

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Insolvency) No. 957 of 2021**

[Arising out of Order dated 01.11.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench, Allahabad, in IA No. 314 of 2021 in CP No. (IB)- 110/ALD/2017]

In the matter of:

**1. Ramesh Kumar Chaudhary
Through its Authorised Representative
Gautam Chaudhary
D 66 Chandrika Colony, Sigra,
Varanasi- 221002, India**

**2. Interweave Polytex Private Limited
B-Block, 8th Floor, Vinayak Plaza
Maldahiya Crossing
Varanasi- 221002
Vs.**

...Appellants

**1. Anju Agarwal,
Liquidator of M/s. Shree Bhawani Paper Mills
Ltd.
73, National Park, Lajpat Nagar, IV, New Delhi-
110024**

**2. Akshat Tondon
5000 C Marine Parade Road
#21-11, Laguna Park, Singapore- 449286**

**3. Ecofirst Pte. Ltd.
19, Tanglin Road, Unit 05-18 Tanglin Shopping
Centre Singapore- 247909**

**4. Stakeholder Consultation Committee appointed
under the Insolvency and Bankruptcy Code, 2016 ...Respondents
(Proforma Respondent)**

**For Appellants: Mr. Arun Kathpalia, Senior Advocate with Mr.
Anuj Tiwari, Advocates.**

**For Respondents: Mr. Abhishek Anand and Mr. Samriddh Bindal,
Advocates for R1.
Mr. Tarun Gulati, Senior Advocate with Mr.
Pulkit Deora, Mr. Harsh Gurbani and Mr. Kumar**

Sambhav, Advocates for R2&3.

J U D G M E N T
(15th March, 2022)

Ashok Bhushan, J.

1. This Appeal has been filed against order dated 01.11.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench, Allahabad in I.A No. 314 of 2021 filed by the Respondent Nos. 2 & 3. The Adjudicating Authority by order dated 01.11.2021 directed the Liquidator to consider the Scheme under Section 230 of the Companies Act, 2013 submitted by the Respondent Nos. 2 & 3 and in the meantime, no further steps were directed to be taken with regard to the auction of the assets of the Corporate Debtor. The brief facts of the case and sequence of the events necessary to be noted for deciding the issue raised in this Appeal are:

The Liquidation Process was initiated against the Corporate Debtor i.e. 'M/s. Shree Bhawani Paper Mills Limited' by order dated 07.07.2021 passed by the Adjudicating Authority in CP(IB) No. 110/ALD/2017. The Ex-Managing Director of the Corporate Debtor Shri Badri Vishal Tandon died on 12.07.2021. On 18.09.2021, Smt. Meenu Tandon, wife of late Badri Vishal Tandon, wrote to Liquidator informing that her husband Badri Vishal Tandon was the largest shareholder of the Corporate Debtor holding 14.6% shares and as per his WILL she has inherited all his shares and has now

become the largest shareholder of the Company. Liquidator was requested to appoint Smt. Meenu Tandon as member of the Stakeholders Consultation Committee (SCC). Liquidator vide e-mail dated 20.09.2021 informed Smt. Meenu Tandon that Shri Badri Vishal Tandon was holding 12.97 percent of shares in individual capacity and holding 1.63 percent of shares as HUF, hence, the largest shareholder is Shri O.P. Goenka holding 13.48 percent of shares who has been included in the Stakeholders Consultation Committee. On 25.09.2021, the Liquidator issued e-auction notice. On 30.09.2021, Respondent No.2 sent an e-mail to the Liquidator communicating that members of shareholder of the Corporate Debtor is proposing a Scheme of Compromise or Arrangement under Section 230 of the Companies Act, 2013, hence, she is requested to withdraw e-auction Sale Notice as published in the newspapers on 25.09.2021. It was also communicated that the Corporate Debtor is a Medium Enterprise under the provisions of Micro, Small & Medium Enterprises Development Act, 2016 and the Respondent No.2 was eligible to submit the Scheme for the resolution of insolvency. On 04.10.2021, a Scheme of Compromise or Arrangement under Section 230 of the Companies Act, 2013 was submitted to the Liquidator. The Liquidator vide her e-mail dated 14.10.2021 provisionally declared the Respondent No.2 & 3 ineligible to submit scheme. Challenging the decision dated 14.10.2021 declaring Respondent Nos. 2 and 3 ineligible, an I.A No. 314 of 2021 was filed before the Adjudicating Authority praying that the Scheme of Compromise or Arrangement submitted by Respondent Nos. 2 and 3 be considered and auction be stopped. On 21.10.2021, the Liquidator sent an e-mail to the Respondent Nos.2 and 3 communicating that the Liquidator

