THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

I.A. 829 OF 2022
I.A. 2565 OF 2023

Under Section 60 (5) of Insolvency & Bankruptcy Code, 2016

Padmajadevi Pratapsingh Mohite Patil

...**Applicant**

V/s

Dhaval Pratapsinh Mohite Patil Agro Industries Limited
Through its Liquidator, Mr. Dharit Shah

...Respondent

I.A. 1409 OF 2023

Under Section 60 (5) of Insolvency & Bankruptcy Code, 2016

Dhaval Pratapsinh Mohite Patil

...**Applicant**

V/s

Dhaval Pratapsinh Mohite Patil Agro Industries Limited
Industries Limited
Through its Liquidator, Mr. Dharit Shah

...Respondent

In the matter of
C.P.(IB) No. 3610/MB/2019
Punjab National Bank

.... **Financial Creditor**

Vs.

Dhaval Pratapsinh Mohite Patil Agro Industries Limited

…**Corporate Debtor**

Order delivered on: 09/11/2023

Coram:

Shri Prabhat Kumar Hon'ble Member (Technical)	**Justice Shri V.G. Bisht** Hon'ble Member (Judicial)

Appearances:

For the Liquidator	:	Mr. Rohan Agarwal a/w Mr. Amey Hadwale & Mr. Geeta Lundwani
For the Respondent	:	None

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application IA 829/2022 is filed on 15.03.2022, u/s 60(5) of the Insolvency & Bankruptcy Code ("IBC") in the Corporate Insolvency Resolution Process ("CIRP"), by Sh. Padmajadevi Pratapsingh Mohite Patil, an ex-director and promoter ("Applicant" of M/s Dhaval Pratapsinh Mohite Patil Agro Industrial Limited ("Corporate Debtor"), who was suspended as Director pursuant to order dated 20 February 2020 initiating CIRP in the case of the Corporate Debtor. The application has been filed through Liquidator Sh. Dharit Kishorbhai Shah to seek following relief, amongst others :

A. Stay the ongoing liquidation proceedings of the Corporate Debtor,
B. stay the Respondent's appointment as the Corporate Debtor's liquidator,
C. extend the time for carrying into effect the scheme of arrangement in respect of the corporate debtor under liquidation to avoid the death of the Corporate Debtor.

2. Since no prospective Resolution Plan came to be submitted for the resolution of the Corporate Debtor, this Tribunal passed the Order dated 5th February 2021 allowing the Respondent's application for liquidation of the Corporate Debtor. Pursuant to this Tribunal approving the Corporate Debtor's liquidation, the Respondent issued a Public Announcement dated 13 January 2022, inter alia calling for bids for the Corporate Debtor's assets. The Respondent also published a Tender Document on various occasions inter alia setting out relevant details of the e-auction to be conducted of the Corporate Debtor's assets.

3. It is the case of the Applicant that the liquidation value of the Corporate Debtor is an amount of Rs. 15,42,10,020/- (Rupees Fifteen Crore Forty Two Lakh Ten Thousand and Twenty only), being the reserve price arrived at by the Respondent for the Corporate Debtor's assets/business as discovered from the published documents. The Applicant approached the Respondent inter alia proposing to submit a scheme under Section 230 of the Companies Act, 2013 qua the Corporate Debtor, being the Proposed Scheme.

3.1. Upon being informed that the e-auction of the Corporate Debtor's assets has failed, the Applicant addressed email dated December 31, 2022 to the Respondent inter alia requesting the Respondent to place the Applicant's Proposed Scheme before the Corporate Debtor's Committee of Creditors and Stakeholders Committee, as mandated by the Code

3.2. The Applicant has submitted their proposal to Punjab National Bank, being the lead CoC member of the Corporate Debtor. However, under the misconception that the Applicant's proposal was in the nature of a 'one-time settlement, Punjab National Bank summarily rejected the Applicant's proposal.

3.3. That in view of the above facts, it is ostensible that the Respondent's conduct is against the interests of the Corporate Debtor, and entirely anathema to the Code. Accordingly, the Applicant is constrained to approach this Tribunal.

4. The Applicant has also filed another Application IA 1409/2023 on 11.04.2023 requiring this Tribunal to exercise its powers under the Code and rules thereunder and permit the Applicant to file their Proposed One Time Settlement with a direction to place the Proposed One Time Settlement before the Corporate Debtor's Committee of Creditors and Stakeholder Committee; and to Stay any further e-auction/auctions of assets of the Corporate Debtor; and to Extend the time for carrying into effect the scheme of arrangement in respect of the corporate debtor under liquidation to avoid death of the Corporate Debtor, amongst others. The Applicant has submitted the One time Settlement proposal, which

contemplates payment of (a) whole of CIRP/Liquidation Process Costs, (b) Rs. 18,94,31,909/- to the Secured Financial Creditors; and (c) amount towards claim of Workmen and Employees, Government/Statutory Dues, Other Operational Creditors Dues in accordance with provisions of Section 53 of the Code.

4.1. The Applicant has further stated in IA 1409/2023 that the Respondent has attempted to auction the Corporate Debtor's assets/business vide e-auctions and has entirely failed on multiple occasions and no prospective buyer of the Corporate Debtor's assets has been identified. The Respondent has failed to take any recourse under the Code to ensure revival of the Corporate debtor, the Respondent instead has proceeded with the Corporate Debtors assets wholly. Despite the Applicant having given a One Time Settlement offer higher than the Corporate Debtor's liquidation value, the Respondent has taken no steps to table this before the Corporate Debtor's stakeholder' committee for their consideration. It is further emphasised that the primary focus of the Code is to ensure revival of the Corporate Debtor, which includes to take necessary and mandatory steps in attempting to do so, and the liquidation ought to be the absolute last resort.

