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

**CP/66(CHE)/2021 in CA(CAA)/359/2020 in
CP/1037/IB/2018**

*(Under Sections 230 to 232 of the Companies Act, 2013 read with
applicable provisions of the Insolvency and Bankruptcy Code, 2016)*

In the matter of ***Sholingur Textiles Limited***

Sholingur Textiles Limited (Under Liquidation)

Having Registered Office at Race Course Mansion,
2nd Floor 8/1-M, Race Course (Near Thomas Park Bus Stop),
Coimbatore – 641 018

Represented by the Liquidator

T.V. Balasubramanian, having office at
KRD Gee Gee Crystal, No. 91 – 92, 7th Floor,
Dr. R.K. Salai, Chennai – 600 004

.. .. *Petitioner*

Along with

**IA/686/2020 in MA/1192/2019 in
CP/1037/IB/2018**

(Under Sections 60(5) of the Insolvency and Bankruptcy Code, 2016)

In the matter of ***Sholingur Textiles Limited***

T.V. Balasubramanian,

Representing the Sholingur Textiles Limited (In Liquidation)
having office at KRD Gee Gee Crystal, No. 91 – 92, 7th Floor,
Dr. R.K. Salai, Chennai – 600 004

.. .. *Applicant*

Versus

1. The Regional Provident Fund Commissioner

Bhavishya Nidhi Bhavan, S-1, TNHB Phase III,
Sathuvacheri, Vellore,
Tamil Nadu – 632 009

2. M/s. Edelweiss Asset Reconstruction Company Limited

Acting in capacity as trustee of EARC trust SC 49
Represented by its Authorized Signatory



Having its registered office at:
Edelweiss House Off GST Road, Kalina,
Mumbai – 400 098

.. .. Respondents

Order Pronounced on 7th March 2023

CORAM:

Justice (Retd.) RAMALINGAM SUDHAKAR, PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)

For Petitioner
CP/66/2021

: *Ravi Rajagopalan, Advocate*
For Liquidator

: *Avinash Krishnan Ravi, Advocate*
For Objector

For Applicant
/ Respondent

: *P.K. Paneer Selvam, Advocate*
For R1 in IA/686/2020

Ananth Merathia, Advocate
For R2 in IA/686/2020

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This is a Company Petition viz. CP/66(CHE)/2021, which is sequel to the CA(CAA)/359/2020, filed by the Liquidator of M/s. Sholingur Textiles Limited, under Section 230 to 232 of the Companies Act, 2013 read with applicable provisions of the Insolvency and Bankruptcy Code, 2016 for sanction of a Scheme of Compromise / Arrangement and its Creditors and for takeover of its assets and properties by the Scheme proponents viz. (i) M. Poobalan and (ii) P. Poongodi



2. The Corporate Insolvency Resolution Process (*hereinafter referred to as "CIRP"*) of the Corporate Debtor viz. Sholingur Textiles Limited was initiated by this Tribunal on 04.02.2019 based on an Application filed the Financial Creditor in CP/1037/IB/2018. Since no viable Resolution Plan in relation to the Corporate Debtor was forthcoming, the Company was ordered for Liquidation by this Tribunal on 13.02.2020 in MA/1192/2019.

3. The Liquidator, as per Regulation 2B of the Insolvency and Bankruptcy Code of India (Liquidation Process) Regulations, 2016 (*hereinafter referred to as "IBBI Regulations, 2016"*) issued Expression of Interest (EoI) inviting for Schemes as contemplated under Section 230 to 232 of the Companies Act, 2013 and also duly prepared the Information Memorandum. The Liquidator has caused paper publication for EoI in Trinity Express (English) and in Makkal Kural (Tamil) on 23.03.2020.

4. In the meantime, due to the COVID - 19 pandemic, the Liquidator was of the opinion that the valuation that which was undertaken during the CIRP period may no longer be viable and also due to the steep decline in the property prices in wake of Covid - 19 pandemic, the Liquidator had initiated steps to go for a fresh valuation to be done by two Registered IBBI Valuer and accordingly

✓ two Registered Valuers appointed by the Liquidator had submitted



their Valuation Report before the Liquidator in the month of July 2020. The said valuation Report was placed before the stakeholders for their consideration.

