

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT-III**

IA-3488/2021

In

IB-431(ND)/2019

**IN THE MATTER OF IB-431(ND)/2019:**

**M/s. SHREE BALAJI REFRACTORIES CO. .... Operational Creditor**

**VERSUS**

**M/s. RGTL INDUSTRIES LIMITED .....Corporate Debtor**

**AND IN THE MATTER OF IA-3488/2021:**

**Mr. ANSHUL GUPTA,**

Liquidator of the Corporate Debtor

**..... Applicant**

**VERSUS**

**M/s. KL RATHI STEELS LIMITED**

**..... Respondent**

**Order Delivered On: 04.01.2024**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

For the Applicant :

For the Respondent :

**ORDER**

**PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)**

1. The present Application has been filed by Mr. Anshul Gupta, Liquidator of the Corporate Debtor on 24.07.2021 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 2B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations as amended and under Section 230 of the Companies Act, 2013 and applicable rules made thereof seeking extension of time for voting by the State Bank of India or approval of scheme under Section

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230 of the Companies Act, 2013 with respect of the Corporate Debtor, for seeking the following reliefs:

*“a. Allow the present application and pass appropriate directions considering the request by the State Bank of India for extension of deadline to allow the State Bank of India for voting; or in lieu thereof  
b. Dispense the meeting of other class of creditors, members as also other formalities under section 230 of the Companies Act 2013; and  
c. Approve the scheme dated 02.07.2021 proposed by one, K L Rathi Steels Ltd. among K L Rathi Steels Ltd., the corporate debtor and its creditors under Section 230 of the Companies Act passed in terms of the Regulation 2B of the IBBI (Liquidation Process) Regulations of 2016; and  
d. Pass any other orders in favour of the applicant to secure the ends of justice.”*

## **2. Brief Background of the Case**

- i. An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Operational Creditor i.e. M/s. Shree Balaji Refractories Co., against the Corporate Debtor i.e. M/s. RGTL Industries Limited and the said application was admitted by this Adjudicating Authority vide order dated 10.04.2019 and a moratorium was declared including the appointment of Mr. Anshul Gupta as an Interim Resolution Professional. Subsequently, the IRP was confirmed as Resolution Professional.
- ii. During the 11<sup>th</sup> CoC meeting dated 04.03.2020, the CoC recommended for Liquidation of the Corporate Debtor, in view of the fact that the resolution plan could not be approved with the requisite 66% of voting share. Pursuant to the decision of the CoC, the Applicant filed the application seeking liquidation of the Corporate Debtor before this Adjudicating Authority. This Adjudicating Authority was pleased to allow the liquidation

application vide order dated 09.11.2020 including appointment of the Applicant as the Liquidator.

**3. Submissions of the Applicant:**

- i. The First Meeting of the Stakeholders Consultation Committee (SCC) was Convened on 18.01.2021. In continuation to the discussion held in the First SCC Meeting, a Public Announcement for invitation for submission of a Scheme under Section 230 of the Companies Act, 2013 was published by the Liquidator in various newspapers on 20.01.2021 wherein the last date for submission of the said Scheme was 04.02.2021.
- ii. Thereafter One request was received from M/s. K. L. Rathi Steels Limited i.e. Respondent herein to submit the Scheme under Section 230 of the Companies Act, 2013. The Liquidator denied the request of the Respondent as it does not fall under the category of person eligible for submission of the Scheme.
- iii. An Application was filed by the Respondent against the Liquidator for not allowing the submission of the Scheme under Section 230 of the Companies Act, 2013. On 03.31.2021, IA-754-2021 titled as M/s. K. L. Rathi Steels Limited Vs. Liquidator of M/s. RGTL Industries Limited, wherein this Adjudicating Authority held that there are no provisions in IBC that bar the third party from proposing a Scheme under Section 230 of the Companies Act, 2013. Therefore, the Liquidator was directed to publish the Scheme and revise the IM in order to invite the public at large.
- iv. The Second SCC Meeting was convened on 15.03.2021. During the course, the Applicant took all necessary steps for approval of a scheme of compromise and arrangement under Section 230 of the Companies Act, 2013 for the Corporate Debtor and issued a public announcement dated 17.03.2021 and it was published in various newspapers and was also uploaded on the company's website along with the Process Memorandum. In response to the same, Two applicants, namely, KL Rathi Steels Limited i.e. Respondent herein

