

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

**IA/302/IB/2020 in MA/824/2019 in CP/1215/IB/2018**  
*(Filed under Section 60(5) and 238 of Insolvency and Bankruptcy Code, 2016  
read with Rule 11 and 14 of NCLT Rules, 2016)*

*and*

**IA/624/IB/2020 in IA/302/IB/2020 in MA/824/2019 in  
CP/1215/IB/2018**  
*(Filed under Rule 11 of NCLT Rules, 2016)*

*In the matter of M/s. GB Raja Top Weaving Private Limited*

Mahalingam Suresh Kumar  
Liquidator of  
M/s. GB raja Top Weaving Private Limited  
M/s. SPP & Co., Chartered Accountants,  
No.27/9, Nivedh Vikas, Pankaja Mill Road,  
Puliyakulam,  
Coimbatore – 641 045

*... Applicant*

*-Vs-*

1. The Officer of the Tax Recovery Officer – 2  
Department of Income Tax,  
No.63, Race course Road,  
Coimbatore – 18
2. The Sub – Registrar  
Registration Departments  
Perundurai,  
Erode – 638 052

*... Respondents*

*Along with*

**IA/741/IB/2020 in CP/1215/IB/2018**  
*(Filed under Section 60(5) of Insolvency and Bankruptcy Code, 2016 read  
with Regulation 33 of IBBI (Liquidation Process) Regulations, 2016)*

And

**IA/742/IB/2020 in IA/741/IB/2020 CP/1215/IB/2018**

*(Filed under Section 25(1) and 60(5) of Insolvency and Bankruptcy Code, 2016)*

And

**IA/200/CHE/2021 in IA/741/IB/2020 in  
CP/1215/IB/2018**

*(Filed under Section 60(5) of Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016)*

And

**IA/809/IB/2020 in IA/741/IB/2020 in  
CP/1215/IB/2018**

*(Filed under Section 60(5) of Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016)*

*In the matter of M/s. GB Raja Top Weaving Private Limited*

M/s. Seyyon Hitech Poly Fabs Private Limited,  
Having its Registered office at  
114/1, Periyar Nagar,  
Erode – 638 001  
And Factory is at  
47/1B, Gangapuram Village,  
Chithode, Erode – 638 102

*... Applicant*

-Vs-

The Liquidator of M/s. GB Raja Top Weaving Private Limited  
(In Liquidation)  
Acting through the Liquidator  
Mr. Mahalingam Suresh Kumar  
Having Office at  
M/s. SPP & Co., Chartered Accountants,  
No.27/9, Nivedh Vikas, Pankaja Mill Road,  
Puliyakulam,  
Coimbatore – 641 045

*... Respondent*

Along with

**IA/1077/2020 in MA/824/2019 in CP/1215/IB/2018**

*(Filed under Section 60(5) of Insolvency and Bankruptcy Code, 2016)*

*In the matter of M/s. GB Raja Top Weaving Private Limited*

1. Bharathan Raajaraajan  
5/5 R C Apartments, Karupanasamy Kovil Street,  
1, Surampatti 4 Road,  
Surampatti, Erode – 638 009
2. Hemavathi Raajarajan  
5/5 R C Apartments, Karupanasamy Kovil Street,  
1, Surampatti 4 Road,  
Surampatti, Erode – 638 009

*... Applicants*

-Vs-

1. M/s. GB Raja Top Weaving Private Limited  
152/1, Avvaiyar Street, CST Colony,  
Veerappanchatram, Erode – 638 004
2. Mahalingam Suresh Kumar  
Liquidator of M/s. GB Raja Top Weaving Private Limited

*... Respondents*

Present:

*For Applicants : A.G. Sathyanarayana, Advocate  
In IA/302/2020 and IA/624/2020*

*N.P. Vijay Kumar, Advocate  
In IA/741/2020, IA/742/2020, IA/809/2020 and  
IA/201/CHE/2021*

*K. Gaurav Kumar, PCS  
In IA/1077/2020*

*For Respondent : Ranjana & Raj Jhabakh, Advocate for R1  
In IA/302/2020 and IA/624/2020*

*A. G. Sathyanarayana, Advocate for Respondents  
In IA/741/2020, IA/742/2020, IA/809/2020 and  
IA/201/CHE/2021 and IA/1077/2020*

CORAM :

**R. VARADHARAJAN, MEMBER (JUDICIAL)  
ANIL KUMAR B, MEMBER (TECHNICAL)**

*Order Pronounced on 21<sup>st</sup> April 2021*

**COMMON ORDER**

***Per: R. VARADHARAJAN, MEMBER (JUDICIAL)***

Since all the issues involved in the above IA's arise out of the same cause of action, all the aforementioned IA's are being taken up together for disposal by way of a common order.