has now changed her opinion and the Respondent Nos. 2 and 3 are declared eligible under Section 29A. The Liquidator further informed that she has called meeting of the Stakeholders Consultation Committee on 22.10.2021 for deliberations on the Scheme. An urgent meeting of the Stakeholders Consultation Committee of the Corporate Debtor was convened on 22.10.2021. The meeting was convened only on 21.10.2021 for the next day. On 22.10.2021, an e-mail was sent by Respondent No.2 at 11.05 A.M. to the Liquidator in response to her e-mail 21.10.2021 requesting that he may be provided reasonable time to clarify any matters arising on the Scheme and before taking any decision on the Scheme. It was further requested that Respondent No.2 has filed an Application before the Adjudicating Authority and till the time Application is not decided, the Liquidator should refrain from dealing with the assets of the Corporate Debtor. Meeting of the Stakeholders Consultation Committee took place on 22.10.2021 where the Liquidator informed about the eligibility of the Respondent Nos. 2 and 3 to propose a Scheme of Compromise or Arrangement. Liquidator sought views/ vote of the members present on the Scheme. According to the minutes, 59.66% voted against the Scheme and it was recorded in the minutes that in terms of Section 230(6) of the Companies Act, 2013, an approval of 75% in value of the creditors is required. Hence, on the basis of the voting, Liquidator declared that the Scheme has not been approved by the Creditors during the Stakeholders Consultation Committee meeting. After declaring that Scheme has not been approved, the Liquidator sought permission of the Stakeholders Consultation Committee members to call Mr. Akshat Tandon for presentation and took vote and according to minutes, 91.35% voted

against the presentation of the Scheme by Respondent No.2. It was further resolved by the Stakeholders Consultation Committee that e-auction for 25.10.2021 be continued. The Liquidator informed that only one person has given Expression of Interest along with EMD.

As per the aforesaid decision in meeting of 22.10.2021, Liquidator proceeded with the e-auction and the Appellant before us who was the only bidder whose bid was accepted by the Liquidator, has given a bid of Rs. 45.30 Crores.

Application I.A. 314 of 2021 was taken up and heard by the Adjudicating Authority. After hearing the Applicants i.e. Respondent Nos. 2 and 3 before us as well as Learned Counsel for the Liquidator, on 01.11.2021, the Adjudicating Authority permitted the Applicants-Respondent Nos. 2 and 3 to file the Scheme with the Liquidator on or before 08.11.2021 by placing all relevant information on record to enable the Liquidator to assess the eligibility of the Applicants in terms of Section 29A of the IBC and to consider whether an application for directions under Section 230(1) of the Companies Act, 2013 should be filed before the Tribunal/ Adjudicating Authority for appropriate directions. The Adjudicating Authority further directed "In the meantime no further steps in regard to the auction shall be taken without leave of this Adjudicating Authority". Aggrieved by the order dated 01.11.2021, the Appellant who is Successful Bidder has filed this Appeal. This Tribunal entertained the Appeal on 23.11.2021 and passed an order staying the order dated 01.11.2021 on the Application I.A No. 314 of 2021.

2. Shri Arun Kathpalia, Learned Senior Counsel for the Appellants submits that the Adjudicating Authority erred in directing the Liquidator to consider filing the Scheme proposed by the Respondent No.2 under Section 230 of the Companies Act, 2013 whereas the Scheme was rejected by the Stakeholders Consultation Committee not being commercially viable in its meeting dated 22.10.2021. The Adjudicating Authority had no jurisdiction to direct the Liquidator to consider the Scheme proposed by the Respondent Nos. 2 and 3. It is submitted that the Scheme filed by the Respondent Nos. 2 and 3 ought to have been presented only after consent of seventy-five per cent of the secured creditors as required by Section 230 (2) (c) and there being no consent by 75% of the secured creditors which is the condition precedent, Scheme was not required to be considered by the Liquidator. The Adjudicating Authority committed error in permitting Respondent Nos. 2 and 3 to file a revised scheme before the Liquidator. Further, no scheme could have been entertained beyond the period of 90 days prescribed for completion of entire process under Section 230 of the Companies Act, 2013. It is submitted that the impugned order has been passed in violation of principles of natural justice since the Appellant was not arrayed as a party to the proceeding and I.A No. 314 of 2021 had become infructuous at the time of passing of the impugned order. It is submitted that the Sale Certificate was issued on 30.12.2021 in favour of the Appellant who has made all payments.

3. Shri Tarun Gulati, Learned Senior Counsel appearing for Respondent Nos. 2 and 3 refuting the submissions of Counsel for the Appellants

contends that entire process adopted by the Liquidator with regard to Scheme of Compromise or Arrangement submitted by Respondent Nos. 2 and 3 is contrary to the provisions of the Code and Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. When a Scheme of Compromise or Arrangement was submitted to the Liquidator well within 90 days from initiation of liquidation process, it was incumbent on the Liquidator to file an Application before the Adjudicating Authority for consideration and passing appropriate order. The Liquidator was not required to obtain votes on the Scheme in the Stakeholders Consultation Committee. It was the Liquidator who ought to have examined the Scheme and file appropriate Application. The whole premise of the Liquidator that Stakeholders Consultation Committee in its meeting dated 22.10.2021 has disapproved the Scheme is fallacious. Section 230(6) which has been relied by the Liquidator for holding that Scheme has been disapproved by the Creditors is wholly misconceived. Applicability of Section 230(6) arises only when meeting is called by order of the Adjudicating Authority. Section 230(2) (c) was also not attracted nor there was any requirement of consent by not less than 75% of the secured creditors for consideration of the Scheme of Compromise or Arrangement submitted by the Applicant. It is submitted that the Liquidator from very beginning has been making efforts to defeat consideration of the Scheme. After Scheme was submitted, on 14.10.2021, she has declared Respondent Nos. 2 and 3 ineligible which decision was reversed on 21.10.2021 when Respondent Nos. 2 and 3 had filed an Application I.A. No. 314 of 2021 before the Adjudicating Authority. On 21.10.2021, when the Liquidator held Respondent Nos. 2 and 3 as

