NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.305/2024
(IA No.817/2024)

In the matter of:

Narottamka Trade & Vyapaar Pvt. Ltd.,
U51109WB1996PTC079534,
Represented by Mr. Mohit Agarwal,
Authorized Signatory,
Having registered office at
No.AE-4, Flat No.1A, First Floor,
Krishnapur, Rabindrapally,
Kolkatta – 700101 and
Having Corporate Office at Old No. 22, New No. 34,
Balaji Nagar 1st Street, Royapettah,
Chennai – 600014 **… Appellant**

V

SPP Insolvency Professionals LLP
Liquidator
Kamachi Industries Limited,
Rep. by Mr. Mahalingam Sureshkumar
SPP & Co. No. 27/9, Nivedh Vikas,
Pankaja Mill Road, Puliyakulam,
Coimbatore – 641028 … **1st Respondent**

Mr. Virendra Jain and Mr. Ankit Jain
Individual Consortium,
Mittal Tower, B-Wing, First Floor,
Nariman Point, Mumbai – 400021 … **2nd Respondent**

With

Company Appeal (AT) (CH) (Ins) No.306/2024
(IA No.818/2024)

In the matter of:

Narottamka Trade & Vyapaar Pvt. Ltd.,
U51109WB1996PTC079534,
Represented by Mr. Mohit Agarwal,
Authorized Signatory,
Having registered office at
No.AE-4, Flat No.1A, First Floor,
Krishnapur, Rabindrapally,
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Having Corporate Office at Old No. 22, New No. 34,
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Mr. Virendra Jain and Mr. Ankit Jain
Individual Consortium,
Mittal Tower, B-Wing, First Floor,
Nariman Point, Mumbai – 400021 … **2nd Respondent**

Present :

For Appellant : Mr. PH. Arvindh Pandian, Senior Advocate
For Mr. Kaushik Narayanan V, Advocate

For Respondents : Mr. TK. Bhaskar, Advocate
For Mr. AG. Sathyanarayana, Advocate for R1
Mr. Abhishek Swaroop, Mr. Palash Agarwal &
Ms. Bhawana Sharma, Advocates for R2

J U D G M E N T
(Hybrid Mode)

Per : Justice Sharad Kumar Sharma, Member (Judicial):

1. These are two Company Appeals, which had been respectively preferred by the Appellant, under Section 61 (1) of I & B Code, 2016. The respective details of the Appeals are given hereunder:

A). Company Appeal (AT) (CH) (INS) No. 305 / 2024, has been preferred by the Appellant being aggrieved against the Impugned Order of 19.07.2024, as it was rendered in IA(IBC)/416(CHE)/2024 in IBA/883/2019 of the NCLT, Chennai Bench. The consequential effect of the Impugned Order had resulted into the rejection of the application, thus preferred by the Appellant, whereby his prayer to declare the e-auction conducted on 31.01.2024 as null and void and to direct the 1st Respondent / Liquidator to consider the Scheme submitted by him was turned down, the decision of the Stakeholder Consultation Committee (SCC) to reject the said Scheme was affirmed on the grounds that it has been done on merits and with majority voting.

B) The connected **Company Appeal (AT) (CH) (INS) No. 306 / 2024**, which has been preferred by the Appellant, seeks to challenge the Impugned Order of 19.07.2024, which has resulted into passing of an order on IA (IBC) / 420 (CHE) / 2024, as preferred in IBA / 883 / 2019, before the learned NCLT, Chennai Bench, in which the learned Adjudicating Authority allowed the application in IA

(IBC) / 420 (CHE) / 2024 of the Liquidator / Respondent No. 1 and confirmed the sale of the Corporate Debtor, as a going concern in favour of the Successful Bidder, with consequential reliefs as sought by the said bidder in their Acquisition Plan dated 29.01.2024 and approved issuance of appropriate directions to modify the records of various Statutory Authorities in respect of the Corporate Debtor, by entering the name of the Successful Bidder in the said records.