2. The above mentioned IA's can be grouped in the following manner as arranged in the cause title;

(i) IA/302/2020 and IA/624/2020;

wherein IA/302/2020 is an Application being filed by the Liquidator seeking to direct the Income Tax Authorities and the Sub - Registrar, Perundurai, to remove the attachment done by the Income Tax Department and consequently direct the Sub - Registrar to register the Scheduled property; IA/624/2020 is an urgent application seeking to list IA/302/2020

- (ii) IA/741/2020, IA/742/2020, IA/809/2020 and IA/200/CHE/2021;

wherein IA/741/2020 is the main Application and IA/742/2020, IA/809/2020 and IA/200/CHE/2021 are urgent Applications seeking to list IA/741/2020. In IA/741/2020, the Applicant / successful bidder has sought a relief to direct the liquidator to raise the Income Tax attachment and consequently to direct the Liquidator to execute the Sale Deed in favour of the Applicant.

- (iii) IA/1077/2020;

It is an Application being filed by the promoters / suspended Directors of the Corporate Debtor and the Applicants have sought for a direction to the Liquidator to accept the Application of the Applicant for a Compromise / arrangement under Section 230 – 232 of the Companies Act, 2013 and to direct the Liquidator not to proceed with the process of sale of the assets of the Corporate Debtor in any manner and to stop the same.

3. The thumbnail sketch of the sequence of facts which culminates to the filing the present Application and which are necessary for the disposal of the present Application is set out hereunder;

- (i) The Corporate Insolvency Resolution Process in respect of the Corporate Debtor viz. M/s. GB Raja Top

Weaving Private Limited was initiated by this Tribunal vide its order dated 15.03.2019 and one Mr. C. Ramasubramaniam was appointed as the "Interim Resolution Professional" (IRP) who has caused public announcement in "Trinity Mirror" and "Makkal Kural" on 21.03.2019 and subsequently convened the 1<sup>st</sup> Committee of Creditors (CoC) Meeting on 12.04.2019, wherein the CoC has recommended for the appointment of the Applicant as the Resolution Professional and based on an Application filed by the CoC in MA/353/2019, this Tribunal vide its order dated 28.05.2019 has appointed the Applicant herein viz. Mr. Mahalingam Suresh Kumar, as the Resolution Professional (RP) in respect of the Corporate Debtor.

- (ii) In the meantime, the erstwhile IRP appointed two IBBI Registered Valuers to ascertain the value of the Plant & Machinery and Land & Building of the Corporate Debtor and as per the valuation report, the value for Land & Building was arrived at Rs.732.50 Lakhs and for Plant & Machinery was arrived at Rs.321.83 Lakhs.
- (iii) In the 2<sup>nd</sup> CoC meeting convened by the RP, the CoC has approved to issue the Expression of Interest in Form - G and the same was issued on 01.06.2019 and thereafter, in the 3<sup>rd</sup> meeting of CoC it was apprised by the RP that he has not received any interest from any of the prospective Resolution

Applicants in response to the Expression of Interest and after detailed discussion and deliberations it was noted by the sole Financial Creditor viz. State Bank of India that the Corporate Debtor is not a going concern for more than 2 years and hence recommended for Liquidation of the Corporate Debtor.

