

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH
KOLKATA**

**I.A. (IB) No...../KB/2020
CA(CAA) No. 20/KB/2019
IN
CP(IB) No. 182/KB/2017**

In the matter of:

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016;

And

In the matter of:

M/s Gujarat NRE Coke Limited (In Liquidation) through Mr Sumit Binani, its Official Liquidator

.... Corporate Debtor

Versus

Mr. Sumit Binani, Liquidator

....Liquidator/Applicant

Coram: Shri Jinan K.R., Hon'ble Member (Judicial)

Shri Harish Chander Suri, Hon'ble Member (Technical)

Counsel Present:

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|-------------------------------|---|-------------------------------------|
| 1. Mr. Sumit Binani |] | Liquidator of Gujarat NRE Coke Ltd. |
| 2. Mr. Sidhartha Sharma, Adv. |] | For Liquidator |
| 1. Mr. Sounak Mitra, Advocate |] | For employees, Workmen and |
| 2. Mr. Saurav Jain, Advocate |] | Shareholders |
| 1. Mr. Ajay Gaggar |] | For State Bank of India |
| 2. Mr. Rajesh Chaubey |] | From State Bank of India |

Date of hearing: 24 .06.2020

Order delivered on: 24 .06.2020

ORDER**Per Harish Chander Suri (T):**

1. This unnumbered application filed by **Mr. Sumit Binani**, the Applicant/Liquidator in the case of Gujarat NRE Coke Limited, praying for disposal of the application being CA(IB) No. 20/KB/2019 in view of the observations made in the order dated 9th June, 2020 of this Tribunal. The urgency for an early hearing being satisfactorily explained, it is listed for hearing today through Video Conferencing.

2. It is submitted that the Liquidator had invited a Composite Scheme of Compromise and Arrangement between Gujarat NRE Coke Limited and the Creditors and Shareholders of Gujarat NRE Coke Limited under Section 230 of the Companies Act, 2013 which was submitted by one Mr. Pramod Loharuka on behalf of 109 equity shareholders of the Corporate Debtor to the

Liquidator on 30th November, 2019. Significant majority of the said equity shareholders are also employees of the Corporate Debtor or its group company. The liquidator, on 10th December 2019, moved an application being CA (IB) No 20/KB/2019 under Section 230 of the Companies Act, 2013 before this Hon'ble Tribunal on the basis of Composite Scheme of Compromise and Arrangement so received from the above mentioned shareholders of the Corporate Debtor. The matter was heard by Hon'ble NCLT on 6th January, 2020, when directions were issued to convene meetings of the Stakeholders of the Corporate Debtor for seeking approval on the Scheme and the next date was fixed for hearing of the matter on 2nd March, 2020. In the meanwhile, Hon'ble NCLT vide its order dated 10th February, 2020, based on the directions of Hon'ble NCLAT (vide its order dated 24th October, 2019) allowed the Liquidator to constitute the CoC of the Corporate Debtor and hold its meeting for its opinion to find out whether the Scheme proposed is viable, feasible and having appropriate financial matrix. The Chairperson appointed for the said meetings submitted his report before the Hon'ble NCLT Kolkata on 2nd March, 2020 stating that the Scheme has been approved by the Unsecured Creditors and FCCB Holders of the Company with requisite majority. However, the Scheme was not approved by the Secured Creditors and Shareholders by the requisite 75% majority.

3. The Liquidator also presented his report before the Hon'ble NCLT, Kolkata on 2nd March, 2020 informing that the CoC meeting for finding out whether the Scheme proposed is viable, feasible and having appropriate financial matrix was held on 18th February, 2020 and that all the CoC members present in the meeting did not find the proposed Scheme to be viable and feasible and matter was kept for further consideration on 14th April, 2020. However, due to ongoing pandemic such matter could not be taken up on the said date.

4. It is further stated that under such circumstances, one application was filed by one Dilip Kumar Singh and Ors praying for reconsideration of the

scheme filed by the shareholders along with the TEV study which had been originally filed by the Liquidator and was lastly heard on 2nd March 2020. The said application was heard on 9th June 2020 by this Tribunal in presence of the Liquidator, where the Liquidator duly expressed its concerns over his inability to cope with the pressures of the lockdown and the consequent impact it is having on the liquidation process of the corporate debtor. The Liquidator/applicant has also pointed that till date he had been religiously abiding by the order of the Hon'ble NCLAT dated 24th October to the best of his abilities. Moreover, it was submitted on behalf of the creditors that in the meeting held on 18th February 2020, the applicant of the said application could not convince the creditors, even after a detailed deliberation as to in what manner the scheme submitted by the shareholders provided for the infusion of funds and how restructuring would be possible without such infusion. It was specifically pointed out that the creditors are helpless while facing such practical difficulties. Further in view of the lapse of over 2 years from liquidation commencement date, the said scheme was of no benefit in reviving the company, especially at this stage when the country is already hit with a pandemic disease. Accordingly, the said application was dismissed by order dated 9th June 2020.