- and RKG Fund along with Committed Ispat Limited, submitted their respective schemes. The said Schemes by both the Applicants were opened in the presence of the Secured Creditors on 07.04.2021 and thereafter, a meeting of the Secured Lenders was conducted on 15.04.2021.
- v. Further, an email was received from the State Bank of India on 16<sup>th</sup> April 2021 to the Liquidator wherein State Bank of India sought an additional 30 days period for completion of the entire process citing the reason that the decision of distribution within the stakeholders is still in process and subsequently time will also be required for the decision making authorities within the institution and thereby requested the Liquidator to seek extension of time from the this Adjudicating Authority for the same. The said email and request were concurred and seconded by the Bank of Baroda as well vide its email dated 16<sup>th</sup> April 2021.
- vi. After a lot of deliberation, it was decided to put the scheme submitted by M/s. K. L. Rathi Steels Ltd. on E-voting which was scheduled from 24<sup>th</sup> of May, 2021 to 29<sup>th</sup> of May, 2021. However, on 29<sup>th</sup> of May, 2021, State Bank of India, the banker with the highest voting share, requested to extend the timeline for voting until 1<sup>st</sup> of June, 2021, the same was agreed upon and the Voting period was extended. Also, an Email was received from the Bank of Baroda to extend the E-voting by 15 days. The Liquidator had mentioned that the voting could not be extended in view of the order of this Hon'ble Tribunal to complete the proceedings on or before 5<sup>th</sup> of June 2021, however, another detailed email was received from the said bank for seeking the extension on the voting timelines.
- vii. Since no application was made before this Adjudicating Authority and the liquidator had to close the voting lines and also had to publish the results of the voting by way of a Scrutinizers report. The E-voting for the Scheme failed as few of the members could not participate in the said E-voting process citing their internal approvals

- not being in place and one of the lead bankers voted against the scheme. The Scrutinizer Report was sent accordingly.
- viii. On 16<sup>th</sup> June, 2021 an email was received from the scheme applicant namely M/s. K.L. Rathi Steels Ltd. i.e. Respondent herein wherein it shared with the liquidator an addendum to the scheme already submitted by him wherein the discussions of the CoC meeting dated 15<sup>th</sup> June 2021 were incorporated specifically regarding the manner in which the plan amount is required to be distributed amongst the secured financial creditors.
- ix. The E-voting line came to an end at 6 PM of 2<sup>nd</sup> of July, 2021 and the Scrutinizer Report wherein the Scheme under Section 230 of the Companies Act, 2013 has been approved with 100% present and voted.
- x. On 5<sup>th</sup> of July 2021, an Email was received from SBI strongly objecting to the decision of the Liquidator to close of the voting process as the same being unreasonable and prejudice to their interest.
- xi. The said extension of timelines is beyond the powers of the Liquidator and the same can be extended only by the necessary directions of this Adjudicating Authority. The liquidator on the specific request of the secured financial creditor, having the largest voting share hereby prays before this Adjudicating Authority that the request for an extension of timelines by a further 15 days, may be considered by this Adjudicating Authority.
- xii. Looking into the fact that the State Bank of India is one of the majority vote-share-holding member of the Committee of Creditors, the extension may be granted for the inclusion of its vote and opinion in the final Report on the Scheme under Section 230 of the Companies Act of 2013. However, the power of any extension of time for voting lies exclusively with this Adjudicating Authority and therefore, the Applicant herein, vide the present application, puts forth the grievance of one of the CoC members, State Bank of India, for extending the timeline enabling it thereby to vote on the scheme.

- xiii. It is submitted by the Liquidator that the object of Section 230 of the Companies Act read with the IBC is the revival of the company, therefore the meeting of the class of creditors for approval of scheme shall follow suit in terms of the IBC and should comprise only of the Financial Creditors.
- xiv. The meeting of the CoC was duly called for and the scheme under section 230 has been approved with 100% vote share of the members present and voting. In such circumstances, the meeting of the operational creditors can be dispensed with, in view of the objects and provisions of the IBC as well as the law on point.
- xv. The present application seeking approval of scheme and/or appropriate directions in relation to the same has been preferred by the Applicant.