- (iv) Accordingly, the Applicant moved MA/824/2019 before this Tribunal seeking for Liquidation of the Corporate Debtor and this Tribunal vide its order dated 29.08.2019 has passed an order of Liquidation as against the Corporate Debtor and appointed the RP viz. Mr. Mahalingam Suresh Kumar as the Liquidator in respect of the Corporate Debtor.
- (v) In pursuance thereof, the Liquidator issued Public Announcement in Form B on 06.09.2019 calling for claims to be submitted by the stakeholders and the Liquidator received the claims which are as follows;

S. No.	NAME OF FINANCIAL CREDITOR	AMOUNT CLAIMED (₹)	AMOUNT ADMITTED (₹)
1	State Bank of India	83,94,66,299	83,94,66,299
2	State Bank of India (as a Corporate Guarantor)	44,95,01,917	44,95,01,917
	<b>TOTAL</b>	<b>128,89,68,217</b>	<b>128,89,68,217</b>

S. No.	NAME OF OPERATIONAL CREDITOR	AMOUNT CLAIMED (₹)	AMOUNT ADMITTED (₹)
1	GHCL Ltd.	1,41,27,079	1,41,27,079
	<b>TOTAL</b>	<b>1,41,27,079</b>	<b>1,41,27,079</b>

- (vi) The Liquidator as per Regulation 31 of the IBBI (Liquidation Process) Regulations 2016 has constituted the Stakeholders Committee as per the claim received by him and the Sole Financial Creditor and the Operational Creditor had participated in the 1<sup>st</sup> Stakeholders meeting held on 29.11.2019.
- (vii) The Liquidator in his Application has averred that as per Regulation 2B of the IBBI (Liquidation Process) Regulations 2016 he has not received any Scheme under Section 230 of Companies Act, 2013 within a period of 90 days from the Liquidation commencement date nor received any proposal under Regulation 32(e) or 32(f) of the IBBI (Liquidation Process) Regulations, 2016 to sell the Corporate Debtor as a going concern.
- (viii) Hence, the Liquidator issued the 1<sup>st</sup> E-Auction Sale Notice on 04.12.2019 and the Sale was scheduled on 04.01.2020, however there were no bidders in the said e-auction. Subsequently, in the 2<sup>nd</sup> Stakeholders Committee meeting it was resolved to reduce the reserve price by 10% and accordingly, the Liquidator issued the second e-auction notice on 02.02.2020 wherein interest bids were called by the Liquidator for an auction comprising of 2 batches, namely for the Corporate Debtor to be sold as a going concern (designated as Lot 1) in Batch 1 and the entire assets

being auctioned in Lot 2 of Batch 2 and individually auctioned in Lot 3 and 4 of Batch 2 with the priority being fixed in relation to Batch 1 for the sale of the Corporate Debtor as a going concern and only in its absence of any bidders Lot 2 of Batch 2 followed by other lots in the case of absence of bidders for the previous lot. The sale in relation to Lot 2 of Batch 2 comprising of the following assets;

Asset No. 1:- (Immovable Properties of Factory Land & building) situated at Survey Nos. 39/3, 39/7A, 39/7B, 39/8A, 39/8B, 51/1, 51/2, Gangapuram Village, Erode Taluk & District – 638 102 (Land: 3.895 acres) **AND**

Asset No. 2:- Plant & Machineries, Other Movable Assets situated at S.F. No. 39/3, 39/7, 39/8 Gangapuram Village, Erode Taluk & District – 638 102.

The sale was completed on 17.02.2020, wherein two bidders had participated and one M/s. Seyyon Hitech Poly Fabs Pvt. Ltd. (*the Applicant in IA/741/2020*) emerged as the successful bidder for quoting a price of Rs.9,53,95,000/- (Rupees Nine Crore Fifty Three Lakh and Ninety Five Thousand Only).

- (ix) Thereafter, the Liquidator verified the books and records of the Corporate Debtor and applied for the Encumbrance certificate of the scheduled property with the Sub – Registrar, Perundurai and it was found

that the Income Tax Department has attached the schedule property for the arrears of another group Company. Thereafter, the Applicant / Liquidator has written a letter dated 12.02.2020 to the Income Tax Department to lift the attachment and since there was no reply from the said Income Tax Department, the Applicant / Liquidator has filed the present Application.

