NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

COMPANY APPEAL (AT) NO.148 OF 2024

(Arising out of order dated 04.04.2024 passed by the National Company Law Tribunal, Mumbai, in CP(CAA)/189(MB)/2023 in CA(CAA)/109(MB)2023)

In the matter of:

1. Nikhil Jain
   S/o Mr Om Prakash Jain
   403 & 403A Citi Scape
   CHS
   Behind Hotel Kohinoor,
   JB Nagar, Andheri East,
   Mumbai 400059

2. Rohtsoffe International Private Ltd
   Th: Director Nikhil Jain,
   1304
   Regent Chambers,
   Jamnalal Bajaj Road Nariman Point,
   Mumbai city, Mumbai, Maharashtra,
   India 400021

3. Wendt Finance Pvt Ltd
   Through Director Nikhil Jain,
   1304
   Regent Chambers
   Jamnalal Bajaj Road
   Nariman Point,
   Mumbai City Mumbai
   Maharashtra
   India 400021 Appellants

   Vs

1. Anil Goel, Liquidator of Birla
   Cotsyn (India) Ltd
   Basement, E-10A, Kailash Colony, Near
   Greater Kailash-I,

New Delhi 110048

2. Bombay Stock Exchange Ltd
Through Chief General Manager,
25th Floor,
Phoroze Jeejeebhoy Towers,
Dalal Street,
Mumbai 400001 Respondents

For Appellant:Mr Arun Kathpalia,Sr. Advocate and Mr Krishnendu Dutta, Sr Advocate with Mr Viraj Parikh, Ms Aakashi Lodha, Mr. Aditya Dhupra, Mr. Umang Mehta, Mr. Rahul, Mr. Kishitij Wadhwa, Advocates.

For Respondent:Mr Neeraj Malhotra, Sr. Advocate with Mr. Dhananjaya Sud, Ms Aishwarya Prasad and Mr. Nimishi Kumar, Advocates for R1.

Mr. Abhishek Puri, Ms Surbhi Gupta, and Mr. Sahil Grewal, Mr. Sumit Yadav, Mr. Manish, Advocates for R2.

JUDGEMENT

JUSTICE YOGESH KHANNA, MEMBER (JUDICIAL)

The present appeal is filed under Section 421 of the Companies Act, 2013 against order dated 04.04.2024 passed by the Ld.National Company Law Tribunal, Mumbai in CP(CAA)/189(MB)2023 in CA(CAA)/109(MB)/2023. The said application was filed by Respondent No.1/Liquidator of Birla Cotsyn India Ltd for approval of the Scheme of Arrangement for the revival of the Corporate Debtor under section 230 read with Section 66 of the Companies Act, 2013 and Regulation 2-B of the IBBI (Liquidation Process) Regulations 2016 (hereinafter referred as “Liquidation Process Regulations”).

2. In the said Application, *vide* the Impugned Order dated 04.04.2024, the Ld NCLT has held it is mandatory for the Liquidator to seek No-Objection Certificate for the Scheme from Respondent No. 2 / Bombay Stock Exchange

under Regulation 37 of the SEBI (Listing Obligation and Disclosure Requirements), Regulations, 2015 ("**LODR**"), and accordingly directed the Respondent No.1 to seek NoC from BSE before the approval of the Scheme by the Ld. NCLT.

3. Thus the broad question of law to be addressed in the present Appeal is whether Regulation *37(1)* and *(2)* of the LODR would apply to the Scheme submitted by the Liquidator under Section 230 of the Companies Act read Regulation 2B of the Liquidation Process Regulations, and alternatively, whether the clarification introduced by way of Regulation *37(7)* of the LODR for restructuring proposals under Section 31 of the Code would also apply to a Scheme for revival of a company in liquidation under Regulation *2B* of the Liquidation Process Regulations read with Section 230 of the Companies Act, 2013 especially considering two modes of revival are in similar continuum.

