.21%)*	
Asset Reconstruction Company India Ltd	*18557.60 (27.22%)*	
Total	**68193.20 (100.00%)**	**10104.00**

TABLE B

(Rs. Lakhs)

Unsecured Creditors *(Sub Category)*	*Claim Admitted & Proportion to the total claim for the class*	*Amount paid In Compromise / Arrangement*	*Remarks*
Operational Creditors (Employees-Other Than Promoters)	*66.90*	*66.90 (100%)*	*Scheme Proposer Intends to settle all employee claims admitted, in full*
Operational Creditors (Other Than Employees, Statutory Creditors & Promoters)	*3943.96*	*1340.96 (34%)*	*Scheme Proposer Intends to settle trade/operational creditors to the extent of 34% of their dues.*
Operational Creditors (Statutory - Claims filed)	*1199.01*	*1199.01 (100%)*	*Claims filed by Asst Commissioner (ST), Income Tax Dept. (Ward 2-CBE), Regional PF Commissioner (Tirunelveli), Director of Electricity Tax & Chief Electrical Inspector to the Govt*

Unsecured Financial Creditors – Others	*1162.40*	*0.00*	*Claims filed by Promoters (Including the claims as Employees)*
Total	***6372.27***	***2606.87***	
Provision for CIR & Liquidation Costs		*30.00*	
Total outlay for all Unsecured Creditors		***2636.87***	

21. Paragraphs 41 and 42 of Scheme A of SPBL deals with the manner in which they propose to deal with equity shareholders of the company in liquidation as given hereunder: -

41. The existing Equity share Capital of the Company, audited as of 31-03-2017 is as under:

	No of Shares (Rs. 10 Value)	***Value (Rs.Lakhs)***
Authorized Share Capital	*5,00,00,000*	*5,000.00*
Issued, Subscribed & paid Up Share Capital	*4,31,13,656*	*4,311.37*

The balance in Reserves & Surplus including Securities Premium Account of the Company audited as of 31-03-2017 is as under:

Account	***Balance as of 31-03-2017 (Rs. Lakhs)***
Securities Premium	*7290.63*
Surplus	*(52,950.95)*
Net Balance	***(45,660.31)***

42.Based on the above mentioned accumulated losses in the Equity account of SPL/ Transferor Company, the intrinsic value of an Equity $hare of

SPL (as per the audited financial statements for the year ended 31st March 2017) is ***Rs (-) 96 per Equity Share****. However, considering the interest of the existing shareholders of SPL, Scheme Proposer intends to value the SPL's Equity Share at* ***Rs. 1 per share****, though not obliged to do so. The total amount of outstanding Equity Shares of SPL as of 31-03-2017 is 4,31,13,656 (Four Crores & Thirty One Lakhs & Thirteen Thousand & Six Hundred & Fifty Six) and accordingly the nominal value of all the Equity Shares of SPL works out to Rs. 4,31,13,656/- (Four Crores & Thirty one Lakhs & Thirteen Thousand & Six Hundred & Fifty Six Only) .*

g) The consolidation of the above figures in relation to the outgo to be expended to each of the respective stakeholders is given by way of Table C to the Scheme A of SPBL which reflects as follows: -

Table C

(Rs. lakhs)

Category	***Scheme Settlement Amount***
Compromise / Arrangement with / to Financial Creditors (Secured) – Per Table A	*10104.00*
Compromise / Arrangement with / to Unsecured Financial Creditors& Operational Creditors – Per Table B	*2606.87*
Provision made for CIR and Liquidation Costs	*30.00*
Amount set aside for contingent Statutory Dues (Currently not admitted)	*2128.00*
Compromise / Arrangement with the Equity Shareholders of SPL (to be settled with Equity Shares of SPB under the Scheme of Amalgamation)	*431.13*
	15300.00

h) *With a view to demonstrate that SPBL has the financial muscle to successfully implement the Scheme the financial figures achieved over the past three years period is given in the Scheme as follows:-*

Financial Performance of the Scheme Proposer

The Turnover and Net worth details of SPB as provided below would substantiate its financial and business performance.

(Amount in Rs. Crores)

	FY 2017-18 (Ind-AS)	FY 2016-17 (Ind-AS)	FY 2015-16 (I-GAAP)
Reference	Annual report for the FY 2017-18	Annual report for the FY 2017-18	Annual report for the FY 2015-16
Turnover/ Revenue from sale of products	1097.87	1149.31	1015.70
Other operating revenues	19.92	17.36	15.80
Other income	9.40	8.14	4.28
Total income	**1127.19**	**1174.81**	**1035.78**

(Amount in Rs. Crores)

	As on 31.03.2018 (Ind-AS)	As on 31.03.2017 (Ind-AS)	As on 31.03.2016 (Ind-AS)
Reference	Annual report for the FY 2017-18	Annual report for the FY 2017-18	Annual report for the FY 2017-18
Share capital	12.61	12.61	12.61
Other Equity / Reserves & surplus**	651.79	532.22	399.37
Total Net Worth	664.40	544.83	411.98