**4. Submissions of the Respondents:**

- i. The Respondent namely the State Bank of India has filed a reply affidavit and submitted that:
  - a) The SBI is the largest creditor holding 52.90% voting share (amongst the secured creditors) and 49.83% of the total debt of the Corporate Debtor. No decision could be reached amongst the secured creditors on the distribution of proceeds under the Scheme without the approval of the Secured Creditors. The secured creditors sought time to discuss the matter of distribution further and seek approval from their competent authority.
  - b) The Schemes were put for voting by the Liquidator from 17.6.2021 to 28.6.2021. The SBI requested the Liquidator for an extension in time for voting and to provide clarity on the distribution in the Scheme. This clarity was necessary to obtain approval from the competent authority of the SBI. However, the time for E-voting was not extended and E-voting closed without the SBI vote.

- c) It is submitted that SBI has no objection to the approval of the Scheme provided that the distribution under the Scheme is made to SBI in order of priority as first charge holder in accordance with Section 53 of the Code. In other words, SBI, as the first charge holder shall have to be repaid ahead of the second charge holding secured creditors of Corporate Debtor.
- d) The Ld. Counsel appearing for the SBI has relied upon the Judgment passed by the Hon'ble Supreme Court of India in the case of **ICICI Bank Limited vs SIDCO Leathers Limited & Others** (2006) 10 SCC 452, wherein the Hon'ble Supreme Court held that in terms of Section 48 of the Transfer of Property Act 1882, claim of the first charge holder shall prevail over the claim of the second charge holder and in a given case where the debts due to both, the first charge holder and the second charge holder, are to be realized from the property belonging to the mortgagor, the first charge holder will have to be repaid first.
- ii. The Respondents namely the Bank of Maharashtra and Bank of Baroda have filed reply affidavit and jointly submitted that:
- a) The Bank strongly opposes any further delaying of the implementation of the Scheme as already approved by the stakeholders as far back as 02.07.2021. It is prayed that this Adjudicating Authority may kindly approve the scheme exactly as approved by the stakeholders pursuant to the voting that took place following the 3<sup>rd</sup> CoC meeting held on 15.06.2021.
- b) It is submitted that during the 3<sup>rd</sup> CoC meeting held on 15.06.2021, detailed discussions took place among the stakeholders and the Liquidator regarding the manner of distribution of the said amount. It is submitted that neither the Code nor the Rules or Regulations framed thereunder prescribe any one particular manner of distribution of the amount being received in a scheme proposed under Section 230 of the Companies Act, 2013. Therefore, the Liquidator made it amply

clear to the stakeholders that it is the prerogative of the stakeholders, and that they are free to determine the exact manner of distribution. It is stated that one possible suggested manner of distribution under the scheme was in terms of Section 53 of the Code, which deals with the distribution mechanism of the proceeds from the sale of liquidation.

- c) It is submitted that the proposed scheme which was finally put to vote reflects the distribution under Section 53 of the Code read with judgment in the case of **Technology Development Board v/s Mr. Anil Goel the Liquidator of Gujarat Oleo Chem Limited** [Company Appeal (AT) (Insolvency) No.731 of 2020] and the same is reproduced below:

Secured Financial Creditor	Voting share (%)	Distribution under the Scheme (INR)
State bank of India	52.90	20,40,62,954
Bank of Maharashtra	34.03	13,12,72,042
Bank of Baroda	10.32	3,98,21,172
RIICO	2.74	1,05,82,577
<b>TOTAL</b>	<b>100.00</b>	<b>38,57,38,745</b>

It is submitted that the State Bank of India, the single largest creditor, abstained from voting on the said scheme, whereas those present, and voting approved the scheme by a 100% vote of which 82.4% were cast by Bank of Maharashtra and Bank of Baroda.

- d) It submitted that IA-3488-2021 has been filed by the Liquidator placing on record the scheme as approved by 100% voting share of those creditors who were present and voting. It is further submitted that SBI may possess the largest voting share of all the secured creditors, SBI abstained from voting and therefore must be estopped from raising any objections to the manner of approval

of the scheme/distribution mechanism as approved by the 100% voting share of the creditors who participated in the voting process.

