

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

CA/359/2020 in CP/1037/IB/2018

(filed under Section 230 of the Companies Act, 2013 r/w Sections 29A of the
Insolvency and Bankruptcy Code, 2016)

And

IA/830/2020 in CA/359/2020 in CP/1037/IB/2018

(filed under Section 35 of the Insolvency & Bankruptcy Code, 2016)

In the matter of **M/s. Sholingur Textiles Limited**

Sholingur Textiles Ltd. (Under Liquidation)

Represented by its Liquidator

T V Balasubramanian,

KRD Gee Gee Crystal, No. 91 – 92,

7th Floor, Dr. R.K. Salai, Chennai – 600 004

... Applicant

-Vs-

1. Edelweiss Asset Reconstruction Company Ltd.

"Edelweiss House" – Off C S T Road, Kalina,
Mumbai, Maharastra – 400 098

2. Rajagiri Rubber & Produce Co. Ltd.

No.60, Rukmini Lakshmipathi Salai,
Chennai – 600 008

3. M/s. M. Poobalan & P. Poongodi

No. 2, 3rd Cross, I Main Road, Devappa Garden,
Nagashettyhalli, RMV Second Stage Extension,
Bangalore – 590 094

... Respondents

Order pronounced on 25th January 2021

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

For Applicant

For 1st Respondent

For 3rd Respondents

: Ravi Rajagopalan, Advocate

: Indumathi Ravi, Advocate

: E. Om Prakash, Senior Advocate

COMMON ORDER

Per:- R. VARADHARAJAN, MEMBER (JUDICIAL)

1. CA/359/2020 is an Application filed by the Liquidator of M/s. Sholingur Textiles Limited, being the Company Under Liquidation, under Section 230 of the Companies Act, 2013 read with Section 29A of the Insolvency and Bankruptcy Code, 2016 seeking for the reliefs as extracted below: -

1. Direct that the time period from 25 March 2020 to 31 July 2020 being a total of 128 days or such period as may granted by this Hon'ble Tribunal, be excluded for the purposes of computing the 90 day period for time taken in proposing Scheme of Compromise or Arrangement under Regulation 2B(1) of the IBBI Liquidation Process Regulations, 2016 as amended and or condone delay if any in filing the present Application due to extenuating circumstances;
2. Directing the dispensation OR the convening of separate Meetings of the Secured Creditors and or Unsecured Creditors, the Preference Shareholders and the Equity Shareholders under Section 230 subsections (3), (4) and (6) as may be deemed fit and proper by this Hon'ble Tribunal in accordance with law;
3. The Applicant humbly prays that necessary directions may be given for conducting respective meetings of the Secured Creditors, Unsecured Creditors, Preference Shareholders and Equity Shareholders of the CD Company if in case this Hon'ble Bench is not inclined to dispense with the said meetings as prayed hereinabove and direct the following:
 - a) To issue and publicize notices and to convene, hold and conduct meetings of equity shareholders, preference shareholders, secured creditors and unsecured creditors of the Company as proposed above as contemplated under Section 230 & Section 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016 and in accordance



with the relevant Circulars issued by MCA under CA 2013 prescribing procedure for conduct of Meetings by video or audio-visual means;

b) To fix the time, date and venue for the individual meetings of the Equity shareholders, Preference shareholders, secured creditors and Unsecured creditors of the Applicant Company as the case may be or in the alternative permit the conduct of the said Meetings to be conducted by video or other audio visual means enabled with e-voting as per applicable procedure prescribed under the MCA Circular MCA General Circular Nos. (i) 20/2020 dated 5th May, 2020 (AGM Circular), (ii) 14/2020, dated 08.04.2020 (EGM Circular-I) and (iii) 17/2020 dated 13.04.2020 (EGM Circular-II);

c) To fix the quorum for the respective Meetings and the procedure to be followed for the meetings including voting in person or by proxy;

d) For appointment of the Liquidator as the Chairman and a Scrutinizer for the meetings to be held and fixing the fee if any to be paid;

e) Fixing the time period within which the Chairman shall report the result of the meetings to this Hon'ble Tribunal.

