

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Virtual Hearing)**

**PRESENT: SHRI RAJEEV BHARDWAJ – MEMBER (JUDICIAL)
: SHRI SANJAY PURI – MEMBER (TECHNICAL)**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 25.04.2024 AT 01:00 P.M.

TC/CP. Nos.	CA/IA No.	Section / Rule	Name of Parties
	Under Liquidation	7 of IBC	Axis Bank Ltd Vs Sembmarine Kakinada Ltd.
TCP(IB)/28/7/AMR/2019	IA(IBC)/56/2024	U/Sec-60(5) of the IBC 2016 R/w. Reg 33 r/w 32, 32A of IBBI (Liquidation Process), 2016 and R/w Rule 11 of the NCLT Rules 2016.	Mr. Vedagiri Venkatesh Krishnamurthy, Liquidator of Sembmarine Kakinada Ltd. vs Anirudh Agro Farms

ORDER

IA (IBC)/56/2024:

Present: Mr. Pradeep Joy, Ld. Counsel along with Ms. Titiksha Jain, Ld. PCS for the Applicant.

Ms. Harika Tejavath, Proxy counsel for the Respondent.

Mr. V. Venkata Krishnamurthy, Liquidator.

Orders pronounced. IA (IBC)/56/2024 is allowed and Recorded.

Separate Sheets.

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**SANJAY PURI
MEMBER (TECHNICAL)**

Sd/-

**RAJEEV BHARDWAJ
MEMBER (JUDICIAL)**

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI**

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IA (IBC)/56/2024
In
TCP (IB)/28/7/AMR/2019

[Under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with regulation 33 read with 32, 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and Rule 11 of National Company Law Tribunal Rules, 2016]

In the Matter of
M/S SEMBMARINE KAKINADA LIMITED

Between:

Mr. Vedagiri Venkata Krishnamurthy,
Liquidator for Sembmarine Kakinada Limited
Having office at First Floor, OSV Complex,
Kakinada Deep Water Port, Beach Road,
Kakinada, Andhra Pradesh – 533007
Email: vvk.skllliquidator@gmail.com

...Applicant/Liquidator

AND

Anirudh Agro Farm Limited
8-2-120/112/88&89, Aparna Crest,
3rd Floor Road No.2, Banjara Hills,
Hyderabad, Telangana – 500034.
Email: anirudhagrofarmsltd@gmail.com

...Respondent/Successful Bidder

Date of Orders: 25.04.2024

CORAM:

SHRI RAJEEV BHARDWAJ, MEMBER (JUDICIAL)
SHRI SANJAY PURI, MEMBER (TECHNICAL)

Appearance:

For Applicant : Titiksa Jain, PCS along with Mr. Pradeep Joy, Advocate
For Respondent : Mr. Drupad Sangwan & Vadeendra Joshi, Advocates.

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ORDER
(Per: Bench)

1. This Application is filed by Mr. Vedagiri Venkata Krishna Murthy (“Applicant/ Liquidator”), Liquidator of the Corporate Debtor (“CD”) seeking prior permission of this Tribunal under the Liquidation Process Regulations for the sale of the CD as a going concern under the Private Sale Mode to Anirudh Agro Farms Limited, i.e., the Acquirer (“AAFL” or “Acquirer”). The following are the reliefs mentioned in the application:
 - a) Accord prior approval to the Applicant/ Liquidator as required under Regulation 33 r/w 32, 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 for private sale of the Corporate Debtor as a going concern to Respondent/ Anirudh Agro Farms Limited on the terms set out in the Letter of Intent dated January 25, 2024, duly counter approved and counter signed by the Respondent read with clarification note issued by the Applicant on January 29, 2024.
 - b) Direct Respondent/ Anirudh Agro Farms Limited to take all the necessary steps/ actions to successfully complete the acquisition of the Corporate Debtor as going concern, including but not limited to executing all the necessary documents/ agreements with the Corporate Debtor/Liquidator/SCC members and deposit the entire balance sale consideration in the bank account of Corporate Debtor preferably within a period of thirty (30) days from the date of order of this Hon’ble Tribunal approving the sale as a going concern or in any case no later than within a maximum period of ninety (90) days from the date of order of this Hon’ble Tribunal approving the sale as a going concern with simple interest of 12% per annum, if any balance sale consideration is

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deposited after thirty (30) days from the date of order of this Tribunal approving the sale as going concern;

