



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI COURT – VI**

**ITEM NO. 3**  
**I.A. 4116/ND/2021**  
**IN**  
**CP(IB)-2260/(ND)/2019**

**IN THE MATTER OF:**

**Mr. Atiuttam Prasad Singh (Liquidator) V/s. M/s. SNS Diagnostics Ltd.**

**Order under Section 2B of IBBI Liquidation Process Regulations, 2016**

**Order delivered on 26.09.2023**

**CORAM:**

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

**ORDER**

Order pronounced in open Court vide separate sheets.

I.A. 4116/ND/2021 in CP(IB)-2260/(ND)/2019 stands allowed.

**SD/-**

**(Rahul Bhatnagar)**  
**Member Technical**

**SD/-**

**(Bachu Venkat Balaram Das)**  
**Member Judicial**



**THE NATIONAL COMPANY LAW TRIBUNAL**

**COURT VI, NEW DELHI**

**I.A. 4116/ND/2021**

**IN**

**Company Petition No. (IB) – 2260/(ND)/2019**

*Application under Regulation 2B of IBBI Liquidation  
Process Regulations, 2016*

**In the matter of:**

**M/S UTSAV SECURITIES PRIVATE LIMITED**

.....FINANCIAL CREDITOR

**VERSUS**

**M/S SNS DIAGNOSTICS LIMITED**

...CORPORATE DEBTOR

**AND IN THE MATTER OF**

**MR. ATIUTTAM PRASAD SINGH**

...APPLICANT/ LIQUIDATOR

**CORAM:**

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

**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

I.A. 4116/ND/2021

IN

Company Petition No. (IB) – 2260/(ND)/2019



**For the Applicant:** Mohd Nazim Khan, PCS along with Mr. Saba Ahmad. and Mr. Kartikeya Singh, Adv

**ORDER**

**PER- RAHUL BHATNAGAR, MEMBER (TECHNICAL)**

**Order Pronounced on: 26.09.2023**

1. This is an application filed under Regulation 2B of IBBI Liquidation Process Regulations, 2016 r/w Section 230 of Companies Act, 2013 praying for the following reliefs:

- i. To condone the delay in filing the application as mentioned in Regulation 2B of Insolvency and Bankruptcy Board of India (Liquidation Process), Regulation, 2016 by 122 days from 05.05.2021 upto the date of filing this Application in view of the reasons as stated in Para 19 of this Application;*
- ii. To approve the Scheme of Compromise and Arrangement proposed by Avail Financial Services Limited and approved by the Stakeholders (Creditors) and Ex-Directors under Regulation 2B of IBBI (Liquidation Process) Regulations, 2016 as per below voting results;*



<b>Particulars</b>	<b>Voting Share</b>
Stakeholders i.e., Creditors	100%
Ex-Directors/ Suspended Directors	100%

- iii. *To provide any other relief which may be found suitable to facilitate the Liquidator to discharge his function effectively and such further orders be passed or directions be given as the Hon'ble Tribunal may deem fit and proper in the interest of the justice; or*
- iv. *Issue such Order as may be deemed fit, proper and necessary in the facts and circumstances of the case.*

2. The Applicant in the application has averred as follows:

- i. That the present application is filed by Liquidator i.e., Mr. Atiuttam Prasad Singh, who was appointed as Liquidator of Corporate Debtor vide order dated 04.02.2021 in IA No. 2026/2020 in CP(IB)-2260(ND)/2019. The application is filed under section 60(5) of IB Code, 2016 read with Regulation 2B of Liquidation Regulations, 2016.
- ii. Regulation 2B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 provide for compromise or arrangement under Section 230 of the



Companies Act, post liquidation order. The same is quoted as under: -

**2B. Compromise or arrangement.**

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

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

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

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

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

- iii. That this Interlocutory Application is being preferred for approval of Scheme of Compromise and Arrangement between the Corporate Debtor and Avail Financial Services Limited by Liquidator i.e., Mr. Atiuttam Prasad Singh.