4. The Learned Senior Counsel for the Appellant submitted that first motion of Scheme of Arrangement was approved by the Learned NCLT. The Appellants are the acquirers of Birla Cotsyn (India) Ltd in liquidation. The company had complied with all the mandatory requirements of the Companies Act and IBC regarding scheme of arrangement, more specifically the requirements prescribed in sub-section (2) of Section 230 of Companies Act. The scheme of arrangement was submitted by the Liquidator and not by the company and thus the Regulations 37(1) and 37(2) of LODR are not applicable. It was submitted in any case the provisions of IBC override over other laws in terms of Section 238 of the Code. It was submitted that exemption provided in Regulation *37(7)* to the resolution plan was introduced

subsequent to the introduction of IBC, 2016 in 2018. The regulation in the liquidation process regulation (2B) was introduced subsequently and thus the LODR is silent on this issue. It was submitted that purchase as going concern in liquidation is akin to resolution of the company under Section 31 and thus on purposive interpretation, the exemption provided in Regulation 37(7) of LODR shall be applicable to it also. The Learned Senior Counsel relied upon judgements in the case of *'Arun Kumar Jagatramka v. Jindal Steel and Power Limited, (2021) 7 SCC 474', 'Meghal Homes Private Limited v. Shree Niwas Girni KK Samiti (2007) 7 SCC 753', 'S.C. Sekaran v. Amit Gupta and Ors. 2019 SCC Online NCLAT 517', ' Y Shivram Prasad v. S. Dhanapal & Ors. 2019 SCC Online NCLAT 172' and 'Soneko Marketing v. Girish Sriram Juneja in Company Appeal (AT) (Ins.) No. 807 of 2023', in support of his arguments.*

5. The learned counsel for the Respondent/BSE had argued that Regulation *37(1)* & *(2)* of LODR shall squarely apply to the Scheme filed by the Liquidator and that Regulation *37(7)* has no applicability in a scheme even if presented by the Liquidator under Section 230 of the Companies Act since it is not akin to restructuring process as envisaged under Section 31 of the IBC. He also argued once the legal provisions contain some prohibition it cannot be ignored by the Court and the Court should not read between lines and is expected to interpret a statute only when it is ambiguous and Court cannot add or substract words to a Statute or read something into it which is not there and also cannot recast and re-write a legislation per *Nasiruddin and others Vs Sita Ram Agarwal (2003) 2 Supreme Court Cases 577*. The Ld. Counsel for BSE also relied upon Regulation 5 and 11 of the LODR to say

there exists an obligation upon the Liquidator to obtain an NOC from BSE before filing the first motion.

6. Learned counsel for the Liquidator (R1) stated he supports the appellant, and as Corporate Debtor is under liquidation, there are no shareholders in the Company.

7. Heard.

8. Under the Companies Act, admittedly, there is no provision mandating companies to obtain a prior NOC from stock exchanges for Scheme of Arrangement. In this context, at the outset, reference may be made to the following sub-sections (1), (2), (3) and (5) of Section 230 of the Companies Act which are reproduced hereinbelow:

> "***230. Power to compromise or make arrangements with creditors and members —***
>
> *(1) Where a compromise or arrangement is proposed—*
>
> *(a) between a company and its creditors or any class of them; or*
>
> *(b) between a company and its members or any class of them,*
>
> *the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.*
>
> *Explanation- For the purposes of this sub-section, arrangement includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.*

(2) ***The company or any other person, by whom an application is made under sub-section (1), shall disclose to the Tribunal by affidavit****—*

(a) all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company and the pendency of any investigation or proceedings against the company;

(b) reduction of share capital of the company, if any, included in the compromise or arrangement;

(c) any scheme of corporate debt restructuring consented to by not less than seventy-five per cent of the secured creditors in value, including—

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

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

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

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

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

(3) ***Where a meeting is proposed to be called in pursuance of an order of the Tribunal under sub-section (1), a notice of such meeting shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company,*** *individually at the address registered with the company which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed:*

[…]

(5) A notice under sub-section (3) along with all the documents in such form as may be prescribed shall also be sent to *the Central Government, the income tax authorities, the Reserve Bank of India,* ***the Securities and Exchange Board, the Registrar, the respective stock exchanges****, the Official Liquidator, the Competition Commission of India established under sub-section (1) of Section 7 of the Competition Act, 2002 (12 of 2003), if necessary,* ***and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.*** *(Emphasis Supplied)*

