



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - IV**

C.P. (CAA) 189/MB/2023

IN

C.A. (CAA) 109/MB/2023

In the matter of

The Companies Act, 2013;

And

In the matter of

Section **230** *a/w.* Section **66** of the Companies Act, 2013, *r/w.* Insolvency and
Bankruptcy Code, 2016, *a/w.* Rules and Regulations framed thereunder;

And

In the matter of

COMPOSITE SCHEME OF COMPROMISE AND ARRANGEMENT

AMONGST

Mr. Nikhil Jain

... Acquirer No. 1

M/s. Rohstoffe International Private Limited

[CIN: U17111MH2010PTC305688]

... Acquirer No. 2

M/s. Wendt Finance Private Limited

[CIN: U65999MH2022PTC380363]

... Acquirer No. 3

... Collectively, “Acquirers”

AND

Birla Cotsyn (India) Limited *(In liquidation)*

[CIN: L17110MH1941PLC003429]

... Corporate Debtor

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FILED BY

Mr. Anil Goel

Liquidator of M/s. Birla Cotysn (India) Limited

... Petitioner

Order Pronounced on: 09.01.2025

Coram:

Mr. Sanjiv Dutt
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Petitioner (Liquidator) : Mr. Rohit Gupta *a/w.* Ms. Prashansa Agarwal, Ld. Counsel for the Liquidator.

For the Acquirers : Mr. Gaurav Joshi (Ld. Sr. Counsel) *a/w.* Mr. Viraj Parikh, Mr. Umang Mehta, Mr. Aamir Attari, Ms. Aalisha Sharma *i/b.* Dhruve Liladhar & Co., Ld. Counsel for the Acquirers.

For the Regional Director (WR) : Mr. Kunal Kanungo, Ld. Counsel for Regional Director (Western Region), Mumbai

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ORDER

1. The captioned Company Scheme Petition bearing *C.P. (CAA) No. 189 of 2023* has been filed *u/s. 230 r/w. s.66 of the Companies Act, 2013 and Regulation 2-B of the IBBI (Liquidation Process) Regulations, 2016* on *05.07.2023* seeking sanction of this Tribunal to a Composite Scheme of Compromise and Arrangement (“the Scheme”) between **Mr. Nikhil Jain** (“Acquirer No.1”), **Rohstoffe International Private Limited** (“Acquirer No.2”) and **Wendt Finance Private Limited** (“Acquirer No.3”; collectively referred to as “Acquirers”) for revival of M/s. **Birla Cotysn (India) Limited** (“Corporate Debtor”), along with its creditors and shareholders. The Scheme has been propounded by **Mr. Anil Goel** (“Liquidator”/ “Petitioner”), the Liquidator of the Corporate Debtor herein. The Corporate Debtor is a listed public company in Liquidation under the provisions of Insolvency and Bankruptcy Code, 2016, (“IBC, 2016”) *r/w.* the IBBI (Liquidation Process) Regulations, 2016.

BACKGROUND OF THE SCHEME IN LIQUIDATION

2. The factual matrix leading up to the proposed Scheme in Liquidation is as under:

- 2.1. The Corporate Debtor herein was incorporated in *circa* 1941, converted into a Public Limited Company in *circa* 1998 and eventually listed on the Bombay Stock Exchange in July, 2008. In furtherance of its objects under the Memorandum of Association, the Corporate Debtor ventured into commercial production of textiles at its two units in Khamgaon and Malkapur, located in Maharashtra. The Corporate Debtor had availed financial facilities from various Banks. However, in course of time, the Corporate Debtor failed to observe financial discipline and started committing defaults in its payment obligations. Owing to the same, all



of the loan accounts of the Corporate Debtor were declared as Non-Performing Asset(s) (“NPA”) in the intervening period of 2012-13, which led to a substantial reduction in its turnover and resulted in the closure of its afore-mentioned unit at Khamgaon.

- 2.2.** In view of Corporate Debtor’s failure to pay off its dues owed to its financial creditors, an application *u/s. 7* of IBC, 2016 came to be filed in April, 2018 before this Tribunal by **Edelweiss Asset Reconstruction Company Limited**. This Tribunal was pleased to admit the said Application *vide* its Order *dated 20.11.2018*, which resulted in initiation of CIRP in respect of the Corporate Debtor herein and one Ms. Sujata Chattopadhyay was appointed as the Interim Resolution Professional to carry out the functions under the IBC, 2016.
- 2.3.** Pursuant to the constitution of Committee of Creditors (“CoC”), deliberations ensued in furtherance of a Resolution Plan, but to no avail. The CoC, in its Fifteenth Meeting *dated 16.08.2019*, passed a resolution seeking initiation of the Liquidation Process of the Corporate Debtor, with a voting share of 91.24%. Accordingly, an application for initiation of Liquidation Process came to be filed before this Tribunal, which was admitted *vide* Order *dated 24.09.2019*. Mr. Anil Goel (*i.e. Petitioner in the captioned Company Scheme Petition*) was thereafter appointed as the Liquidator of the Corporate Debtor to oversee the same in accordance with the provisions of IBC, 2016 and the relevant Regulations.
- 2.4.** The Petitioner in the captioned Company Scheme Petition submits that it filed the Preliminary Report, Asset Memorandum and List of Stakeholders before this Tribunal in accordance with Regulations 5, 13 and 34 of the *IBBI (Liquidation Process) Regulations, 2016* in the following manner:



Details of Quarterly Reports	Period of Filing	Date of Filing
Preliminary Report	Within 75 days from liquidation commencement	28.10.2019
Asset Memorandum	Within 75 days from liquidation commencement	28.10.2019
List of Stakeholders	Within 75 days from liquidation commencement	28.10.2019

The Petitioner submits that the Stakeholders' Consultation Committee ("SCC") was accordingly constituted which comprises of all the creditors of the Corporate Debtor, pursuant to crystallization of the respective claim(s) by the Liquidator.

2.5. Thereafter, the Liquidator took steps to auction and sell the assets of the Corporate Debtor. In the meantime, however, one *M/s. Birla Industries Group Charity Trust* filed a Writ Petition No.755 of 2020 before the Hon'ble High Court at Bombay challenging the initiation of CIRP and Liquidation of the Corporate Debtor consequent to dismissal of its Appeal by the Hon'ble NCLAT. The Hon'ble High Court at Bombay granted an Interim Stay on further sale/ auction of the assets of Corporate Debtor *vide* Order dated 16.03.2020 and directed the Liquidator, "*..not to take any final decision in re-auction of the remaining properties.*" In a bid to vacate the said Interim stay Order, the Liquidator filed an Interim Application before the Hon'ble High Court at Bombay. The Hon'ble High Court was pleased to permit withdrawal of the said Writ Petition *vide* its Order dated 26.06.2023, and resultantly, the Interim Stay stood vacated.