4. Permitting filing application, petition and other documents thereafter as may be required for the purpose of sanctioning the proposed Scheme of Compromise and Arrangement between Sholingur Textiles Ltd (Under Liquidation) represented by the Applicant Liquidator, its Creditors and its Shareholders as sought for.

5. Directing issuance of notices under Section 230(5) to the statutory authorities namely

a. Income Tax Department (Company Circle-6(2), 7th Floor, Room No.707, 121, Mahatma Gandhi Road, Chennai – 600 034),

b. The Registrar of Companies, Coimbatore and the Regional Director, Chennai and



c. The Office of the Official Liquidator,

6. Direct that if in case the submitted Scheme is not approved by this Hon'ble Tribunal, the costs incurred by the Liquidator in relation to the consideration of the present Scheme be paid by the Scheme Proponents under Proviso to Regulation 2B(3) upon such demand being made by the Liquidator to them.
7. Pass such further orders, as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and render justice.

2. IA/830/2020 is an Application filed by the Liquidator seeking relief as follows;

1. Direct that the Scheme as submitted by the Scheme Proponents, the 3rd Respondent herein, be placed for further consideration under Section 230-232 of the Companies Act, 2013 with or without modifications as may be ordered by this Hon'ble Tribunal presently in this Application;
2. Direct that if in case the submitted Scheme is not approved by this Hon'ble Tribunal, the costs incurred by the Applicant Liquidator in relation to the consideration of the present Scheme, be paid by the Scheme Proponents under Proviso to Regulation 2B(3) upon such demand being made by the Liquidator to them.
3. Pass such further orders, as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and render justice.

3. Since the relief sought for in CA/359/2020 and IA/830/2020 are interconnected and pertains to same issue, both are taken up together to pass a common order.



4. The Corporate Insolvency Resolution Process (*hereinafter referred to as "CIRP"*) of the Corporate Debtor/Company under

Liquidation was initiated by this Tribunal on 04.02.2019 based on an Application filed the Financial Creditor in CP/1037/IB/2018. Since no viable Resolution Plan in relation to the Corporate Debtor was forthcoming, the Company was ordered for Liquidation by this Tribunal on 13.02.2020 in MA/1192/2019.

5. The Liquidator, as per Regulation 2B of the Insolvency and Bankruptcy Code of India (Liquidation Process) Regulations, 2016 (*hereinafter referred to as "IBBI Regulations, 2016"*) issued Expression of Interest (EoI) inviting for Schemes as contemplated under Section 230 to 232 of the Companies Act, 2013 and also duly prepared the Information Memorandum. The Liquidator has caused paper publication for EoI in Trinity Express (English) and in Makkal Kural (Tamil) on 23.03.2020.

6. In the meantime, due to the COVID – 19 pandemic, the Liquidator was of the opinion that the valuation that which was undertaken during the CIRP period may no longer be viable and also due to the steep decline in the property prices in wake of Covid – 19 pandemic, the Liquidator had initiated steps to go for a fresh valuation to be done by two Registered Valuer of IBBI and accordingly two Registered Valuers appointed by the Liquidator had submitted their Valuation Report before the Liquidator in the



month of July 2020. The said valuation Report was placed before the stakeholders for its consideration.

7. In response to the EoI, the Company in Liquidation evinced interest from 3 prospective Scheme proponents and finally one prospective Scheme Proponent, the 3rd Respondent herein has submitted draft Scheme before the Liquidator. The Scheme as proposed by the 3rd Respondent is placed at pages 92 to 139 of the typed set filed along with the Application. The Scheme proponents / 3rd Respondents have also filed an Affidavit under Section 29A of IBC, 2016 that they are not disqualified to submit the Scheme under Section 29A of IBC, 2016.

8. The Learned Counsel for the Liquidator submitted that the Liquidator has convened a Meeting of the Committee of Creditors (CoC) of the Corporate Debtor in order to elicit their opinion as per the ratio laid down by the Hon'ble NCLAT in the matter of **Shivram Prasad –Vs- Dhanapal & Ors.** in *Company Appeal (AT)(Insolvency) No. 224 of 2018* as to the viability, feasibility of the Scheme. It is submitted that the CoC in the said meeting dated 27.07.2020 has unanimously proposed to go ahead with the Scheme. However, the CoC has raised certain concerns in relation to the terms / conditions in the Scheme which pertains to the release of Security by the Secured Creditors, to which the



Scheme Proponents / 3rd Respondent has modified and clarified the same by submitting an Addendum on 17.08.2020. While this being the fact, the Liquidator has moved this Application before this Tribunal on 10.09.2020, under Section 230 of the Companies Act, 2013 seeking for the dispensation or convening the meeting of the creditors / shareholders.