4. However, before this Tribunal adjudicates upon the legality of the attachment orders issued by the Income Tax authorities in respect of the properties of the Corporate Debtor which are intended to be sold by way of e-auction to the successful bidder, the Learned Counsel for the Income Tax Department, with a view to put quietus to the present situation has filed a memo vide Diary No. 921 dated 16.02.2021 wherein it has been stated that by order dated 07.12.2020, the Income Tax Authorities have raised / lifted the attachment in respect of the schedule mentioned properties and have also addressed a letter to the Sub - Registrar, Perundurai to give effect to the lifting of the attachment and to transfer the title to the successful bidder. Hence, in view of the attachment being lifted by the Income Tax Department, nothing survives in IA/302/2020 and accordingly the same stands **dismissed as infructuous.**

5. Coming to the IA/741/2020 which is filed by the successful bidder viz. M/s. Seyyon Hitech Poly Fab Private Limited, the Applicant has sought for a direction to the Liquidator to raise the Income Tax attachments and also to direct the Liquidator to execute the Sale Deed / Sale Certificate in favour of the Applicant. In relation to the said prayers, it is already seen that the Income Tax Authorities have lifted the attachment in respect of the scheduled mentioned properties and that the prayer as sought for to such an extent has become infructuous. While dealing with the second portion of the prayer wherein the Applicant has sought for a direction to the Liquidator to execute the Sale Deed / Sale Certificate in favour of the Applicant, it is necessary to take into consideration the following events which took place subsequent to the sale being concluded;

- (i) The Applicant viz. M/s. Seyyon Hitech Poly Fab Private Limited emerged to be the successful bidder in respect of 3.895 acre of Land and Building for a sum of Rs.9,48,95,000/- and upon inspection of the premises it was found that the property was subject to the Income Tax Attachment order dated 08.11.2017.
- (ii) As per the E-auction procedures
  - a. 25% sale consideration less the EMD to be deposited within 24 hours.

- b. Balance 75% of sale consideration to be deposited within 30 days of E-auction i.e. within 30 days of auction.
  - c. Beyond period of 30 days, interest is payable at the rate of 12% p.a. from 31<sup>st</sup> day.
  - d. Failure to pay beyond 90 days, the Liquidator will have the right to cancel the sale along with forfeiture of EMD.
- (iii) Immediately after the e-auction, the Liquidator filed IA/302/2020 before this Tribunal on 21.02.2020 seeking for removal of the Income Tax attachments. Thereafter, nationwide lockdown was imposed by the Central Government in the wake of Covid – 19 pandemic from 24.03.2020 onwards.
- (iv) It is seen that as on 26.03.2020, the successful bidder has paid the following amount;

EMD	-	Rs. 94,89,500/-
On 22.02.2020	-	Rs.1,43,59,350/- (25%)
On 18.03.2020	-	Rs.1,00,00,000/-

In the meanwhile, the Regulator viz. IBBI on 17.04.2020 notified Regulation 47A of IBBI (Liquidation Process) Regulations, 2016 wherein it has been stated that the period of lockdown imposed by the Central Government in the wake of Covid – 19 outbreak shall not be counted for the purpose of computation of the time-line for any task

that could not be completed due to such lockdown, in relation to any liquidation process.

- (v) Thereafter, on 30.05.2020 by way of e-mail the successful bidder informed the Applicant his readiness and willingness to make the balance payment and calls upon the Liquidator to raise the Income Tax Attachment so that the Registration of property can be carried out in favour of the successful bidder.
- (vi) The Liquidator on 02.09.2020 sent an e-mail to the Applicant to make the balance payment and also to pay the interest to the Applicant, which necessitated the successful bidder to file IA/741/2020 seeking directions to the Liquidator to lift the attachment and to register the Sale deed in favour of the Applicant.
- (vii) In the meantime, the promoters / suspended Directors of the Corporate Debtor have filed IA/1077/2020 before this Tribunal on 06.11.2020 seeking a direction to the Liquidator to consider the Scheme under Section 230 of the Companies Act, 2013 which is proposed to be filed by them. In the said Application this Tribunal vide its order dated 04.01.2021 for the reasons stated therein, has granted *status quo* and directed the Liquidator to file counter.

(viii) In the meantime, the Income Tax Department removed the attachment on 07.12.2020 and the successful bidder paid the balance amount to the Liquidator on 10.12.2020 and the Liquidator has issued the Sale certificate on 14.12.2020.