2. Brief facts of the case as it involves consideration are that;

`M/s. Kamachi Industries', hereinafter to be referred to as the `Corporate Debtor', was admitted into Corporate Insolvency Resolution Process (CIRP) on an application under Section 7 of I & B Code, 2016, filed by State Bank of India on account of non-payment of debt by an order of NCLT, Chennai, dated 19.02.2020. Moratorium under Section 14 was imposed and Interim Resolution Professional (IRP) was appointed. The IRP constituted the Committee of Creditors (CoC) and called for Resolution Plans. Three Resolution Plans were received and all of them were rejected by CoC on account of the plan value being lower than the liquidation value. The CoC voted for Liquidation on 14.09.2021 and the Tribunal allowed the application for liquidation vide its Order of 09.12.2022 and appointed the Liquidator.

3. The Liquidator formed the Stakeholders Consultation Committee (SCC), got conducted fresh valuation of the Corporate Debtor, prepared the Asset Memorandum and also issued a Public Announcement on 16.10.2023 for sale of the Corporate Debtor as a going concern both under Regulation 32 (e) or 32A or for the Scheme of Arrangement or Compromise under Section 230 of the Companies Act, read with Regulation 2B of the IBBI (Liquidation Process) Regulations, 2016.

4. Subsequently, the Liquidator was changed at the instance of Financial Creditor; the new Liquidator on instruction of SCC cancelled the EoI dated 16.10.2023 and issued fresh e-auction notice on 27.12.2023. The e-auction was held on 31.01.2024 and the highest bidder Mr. Virendra Jain and Mr. Ankit Jain were issued with Letter of Intent on the same day. The Liquidator filed an application being IA (IBC) / 420 (CHE) / 2024 to confirm the sale of Corporate Debtor as a going concern, before the Hon'ble NCLT which was approved by it on 19.07.2024.

5. Meanwhile, one minority Shareholder, the Appellant herein had submitted a Scheme of Arrangement on 18.10.2023. The same was deliberated upon and rejected by SCC on 31.01.2024 on grounds of the value offered being lower than Liquidation Value, no clarity on source of funds and unwillingness to derail the

auction process which was parallelly going on. The minority Shareholder filed an application in IA(IBC)/416(CHE)/2024, before Hon'ble NCLT to set aside the e-auction process and to direct the Liquidator to consider the Scheme submitted by him. It was rejected by the same order dated 19.07.2024.

6. The grievance of the Appellants in the instant Company Appeals, as against the two Impugned Orders which have been respectively rendered in the two Interlocutory Applications referred to hereinabove is that, in IA(IBC)/416(CHE)/2024 filed by him, the learned Adjudicating Authority rejected his prayer for consideration of the Scheme of Arrangements proposed by him under Section 230 of the Companies Act, 2013, without considering its merits and in IA(IBC)/420(CHE)/2024, it confirmed the sale of the Corporate Debtor as a going concern, despite several deficiencies in the auction process as required under law in the light of the provisions contained under IBBI (Liquidation Process) Regulations of 2016, particularly that as contained under Regulations 2B, 32(e), 32A and Clause 12 of Schedule of said Regulations.

7. The appellant has come up with the case that since he was the Scheme Proponent under Section 230 of the Companies Act, his application preferred under Section 230 of the Companies Act, 2013, should have been given precedence in consideration, over the process contemplated under Regulation 32

(e) & 32A of IBBI Regulation of 2016, and that, the sale of the assets of the Corporate Debtor under Regulations 32 (e) to be read with Regulation 32A of IBBI (Liquidation Process) Regulations, 2016, should have been resorted to by the Liquidator, only after deciding on the application preferred by him under Section 230 of the Companies Act, 2013.

8. Secondly, the Appellant has further submitted that, the Liquidator has proceeded with the consideration of the Scheme of Arrangement and the sale of the assets of the Corporate Debtor simultaneously, which is against the provisions of the Code and particularly that, as contained under Section 230 (1) of the Companies Act, 2013.

9. Thirdly, it is submitted by the appellant that, Regulation 2B of the IBBI (Liquidation Process) Regulations, 2016, prescribes for a period of 90 days from the date of commencement of the Liquidation, to complete the process of Scheme of Arrangements in case, it is proposed to be undertaken. In the instant case, this is being used by the Respondent No. 1 to reject his Scheme, after having entertained his proposal and having processed the same which is not correct in law, as per the precedence laid down by the Hon'ble Apex Court, as well as, by the Judgments of the Principal Bench, wherein, it has been observed that, the provisions contained under Regulation 2B of the IBBI (Liquidation Process) Regulations, 2016, which

prescribes for a period of 90 days to complete process of Compromise / Arrangement under Section 230 of the Companies Act, 2013, is directory in nature and not mandatory.