9. Section 230(2) of the Companies Act refers to the requirements / disclosures for a Scheme of Arrangement and it does not prescribe any requirement for a prior NoC from the stock exchanges. Now the Ld. NCLT has stalled the proceedings in the present Scheme by directing the Liquidator to obtain NoC from BSE. In *Pentemedia Graphics Limited* v. *The Bombay Stock Exchange*, **2006 SCC Online Mad 918 (at Paragraph 38-41)** it was held the requirement of NoC from stock exchanges is not mandatory for approval of a Scheme and it is only required for continued listing of the Company, *which can be pursued after the Scheme as well.*

10. Further, Section 230(5) of the Companies Act, 2013 only contemplates notice to the stock exchanges *after the Scheme has been filed* with the Tribunal, and *not a prior NoC* from the stock exchanges. The requirement of giving notice to the stock exchanges under Section *230(5)* of the Companies Act has admittedly been complied with by the Liquidator and the Scheme was received by the BSE on 16.05.2023.

11. Thus, under the Companies Act, there is no requirement for prior NOC from the stock exchanges or SEBI before the Scheme is filed before the Ld. NCLT, and the requirement is only to give notice to the stock exchanges and SEBI once the Scheme is filed with the Ld. NCLT for calling/dispensing with meetings of creditors and members, which has been duly complied with by the Liquidator / Applicant of the Scheme.

12. Now the requirement for prior NOC from the stock exchanges is imposed by Regulation *37(1)* and *(2)* of the LODR, which stipulate as follows:

> ***37. Draft Scheme of Arrangement & Scheme of Arrangement.***
> *(1)Without prejudice to provisions of regulation 11,* ***the listed entity desirous of undertaking a scheme of arrangement or involved in a scheme of arrangement, shall file the draft scheme of arrangement, proposed to be filed*** *before any Court or Tribunal under sections 391-394 and 101 of the Companies Act, 1956 or under Sections 230-234 and Section 66 of Companies Act, 2013, whichever applicable, along with a non-refundable fee as specified in Schedule XI,* ***with the stock exchange(s) for obtaining the No-objection letter, before filing such scheme with any Court or Tribunal****, in terms of requirements specified by the Board or stock exchange(s) from time to time.*
>
> *(2)****The listed entity shall not file any scheme of arrangement*** *under sections 391-394 and 101 of the Companies Act, 1956 or under Sections 230-234 and Section 66 of Companies Act, 2013 ,whichever applicable,* ***with any Court or Tribunal unless it has obtained the No-objection letter from the stock exchange(s). (Emphasis Supplied)***

13. On a plain reading of Regulation *37(1)* and *37(2)*, it becomes clear that Regulation *37(1)* mandates the 'listed entity' i.e. the 'company' must apply for the NOC from the stock exchanges. Similarly, Regulation *37(2)* imposes a prohibition on the 'listed entity' / 'company' from filing any scheme for approval without the NOC from stock exchanges.

14. Now in cases of companies in liquidation, a scheme of arrangement is not filed by the 'company' / 'listed entity'. It is rather filed by the liquidator. Further, under Section 230(1) of the Companies Act, the Liquidator is treated as separate and independent from the 'company'. This is evident from the plain language of Section 230(1), which stipulates *the Tribunal may,* ***on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator.***

15. *Thus s*ection 230(1) of the Companies Act contemplates four different categories of persons who can apply to the NCLT for approval of a Scheme. Pertinently, Section 230(1) treats the liquidator as a *separate and distinct category of person* who can file a scheme before the Ld.NCLT. It does not consider the liquidator to be the same as the company, hence the rigors of Regulation *37(1)* and *37(2)* of LODR shall not apply.