9. The Liquidator in page Nos. 161 to 162 of the typed set filed along with the Applicant has given the list of classes of members / creditors;

- a. 310 Equity Shareholders
- b. 106 Preference Shareholders
- c. 1 Secured Creditor
- d. 169 Workmen (Unsecured Creditors)
- e. 5 Individual Employees (Unsecured Creditors)
- f. 1 Unsecured Financial Creditor.
- g. 1 Operational Creditor
- h. 2 Government Authorities for statutory dues.

10. Further, it is to be noted here that the Liquidator has sought for a prayer to exclude the time period from 25.03.2020 to 31.07.2020, a total of 128 days, for the purpose of computing the 90 days period, for the time taken in proposing the Scheme as contemplated under Regulation 2B of the IBBI Regulations, 2016. It is to pertinent to note here that the Regulator viz. IBBI



by way of an amendment inserted Regulation 47A in IBBI (Liquidation Process) Regulations, 2016, which states as follows;

Exclusion of period of lockdown.

47A. Subject to the provisions of the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purposes of computation of the time-line for any task that could not be completed due to such lockdown, in relation to any liquidation process.

11. Thus, in view of the Regulation 47A of IBBI (Liquidation Process) Regulations, 2016, the period as sought for by the Liquidator from 25.03.2020 to 31.07.2020 is excluded from the Liquidation period and as a consequence thereof, the present Application as filed by the Liquidator falls within the prescribed period of 90 days as stipulated under Regulation 2B of IBBI (Liquidation Process) Regulations, 2016

12. While considering the Scheme placed by a Liquidator appointed under the provisions of IBC, 2016 in relation to a Company under Liquidation under Section 230 of the Companies Act, 2013, this Bench of the Tribunal had an occasion to consider, in the matter of **S. Dhanpal vs. Indian Overseas Bank and 4 Ors.** in CA/1266/2019 elaborately the procedure to be followed taking into consideration the dictum of the Hon'ble NCLAT laid down in *Company Appeal (AT)(Insolvency) No.224 of 2018* and an another connected appeal following its own decision rendered



in **S. C. Sekaran v. Amit Gupta & Ors**, *Company Appeal (AT) (Insolvency) Nos.495 & 496 of 2018* and since being apposite to the present instance the relevant portion alone is reproduced as under:-

In, "**S. C. Sekaran v. Amit Gupta & Ors**.
Company Appeal (AT) (Insolvency) Nos. 495 & 496
of 2018, holding as follows;

8. In view of the provision of Section 230 and the decision of the Hon'ble Supreme Court in 'Meghal Homes Pvt. Ltd.' and 'Swiss Ribbons Pvt. Ltd.,' we direct the 'Liquidator' to proceed in accordance with law. He will verify claims of all the creditors; take into custody and control of all the assets, property, effects and actionable claims of the 'corporate debtor', carry on the business of the 'corporate debtor' for its beneficial liquidation etc., as prescribed under Section 35 of the I&B Code. The Liquidator will access information under Section 33 and will consolidate the claim under Section 38 and after verification of claim in terms of Section 39 will either admit or reject the claim, as required under Section 40. Before taking steps to sell the assets of the 'corporate debtor(s)' (companies herein), the Liquidator will take steps in terms of Section 230 of the Companies Act, 2013. The Adjudicating Authority, if so required, will pass appropriate order. Only on failure of revival, the Adjudicating Authority and the Liquidator will first proceed with the sale of company's assets wholly and thereafter, if not possible to sell the company in part and in accordance with law."