5. In response to the EoI, the Corporate Debtor evinced interest from 3 prospective Scheme proponents and finally one prospective Scheme Proponent has submitted draft Scheme before the Liquidator. The Scheme as proposed by Scheme proponent is placed at pages 82 to 129 of the typed set filed along with the Application.

6. The Learned Counsel for the Liquidator submitted that the Liquidator has convened a Meeting of the Committee of Creditors (CoC) of the Corporate Debtor in order to elicit their opinion as per the ratio laid down by the Hon'ble NCLAT in the matter of **Shivram Prasad -Vs- Dhanapal & Ors.** in *Company Appeal (AT)(Insolvency) No. 224 of 2018* as to the viability, feasibility of the Scheme. It is submitted that the CoC in the said meeting dated 27.07.2020 has unanimously proposed to go ahead with the Scheme. However, the CoC has raised certain concerns in relation to the terms / conditions in the Scheme which pertains to the release of Security by the Secured Creditors, to which the Scheme Proponents has modified and clarified the same by submitting an Addendum on 17.08.2020.



7. While this being the fact, the Liquidator has moved the first motion Application viz. CA(CAA)/359/2020 before this Tribunal on 10.09.2020, under Section 230 of the Companies Act, 2013 seeking for the dispensation or convening the meeting of the creditors/shareholders. Accordingly, a direction was issued by this Tribunal vide its order dated 25.01.2021.

8. Based upon the orders passed by this Tribunal the Liquidator has appointed the Authorized Representatives for the stakeholders on 09.02.2021 and the Stakeholders meeting was fixed on 01.04.2021. The notice of the meeting was sent to the individual stakeholders / claimants on or before 01.03.2021. Further, it was submitted that the newspaper publication was made on 25.02.2021 and the notice to the statutory authorities was issued in CAA 3 on 25.02.2021.

9. The Liquidator has also filed a compliance report by way of an Affidavit 7 days before the proposed meeting duly enclosing all the relevant proofs for the compliances made in relation to the convening of the meeting of the stakeholders.

10. It is seen that the Chairman appointed by this Tribunal has filed his Report and a perusal of the same would show that the Scheme has been approved by the thumping majority of 83.883%.

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It is also seen that 0.402% have voted against the Scheme and the balance 15.715% have abstained from voting. The consolidated voting Result of the meeting is tabulated hereunder;

A	B	C	D	E	F						
			Considering claims against Liquidation Estate only under Section 53			Votes in favour			Vote against		
S N O	CLASS OF CLAIMANTS	VALUE BASIS	NO. OF CLAIMANTS	VALUE	%	NO. OF CLAIMANTS	VALUE	%	NO. OF CLAIMANTS	VALUE	%
1	Equity Shareholders	At paid-up face value	310	7,24,50,000	8.59	1	15,000	0.002	0	0	0.000
2	Preference Shareholders	At paid-up face value	106	1,93,28,000	2.29	0	0	0.000	0	0	0.000
3	Secured Creditor	Admitted Claim	1	70,19,46,938	83.24	1	70,19,46,933	83.244	0	0	0.000
4	Workmen (Unsecured)	Admitted Claim	105	71,34,828	0.85	69	52,90,127	0.627	0	0	0.000
5	Employees (Unsecured)	Admitted Claim	0	0	0.00	0	0	0.000	0	0	0.000
6	Financial Creditor (Unsecured)	Admitted Claim	1	2,57,08,202	3.05	0	0	0.000	0	0	0.000
7	Operational Creditor	Admitted Claim	1	1,09,078	0.01	1	1,09,078	0.013	0	0	0.000
8	Government Authority for Statutory Dues	Admitted Claim	2	1,65,94,336	1.97	0	0	0.000	1	33,91,657	0.402
	TOTAL CLAIM VALUE			84,32,71,382	100		70,73,61,143	83.883		33,91,657	0.402

11. Based on the aforesaid facts and circumstances, the Liquidator has submitted that the Scheme of Compromise or Arrangement as proposed by the Scheme proponents for the Stakeholders of the Corporate Debtor is the most fair and reasonable one and that it was submitted that the sanction of the Scheme will benefit the Corporate Debtor and is in the interest of all the stakeholders of the Corporate Debtor and the general public, especially the larger interest of the farmers. Therefore, it was submitted that it would be just and equitable that be Scheme be sanctioned as the same is bound to benefit the Corporate Debtor

 and its shareholders.