5. The Applicant has also filed another Application IA 2565/2023 on 16.06.2023 requiring this Tribunal to quash and set aside the auction sale conducted by the Respondent of the Corporate Debtor's assets pursuant to auction notice dated 3rd March 2023; and to direct the Respondent to schedule a meeting of the

Stakeholders Consultation Committee in accordance with the Liquidation Regulations.

5.1. The Applicant has stated in this IA 2565/2023 that this Tribunal had directed the Respondent that the Applicant's proposal be placed before the Corporate Debtor's Stakeholders Consultation Committee on 25.04.2023, however, the Applicant came to know during the hearing taken place on 2.6.2023 that the Stakeholders Consultation Committee had rejected the Applicant's offer. The Applicant had a right, in terms of the Liquidation Regulations, to remain present for meetings of the Corporate Debtor's Stakeholders Consultation Committee, the Respondent failed to extend any invitation to the Application, and the Applicant was only informed during the hearing on 2.6.2023.

6. The Respondent Liquidator has filed affidavit in compliance of Order dated 25.4.2023 stating that pursuant to the order dated 25.04.2023, the applicant's OTS proposal dated 15.05.2023 was forwarded to Punjab National Bank ("Bank") vide email dated 15.5.2023 for necessary consideration. The said proposal was also discussed in the Stakeholders meeting held on 23.5.2023. Pursuant to the discussions the stakeholders resolved to reject the said proposal. The Bank vide its letter dated 26.5.2023 also communicated its decision to the Liquidator. Pursuant to such communication, the suspended management yet again sent a revised OTS proposal dated 29.5.2023, which was again rejected vide Bank's email dated 31.05.2023 that the Liquidator informed SCC that he has been approached by the Suspended Management

for compromise u/s 230 of the Companies Act and also meeting in person on 24.1.2022. However the liquidator has replied to them that he can neither accept proposal of compromise u/s 230 of the Companies Act, 2013 nor present the same before SCC because 90 days are over to the commencement of Liquidation as provided in Regulation 2(b) of the IBBI (Liquidation Process) Regulations, 2016. The liquidator sought the views of the SCC on this and the same was deliberated thereat and Liquidator was told by SCC they have also been approached by suspended management separately for this proposal and the same was declined by them by writing a letter to them, the copy of such communication from the members of SCC was placed before the meeting also.

7. We have heard the Counsel and perused the material available on record in respect of all three IAs.

7.1. We note find from the minutes of meeting of Stakeholders Consultation Committee held on 23.05.2023 that the One Time Proposal submitted pursuant to order dated 25.04.2023 came to be rejected by the Bank as well as Stakeholders Consultation Committee on 23.05.2023, and the Applicant alongwith another person represented the suspended Board in that meeting.

7.2. We finds from the minutes that the Suspended Board of Directors, Applicant and one other, attended the said meeting and had asked SCC member whether they have understood the proposal on Compromise/ one time settlement/ arrangement, further they also explained SCC that in the proposal the amount proposed is “plus-plus” and not “or-or”. Moreover the proposal proposes the amount for assets of Corporate Debtor and Guarantors separately.

7.3. The minutes further records that “While going through Udyam Certificate, the registration of Udyam i.e. the categorisation of the Corporate debtor as an MSME is dated 21.01.2022 which is during the course of liquidation of Corporate Debtor which establishes ineligibility u/s 29A of the Suspended Board to submit a proposal. Nonetheless, the suspended Board had no authority to do any act on behalf of the corporate debtor after commencement of CIRP, hence the said registration has been taken in an unauthorised manner in order to circumvent ineligibility under section 29A of the Code under the guise of MSME. The minutes further record that on 6.3.2023 auction of assets of the Corporate Debtor was successfully completed and against that 25% amount of the sale consideration was also received.

7.4. We further find that the Liquidator had informed the SCC that the Suspended Board is restricting entry of prospective buyers of auction concluded in March, 2023 at road level i.e. outside the factory, and the Liquidator had to meet Police Inspector on 7.9.2022 for protection. However, no police protection was made available and upon visit, the Liquidator was threatened that he should stop visiting the site, else he may be hit. The Liquidator had also apprised SCC about the police complaints filed against suspended Board on various occasion starting from 5.9.2020 to 8.9.2022 and a contempt petition against the suspended board came to be filed on 6.7.2022 before this Bench. This also demonstrates the conduct of the Suspended Board in prevailing upon the Liquidator through threats and obstruction,and delaying the process by filing these applications before the Tribunal. Accordingly, we consider it a fit case for reference to IBBI in terms of section 65 of the Code to conduct an inquiry and take necessary action against them in terms of the provisions of the Code.

7.5. We consider that the SCC has rejected the various attempts of the Suspended Board to take control of corporate debtor again by submitting various proposals, and this Tribunal can not interfere in the commercial wisdom of SCC in this respect. Accordingly, we are inclined to dismiss all three IAs i.e. IA 829/2022, 1409/2023, and 2565/2023 as we do not find any merit in these applications to grant any relief thereunder.

8. In view of aforesaid discussion and findings, IA 829/2022, 1409/2023, and 2565/2023 are dismissed. The registry is directed to send copy of this Order to IBBI for necessary action in terms of Section 65 of the Code.

Sd/-	**Sd/-**
Prabhat Kumar	**Justice V.G. Bisht**
Member (Technical)	Member (Judicial)