eligible, it was incumbent on her to examine the Scheme and submit an Application before the Adjudicating Authority. The Liquidator has abdicated her duties as required under the Code and Regulations and trying to shield her illegalities on the strength of alleged decision by the Stakeholders Consultation Committee dated 22.10.2021. Applicants- Respondent Nos. 2 and 3 on 30.09.2021 have requested the Liquidator not to proceed with the auction notice, hence, it was incumbent on the Liquidator not to proceed especially when she herself found Respondent Nos. 2 and 3 eligible to submit a Scheme. The advice of Stakeholders Consultation Committee is neither binding nor mandatory to be followed by the Liquidator. Further 90 days period for completion of Compromise or Arrangement as provided under Section 2B of the Liquidation Regulations is not mandatory. Further, a bidder who is a party to a process for sale of the Corporate Debtor as a going concern which process also did not conclude within 90 days cannot be heard to contend that the Scheme was not sanctioned within 90 days.

4. It is further submitted that against the order dated 01.11.2021 passed by the Adjudicating Authority, this Court on 23.11.2021 passed only an interim order. It was not open for the Liquidator during the pendency of the Appeal to issue Sale Certificate in favour of the Appellant. The Appeal filed by the Appellant has not yet allowed and the Liquidator to unduly benefit the Appellant has proceeded to issue Sale Certificate as well as assets to the Appellants. It is submitted that in the auction notice the reserve price mentioned was Rs.45 crore. In the scheme, which was submitted on 04.10.2021, the Respondent No.2 has valued the Scheme as Rs.45.21 Crore

and the sole bid placed by the Appellants was for Rs. 45.30 Crores. It was submitted by the Learned Counsel for the Appellants that information regarding value of the Scheme was leaked to the Appellant that is why he gave an offer of Rs.45.30 Crores. The auction which was held on 25.10.2021 was against the provisions of the Code and Regulations and is a result of illegalities committed by the Liquidator.

5. Shri Abhishek Anand, Learned Counsel for the Liquidator submits that the order passed by the Adjudicating Authority suffers from infirmity and contrary to the Code. It is submitted that the Scheme was submitted by Respondent Nos. 2 and 3 one day before expiry of 90 days. However, Shri Abhishek Anand does not dispute that the Scheme for Compromise or Arrangement was received on 04.10.2021 submitted by Respondent Nos. 2 and 3. It is submitted that in the third Stakeholders Consultation Committee meeting held on 22.10.2021, the Scheme with 75% in value of the Creditors was disapproved. The Stakeholders Consultation Committee also opined that Respondent Nos. 2 and 3 are eligible for submitting the Scheme. The Stakeholders Consultation Committee having already rejected the Scheme of Respondent Nos. 2 and 3, the Liquidator has transferred the physical possession of the assets of the Corporate Debtor to the Appellant.

6. We have considered the submissions of the Learned Counsel for the parties and perused the record.

7. Liquidation Regulations 2016 were amended by inserting Regulation 2B w.e.f. 06.01.2020. Regulation 2B is as follows:-

“2B. Compromise or arrangement. (1) Where a compromise or arrangement is proposed under section 230 of the Companies Act, 2013 (18 of 2013), it shall be completed within ninety days of the order of liquidation under sub-sections (1) and (4) of section 33.

Provided that a person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor, shall not be a party in any manner to such compromise or arrangement.

(2) The time taken on compromise or arrangement, not exceeding ninety days, shall not be included in the liquidation period.

(3) Any cost incurred by the liquidator in relation to compromise or arrangement shall be borne by the corporate debtor, where such compromise or arrangement is sanctioned by the Tribunal under sub-section (6) of section 230:

Provided that such cost shall be borne by the parties who proposed compromise or arrangement, where such compromise or arrangement is not sanctioned by the Tribunal under sub-section (6) of section 230.”

8. By insertion of the Regulation 2B of the Liquidation Regulation, the statutory Scheme is clear that within 90 days of the order of the liquidation the Scheme of Compromise or Arrangement be completed. Further, by virtue of sub-regulation (2) of Regulation 2B, the period of 90 days is not to be included in the liquidation period. This Tribunal in several judgments has emphasised that before taking steps to sell the assets of the Corporate Debtor, the Liquidator is to take steps in terms of Section 230 of the

Companies Act, 2013. This Tribunal in **“S.C. Sekaran vs. Amit Gupta- Company Appeal (AT) (Ins.) No. 495 & 496 of 2018”** laid down following:-

“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 any possible to sell the company in part and in accordance with law.”

9. Further, in **“Y. Shivram Prasad vs. S. Dhanpal- Company Appeal (AT) (Insolvency) No. 224 of 2018”** again in paras 13 and 14, following was held:-

“13. Therefore, it is clear that during the liquidation process, step required to be taken for its revival and continuance of the ‘Corporate Debtor’ by protecting the ‘Corporate Debtor’ from its management and from a death by liquidation. Thus, the steps which are required to be taken are as follows:-

- (i) By compromise or arrangement with the creditors, or class of creditors or members or class of members in terms of Section 230 of the Companies Act, 2013.*
- (ii) On failure, the liquidator is required to take step to sell the business of the ‘Corporate Debtor’ as going concern in its totality along with the employees.*

14. The last stage will be death of the 'Corporate Debtor' by liquidation, which should be avoided."

10. In the present case, Counsel for the Appellant has given much emphasis on the fact that Scheme of Compromise or Arrangement was filed one day before expiry of 90 days. The present is a case where a Scheme for Compromise or Arrangement by Respondent Nos. 2 and 3 was filed well before 90 days and on 30.09.2021, Respondent No.2 has already intimated the Liquidator that they are submitting a Scheme for Compromise or Arrangement and further steps pursuant to auction notice dated 25.09.2021 be not taken. The mere fact that it was filed one day before expiry of 90 days in no way attaches any ineligibility in consideration of the Scheme.