18. During proceeding under Section 230, if any, objection is raised, it is open to the Adjudicating Authority (National Company Law Tribunal) which has power to pass order under Section 230 to overrule the objections, if the arrangement and scheme is beneficial for revival of the 'Corporate



Debtor' (Company). While passing such order, the Adjudicating Authority is to play dual role, one as the Adjudicating Authority in the matter of liquidation and other as a Tribunal for passing order under Section 230 of the Companies Act, 2013. As the liquidation so taken up under the 'I&B Code', the arrangement of scheme should be in consonance with the statement and object of the 'I&B Code'. Meaning thereby, the scheme must ensure maximisation of the assets of the 'Corporate Debtor' and balance the stakeholders such as, the 'Financial Creditors', 'Operational Creditors', 'Secured Creditors' and 'Unsecured Creditors' without any discrimination. Before approval of an arrangement or Scheme, the Adjudicating Authority (National Company Law Tribunal) should follow the same principle and should allow the 'Liquidator' to constitute a 'Committee of Creditors' for its opinion to find out whether the arrangement of Scheme is viable, feasible and having appropriate financial matrix. It will be open for the Adjudicating Authority as a Tribunal to approve the arrangement or Scheme in spite of some irrelevant objections as may be raised by one or other creditor or member keeping in mind the object of the Insolvency and Bankruptcy Code, 2016.

19. In view of the observations aforesaid, we hold that the liquidator is required to act in terms of the aforesaid directions of the Appellate Tribunal and take steps under Section 230 of the Companies Act. If the members or the 'Corporate Debtor' or the 'creditors' or a class of creditors like 'Financial Creditor' or 'Operational Creditor' approach the company through the liquidator for compromise or arrangement by making proposal of payment to all the creditor(s), the Liquidator on behalf of the company will move an application under Section 230 of the Companies Act, 2013 before the Adjudicating Authority i.e., National Company Law Tribunal, Chennai Bench, in terms of the observations as made in above. On failure, as observed above, steps should be taken for outright sale of the 'Corporate Debtor' so as to enable the employees to continue."



13. Taking the lead from the above judgments of the Hon'ble NCLAT as to how the Liquidator appointed under IBC, 2016 and thereafter, this Tribunal is required to consider the Scheme if placed before it effectively intertwining the two Acts, namely IBC, 2016 on the one hand and Companies Act, 2013, this Tribunal in S. Dhanupal's case in CA/1266/2019 chose to give a direction in relation to calling, convening and holding of the meeting of the stakeholders. However in the said case, namely CA/1266/2019 it must be noted two different Schemes were placed by the Liquidator and in the circumstances provision was made in the order itself as to the manner in which, in case a tie arises in voting, for resolving it. In the instant case, this Tribunal is not encountered with such a situation and the only Scheme which is up for consideration is that of the Respondent No.3, the Scheme Proponent.

14. In the circumstances we are inclined to issue directions for convening the meetings of the stakeholders comprising of Secured Creditors, Unsecured Creditors and other creditors and Members as was done in the decision of this Tribunal rendered in the matter of **S. Dhanupal's case** in CA/1266/2019 dated 13.03.2020, however suitably modified to suit the present instance taking into consideration the facts and circumstances of



the case, as was done by this Tribunal while issuing directions for consideration of the Scheme under Section 230 of the Companies Act, 2013 in relation to the shareholders in the matter of **V. Mahesh, Liquidator of M/s. Nagarjuna Oil Corporation Ltd. –Vs– Haldia Petrochemicals Ltd. & 22 Ors** in CA/216/2020 dated 20.08.2020.

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

- (a) In view of the wide powers vested with this Tribunal under Section 230 of the Companies Act, 2013, however, without being bogged down by the procedural rigmarole as prescribed therein for approval of a Scheme of Compromise or Arrangement including by way of Amalgamation and at the same time however, not ignoring the views and voting of the respective stakeholders in relation to the Scheme to be placed before them, be it a secured creditor, unsecured creditors, Operational Creditors or the members of the Company in Liquidation, the Liquidator is directed to constitute a Stakeholders Committee in terms of Regulation 31A of IBBI (Liquidation Process) Regulations, 2016 as prevalent on the date of liquidation for the



consideration of the Scheme and voting thereon.