SCHEME OF COMPROMISE AND ARRANGEMENT

12. M/s Sholingur Textiles Limited was incorporated in 1964 and registered under the Companies Act, 1956 having its registered office at Race Course Mansion, 2nd Floor 8/1-M, Race Course, (Near Thomas Park Bus Stop) Coimbatore, Coimbatore Tamil Nadu 641018 India, with corporate identification number U17111TZ1964PLC030702.

13. As per the last audited balance sheet as on 31.03.2018 the share capital of the Company is as under:

PARTICULARS	AMOUNT IN RUPEES
Authorised Capital:	
80,00,000 Equity shares of Rs. 10/— each	8,00,00,000
2,00,000 Preference Share of Rs.100/- each	2,00,00,000
Subscribed and Paid-up Capital:	
72,45,000 Equity shares of Rs. 10/- each	7,24,50,000
1,93,280 Preference Share of Rs.100/- each	1,93,28,000

Subsequent to 31.03.2018 there has been no change in the authorized, issued, and paid-up capital of the Company.

PROPOSED INFUSION OF FUNDS

14. The Scheme Proponent 1 agrees to infuse a sum of Rs. 16,00,00,000 (Rupees Sixteen Crores only) into the Company. The

✓ Scheme Proponent 1 proposes to disburse this amount as two tranches:



15. An amount of Rs. 5,00,00,000/- (Rupees Five Crores only) will be released in favour of the liquidation estate on the 30th day from the date of approval of the Scheme by the NCLT, Chennai.

16. The remaining amount to the tune of 11,00,00,000/- (Rupees Eleven Crores only) shall be released in favour of the liquidation estate on the 75th day from the date of approval of the Scheme by the NCLT, Chennai.

17. The Modus Operandi for the above said amounts to be released in favour of a specified account that the Liquidator may assign and the payments shall be done through either a cheque or RTGS.

18. The total funds infused into the Company shall be demarcated for two purposes namely: (a) an amount of Rs.80,00,000/- (Rupees Eighty Lakhs only) for the purchase of equity shares in the Company and (b) an amount of Rs.15,20,00,000 (Rupees Fifteen Crores and Twenty Lakhs only) which shall be treated as an unsecured loan in the books of the Company. The abovementioned sum of Rs.16,00,00,000 (Rupees Sixteen Crores Only) shall be disbursed in a manner set out in Section 4.3 of this Scheme.

ISSUE OF NEW SHARES:

19. The Company shall issue new Equity Shares in favor of the Scheme Proponents for a subscription amount of Rs.80,00,000/-



(Rupees Eighty Lakhs only) in the manner set out in Section 4.2.3. The Scheme Proponents 1 and 2 will acquire entire 100% of the shareholding of the Company, by way of infusion of Rs. 80,00,000/- (Rupees Eighty Lakhs only) into the Company for purchase of Share Capital as detailed in Section 4.2.3 below.

TREATMENT OF EXISTING EQUITY SHARES

20. The Company has an authorized capital of Rs.8,00,00,000 with 80,00,000 Nos of Equity shares at Rs. 10/- each. Out of this the Issued, Subscribed and Paid up Capital is Rs.7,24,50,000 with 72,45,000 Nos. of Equity shares at Rs. 10 each. As per Section 4.2.1 of the Scheme, the existing equity shares stand cancelled. As per Section 4.2.2 of the Scheme fresh equity shares worth Rs.80,00,000/- (Rupees Eighty Lakhs only) that are issued ought to be split in the following manner:

- i. The ratio of ownership of shares between the Scheme Proponent 1 and Scheme Proponent 2 shall be 99.999875 : 0.000125. Therefore, the Scheme Proponent No. 1 i.e. Mr. M. Poobalan shall purchase, hold and own 7,99,999 Equity shares at the value Rs. 10 each. The Scheme Proponent 1 shall purchase for and on behalf of Scheme Proponent No. 2 i.e. Mrs. P. Poongodi 1 Equity Share at the value of Rs.10 each and Mrs. P. Poongodi shall hold this 1 Equity Share with beneficial interest being declared in favour of Mr. M. Poobalan.