11. The sequence of the events as noted above indicates that after submission of the Scheme on 04.10.2021, at no point of time there was proper consideration of the Scheme submitted by the Respondent Nos. 2 and 3. On 14.10.2021, the Liquidator declared Respondent Nos. 2 and 3 ineligible to submit a Scheme which decision was reversed by Liquidator herself on 21.10.2021 holding that Respondent Nos. 2 and 3 are eligible. After holding the Respondent Nos. 2 and 3 eligible there was no impediment in consideration of the Scheme by the Liquidator. The only consideration of the Scheme, as is the case of the Liquidator, is that the Scheme was considered in Stakeholders Consultation Committee on 22.10.2021 and was not accepted. Hence, the Liquidator treated herself absolved from consideration of the Scheme any further and proceeded with the e-auction

on 25.10.2021 of the assets of the Corporate Debtor. The minutes of the Stakeholders Consultation Committee have been brought on the record of the Appeal as Annexure A/11. Part-2 of the Minutes is with regard to the “Matters Discussed”. The entire consideration regarding the Scheme submitted by the Respondent Nos.2 and 3 is contained in para-A which is to the following effect:-

“A. Eligibility under Section 29 A of proposers of the scheme of Compromise & Arrangement i.e. Mr. Akshat Tandon and Ecofirt PTE. Ltd. and Presentation of the scheme to SCC

The Liquidator apprised that as per the provisional eligibility report forwarded by the Liquidator vide email dated 14th October, 2021, the Liquidator had formed an opinion that both the above proposers of the scheme were not eligible due to the reasons mentioned in the said report. Subsequently, Mr. Akshat Tandon had sent to the Liquidator relevant circulars of MSME ministry and RBI mentioning that on the basis of these circulars they are eligible. Thereafter, the Liquidator had conducted its own due diligence and after examination, the Liquidator on the basis of additional information declared that both the proposers of the scheme eligible under Section 29A in terms of Section 240 A of the Code. A complete revised report of the Liquidator is enclosed for perusal of the Stakeholders.

The Liquidator thought it pertinent to convey that the said scheme was to be submitted within 90 days of the Liquidation Commencement dated (i.e. by 4th October, 2021- LCD date being 7th July, 2021) and the email

proposing the scheme was also received by the Liquidator on the 90th day.

SCC also took note of the opinion of Mr. Abhishek Anand as put up in the Agenda and also the voting share of the creditors as put up in the Agenda.

The SCC took note that proposers of the scheme of Compromise & Arrangement i.e. Mr. Akshat Tandon and Ecofirst PTE. Ltd. are eligible under Section 29A, subject to Section 240A of the Code being MSME.

At this point, the Liquidator stated that the full copy of the said scheme had already been circulated to all the stakeholders for their perusal, however, the Liquidator for the benefit of the stakeholders understanding, presented the salient features of the said scheme to the SCC members and sought views/ vote of the members present one by one on the scheme. The result of the members present and voting is given below in the chart-

S. No.	Category	Secured/Unsecured	Voting % of claims/ debt	Voted in favour/ against	Reasons for vote
1	Financial Creditor- JM Financial Asset Reconstruction Company Limited	Secured	55.86%	Voted against	Commercially not viable
2	Financial Creditor- Bank of Baroda	Secured	33.91%	Did not vote	Will put up the matter to competent authority
3	Representatives of Unsecured Financial Creditors	Orion I.T. Parks Pvt. Ltd.	3.93%	Voted in favour	Can be considered
		Suchitra Tandon		Voted in favour	Should give a chance
4	Representative of Employees and Workmen	Unsecured	1.58%	Voted against	No faith in Tandon Family

5	Representatives of Operational creditors other than Workmen, employees and Governments	M/s Ashirwad Industries	2.22%	Voted against	No reason given
		Raja Ram Gupta & Co- Proprietor- Gyan Prakash Gupta		Not available during the voting*	
6	Government	Employees Provident Fund Organisation Regional Office- Lucknow	2.51%	Not present	Not Present
7	Operational Creditors other than Workmen, employees and Governments	Mr. Om Prakash Goenka	-	Not present	Not Present
Total			100.00%		

*not possible to split the voting share therefore taken as voted against

Result for voting-

Voted against- 59.66%

Voted in favour- 3.93%

Did Not vote- 33.91%

Not Present- 2.51%

Since in terms of Section 230 (6) of the Companies act 2013, an approval of 75% in value of the creditors is required for approval of the scheme, the Liquidator on the basis of the above voting results declared that the said scheme has not been approved by the creditors during the SCC meeting. The legal Counsel present in the meeting apprised the stakeholders about the provisions of Section 230 of the Companies Act, 2013 as well as the requisite voting share required for approval of a Scheme of Compromise of Arrangement.