6. Thus, from the facts narrated above, it could be seen that even before the *status quo* order was passed by this Tribunal in IA/1077/2020, the successful bidder has paid the entire sale consideration to the Liquidator and the Liquidator has also issued Sale Certificate in favour of the successful bidder. However, the Sale Deed could not be executed in favour of the successful bidder in view of the *status quo* order having been passed by this Tribunal on 04.01.2021 in the meanwhile. Hence, the Applicant / successful bidder in the present Application MA/741/2020 has sought for a direction to the Liquidator to execute the Sale Deed in favour of the successful bidder.

7. Before, we render our finding in MA/741/2020, it is necessary to take up IA/1077/2020 which is filed by the promoters / suspended directors of the Corporate Debtor since the rights of the Applicant in MA/741/2020 is affected due to a *status quo* order being granted in IA/1077/2020 and thereby the Sale Deed could not be executed in

favour of the successful bidder as a follow up to the Sale certificate issued.

8. IA/1077/2020 as already noted is an Application which is filed by the promoters / suspended directors of the Corporate Debtor seeking for a direction to the Liquidator to accept the Application for a Compromise / Arrangement under Section 230 – 232 of the Companies Act, 2013. The Applicant in IA/1077/2020 has averred that the Corporate Debtor is an MSME and thereby the provisions of Section 29A of IBC, 2016 does not apply to it. Further, it was submitted by the Learned PCS that the Hon'ble NCLAT in the matter of **Y. Shivram Prasad –Vs- S. Dhanapal & Ors.** in *Company Appeal (AT) (Insolvency) No. 224 of 2018* has dealt with the importance of realizing the maximum value of Assets of the Corporate Debtor first by means of Section 230 of the Companies Act, 2013 and if that does not happen then by way of Sale of assets of the Corporate Debtor and hence sought that the Applicants may be permitted to make an offer of arrangement of merger / compromise as envisaged under Section 230 of the Companies Act, 2013.

9. The Liquidator has filed counter and the Learned Counsel for the Liquidator submitted that the IA/1077/2020 as filed by the Applicants is

neither maintainable on law nor on facts and the same deserved to be dismissed *in limine*. It was submitted by the Learned Counsel for the Liquidator that as per the IBBI (Liquidation Process) Regulations 2016, a Scheme shall be submitted on or before the expiry of 90 days from the date of order of Liquidation, however in the present case the Applicants / promoters are before this Tribunal after expiry of 435 days and that too not with a Scheme / Compromise under Section 230 of the Companies Act, 2013 but only with a relief to permit the Applicants to file a Scheme / Compromise. It was submitted by the Learned Counsel for the Liquidator that the entire sale consideration was received within a 90 days period, after exclusion of the Covid – 19 lockdown period and also due to the pendency of IA/302/2020. Further, it was submitted by the Learned Counsel for the Liquidator that the sale certificate in respect of the properties of the Corporate Debtor was issued by the Liquidator as early as on 14.12.2020 which is before the issuance of the *status quo* order by this Tribunal on 04.01.2021 and hence the present Application is not maintainable.

10. Heard the submissions made by the Learned Counsel for the parties. The IA/1077/2020 filed by the promoters / suspended Directors of the Corporate Debtor is not maintainable in view of the fact that the Applicants have approached this Tribunal after an expiry of

435 days from the date of liquidation order being passed by this Tribunal and that the Applicants in the present IA/1077/2020 and in any case the Applicant therein has only sought for a direction to permit them to file a Scheme. Such a relief at this stage cannot be granted for the simple reason that Regulation 2B of the IBBI (Liquidation Process) Regulations, 2016 which was inserted by way of notification on 25.07.2019 would apply to the present case since the Liquidation in respect of the Corporate Debtor was ordered by this Tribunal only on 29.08.2019 i.e. after the coming into force of the said Regulation 2B. It is seen that Regulation 2B contemplates that 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 of IBC, 2016. The Applicant has not submitted its proposal for compromise within the 90 days from the date of commencement of liquidation process. It was contended by the Learned PCS for the Applicant that this Tribunal in exercise of its inherent powers under Rule 11 of NCLT Rules, 2016 can direct the Liquidator to consider the proposal for Compromise under Section 230 of the Companies Act, 2013. To answer the said contention, it is necessary to refer to the decision of the Hon'ble NCLAT in the matter of **Kridhan Infrastructure Pvt. Ltd. –Vs- Venkatesan Sankaranarayan & Anr.** in *Company Appeal (AT) (Insolvency) No.*