10. The learned counsel for the appellant has further submitted that, the act of acceptance or rejection of a Scheme of Arrangement can only be done under the manner set out under Section 230(1) of the Companies Act, 2013 and not by way of a meeting of the Stakeholders Consultation Committee, and accordingly, the Scheme submitted in the instant case, should have been approved or rejected, if at all required, only by the meeting of the Creditors which should have been called upon as per Rule 3 of the Company (Compromises, Arrangements and Amalgamations) Rules, 2016.

11. As against the aforesaid backdrop, the learned counsel for Respondent No. 1, who has filed his Counter Affidavit, has submitted that, as a consequence of the confirmation of the sale in an e-auction proceedings, the process under Regulation 32(e) & 32A of the IBBI (Liquidation Process) Regulations, 2016, has already been completed, and hence, there was no necessity at this stage for consideration of Scheme submitted by the Scheme Proponent, as contemplated under Section 230 of the Companies Act, 2013.

12. According to the contentions raised by Respondent No. 1, he intends to submit that since the process under Regulation 32(e) & 32A, contemplates sale of the Corporate Debtor, as a going concern, it meets the basic purpose and intention of the legislation and that the Scheme of Arrangement as contemplated under Section 230 of the Companies Act, 2013, which also targets the same, will not get a precedence over the process of sale of Corporate Debtor as a going concern, particularly when e-auction has already been concluded, i.e. on 31.01.2024.

13. Apart from the aforesaid, the Respondent further submitted that, as a consequence of the sale, which has already taken place, the Corporate Debtor has been sold as a going concern and the same has been given finality and since, the Corporate Debtor is presently a functioning concern, at this stage, no cause of action as such survives to be considered by this Tribunal, in the exercise of its Appellate Jurisdiction under Section 61(1) of the I & B Code, 2016.

14. At this point, it has been argued by the learned counsel for the Appellant, in response to the contentions by the learned counsel for the Respondent No. 1, that the propriety of the e-auction as it was conducted under Regulation 32 (e) and 32A, has to be considered, as to whether, under the given set of circumstances whether at all the e-auction was required to be conducted for the purposes of selling of the Corporate Debtor as a going concern.

15. In order to deal with the respective arguments, we will have to deal with as to what reliefs were primarily sought in the two IAs, which was preferred by the appellants herein, before learned NCLT.

16. The reliefs sought for in IA (IBC)/416(CHE)/2024, before the learned Adjudicating Authority, which is the subject matter in Company Appeal No. 305 / 2024, was the following:

> *``a) To declare that the e-auction conducted on 31.01.2024 as null and void and to pass necessary direction / directions to the 1st Respondent to consider the Scheme submitted by the Applicant after following due process of law;*
>
> *b) To pass such Order or Orders as this Hon'ble Tribunal may deem fit and proper and thus render Justice.''*

17. Thus, the principal relief which was prayed for, was for quashing of e-auction of 31.01.2024, and for consideration of the Scheme submitted by the Appellant.

18. In the connected IA, being IA(IBC)/420(CHE)/2024, the relief which sought for by the applicant being the Liquidator was of the following nature:

> *``a) To pass an order confirming the Corporate Debtor Sale as a going concern as required under the law;*
>
> *b) To consider and pass an order confirming the successful bidder requirements as detailed in S. Nos. 4 to 58 of their Acquisition Plan dt. 29.01.2024.*

c) To pass an order directing the statutory authorities involved in management of Corporate Debtor to modify their records by entering the successful bidder's name or as proposed by them''

19. It is the Appellant's case that, the order which was passed confirming the sale of the Corporate Debtor as a going concern was contrary to the provisions contained under Section 230 (1) of the Companies Act, 2013, and hence, the same deserves to be set aside and as a consequence thereto, the confirmation of sale to the Successful Bidder deserves to be quashed, and directions be issued to consider the Scheme of Arrangement, under Section 230 of the Companies Act, 2013.

20. The matter has extensively been dealt with by the learned Adjudicating Authority and after considering the rival contentions, the learned Adjudicating Authority has recorded its finding, qua the implications as argued pertaining to the proceedings of IA(IBC)/416(CHE)/2024, with regards to the Scheme of Arrangements, as it was filed by the appellant, which was placed on record, contending that the application for consideration of his Scheme ought not to have been rejected until and unless, the pre-conditions of such Sub Section (1) of Section 230 was complied with.