5. The Liquidator/applicant further submits that in view of the dismissal of the said application which had intended the reconsideration of the scheme submitted originally on 10th December 2019 and in view of the consolidated opinion expressed by the secured creditors that the same cannot be approved by majority voting on account of inadequate techno commercial viability, no further deliberations were allowed and in essence, while rejecting such application, this Hon'ble Bench had decided the fate of the original application for approval of scheme being CA (IB) No 20/KB/2019.

6. Through this instant application, the Liquidator is praying for disposal of the application being CA(IB) No. 20/KB/2019 in view of the observations made in the order dated 9th June, 2020 so that the liquidation process can be

completed in accordance with law since the value of the assets of the Corporate Debtor are depleting with every passing day and the Liquidator is under huge financial burden to maintain the same, the liquidation process of the Company must be completed at the earliest.

7. During the course of hearing, learned Liquidator Mr. Sumit Binani referred to the order of Hon'ble NCLAT dated 24th October, 2019, passed in Jindal Steel and Power Limited, vs. Arun Kumar Jagatramka and another (Gujarat NRE Coke Ltd.), in which the Hon'ble NCLAT had to decide the two issues, namely:-

i) Whether in a liquidation proceedings under Insolvency and Bankruptcy Code, 2016, the Scheme for Compromise and Arrangement can be made in terms of Section 230 to 232 of the Companies Act?

AND

ii) If so permissible, whether the Promoter is eligible to file application for Compromise and Arrangement, while he is ineligible under Section 29A of the I & B Code to submit a Resolution Plan?

8. The Hon'ble Tribunal while dealing with these issues, referred to the earlier case that had fallen for consideration before the Hon'ble NCLAT, in **S.C. Sekaran v. Amit Gupta & Ors.- Company Appeal (AT)(Insolvency) Nos.495 & 496 of 2019**, which also referred to an earlier decision in the case of **Y.Shivram Prasad vs. S. Dhanapal & Ors. – Company Appeal (AT)(Insolvency) No.224 of 2018**, disposed of on 27.2.2019, and observed and held as under:-

“11. During the liquidation stage, Liquidator required to take steps to ensure that the company remains a going concern instead of liquidation, and for revival of the Corporation Debtor by taking certain measures. “

9. The Hon'ble NCLAT had also referred to the observations of the Hon'ble Supreme Court of India in **Swiss Ribbon Pvt. Ltd. And Another vs. Union of India**

& Ors. And Meghal Homes Pvt. Ltd. Vs. Shree Niwas Girni K.K. Samiti & Ors - (2007) 7 SCC 753 and observed and held as under:-

“5. We have heard the learned counsel for the parties and perused the record. The Hon’ble Supreme Court in its judgment dated 25th January, 2019 observed as follows:-

“What is interesting to note is that the Preamble does not in any manner refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not upto the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern.”

10. The Liquidator referred to paragraph 13 of the aforesaid order of Hon’ble NCLAT, which is reproduced as under:-

“Therefore, it is clear that during the liquidation process, steps are required to be taken for its revival and continuance of the Corporate Debtor by protecting the Corporate Debtor from its management and from a death by liquidation. Thus the steps which are required to be taken are as follows:-

- i) By compromise or arrangement with the creditors, or class of creditors or members or class of members in terms of Section 230 of the Companies Act, 2013;
- ii) On failure, the Liquidator is required to take step to sell the business of the Corporate Debtor as going concern in its totality along with the employees.

11. The Ld. Counsel submitted that the Hon’ble Tribunal had answered the first question in affirmative and held that in a liquidation proceeding under the Code, a petition under section 230-232 of the Companies Act, is maintainable. And as regards the second question, it was held and made clear that even during the period of Liquidation for the purpose of Section 230 to 232 of the Companies Act, the

Corporate Debtor is to be saved from its own management, meaning thereby the Promoters who are ineligible under Section 29A, are not entitled to file application for Compromise and Arrangement in their favour under Section 230 to 232 of the Companies Act. Proviso to Section 35(f) prohibits the Liquidator to sell the immovable and movable property or actionable claims of the Corporate Debtor in Liquidation to any person who is not eligible to be a Resolution Applicant.

