IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT– I) CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **18.12.2024** THROUGH VIDEO CONFERENCING

PRESENT: **HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)**
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF **:** Small Industries Development Bank of India
Vs
Tirupur Plaza Hotel P. Ltd.

MAIN PETITION NUMBER **:** CP (IB)/107(CHE)2021

(IA/MA) APPLICATION NUMBERS

IA(IBC)/1784(CHE)2024

ORDER

Present: Ld. Counsel Shri. Pranav V Shankar for the Applicant.

Ld. Counsel Shri. A.G. Sathyanarayana for the Respondent.

Vide separate order pronounced in Open Court, the scheme of compromise and arrangement proposed by the Scheme Proponent is sanctioned. The Corporate Debtor is released from the rigors of CIRP. The petition and the application are disposed of.

File be consigned to records.

Sd/-	**Sd/-**
(VENKATARAMAN SUBRAMANIAM)	**(SANJIV JAIN)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

MG

IN THE NATIONAL COMPANY LAW TRIBUNAL

DIVISION BENCH – I, CHENNAI

IA(IBC)1784(CHE)2024 in IA/1560/2022 in CP/107/IB/2021

(Filed under Section 60(5)of the Insolvency and Bankruptcy Code, 2016 R/w Section 230 of the Companies Act, 2013)

In the matter of ***M/s. Tirupur Plaza Hotel Private Limited***

Dr. D.S. Jagannathan,
Personal Guarantor of Tirupur Plaza Hotel ,
5/778, P.N. Road,
Pichampalayam Pudur,
Tirupur - 641603

… Scheme Proponent / Suspended Director

Vs

Mr. A.R. Ramasubramania Raja
Liquidator of M/s.Tirupur Plaza Hotel Pvt. Ltd.
3, Sundaram Brothers Layout,
Ramanathapuram,
Coimbatore – 641045

… Respondent / Liquidator

Present:

For Applicant	:	*Shri.R. Vidya Shankar, Advocate*
For Respondent	:	*Shri. A.G. Satyananrayanan, Advocate*

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Order Pronounced on ***18th December, 2024***

O R D E R

(Heard through Video Conferencing)

IA/1784(CHE)/2024 has been filed by the Applicant / Liquidator seeking the following reliefs:

a. Dispense with meeting of Shareholders of the Corporate Debtor in the matter of sanction of the Scheme of Compromise;

b. Dispense with meeting of Secured and Unsecured Creditors of the Corporate Debtor in the matter of sanction of the Scheme of Compromise;

c. Sanction the Scheme of Compromise / Arrangement of M/s Tirupur Plaza Hotel Pvt Ltd.;

d. Pass such further and other orders as may be deemed necessary in the interest of justice;

2. M/s. Tirupur Plaza Hotel Pvt Ltd, the Corporate Debtor was incorporated as private limited company on 15.02.2006.

3. The main objective of the Corporate Debtor is for establishing, maintaining and operating a hotel in Tirupur. Its authorized and paid up capital are Rs. 5,00,00,000/- and Rs.4,74,51,250/-.

i) The details of equity shareholding in the Debtor are under:

1. Details of shareholding in the Corporate Debtor is as follows:

Sl. No.	Name of Shareholder	No. of Equity Shares	% of Shareholding
1	D.S. Jagannathan	1518620	54.48
2	Sridhar Jagannathan	846000	30.35
3	D.S. Venugopal	50000	1.79
4	Akila Gowri	40000	1.43
5	Jayashree Kandasamy	40000	1.43
6	Jaishankar Gurusamy	80000	2.87
7	Bala A. Balakrishnan	20000	0.72
8	A.V. Palaniswamy	60000	2.15
9	R. Boopathy Raj	4000	0.14
10	S .Subbian	9000	0.32
11	S. Sasikiran	120000	4.30
	Total	**2787620**	**100**

ii) Details of shareholding of 9% Cumulative Redeemable Preference Shares of Rs. 100 each is as under:

Sl No	Name of shareholder	No of Shares	%
1	Shankar Jagannathan	92,500	47.25
2	Shalini Jagannathan	103250	52.75
	Total	**195750**	**100**

