

**NATIONAL COMPANY LAW TRIBUNAL**  
**MUMBAI BENCH**  
**COURT-IV**

12. C.P.(CAA)/189(MB)2023  
IN  
C.A.(CAA)/109(MB)2023

CORAM:

MS. ANU JAGMOHAN SINGH  
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI  
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **04.04.2024**

Name of the Party: Anil Goel Liquidator- M/s Birla Cotsyn  
(India) Ltd.

Section 230-232 of Companies Act, 2013

**ORDER**

1. Mr. Omprakash Jha a/w Mr. Sumit Yadav i/b The Law Point for BSE, Ld. Counsel for the BSE present. Mr. Rohit Gupta, Ld. Counsel for the Liquidator present. Mr. Gaurav Joshi, Ld. Sr. Counsel a/w Mr. Umang Mehta, Ld. Counsel for the Petitioner present. Adv. Kunal Kanungo a/w Adv. Tanushree Sogani and Adv. Atishay Jain i/b Mr. Gaurav Jaiswal and Mr. Tushar Wagh, Ld. Counsel for the Regional Director present.
2. The Counsel for the SEBI appeared and submitted that the present Application filed u/s 230-232 read with Section 66 of Companies Act, 2013 for compromise and arrangement/ amalgamation/ merger/ reconstruction/ reduction etc. The scheme is in between the Acquirers and BCIL and its Creditors and Shareholders.
3. At the time of hearing, Ld. Counsel for the SEBI submits that this Bench issued notice regarding intimation of the Scheme to BSE on 09.05.2023, the same was duly received on 16.05.2023.
4. Ld. Counsel for the SEBI further submits that upon examination of the said notice dated 09.05.2023, the BCIL has failed to obtain No

Objection Certificate (NOC) in terms of SEBI (LODR) Regulations, 2015. The circular issued by SEBI which categorically provides that any listed entity is required to ensure the veracity of the said Scheme.

5. Ld. Counsel for the SEBI stated that BSE vide letter dated 14.07.2023, addressed to this Bench with copy marked BCIL prayed that “*to take BSE’s observation on record and direct BCIL to not proceed with the proposed Scheme without complying with requirement prescribed by the Securities and Exchange Board of India*”. Pursuant to the said letter, BSE did not receive any letter/ intimation regarding the proposed Scheme from BCIL.
6. Ld. Counsel for the SEBI further submits that the Birla Cotsyn (India) Limited (BCIL) has failed to obtain No Objection Letter from the BSE as mandated as per Regulation 37(1) of the SEBI (LODR) Regulations, 2015, which provides that the listed entity shall not file any scheme of arrangement with any Tribunal unless it has obtained No Objection Letter from the Stock Exchange.
7. Ld. Counsel for SEBI further submits that as per Regulation 11 of SEBI (LODR), Regulations, 2015 that any listed entity is required to ensure the veracity of the said Scheme.
8. It is further submitted that in light of the aforesaid Regulations, Petitioner Company has failed to obtain NOC accordingly, the proposed Scheme is in violation of SEBI Regulations, 2015 and BCIL is statutorily prohibited from filing the same before this Bench.
9. Ld. Counsel for the SEBI submits that the framework contemplated in Regulation 37(7) of SEBI (LODR) Regulations, 2015 for Resolution Plan submitted in CIR Process cannot be extended to any other Scheme including subject matter proposed by the Acquirers. It is further submitted that compliance with securities laws is of paramount

significance considering the interests of thousands of Investors and Securities Market. It is also submitted that, if BCIL/Corporate Debtor is allowed to evade the consequence for non-compliance with the SEBI (LODR) Regulations, 2015, it will severely jeopardize the interest of investors and Shareholders of the Companies and the Securities Market.

10. The Counsel for the Liquidator submitted that the SEBI is having a power to protect the interest of the Shareholders. BCIL i.e. Corporate Debtor is under liquidation, therefore, there are no Shareholders in the Company.
11. Ld. Counsel for the Liquidator has relied upon the following judgments Hon'ble Apex Court in the matter of "*SCC (2021) 7 Supreme Court Cases 474 Arun Kumar Jagatramka Vs. Jindal Steel and Power Limited and another*" and Hon'ble NCLAT in the matter of "*Puissant Towers India Private Limited Vs. Neueon Towers Limited and others (Company Appeal No. 181/2022)*" in which it was held that "*keeping in view, the clarification given by the Counsel for RBI that the 'prior permission' is not required, this Tribunal is of the considered view that the Adjudicating Authority ought not to have rejected the Resolution Plan, more so when the principal objective of the Code is that 'revival of Corporate Debtor and resolution' liquidation ought to be last resort, keeping in view scope and spirit of the Code*"
12. Heard both the counsel and perused the record, this Bench observes that the SEBI has already intimated the Applicant that a prior permission/ NOC is required for filing of the Scheme. This Bench is of the considered view that it is mandatory for all the listed Company to obtain No Objection Letter from the stock exchanges for the Scheme in terms of Regulation 37 of the SEBI (LODR) Regulations, 2015.

13. Therefore, this Bench directs that the Liquidator/ Applicant shall approach the SEBI and get NOC before the approval of the Scheme by this Tribunal.
14. The matter is adjourned to **02.05.2024** for further consideration.

Sd/-

**ANU JAGMOHAN SINGH**  
**Member (Technical)**

/Dubey/

Sd/-

**KISHORE VEMULAPALLI**  
**Member (Judicial)**