The Liquidator presented before the SCC and sought their advice for inviting Mr. Akshat Tandon to make his presentation on the scheme to SCC.

Since one of the major objector raised by Mr. Akshat Tandon in his email dated 22nd October, 2021 was that the Liquidator has not given him the opportunity to present the said scheme to SCC, the Liquidator sought permission of the SCC members to call Mr. Tandon for presentation and took the vote one by one and the results of voting is as under:-

S. No.	Category	Secured/Unsecured	Voting % of claims/ debt	Voted in favour/against the presentation by Mr. Akshat Tandon
1	Financial Creditor- JM Financial Asset Reconstruction Company Limited	Secured	55.86%	Voted against
2	Financial Creditor- Bank of Baroda	Secured	33.91%	Voted against
3	Representatives of Unsecured Financial Creditors	Orion I.T. Parks Pvt. Ltd. Suchitra Tandon	3.93%	Voted in favour Voted in favour
4	Representative of Employees and Workmen	Unsecured	1.58%	Voted against
5	Representatives of Operational creditors other than Workmen, employees and Governments	M/s Ashirwad Industries Raja Ram Gupta & Co- Proprietor- Gyan Prakash Gupta	2.22%	Not available during the voting Not available during the voting
6	Government	Employees Provident Fund Organisation Regional Office- Lucknow	2.51%	Not Present
7	Operational Creditors other than Workmen, employees and Governments	Mr. Om Prakash Goenka	-	Not Present
	Total		100.00%	

Since 91.35% of voting share of the Creditors had voted against the presentation of the scheme before the SCC to

me made by Mr. Akshat Tandon, the Liquidator decided not to invite Mr. Tandon accordingly.”

12. We may first notice the purpose and object of the Stakeholders Consultation Committee. Regulation 31A deals with ‘Stakeholders’ Consultation Committee’. Regulation 31A (1) is as follows:-

“31A. Stakeholders’ consultation committee. (1)
The liquidator shall constitute a consultation committee within sixty days from the liquidation commencement date, based on the list of stakeholders prepared under regulation 31, to advise him on the matters relating to sale under regulation 32.”

13. The Stakeholders Consultation Committee is only to advise the Liquidator on the matters relating to sale under Regulation 32. Sub-regulations (9) and (10) are also relevant which are to the following effect:-

“(9) The consultation committee shall advise the liquidator, by a vote of not less than sixty-six percent of the representatives of the consultation committee, present and voting.

(10) The advice of the consultation committee shall not be binding on the liquidator: Provided that where the liquidator takes a decision different from the advice given by the consultation committee, he shall record the reasons for the same in writing.”

14. Sub-regulation (9) of Regulation 31A provides that the advice of the Stakeholders Consultation Committee shall be taken by a vote of not less than sixty-six percent and further sub-regulation (10) states that said advice is not binding on the Liquidator. The action of the Liquidator in placing the Scheme of Compromise or Arrangement before the Stakeholders Consultation Committee was uncalled for and is not in accordance with the provisions of the Code and the Regulations. Section 230 of the Companies Act read with Regulation 2B of the Liquidation Regulations indicates that it is the Liquidator who is to take a decision as to whether Scheme for Compromise or Arrangement is to be placed before the Tribunal by an Application or not. When sub-regulation (1) of Regulation 31 specifically refers to advice of Stakeholders Consultation Committee on the matters relating to sale under Section 32, the Stakeholders Consultation Committee was not any competent forum for obtaining any advice with regard to Scheme for Compromise or Arrangement submitted under Section 230.

15. Apart from the above, we now need to notice the minutes of the Stakeholders Consultation Committee dated 22.10.2021 to find out the decision taken by the Stakeholders Consultation Committee and the Liquidator. After taking views and votes of all members present in the Stakeholders Consultation Committee, it is recorded in the minutes that 59.66% voted against the Scheme. After noting the voting percentage, following is recorded in the minutes:-

“Since in terms of Section 230 (6) of the Companies act 2013, an approval of 75% in value of the creditors is

required for approval of the scheme, the Liquidator on the basis of the above voting results declared that the said scheme has not been approved by the creditors during the SCC meeting. The legal Counsel present in the meeting apprised the stakeholders about the provisions of Section 230 of the Companies Act, 2013 as well as the requisite voting share required for approval of a Scheme of Compromise of Arrangement.”

16. Section 230(6) of the Companies Act, 2013 has been relied by the Liquidator for holding that the Scheme has not been approved by the Creditors. We may at this stage notice Section 230 (1) as well as Section 230 (6), which are to the following effect:-

“230. Power to compromise or make arrangements with creditors and members.— (1) Where a compromise or arrangement is proposed—

(a) between a company and its creditors or any class of them; or

(b) between a company and its members or any class of them, the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, 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.

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.

xxx

xxx

xxx

(6) Where, at a meeting held in pursuance of sub-section (1), majority of persons representing threefourths 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.”