21. In order to deal with the aforesaid contentions raised by the learned counsel for the appellant, it becomes relevant to delve into the basic intention of the legislature, behind incorporation of Section 230, under the Companies Act, 2013,

as contained under Chapter 15, which deals with the aspects of Compromises, Arrangements & Amalgamations. Section 230 of Companies Act, 2013 is extracted hereunder:

> ***``Section 230. 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, 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.*
>
> *(2) The company or any other person, by whom an application is made under subsection (1), shall disclose to the Tribunal by affidavit—*
>
> *(a) all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company and the pendency of any investigation or proceedings against the company;*
>
> *(b) reduction of share capital of the company, if any, included in the compromise or arrangement;*
>
> *(c) any scheme of corporate debt restructuring consented to by not less than seventy-five per cent of the secured creditors in value, including—*

(i) a creditor's responsibility statement in the prescribed form;

(ii) safeguards for the protection of other secured and unsecured creditors;

(iii) report by the auditor that the fund requirements of the company after the corporate debt restructuring as approved shall conform to the liquidity test based upon the estimates provided to them by the Board;

(iv) where the company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect; and

(v) a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.

(3) Where a meeting is proposed to be called in pursuance of an order of the Tribunal under subsection (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 (12 of 2003), 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 and the contributories of the company.

(7) An order made by the Tribunal under sub-section (6) shall provide for all or any of the following matters, namely:—

(a) where the compromise or arrangement provides for conversion of preference shares into equity shares, such preference shareholders shall be given an option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable;

(b) the protection of any class of creditors;

(c) if the compromise or arrangement results in the variation of the shareholders' rights, it shall be given effect to under the provisions of section 48;

(d) if the compromise or arrangement is agreed to by the creditors under sub-section (6), any proceedings pending before the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) shall abate;

(e) such other matters including exit offer to dissenting shareholders, if any, as are in the opinion of the Tribunal necessary to effectively implement the terms of the compromise or arrangement:

Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect 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.

(8) The order of the Tribunal shall be filed with the Registrar by the company within a period of thirty days of the receipt of the order.

(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.

(10) No compromise or arrangement in respect of any buy-back of securities under this section shall be sanctioned by the Tribunal unless such buy-back is in accordance with the provisions of section 68.

(11) Any compromise or arrangement may include takeover offer made in such manner as may be prescribed:

Provided that in case of listed companies, takeover offer shall be as per the regulations framed by the Securities and Exchange Board.

(12) An aggrieved party may make an application to the Tribunal in the event of any grievances with respect to the takeover offer of companies other than listed companies in such manner as may be prescribed and the Tribunal may, on application, pass such order as it may deem fit.

Explanation.—For the removal of doubts, it is hereby declared that the provisions of section 66 shall not apply to the reduction of share capital effected in pursuance of the order of the Tribunal under this section.''

22. The intention of the Legislature in Chapter 15 of the Companies Act, 2013, is very clear, that is, a Company should be continued, to the maximum extent possible, as a going concern, while addressing the issues of insolvency / sickness and for that purpose, it envisages certain processes and procedures to be followed as laid down in Section 230. It is to be kept in mind that Section 230 was created in 2013, prior to enactment of I & B Code, 2016, and the concept of CIRP and Liquidation were yet to be born. That is why under Section 230 (5) notices are to be sent to various Authorities, including Official Liquidator and under Section

230(7) (d) provision is made for abatement of proceedings pending before BIFR in the event of any arrangement agreed to by the Creditors under Section 230 (6). With enactment of IBC, the process of Insolvency Resolution has been fast tracked and therefore, the significance of Section 230(1) in addressing the issue of insolvency / sickness has diminished.