5. **Analysis and Findings**

- i. We have heard the submissions of Ld. Counsel appearing for the Applicant as well as Ld. Counsel appearing for the Respondents. We have also perused the records.
- ii. We Find that based on the aforesaid submissions, the Applicant has prayed for the approval of the Scheme proposed under Section 230-232 of the Companies Act at the stage of the first motion.
- iii. The following issues emerge for Consideration:
  - a) Whether there is any requirement to file the Second Motion application, where the Scheme for Compromise and Arrangement is proposed at the Liquidation stage under the proceedings of IBC, 2016 and
  - b) Whether there is any requirement for issuing notice to the Sectoral Regulators.
- iv. From perusal of the Regulation 2B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, we do not find any provision which exempts the Scheme proposer under IBC from filing any Second Motion application.
- v. As regards notice to the Regulators, we are of the considered view, that the role of Sectoral Regulators under Section 230-232 of the Companies Act, 2013, is not of a claimant, but rather of being a watchdog, who shall examine the Scheme if the same is not violative of any law or is not against the public interest. Therefore, the statutory requirement of sending notices to them cannot be dispensed with by this Adjudicating Authority.
- vi. The timeline for completing the process of compromise and arrangement within Regulation 2B(2) of IBBI (Liquidation Process) Regulations, 2016 is directory in nature as already held by **Y. Shivram vs. S. Dhanpal & Ors.** Company Appeal (AT) (Insolvency)

No. 224 of 2018 dated 27.02.2019. The relevant extracts of the judgment passed by the Hon'ble NCLAT are reproduced below:

*"17. Normally, the total period for liquidation is to be completed preferably within two years. Therefore, in "S.C. Sekaran v. Amit Gupta & Ors." (Supra), this Appellate Tribunal allowed 90 days' time to take steps under Section 230 of the Companies Act, 2013. In case, for any reason the liquidation process under Section 230 takes more time, it is open to the Adjudicating Authority (Tribunal) to extend the period if there is a chance of approval of arrangement of the scheme."*

- vii. In light of the above-quoted judgement, we are therefore of the considered view that the judgment passed by Hon'ble NCLAT in in the case of **Y. Shivram (supra)** will apply to the present case. We observe that the IBC does not prescribe any such timeline as prescribed in the Regulations for submission of the Scheme. However, the judgement in the case of **Y. Shivram (supra)** allows the Adjudicating Authority to extend the period/timeline if there is a chance of approval of arrangement of the scheme. Thus, it could be inferred that the timeline prescribed in the Liquidation regulations is directory in nature.
- viii. Further, the SBI has not objected to the proposed scheme but has not voted and abstained from voting on the said scheme. Admittedly, the State Bank of India is one of the majority vote-share-holding members of the Committee of Creditors. We therefore direct the extension of deadline to allow the State Bank of India for inclusion of its vote on the Scheme under Section 230 of the Companies Act of 2013.
- ix. Further we find force in the Contentions raised by the Bank of Maharashtra and Bank of Baroda that the manner of distribution under the scheme was in terms of Section 53 of the Code, which deals with the distribution mechanism of the proceeds from the sale of liquidation.

- x. Since the Corporate Debtor is under Liquidation and the power of the Director and Shareholders to take commercial decisions on behalf of the Corporate Debtor is under suspension, therefore, the question of convening meeting of Shareholders does not arise, especially when the Scheme has the assent of the Liquidator. The Company has NIL Unsecured Creditors and NIL Operational Creditors. Therefore, the meeting of the Creditors is dispensed with and the **First motion is allowed.**
- xi. We further direct the Applicant to file the Second Motion Petition for approval of the Scheme.
- xii. Accordingly, Prayer a and Prayer b stand allowed with the aforesaid directions. The Applicant is at liberty to raise the other prayers/reliefs at the time of filing the Second Motion Application.
6. In view of the above facts and circumstances and the foregoing discussion. It is accordingly ordered as follows:
- i.** The Application bearing **IA-3488/2021** filed by the Applicant is **disposed of.**
- ii.** The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
- No order as to costs.

Sd/-

**(ATUL CHATURVEDI)**  
**MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**