16. The argument of the Ld. Counsel for BSE that Regulation *5* and *11* of the LODR indicate there exists an obligation for the Liquidator to obtain a NOC from BSE before submitting a Scheme of Arrangement for listed entity, is also not convincing. Regulation *5* and *11* of LODR are as under:-

> *"Regulation 5: The listed entity shall ensure that key managerial personnel, directors, promoters or any other person dealing with the listed entity, complies with responsibilities or obligations, if any assigned to them under these regulations."*
>
> *Regulation 11: The listed entity shall ensure that any scheme ofarrangement/amalgamation/merger/reconstruction/reducti on of capital etc to be presented to any Court or Tribunal does not in any way violate, override or limit the provisions of securities laws or requirements of the stock exchange(s)."*

17. Regulation 5 above pertains to an obligation of a listed company to ensure its key managerial personnel, officers etc shall comply with the responsibilities or obligations assigned to them and it does not make the obligation of the listed entity the obligation of key managerial personnel, directors, promoters or the persons dealing with the listed entity. To attract Regulation 5, there must be an assignment of responsibility/obligations and there is no Regulation under the LODR which cast an obligation on the Liquidator to obtain a prior NOC before filing a scheme of arrangement. So far Regulation *11* of the LODR is concerned, it does not deal or impose any obligation on the Liquidator to obtain a NOC in respect of a scheme of arrangement and the said Regulation deals with *merits of the Scheme* to ensure the same does not violate any provision of the Securities Laws.

18. So far as phrase relied upon by the learned counsel for the BSE *viz.* listed company *"involved in a scheme of arrangement"* in Regulation *37(1)* of LODR, we may say the Regulation cannot be interpreted by selectively referring to a particular phrase without considering the context which it deals. Regulation *37(1)* of the LODR refers to obligation of a listed entity. As earlier noted there are four categories of persons who may apply for approval of scheme of arrangement, including creditor or a member of the company. Section 230(1) treats the Liquidator as a separate and distinct category. Suppose scheme is filed through the creditor, can he be made bound by the rigours of Regulation *37(1)* & *(2)*. The answer would be *no*.

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. Regulation 37(7) stipulates as follows:

> *(7)* ***The requirements as specified under this regulation*** *and under regulation 94 of these regulations* ***shall not apply to a restructuring proposal approved as part of a resolution plan by the Tribunal under section 31 of the Insolvency Code****, subject to the details being disclosed to the recognized stock exchanges within one day of the resolution plan being approved. (Emphasis Supplied)*

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. The Hon'ble Supreme Court has had a chance to consider the different modes for revival of a Corporate Debtor under the IBC in *Arun Kumar Jagatramka v. Jindal Steel and Power Limited, (2021) 7 SCC 474.* In that judgment, the Hon'ble Supreme Court held that although Section *29-A* of the Code only contemplates disqualification when submitting a Resolution Plan, it would apply equally to a Scheme for Restructuring in Liquidation. The Court observed as follows:

> *68. Now, it is in this backdrop that* ***it becomes necessary to revisit, in the context of the above discussion the three modes in which a revival is contemplated under the***

provisions of the IBC. The first of those modes of revival is in the form of the CIRP elucidated in the provisions of Chapter II of the IBC. The second mode is where the corporate debtor or its business is sold as a going concern within the purview of clauses (e) and (f) of Regulation 32. The third is when a revival is contemplated through the modalities provided in Section 230 of the Act of 2013. *A scheme of compromise or arrangement under Section 230, in the context of a company which is in liquidation under the IBC, follows upon an order under Section 33 and the appointment of a liquidator under Section 34. While there is no direct recognition of the provisions of Section 230 of the Act of 2013 in the IBC, a decision was rendered by the NCLAT on 27 February 2019 in Y Shivram Prasad v. S Dhanapal. 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 statutory scheme underlying the IBC and the legislative history of its linkage with Section 230 of the Act of 2013, in the context of a company which is in liquidation, has important consequences for the outcome of the controversy in the present case. The first point is that a liquidation under Chapter III of the IBC follows upon the entire gamut of proceedings contemplated under that statute. The second point to be noted is that one of the modes of revival in the course of the liquidation process is envisaged in the enabling provisions of Section 230 of the Act of 2013, to which recourse can be taken by the liquidator appointed under Section 34 of the IBC. The third point is that the statutorily contemplated 2019 SCC OnLine NCLAT 172; herein, referred to as "Y Shivram Prasad" activities of the liquidator do not cease while inviting a scheme of compromise or arrangement under Section 230. ***The appointment of the liquidator in an IBC liquidation is provided in Section 34 and their duties are specified in Section 35. In taking recourse to the provisions of Section 230 of the Act of 2013, the liquidator appointed under the IBC is, above all, to attempt a revival of the corporate debtor so as to save it from the prospect of a corporate death. The consequence of the approval of the scheme of revival or compromise, and its***

sanction thereafter by the Tribunal under Sub-section (6), is that the scheme attains a binding character upon stakeholders including the liquidator who has been appointed under the IBC. In this backdrop, it is difficult to accept the submission of Mr Bajaj that Section 230 of the Act of 2013 is a standalone provision which has no connect with the provisions of the IBC.