(b) However, the said Regulation shall not apply *mutatis mutandis* as the following exceptions are required to be made taking into consideration the fact that even though the company is in liquidation, since a Scheme is under contemplation as envisaged under Rule 2B of IBBI (Liquidation Process) Regulations, 2016 and in view of the absence of substantive provisions or rules or regulations, save the judicial precedent for consideration of the Scheme without any commensurate procedure prescribed and primacy of Secured Creditors is required to be maintained as the process as such is kept in abeyance as discussed in paragraph 19 of **S. Dhanapal's case** cited as above.

(c) Save the individual secured financial creditors, all the other stakeholders, be it financial creditors forming part of promoters or otherwise, the respective group of operational creditors, namely employees, statutory dues and other operational creditors and shareholders' shall be represented only by their respective Authorized Representative (AR) to be chosen for each class in the manner as contemplated under sub-section (6) and sub-section (6A) of Section 21 of IBC, 2016 read



with Regulation 4A and Regulation 16A of IRPCP Regulations, 2016 as applicable during the CIRP of a Corporate Debtor. The exercise shall be completed by the Liquidator within a period of 15 days from the date of this Order.

- (d) Immediately after the AR is chosen by the respective group, Stakeholders Committee Meeting shall be convened by the Liquidator within 45 days thereof not exceeding 60 days from the date of this Order wherein the Secured Financial Creditors will be entitled to participate and vote on individual basis and other stakeholders to be represented only by their respective Authorized Representatives and the voting shall be done similar to the one contemplated for the approval of a Resolution Plan under IBC, 2016 read with attendant regulations after proper circulation of notice to the individual stakeholders at their last known e-mail address along with a synopsis of the Scheme as proposed by the 3rd Respondent. The notice of the meeting shall be issued to the Stakeholders at least not less than 30 days prior to the date fixed for the meeting.

- (e) The Liquidator is directed to cause publication of notice in "Times of India" (English, Chennai Editions) and in "Daily Thanthi" (Tamil, Chennai Edition) within 7 days from the date of this order.



- (f) The voting share shall be determined in accordance with Section 5(28) of IBC, 2016 save instead of 'financial creditors', 'financial debt' and 'committee of creditors' specified therein, it shall be substituted with the term 'stakeholders', 'debt' and 'stakeholders committee'.
- (g) Let notices be sent to all the authorities without fail by the Applicant and in addition notice is also directed to be issued to the concerned RoC, RD and Income Tax Department including the Jurisdictional Assessing Officer mentioning clearly the PAN number as well as others as contemplated under Section 230 (5) of Companies Act, 2013. The said authorities to whom notices have been issued in terms of the provisions of Section 230(5) of the Companies Act, 2013 shall act in accordance thereof.
- (h) The Liquidator shall furnish an Affidavit of service of notice of meetings and publication of advertisement and compliance of all the directions contained herein at least a week before the proposed meeting.
- (i) The Chairman for Stakeholders' Committee meeting to be convened shall be **S. Dhanapal** who shall file his report in relation to the Stakeholders' Committee meeting and its outcome within seven (7) days from the date of the meeting. The remuneration payable to the

Chairman shall be ₹1,50,000/-. The Alternate Chairman for the Stakeholders' Committee meeting shall be the Liquidator.

- (j) Let the Scheme as approved by the Stakeholders with the requisite voting majority be placed before this Tribunal for the consideration of its sanction within a period of 60 days from the date of this Order.
- (k) Since the Scheme has been propounded by the 3rd Respondent, we direct the Scheme Proponent / 3rd Respondent to make arrangement for the expenses likely to be incurred in relation to the meetings including the fees of the Chairman appointed as above and for placing the Scheme before the Stakeholders Committee. In case of any query being addressed by the Stakeholders in relation to the Scheme and with a view to address those queries which may be addressed by the Stakeholders and to offer clarifications, we deem it fit to allow a representative of the 3rd Respondent / Scheme Proponents to be a participant but not being entitled to vote under any circumstances.

16. With the above directions the Application CA/359/2020 and IA/830/2020 stands **disposed of**. In case of any difficulty in implementing the procedure as directed above, the Liquidator is



given liberty to approach this Tribunal as and when required for necessary directions at the earliest without any delay.

-SD-

(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Raymond