2.6. Meanwhile, a Scheme for Compromise and Arrangement was received on 15.02.2022 from Acquirer No.1 (*in the captioned Company Scheme Petition*) *u/s.* 230 of the Companies Act, 2013, *r/w.* Regulation 2-B of the



IBBI (Liquidation Process) Regulations, 2016. The said Scheme was taken up for discussions/ deliberations by the SCC in its subsequent meetings *w.e.f.* March 2022 and the (revised) Scheme of Compromise and Arrangement was subsequently submitted by the Acquirers on 29.11.2022 along with an Earnest Money Deposit of INR One Crore. The Liquidator duly apprised the SCC on the key features of the same in addition to its feasibility *vis-à-vis* Section 29A of IBC, 2016. Thereafter, the Liquidator acting on the behest of the SCC, in its Tenth Meeting *dated* 08.12.2022, conducted the E-voting on the resolution of ‘*Approval of Scheme*’ and the same was admittedly approved by a voting-share of 78.22% of the Creditors (by value) in favour of the Scheme, as evident from the voting results extracted below:

Sr. No.	Voter Name	Percentage	Approve	Reject	Not Voted
1	Edelweiss Asset Reconstruction Company Limited	34.07%	34.07%	-	
2	Indian Overseas Bank	14.27%	-	14.27%	
3	Asset Reconstruction Company (India) Ltd. (assigned by Kayur Vyasya)	12.19%	12.19%	-	
4	Canara Bank	9.97%	9.97%	-	
5	Phoenix Arc Private Limited (assigned by Catholic Syrian Bank Limited)	9.07%	9.07%	-	
6	Union Bank of India	6.70%	6.70%	-	
7	State Bank of India	3.90%	3.90%	-	
8	Commissioner of Customs, Maharashtra	3.09%	-	-	3.09%



9	Wazir Financial Services Private Limited	2.71%	-	-	2.71%
10	Cecil Webber Engineering Limited	1.29%	-	1.29%	
11	Jankalyan Sahakari Bank	0.85%	0.85%	-	
12	Shrem Investments Private Limited	0.70%	0.70%	-	
13	Maheshwari Traders	0.38%	0.38%	-	
14	Superintendent Engineer, SEDCL, O&M Circle Office, Buldhana	0.33%	-	-	0.33%
15	Maharashtra Petroleum Corporation	0.00%	0.00%	-	
16	Workers who voted and approved	0.38%	0.38%		
17	Workers who voted and rejected	0.03%	-	0.03%	
18	Workers not voted upon	0.05%	-	-	0.05%
		100.00%	78.22%	15.60%	6.18%
TOTAL VOTING DONE		93.82%			

In the intervening period, the Liquidator sought Exclusion of the period from 16.03.2020 till the final adjudication of the Writ Petition by at the Hon'ble High Court of Bombay. This Tribunal *vide* its Order dated 08.12.2022 granted “*..exclusion of the period from 16.03.2020 till the date of final adjudication of this application or vacation of stay granted by the Hon'ble High Court, Bombay (whichever is earlier) from the liquidation process of the corporate debtor.*”

2.7. Accordingly, the Company Scheme Application bearing C.A. (CAA) No. 109 of 2023 was filed before this Tribunal *u/s.230* of the Companies Act,



2013 by the Petitioner on 21.04.2023 seeking directions with respect to dispensation of meetings of the shareholders and creditors. Upon a considered view of the facts and circumstances, this Tribunal disposed of the said Company Scheme Application *vide* its Order dated 02.05.2023 and passed the following directions:

“

21. Accordingly, this Bench passes the following order:

- a) The proposed Scheme can be proceeded, subject to conclusion of whole process within 90 days from the date of this order.
- b) The present Application is allowed with the following directions:
 - i. The meeting of the shareholders of the Corporate Debtor is dispensed with.
 - ii. The meeting of the creditors of the Corporate Debtor is dispensed with.

22. That the Applicant Companies are directed to serve notices along with copy of Scheme upon the-

- i. Central Government through the office of Regional Director, Western Region, Mumbai;
- ii. Jurisdictional Registrar of Companies;
- iii. Securities Exchange Board of India;
- iv. National Stock Exchange;
- v. Jurisdictional Income Tax Authority within whose jurisdiction the Applicant Company's assessment are made; and the Nodal Authority in the Income Tax Department having jurisdiction over such authority i.e. Pr. CCIT, Mumbai, Address:- 3rd Floor, Aayakar Bhawan, Mahrishi Karve Road, Mumbai – 400 020, Phone No. 022-22017654 [E-mail: mumbai.pccit@incometax.gov.in;
- vi. Jurisdictional GST Authority(s) (proper officer), within whose jurisdiction such companies are assessed to tax under GST law;
- vii. Bombay Stock Exchange and
- viii. Directorate General of Foreign Trade.



ix. Reserve Bank of India.

x. Ministry of Corporate Affairs; and

*xi. Any other Sectoral/ Regulatory Authorities relevant to the
Petitioner Companies or their business.*

*under the provisions of Section 230 (5) of the Companies Act, 2013
and Rule 8 of the Companies (Compromises, Arrangements and
Amalgamations) Rules, 2016.*

*23. The Notice shall be served through by Registered Post-AD/ Speed
Post/ Hand Delivery and email along with copy of Scheme and
state that “If no response is received by the Tribunal from the
concerned Authorities within 30 days of the date of receipt of the
notice it will be presumed that the concerned Authorities has no
objection to the proposed Scheme”. It is clarified that notice service
through courier shall be taken on record only in cases where it is
supported with Proof of Delivery having acknowledgement of the
noticee.*

*24. The Applicant is directed to publish a notice in two newspapers viz.
Free Press Journal (English) and Navsakti (Marathi) informing the
public of the Scheme, and inviting any objections. The Applicant is
directed to place on record any objections received.*

*25. The Applicant Companies shall file affidavit of service within 30
days from the last of the compliances as stated in above
paragraphs are made and do report to this Tribunal that the
directions regarding the issue of notices have been duly complied
with.*

26. Application is accordingly disposed of.”

In due compliance with the aforesaid directions of this Tribunal, the
Petitioner viz. Scheme Proponent filed an Affidavit-of-Service dated
03.07.2023 which forms part of the record.



- 2.8** The captioned Company Scheme Petition has thus been filed seeking sanction of the Scheme in Liquidation between the Acquirers and the Corporate Debtor.

SALIENT FEATURES OF THE SCHEME

- 3.** The Salient features of the Scheme in Liquidation between the Acquirers and the Corporate Debtor are as follows:

- 3.1** The Scheme will enable the Company to continue as a going concern. Revival of the Company by way of infusion of necessary funds would enable it to revive its and/or carry on suitable business operations and which would lead to current and future employment generation, expansion and/or enlargement and/or diversification of business activities and increase in the overall economic value of the enterprise.
- 3.2** The Company is engaged in textile business and new Government policies and schemes notified by Government would provide further impetus to business growth of the Company.
- 3.3** Certainty and timeline for payment to the stakeholders is clearly defined and outlined in the Scheme which may be totally uncertain in case of liquidation under the Insolvency and Bankruptcy Code on a piece-meal sale of assets. As a part of this Scheme, the Acquirer is assuring to invest significant amount of money for repayment to stakeholders as outlined in the Scheme. Revival of the Company shall present business opportunities for various small and medium size suppliers and provide employment at local level as well.
- 3.4** The Scheme is framed in the interest of the creditors and all other stakeholders of the Company under Liquidation under the IBC, 2016



and is not prejudicial to the interests of the concerned creditors or the public at large.