23. We are of the view that, the follow up process which has been provided under Sub Section (1) of Section 230, would only be necessary to be complied with when the process of Compromise or Arrangement, as envisaged under the Companies Act, 2013, becomes necessary and needs to be carried out. But, that would be only in a situation, when there is a failure on the part of the Liquidator in his attempt to sustain the functioning of the Corporate Debtor as a going concern, as sufficient provisions have been provided under the I & B Code, 2016, and the IBBI (Liquidation Process) Regulations, 2016. Further, Regulation 2B under the Liquidation Regulations provides for Compromise / Arrangement within a limit of 90 days from the date of Order of Liquidation. The intent behind such provision is to give a chance for Compromise / Arrangement, before resorting to competitive bidding process for sale of the Corporate Debtor in the manner laid down in Regulation 32 of the said Regulations. In that light, it is only one more instrument in the hand of the Liquidator to keep the Company under Liquidation as a going concern. This principle has been succinctly laid down by Hon'ble Apex Court in

its Judgment dated 15.03.2021 in Civil Appeal No. 9664 of 2019 in the matter of ***Arun Kumar Jagatramka V. Jindal Steel & Power Ltd. & Anr.*** The relevant Paragraph being Para 67 is extracted hereunder:

> *``67. Now, it is in this backdrop that it becomes necessary to revisit, in the context of the above discussion the three modes in which a revival is contemplated under the provisions of the IBC. The first of those modes of revival is in the form of the CIRP elucidated in the provisions of Chapter II of the IBC. The second mode is where the corporate debtor or its business is sold as a going concern within the purview of clauses (e) and (f) of Regulation 32. The third is when a revival is contemplated through the modalities provided in Section 230 of the Act of 2013. A scheme of compromise or arrangement under Section 230, in the context of a company which is in liquidation under the IBC, follows upon an order under Section 33 and the appointment of a liquidator under Section 34. While there is no direct recognition of the provisions of Section 230 of the Act of 2013 in the IBC, a decision was rendered by the NCLAT on 27 February 2019 in Y Shivram Prasad v. S Dhanapal[39]. NCLAT in the course of its decision observed that during the liquidation process the steps which are required to be taken by the liquidator include a compromise or arrangement in terms of Section 230 of the Act of 2013, so as to ensure the revival and continuance of the corporate debtor by protecting it from its management and from "a death by liquidation". The decision by NCLAT took note of the fact that while passing the order under Section 230, the Adjudicating Authority would perform a dual role: one as the Adjudicating Authority in the matter of liquidation under the IBC and the other as a Tribunal for passing an order under Section 230 of the Act of 2013. Following the decision of NCLAT, an amendment was made on 25 July 2019 to the Liquidation Process Regulations by the IBBI so as to refer to the process envisaged under Section 230 of the Act of 2013.''*

24. Thus, contrary to the assertion of the Appellant, Scheme of Compromise / Arrangement under Section 230 is not to be put on a higher pedestal; rather, since it is a carryover from an earlier legal regime, it is sought to be accommodated within the tight-time frame of I & B Code, 2016. On the other hand, the sale of the Corporate Debtor as a going concern under Section 32(e) & 32A is more transparent and effective; therefore, the sale of the Corporate Debtor as a going concern will have precedence, rather than resorting to the Scheme of Compromise under Section 230 (1) of the Companies Act, 2013.

25. More important and relevant for the purposes of the instant case, would be the provisions contained under Regulation 32A, which provides for that, where the Committee of Creditors, has recommended the sale of the Corporate Debtor, under Clause (e) or (f) of the Regulation 32 or where the Liquidator is of the opinion that the sale of the Corporate Debtor under 32(e) or 32(f) will maximize the value of the Corporate Debtor, he shall endeavour to sell under such clauses. Accordingly, while taking action under Chapter 6 of Liquidation Process Regulations, dealing with realizations of assets of the Corporate Debtor, selling the Corporate Debtor as a going concern, will have to be the first priority for the Liquidator, in order to meet the objective of the I & B Code, 2016, i.e. the Corporate Debtor is to be kept, as a going concern after resolution of the insolvency.