4. Board of Directors of the Corporate Debtor prior to admission into CIRP comprised of the following:

Sl No	Name	DIN No
1	Sridhar Jagannathan	08595971
2	Cheluvaraju	07812122
3	Sagaya Shanti Mary	07107892

5. Small Industries Development Bank of India , the Financial creditor of the Corporate Debtor filed the petition *CP/107/CHE/2021* under Section 7 of IBC for initiation of CIRP against the Corporate Debtor. This Tribunal allowed the petition vide order dated 25.04.2022 and admitted the Corporate Debtor into Corporate Insolvency Resolution Process.

6. Since there were no prospective investors for the Corporate Debtor within the CIRP stipulated timeline, considering the prevailing market condition, the CoC in the meeting on 09.12.2022 recommended Liquidation of the Corporate Debtor.

7. *IA/1560/CHE/ 2022* filed by the Resolution Professional for liquidation of the Corporate Debtor was allowed by the tribunal on 15.02.2023.

8. The total claims received in respect of Corporate Debtor by the liquidator amounted to Rs.16,12,93,609/-. The liquidator admitted claims amounting to Rs. 12,88,59,725/- . The breakup of admitted claim of each class of creditor is tabulated as under:

Particulars of Liability	Admitted claim(Rs.)
Secured Financial Creditor (SIDBI)	6,30,19,891
Unsecured Financial Creditors	1,74,50,224
Operational Creditors (workmen)	Nil
Operational Creditors (Government Dues)	10,23,254
Operational Creditors (other than workmen and Government Dues)	5,54,856
Otherstakeholders, ifany (other thanfinancial creditorsand operationalcreditors)	4,68,11,500
Total	**12,88,59,725**

9. It is stated that Liquidator during liquidation process, disbursed a sum of Rs.2,45,23,367/- to the secured financial creditor under waterfall mechanism on sale of asset of Corporate Debtor.

10. It is stated that the Financial Creditor SIDBI filed case no. *CP/IB/34/CHE/ 2023* in the Chennai Bench II against the Scheme Proponent in his capacity as the personal Guarantor of the Corporate Debtor for repayment of the loan dues owed by the Corporate Debtor. In response to SIDBI's demand, the Applicant / Scheme Proponent herein, in his capacity as the Personal Guarantor for the Corporate Debtor, made the following payments to SIDBI:

Date	**Amount Paid**
02.01.2024	1,000
08.01.2024	1,00,00,000
18.01.2024	1,00,00,000
30.01.2024	1,00,00,000
31.01.2024	1,80,00,000
Total	**4,80,01,000**

11. It is stated that considering the amount of Rs. 2,45,23,367 distributed by the Liquidator and Rs. 4,80,01,000 paid by the Scheme Proponent, the Secured Financial Creditor SIDBI was paid Rs. 7,25,24,367, more than the admitted claim of Rs. 6,30,19,891, with an excess payment of Rs. 95,04,476.

Thus, the *Secured Financial Creditor* SIDBI's claim was paid in full by the Scheme Proponent.

12. It is stated that the *unsecured financial creditors* are the Scheme Proponent, his sons and daughter as under:

Name of Unsecured creditor	Amount outstanding Rs.
D.S.Jagannathan (Scheme Proponent)	66,50,224
Shankar Jagannathan (son)	31,00,000
Sridhar Jagannathan (son)	31,00,000
Shalini Jagannathan (daughter)	46,00,000
Total	**1,74,50,224**

It is stated that the repayments to the *unsecured related party financial creditors* were not considered in the scheme.

13. It is stated that the claims of "*Other stakeholders, if any (other than financial creditors and operational creditors)*" to an extent of Rs. 4,68,11,500/-

are nothing but the *claims of Shareholders*, and repayment in respect of such class is not reckoned, in so far as this Scheme is concerned.