3.5 Acquirers are well-versed with the textile sector, have right experience and understanding of business, have financial capability and hence, are suited to revive the Company due to their business understanding, local network and local presence.

4. The Ld. Counsel for the Petitioner submits that as against the requisite valuation, the proposal submitted and approved by Stakeholders is as under:

Claimant	Claim Admitted (Rs. in Cr.)	Proposed Payment (Rs. in Cr.)
Pending CIRP Cost during the CIRP Period		3.18
Liquidation Costs up to 30 th September 2022 plus Liquidator Fees		4.18
Scheme related Costs (including estimated Liquidation Costs from 2 nd February 2022 till Scheme Effective Date)		0.92
Secured Financial Creditors	656.78	37.70
Unsecured Financial Creditors	33.96	1.00
Workmen and Employee Dues	2.48	1.22
Statutory Dues	22.28	1.00



Operational Creditors (other than Statutory and Workmen and Employees Dues)	5.51	0.22
Existing Equity Shareholders	-	Promoter Shareholding to be extinguished. Public shareholding to be continued at 5% of total shareholding.
Fund infusion towards Working Capital		3.00
Total Financial Proposal		52.43

5. In response to specific query of this Tribunal *apropos* **Workers' Dues**, the Petitioner submits that the said dues are being paid in full and the same amounts to INR 1,25,14,682/- (included in 'CIRP Cost') and the balance amount of INR 1,22,91,877/- is being paid "*..as full and final settlement of their dues*" under the Scheme separately. The Ld. Counsel for the Petitioner has further sought to clarify that:

5.1. Statutory Dues are owed to the Commissioner of Customs, *and*;

5.2. There are no dues owed towards **Provident Fund** for the period prior to the CIRP commencement date.

6. The Scheme envisages payment(s) to the afore-mentioned stakeholders, in consonance with the schedule/period as set out in the table below:



No.	Claimant	Time-line
1.	Pending CIRP Cost during the CIRP Period	E + 45 (in priority over all payments)
2.	Liquidation Costs up to 30 th September 2022 plus Liquidator Fees	in priority over all other payments i.e. E + 45
3.	Scheme related Costs (including estimated Liquidation Costs from 2 nd February 2022 till Scheme Effective Date)	in priority over all other payments i.e. E + 45
4.	Secured Financial Creditors	45% at E + 45 5% at E + 60 50% at E + 150
5.	Unsecured Financial Creditors	45% at E + 45 5% at E + 60 50% at E + 150
6.	Workmen and Employee Dues	45% at E + 45 5% at E + 60 50% at E + 150
7.	Statutory Dues	45% at E + 45 5% at E + 60 50% at E + 150
8.	Operational Creditors (other than Statutory and Workmen and Employees Dues)	45% at E + 45 5% at E + 60 50% at E + 150

E= Effective Date = Date on which Scheme is Sanctioned

7. The Scheme further envisages a '**REDUCTION OF SHARE CAPITAL and CONTINUED LISTING**' as per Part-IV of the same. In relation to the proposed Reduction of Share Capital, the relevant portion is extracted as under:



PART IV

SCHEME FOR REDUCTION OF SHARE CAPITAL and CONTINUED LISTING

1. Reduction of Share Capital

- 1.1 As an integral part of the Scheme, the Acquirer (along with any of the Acquirer's nominees) shall be issued 25,00,00,000 Equity Shares of INR 1 each of the Company in the following manner*:

Name	Number of Equity Shares to be issued
Nikhil Jain (Acquirer No. 1)	1,00,00,000
Rohstoffe International Private Limited ('Acquirer No. 2')	2,00,00,000
Wendt Finance Private Limited (Acquirer No. 3)	21,00,00,000
Sheela Jain	25,00,000
Akhil Jain	25,00,000
Sonal Jain	25,00,000
Priyanka Nikhil Jain	25,00,000
Total	25,00,00,000

*The Acquirer shall have the right to alter the shareholding mix at its own will as per its requirements.

- 1.2 Equity Shares to be issued to Acquirer (as mentioned in table above) and nominees (both considered together, not being less than 7 in number) shall be issued on or one day after the Scheme Effective Date.
- 1.3 As an integral part of the Scheme, on and with effect from the Scheme Effective Date or 1 day post the issuance of Equity Shares to Acquirer as mentioned in table above, whichever is later, the issued, subscribed and paid up share capital of the Company (except Equity Share capital issued to Acquirer as per table above) shall without further act, application or deed be deemed to stand reduced, cancelled and extinguished as below:
- Equity Share Capital of INR 48,60,83,760 comprising of 48,60,83,760 Equity Shares of INR 1 each, fully paid up, held by the existing Promoters and Promoters group in the Company shall be reduced, cancelled and extinguished without any payment
 - Equity Share Capital of INR 220,04,86,690 comprising of 220,04,86,690 Equity Shares of INR 1 each, fully paid up, held by the existing Public Shareholders in the Company shall be dealt with as under:
 - Public Shareholders would continue to own 1 Equity Share in the Company for every 153 existing Equity Shares held by the respective Public Shareholder. Any fractional share shall be ignored ("Continuing Public Shareholding")
 - Balance Equity Shares (i.e., Equity Shares over and above Continuing Public Shareholding) held by Public Shareholders shall be reduced, cancelled and extinguished without any payment
 - Post such reduction, it is expected that Public Shareholders would have a



shareholding of at least 5% in the Company [This is based on details of shareholding as at 29th March 2019]

iv. Indicative shareholding post reduction is likely to be as under:

Shareholder	% of holding	No. of shares	Face value (Rs)	Total INR (Rs)
Acquirer	94.52%	25,00,00,000	1.00	25,00,00,000
Public Shareholders	5.48%	1,45,06,575	1.00	1,45,06,575
Total	100.00%	26,45,06,575	1.00	26,45,06,575

- 1.4 Upon the cancellation of the share capital of the Company as contemplated above, the amount shall be transferred to the Capital Reserve account of the Company.
- 1.5 The reduction would not involve either a diminution of liability in respect of unpaid share capital or payment of paid-up share capital and the provisions of Section 66 of the Companies Act will not be applicable.
- 1.6 The aforesaid reduction shall be effected as an integral part of this Scheme. The order of Hon'ble Adjudicating Authority sanctioning the Scheme shall be deemed to be an order under Section 66 of the Companies Act confirming the reduction and no separate sanction under Section 66 of the Companies Act will be necessary. The approval granted by the shareholders of the Company to the Scheme shall be deemed to be the approval for the purpose of Section 66 and other relevant provisions of the Companies Act. The Company shall not be obliged or required to call for a separate meeting of its shareholders/ Creditors for obtaining their approval for sanctioning the reduction in its paid-up share capital.
- 1.7 Notwithstanding the reduction as mentioned above, the Company shall not be required to add the words "and reduced" as a suffix to its name consequent upon such reduction and the Company shall continue in its existing name.

