

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

CA (CAA)/2(CHE)/2023

IN

IBA/332/3019

(Under Regulation 2B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 read with Sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016)

In the matter of ***M/s. R.A. Samy Trading Private Limited***

CA. ASHOK SESHADRI

Liquidator of M/s. R.A. Samy Trading Private Limited
A2, Dynamaic Flats, Parangusapuram Street,
Kodambakkam,
Chennai – 600 024.

... Applicant / Liquidator

Order Pronounced on 07th March, 2023

CORAM

ASHOK KUMAR BHARADWAJ, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant: S. Sathiyarayanan, Advocate

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

Under consideration is a Company Application filed by the Liquidator of M/s. R.A. Samy Trading Private Limited (hereinafter referred to as the "Corporate Debtor") under Regulation 2B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 read with section 230 - 232 of Companies Act,





Regulations, 2016 read with section 230 - 232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Arrangement (hereinafter referred to as the "SCHEME") proposed by the Mr. C. Ganesh (hereinafter referred to as the "Scheme Proponent"). The said scheme is placed along with the present Application.

2. In relation to the Corporate Debtor, an Affidavit dated 09.01.2023 and an Additional Affidavit dated 03.02.2023 in support of the present Application is sworn by the Applicant Liquidator. The prayer under the present Application is reproduced as under:

"A) It is prayed that necessary directions may be given for dispensing with the convening, holding and conducting of meeting of the Stakeholders of the Company under Liquidation and fix a date for presentation of the Company petition and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and render justice.

B) It is prayed that notices to the statutory authorities may be ordered by this Hon'ble Tribunal as per the provisions of Section 230(5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromise, Arrangement and Amalgamations) Rules, 2016"

3. Learned Counsel submits that this Tribunal vide order dated 30.04.2019 admitted the Corporate Debtor into Corporate Insolvency Resolution Process at the behest of an application





(IBA/332/2019) by Union Bank of India under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code"). Subsequently, this Tribunal vide order dated 20.04.2021 ordered liquidation of the Corporate Debtor and consequently appointed the applicant as the Liquidator.

4. It is submitted that the Stakeholders Consultation Committee (hereinafter referred to as the 'SCC') was duly constituted in terms of Regulation 31A of the IBBI (Liquidation Process) Regulations, 2016. As per the application, the list of the Stakeholders contemplated under Regulation 31 is extracted as under:

S. No.	Name of the Creditor	Admitted Claim (In Rs.)	Nature of Stakeholder
1	Punjab National Bank	25,76,21,874/-	Secured Financial Creditor
2	EPFO, Chennai	11,98,819/-	Statutory Authority
3	Ramajayam Arumugasamy	13,76,32,252/-	Unsecured Financial Creditor
4	Eshwariswami Arumugasamy	9,40,01,095/-	Unsecured Financial Creditor
5	C. Ganesh	10,25,58,049/-	Unsecured Financial Creditor
6	Jayashankar	75,93,973/-	Unsecured Financial Creditor
7	A. Raghuram	23,15,70,800/-	Unsecured Financial Creditor
8	A. Raghuram	4,00,00,000/-	Operational Creditor
Total		Rs. 87,21,76,862/-	





5. It is submitted that pursuant to the 1st SCC Meeting held on 07.10.2021, the 1st Auction Sale was conducted on 08.11.2021 with the Reserve Price being Rs.42,78,00,000/- (Rupees Forty-Two Crore Seventy-Eight Lakh only), however the process was not fruitful since there were no bidders. Subsequently, pursuant to the 2nd SCC Meeting held on 17.11.2021, the 2nd Auction Sale was conducted on 21.12.2021 with the Reserve Price being Rs.38,00,00,000/- (Rupees Thirty-Eight Crore only) and the said auction had once again failed.

6. It is submitted during the 3rd SCC Meeting held on 30.12.2021 wherein the sole secured Financial creditor i.e. Punjab National Bank had requested the Applicant to not to proceed with the subsequent auction as they were in receipt of an One Time Settlement proposal for the promoters of the Corporate Debtor. However, during the 4th SCC Meeting held on 28.02.2022, Punjab National Bank had advised the Applicant to proceed with the subsequent auction sale.

7. It is further submitted that the 3rd Auction Sale was conducted on 28.03.2022 with the Reserve Price of Rs.34,65,00,000/- (Rupees Thirty-Four Crore Sixty-Five Lakh only) which is stated to be arrived based on the average liquidation value as per the two valuation report obtained by Registered



Valuers. It is stated that this attempt had failed since there were no bidders.