14. It is stated that the admitted claim of *operational creditors (other than workmen)* was Rs. 15,78,110. The Scheme Proponent has paid Rs. 10,23,254 for the claim by Tirupur City Municipal Corporation and settled Rs. 5,54,856 towards dues of the other operational creditors for Rs. 5,00,000 and submitted the 'No due Certificate' from them to the Liquidator.

15. It is stated that including the payment of Rs. 3,84,96,524/- to the financial creditor, and payment of Rs. 15,23,254/- to the operational creditors (workmen and otherwise), the total amount payable as per their Claim Forms of Rs. 4,00,19,778/- has been *paid by the Scheme Proponent*. The Scheme Proponent has made an excess payment of Rs. 95,04,476/- to the financial creditor SIDBI.

16. It is stated that the consequent to the distribution of the proceeds from the sale of the property by the Liquidator, the balance of admitted claims have been paid to the claimants by the Scheme Proponent. The admitted dues to operational creditors have also been paid by him. It is stated that other than the loan amounts extended by the Scheme Proponent, his sons

and his daughter, and the amounts claimed by the equity shareholders and preference shareholders, no admitted dues of the Corporate Debtor remain for repayment and the admitted claims have been discharged entirely by the Scheme Proponent.

17. In the 12th SCC Meeting held on 08.04.2024, the Liquidator recorded as under:

a. The Financial Creditor confirmed that they received a total sum of Rs. 6,30,19,891 as per submitted Claim in Form D to the liquidator in full;

b. That promoter provided details of payments made to the other creditors and got the letters from them, as they are settled in full against their claim submitted to the Liquidator.

c. That the promoter sent a mail to SIDBI and Liquidator to consider and approve his draft scheme of compromise under Section 230 of the Companies Act.

18. It is stated that in the meeting, it was resolved that the Liquidator would file an application under Section 12A of IBC for withdrawal of the Application filed before the tribunal.

19. It is stated that the Liquidator filed *IA 1247 of 2024* seeking withdrawal of the Corporate Debtor from Liquidation process under Section 12A of IBC, in light of settlement of the entire dues of the Corporate Debtor by the Applicant / Scheme Proponent herein. The said IA was dismissed by the tribunal vide their Order dated 30.05.2024, noting that during the liquidation, Section 12A application cannot be filed.

20. It is stated that after that the Applicant has preferred the instant Application for sanction of the Scheme of Compromise. It is stated that the Scheme of Compromise / Arrangement has been prepared on the basis of the requirements of the provisions of the Insolvency and Bankruptcy Code, 2016, the IBBI (Liquidation Process) Regulations, under Section 230 of the Companies Act, 2013, and on the basis of the information obtained from the liquidator.

21. It is stated that the Applicant cleared the entire dues of all the financial creditors, operational creditors (workmen), operational creditors (other than workmen) and also in respect of CIRP costs. Consequent to the repayment made by the Scheme Proponent, the entire dues of the Corporate Debtor have been discharged. No admitted dues of the Corporate Debtor remain for repayment, barring the repayment to related party unsecured Creditors. All the liabilities of the Corporate Debtor have been discharged by the Scheme proponent, in terms of the plan aforesaid, and no obligation remains to be discharged by the Scheme Proponent.

22. It is stated that there is no bar operating against the Scheme Proponent preventing him from submitting the Scheme of Compromise / Arrangement. In terms of *Section 29A of IBC*, the Scheme Proponent has ensured repayment of all dues including interest thereon to the sole financial creditor. The Scheme Proponent has repaid to operational creditors and met the CIRP costs at actuals and has already paid the same. Consequently, there is no bar under Section 29A operating against the Scheme Proponent. It is stated that the Scheme proponent is not an undischarged insolvent nor is he classified as a wilful defaulter in

accordance with RBI Regulations. Outstandings, if any, have been cleared to all the creditors concerned. The Scheme Proponent has not been convicted of any offence punishable with imprisonment, nor is he disqualified to act as a director under the Companies Act, 2013. The Scheme Proponent is not prohibited by SEBI from trading or accessing the securities markets. The Scheme proponent has not indulged in any preferential, undervalued, extortionate credit or fraudulent transaction. The Scheme Proponent is not prevented under any of the sub-clauses of Section 29A and is legally entitled to submit the instant Scheme of Compromise / Arrangement. The Scheme proponent specifically declares and undertakes that he is not ineligible under Section 29A of the Insolvency and Bankruptcy Code.