- iv. That the Applicant had issued Public Announcement in Business standard (English) and Business standard (Hindi), under Regulation 12 of IBBI (Liquidation Process) Regulations, 2016, inviting the stakeholders of Corporate Debtor to submit their claims on or before 06<sup>th</sup> March, 2021.
- v. That in compliance of Regulation 31A of the Liquidation Process Regulations, 2016, the Applicant constituted Stakeholders Consultation Committee (SCC) within sixty days from the Liquidation Commencement Date and the same was filed before the Tribunal on 07.07.2021.
- vi. That in compliance of Regulation 2B of the IBBI (Liquidation Process) Regulations, 2016 read with Section 230 of the Companies Act, 2013, the Liquidator invited the offers for Scheme of Compromise or Arrangement on going concern basis, for sale of whole Company namely SNS Diagnostics Limited (In Liquidation) in possession of the Liquidator.
- vii. That it was clearly mentioned in the above said invitation that the sale by way of Compromise or Arrangement will be conducted on “AS IS WHERE IS”, “AS IS WHAT IS” and “WHATEVER THERE IS BASIS” and subject to the provisions of Clause 2B of Insolvency and Bankruptcy Board of India



(Liquidation Process) Regulations, 2016 read with Section 230 and other applicable provisions including any enactment or modifications thereof of the Companies Act, 2013.

- viii. That in pursuance to the above-mentioned invitation, Liquidator has received the scheme of Compromise and Arrangement from M/s Avail Financial Services Limited
- ix. That on receipt of Scheme, the Liquidator convened the First meeting of Stakeholders on 05.08.2021 and placed the Scheme for the sale of Corporate Debtor which was approved by members of SCC and Ex-Directors with 100% voting shares.
- x. That following are the salient features of the scheme of Compromise or Arrangement approved by the Stakeholders:
- a. This Scheme of Compromise or Arrangement is for merger of the Corporate Debtor with Avail Financial Services Limited.
- b. This Scheme of Merger would benefit the respective Companies on account of the following reasons: -
- i. The Merger will enable both the companies to consolidate their business operations and provide significant impetus to their growth.

ii. The Merger will save the premature death of the Transferor by way of Liquidation in the interest of all stakeholders.

c. The Scheme Provides for arrangement / compromise with the creditors, without any other or further act, application or deed.

d. The Liquidator has accepted the claims of Financial Creditors, details as under:

S No	Name of Financial Creditor	Amount of Claim Admitted in Rs.		
		Principal	Interest	Total
1.	Utsav Securities Private Limited	1,757,185	5,39,972	2,297,157
<b>Total</b>		<b>1,757,185</b>	<b>5,39,972</b>	<b>2,297,157</b>

e. That the total consideration including the value of all assets under the Scheme payable to various stakeholders shall be INR 12,00,000 and the same will be paid to the account of the Corporate Debtor within 30 days of approval of the Scheme.




S No	Particulars	Basis	Amount
i.	Unpaid Corporate Insolvency Resolution Process cost & Liquidation Cost	Not Applicable	INR Nil or actual amount, whichever is higher
ii.	Secured Financial Creditors, Unrelated, Having Voting Right	Not Applicable	Nil
iii.	Unsecured Financial Creditors, Unrelated, Having Voting Right	52.238%	INR 12,00,000 (Ten Lakh Rupee)

iv.	Operational Creditors other than workmen and employees	Not Applicable	Nil
v.	Workmen Dues	Not Applicable	Nil
vi.	Employees	Not Applicable	Nil
vii.	Government dues (NSDL, CDSL, Stock Exchange listing Fees, RTA, Income Tax Dept., etc.)	Not Applicable	Nil
viii.	Others	Not Applicable	Nil
ix.	Contingency	Not Applicable	Nil
<b>Total</b>			<b>INR 12,00,000</b>

f. The aforesaid consideration shall be distributed in accordance with the provisions of Section 53 of the Insolvency and Bankruptcy Code, 2016.

g. Upon this Scheme becoming effective and in consideration for the transfer of and vesting of all the properties and



assets of the Transferor Company into the Transferee Company, Upon this Scheme becoming effective and in consideration for the transfer of and vesting of all the properties, assets and liabilities of the Transferor Company into the Transferee Company, the Transferee Company shall without any further act or deed, issue and allot to the member(s) of the Transferor Company or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title as may be recognized by the Board of Directors of the Transferor Company and approved by them whose names appear in the Register of Members of the Transferor Company as on the Record Date, shares in the share capital of the Transferee Company, on a proportionate basis, at par, credited as fully paid in lieu of shares held by them in the share capital of the Transferor Company, up to the extent indicated below, in the following ratio (the 'Share Exchange Ratio'):

- h. (One) equity shares of the face value of Rs 10 each credited as fully paid up in the share capital of the Transferee

Company for every 10 (Ten) fully paid-up equity shares of the face value of Rs 10 each held in Transferor Company.”