8. It is submitted that on 10.05.2022, the Applicant Liquidator was in receipt of the 'Scheme of Arrangement' proposed by Scheme Proponent who is also a creditor of the Corporate Debtor. It is stated that the same was placed for consideration of the SCC during the 5th SCC Meeting which was held 29.10.2022. It is submitted that after due negotiation by the Scheme Proponent, during the 6th SCC Meeting held on 01.12.2022, the SCC has approved the revised scheme and had consequently advised the Applicant Liquidator to approach this Tribunal for necessary approval. The said resolution of the SCC is extracted as under:

Resolved that the Scheme of Compromise dated 25th November 2022 provided by Mr. C. Ganesh with the following features

- a. a payment of Rs. 14.25 cr to PNB, within one month of the approval by the Adjudicating Authority with interest at 12% PA for any delay in the same and a recognition that the Scheme can be considered a failure if any part of the payment to PNB is delayed beyond six months from the date of approval by the AA.*
- b. full settlement of the Rs. 11,98,819/- dues to PF authorities within 30 days of the approval by the AA.*
- c. Full settlement of Rs. 32,35,493 of CIPR and Liquidation Costs in priority after the approval by the AA.*
- d. Full settlement of Rs. 86,78,468/- being the remuneration payable to the liquidator in priority after the approval by the AA.*
- e. Withdrawal of all litigation by the promoters both on the Bank and on the liquidator.*
- f. Not demanding withdrawal of litigation by the liquidator.*

Is hereby approved and the liquidator is advised to make a suitable application to NCLT, Chennai for its approval and seek legal help for the same.

It is further resolved that the letter from the proponent mentioning that the sanction letters from the two NBFCs to the extent of Rs. 14 cr will be produced in such a way that it will be a part of the application by the liquidator for approval of the Adjudicating Authority is noted. The fact that the NBFCs require the minutes of this meeting to be able to process the sanction is also noted.





9. Thus, the Applicant Liquidator has filed the present Company Application before this Tribunal on 09.01.2023 seeking for the dispensation of meeting contemplated under Sections 230 – 232 of the Companies Act, 2013.

10. With respect to the time period prescribed under the Regulation 2B, the Applicant places reliance on the judgement of the Hon'ble Supreme Court in the case ***Pioneer Urban Land Infra Ltd & Anr Vs. Union of India & Ors [WP (Civil) No. 43 of 2019]*** and on the judgement of the Hon'ble NCLAT in the case ***Standard Surfa Chem India Private Limited Vs. Mr. Kishore Gopal Somani [Company Appeal (AT) (Insolvency) No. 684 of 2021]*** and submits that the timeline under the said regulation is directory and not mandatory.

11. It is submitted that that the delay in filing the present application is neither wilful and nor wanton and is only due to the substantial time consumed in negotiating and approving the scheme by the sole financial creditor, consequently the delay in filing the present application is sought to be condoned by the Learned Liquidator. It is also seen that this Tribunal vide order dated 23.08.2022 in IA(IBC)/448(CHE)/2022 excluded a period of 315 days from the liquidation period. Considering the submissions made and in the interest of the saving the Corporate Debtor from



the death by liquidation, the delay in presenting this Company Application is condoned.

12. Heard the submissions made by the Learned Counsel for the Applicant and perusal of the documents including the scheme proposed in relation to the Corporate Debtor. *Prima Facie* it is seen that the stakeholders in relation to the Corporate Debtor are agreeable to the scheme proposed by the Scheme Proponent. Considering this factual matrix leading to the present Company Application, we are inclined to issue directions for convening the meetings of the stakeholders; however, suitably modified to suit the present instance taking into consideration the facts and circumstances of the case:

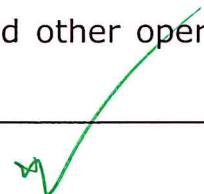
13. The Liquidator of the Company under liquidation shall place the Scheme of Arrangement before the Stakeholders Committee of the Company in liquidation at their meeting to be called, convened and held as follows:-

- (a) In view of the wide powers vested with this Tribunal under Section 230 of the Companies Act, 2013, however, without being bogged down by the procedural rigmarole as prescribed therein for approval of a Scheme of Compromise or Arrangement including by way of Amalgamation and at the same time however, not ignoring the views and voting of the respective stakeholders



in relation to the Scheme to be placed before them, be it a secured creditor, unsecured creditors, Operational Creditors or the members of the Company in Liquidation, the Liquidator is directed to constitute a Stakeholders Committee in terms of Regulation 31A of IBBI (Liquidation Process) Regulations, 2016 as prevalent on the date of liquidation for the consideration of the Scheme and voting thereon.