12. The Hon'ble Tribunal thus remitted the case back to the Liquidator/AA to proceed in terms of the decision of the Hon'ble Appellate Tribunal in **Y. Shivram Prasad (supra)**.

13. The Liquidator thus submits that he has been religiously abiding by the aforesaid order of the Hon'ble NCLAT dated 24th October, 2019. It is further submitted that the aforesaid orders of the Hon'ble NCLAT was challenged in the Hon'ble **Supreme Court of India in Civil Appeal no.9664/2019**, and the **Hon'ble Apex Court vide its orders dated 24.2.2020**, issued Notice returnable on 23.3.2020, and directed that **"in the meantime, proceedings may go on only and sales if any, will not be confirmed.**

14. It is submitted that in view of the earlier application filed by one **Dilip Kumar Singh & Others** representatives of the employees of the Corporate Debtor Company, Gujarat NRE Coke Ltd. (Corporate Debtor) which is under Liquidation since, i.e 11.01.2018 praying for issuing directions to the respondents to reconsider the Scheme of Compromise and Arrangement under Section 230 of the Companies Act, 2013, proposed by the shareholders along with the TEV Study; and also a direction in the interim to the liquidator not to discharge or dismiss any employee and maintain their employment; has already been rejected, there is no question of reconsideration of any such Scheme by this Tribunal.

15. It is further submitted by the Liquidator that the Corporate Debtor Company has been making losses which has aggravated during the lockdown period and if the company is desired to be run, it would require a huge sum for making payment as wages to its employees.

16. In spite of the aforesaid submissions of the learned Liquidator Mr. Sumit Binani, learned Counsel Mr. Sounak Mitra appearing for employees, workmen and shareholders, however, sought some more time to try his luck before the Hon'ble High Court of Calcutta, where a writ petition stated to have been filed by the Workers and 109 equity shareholders of the Corporate Debtor, and is likely to come up for hearing shortly. His argument was countenanced by the Bench on the ground that even if his plea is accepted by the Hon'ble High Court, would the Scheme proposed by the Workers get the approval of the Secured Creditors with required majority, and whether in the absence of such an approval, they would be able to run the business of the company. Similarly, in the absence of any approval and requisite funds to run the business of the Company, which has been clearly denied by the majority secured creditor/SBI, would the Scheme take off at all, particularly because there is no provision of funds for running the business in the proposed Scheme.

17. Ld. Counsel Mr. Ajay Gaggar for the State Bank of India has opposed the idea of the Liquidator to sell the Corporate Debtor as a going concern as interpreted by the Liquidator from the orders of the Hon'ble NCLAT, when it says, "On failure, the liquidator is required to take step to sell the business of the Corporate Debtor as going concern in its totality along with the employees." Mr Gaggar, however, has interpreted it that Only the business of the Corporate Debtor would be sold and NOT the Corporate Debtor itself. We doubt we can offer to resolve this controversy as regards interpretation of orders of the Hon'ble NCLAT.

18. On hearing all the parties at length to their entire satisfaction, and after going through the record/documents placed before us, we are of the considered view that

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- i) In view of the fact that since the Scheme having not been approved by the Secured Creditors and could not be proceeded with, therefore vide orders dated 9.6.2020, the prayer made in application was rejected. Such a prayer

therefore cannot be entertained again or reconsidered on the same similar grounds.

ii) In view of the aforesaid facts, the Liquidator, has no option but to proceed with sale by complying with the provisions of the Code read with Regulations under Chapter VI (Realisation of Assets), of IBBI (Liquidation Process) Regulations, 2016, in letter and spirit, in the light of the orders passed by Hon'ble Appellate Tribunal and Hon'ble Supreme Court, as mentioned above. We order accordingly.

iii) In the result this **unnumbered I.A.(IB) No. /KB/2020** along with **CA(CAA) No. 20/KB/2019** stands **dismissed as infructuous**. No order as to costs.

iv) Registry is directed to serve copies of the order forthwith to all the parties by way of e-mail.

(Harish Chander Suri)
Member (T)

(Jinan K.R.)
Member (J)

Signed on this, the 24th day of June, 2020

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