***Excludes capital Reserve of Rs. 37.16 crores.*

i) *The usage of funds and sources of funding to successfully complete the Scheme of Amalgamation as contemplated between the Company under liquidation and the SPBL have also been given which pans out as follows:-*

TABLE -D

Uses of funds	*Amount required / earmarked (Rs. lakhs)*	*Remarks*
1.Compromise/Arrangement with Creditors including liquidation costs (but excluding the amount set aside for contingent statutory dues)	*12740.87*	*45 days from effective date or upon conclusion of appeals if any initiated by any stakeholder, whichever is later.*
2. Compromise/Arrangement with Equity share holders of SPL.	*431.13*	*Process of share exchange to commence after the expiry of 45 days from effective date or upon conclusion of Appeals if any initiated by any stakeholder, whichever is later.*
3. Amount set aside to meet Contingent Statutory Dues.	*2128.00*	*Upon the materialising of this statutory liability.*
4. Further capital investments for acquiring / renewing plant & Machinery.	*6000.00*	*To be incurred over a period of 12 months post Amalgamation*
5.working capital Infusion	*6000.00*	
6. Funds for monthly overheads till such time plant goes on stream	*1200.00*	
Total	***28500.00***	***Total Projected outlay***

(Source of Funds):

	Amount in Lakhs
Own Funds of the Scheme Proposer (Mainly towards Initial Outlay as part of Scheme of Compromise / Arrangement)	*12,800.00*
Combination of Own and Debt funds of the Scheme proposer (Subsequent Capital Investments and Working Capital Infusion, Post Amalgamation)	*15,268.87*
Fresh Issue of Equity Share Capital of SPB (to the Shareholders of SPL)	*431.13*
Total Capital requirement for implementation of this scheme to takeover of the SPL's assets and to make it operational	*28,500.00*

j) *It is also observed that amongst concessions sought the following are also included in the Scheme of Arrangement by way of Amalgamation involving the creditors and members which are to the following effect:*

a) The proposed Scheme of Compromise or Arrangement shall be subject to the approval by the requisite majority of the Unsecured and Secured Creditors and Members of the Transferor Company or as may be dispensed or dealt with by the Hon'ble NCLT in accordance with the provisions of the Act or the Code.

b) This proposed draft composite Scheme involves two Companies SPL (Under Liquidation) and SPB, both listed on the Stock Exchanges and being widely held Companies in which the public are substantially interested. In accordance with law, the Scheme proposed is subject to the consents, approvals or permissions of all statutory authorities including the SEBI, Stock Exchanges, Income Tax Departments, Office of the Regional Director/Registrar of Companies, Official Liquidator & others. The Liquidator in presenting this Scheme to the Hon'ble NCLT, upon approval by the CoC and after agreement with the Scheme Proposer shall seek such approvals as may be required in accordance with law so as to fulfill that the terms, conditions and assumptions herein under Section 230(5) of the Act.

c) Without prejudice to the generality of the above, all benefits, incentives, claims, losses, credits (including Income Tax, Service Tax, Excise Duty, Goods and Services Tax and applicable State

Value Added Tax) to which the Transferor Company is entitled to in terms of applicable tax laws, shall be available to and vest in the Transferee Company from the Cut Off date.

d) All the expenses incurred by the Transferor Company and the Transferee Company in relation to the Resolution Plan and Scheme of Amalgamation of the Transferor Company with the Transferee Company in accordance with this Scheme, including Stamp Duty expenses, if any, shall be allowed as deduction to the Transferee Company in accordance with Section 35DD of the Income-tax Act over a period of five (5) years beginning with the financial year in which this Scheme becomes effective.

e) It is assumed that the proposed Scheme involving the transfer of the Undertaking of the Transferor to the Transferee Company would suffer registration fees of up to Rs.30,000 and stamp duty under the Tamil Nadu Stamp Act at 2% of market value of immovable property or 0.6% of the aggregate of the market value of the shares whichever is higher.

k) However it is also required to be noted as against the original allocation in relation to compromise with creditors of different categories and members, SPBL seem to have enhanced and revised its allocation as follows as disclosed in the revised Table C as compared to the initial Table C proposed as given below:-

TABLE - C (Proposed Revised Scheme)

Category	*Scheme Settlement amount*
Compromise / Arrangement with / to Financial Creditors (Secured) - Per Table A	*16 000.07*
Compromise / Arrangement with / to Operational Creditors (Unsecured) - Per Table B	*794.00*
Provision made for CIR and Liquidation Costs	***274.80***
Amount set aside for Contingent Statutory Dues (currently not admitted) - Now included as Operational Creditors and is part of Table – B	*NIL*
Compromise / Arrangement with the Equity Shareholders of SPL (to be settled with Equity Shares of SPB under the Scheme of Amalgamation)	*431.13*
Total Scheme Settlement Amount	***17 500.00***

22. The Scheme A as propounded by SPBL further proposes to bring in the funds to be distributed to different stakeholders as detailed below whilst acknowledging the rights of the secured financial creditors in relation to the security held in the following manner: -