202 of 2020 wherein the Appellate Tribunal while dealing with the issues of liquidation and exercise of inherent powers of the Adjudicating Authority, has held as follows;

68. Ordinarily, the 'Adjudicating Authority' is to follow the discipline of 'I&B' code enacted by the Parliament, especially to streamline the 'Resolution' of 'Corporate Insolvency matters' involving 'Corporate Insolvency' and the same require the experts' decision. Of course, it is not open to an 'Adjudicating Authority' to take upon itself, the onus of supervising the intricacies of 'Resolution Process'. Although, the resolution of 'Corporate Insolvency' to ensure the survival of a company / enterprise as a going concern is one of the key objectives of the 'I&B' code but the rider is this must not come at the cost of efficiency, as opined by this Tribunal. To put it succinctly, a 'Timely Liquidation' is preferred over endless 'Resolution process'.

69. One cannot brush aside an important fact that longer the delay, more likely it is the 'Liquidation' will only be the sensible answer. No doubt, the 'Liquidation value' tends to go down with an efflux of time as many 'Assets' suffer from high economic depreciation value. Looking at from the point of view of creditors a good realisation can generally be secured if a company/firm is sold as a going concern. If one construes in the teeth of the object sought to be achieved by the 'I&B' Code and in the light of consequences provided by Section 33 of the Code, therefore, makes it unerringly clear that the periods mentioned in Section 12 are mandatory and cannot be extended. If time specified by statute is changed, then it will give room for wider complications/implications, in the considered opinion of this Tribunal.

70. Also, even in 'Liquidation', the realisation will be lower when there are delays and in fact, delays cause value destruction/reduction. Moreover, the failure of some business plan is an integral part of the process of 'market economy'.

71. It is to be pointed out that an administrator is in control of the affairs of the Company and is in a position to offer an

independent and detached view of company affairs as per decision 'Re Newport County Association Football Club Ltd.' (1987) BCLC 582(ChD). It is to be remembered that the 'Liquidation Proceedings' cannot proceed incessantly, affecting / damaging the interests of 'stakeholders'

72. It is significant to point out that pre-occupation of 'I&B' Code with 'timely resolution of insolvency' is an important factor. In so far as 'Liquidation' is concerned it destroys the organisational capital etc. 'I&B' Code allows 'Liquidation' only on failure of 'CIRP' and it facilitates / encourages resolution in several manner. Undoubtedly, a liquidation order shall also be a 'notice of discharge' to the offices, employees and workmen of the 'Corporate Debtor' except when the business of the 'Corporate Debtor' is continued.

73. It is to be pointed out that Section 230 of the Companies Act, 2013 deals with Tribunal's power to make an order on the application of the Company or of any creditor or member of the Company or in case of company which is being wound up, of the liquidator under this Act or under IBC as the case may be that a meeting may be called for the proposed compromise or arrangements including debt restructuring etc. between company, its creditors and members. In fact, the Company or any other person by whom an application made shall disclose all material facts relating to Company such as latest financial position of the Company, latest Auditor's Report, 'Reduction of Share Capital' of the company included in the compromise or arrangement etc.

74. The Adjudicating Authority in the impugned order dated 16.01.2020 in C.A. No. 2683(PB)/2019 in Company Petition No. (IB)-197(PB)/2017 at paragraph 6 had clearly observed that 'During hearing on 18.12.2019 an opportunity was afforded to respondent no. 1 to 3 to file reply within one week thereof. However, neither any reply was filed nor it could be shown as to how the approved resolution plan could at all be implemented'. Further, at paragraph 7 of the impugned order, the Adjudicating Authority had clearly mentioned that even after period of eight months the 'Resolution Applicant' has failed to adhere to any of the timelines for equity infusion, since approval of the 'Resolution Plan'.

75. By diluting the speed specified in the code there is likelihood of adversely affecting the interests of both sides. If the same is delayed, maximization of value of assets of the 'Corporate Debtor' will weaken the realisation of potential creditors. Moreover, the Company promoters' rights or wrongs remain undischarged from the liability. A person who is to proceed against the Company is suspended from exercising his rights for 'moratorium' remains in force as long as the CIRP period continues.