The following will be the shareholding pattern upto the approval of the Scheme

S. No.	NAME OF SHAREHOLDER	TOTAL NO. OF EQUITY SHARES ALLOCATED	AMOUNT IN RUPEES
1	Mr. M. Poobalan	7,99,999 @ Rs.10/-	79,99,990
2	Mrs. P. Poongodi	1 @ Rs.10/-	10

CANCELLATION OF EXISTING PREFERENCE SHARES

21. All the Preference shares issued by the Company to the tune of 1,93,280 numbers and valued at Rs. 1,93,28,000 (Rupees One Crore Ninety-Three Lakh Twenty-Eight Thousand) shall stand cancelled from the date of approval of this Scheme. Consequent to the above, from the approval of the scheme, the Scheme Proponents 1 and 2 alone shall be the only shareholders of the Company.

CONVERSION OF COMPANY FROM PUBLIC LTD TO PRIVATE LTD

22. The Company shall be converted into a Private Limited Company by way of this scheme. Since Company has very small numbers of shareholders and Company is in no need of more funding from capital and in the interest of shareholders and stakeholders, it would be better to convert the Company into a Private Limited Company. Since the Company can work effectively as a Private Limited Company itself, it is being proposed to convert



into a Private Limited Company. The Company after the Scheme is approved does not have many shareholders and it does not need funds requirement from other sources.

23. Pursuant to this change, the MOA and AOA shall be allowed to be edited to reflect these changes and any other changes as may be required to effectively give effect to these changes.

PROPOSAL FOR REVIVAL OF THE COMPANY

24. It is admitted in the Information Memorandum that it is not possible to run a textile mill anymore in the present location due to the fact that majority of the machinery have been removed from the factory and the remaining machinery in the factory are obsolete and redundant. It is also observed that the factory premises itself is dilapidated and cannot be put to use. Therefore, the Scheme Proponents propose to set up various educational institutions in the present location and further set up a trust to run these institutions. The Company however will be the one to provide the infrastructure and the necessary aids to commence and continue running these institutions. The Company will therefore be revived and the functioning of the same will commence as soon as this scheme is sanctioned by the Hon'ble NCLT. Therefore, since the main objectives of the Company are proposed to be changed, it is sought that the main objectives in the Memorandum of Association may be

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changed and any other requisite changes required in the Memorandum of Association and Articles of Association may be made by the Scheme proponents in compliance of statutory provisions.

OBJECTIONS TO THE SCHEME

25. The Director General of Foreign Trade (DGFT) has filed its objection to the scheme. It was submitted by the Learned Counsel for the objector that the Scheme does not contemplate any payment to the objector and the objector is a statutory authority to whom the liquidator has served the notice as per the tenets of the Companies Act, 2013. It was submitted that Regulation 2B of the IBBI (Liquidation Process) Regulations, 2016 provides for a Scheme to be propounded in liquidation and the same does not envisage the doctrine of "clean slate" as available in the Resolution Plan. In support of his contention he relied upon the following judgments;

- a. Visisth Services Limited vs S V Ramani, Company Appeal (AT) (Insolvency) No.896 of 2020
- b. MS Vishwanathan vs Pixtronic Global Technologies Pvt Ltd, IA/1215/CHE/2021
- c. M/s. Shiv Shakti Inter Globe Exports Pvt. Ltd. Vs. M/s KTC Foods Private Limited Through Liquidator, Mr. Anup Kumar Singh, Company Appeal (AT) (Insolvency) No, 650 of 2020 (*to distinguish between sale of Corporate Debtor as "going concern" and sale of "business as a going concern"*), (*in this case, the sale was held to be*





on "clean slate" basis, where in liquidation, the business was sold on "going concern" basis).

26. Thus, it was submitted that the Scheme envisages transfer of the Corporate Debtor as a going concern on "clean slate" basis, which is evident from clauses 4.4.3, 4.4.6 and various other terms contained in part 4.4 of the Scheme. It is trite law that a resolution plan or a scheme, which is in contravention of any law for the time being in force, will not be approved by this Adjudicating Authority and under the said circumstances prayed for dismissal of the present Application.