23. It is stated that there are 11 equity Shareholders to the Corporate Debtor. The Scheme Proponent and his son Sridhar Jagannathan are the majority equity shareholders holding 84.83% share. The Scheme Proponent is the Power of Attorney holder for his son. In addition to the 2 equity shareholders, consent affidavits of 5 out of 11 equity shareholders have been secured. The shareholdings of these 7 equity shareholders constitute 93.17% of the total issued, subscribed and paid up capital of the

Corporate Debtor. Consent of 93.17% shareholders has been secured to the Scheme through appropriate Affidavits. It is stated that apart from this, remaining 4 equity shareholders who are residing outside India and holding 6.83% of total paid up capital have given their consent via email. Inclusive of the 6.83% shareholders, the total consent secured amounts to 100%. It is stated that as 100% consent has been received from the shareholders by way of affidavits and e-mails , the meeting of equity shareholders of the Corporate Debtor be dispensed with.

24. It is stated that there are two Preference Shareholders in the Corporate Debtor. They are the elder son and daughter of the Scheme Proponent. It is stated that his son Shankar Jagannathan and daughter Shalini Jagannathan are afflicted with Autism and the Scheme Proponent is their father/natural guardian. The repayments to these Preference Shareholders, his son and daughter, are not reckoned in so far as this Scheme is concerned.

25. It is stated that all financial and operational creditors of the Corporate Debtor have been paid off and the minutes of the 12th and 13th SCC Meeting reflect the same. In the meeting, SIDBI had informed that, as

there is no dues receivable by SIDBI, they need not be a party in the SCC. The Nil dues email was also received from SIDBI. There are NIL secured and unsecured creditors as on date. It is stated that as all the creditors are repaid, the question of securing consent from financial and operational creditors does not arise. Consequently, the Applicant seeks dispensation of meeting of secured and unsecured creditors.

26. It is stated that the Scheme of Compromise / Arrangement has taken into account interest of all the stakeholders including financial creditors, statutory dues, operational creditors (workmen), operational creditors (other than workmen) and CIRP costs. Interest of all the stakeholders has been taken into account such that no person shall be worse off on approval of the Scheme. The Scheme Proponent has shown his bonafide and made the payments in full to all the creditors. It is stated that the Scheme Proponent has considered the approval in line with the interest of all stakeholders.

27. Liquidator filed a *status report* dated 20th October 2024 that the respondent liquidator is yet to receive Rs 14,16,000/- as liquidator fee and

Rs 83,125/- as liquidation cost and in total Rs. 14,99,125/- till 30.09.2024 from the promoter and scheme proponent.

28. The Scheme Proponent filed an affidavit dated 23rd October 2024 stating that Scheme provides Rs. 12,00,000/- towards the CIRP/ Liquidation costs . Further in the proceedings dated 24.10.2024, the applicant has undertaken to pay the CIRP/ Liquidation amount as claimed by liquidator in full.

29. We have heard Ld. Counsels for the parties and perused the record.

30. The CIRP in the present case was initiated on an application filed by Small Industries Development Bank of India under Section 7 of IBC for initiation of CIRP against the Corporate Debtor. This Tribunal allowed the petition CP/107/2021 vide order dated 25.04.2022 and admitted the Corporate Debtor into Corporate Insolvency Resolution Process.

31. Since there were no prospective resolution applicants for the Corporate Debtor during the CIRP within the stipulated timeline, considering the prevailing market condition, the CoC at its meeting on

09.12.2022 recommended liquidation of the Corporate Debtor. *IA/1560/CHE/2022* filed by the Resolution Professional for liquidation of the Corporate Debtor was allowed by the tribunal on 15.02.2023.

32. The liquidator admitted the claims of Rs. 12,88,59,725/- as against the total claims of Rs. 16,12,93,609/-. During liquidation, liquidator sold a property and distributed Rs. 2,45,23,567/- to the sole secured financial creditor. The fact was apprised to SCC in 9th SCC meeting held on 23.01.2024.