- i. The equity shareholding structure before and after approval of this scheme is as under:


Name of Shareholder	BEFORE RESOLUTION				AFTER RESOLUTION			
	No. of Shares	Face Value (Rs.)	Amount (Rs.)	% of Shareholding	No. of Shares	Face Value (Rs.)	Amount (Rs.)	% of Shareholding
Promoters Individual	0	0	0	0	0	0	0	0
Public other than Promoter								
a) Individual				92.37				1.06
b) Body Corporate	1,246,950	10	12,469,500	7.63	124,695	10	1,246,950	0.09
	103,050	10	1,030,500		10,305	10	103,050	
Shareholders of Transferee Company and its Associates	-	-	-	-	11,633,000	10	116,330,000	98.85
<b>TOTAL</b>	<b>1,350,000</b>	<b>10</b>	<b>13,500,000</b>	<b>100</b>	<b>11,768,000</b>	<b>10</b>	<b>117,680,000</b>	<b>100</b>

- j. Upon approval of the Scheme by the NCLT and on becoming the Transferee Company as the Listed Company pursuant to clause 7.1, the entire share capital of the Transferee Company along with the new shares to be issued to the members of Transferor Company shall be listed on Metropolitan Stock Exchange of India without any further

act, deed or thing on the part of the Transferee Company and details of shares to be listed upon approval of the Scheme is as under:


DETAILS	SNS	AVAIL	TOTAL
<b>Pre-merger:</b>			
No of shares	1,350,000 (Listed)	11,633,000 (Unlisted)	12,983,000
<b>Pre-merger:</b>			
Face Value per share	10/-	10/-	10/-
<b>Pre-merger:</b>			
Paid up share capital (INR)	13,500,000 (Listed)	116,330,000 (Unlisted)	129,830,000
<b>Post-merger Listed:</b>			
No of shares <sup>1</sup>	Nil	11,768,000 (Listed)	11,768,000 (Listed)
<b>Post-merger Listed:</b>			
Face Value per share	Nil	10/-	10/-
<b>Post-merger Listed:</b>			
Paid up share capital (INR)	Nil	117,680,000 (Listed)	117,680,000 (Listed)

- k. Upon approval of the Scheme by the NCLT and pursuant to the SEBI (Issue and Capital Disclosure Requirements) Regulations and the Securities Contracts Regulation Act, Listing Agreement and other applicable provisions of the



law for the time being in force, the Transferee Company undertakes and confirms that the Transferee Company shall maintain the minimum promoters and minimum public shareholdings within prescribed period.

1. Upon approval of the Scheme by the NCLT, the Transferee Company undertakes and confirms the compliance of the SEBI (Issue and Capital Disclosure Requirements) Regulations and the Securities Contracts Regulation Act, Listing Agreement and other applicable provisions of the law for the time being in force within prescribed period.
- m. The Corporate Insolvency Resolution Process cost and Liquidation cost as on date is Nil. In case any expenses are incurred from now onwards, the said expenses shall be paid at actual upon submission of bill as per clause 6.1 of the Scheme. Upon the Scheme becoming effective and with effect from the closing date, all the shares of the Corporate Debtor –with their voting rights shall be transferred to the buyer company or its shareholders.
- n. Upon the Scheme becoming effective, the Merger of the Transferor Company with the Transferee Company shall be



accounted as per the Accounting Standard 14 issued by the Institute of Chartered Accountants of India.

- o. That the accounting treatment, if any, proposed in the scheme of Compromise or Arrangement is in conformity with the accounting standards prescribed under section 133 and a certificate to this effect has been issued by the Auditor of the Corporate Debtor and Avail Financial Services Limited
- xi. That the Applicant had filed IA-2833/2021 under Section 30 of the IBC read with Rule 2B of the IBBI Liquidation Process Regulations 2016 for approval of the Resolution Plan during the course of liquidation of the Corporate Debtor and at the time of hearing on 29.07.2021 before this Bench, it was pointed out by this Bench that no resolution plan can be filed under Section 30 of the IBC in a situation when the Corporate Debtor is under liquidation. However, the Scheme of Compromise and Arrangement should have been filed by the Applicant in terms of Rule 2B of the IBBI Liquidation Process Regulations 2016. Accordingly, this Bench dismissed the IA-2833/2021 as withdrawn and liberty was granted to file a fresh application as per the provisions of law in force.



xii. That the Applicant respectfully prayed for approval of Scheme of Compromise or Arrangement submitted by Avail Financial Services Limited as per Regulation 2B of the IBBI (Liquidation) Regulations, 2016 by granting the prayers in this Application.