27. In reply to the objection raised by DGFT, the Learned Counsel for the Liquidator submitted that the objector viz. DGFT has neither during the CIRP nor during Liquidation process, till date, has preferred to file the claim as per the procedure prescribed under the provisions of IBC, 2016. Further, the last date for filing claims for the Corporate Debtor under Liquidation was 18.03.2020 and as of the date of the reply, a period of 646 days has since elapsed for filing a valid claim. Further, it was submitted that no application for condonation of delay has been filed by the objector. It was submitted that only now the objector has come forward to file a purported objection memo, which is factually incorrect and bereft of any supporting documents and does not put forth any valid objection to the Petition under consideration.



28. It was submitted by the Learned Counsel for the Liquidator that he has written two letters / emails to the objector on 18.02.2020 and 04.12.2020 informing that a claim has to be lodged and has not been filed and that the same may be taken up by moving before the Adjudicating Authority under the provisions of IBC, 2016 in view of the delay. However, inspite of the same, the objector has chosen to remain silent and has now come forward to file the present objection memo.

29. Thus, it was submitted that no claim has been filed by the Objector for adjudication during the Liquidation Process and the statement made in the Objection Memo can have no legal effect whatsoever on the Liquidation Estate of the Corporate Debtor. Further, it was submitted that all claims must be submitted, collated, verified or adjudicated in order to be eligible for any distribution during the CIR process or Liquidation Process. In support of the same, the Learned Counsel for the Liquidator relied upon the Judgment of the Hon'ble NCLAT in the matter of **Municipal Corporation Faridabad Vs Sajeve Bhushan Deora & Ors** vide order dated 08-Dec-2021 delivered in the context of a belated claim by a statutory creditor would squarely apply to the facts of the matter and is cited in support of the stand of the Liquidator. The Orders passed by this Bench in **BHEL Vs V Mahesh, Liquidator of**





M/s Nagarjuna Oil Corprn Ltd dated 01- Jun-2021 in I.A 840/1B/2020 in M.A No 289 of 2018 in TCP/10/18/2017 (vide Annexure-4) is also cited in support of the same.

30. The Learned Counsel for the Liquidator further submitted that the objector herein being the Office of the DGFT had full notice of the Corporate Debtor that they are under Liquidation and should have filed its claim, participated in the stakeholders meeting and voted on the Scheme of Compromise that was tabled. Having elected not to do so, it was submitted that the objector loses its rights if any in reference to the claim and the majority vote of the stakeholders to approve the Scheme extinguishes the claim if any. Further, it was submitted that for the sake of argument, if the DGFT had filed its claim amounting to Rs.2.61 crores and had voted against the Scheme, yet the Scheme would have stood approved by 81.36% of the vote much higher than the required 75%.

31. Having heard the argument made by the Learned Counsel for the objector and the reply argument of the Learned Counsel for the Liquidator we find credence in the submissions made by the Learned Counsel for the Liquidator that even though the Liquidator has written two letters/emails to the objector on 18.02.2020 and 04.12.2020 informing that a claim has to be lodged, the objector preferred to be indolent and not moved any application before this



Tribunal seeking condonation of delay in filing the claim. Thus the principle of '*vigilantibus non dormientibus jura subveniunt*' (*The law assists the vigilant, not those who sleep*) would squarely apply to the present case.


32. Further, the objector, eventhough if his claim is admitted would be having only 2.52% of the voting share and as rightly pointed out by the Learned Counsel for the Liquidator that if the DGFT had voted against the Scheme, yet the Scheme would have stood approved by 81.36% which is much higher than the required mandate of 75%.

33. Further, the objector has in his objection report has stated that the principles of "clean slate" is available only during the CIRP period and does not apply to the Liquidation process.

34. In this connection, it is significant to refer to the Judgment of the Hon'ble NCLAT in the matter of **Ramesh Kumar Chaudhary & Anr. -Vs- Anju Agarwal, Liquidator of M/s. Shree Bhawani Paper Mills Ltd. & 3 Ors.** in *Company Appeal (AT) (Insolvency) No. 957 of 2021* wherein at para 21 to 27 it has been held as follows;

21. During the submissions before us as well as in the meeting of the Stakeholders Consultation Committee, reliance has been placed by the Appellants as well as the Liquidator on Section 230(2)(c). Shri Arun Kathpalia, Learned Senior Counsel for the Appellants submits that any scheme for corporate debt restructuring is to be consented by not less than 75% of the secured creditors and unless there is consent of 75% of secured





creditors, no Application for compromise or arrangement can be entertained by the Liquidator. He submits that fulfilment of requirement under Section 230(2)(c) is a condition precedent for consideration of any scheme or to make arrangement. Learned Counsel for the Respondent Nos. 2 and 3 submitted that Section 230(2) (c) i.e. requirement of not less than 75% of the consent of the Corporate Debtor is not a condition precedent. Section 230(2) is as follows:

"230. Power to compromise or make arrangements with creditors and members.—(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."