17. Section 230 (6) refers to a meeting held in pursuance of sub-section (1) i.e. in pursuance of meeting directed by the Tribunal on an Application filed by the Liquidator. In the present case, no meeting was convened under Section 230(1), hence, there is no applicability of Section 230(6). Reliance on Section 230(6) was wholly out of place and was uncalled for. The above holding that the Scheme of Compromise or Arrangement submitted by the Respondent Nos. 2 and 3 has not been approved by the Creditors during the Stakeholders Consultation Committee meeting, referring to Section 230(6) indicates misconception of the whole statutory procedure by the Liquidator. Further, we have already noticed that under sub-regulation (9) of Regulation 31A, the advice of Stakeholders Consultation Committee is to be taken by a vote of not less than 66%. Thus, the advice of Stakeholders Consultation

Committee with regard to the Scheme was not 66% since voting percentage noticed by the Liquidator is following:-

“Result for voting-

Voted against- 59.66%

Voted in favour- 3.93%

Did Not vote- 33.91%

Not Present- 2.51%”

18. When an advice of rejection of the Scheme is not by 66%, there was no question of following the said advice of the Stakeholders Consultation Committee by the Liquidator and act of Liquidator in relying on the said advice amounts to abdication of her own duty to consider the Scheme and shield herself on misconception of law rejecting the Scheme submitted by Respondent Nos. 2 and 3.

19. At this stage, we may notice one more aspect with regard to which there appear to be misconception in the mind of Liquidator and Stakeholders Consultation Committee. What is mandated by sub-regulation (9) of Regulation 31A is that Stakeholders Consultation Committee shall advice the Liquidator by a vote of not less than sixty-six percent of the representative of the Consultation Committee, present and voting. Thus, percentage has to be computed on the members of the Stakeholders Consultation Committee present and voting and not from value of claims of the Financial Creditor. When we look into the Regulation 31A (2) which provides composition of the Consultation Committee, it is clear that the

number of representatives have been provided in Column-3. The percentage of voting computed by the Liquidator is not on the basis of votes of members present in the voting rather on the value of the claim. This is wholly contrary to the statutory Scheme under Regulation 31A (9).

20. From the above discussion, it is clear that the meeting of the Stakeholders Consultation Committee and its minutes is not in accordance with the statutory Scheme nor it can be held that Stakeholders Consultation Committee had given any advice to reject the Scheme. Consequently, the Liquidator's decision to reject the Scheme submitted by the Respondent Nos. 2 and 3 based on such advice also falls on ground. Hence, we conclude that there was neither any consideration of the Scheme nor there any valid reason for rejecting the Scheme by the Liquidator and consequential action after rejection of the Scheme to proceed with the auction is also unsustainable since the decision to proceed with auction was consequent to rejection of the Scheme submitted by Respondent Nos. 2 and 3 which also held to be contrary to the statutory Scheme and statutory requirements.

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 ‘re-structuring’ 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.

28. Obligation to obtain the consent of 75% of the Creditors is on the person who proposes the Scheme. When the Scheme was submitted by Respondent Nos.2 and 3 to the Liquidator, the Liquidator was required to intimate the Respondent Nos.2 and 3 to obtain consent by 75% of creditors and it was for Respondent Nos. 2 and 3 to present the Scheme before Creditors and impress them to give their consent. The Liquidator in the

present case, after holding Respondent Nos.2 and 3 to be eligible to submit the Scheme on 21st October, 2021, placed the Scheme before Stakeholder Consultation Committee on the next day, that is, 22nd October, 2021 and refused Respondent Nos.2 and 3 to present and clarify the Scheme before the Stakeholder Consultation Committee. The procedure adopted by the Liquidator for getting the Scheme rejected by Stakeholder Consultation Committee was not a proper procedure. Respondent No.2 after receiving the email from Liquidator on 21st October, 2021 that the Liquidator has changed her opinion and held Respondent Nos.2 and 3 eligible to submit Scheme on the same day, that is, 21st October, 2021, Respondent No. 2 sent an email to Liquidator requesting to give reasonable opportunity to clarify the Scheme before Members of the Stakeholder Consultation Committee. By the email dated 21st October, 2021 following was communicated to the Liquidator by Respondent Nos.2 and 3:

“Without prejudice to the rights and remedies of the undersigned as available under the law of the land, the undersigned states that -

a) You being the Liquidator of the CD did not explore revival of the CD with 90 days of liquidation commencement date as mandated under Regulation 2B of IBBI (Liquidator Process) Regulations, 2016. Also, in view of catena of judgments rendered by the Hon’ble Supreme Court of India and Hon’ble NCLAT and NCLT, it has been stressed that revival of the CD is paramount in place of rigorous of liquidation of the CD. Further, preference shall always be given to the Scheme, if any submitted by the Shareholders/

creditors of the CD. However, you have gone ahead with auction of assets of the CD.

b) Even after submission of the Scheme on 04.10.2021, which is within the period allowed for submission of the Scheme, you deliberately took time to convene the meeting of the SCC and also delayed the process of verification of eligibility of the undersigned u/s 29A of the Code to justify your action of initiation of auction of assets of the CD in place of exploring revival of the CD.

c) During the 2nd meeting of SCC held on 12.10.2021, the legal advisor apprised to you and the members of the SCC to take decision whether to consider the Scheme or pursue auction of assets of the CD scheduled to be held on 25.10.2021. Deliberately, you circulated provisional report on eligibility of the undersigned u/s 29A of the Code on 14.10.2021 to stakeholders of the CD and kept the undersigned in dark as to his eligibility to propose the Scheme for the reason best known to you.

d) It is understood that you have exposed the Scheme of the undersigned to the Potential Bidder/s during the ongoing auction of assets of the CD, which action is unethical.

e) You have deliberately excluded the promoter group from Stakeholders committee, to restrict their participation. The irregularities in constitution of Committee was pointed out well in time and is now pending before the Hon, NCLT in petition filed by Mrs. Meenu Tandon.

f) The undersigned humbly states that he should be provided reasonable time to clarify any matters arising on the Scheme and before taking

any decision on the Scheme, the undersigned be allowed reasonable opportunity to discuss and clarify on the Scheme to the members of the SCC. Please note that the undersigned has already filed an application before the Hon'ble NCLT, Allahabad Bench seeking appropriate direction and till the time the said application is not decided, you should refrain from dealing with the assets of the CD in any manner, including concluding auction of assets of the CD."