> *That SPBL is willing to acknowledge the rights of the Financial Creditors as Secured Creditors and they can release the Custody of the assets only on settlement of the agreed Scheme amount in full. Hence, as part of the settlement process, the Scheme Proposer seems to recommend the following:*
>
> *a) Upon approval of SPBL revised Scheme by the CoC presently and submission of the Application to the Hon'ble NCLT by the Liquidator, for consideration of the scheme submitted by SPB, we propose to deposit a sum of Rs. 5000 lakhs (Rupees Fifty Crores only) in an Escrow account to demonstrate our commitment to this*

Scheme. The amount so deposited in Escrow Account would be the first tranche of payment of the Scheme Outlay amount.

b) *Immediately, upon approval of this proposed Scheme by the Hon'ble NCLT under Section 230 in accordance with the process thereunder we would transfer the balance proposed cash outlay of Rs.12 069 lakhs as full and final / second tranche into the said Escrow account.*

c) ***We propose that the amount so deposited in the Escrow account, in both the tranches, shall be disbursed to the identified stakeholders in accordance with this revised Scheme, only after the expiry of 45 days from the date of approval of the Scheme by the Hon'ble NCLT (or) after disposal of all Appeals filed if any against the Scheme so approved by the Hon'ble NCLT before the Appellate Authorities, whichever is later.***

23. The salient aspects of the Scheme A as propounded by SPBL has been dealt with above. However, it is required to be noted that the COC comprising of secured creditors is not inclined to wait for the disbursal of funds as contemplated in clause (c) highlighted as above being primarily the leading cause for their unfavourable opinion, on the other hand, in view of the allocation towards the CIR and liquidation cost to the extent of Rs.274.80 lakhs, the Liquidator is more in favour of Scheme A of SPBL.

24. In comparison to the Scheme of Compromise and Arrangement by way of Amalgamation as placed by SPBL in its Scheme – A, SPML has proposed a Scheme of Compromise simpliciter wherein the major beneficiary of such a compromise seems to be the secured financial creditors in comparison to the other stakeholders, including the then Resolution Professional and presently the Liquidator thereby drawing the ire of the applicant/liquidator in comparison to the secured creditors giving their go ahead to Scheme B of SPML as already noted which becomes evident on a closer analysis of Scheme B the salient points of which are as follows:-

<u>A brief background of the Scheme B proponent is given as follows in the Scheme</u>

Name of the Applicant	*M/S SUN PAPER MILL LIMITED*
CIN	*U21011TN1961PLC004531*
Date of incorporation	*11.07.1961*
Class of the Company	*Public Limited Company*
Registered Office	*No.11/6, Ratnapuri, 2ndStreet, Koyembedu, Chennai-600 107, Tamil Nadu*

SUN PAPER MILL LTD. was incorporated in the year 1961 by Visionary & Philanthropist Late Sri. S. B. Adithyan. In its odyssey from 1961, the Company has been involved in up gradations and developing indigenous expertise for setting up a large Newsprint and Paper Mill. It's not out of place to mention that the founder of our company is also the founder *of the "Daily Thanthi", the leading Tamil Newspaper Daily having the largest circulation. The Daily Thanthi has a monthly requirement of 9000 MT of Newsprint for its publication currently. The targeted production from the acquired Corporate Debtor to the tune of 70% will be consumed by Daily Thanthi from where the applicant is having standing order to the tune of 6000MT. Presently this quantity is imported due to capacity shortage of the applicant unit.*

SUN PAPER MILL LIMITED is a Zero Debt Profit Making Company having an asset base to the tune of more than Rs.200 Crores as per the latest valuation report taken by the bankers.

25. Eligibility of the Applicant to present the Scheme by the fulfillment of the eligbility criteria as fixed and the nature of Scheme proposed is sought to be highlighted as evident upon a perusal of Scheme – B by SPML, namely

The Applicant is eligible to submit a scheme of Compromise/ Arrangement under the provisions of Section 230 of Companies Act 2013. The Applicant has fulfilled the Eligibility criteria set out in the EOI for the takeover of "SERVALAKSHMI PAPER LIMITED" (Under Liquidation).

Conditions Laid Down	***Applicant meeting the requirement***
Business Capacity: *Turnover: To have a turnover of Rs. 100, 00, 00,000 (Rs. One Hundred Crores) or more as per the last audited financial statements*	*As per the last audited balance sheet for the year ending 31.03.2018, the applicant has recorded a standalone turnover for Rs. 257,66,36,603/-(Rs. Two fifty Seven Crores Sixty Six Lakhs Thirty Six Thousand Six Hundred And Three Only) has a group level turnover of Rs.1203.64 Crores.*
Financial Capacity: *Net worth: Minimum Tangible Net Worth of INR 100 Crores at the Group level in the immediately preceding completed financial year.*	*Applicant meets the requirement as the Net worth of the Applicant at Group Level as on 31.03.2018 is Rs. 107.30 Crores.*

26. The following table as extracted from Scheme B demonstrates the way in which SPML seeks to deal with the compromise with different stake holders of the company in liquidation which is to the following effect: -

TABLE1: DISTRIBUTION OF PAYMENT TO SECURED FINANCIAL CREDITORS:

Sl. No.	**Name of Financial Creditor**	**Admitted Claim (Rs. in Crores)**	**Payment Proposed to Financial Creditor (Rs. In Crores)**
1.	*INDIAN OVERSEAS BANK*	*338.05*	*76.83*
2.	*ASSET RECONSTRUCTION COMPANY INDIA LTD*	*185.57*	*42.18*
3.	*PRIDHVI ASSET RECONSTRUCTION & SECURITSATION COMPANY LTD*	*158.30*	*35.99*
	Total	***681.93***	***155.00***

PROPOSAL OF WORKMEN AND EMPLOYEES DUES OF CORPORATE DEBTOR:

The amount due towards the Employees & Workmen Dues, based on the claims admitted by the Liquidator and the amount provided under the Arrangement Scheme is as stated below:

Nature of Claimant	***No. of Claimants***	***Admitted Claim Claimed (in INR)***	***Amount Proposed under the Arrangement Scheme (in INR)***
WORKMEN	*NA*	*NA*	*NA*
EMPLOYEES	*50*	*1,41,57,384.00*	*35,39,346.00*
NON-DETERMINABLE OF WORKMEN OR EMPLOYEE	*NA*	*NA*	*NA*

PROPOSAL FOR UNSECURED FINANCIAL CREDITORS:

The amount due towards the Unsecured Financial Creditors, based on the claims submitted and admitted by the Liquidator, along with the amount provided in the Arrangement Scheme is as stated below:

S. NO	Name of UNSECURED Financial Creditor	Claim admitted (In Rs.)	Amount Provided Under Arrangement Scheme (in Rs.)
1.	Servall Engineering Works Private Ltd	9,44,10,610.00	28,32,318.30
2.	Sri Lakshmi Engineering Work	16,95,121.00	50,853.63
3.	Vijayalakshmi Paper Mills	10,30,778.00	30,923.34
4.	R. Ramaswamy	1,16,33,000.00	3,48,990.00
	Total	**10,87,69,509.00**	**32,63,085.27**

PROPOSAL FOR OPERATIONAL CREDITORS OF CORPORATE DEBTOR:

The amount due towards the Operational Creditors including claims submitted by Statutory Authorities, based on the claims admitted by the Liquidator and the amount provided under the Arrangement Scheme is as detailed below:

Total Amount claim Submitted (in INR)	No of verified claims (Totally Partially)	Claim Admitted (in INR)	Amount provided under the Arrangement Scheme (in INR)
81,29,81,403.75	61	51,42,96,619.80	1,54,28,898.59

PROPOSAL FOR EXISTING SHAREHOLDERS OF CORPORATE DEBTOR:

S. No	Category of Shareholder	No. of Shares	Share capital (In INR)	Compensation provided in the Arrangement Scheme (in INR)
1.	Promoter& Existing promoter Group	2,24,24,000	22,42,40,000	NIL
2.	Public Shareholders	2,06,89,656	20,68,96,560	41,37,931.20
	Total	**4,31,13,656**	**43,11,36,560**	**41,37,931.20**

Summarizing the tables in relation to payments contemplated to the different stakeholders of the company in Liquidation the following picture emerges under Scheme – B:-

SUMMARY OF CONSOLIDATED PAYMENTS TO BE MADE AS PER ARRANGEMENT SCHEME:

Particulars	Total amount provided in Arrangement Scheme (INR in Crores)
Liquidation cost	0.75
Payment to SFC – Secured (both Term Loan Lenders and Working Capital Lenders)	155.00
Payment to Unsecured Financial Creditors	0.33
Payment to Workmen and Employees	0.35
Payment to OC	1.54
Payment / Compensation to Public Share Holders	0.41
TOTAL	**158.38**

27. Means of finance sought to be raised for the amount of compromise proposed to the different stakeholders is sought to be arranged by SPML the proponent of Scheme B in the following manner, namely :

> *The arrangement Scheme proposes an amount of Rs. 158.38 Crores for settling of all the dues of the Corporate Debtor. The total amount required for the funding of the project and for the conduct of the business in smooth manner after the Approval of the Arrangement Scheme by the Adjudicating Authority would be sourced by the Applicant from the reserves and surplus of the applicant, infusement of funds in the form unsecured loan from the group companies, directors, Promoters of the group companies of the Applicant. Further the Applicant would like to bring to notice that the Banker of the Applicant "Indian Bank Tirunelveli Branch" has in principle approved for sanction of an amount to the tune of Rs.165 Crores as term loan and Rs. 50 Crores as working capital for the successful implementation of this Arrangement Scheme. The letter issued by the Banker "INDIAN BANK, Tirunelveli Branch "in this regard is annexed as an* ***Annexure to the Scheme****. An amount of Rs. 10 Crores will be deposited to the Escrow account opened by the Liquidator within 7 business days on approval of the Arrangement Scheme by the CoC and the balance amount will be deposited to the escrow account opened by the Liquidator within 90 days from the effective date on approval of the Arrangement Scheme by the Adjudicating Authority for the complete disbursement of the funds provided in this Arrangement Scheme to the stakeholders. Therefore the Arrangement Scheme is feasible and viable.*

28. In addition to the compromise proposed with the different stakeholders by means of payout to them and the manners in which SPML has tied with the arrangement of finance the manner of implementation of the Scheme as well as the

supervision in relation to successful implementation is also brought forth as follows:

PROVISION FOR IMPLEMENTATION & SUPERVISION OF THE ARRANGEMENT SCHEME:

The term of the proposed Arrangement Scheme will commence from the effective date. The implementation of the Scheme will begin once the Arrangement Scheme is approved by the Adjudicating Authority. In order to ensure smooth implementation of the Arrangement Scheme, the Applicant has already identified a core team with a strong experience in the relevant field. In addition to the fact the Applicant is in the same line of Business for more than 5 decades. The Applicant also proposes appointment of present Liquidator as custodian to supervise the implementation of the Arrangement Scheme.