22. We have considered the submissions of the parties in the above regard and perused the statutory scheme under Section 230.

23. Section 230(2)(c) uses expression 'any scheme of corporate debt restructuring consented to by not less than seventy-five per cent of the secured creditors in value'. Sub-clause (c) of sub-section (2) of Section 230 is attracted when there is a scheme of corporate debt restructuring. The expression used in sub-clause (c) is 'corporate debt restructuring'. Debt restructuring is well known concept. Debt given by a lender can be restructured by the lender by any scheme issued by the lender or Reserve Bank of India or Central Government. Debt restructuring scheme which are issued by the Reserve Bank of India or Central Government from time to time are to mitigate the hardship of the borrowers. The word 'restructuring' has been defined in 'P Ramanatha Aiyar, Advanced Law Lexicon, 6th Edition, Volume 4' in following words:-

"Generically in context of financial instruments, refers to the rescheduling or alteration of terms of the instrument, generally adversely affecting the interest of the instrument holder. For example, elongating the repayment terms of a loan, or reducing security. In ISDA definitions, restructuring as a credit event is defined as events as a result of which the terms, as agreed by the reference entity or governmental authority and the holders of the relevant obligation, governing the relevant obligation have become less favourable to the holders that they would otherwise have been. These events include a reduction in the principal amount or interest payable under the obligation, a postponement of payment, a change in ranking in priority of payment or any other composition of payment."

24. Learned Counsel for the Appellant has also relied on the definition of 'corporate debt restructuring' in "Glossary of Key Terms and Concepts" from the Development Co-operation Report, which is to the following effect:

"Definition: Any action officially agreed between creditor and debtor that alters the terms previously established for repayment. This may include forgiveness (extinction of the loan), or rescheduling which can be implemented either by revising the



repayment schedule or extending a new refinancing loan.”

25. Learned Counsel further submits that the Hon’ble Supreme Court in “Commissioner of Income Tax VII New Delhi vs. Punjab Stainless Steel Industries- (2014) 15 SCC 129” has laid down that when a term is not defined in statutes and circulars, its meaning can be taken as in prevalent in ordinary, common or commercial parlance amongst persons concerned with it.

26. When lenders restructure the debt i.e. permit the borrower to make the payment debt in different time schedule or different instalment as per any Scheme, the said will be debt restructuring. The statutory scheme required consent by not less than 75% of the secured creditors for such debt restructuring which indicate that debt restructuring is to be consented by specific majority of secured creditors and it is secured creditors who are generally banks and the financial institution who can restructure the debt.

27. We accept the submission of Shri Arun Kathpalia, learned Senior Counsel for the Appellant that the Scheme proposed by Respondent Nos.2 and 3 is an arrangement by Respondents, wherein alternations have been proposed in the terms of the loan and lesser amount have been proposed to be paid for settling the claim, which is restructuring of corporate debt. Hence, the Scheme under Section 230 submitted by Respondent Nos.2 and 3 ought to have consent of not less than 75% of the Secured Creditors, and an affidavit to that effect ought to accompany with the Scheme.

35. Thus, a Scheme proposed under Section 230 of the Companies Act, 2013 may also include extinguishment of the claim of the Creditors and the decision of the majority (75%) of the creditors in this regard will bind the minority. Hence, the objections raised by the DGFT in relation to the approval of the Scheme under Section 230 of the Companies Act, 2013 are devoid of merits and accordingly stand overruled.