8. In relation to the (proposed) Continued Listing of Shares, the relevant portion is extracted below:

2. Continued Listing

- 2.1 The Acquirer proposes to continue the listing of the Equity Shares of the Company on the Stock Exchange, as given below:
- 2.2 The Equity Share capital of the Company is INR 268, 65, 70,450 representing 100% (One Hundred percent) fully paid up Equity Shares having face value of INR 1 (Indian Rupees One) each. The Equity Shares of the Company were listed on the Stock Exchange; however, the trading in the Equity Shares of the Company is currently suspended.
- 2.3 Based on the information available on the website of the Stock Exchange, the shareholding pattern of the Equity Shares of the Company as on June, 2019 is as follows:

Shareholder	% of holding	No. of shares	Face value(Rs)	Total INR (Rs)
Promoters	18.09%	48,60,83,760	1.00	48,60,83,760
Public Shareholders	81.91%	220,04,86,690	1.00	220,04,86,690
Total	100.00%	268,65,70,450	1.00	268,65,70,450



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- 2.4 As mentioned above, as an integral part of this Scheme and on approval from the Adjudicating Authority, the additional Equity Shares of the Company shall be issued to Acquirer and Equity Share held by Existing Equity Shareholders (i.e., Promoters and Public Shareholders) shall be reduced, cancelled and extinguished as detailed in Clause 1 of this Part IV of the Scheme.
- 2.5 The Acquirer would like to continue listing of resultant Equity Shares of the Company on the Stock Exchange without any further cost and act, deed, process or thing required to be done by the Company or Acquirer or any other party forming part of this Scheme.
- 2.6 The Hon'ble Adjudicating Authority Approval to this Scheme shall be deemed as an approval for the continued listing of Equity Shares and revocation of suspension on trading of existing Equity Shares as well as issue and allotment of listing of Equity Shares issued to the Acquirers from the Stock Exchange and accordingly, approvals from SEBI or Stock Exchange or any existing Equity Shareholders or any other regulator will not be required.
- 2.7 The Acquirer shall be considered as Promoter of the Company.
- 2.8 As may be required, the Company shall achieve the minimum public shareholding within a period of three years from the Scheme Effective Date in the manner prescribed in SEBI Circular SEBI/HO/CFD/CMD/CIR/P/43/2018 dated 22 February 2018 - 'Manner of achieving minimum public shareholder'.
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- 8.1 It is noticed from the record that no representation has been received from the Regional Director (Western Region, Ministry of Corporate Affairs), the Registrar of Companies (Mumbai, Maharashtra) and the Securities and Exchange Board of India (the Corporate Debtor being a listed company) with regard to the proposed Reduction of Share Capital. Similarly, no observation or objection has been received from Securities and Exchange Board of India, BSE and NSE in regard to the proposed Continued Listing of Equity Shares of the Corporate Debtor. In view of this, it can be presumed that they have no objection to the proposed Reduction of Share Capital as well as Continued Listing of Equity Shares on the Stock Exchange(s).

OBJECTIONS TO THE SCHEME IN LIQUIDATION

9. Pursuant to the Order of this Tribunal *dated 02.05.2023* in the captioned Company Scheme Application and upon intimation of the same to sectoral regulators/entities, the **Bombay Stock Exchange** ("BSE") *vide* its Letter *dated 14.06.2022* raised its objection by stating that the Corporate Debtor had not obtained prior permission / 'No-objection' letter (NOC)

from the Exchange in terms of Regulation 37 of the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 [SEBI (LODR) Regulations] for the captioned Scheme before submitting the same to this Tribunal. Accordingly, this Tribunal *vide* its Order dated 04.04.2024 (as modified by subsequent order dated 02.05.2024) directed the Liquidator/Applicant to approach BSE and get the NOC before the approval of the Scheme by this Tribunal.

10. The said direction was challenged by the Acquirers by way of *Company Appeal (AT) No.148 of 2024* before Hon'ble NCLAT *u/s.421* of the Companies Act, 2013. The Hon'ble NCLAT, after an exhaustive analysis of the interplay between *Section 31 of the IBC, 2016*, vis-à-vis *Clauses (1), (2), (3) and (5) of Section 230 of Companies Act, 2013*, Regulation(s) **37(1)** and **37(2)** of *SEBI (LODR) Regulations, 2015*, Regulation **2-B** of the *IBBI (Liquidation Process) Regulations, 2016* along with the ratio(s) propounded in the judgements of *Arun Kumar Jagatramka v. Jindal Steel and Power Limited* [(2021) 7 SCC 474], *S.C. Sekaran v. Amit Gupta and Ors.* [2019 SCC Online NCLAT 517], *Y. Shivram Prasad v. S. Dhanpal & Ors.* [2019 SCC Online NCLAT 172] and *Ghanshyam Mishra & Sons Pvt. Ltd. v. Edelwiss Asset Reconstruction Company Ltd.* [(2021) 9 SCC 657], *vide* its Judgment dated 20.08.2024 allowed the appeal and held that there is no requirement under the Companies Act, 2013 for prior NOC from the stock exchanges or SEBI before the Scheme is filed before this Tribunal. We further deem it fit to extract the relevant observations of Hon'ble NCLAT as under:

“

- 33.** *The situation must also be looked at from a practical point of view. The Corporate Debtor is already in liquidation. It implies its assets are insufficient to meet its liabilities. Therefore, if the scheme fails and the Corporate Debtor is liquidated, its shareholders will get nothing. Presumably, the purpose of seeking a prior NOC under Regulation 37*



is to protect the interests of public shareholders. Under the Scheme, public shareholders will continue to hold 5% of the total equity shares of the Corporate Debtor. Under the Scheme, they are retaining some value whereas in the alternative scenario, they would get 'nil' value. That being so, the Scheme cannot possibly be contrary to the interests of public shareholders.

34. Considering what is stated hereinabove, the clarification / exemption to the prior NOC requirement in Regulation 37(7) must equally apply to a scheme of arrangement for revival of a company in liquidation.

35. The scheme in question in the present matter is akin to a Resolution Plan under Section 31 of the Code and it complies with the requirement of Resolution Plan under Section 30(2) of the Code and Regulation 37 and 38 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The scheme contemplates full payment of CIRP and liquidation cost, dues of workmen, payment of settlement value to creditors, extinguishment of all liabilities filed or not filed/admitted or not admitted, ouster of the erstwhile promoters, inducting of the acquirers as new promoters, constitution of monitoring committee, payment of EMD and performance security etc. If a restrictive literal interpretation of Regulation 37(7) of LODR is accepted then the same will lead to manifest absurdity in as much as while the Resolution Plan and the Scheme seek to achieve the same objective i.e. to prevent civil death of the company, and are also similar in form, the mode of revival by way of Scheme of Arrangement under liquidation would be more onerous than a Resolution Plan under Section 31 of the Code. The interpretation argued by the Respondent would run contrary to the entire objective of the Code to provide multiple modes of revival at various stages in order to resolve the indebtedness of the Corporate Debtor and revive the company. The Courts have time and again held that every effort must be made to revive the business of the company as the same is in the interest of all the stake holders.