70. Undoubtedly, Section 230 of the Act of 2013 is wider in its ambit in the sense that it is not confined only to a company in liquidation or to corporate debtor which is being wound up under Chapter III of the IBC. Obviously, therefore, the rigors of the IBC will not apply to proceedings under Section 230 of the Act of 2013 where the scheme of compromise or arrangement proposed is in relation to an entity which is not the subject of a proceeding under the IBC. But, ***when, as in the present case, the process of invoking the provisions of Section 230 of the Act of 2013 traces its origin or, as it may be described, the trigger to the liquidation proceedings which have been initiated under the IBC, it becomes necessary to read both sets of provisions in harmony. A harmonious construction between the two statutes would ensure that while on the one hand a scheme of compromise or arrangement under Section 230 is being pursued, this takes place in a manner which is consistent with the underlying principles of the IBC because the scheme is proposed in respect of an entity which is undergoing liquidation under Chapter III of the IBC. As such, the company has to be protected from its management and a corporate death. It would lead to a manifest absurdity if the very persons who are ineligible for submitting a resolution plan, participating in the sale of assets of the company in liquidation or participating in the sale of the corporate debtor as a 'going concern', are somehow permitted to propose a compromise or arrangement under Section 230 of the Act of 2013.***

71. […]

72. 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****. (Emphasis Supplied)*

21. After the introduction of the Code, in 2018 SEBI conducted a major overhaul of all its regulations to bring them in line with the provisions of the Code. This included an amendment to Regulation *37* of the LODR. By way of the amendment dated 31st May 2018, SEBI introduced sub-regulation *7* to Regulation *37* of the LODR.

22. SEBI has thus chosen to exempt the requirement of seeking NOC from stock exchanges for any restructuring proposal by way of a resolution plan under Section 31 of the Code. This is in accordance with the principle the CIRP process under the Code must be carried out in a time-bound manner under the supervision of one authority i.e. the Ld. NCLT.

23. Pertinently, when the amendment was carried out, the concept of schemes of arrangement for revival of companies in liquidation was not statutorily recognized under the Code. There was no specific provision under the Code or under the Liquidation Process Regulations that permitted such a scheme of revival. Admittedly, schemes for revival of companies in liquidation was prevalent under the old Companies Act, 1956 and had been recognized by the Hon'ble Supreme Court in *Meghal Homes Private Limited v. Shree Niwas Girni KK Samiti (2007) 7 SCC 753.* However, it was not clear as to whether the same would also apply to a company undergoing liquidation under the Code.

24. This clarity was only supplied by this Tribunal in its judgment passed on 29th January 2019 in *S.C. Sekaran v. Amit Gupta and Ors.* **2019 SCC Online NCLAT 517**. In this judgment, this Tribunal approved the concept of a scheme in liquidation under the Code and also held that a scheme in liquidation must be attempted first, before sale of assets of the company as a going concern / in parts. Paragraph 8 is relevant and holds 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****. (Emphasis Supplied)*

25. This Tribunal in Y. Shivram Prasad v. S. Dhanapal & Ors. **2019 SCC Online NCLAT 172** in judgement dated 27th February, 2019 further emphasized the revival of a Corporate Debtor during liquidation by way of the Scheme under Section 230 of the Companies Act. The said aspect has been duly noted by the Hon'ble Supreme Court in *Arun Kumar Jagatramka (supra).*

26. It is after the judgment of the Hon'ble NCLAT in S.C. Sekaran (supra) and Y. Shivram (supra) that Regulation 2-B was introduced in the Liquidation Process Regulations by amendment dated 25th July 2019. Regulation 2-B as it is now stipulates as follows:

> *2-B. Compromise or arrangement.—(1) Where a compromise or arrangement is proposed under Section 230 of the Companies Act, 2013 (18 of 2013), it shall be completed within ninety days of the order of liquidation under Section 33*

27. Considering the aforesaid, it can be safely stated that when SEBI carried out the amendment to various regulations including the LODR in May 2018, it did not have in its contemplation the concept of a scheme for compromise or arrangement for revival of a company in liquidation.