- c) Pass an order in the nature of direction/ clarification that the Applicant shall be allowed to continue to function in the capacity of Liquidator till the Applicant files the appropriate application along with the final report and compliance certificate before this Tribunal as per Regulation 45 of the Liquidation Process Regulations for closure of the liquidation process of the Corporate Debtor;
- d) Pass an order in the nature of declaration that, post-sale of the Corporate Debtor as a going concern and after distribution of the sale proceeds by the Applicant in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, all claims and liabilities of the stakeholders/ creditors qua the Corporate Debtor/ Liquidator/ Applicant whether crystallised or uncrystallised of the Corporate Debtor shall stand extinguished/ satisfied in entirety and perpetually and no action shall lie against the Corporate Debtor/ Liquidator/ Applicant in respect of the same.
- e) Pass an order in the nature of direction that all the future proceedings pending before this Hon'ble Tribunal or other Court/Authority of Competent Jurisdiction shall be perused by Anirudh Agro Farms Limited, save and except the proceedings relating to the Avoidance Transactions.

2. The brief facts leading to the instant application are as follows:

- a. The Applicant submitted that pursuant to the initiation of the Liquidation proceedings of the CD, the Liquidator has performed the functions and

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duties as provided under the code and the Liquidation Process Regulations from time to time. The Applicant, upon forming the liquidation estate of the CD, prepared an asset memorandum and the same was filed before this Tribunal on January 13, 2022. The Applicant had constituted the Stakeholders Consultation Committee ("SCC") basis the list of stakeholders. However, in view of amendment to the liquidation process regulations with effect from September 16, 2022, the applicant reconstituted the SCC. Further, the quarterly Progress Reports in accordance with Regulation 15 of the Liquidation Process Regulations were filed before this Tribunal.

- b. In accordance with Regulation 32A of the Liquidation Process Regulations, the Liquidator first endeavoured to sell the CD as a going concern for ninety days since liquidation commencement, i.e., up to January 29, 2022. The applicant issued various invitations for expression of interest ("EOI") for the E-Auctions held on January 12, 2022, January 20, 2022 and January 28, 2022. In the First auction held on January 12, 2022, only one prospective bidder, namely, M/s. Ultra Dimension Private Limited had submitted an EOI and conducted a site visit. Subsequently, M/s. Ultra Dimension Private Limited did not participate in the E-Auction. In the Second and Third E-Auctions held on January 20, 2022 and January 28, 2022, respectively, the Applicant did not receive any EOI and the aforesaid auctions to sell the CD as a going concern failed. Thereafter, the Applicant attempted to sell the assets of the CD keeping both the options open i.e., sale of the CD as going concern as well as on a piecemeal basis in accordance with Regulation 32 of the Liquidation Process Regulation. Accordingly, assets were identified, and auction notices were published to invite bidders in the sale process of the assets of the CD. The applicant

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issued various notices for auction of the assets of the CD as per the below table:

Auction No.	Date of Auction Notice	Date of Auction
1 st	February 12, 2022	February 25, 2022
2 nd	February 27, 2022	March 11, 2022
3 rd	March 17, 2022	March 31, 2022
4 th	April 7, 2022	April 18, 2022
5 th	May 4, 2022	May 25, 2022
6 th	June 9, 2022	June 23, 2022
7 th	February 15, 2023	March 10, 2023
8 th	March 23, 2023	April 17, 2023
9 th	April 29, 2023	May 23, 2023
10 th	May 25, 2023	June 17, 2023
11 th	June 30, 2023	July 23, 2023
12 th	July 28, 2023	August 21, 2023
13 th	September 04, 2023	September 28, 2023
14 th	October 12, 2023	November 6, 2023

- c. Pursuant to the auction notices, various auctions were conducted wherein bids were received for various assets of the Corporate Debtor and the Applicant had declared the various successful bidders for most of the assets of the Corporate Debtor. Sale consideration for the assets auctioned aggregating to INR 128, 31,63,136 (One Hundred and Twenty Eight Crores Thirty One Lakhs Sixty Three Thousand and One Hundred and Thirty Six Only) were received and the process for handing over the possession of the assets, issuing sale certificates and thereby completing the sale transaction were completed by the Applicant.
- d. Thereafter in the 9th SCC Meeting held on June 23, 2023, the representative of the secured financial creditors in the SCC, suggested to