**

39. Admittedly till date no objection has been raised by BSE on the merits of the Scheme, which offers Rs. 52.3 Crore for the Corporate Debtor (i.e. 3 times offers made by way of rejected resolution plans and higher than liquidation value of the Corporate Debtor). Further, the Stock Exchange has the opportunity to place before Ld. NCLT its objections, if any, to the Scheme of Arrangement in response to the notice issued to it prior to final approval of the scheme.

40. In view of the above stated facts and circumstances, we hold:

- a) the Impugned Order dated 4th April 2024 is **set aside**.
- b) prior NOC from stock exchanges under Regulation 37(1)(2) of the LODR is **not required** for schemes for revival of companies undergoing liquidation under the Code.
- c) Alternatively, the clarification introduced by way of Regulation 37(7) of the LODR for restructuring proposals also applies to Scheme by the liquidator under Section 230 of the Code, which is in similar continuum as a restructuring proposal by way of a resolution plan under Section 31 of the Code.
- d) **We direct the Ld. NCLT to proceed with hearing the scheme on merits without insisting on prior NOC from the stock exchanges** and dispose of the same expeditiously, preferably within four weeks.

”

(emphasis supplied)

11. It is further pertinent to note that BSE challenged the afore-mentioned Order of the Hon’ble NCLAT dated 20.08.2024 before the Hon’ble Supreme Court of India. The Hon’ble Apex Court, *vide* its Order dated 14.11.2024, dismissed the said Appeal with the observation that it finds no error in the afore-mentioned judgement of the Hon’ble NCLAT. In light of the same, the objection raised by BSE no longer survives or stands in the way of disposal of the captioned Company Scheme Petition on merits.



12. Further, the **Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai** (“RD”) raised its objections to the Scheme *vide* its Report dated 22.08.2023 and Supplementary Report dated 22.11.2023. The RD submits that in view of certain inspections, investigations and consequent follow-ups pending at the instance of the Central Government *qua* the Corporate Debtor being carried out by Serious Frauds Investigation Office (“SFIO”) against the Birla Group Companies, the Scheme is “*..a device to indirectly scuttle such pending investigations and prosecutions, which admittedly cannot be done directly.*” The RD contends that the Acquirers apropos the Scheme are barred under Section 29A of the IBC, 2016 and has sought to demonstrate the same by placing reliance on the directorship details along-with the inter (*and intra*) relationships of the Acquirer No.1 herein with one Mr. O.P. Jain against whom certain investigations/prosecutions are pending. The RD submits that the transactions of the Corporate Debtor were entered into based on the advice, instructions and directions of MR. O.P. Jain under Section 5(24) (f) and 5(24)(m) of the IBC, 2016 with the pervasive influence of Mr. O.P. Jain. The RD further contends that the conduct of the Liquidator amounts to *approbation and reprobation* on the nature of relationship between the Acquirers and that this Tribunal ought not to sanction the Scheme against the backdrop of ongoing proceedings *u/s.* 241-242 of the Companies Act, 2013, which are evidently pending adjudication by a co-ordinate Bench of this Tribunal. In this connection, the RD has placed reliance on the judgements of Hon’ble Supreme Court in ***Phoenix ARC Private Limited v. Spade Financial Services Limited & Ors.*** [Civil Appeal No. 2842 of 2020] and of Hon’ble NCLAT in ***Ashish O. Lalpuria v. Kumaka Industries Ltd.*** [2020 SCC OnLine NCLAT 676] on the aspect of public interest to be kept in mind before sanctioning any Scheme of Arrangement. The RD has further raised objections to para nos. (7.14), (7.28), (7.30), (10.13), (10.21) of the Scheme dealing with



reliefs/concessions/waivers to contend that “*..the scheme agreement appears to have been effectively designed in such a way so as to eliminate all criminal and monetary liability arising out of investigations pending with the SFIO..*”

12.1 In response to the objections raised by the RD, the Acquirers have filed their Affidavit-in-Reply dated 25.09.2023. The Acquirers contend that the RD has no locus to object to the Scheme; that the investigations/ prosecutions at the behest of SFIO have no adverse effect on the Scheme and that the RD’s contention with regard to the *alleged* ineligibility of the Acquirers *u/s.* 29A of IBC, 2016, is squarely covered by the Undertakings and Financial Statements submitted by the Acquirers in addition to having been examined in toto by the Liquidator and the same thus “*..has no bearing on the present Scheme.*”

12.2 The Liquidator *vide* its Affidavit-in-Reply has refuted the objections/allegations levelled by the RD. The Liquidator submits that the Scheme is not violative of Section 29A of IBC, 2016, as the Acquirers do not fall within any criteria(s) for disqualification under Section 29A, more particularly so, amongst the criteria of ‘related party’ as defined *u/s.* 5(24) of IBC, 2016 and that their status has already been examined by the Liquidator so as to arrive at a conclusive finding in this regard. The Liquidator contends that the objections raised by the RD are vague and that Section 32A of IBC, 2016 will not be circumvented by virtue of the Scheme and that this Tribunal ought not to venture into subjective or extraneous conditions while dealing with the same.

12.3 In this connection, this Tribunal, *vide* its Order dated 22.02.2024, sought explanation(s) from the SFIO regarding the financial transactions under investigation and directed the Acquirers “*..to file*



an affidavit giving details of the financial transactions between the proposed acquirers and also state as to how such transactions fall under the category of transactions in the natural course of business.” The said directions were duly complied with by the concerned parties, as evidenced by Order of this Tribunal *dated 21.03.2024*, whereby the SFIO sought to submit its *Confidential Report* bringing out certain transactions between the Acquirers and the Corporate Debtor, and the Acquirer in-turn has filed its Additional Affidavit *dated 06.03.2024* in due compliance with the above directions of this Tribunal.

13 We have heard the parties and duly perused the materials on record. We now find it opportune to deal with the objections/concerns raised by the RD;

13.1 In relation to the objection raised on the *alleged* disqualification of the Acquirers *vis-à-vis* Section 29A of IBC, 2016, the records indicate that Mr. O.P. Jain *viz.* Father of Acquirer No. 1, was Managing Director of the Corporate Debtor for a period of 39 days *w.e.f.* 08.11.2012 to 17.12.2012, and that a significant period (of nearly six years) had elapsed when the CIRP was initiated in respect of the Corporate Debtor on 20.11.2018. It is a settled position in law that the exhaustive definition accorded to ‘related party’ *u/s.* 5(24)(a) of IBC, 2016, in relation to a Corporate Debtor comes into play as on the insolvency commencement date. As Mr. O.P. Jain had ceased to be Managing Director of the Corporate Debtor about 6 years before the insolvency commencement date, he can by no means be treated as a ‘related party’ in terms of Section 5(24) of IBC, 2016. At the same time, the law is also settled that if there exists sufficient/ cogent material on record to demonstrate that the vacation from the office by such ‘person’ was *malafide* or *collusive* in nature, the rigours of 5(24)(a) would validly apply

and the said person would thereby be deemed to be a 'related party'. However, we find that there is no cogent material on record to show that the vacation from his position of Managing Director of the Corporate Debtor by Mr. O.P. Jain on 17.12.2012, was either malafide and/ or collusive in nature.