3. We have gone through the documents on record and heard the parties at length.

4. It is observed that this Tribunal vide order dated 14.12.2021 dismissed this application filed by the Applicant on the ground that the applicant company is disqualified to submit a compromise or arrangement in terms of section 29A of the Code read with Regulation 2B of IBBI Liquidation Process Regulations, 2016. However, the Hon'ble NCLAT vide order dated 05.08.2022 set aside the order of this Tribunal dated 14.12.2021. Hence, the present application was restored.

5. The Applicant prayed for condonation of delay in filing the application as mentioned in Regulation 2B of Insolvency and Bankruptcy Board of India (Liquidation Process), Regulation, 2016 by 122 days from 05.05.2021 upto the date of filing this Application. The Hon'ble Supreme Court in Swiss Ribbons (P) Ltd. and another v Union of India and others MANU/SC/0079/2019 :



(2019) 1 Comp LJ 273 (SC), Writ Petition (Civil) No. 99 of 2018 by its judgment dated 25 January, 2019, observed as follows:

*"11. ....What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern. [See Arcelor Mittal, supra, at paragraph 83, footnote 3]. (Emphasis supplied)"*<sup>1</sup>

**12. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends."**



6. It is well settled that the liquidator is required to take step to sell the business of the 'Corporate Debtor' as going concern the last stage will be death of the 'Corporate Debtor' by liquidation, which should be avoided. Hence, we condone the delay in filing application.

7. The Scheme of Compromise and Arrangement is filed by the Liquidator of the Corporate Debtor. The Scheme of arrangement as proposed by Avail Financial Services Limited was approved in the First meeting of Stakeholders on 05.08.2021 with 100% voting shares both by SCC and ex-management.

8. The applicant has prayed for number of waivers and reliefs in the scheme of arrangement. As to the relief and concessions sought in the scheme, by taking into consideration the decision of the Hon'ble Supreme Court in the matter of *Embassy Property Development Private Limited v. State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019*, we direct the company to file necessary application before the necessary forum/ authority in order to avail the necessary relief and concessions, in accordance with respective laws.



9. Since the objective of the IBC is to prefer resolution over liquidation and maximisation of the value of assets of the Corporate Debtor at any stage, it would be just and reasonable to make all possible efforts to revive the Corporate Debtor. The above facts and circumstances and the law on the issues, establish that the Scheme in question satisfy extant provisions of Code and the Companies Act, 2013, the rules made there under. Therefore, we are inclined to accept and sanction the Scheme with consequential directions as mentioned below.

- (1) The Scheme shall be binding on the Company, all the Creditors, or class of Creditors or Members or class of Members, all Statutory Authorities belonging to Central and State Govts.
- (2) The Company shall within thirty days of the date of the receipt of this Order cause a certified copy of this Order along with a copy of Scheme of Amalgamation to be delivered to the Registrar of Companies for registration in accordance with Rule 25(7) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;



- (3) That all the property, rights and powers of all the Transferor Companies, be transferred without further act or deed, to the transferee company and accordingly the same shall, pursuant to Section 232 of the Companies Act, 2013, be transferred to and vest in the transferee company; and
- (4) On sanction and approval of the Scheme by NCLT, all costs, charges, taxes including duties, levies and all other expenses, if any of the Transferor Company and the Transferee Company arising out of or incurred in connection with carrying out and implementing this Scheme and matters incidental thereto shall be borne by the Transferee Company.
- (5) The appointed date i.e., 01.04.2019 is confirmed by this Tribunal.
- (6) The parties are at liberty to file Miscellaneous Application(s) in the instant Petition, seeking any directions(s) if any, requires.



10. I.A. 4116/ND/2021 stands allowed in terms of the above order.

**SD/-**  
**(Rahul Bhatnagar)**  
**Member (Technical)**

**SD/-**  
**(Bachu Venkat Balaram Das)**  
**Member (Judicial)**