76. In regard to the exercise of 'inherent powers' it is to be pointed out that inherent jurisdiction must be exercised subject to the rule that if the code does contain specific provision that would meet the necessities of the case in question such provision should be followed and the inherent jurisdiction should not be invoked, as per decision 'Arumuga Chettiar' V. 'K.R.S. Sevugan Chettiar' AIR 1950 Madras page 779'. 77. It is well settled principle in Law that an 'inherent power' cannot be resorted to when there are specific provisions in Law to deal with the situations. In this connection, this Tribunal worth recalls and recollects the decision of Hon'ble Supreme Court in 'Durgesh Sharma' V. 'Jayshree' reported in Air 2009 Supreme Court at page 285 wherein it is observed and held that the inherent power cannot be exercised in contravention or in conflict or ignoring express provision of Law, since law relating to transfer is contained in Section 22 to Section 25 of the Code and they are exhaustive in nature.

*(underline supplied)*

11. Thus, in all regards, the Applicant / ex-promoters / suspended Directors of the Corporate Debtor cannot, at this stage be permitted to file a Scheme under Section 230 of the Companies Act, 2013, especially when the assets of the Corporate Debtor are already sold through e-auction, and if such a relief is granted to the Applicant the entire liquidation process would turn topsy-turvy. It is also to be noted here that this Tribunal also does not have power under Rule 11 of NCLT

Rules, 2016 to enlarge the time limit of 90 days as specified under Regulation 2B of the IBBI (Liquidation Process) Regulations, 2016 as the Applicant in IA/1077/2020 cannot also seek shelter for exclusion of time period in relation to Covid – 19 as the expiry of time period had lapsed much prior to the cut-off date of 25.03.2020 taking into consideration the liquidation commencement date of 29.08.2019. Thus, in all aspects the Application as filed by the Applicant / ex-promoters / suspended Directors in IA/1077/2020 deserves to be dismissed.

12. Further, the plea of the Applicant that they are MSME and that the provisions of Section 29A of IBC, 2016 would not disentitle / disqualify them from filing a Scheme, also does not hold much water in view of the fact that the disqualification which the Corporate Debtor suffer is in relation to them having been classified as a 'wilful defaulter' as specified under sub-clause (b) of Section 29-A of IBC, 2016. Section 240-A of IBC, 2016 states that only the provisions contained in clause (c) and (h) of Section 29-A of IBC, 2016 would not apply to an MSME. Thus, in any case, the Applicant, eventhough is an MSME, is not eligible to submit a scheme, in terms of the disqualification being suffered under sub-clause (b) of Section 29-A of IBC, 2016. In this regard, it is also significant to refer to the latest decision of the Hon'ble Supreme Court in the matter of **Arun Kumar Jagatramka –Vs- Jindal Steel**

**and Power Ltd. & Anr.** in *Civil Appeal No. 9664 of 2019*, wherein the Apex Court, while dealing with the issue as to whether a person who is ineligible under Section 29A of the Insolvency Bankruptcy Code, 2016 to submit a resolution plan, is also barred from proposing a scheme of compromise and arrangement under Section 230 of the Companies Act, 2013, has held as follows;

68. The statutory scheme underlying the IBC and the legislative history of its linkage with Section 230 of the Act of 2013, in the context of a company which is in liquidation, has important consequences for the outcome of the controversy in the present case. The first point is that a liquidation under Chapter III of the IBC follows upon the entire gamut of proceedings contemplated under that statute. The second point to be noted is that one of the modes of revival in the course of the liquidation process is envisaged in the enabling provisions of Section 230 of the Act of 2013, to which recourse can be taken by the liquidator appointed under Section 34 of the IBC. The third point is that the statutorily contemplated activities of the liquidator do not cease while inviting a scheme of compromise or arrangement under Section 230. The appointment of the liquidator in an IBC liquidation is provided in Section 34 and their duties are specified in Section 35. In taking recourse to the provisions of Section 230 of the Act of 2013, the liquidator appointed under the IBC is, above all, to attempt a revival of the corporate debtor so as to save it from the prospect of a corporate death. The consequence of the approval of the scheme of revival or compromise, and its sanction thereafter by the Tribunal under Sub-section (6), is that the scheme attains a binding character upon stakeholders including the liquidator who has been appointed under the IBC. In this backdrop, it is difficult to accept the submission of Mr Bajaj that Section 230 of the Act of 2013 is a standalone provision which has no connect with the provisions of the IBC. Undoubtedly, Section 230 of the Act of 2013 is wider in its ambit in the sense that it is not confined only to a company in liquidation or to