13.1.1 Further, in order to counter the RD's plea of alleged ineligibility of the Acquirers in proposing this Scheme u/s.29A of the Code, the Liquidator has sought to rely upon the following:

Sub-section of section 29-A	Criteria for Disqualification	Application to facts of Present matter
(a)	Undischarged Insolvent	None of the acquirers are undischarged insolvent.
(b)	Wilful defaulter	None of the acquirer are wilful defaulter.
(c)	Classified as NPA	None of the Acquirers or entities in which Acquirers are promoters, are classified as NPA.
(d)	Convicted of an offence	None of the Acquirer are convicted of any offence.
(e)	Disqualified to act as director	None of the Acquirer are disqualified to act as director.
(f)	Prohibited by Sebi from Securities market	None of the Acquirer are Prohibited by Sebi from Securities market.
(g)	Promoter or in the management or control of a corporate debtor in which a PUFEE transaction has	None of the Acquirer are Promoter or in the management or control of a corporate debtor in which a PUFEE transaction has taken place and in respect of which as order has been made by



	taken place and in respect of which as order has been made by the Adjudicating Authority under the Code.	the Adjudicating Authority under the Code.
(h)	Has executed a guarantee in which favour of a company which is admitted into CIRP.	None of the Acquirer have executed a guarantee in which favour of a company which is admitted into CIRP.
(i)	Disqualification akin to (a) to (h) in any jurisdiction outside India.	None of the Acquirer has suffered Disqualification akin to (a) to (h) in any jurisdiction outside India.
(j)	Has a connected person not eligible under (a) to (i)	No connected person of any Acquirers is affected by any of criteria from (a) to (i).

We find that the RD has not pointed out any material defects or discrepancies or inconsistencies in the said inferences drawn by the Liquidator.

13.1.2 Furthermore, it is also not the case of the RD that any of the Acquirers has a “connected person” not eligible under clauses (a) to (i) of Section 29A of IBC within the meaning of Explanation I to Section 29A(j) of IBC, 2016.

13.2 It is now proposed to ascertain if any of the Acquirers is a ‘related party’ of the Corporate Debtor within the meaning of Section 5(24) of IBC, 2016. What is to be seen under Section 5(24) of IBC is the relationship between the Acquirers and the Corporate Debtor rather than the



relationship of the Acquirers with Mr. O.P. Jain. Under Section 5(24)(f) of IBC, 2016 ‘related party’ in relation to a corporate debtor means any body-corporate whose board of directors, managing director or manager in the ordinary course of business acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor.

13.2.1. It is observed from the record there are two corporate entities among the Acquirers of the Corporate Debtor. The Acquirer No. 2 viz. *Rohstoffe International Private Limited* was incorporated in 2010. Its current directors are Mrs. Sheela Jain (*wife of Mr. O.P. Jain*) and Mr. Akhil Jain (*son of Mr. O.P. Jain*) since 2010, and Mr. Nikhil Jain (*son of Mr. O.P. Jain*) subsequently became its Additional Director(s) in March, 2021. Mr. O.P. Jain was evidently its Director from 16.03.2010 to 30.10.2010. Further, Mr. O.P. Jain was Managing Director of Corporate Debtor for a period of 39 days from 08.11.2012 to 17.12.2012. The Acquirer No. 3 viz. *Wendt Finance Private Limited*, has been incorporated during 2022 and is headed by Mr. Nikhil Jain and Mrs. Sheela Jain as its Directors. Notably, the Acquirer No. 3 came into existence much after the initiation of CIRP in respect of the Corporate Debtor on 20.11.2018 and, therefore, the question of Acquirer No. 3 being a ‘related party’ in relation to the Corporate Debtor within the meaning of Section 5(24)(f) of IBC does not arise by any stretch of imagination. Likewise, it cannot be said that the Acquirer No.2 was ‘related party’ of the Corporate Debtor within the rigours of Section 5(24)(f) of IBC, 2016, because except for a brief period of 39 days in 2012 as referred to above; Mr. O.P. Jain during the remaining



period of about 6 years till initiation of CIRP on 20.11.2018 was not a director, partner or manager of the Corporate Debtor and as such he could not have advised, guided or directed the board of directors, managing director or manager of Acquirer No.2 in the ordinary course of business.

13.2.2. Further, as per Section 5(24)(m)(i) of IBC, 2016, 'related party' in relation to the Corporate Debtor means any person who is associated with the Corporate Debtor on account of participation in policy-making process of the Corporate Debtor. In this connection, it is observed that Mr. O.P. Jain was Managing Director of the Corporate Debtor from 08.11.2012 to 17.12.2012. However, none of the Acquirers has been associated with the Corporate Debtor on account of participation in its policy-making process. No specific financial transactions of the Corporate Debtor have been brought out which were allegedly entered into, based on the advice, instructions and directions of the Mr. O.P. Jain in terms of Section 5(24)(f) and 5(24)(m) of IBC, 2016, with the pervasive influence of Mr. O.P. Jain. In this connection, it will not be out of place to mention that the Ld. Coordinate Bench of this Tribunal (*viz.* Bench-III), *vide* its Order dated 20.11.2023 in *I.A. No. 2414 of 2020 (C.P. No. 579 of 2018)* filed by the Liquidator *u/s.* 43 of IBC, 2016 against Acquirer No. 2 and others, had Dismissed the Application by holding that the alleged transactions between Acquirer No. 2 and the Corporate Debtor flagged therein, had been undertaken in the 'ordinary course of business' and no case of preferential transaction could thus have been made out.



13.3 In view of the foregoing, we find no legitimate basis to deem the Acquirers as ineligible to propose a Scheme in liquidation *vis-à-vis* the proviso to Regulation 2B(1) of IBBI (Liquidation Process) Regulations, 2016 *r/w*. Section 29A of IBC, 2016. There is nothing on record to show that the Acquirers are a ‘related party’ to the Corporate Debtor within the meaning of Section 5(24) of IBC, 2016. The statutory rigours of clauses (f) and (m) of Section 5(24) of IBC, 2016, in relation to ‘related party’ of the Corporate Debtor, are not attracted *qua* the Acquirers, who are well within their rights to propose this Scheme. As a matter of fact, and in the interest of integrality, Acquirer No.2 has been a vendor or supplier of cotton bales to the Corporate Debtor for its textile manufacturing business.