29. As noted above no opportunity was given to Respondent Nos.2 and 3 to explain and clarify their Scheme before Financial Creditors and Members of Stakeholder Consultation Committee on 22nd October, 2021, on which date the meeting was convened by the Liquidator. The Liquidator first put the Agenda consideration of the Scheme submitted by Respondent Nos.2 and 3 and when it was disapproved, the Liquidator submitted another proposal before the Committee as to whether the Respondent Nos. 2 and 3 be permitted to present their Scheme before the Stakeholder Consultation Committee, which obviously got rejected since Scheme had already been disapproved by the Stakeholder Consultation Committee, prior to this item being taken for consideration. It was incumbent to the Liquidator to first put the Resolution before the Stakeholder Consultation Committee as to whether Respondent Nos. 2 and 3 be permitted to present and clarify their Scheme, which was not done to the prejudice of Respondent Nos.2 and 3. The persons, who submitted the Scheme that is Respondent Nos.2 and 3 could not get any opportunity to present their Scheme before the Financial

Creditors and obtain their consent. The Liquidator after declaring the Respondent Nos.2 and 3 eligible on 21st October, 2021, got the Scheme disapproved on the next day in the meeting dated 22nd October, 2021 without giving any opportunity to Respondent Nos.2 and 3 to appear before Stakeholder Consultation Committee or to approach the Financial Creditors for getting their consent to the Scheme. Prior to 21st October, 2021, Respondent Nos.2 and 3 had no opportunity to approach the Financial Creditors for their consent, since the Liquidator has declared Respondent Nos.2 and 3 ineligible to submit the Scheme under Section 29A of the Code. The person submitting Scheme under Section 230, sub-section (1) of the Companies Act, 2013 is entitled to place the Scheme before Financial Creditors and make efforts to obtain their consent, which was denied to Respondent Nos.2. and 3, in the present case, due to the course adopted by the Liquidator as noted above. We thus are of the view that Respondent Nos.2 and 3 are entitled to an opportunity to place and explain their revised Scheme before Financial Creditors and it is for the Financial Creditors to consider the Scheme for purposes of giving consent as contemplated by Section 230, sub-section (2) (c) of the Companies Act. The learned Counsel for the Appellant has submitted that Scheme submitted after the order of the Adjudicating Authority proposes a higher amount as compared to one which was offered by Appellant in auction held on 25th October, 2021.

30. One more aspect we notice with regard to claim of the Respondent Nos. 2 and 3 that Smt. Meenu Tandon, wife of late Badri Vishal Tandon, was the largest stakeholder and was entitled to participate in the Stakeholders

Consultation Committee meeting. The relevant e-mails with regard to claims submitted by Smt. Meenu Tandon has been brought on the record by the Appellant himself in the Appeal. On 18.09.2021, Smt. Meenu Tandon, wife of late Badri Vishal Tandon, has informed the Liquidator about the death of Chairman and to include her as the largest shareholder. On 18.09.2021, following e-mail was sent by Smt. Meenu Tandon:-

“Dear Madam,

This is to inform you that my husband Late Badri Vishal Tandon was the largest shareholder of Shree Bhawani Paper Mills Ltd., under Liquidation.

In various folios he was holding 14.6 percent of shares and per his Will I have inherited all the shares and have become the largest shareholder of the company.

You are therefore informed to appoint me as a member of the Stake Holder committee in place of any person you may have already appointed.

Details of holding of various folios is being attached. In the meanwhile, no meeting of Stakeholder committee be held till the matter is resolved. Please confirm.

Thanking You

Meenu Tandon

Annexure: as above.”

31. The aforesaid claim was rejected by the Liquidator on 20.09.2021 by following Reply:-

“Dear Sir,

As per the latest shareholding pattern which was filed with BSE for quarter ending June, 2017, the largest shareholder is Mr. O.P. Goenka holding 13.48 percent of shares in Individual capacity.

Also be informed that Mr. Badri Vishal Tandon was holding 12.97 percent of shares in Individual capacity and holding 1.63 percent of shares as HUF.

Accordingly, the shareholder with highest shareholding in individual capacity is being included in the SCC.