corporate debtor which is being wound up under Chapter III of the IBC. Obviously, therefore, the rigors of the IBC will not apply to proceedings under Section 230 of the Act of 2013 where the scheme of compromise or arrangement proposed is in relation to an entity which is not the subject of a proceeding under the IBC. But, when, as in the present case, the process of invoking the provisions of Section 230 of the Act of 2013 traces its origin or, as it may be described, the trigger to the liquidation proceedings which have been initiated under the IBC, it becomes necessary to read both sets of provisions in harmony. A harmonious construction between the two statutes would ensure that while on the one hand a scheme of compromise or arrangement under Section 230 is being pursued, this takes place in a manner which is consistent with the underlying principles of the IBC because the scheme is proposed in respect of an entity which is undergoing liquidation under Chapter III of the IBC. As such, the company has to be protected from its management and a corporate death. It would lead to a manifest absurdity if the very persons who are ineligible for submitting a resolution plan, participating in the sale of assets of the company in liquidation or participating in the sale of the corporate debtor as a 'going concern', are somehow permitted to propose a compromise or arrangement under Section 230 of the Act of 2013.

69. The IBC has made a provision for ineligibility under Section 29A which operates during the course of the CIRP. A similar provision is engrafted in Section 35(1)(f) which forms a part of the liquidation provisions contained in Chapter III as well. In the context of the statutory linkage provided by the provisions of Section 230 of the Act of 2013 with Chapter III of the IBC, where a scheme is proposed of a company which is in liquidation under the IBC, it would be far-fetched to hold that the ineligibilities which attach under Section 35(1)(f) read with Section 29A would not apply when Section 230 is sought to be invoked. Such an interpretation would result in defeating the provisions of the IBC and must be eschewed.

70. An argument has also been advanced by the appellants and the petitioners that attaching the ineligibilities under Section

29A and Section 35(1)(f) of the IBC to a scheme of compromise and arrangement under Section 230 of the Act of 2013 would be violative of Article 14 of the Constitution as the appellant would be “deemed ineligible” to submit a proposal under Section 230 of the Act of 2013. We find no merit in this contention. As explained above, the stages of submitting a resolution plan, selling assets of a company in liquidation and selling the company as a going concern during liquidation, all indicate that the promoter or those in the management of the company must not be allowed a back-door entry in the company and are hence, ineligible to participate during these stages. Proposing a scheme of compromise or arrangement under Section 230 of the Act of 2013, while the company is undergoing liquidation under the provisions of the IBC lies in a similar continuum. Thus, the prohibitions that apply in the former situations must naturally also attach to the latter to ensure that like situations are treated equally.

*(underline supplied)*

13. Thus, the Application in IA/1077/2020 as filed by the Ex-promoters / suspended Directors of the Corporate Debtor in the light of the discussions made *supra* does not hold any merit and hence deserves to be dismissed and accordingly stands **dismissed**. Interim orders if any passed shall stand vacated.

14. As a consequence thereof, since the Liquidator has already concluded the sale in respect of the properties of the Corporate Debtor and also the successful bidder has paid the entire sale consideration amount, and also the Income Tax Authorities having lifted the order of attachment, the Liquidator is directed to conclude the Sale by

executing the Sale Deed in favour of the successful bidder viz. M/s. Seyyon Hi Tech Poly Fabs Private Limited. Accordingly, IA/741/2020 stands **allowed**. All connected urgent Applications, if any which is pending, stands **closed**.

-Sd-

**ANIL KUMAR B**  
MEMBER (TECHNICAL)

-Sd-

**R. VARADHARAJAN**  
MEMBER (JUDICIAL)

*Raymond*