26. The learned Adjudicating Authority in Paragraph 67 of the Impugned Order in relation to the reliefs sought for in IA(IBC)/416(CHE)/2024, has dealt with the principles which has been enunciated in the matters of ***Small Industrial Bank of India v. Delicious Coco Water Pvt. Ltd., NCLT New Delhi,*** as rendered in IA/2308/ND/2022 in CP(IB)/575(ND)/2017, as well as, in yet another matter of the same nature, being ***Kridhan Infrastructure Pvt. Ltd. v. Venkatesan Sankaranarayanan (NCLAT) Company Appeal (AT) (INS) No. 202 / 2020***, where the Principal Bench has held that, as far as the processes contemplated under Section 230(1) of the Companies Act, for the purposes of approval of a proposed Scheme is concerned, that may not have a precedence for the purposes that, it would defeat the very objective of the legislation to sell the Corporate Debtor, as a going concern. Ultimately, the learned Adjudicating Authority, in view of the findings which has been recorded in Paragraph Nos. 70, 71, 72 & 73 of the Impugned Order, pertaining to the implications of the provisions contained under Section 230, to be read with in-consonance with the Regulation 32(e) and more particularly 32A, has observed that the IA(IBC)/416(CHE)/2024, lacks merit on the grounds that the Scheme was submitted much beyond the time limit of 90 days from the date of order of Liquidation as envisaged in Regulation 2B(1), that the Liquidator did consider the Scheme, SCC deliberated on the Scheme and rejected the same on the basis that the value offered was well below the Liquidation Value,

that there was lack of clarity in respect of source of funds, and that SCC being a body, comprising of Creditors was competent enough to take a decision on the proposed Scheme and the Liquidator is bound by the decision of SCC.

27. It further held that the e-auction sale of the Corporate Debtor as a going concern under Regulation 32(e), cannot be said to be in violation of any of the provisions contained under the I & B Code, 2016, and that, in that eventuality, after the finalization of the process of e-auction, it cannot be permitted to be argued that the process of Section 230 for a Scheme of Arrangement submitted by the Scheme Proponent, in relation to the Corporate Debtor should have been considered first, before deciding the aspect of selling the Corporate Debtor as a going concern. The said interpretation of Section 230 of the Companies Act as being attempted by the Appellant is not acceptable by this Tribunal.

28. In relation to the prayers made in IA(IBC)/420(CHE)/2024, the learned Adjudicating Authority, has observed that the aspect of confirmation of sale of the Corporate Debtor, as a going concern to the Successful Bidder as required under Regulation 32(e) to be read with Regulation 32A, meets the objective of the Code, that the Successful Bidder i.e. Mr. Virendra Jain & Mr. Ankit Jain, were determined as to be the Highest Bidder and the amount of Bid Price, submitted by them being Rs.487 Crores is much higher than the Reserve Price of Rs.457 Crores,

which was fixed by the Liquidator and that, there was no apparent or legal error committed as such, calling for any interference.

29. Thus, ultimately based upon the aforesaid finding and analysis, which has been made by the learned Adjudicating Authority, the two applications as preferred therein by the appellant, and which are the subject matter for consideration independently in these two Appeals, had rightly been rejected by the learned Adjudicating Authority.

30. As far as the objection raised by the learned counsel for the Appellant with regards to the non-compliance of Clause 12 of Schedule I of the IBBI (Liquidation Process) Regulations, 2016, during the bid process is concerned, it is seen that the same has been taken into consideration by the learned Adjudicating Authority, by recording that minor discrepancies which might have chanced in the process due to inadvertent omission, will not have a very vital bearing over the entire proceedings of e-auctioning, which was held particularly when the Corporate Debtor was being sold as a going concern, and such the inadvertent errors or omissions ought to be ignored when it does not defeat the very object of the provisions contained under the said Regulations 2016. The aforesaid assertion derives its strength from the Judgment of ***2006 Vol IV SCC 476 Saheb Khan v. Mohd. Yusufuddin***, where the Hon'ble Apex Court has laid down, that liberty and a leverage can be granted, only

when there is substantial injury by fraud, and when it is acting as to be the basis to defeat the challenge of e-auction proceedings and not minor inadvertent procedural errors, which may not have any bearing on the principal proceedings that, will not create an impediment, as such to set aside the e-auction as it was conducted in the instant case under Regulation 32(e) & 32A of IBBI Regulations, 2016, and more importantly, as it has been reflected by the learned counsel for the Respondent No. 1, that as a consequence of conclusion of the e-auction process, the Successful Bidder, is now in the helm of affairs of the Corporate Debtor and he is operating the Corporate Debtor as a going concern. Accordingly, no cause as such prevails for the purposes of the appellant in the instant appeals.

31. Thus, the Company Appeal (AT) (CH) (INS) No. 305 / 2024 and Company Appeal (AT) (CH) (INS) No. 306 /2024 lack merits and the same are accordingly dismissed. The connected pending Interlocutory Applications, if any, too are closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

14/11/2024

SR/TM/MS