The Liquidator shall distribute to all the stakeholders in accordance with the arrangement scheme the total amount of Rs. 158.38 Crores deposited by the Applicant in to the escrow account of the CD opened for implementation of the Arrangement Scheme.

RELEASE OF SECURITIES

On receipt of the payment of as per this Arrangement Scheme, the Secured Financial Creditor/ Banks shall unconditionally release all securities/ Corporate Guarantees / collaterals (pertaining to the Corporate Debtor) provided as security against the debt availed by the Corporate Debtor.

- *Financial Creditor Banks shall release their charge over the assets of the M/s. Servalakshmi Paper Limited which have been provided as security against the facilities availed from the financial lenders and hand over the original documents pertaining to the assets mortgaged with them and also release the corporate guarantees held by them after receipt of payment as per the Arrangement Scheme. The necessary form required for the same shall be filled with the ROC for giving effect.*

29. Upon the careful consideration of the Schemes presented before this Tribunal by the Liquidator a side by side comparison of Schemes becomes imperative cutting out the narration and the cold figures which stand out after deciphering the respective Schemes by the Liquidator for the ease of this Tribunal have also been provided at paragraph 27 of the application by the Liquidator by way of a convenient tabulation comparing figures vis-à-vis provided under the respective Schemes as pay outs to different stakeholders which reads as follows:-

	CLAIM ADMITTED	***SETTLEMENT PROPOSED BY SESHASAYEE PAPER AND BOARDS LIMITED***	***SETTLEMENT PROPOSED BY SUN PAPER MILL LIMITED***
SECURED FINANCIAL CREDITORS			
a) IOB	*338,04,72,538.00*	*79,31,23,409.90*	*76,83,00,000.00*
b) Pridhvi Asset Reconstruction & Securitisation Company Ltd.	*158,30,89,052.00*	*37,13,61,624.70*	*42,18,00,000.00*
c) ARCIL	*185,57,59,287.00*	*43,55,21,905.40*	*35,99,00,000.00*
TOTAL SECURED CREDITORS	***681,93,20,877.00***	***160,00,07,000.00***	***155,00,00,000.00***
UNSEURED FINANCIAL CREDITORS			
Financial Creditors Forming Part of Promoters	***10,87,69,509.00***	***0.00 (no payment against claims filed by Promoters including as operational creditors – employees)***	***32,63,085.27 (3%)***

OPERATIONAL CREDITORS			
a) Employees	*1,41,57,384.00*	*66,90,000.00 (100% to all employees other than promoters)*	*35,39,346.00 (25%)*
b) Statutory dues & others operational creditors	*51,42,96,619.80 (other operational creditors - other than employees, statutory dues) 21,28,00,404.04 (statutory dues)*	*5,14,29,700 (10% of operational creditors) 2,12,80,000 (10% of statutory dues)*	*1,54,28,898.59 (3%)*
TOTAL OPERATIONAL CREDITORS	***74,12,54,407.84***	***7,93,99,700.00***	***1,89,68,244.59***
CIRP & LIQUIDATION COSTS		***2,74,80,000.00 (provided for 100% of liquidation costs)***	***75,00,000.00 (not provided for full liquidation cost)***
SHARE HOLDERS	***43,11,36,560.00***	***4,31,13,000.00 (Rs.10/- share valued at Re.1/- shareholders of SPL will be allotted equivalent number of Equity Shares of SPB as per valuation of SPB on cut-off date)***	***Cancellation of entire Paid Up capital of the Company***
GRAND TOTAL		***175,00,00,000.00***	***158,38,00,000.00***

30. The respondents 2 to 5 have filed a reply/counter as the case may be in respect of the above application filed by the Liquidator. In relation to the Secured Creditors, namely R1 to R3 they have parroted the same lines almost verbatim or adopted it uniformly after discussions with the Scheme proponents which is to the following effect:-

(i) The possession of Assets shall be given to Sun Paper Mill Limited (4th respondent) only after the financial creditors have been repaid their amount in full as contemplated in the scheme and existing charge on the assets is released.