- (b) However, the said Regulation shall not apply *mutatis mutandis* as the following exceptions are required to be made taking into consideration the fact that even though the company is in liquidation, since a Scheme is under contemplation as envisaged under Rule 2B of IBBI (Liquidation Process) Regulations, 2016 and in view of the absence of substantive provisions or rules or regulations, save the judicial precedent for consideration of the Scheme without any commensurate procedure prescribed and primacy of Secured Creditors is required to be maintained as the liquidation process as such is kept in abeyance.
- (c) Save the individual secured financial creditors, all the other stakeholders, be it financial creditors forming part of promoters or otherwise, the respective group of operational creditors, namely employees, statutory dues and other operational





creditors and shareholders' shall be represented only by their respective Authorized Representative (AR) to be chosen for each class in the manner as contemplated under sub-section (6) and sub-section (6A) of Section 21 of IBC, 2016 read with Regulation 4A and Regulation 16A of IRPCP Regulations, 2016 as applicable during the CIRP of a Corporate Debtor. The exercise shall be completed by the Liquidator within a period of 15 days from the date of this Order.

- (d) Immediately after the AR is chosen by the respective group, Stakeholders Committee Meeting shall be convened by the Liquidator within 45 days thereof not exceeding 60 days from the date of this Order wherein the Secured Financial Creditors will be entitled to participate and vote on individual basis and other stakeholders to be represented only by their respective Authorized Representatives and the voting shall be done similar to the one contemplated for the approval of a Resolution Plan under IBC, 2016 read with attendant regulations after proper circulation of notice to the individual stakeholders at their last known e-mail address along with a synopsis of the Scheme as proposed by the 3rd Respondent. The notice of the meeting shall be issued to the

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Stakeholders at least not less than 30 days prior to the date fixed for the meeting.

- (e) The Liquidator is directed to cause publication of notice in "Business Standard" (English, All India Edition) and in "Dinamani" (Tamil, Chennai Edition) within 7 days from the date of this order.
- (f) The voting share shall be determined in accordance with Section 5(28) of IBC, 2016 save instead of 'financial creditors', 'financial debt' and 'committee of creditors' specified therein, it shall be substituted with the term 'stakeholders', 'debt' and 'stakeholders committee'.
- (g) Let notices be sent to all the authorities without fail by the Applicant and in addition notice is also directed to be issued to the concerned RoC, RD and Income Tax Department including the Jurisdictional Assessing Officer mentioning clearly the PAN number as well as others as contemplated under Section 230 (5) of Companies Act, 2013. The said authorities to whom notices have been issued in terms of the provisions of Section 230(5) of the Companies Act, 2013 shall act in accordance thereof.
- (h) The Liquidator shall furnish an Affidavit of service of notice of meetings and publication of advertisement and compliance of all the



directions contained herein at least a week before the proposed meeting.

- (i) The Chairman for Stakeholders' Committee meeting to be convened shall be **N.K. Bhansali, Company Secretary (Contact No. 98400 84744)** who shall file his report in relation to the Stakeholders' Committee meeting and its outcome within seven (7) days from the date of the meeting. Consequently, we hereby appoint **Jerin Asher Sojan, Advocate (Contact No. 80755 04970)** as the scrutinizer for the said meeting and he shall file his report in relation to the Stakeholders' Committee meeting and its outcome within seven (7) days from the date of the meeting. The remuneration payable to the Chairman and Scrutinizer shall be Rs. 60,000/- and Rs. 30,000/- respectively.
- (j) Let the Scheme as approved by the Stakeholders with the requisite voting majority be placed before this Tribunal for the consideration of its sanction within a period of 60 days from the date of this Order.
- (k) Since the Scheme has been propounded by the Mr. C. Ganesh we direct them to make arrangement for the expenses likely to be incurred in relation to the meetings including the fees of the Chairman and Scrutinizer appointed as above and for placing the Scheme before the

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Stakeholders Committee. In case of any query being addressed by the Stakeholders in relation to the Scheme and with a view to address those queries which may be addressed by the Stakeholders and the Scheme Proponent may clarify the same.

14. Accordingly, this **CA(CAA)/2(CHE)/2023** is stands **allowed** in terms of this order. In case of any difficulty in implementing the procedure as directed above, the Liquidator is given liberty to approach this Tribunal as and when required for necessary directions at the earliest without any delay.

- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

- Sd -

ASHOK KUMAR BHARADWAJ
MEMBER (JUDICIAL)

V.Shreekumar

*Order pronounced under Rule 151 of NCLT Rules, 2016, by Hon'ble (Technical Member, Sameer Kakar on behalf of the Bench comprising of **Ashok Kumar Bharadwaj, Member (Judicial)** and **Sameer Kakar, Member (Technical)**).*

M. Nalluracharyulu
(Court Officer)