28. Pertinently, the Code contemplates a 'single window' process in revival of companies in distress, where necessary approvals are to be obtained from the Ld. NCLT. This is to ensure a timely completion of the CIRP and liquidation process. For instance, Section *31(4)* contemplates that if any statutory approvals are required for a resolution plan, they can be obtained within one year from the date of approval of the resolution plan. Section 31(4) stipulates as follows:

> *"31….(4)The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later.*
>
> *Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the*

> *Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors."*

29. In fact, even though the proviso to Section 31(4) of the Code requires prior approval of the Competition Commission in cases of 'combinations', this Tribunal has even read that provision as directory and not mandatory in *Soneko Marketing v. Girish Sriram Juneja in Company Appeal (AT) (Ins.) No. 807 of 2023.*

30. Considering the aforesaid situation, if Regulation 37 is considered to impose a mandatory requirement for prior NOC from stock exchanges for a scheme for revival of a company in liquidation also, it would conflict with the strict timelines provided under the Code and the Liquidation Process Regulations. In case of any such conflict, the provisions of the Code must prevail given the *non-obstante clause* contained in Section 238 of the Code.

31. It is also relevant to note Regulation *37(7)* of LODR must be given a purposive interpretation. The strict literal interpretation of Regulation 37(7) must give way to a dynamic interpretation that achieves the objective of the sub-regulation i.e. *to facilitate the modes of revival with an objective of preventing civil death of the companies*. In this regard, the judgment of the Hon'ble Supreme Court in *Shailesh Dhairyawan v. Mohan Balkrishna (2016) 3 SCC 619* is apposite. In paragraph 33, the Hon'ble Supreme Court holds as follows:

> *We may also emphasize that the statutory interpretation of a provision is never static but is always dynamic. Though literal rule of interpretation, till some time ago, was treated as the 'golden rule', it is now the doctrine of* ***purposive interpretation*** *which is predominant, particularly in those cases where literal interpretation may not serve the purpose*

> *or may lead to absurdity. If it brings about an end which is at variance with the purpose of statute, that cannot be countenanced. Not only legal process thinkers such as Hart and Sacks rejected intentionalism as a grand strategy for statutory interpretation, and in its place they offered purposivism, this principle is now widely applied by the Courts not only in this country but in many other legal systems as well.*

32. It is pertinent to note even other principles that are exclusively contemplated for resolution plans under the Code have been extended to the other modes of revival. For instance, the '*clean slate theory*' recognized by the Hon'ble Supreme Court in *Ghanashyam Mishra & Sons Pvt. Ltd.* v. *Edelweiss Asset Reconstruction Company Ltd.* **(2021) 9 SCC 657** has been equally applied in cases of sale of a corporate debtor as a going concern during liquidation, despite there being no express statutory provision to that effect.

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 indebtness 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.

36. The argument of the learned counsel for the Respondent that strict meaning be given to Regulations does not convince us since the scheme of arrangement under Section 230 of the Companies Act has also been considered as a mode of revival, through judicial interpretation and subsequent introduction of Regulation 2B of Liquidation Process Regulation.

37. It is also relevant to note that the Ld. NCLT *vide its* order dated 02.05.2023 had directed that the Scheme shall be proceeded with. No appeal has been filed by Respondent No. 2 against the said order dated 02.05.2023 despite the same being in their knowledge as early as 16.05.2023.

38. The Impugned Order dated 04.04.2024 is in effect a review of the order dated 02.05.2023. In absence of any challenge to the order dated 02.05.2023, the objection raised by BSE / Respondent No.2 at this stage could not have been entertained.

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.

41. Hence we allow the appeal.

42. Pending applications, if any, are closed.

(Justice Yogesh Khanna)
Member (Judicial)

(Mr. Ajai Das Mehrotra)
Member (Technical)

Dated: 20 -8-2024

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