13.4 The records reveal that the captioned Company Petition was ***Reserved for Orders*** on 30.08.2024. In the meantime, this Tribunal came to know about certain ongoing proceedings *u/ss.* 241-242 of the Companies Act, 2013 instituted by Union of India [*Through Regional Director (WR)*] by way of Company Petition bearing *C.P. (IB) No. 150 of 2022*. It is noticed that the Corporate Debtor herein has been arrayed as Respondent No.1 on account of its failure to make repayment to its fixed deposit holders therein and, consequently, certain interim and final reliefs have been sought *qua* the Corporate Debtor. The afore-mentioned proceedings are evidently pending adjudication by a co-ordinate Bench of this Tribunal. The captioned company petition was accordingly ***De-Reserved***, as expressly noted by this Tribunal *vide* its Order dated 04.10.2024. Both the parties were directed to file affidavits clarifying the impact/effect of the pending Section 241-242 Petition on the present case. For this purpose, three weeks’ time was granted to the Petitioner(s)/Acquirer(s) and the RD.



13.4.1. As duly recorded by this Tribunal *vide* its Order dated 28.11.2024, the Liquidator (*i.e.* Petitioner herein) and the Acquirer(s) have filed their Additional Affidavit(s) dated 14.10.2024. The Petitioner has submitted that the said Petition has no impact on the approval of the Scheme for revival of the Corporate on following grounds:

- (i) The purpose and intent of Section 32-A is to clearly grant protection to the Resolution Applicant/Scheme Proponent from any liability of the Corporate Debtor for any offences committed prior to commencement of CIRP.
- (ii) The Scheme does not seek any protection whatsoever for the erstwhile promoters and management of the Corporate Debtor. Therefore, the approval of the Scheme shall not affect or prejudice this right of the Union of India to continue or initiate proceedings against the erstwhile promoters/management of the Corporate Debtor. Protection will only be available to the Corporate Debtor and its assets, which is the entire motive of S. 32A of the Code.
- (iii) The said Petition was filed when the Corporate Debtor was undergoing liquidation. Under Section 33(5) of the Code, once the liquidation of a company commences, no suit or legal proceeding can be filed against the Corporate Debtor. It is further submitted that for the reasons best known to the Union of India, despite there being a Liquidator in the Company, he was never made party to the said Petition.
- (iv) It is submitted that *vide* an order dated 24.09.2024, since the commencement of the liquidation of the Corporate Debtor, the Liquidator has taken the charge over the



affairs of the Company and the management of the Corporate Debtor has ceased to exist. Hence, prima-facie, maintainability of Section 241 Petition for a Company in Liquidation is questionable.

- (v) This is to further place on record that during the course of liquidation, the fixed deposit holders filed their respective claims before the Liquidator and the same has been adjudicated and admitted in accordance with the law and the same has not been challenged till date. Further, present Scheme provides for payments to the fixed deposit holders. Therefore, the interests of fixed depositors are taken into cognizance in the present scheme.
- (vi) It is settled position on law that the payments to be made to any Creditors of the Company in Liquidation/CIRP can be paid out only in accordance with the Waterfall Mechanism. It is submitted that the present Scheme is akin to Resolution plan and the payments offered therein are in accordance with the law.

It is thus submitted that the pendency of the said Union of India Petition shall not have any impact on the outcome of the present Scheme. On the contrary, the allowing of the Scheme will actually ensure some repayments to be made to the Depositors and, therefore, shall be in their interest. It is observed that the Acquirers have also made submission on similar lines.

- 13.4.2.** In contra-distinction to the same, the RD has refuted the averments raised by the Petitioner *via* its Additional Supplementary Report *dated 27.11.2024*. The RD contends that



“..the present scheme does not fall under IBC and thus, the principles of clean slate and section 32A of IBC cannot be incorporated as per doctrine of estoppel/ admitted by Liquidator on behalf of the acquirer.” In relation to the ongoing proceedings *u/ss. 241-242*, the RD has submitted that *“..the CP u/s. 241-242 has a direct bearing on the scheme proceedings”* and that *“..Therefore, it is prayed to this Hon’ble Tribunal to defer passing any orders in the present matter till the Company Petition u/s. 241-242 is heard on merits, notwithstanding the status of liquidation and ensure that justice is rendered in accordance with law.”*

- 13.4.3.** On careful consideration of rival contentions on the limited aspect of the ongoing proceedings *u/ss. 241-242* of the Companies Act, 2013, we are of the view that the same shall have no bearing upon the Scheme. It is trite law that all pending inquiries, investigations and prosecutions in this regard may continue independently of the approval of this Scheme and the pendency of the same does not disentitle the Acquirers from proposing the Scheme, as held by the Hon’ble Supreme Court in the cases of *Miheer H. Mafatlal v. Mafatlal Industries Ltd. [(1996) 87 Comp Cas 792]* as well as *Hindustan Lever v. State of Maharashtra [(2004) 9 SCC 438]*. Both the Petitioner herein and the Acquirers have categorically stated that the Scheme in Liquidation does not seek any protection whatsoever from ongoing investigation which would continue unhindered against the erstwhile promoters and management of the Corporate Debtor and that the approval of the said Scheme by this Tribunal shall not affect or prejudice the rights of the Union of India to continue or initiate appropriate proceedings against



the erstwhile promoters/ management of the Corporate Debtor. In view of this position, we are of the considered view that the pendency of the ongoing proceedings *u/ss.* 241-242 of the Companies Act, 2013 does not pose any hindrance to the sanctioning of the Scheme.

FINDINGS OF THIS TRIBUNAL

14. We have heard the Ld. Counsel for the Petitioner-Liquidator and have duly perused the materials available on record in relation to the Company Scheme Petition and have duly dealt with the objections in relation to the same.
15. The Petitioner submits that the present Scheme presents the best possible option for recovery for the creditors and revival of the Corporate Debtor and has placed specific reliance on the facts mentioned below:
 - a. Only one resolution plan was received during the CIRP of the Corporate Debtor. That Resolution Plan was rejected by the COC.
 - b. The total recovery in the Resolution Plan was Rs. 14 Crores. The total recovery under the Scheme is Rs. 52.43 Crores which is far higher.
 - c. The total recovery under the Scheme is Rs. 52.43 Crores which is much higher than the liquidation value of the Corporate Debtor.
 - d. Further, the Scheme also presents the best possible outcome for the revival of the Corporate Debtor. The Scheme ensures that the Corporate Debtor continues as a going concern, which is essential as it currently has 56 employees and 65 workmen and shall enhance the scope for further employment to several workman and employees.



- e. Further, the Corporate Debtor is a manufacturing concern and at its peak, the Corporate Debtor used to have significant exports, generating foreign currency revenue and boosting the Indian economy. Therefore, the revival of the Corporate Debtor is in the best interests of the economy as a whole.

16. With regard to a Scheme in Liquidation, the Hon'ble Apex Court in *Arun Kumar Jagatramka v. Jindal Steel and Power Ltd. [(2021) 3 SCR 114]* has succinctly summarised that IBC, 2016 prescribes three modes for revival of a corporate debtor on a going concern basis viz.;

- a. CIRP under Chapter II;
- b. Sale of a company or its business in Liquidation as a going concern [within the purview of Regulations 32(e) and 32(f)]; and
- c. A Scheme of Compromise or Arrangement under Section 230 of the Act of 2013 pursuant to an order for liquidation being passed under Chapter III of the IBC.

In this connection, it will be appropriate to consider the following observations of the Hon'ble Apex Court relevant to the present case:

“

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 Dhanapal³⁹. 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.