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discontinue the option for sale as going concern in the auctions going forward considering that majority of assets were already sold and value of the Corporate Debtor for the purpose of going concern sale had substantially gone down. The matter was deliberated and in that meeting it was decided to discontinue the said mode of sale going forward, however, it was also agreed in the meeting that in case there is a prospective buyer in the future leading the option of sale to it/him as a going concern could be explored. Further, in the said meeting, the representative of the secured financial creditors recommended to assign or transfer the “right for insurance claim” and “Avoidance transactions” to a third party entity as per Regulation 37A of the Liquidation Process Regulations (Assignment of NRRRA) as the same may not be readily realizable being contingent/disputed in nature and in view of the pending legal proceeding before the State Consumer Disputes Redressal Forum.

- e. Thereafter, the Applicant issued invitation for EOIs on July 21, 2023 under Regulation 37A of the Liquidation Process Regulations, thereby inviting EOIs for Assignment of NRRRA whereby, AAFL vide its e-mail dated September 04, 2023, initially gave an offer for an amount of INR 1,00,00,000/- (Indian Rupees One Crore Only) on an upfront basis towards acquisition of the Insurance Claim, one of the assets forming part of Assignment of NRRRA. However, to ensure continuation of legal proceedings pertaining to the recovery of the Insurance Claim, AAFL requested that the Corporate Debtor be sold as going concern along with the said Insurance Claim.
- f. In light of the interest shown by AAFL to acquire the Corporate Debtor as a going concern under the liquidation proceedings, the Applicant, vide e-mail dated September 06, 2023 appraised AAFL about the going

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concern sale which includes all the balance assets of the Corporate Debtor and thereby requested AAFL to provide revised offer to acquire the Corporate Debtor as a going concern. AAFL vide its e-mail dated September 12, 2023, submitted its revised offer, inter alia, offering INR 6,00,00,000/- (Indian Rupees Six Crores Only) to acquire the Corporate Debtor as a going concern. The revised offer was placed before the SCC Members in the 11th SCC Meeting held on September 14, 2023, whereby the SCC Members discussed in detail about the proposed revised offer received from AAFL to acquire the Corporate Debtor as a going concern. Further, in the said meeting, representatives of AAFL were also invited and attended the meeting for the limited purpose to explain and present their proposal/ offer to the SCC members, when the matter was deliberated by the SCC members. The SCC members requested for further time to decide on the proposed revised offer of AAFL.

- g. Thereafter, pursuant to negotiations done by the Applicant with AAFL on the request of SCC Members, AAFL further increased its offer to INR 8,00,00,000/- (Indian Rupees Eight Crore Only) and sent its detailed revised offer vide its e-mail dated October 09, 2023. The Applicant placed the detailed revised offer before the SCC Members in 12th SCC Meeting held on October 10, 2023, and also informed the SCC members in the meeting that Liquidation Process Regulations and one of the circumstances is with the prior permission of the Adjudicating Authority. It was further stated by the Applicant in the meeting that, this shall be followed by a challenge mechanism in order to have price discovery and maximization of realization by considering the offer from AAFL as the anchor bid. The secured financial category of the SCC members also

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- decided that they will call a Joint Lender Meet (“JLM”) to discuss on the revised offer received from AAFL.
- h. The Applicant again received a revised offer from AAFL vide e-mail dated October 20, 2023, offering INR 9,50,00,000 (Indian Rupees Nine Crore Fifty Lakhs Only) to acquire the Corporate Debtor as a going concern. The Applicant pursuant to the JLM, Called the 13th SCC meeting on November 07, 2023, to discuss and vote on the revised offer dated October 20, 2023, received from AAFL. Further AAFL was also invited to attend the meeting for the limited purpose of presenting and discussing on the revised offer. Post the negotiations between the SCC members and AAFL during the meeting AAFL was called upon to improve its commercial offer and send the updated revised offer which shall be placed for voting before the SCC. The applicant also stated that post the outcome of the voting on the updated revised offer of AAFL, a challenge mechanism shall be carried out and thereafter appropriate application shall be filed before this Hon’ble Tribunal for seeking its approval under Regulation 33 (2)(d) of the Liquidation Process Regulations.
- i. The major asset of the company, i.e., the Floating Dry Dock was sold pursuant to which the corporate debtor had ceased to operate ad hence no revenue is generated. On the other hand, the Applicant has to incur fixed expenses like electricity, salaries, subcontractor cost, security charges and other admin related charges etc. in order to maintain the balance assets of the corporate debtor. This in turn is having an adverse impact on the realization of the stakeholders. Further, after the liquidation commencement on November 1, 2021, this Tribunal had granted appropriate extension/exclusion of time on two occasions, i.e., vide order dated November 17, 2022 & July 03, 2023 and pursuant to the

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aforementioned extension/ exclusion of time, the liquidation process is expiring on February 16, 2024 and the Applicant is in process of filing an appropriate application in this regard.