(ii) *Any new charge on the assets of the Corporate Debtor required to be created pursuant to the Scheme can only be a Second Charge; existing charge shall continue to be First Charge which shall be released on full settlement to the Charge Holder as provided in the Scheme.*

(iii) *The EMD amount of Rupees Two Crores already given to the Liquidator and the Escrow Amount of Rupees Ten Crores as provided in the Scheme shall be non-refundable and liable to be forfeited in the event of any default in implementing the Scheme and further Applicant may consider to furnish a BG for the remaining amount as provided for in the Scheme.*

(iv) *Scheme Applicant to bear full liquidation cost without affecting the disbursement to creditors as directed by CoC.*

(v) *CoC members reserve their right to proceed against personal guarantors of M/s. Servalakshmi Paper Limited (under liquidation) and the approval/implementation of Scheme shall in no manner affect this right and shall not serve as a discharge of personal guarantors.*

31. It is also disclosed therein that while SPML was prepared to deposit the amount payable under the Schemes to the secured creditors immediately after approval if any is granted to the Scheme propounded by it however, SPBL was not willing to compromise from its stand of depositing the sums assured as payable to the secured creditors after approval of the Scheme by this Tribunal, but not after the expiry of 45 days from the date of approval of this Tribunal or disposal of any appeals against the scheme and whichever is

later, even though SPBL had upped its offer as brought out in the replies itself from Rs.101.04 crores to Rs.160 crores. This condition on the part of SPBL has really rankled the secured creditors, namely R1 to R3 even though the offer of payment by SPBL is higher by around approximately Rs 5 crores on the analogy that a bird in hand is better than two in the bushes. However, to assuage the apprehensions of the secured creditors, Ld Counsel for SPBL during the course of his oral submissions and also as reflected in the written submissions seem to be agreeable to drop the pre-condition in relation to conditional payment and expresses its willingness to pay the Scheme amount as contemplated under Scheme A propounded by SPBL within 60 days of this Tribunal's order approving its Scheme unconditionally thereby bringing on parity almost to the deposit terms as promised by SPML in its Scheme – B.

32. On its part, SPML with a view to allay the apprehensions of the applicant/liquidator in meeting out the CIRP and Liquidation costs including obviously his fees, instead of the fixed amount provided in its Scheme – B is willing to give a commitment that whatever amounts due as per law in relation to the costs is payable, it will pay in addition to the

amounts promised to the different stakeholders under its Scheme.

33. Thus, it can be seen that in a transaction of a reasonable magnitude as in the present instance, the quantum of payment offered by the respective proponents in their respective Schemes to the different stake holders are almost on an even keel save some differences here and there. The financial capability and wherewithal to execute the respective Schemes if either one is chosen, is also exhibited by both the Scheme proponents as evident from the earlier paragraphs. Both the Scheme proponents also belong to the industry as to the one being carried by the Company in Liquidation. Thus a piquant situation arises.

34. To resolve the same, drawing upon reference to precedents if any in relation to the provisions of Section 230 of the Companies Act, 2013 or its predecessor under the provisions of Section 391 of the Companies Act, 1956 in relation to a company in liquidation, as distressed concern or assets like the one on hand having economic value and also being maintained as a going concern, normally attracts diverse suitors for the economic benefit to be derived therefrom at

competitive rates like moths to a candle, the Hon'ble High Court of Gujarat when confronted with two Schemes somewhat like in the present situation has delat with the issue of per se two Schemes being considered, in the matter of **Panchmahals Steel Limited vs. Universal Steel Traders** reported in 46 com.cas 706, Guj (1975). Paragraph 6 of the said judgement neatly sums up the predicament *faced by the company court in the said case*

> ***" Accordingly, there were two Schemes of compromise and arrangement before the Court in respect of the same company, one moved by the company at the instance of Mr. Malhotra, and another moved by GISCO, and as both desired to take over the plant of the company, pending consideration of the rival schemes, a situation to the total advantage of the company, its staff, its secured creditors and unsecured creditors developed unexpectedly. To exploit to the best advantage of those who were to otherwise to suffer of the company were to be wound up, the court directed on 23rd July, 1975, that both Mr Malhotra as well as GISCO, the proponents of two rival schemes, will be entitled to bid in an open auction in the court as to the terms and conditions on which they would be willing to take over the plant of the company for the purpose of running it pending the processing and finalization of the rival schemes of compromise and arrangement."***

35. The Hon'ble Judge in the above noted citation going further records that by virtue of consenus amongst the parties he comes to a conclusion that summons should be answered in

favour of Mr. Malhotra goes on to record that under the circumstances a speaking and reasoned order may not be called for, but however chooses to do so in view of the summons being granted is charting a new unexplored, hazardous and venturesome course in company litigation especially when a winding up petition is pending. The instant case on hand is also not far from the above observation. In paragraph 8 of the said judgment, the Hon'ble Judge goes on to elucidate as to why winding up may not be an option, in view of the two schemes proposed is up for consideration, but however, the company should not made to await for the decision of the court in this regard in the interim as the assets of the company will remain unutilized till such time and in the circumstances the summons is required to be answered. In the present instance under IBC, 2016, unlike the earlier regime of winding up under Companies Act, 1956, this situation may not arise as it is neatly addressed in view of the IRP/RP/Liquidator mandated under the statute to keep it as a going concern. However, what interests and fascinates this Tribunal is the observation of the Hon'ble Judge about the proactive role a company court is required to play when confronted with a situation to find a solution and not be bogged down by it and since the words of the Hon'ble Judge forcefully hits the nail on its head it would be better to reproduce his own words, lest should it do injustice as given in paragraph 9 of the said judgement, namely:

> ***9. *************** Law must take note of the existing situation in which problems that arise in law and have a human content have to be disposed of. Law cannot divorce itself off the mores of the day. Philosophy of law is functional and not analytical. Now, if the law takes note of the existing situation in which a problem has been put in the lap of the court, a solution must be sought through a machinery of law. Law cannot be static and its interpretation has to be dynamic. Law cannot operate in vacuum. Either by its pragmatic approach or progressive interpretation, law must find and offer a solution or it must perish. Socio-economic problems of the contemporary times cannot be solved by the arid nineteenth century approach to the provisions of company law. Time honoured approach that the company law must safeguard the interest of investors and shareholders of the company would be too rigid a framework in which it can now operate. New problems call for a fresh approach. And in ascertaining and devising this fresh approach, the objective for which the company is formed may provide a guideline for the direction to be taken.***

36. Going further, the Hon'ble Judge without losing track also factors in the judgement the necessity of keeping the concern as going concern taking into consideration the interest of the workmen and its employees and in this connection cites

> ***"One section of the community whose interests as such are not afforded any protection, either under this head or by virtue of the provisions for investor or creditor protection, are the workers and employees of the taken over company. This is a particularly unfortunate facet of the principles that the interest of***

the company means only the interest of the member, and not of those whose livelihood is in practice much more closely involved."

37. It is pertinent to note that after nearly four-and-half decades, while interpreting the provisions of IBC, 2016 the Hon'ble Supreme Court in the case of **Arcelor Mittal India Private Limited v. Satish Kumar Gupta;** *(2019) 2 SCC 1* while dealing with the necessity of adherence to time lines by NCLT and NCALT, at paragraph 83 of the said judgment while quoting the legal maxim "Actus curiae neminem gravabit" – "the act of court shall harm no man" echoes the sentiment as expressed in Panchmahal's case (supra) and the consequence of liquidation to be avoided in a CIRP by not losing sight that the corporate debtor consists of several employees and workmen whose daily bread is dependent on the outcome of the CIRP and that every possible effort should be made to keep it as a going concern and to see that it is made possible as such and the displacement of employees and workers are required to be avoided.

38. Thus armed with the wisdom gleaned from the precedents as cited above as well as a somewhat elaborate discussion which necessitates this Tribunal to address a problem which has

been put in its lap for which a dynamic solution is required to be found without being too analytical and at the same time without losing track in any way the objectives of the Code for which it was framed including for the resolution of insolvency and re-organisation which includes within its ambit revival and restructuring within a speedier time frame for maximization of value of its assets of the company in liquidation and guided by the decision of Hon'ble NCLAT in **S.C. Sekaran** case in *Company Appeal (AT) (Insolvency) Nos. 495 & 496 of 2018* and its ratio being reiterated in several other judgements passed subsequently including in the case of Company in liquidation that the Scheme proffered on liquidation is required to be considered under the provisions of Section 230 of the Companies Act, 2013 without in any way losing sight of the objectives and provisions of IBC, 2016 the following directions are sought to be issued:

A. Both SPML and SPBL, in view of their subsequent position expressed before the COC as well as before this Tribunal in relation to their earlier stated position at the time of submission of their original Scheme, whether it be Scheme A or Scheme B shall resubmit their Comprehensive Scheme by including the modifications to the terms of deposit of their committed amounts and its withdrawal by the stakeholders and also clearly specifying and quantifying the amount payable towards CIRP and Liquidation costs including the fees of the RP/Liquidator to be factored;

B. Both the Scheme proponents, namely SPML and SPBL while re-submitting their respective Schemes with the modifications to the respective Schemes as represented before the COC, Liquidator and before this Tribunal shall be entitled to upwardly revise the compromise/settlement amount offered to the creditors and in case of such upward revisions made, the said amount shall be distributed to each of the creditors in proportion to their already promised distribution ratio. This exercise is directed to be undertaken with a view to maximize the value of the assets of the company in liquidation and thereby to the benefit of the creditors;

C. Both the Scheme proponents shall simultaneously submit their respective Schemes in a sealed cover before this Tribunal as well as with the Liquidator within a period of one week from today;

D. In view of the wide powers vested with this Tribunal under Section 230 of the Companies Act, 2013, however without being bogged down by the procedural rigmarole as prescribed therein for approval of a Scheme of Compromise or Arrangement including by way of Amalgamation and at the same time however, not ignoring the views and voting of the respective stakeholders in relation to the competing Schemes to be placed before them, be it a secured creditor, unsecured creditors, operational creditors or the members of the Company in Liquidation, The Liquidator is directed to constitute a Stakeholders Committee in terms of Regulation 31A of IBBI (Liquidation Process) Regulations, 2016 for the consideration of the Schemes and voting thereon. However, the said Regulation shall not apply mutatis mutandis as the following exceptions are required to be made taking into consideration the fact that even though the company is in liquidation; however, since a Scheme is under contemplation as directed by Hon'ble NCLAT and envisaged under Rule 2B of IRCP Regulations, 2016 as amended even though made effective after the liquidation order taking a cue therefrom in view of the absence of substantive provisions or rules or regulations, save the judicial precedent for consideration of the Scheme without any commensurate procedure, primacy of Secured Creditors is required to be maintained as the process as such is kept in abeyance as discussed in paragraph 19 *supra*. In the instant case the following are the stakeholders in relation to the company in liquidation and with their admitted claim, namely:-