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.

*75 The benefit under Section 31, following upon the approval of the resolution plan, is that the successful resolution applicant starts running the business of the corporate debtor on “a fresh slate”. The scheme of compromise or arrangement under Section 230 of the Act of 2013 cannot certainly be equated with a withdrawal simpliciter of an application, as is contemplated under Section 12-A of the IBC. **A scheme of compromise or arrangement, upon receiving sanction under Sub-section (6) of Section 230, binds the company, its creditors and members or a class of persons or creditors as the case may be as well as the liquidator (appointed under the Act of 2013 or the IBC). Both, the resolution plan upon being approved under Section 31 of the IBC and a scheme of compromise or arrangement upon being sanctioned under Sub-section (6) of Section 230, represent the culmination of the process. This must be distinguished from a mere withdrawal of an application under Section 12-A. There is a clear distinction between these processes, in terms of statutory context and its consequences and the latter cannot be equated with the former.....”***

(emphasis supplied)

17. Further, the Hon’ble NCLAT in **Nikhil Jain & Ors. v. Anil Goel, Liquidator of Birla Cotysn (India) Ltd. & Anr.** [Company Appeal (AT) No.148 of 2024] filed



u/s. 421 of the Companies Act, 2013 and referred to above at Para No. [10] of this Order has made the following relevant observations:-

“

19. *Now we come to applicability of Regulation 37(7) to find out if the requirement for prior NOC does not apply only to ‘restructuring proposals’ approved as part of a resolution plan by the NCLT under section 31 of the Code. **Pertinently, a scheme of arrangement for revival of a company in liquidation is also a ‘restructuring proposal’.** It contains all the same attributes and characteristics of a resolution plan under Section 31 of the Code. It is just a different mode contemplated under the Code for achieving the same objective i.e. revival of the Corporate Debtor. [...]*

20. *Hence, whatever benefits and rigors that applies to a resolution plan under Section 31 of the Code must equally apply to a scheme of arrangement submitted under Section 230 of the Companies Act read with Regulation 2-B of the Liquidation Process Regulations. Both these modes of revival operate in a similar continuum. They deserve equal treatment. [...]*

”

(emphasis supplied)

18. The Petitioner further submits that along with the approval of the Scheme, this Tribunal ought to grant certain reliefs and concessions as sought in the Company Scheme Petition. In this regard, we make it expressly clear that the reliefs and concessions (as more specifically mentioned hereinafter) are allowed only to the limited effect and extent of being concomitant to ‘*Doctrine of Clean State*’, as propounded by the Hon’ble Supreme Court in *Arun Kumar Jagatramka* (*supra*). Ordered as hereunder:

- The claims of creditors shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors including the Central Government, any State Government or any local authority,



guarantors and other stakeholders. On the date of approval of the Scheme, all claims which are not a part of the Scheme shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the Scheme.

- The acquisition/transactions contemplated herein shall not be treated as void under Section 281 of the Income Tax Act, 1961 and/or Section 81 of the Central Goods and Services Act, 2017 for any claims in respect of tax or any other sum payable by the Corporate Debtor.
- The brought forward losses and unabsorbed depreciation of the Corporate Debtor will be dealt with in accordance with the provisions of Income Tax Act, 1961. Tax (including withholding Tax) including, but not limited to, write-back of liability/payables by the Corporate Debtor under the Income Tax Act, 1961 and rules made thereunder shall be leviable on the Corporate Debtor and/or the Acquirers or exempted in accordance with the provisions contained in the Income Tax Act, 1961.
- The payment of all taxes under the Income Tax Act, 1961 (including deeming provisions of the IT Act such as Section 56 etc.) which may arise on account of the transactions envisaged for giving effect to the Scheme shall be in accordance with the provision of respective law and any exemption or concession shall be subject to the provision of respective law.
- The existing paid-up capital of the Company shall be cancelled or extinguished subject to necessary consents, approvals, waivers no-objections from the Securities and Exchange Board of India (“SEBI”) and/or the relevant stock exchanges. The issuance of fresh share capital shall be permissible; however, the Acquirers shall seek



necessary approval from SEBI and/or the relevant stock exchange for listing of shares so issued.

19. Notwithstanding the afore-stated, no reliefs/waivers/ concession(s) are granted which tantamount to absolution of liability in relation to the Corporate Debtor, whether partial or otherwise, to all procedural encumbrances that are to be mandatorily carried out apropos the respective governmental authorities/ fora in consonance with the enshrined provisions of law. Requisite approvals shall be granted by the concerned authorities after fulfilment of necessary procedural formalities as well as payment of prescribed fee/cost and such approval shall not be denied because of insolvency/ liquidation of the Corporate Debtor. The Acquirers/ Corporate Debtor may in accordance with applicable law and procedure approach the appropriate and concerned authorities to seek the relevant reliefs and concessions as may be available to them in law.
20. In view of the foregoing discussions, this Tribunal is of the view that the Scheme appears to be fair and reasonable and does not violate any provisions of law and is also not opposed to public policy. Ordered accordingly as hereunder:
- a. **The Scheme for Compromise and Arrangement, as enshrined by way of the present Company Scheme Petition, bearing C.P. (CAA) 189/MB/2023, is hereby Sanctioned and Approved**, in consonance with the terms contained in this Order hereto.
- b. This Scheme shall come into effect from the date of uploading of this Order by this Tribunal.



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- c. The Applicant Company is directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with e-Form INC-28, in addition to physical copy, within **30 days** from the date of receipt of the Order duly certified by the Deputy Registrar or Assistant Registrar of the National Company Law Tribunal, Mumbai Bench.
- d. The Applicant Company is to lodge a copy of this order and the Scheme duly certified by the Deputy Registrar or Assistant Registrar of this Tribunal with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within a period of **60 days** from the date of receipt of the Order.
- e. The Acquirer(s) and the re-constituted Board of Directors of Applicant Company *viz.* Corporate Debtor, to ensure mandatory compliance with the requisite Accounting Standards prescribed under Section 133 of the Companies Act, 2013 while giving effect to the Scheme in the books of account and financial statements.
- f. All pending investigations by Governmental Authorities and/ or other such authorities may continue as against the erstwhile promoter(s) and all other key managerial personnel(s) who were in charge of affairs of the Corporate Debtor prior to sanction of this Scheme in due consonance with the law. We further deem it fit to direct the re-constituted Board of Directors of the Corporate Debtor to extend all assistance and cooperation to any authority investigating an offence committed prior to the commencement of Liquidation of the Corporate Debtor.
- g. All concerned Regulatory Authorities to act on a copy of this Order along with Scheme duly certified by the Deputy Registrar or Assistant Registrar of this Tribunal.



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- h.** Any person interested is at liberty to apply to this Tribunal in the above matters for any directions that may be necessary.
 - i.** Any concerned Authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.
 - j.** Ordered Accordingly. Files be consigned to the record room.

Sd/-

SANJIV DUTT
MEMBER (TECHNICAL)
09.01.2025

Aditya Kalia

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)