- j. Pursuant to the discussion which took place in the 13th SCC meeting, the Applicant received the final revised offer from AAFL vide e-mail dated November 15, 2023, (“AAFL Final Offer”), and earnest money deposit of INR 95,00,000/- (Indian Rupees Ninety-Five Lakhs Only) i.e. equivalent to 10% of AAFL Final Offer on November 20, 2023. AAFL also submitted the requisite documents, including Section 29A affidavit and board resolution. Thereafter, AAFL Final Offer was put for voting before the SCC members as agreed in the 13th SCC meeting. The Applicant opened the window for e-voting of SCC members on November 16, 2023, which was initially kept open till November 30, 2023. However, based on requests from SCC Members, the same was extended from time to time till December 30, 2023. On December 30, 2023, the SCC by vote of 86.68% of total voting rights approved the sale of the Corporate Debtor as a going concern by way of private sale to AAFL, subject to conducting challenge mechanism and final approval of this Tribunal.
- k. In the 14th SCC Meeting held on 02.01.2024, the Applicant apprised the SCC Members that as per the AAFL Final Offer, avoidance Transaction Applications (IA 6/2022, IA 45/2022, IA 51/2022) shall be pursued by the creditors. The Applicant shall on the advice of the SCC, provide in the application along with the final report to be filed under Regulation 45 of the Liquidation Process Regulations for the manner in which Avoidance Applications will be pursued after closure of liquidation process and the manner in which the proceeds, if any, from such proceedings shall be distributed. Further, the matters pertaining to Insurance Claim and

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Customs pending adjudication before this Hon'ble Tribunal and before Commissioner of Customs (Appeals), Kakinada shall not be withdrawn by AAFL without the prior written permission of majority of the creditors, AFFL will submit a quarterly report to the creditors providing an update on the aforesaid insurance claims and customs litigations.

- l. On January 04, 2024, the Applicant invited EOIs from the prospective bidders for the challenge mechanism by way of publication in the newspapers viz Business Standard being English Newspaper, All India Edition and Andhra Jyothi (AP+TS) being the regional newspaper along with uploading the requisite documents on the website of the company and the IBBI website in compliance with the Liquidation Process Regulations, inter alia, mentioning the last date for submission of EOIs as January 18, 2024, last date for EMD submission as January 25, 2024. The Applicant also stated in the publication that the challenge mechanism shall be conducted on January 29, 2024. The Applicant also issued the process memorandum containing in detail the manner in which challenge mechanism shall be conducted and terms and conditions regarding the same.
- m. The Applicant, however, did not receive any EOI from any other prospective bidder as on January 18, 2024 i.e., the last date for submitting EOI. Further, Clause 11.2 of the Process Memorandum, inter alia provides that, in the event if no other bidder shows interest for participation in the challenge mechanism, then the Anchor Bidder, i.e., AAFL shall be declared as the successful bidder and will have to acquire the Corporate Debtor as going concern, subject to approval of this Hon'ble Tribunal. Hence, in absence of any EOI by the Applicant from any prospective bidder and pursuant to Clause 11.2 of the process