33. The financial creditor also initiated personal insolvency proceedings against the Scheme Proponent, who was a guarantor to the Corporate Debtor. The Scheme Proponent paid Rs 4,80,01,000/- to the financial creditor. The claim of the financial creditor was fully met in terms of the payments made by liquidator and by the Scheme Proponent. In the 12th SCC meeting dated 08.04.2024, liquidator recorded that the financial creditor has confirmed that it has received the claim amount in full and that letter of full settlement has been received from other creditors.

34. Claims of Rs. 15,78,100/- were filed by Operational Creditors. The Scheme Proponent has paid Rs. 10,23,254/- to Tirupur City Municipal

Corporation and paid Rs.5,54,856/- towards the settlement of other creditors. No Objection Certificates from them have been submitted to the liquidator.

35. The Unsecured Creditors of Rs.1,74,50,224/- consist of the Scheme Proponent , his sons and daughter. As they are related parties, the Scheme does not provide for payment to these unsecured creditors.

36. It is stated that the claim of Rs. 4,68,11,500/- by " Other Stake holders" are the claims made by the shareholders and the scheme does not envisage repayment of the scheme.

37. The Liquidator had filed *IA 1247 of 2024* seeking withdrawal of the Corporate Debtor from Liquidation process under *Section 12A of IBC*, in light of settlement of the entire dues of the Corporate Debtor by the Applicant / Scheme Proponent herein. The said IA was dismissed by the tribunal vide their Order dated 30.05.2024 (Exhibit A-11) noting that withdrawal under 12A is not permissible during liquidation.

38. Subsequently the Suspended Director / Guarantor / Scheme Proponent filed a scheme under Section 230 of the Companies Act vide

an application IA/1784/CHE/ 2024 on 26.05.2024 praying for dispensing with the meeting of the shareholders of the Corporate Debtor, secured and unsecured Creditors and for sanction of scheme. Necessary affidavits and confirmations have been obtained.

39. Regulation 2B of IBBI, (Liquidation Process) Regulations 2016, provides for compromise or arrangement. It reads:

> *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 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.].

40. **Section 230 of the Companies Act, 2013** provides 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 appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be, 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.

-- -- --

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

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

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

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

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

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

(6) Where, at a meeting held in pursuance of sub-section (1), majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by

the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company being wound up, on the liquidator appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be, and the contributories of the company.

- - --

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

41. A reading of the above provisions would show that under Regulation 2B, a compromise / arrangement can be proposed under Section 230 of the Companies Act. It should be completed within 90 days from the order of the liquidation under Section 33 of IBC. It was held in the case of ***Small Industrial Bank of India Vs. Delicious Coco water Pvt Ltd. (NCLT Delhi) (IA.2308/ND/2022 in CP(IB)- 575(ND)/2017) and Kridhan***

Infrastructure Pvt Ltd. Vs. VenkatesanSankaranarayanan (NCLAT) Company Appeal (AT) (Insolvency) No. 202 of 2020, that 90 days period for submitting the scheme under Section 230 is directory not mandatory and the scheme can be considered after the expiry of 90 days period for value maximization of the assets. Sanction of a scheme as a facet of liquidation proceedings is also recognized in ***Arunkumar Jagatranka Vs. Jindal Steel & Power Ltd. & Anr, (2021) 7 SCC 474.***

42. In the present case, the scheme meets all statutory requirements and is in fact beneficial to all the stakeholders and would result in all the claims being fully satisfied. It also meets the objectives of the IBC to promote entrepreneurship and balances the interest of all the stakeholders.

43. **We therefore sanction the Scheme of Compromise and Arrangement as proposed by the Scheme Proponent in IA/1784/2024. The Corporate Debtor is accordingly released from the rigors of CIRP. IA 1784/2024 and CP 107/CHE/2021 are disposed of.**

44. File be consigned to records.

Sd/-
VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Sd/-
SANJIV JAIN
MEMBER (JUDICIAL)