IA/686/2020

36. This Application has been filed by the Liquidator of the Corporate Debtor under Section 60(5) of IBC, 2016 against (i) Regional Provident Fund Commissioner, Vellore and (ii) M/s. Edelweiss Asset Reconstruction Company Limited, seeking relief as follows;

- (a) Hold that the Claim of the Respondent as adjudicated upon by the Liquidator, reproduced in Table A hereinabove is in accordance with Section 53 read with Section 36 of the Code and has been correctly determined thereunder.
- (b) Hold that the encumbrance registered by way of a Registered Document bearing No.6/2019 dated 28-Mar-2019 on the file of the Sub – Registrar, SH128, Shankar Nagar, Sholingur, Tamil Nadu 631 102, is not binding on the Liquidator under Section 77(3) of CA 2013 and the Respondent has no right, title, interest or claim in or over the property forming subject matter of the said encumbrance created.
- (c) Direct that the said encumbrance registered by way of a Registered Document bearing No.6/2019 dated 28-Mar-2019 on the file of the Sub – Registrar, SH128, Shankar Nagar, Sholingur, Tamil Nadu – 631 102 be cancelled.
- (d) Pass such further orders, as this Hon'ble Adjudicating Authority may deem fit and proper in the circumstances of the case and render justice.

37. The Respondent EPFO has submitted the claim before the Liquidator for a sum of Rs.1,57,02,503/- in Form F dated





24.02.2020. It was submitted that the Respondent has contended that the entire claim of Rs.1,57,02,503/- is to be paid in full. Further, it was submitted that the claim of the Respondent under the head "interest", or "penal damages" can neither be treated as "secured" nor can it be given under priority under Section 36(4)(a)(iii).

38. These issues raised are no longer *res integra* in view of the decision of the Hon'ble NCLAT in the matter of **Jet Aircraft Maintenance Engineers Welfare Association** wherein it has been held that non-payment of the dues of the Employees Provident Fund Organization in full would amount to breach of the provision of Section 30(2)(e) of IBC, 2016. Further, by relying upon the Judgment of the Hon'ble Supreme Court in the matter of **Maharashtra State Cooperative Bank Limited -Vs- Assistant Provident Fund Commissioner; (2009) 10 SCC 123**, it has been held by the Hon'ble NCLAT that any amount due from the employer appearing in sub-section (2) of Section 11 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, also covers the amount determined under Sections 7A, 7Q, 14B and 15(2) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and the preposition as laid down by the Hon'ble Supreme Court squarely applies in the above case. Also, by placing reliance upon Section 36(4)(a)(iii) of IBC, 2016 it was held that Provident Fund





dues are not subject to distribution under Section 53(1) of IBC, 2016.

39. Thus, it is made clear that the EPFO are entitled to their full claim of Rs.1,57,02,503/-. With the above said directions **IA/686/2020 stands disposed off.**

40. The Scheme Proponents have sought certain Waiver / Relief / Concessions from this Tribunal in Clause 17 of the Scheme so as to implement the Resolution Plan. These are ordered as follows;

SL. No.	RELIEF / CONCESSIONS SOUGHT FOR	ORDERS THEREON
1	All relevant Government Authorities to grant relief from payment of stamp duty, registration fees and other applicable fees (including fees payable to the Registrar of Companies, Chennai and the jurisdictional Registrar or Sub – Registrar of Assurances) for successful implementation of this Scheme	This is for the appropriate authorities to consider, keeping in view of the clean slate principle envisaged under IBC, 2016.
2	The Registrar of Companies, Chennai to take on record and implement the Scheme, upon approval of the Scheme by the NCLT, without any further compliances;	This is for the RoC, Chennai to consider, keeping in view of the clean slate principle envisaged under IBC, 2016.
3	The MCA and / or the NCLT to exempt compliance with the provisions of Chapter XV of the 2013 Act in respect of schemes of arrangement, as contemplated under this Scheme;	Granted
4	The Central Board of Direct Taxes to: (i) not void or take any other actions with respect to the transactions contemplated under this Section under Section 281 of the IT Act (including requiring a no-objection certificate in respect of all pending proceedings and Tax dues of the Company, whether contingent or crystallized (including all interest and penalty in relation	This is for the CBDT, CBIC and other appropriate authorities to consider keeping in view the object of IBC, 2016