Thanks & Regards,

On behalf of Anju Agarwal

Liquidator- Shree Bhawani Paper Mills Limited”

32. From e-mail which was sent by the Liquidator itself, it is clear that Late Badri Vishal Tandon was holding 12.97% of shares and holding 1.63% shares as HUF. When these two figures are added, the figure comes 14.50% which was more than 13.48%, whom the Liquidator has permitted in the meeting of the Stakeholders Consultation Committee. It is further relevant to notice that after rejection of the claim on 20.09.2021 another e-mail was sent by Smt. Meenu Tandon where she stated that she in her personal capacity holds 0.83% share and added to the individual shares inherited by her of 12.97%, her total holding excluding HUF adds to 13.70% which is

higher than O.P. Goenka 13.48%. It is relevant to note that after rejection of the claim of Smt. Meenu Tandon, she filed an Application before the Adjudicating Authority and Adjudicating Authority has accepted the claim of Smt. Meenu Tandon. It is further relevant to notice that the claim of Smt. Meenu Tandon was filed as shareholder which was rejected by the Liquidator on the ground of delay vide e-mail dated 22.09.2021 against which order I.A 320 of 2021 was filed which has been decided by the Adjudicating Authority on 15.11.2021 condoning the delay in submission of the claim and Liquidator was directed to adjudicate the claim on merits.

33. We have noticed that the Respondent No.2 after he was informed by the Liquidator on 21.10.2021 that Respondent No.2 is eligible to submit a Scheme of Compromise or Arrangement, Respondent No.2 requested the Liquidator that he be permitted to explain the Scheme. Stakeholders Consultation Committee minutes dated 22.10.2021 has already been extracted above which indicates that the Liquidator first put the Scheme before the members of the Stakeholders Consultation Committee for their views and votes and after it was rejected, she obtained the opinion of the Stakeholders Consultation Committee as to whether Respondent No.2 be called for presentation and she took vote on the said issue. The aforesaid conduct of liquidator indicates that liquidator herself never wanted to give any opportunity to the Respondent No.2 to appear before the Stakeholders Consultation Committee and to explain his Scheme. Had liquidator wanted to give any opportunity and she wanted to obtain advice of the Stakeholders Consultation Committee on the above, she ought to have put the item before

Stakeholders Consultation Committee first to consider before putting their Scheme for consideration. The hurried calling for the meeting on 22.10.2021, when she decided on 21.10.2021 that Respondent Nos. 2 and 3 are eligible, then not providing opportunity to Respondent Nos. 2 and 3 to explain the Scheme before the Financial Creditors or other stakeholders indicate that the liquidator never wanted the Scheme to be considered and she took all steps to get the Scheme rejected so that she may proceed with the auction which she has already fixed for 25.10.2021. Further conduct of the liquidator after passing of the interim order by this Court on 23.11.2021 to proceed to issue Sale Certificate, disbursing the amount is also not an appropriate action when the Appeal was entertained by this Tribunal and was under consideration and the Liquidator was represented by a counsel, even on the first day, the Liquidator could have asked for clarification and further direction for permitting the liquidator to proceed with the finalisation of the sale and distribution of assets, delivery of possession of the assets to Successful Bidder, which was not done.

34. The Successful Bidder is in Appeal and his Appeal has not been allowed, only an interim order has been passed on 23.11.2021 staying the order dated 01.11.2021. It is further to be noted that I.A 314 of 2021 was not finally disposed off and order dated 01.11.2021 was an interim order passed by the Adjudicating Authority and the Application is still pending before the Adjudicating Authority. There was no such great hurry in proceeding to issue Sale Certificate, disburse the amount and handover the assets of the Corporate Debtor when Application I.A 314 of 2021 was

pending as well as this Appeal pending before this Tribunal. The Hon'ble Supreme Court in **“Shree Chamundi Mopeds Ltd. vs. Church or South India Trust Ass. CSI Cinodsecretariat, Madr- 1992 SCC (3) 1”** has held that by passing of an interim order by a Court, the order impugned is not wiped off. It only becomes in-operative. The order impugned does not die and continue to live till it is set aside, following is the observation in the above context:-

“While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law so long as it exists, it cannot

be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending.”

35. The interim order dated 23.11.2021 has put the order 01.11.2021 inoperative but the order dated 01.11.2021 was not quashed, it was appropriate for the Liquidator to obtain any clarification from the Adjudicating Authority or by this Tribunal for proceeding further to complete the process which was put in question before the Adjudicating Authority as well as before this Appellate Tribunal in Appeal.

36. In result of foregoing discussion, we dispose of this Appeal in following manner:

- (i) The order dated 1st November, 2021 passed by the Adjudicating Authority in I.A. No.314 of 2021 is affirmed. In consequence to affirmation of the order dated 1st November, 2021 of the Adjudicating Authority, interim order passed in this Appeal dated 23rd November, 2021 stands discharged and all actions taken subsequent to the interim order dated 23rd November, 2021 stands vacated.
- (ii) Respondent Nos.2 and 3 are allowed one month's time from this date to submit the revised Scheme along with an affidavit indicating the consent of Financial Creditors as contemplated by Section 230, sub-section 2(c) of the Companies Act, 2017, if any.

- (iii) In event, Respondent Nos.2 and 3 are able to obtain the requisite consent of the Financial Creditors, such Scheme submitted before the Liquidator shall be filed before the Adjudicating Authority for taking further proceedings as per Section 230 of the Companies Act.
- (iv) The Adjudicating Authority may finally decide the IA No.314 of 2021 and also pass such consequential orders as may be necessary in the facts of the present case. The parties may act in accordance with the order of the Adjudicating Authority in the proceedings.

The parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Dr. Alok Srivastava]
Member (Technical)

New Delhi
Anjali