	CLAIM ADMITTED
<u>**SECURED FINANCIAL CREDITORS**</u>	
a) IOB	338,04,72,538.00
b) Pridhvi Asset Reconstruction & Securitisation Company Ltd.	158,30,89,052.00
c) ARCIL	185,57,59,287.00
TOTAL SECURED CREDITORS	**681,93,20,877.00**
<u>**UNSEURED FINANCIAL CREDITORS**</u>	
Financial Creditors Forming Part of Promoters	**10,87,69,509.00**
<u>**OPERATIONAL CREDITORS**</u>	
b) Employees	1,41,57,384.00
b) Statutory dues & others operational creditors	51,42,96,619.80 (other operational creditors – other than employees, statutory dues) 21,28,00,404.04 (statutory dues)
TOTAL OPERATIONAL CREDITORS	**74,12,54,407.84**
CIRP & LIQUIDATION COSTS	
SHARE HOLDERS	**43,11,36,560.00**
GRAND TOTAL	

E. Save the individual secured financial creditors, all the other stakeholders, be it financial creditors forming part of promoters, the respective group of operational creditors, namely employees, statutory dues and other operational creditors and shareholders shall be represented by only their respective Authorized Representative chosen in the manner as contemplated under sub section (6) and sub section (6A) of Section 21 of IBC, 2016 read with Regulation 4A and Regulation 16A of IRCP Regulations, 2016 as applicable during the CIRP of a Corporate Debtor. The exercise shall be completed by the Liquidator within a period of 15 days from the date of this order.

F. Immediately after the Authorized Representative is chosen by the respective group, Stake holders Committee Meeting shall be convened by the Liquidator within 45 days from the date of this order wherein the Secured Financial Creditors will be entitled to participate and vote on individual basis and other stakeholders represented only by their respective Authorized Representatives and the voting shall be done similar to the one contemplated for the approval of a Resolution Plan under IBC, 2016 read with attendant regulations after proper circulation of notice to the individual stakeholder along with a synopsis of the Scheme proposed by SPML and SPBL. However at the venue a copy of the Scheme with annexures shall be kept available in entirety for the perusal of the stakeholders.

G. The voting share shall be determined in accordance with Section 5(28) of IBC, 2016, save instead of financial creditors and committee of creditors specified therein, it shall be substituted with stake holders and stake holders committee.

H. With a view to obviate time delay if any being occasioned, in case of the selected Scheme and its proponents with three fourth of the creditors and members present and voting in the Stakeholders committee meeting as contemplated under Section 230(6) and the proponents of such successful Scheme is not in a position to execute the Scheme it is directed that both the Schemes be placed for voting by the Stakeholders and this action the Tribunal is of the view will be the best course available, where more than one Scheme has been proposed as in the present instance and we find will also be in line with the proposed changes by IBBI in relation to a Resolution Plan proposed under Section 30 of IBC, 2016 which envisages all eligible resolution plans to be placed simultaneously before the COC for voting. Even though the proposal made by IBBI is in a nascent stage and we are conscious that only a discussion paper dated 14th February 2020 has been circulated calling for the view of the general public, however, in order to fill in the gaps in the Code or in the Regulations in relation to Schemes presented in Liquidation and if the Successful proponents is not in a position to carry through the process, we direct both the Schemes shall be simultaneously placed for voting before the Stakeholders Committee as contemplated by IBBI similar to the draft proposal for placing all eligible resolution plans received before the COC as envisaged under Section 30 of the Code for its consideration and voting will be on the lines proposed in the draft paper circulated by IBBI which are to the effect that where more than one compliant resolution plans are available, both the plans should be put to vote simultaneously. The plan ,that receives the highest affirmative votes, subject to receiving the requisite 66% (in the instant case being a Scheme approval and hence to be compliant with Section 230 of the Companies Act, 2013, 3/4th of the Stakeholders Committee present and voting) may be regarded as approved by COC (in the instant case Stakeholders Committee). In an unlikely event of two or more resolution plans securing equal number of votes, the creditors (including those in a class) may be asked to vote for one of those. This voting for one of the plans (additional voting) may be conducted simultaneously with the voting for plans making it clear that this will be used as a tie breaker only when there is equality of votes. This Tribunal is of the view that the above voting method can be gainfully adopted in the instant case as well while simultaneously placing two schemes for consideration. It is to be further noted that it is only the creditors who should be offered a chance to vote as contemplated above namely additional voting with a view to break the tie breaker and not the members or the promoters group having the façade of a creditor as well.

I. Let the Scheme as approved based on the above voting method be placed before this Tribunal for its sanction within a period of 60 days from the date of this order.

39. With the above directions this application stands **disposed of**. In case of any difficulty in implementing the procedure as directed above, the Liquidator is given liberty to approach this Tribunal as and when required for necessary directions at the earliest without any delay.

-SD-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Raymond