	thereto); (ii) exempt the Scheme proponents from any liability pursuant to Section 56 and 170 of the IT Act; and (iii) not levy any Tax (including minimum alternate Tax under the IT Act and any interest and penalty in relation thereto) or initiate any tax proceedings arising as a result of giving effect to, or otherwise in relation to, this Scheme in the hands of Company or the Scheme proponents. The Central Board of Excise and Customs / Goods and Service Tax authorities shall not void or take any other actions with respect to the transactions contemplated under this Scheme under Section 81 of the Central Goods and Service Tax Act, 2017 and not impose any successor liability or levy and Tax on the Company or the Scheme Proponents;	
5	The Company shall be entitled to modify or terminate contracts (including contracts with parties that were related parties of the Company prior to the Insolvency Commencement Date) which impose onerous conditions hindering the restructuring and revival of the Company, without any damages being payable by the Company for such modification or termination; This Clause does not in any manner limit the applicability of Section 15 of this Scheme.	Granted, subject to the provisions of Contract Act, 1872 and other applicable laws
6	Since the Scheme Proponents have been provided with limited information in relation to the Business Permits and their current status, it is probable that certain of the Business permits of the Company have lapsed, expired, suspend, cancelled, revoked or terminated or the Company has Non - Compliances in relation thereto. Accordingly, all Governmental Authorities that have issued or granted such Business Permits to provide a reasonable time period after the Effective Date in order for the Scheme Proponents to assess the status of these Business Permits and ensure that the Company is compliant with the terms of such Business permits and Applicable Law without initiating any investigations, actions or proceedings in relation to such Non - Compliances and to permit the Scheme proponents to continue to operate the business of the Company as carried out prior to the Insolvency Commencement date;	This is for the appropriate Government authorities to consider, keeping in view of the clean slate principle envisaged under IBC, 2016.
7	All concerned State revenue of stamp authorities to waive penalties for non - registration and inadequate or non - stamping of documents executed by the Company	This is for the appropriate authorities to consider, keeping in view of the clean slate principle



		envisaged under IBC, 2016.
8	All Governmental Authorities (including the RBI) to grant any relief, concession or dispensation as may be required for implementation of the transactions contemplated under this Scheme in accordance with its terms and conditions, and to waive the Non – Compliances of the Company prior to the date of approval of this Scheme;	This is for the appropriate authorities to consider, keeping in view of the clean slate principle envisaged under IBC, 2016.
9	All Creditors of the Company to withdraw all legal proceedings commenced against the Company in relation to Claims, including all criminal proceedings, proceedings under Section 138 of the Negotiable Instruments Act, 1881 and proceedings under the SARFAESI and RDDBFI without 30 (thirty) days from the date of approval of this Scheme; and	Granted, subject to the provisions of IBC, 2016 and other applicable laws
10	All Governmental Authorities to waive the Non – Compliances of the Company prior to the date of approval of this Scheme.	Granted, subject to the provisions of IBC, 2016
11	The Benefits bestowed by CBDT under Section 115JB of the Income Tax Act, 1961, shall apply for the Company even after the approval of this Scheme. Thus, the amount of total loss brought forward (including unabsorbed depreciation) shall be allowed to be reduced from the book profit for the purposes of levy of MAT under Section 115JB of the Act.	This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016
12	All actions taken by the Creditors both secured and unsecured against the personal guarantees extended by the existing promoters which have been initiated prior to the sanction of this Scheme including but not limited to all legal suits, debt recovery certificate proceedings and / or quasi-legal proceedings that have been initiated against the Company or the existing promoters, which may have an adverse impact on the company shall stand quashed.	Granted, however, the personal guarantees of the promoters are not discharged.

41. It is made clear that this Sanction of Scheme does not automatically construe that the approvals in relation to the statutory authorities or Government or any other authority is automatically granted.



42. The Sanction of the Scheme in relation to the objective stated by Scheme proponent and recorded in para 24 of this order is binding on the proponent of the Scheme.

43. During the Implementation Period, the Liquidator shall act as the Chairman of the Monitoring Committee and the members of the Stakeholders Committee shall form part of the Monitoring Committee till the tenure of completion of the Scheme.

44. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law

45. Thus, the Scheme of Compromise or Arrangement for takeover of assets and properties of Sholingur Textiles Limited is hereby **approved** and is binding on the Corporate Debtor viz. Sholingur Textiles Limited and all other stakeholders involved. The Liquidator is directed to file the certified copy of this order to the Registrar of Companies concerned for registration. As a consequence thereof, CP/66/2021 stands **allowed**. All other





Applications filed by the objectors, if any which is pending, also stands **closed** in terms of this order.

- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

- Sd -

Justice RAMALINGAM SUDHAKAR
PRESIDENT

Raymond