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memorandum, the Applicant declare AAFL being the Anchor Bidder as the successful bidder in the challenge mechanism, vide e-mail dated January 19, 2024. Further, the applicant vide e-mail dated January 19, 2024 had inform AAFL about two (2) assets namely Aerial Platform 1 and Aerial Platform 2 sold to another successful bidder in the auction held on September 28, 2023. However, the successful bidder of the auction failed to pay the sale proceeds within stipulated time period of the Liquidation Process Regulations, leading to cancellation of sale. The price of the said failure auction was INR 13,86,000/- for each of the aforesaid two assets, that is totalling up to INR 27,72,000/-. Since the Corporate Debtor was sold as a going concern with the aforesaid two assets excluded, AAFL were informed about this development. In response thereto, vide e-mail dated January 22, 2024, AAFL offered a price of INR 27,74,000/-, which is more than the reserve price of the failed auction and requested the liquidator to include the aforesaid two assets amongst the other assets proposed to be transferred to AAFL pursuant to the sale of Corporate Debtor as a going concern and informed that AAFL's offer price shall stand suitably increase accordingly. After sale of Corporate Debtor as going concern there would be several operational difficulties and additional costs in continuing to hold these two assets after sale of corporate debtor as a going concern. Selling these two assets to AAFL along with sale as going concern would mitigate operational difficulties and maximize realizations in the liquidation process. Accordingly, vide e-mail dated January 23, 2024, and duly intimated the same to SCC in the 15th SCC meeting held on January 23, 2024. Thereafter, the Applicant, inter alia, requested AAFL to pay INR 2, 77,400/- i.e., 10% of INR 27, 74,000/- as Earnest Money Deposit towards these two assets latest by

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- January 25, 2024, whereas the balance 90% consideration amount out of INR 27, 74,000/- shall be paid by AAFL as per the same timelines as applicable to the payment of the balance consideration in respect of sale of as going concern.
- n. Thereafter, the Applicant issued the letter of intent on January 25, 2024 which was duly accepted and counter signed by AAFL and submitted both the soft copy and the hard copy of the letter of intent to the Applicant on January 30, 2024. AAFL vide e-mail dated January 29, 2024, had sought clarifications from the Applicant with respect to the process memorandum dated January 4, 2024, issued by the Applicant. In response thereto, the Applicant vide e-mail dated January 29, 2024, issued a clarification note to AAFL.
3. The successful bidder, the respondent, submitted a memo stating that the Liquidator had sent a Letter of Intent (LOI) to them via email on January 25, 2024. The respondent acknowledged receipt of the LOI by submitting a countersigned copy of the LOI to the Liquidator via email on January 30, 2024. Respondent agrees to follow the terms and conditions of the LOI and all of its enclosures, as well as any further explanations that the Liquidator may provide. And further submitted that the Respondent had no objections to allow the reliefs included in the Application.
4. The Applicant had filed written submissions along with the case laws.
5. In numerous rulings, the Hon'ble Apex Court has stated that "Liquidation" ought to be the final option only in cases when the Resolution Plan that has been provided is inadequate. This has been noted even in the event of a liquidation, the Corporate Debtor's company may be sold as a "going concern."

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Regulations 32A and 45(3) which were inserted in the Liquidation Process Regulations subsequent to '*Arcelormittal India Private Limited*' and '*Swiss Ribbons Private Limited & Anr*' specifically define the process for sale of 'Corporate Debtor' or its business as a going concern.

- a. The Hon'ble Supreme Court in '*M/s. Innoventive Industries Ltd.*' Vs. '*ICICI Bank and Anr.*', Civil Appeal Nos. 8337-8338 of 2017 has observed as follows:-

"From the viewpoint of creditors, a good realization can generally be obtained if the firm is sold as a going concern. Hence, when delays induce liquidation, there is value destruction. Further, even in liquidation, the realization is lower when there are delays. Hence, delays cause value destruction. Thus, achieving a high recovery rate is primarily about identifying and combating the sources of delay."

- b. The Hon'ble Supreme Court in *Arcelormittal India Private Limited vs. Satish K. Gupta and Ors (2019)* in paragraph 86, noted thus:- -

"86. Given the fact that both the NCLT and NCLAT are to decide matters arising under the Code as soon as possible, we cannot shut our eyes to the fact that a large volume of litigation has now to be handled by both aforesaid Tribunals. What happens in a case where the NCLT or the NCLAT decide a matter arising out of Section 31 of the Code beyond the time limit of 180 days or the extended time-limit of 270 days? Actus curiae neminem gravabit – the act of the court shall harm no man – is a maxim firmly rooted

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in our jurisprudence (see Jang Singh v. Brij Lal, SCR at p. 149 and A.R. Antulay v. R.S. Nayak, SCR at p. 71). It is also true that the time taken by a Tribunal should not set at naught the time-limits within which the corporate insolvency resolution process must take place. However, we cannot forget that the consequence of the chopper falling is corporate death. The only reasonable construction of the Code is the balance to be maintained between timely completion of the corporate insolvency resolution process, and the corporate debtor otherwise being put into liquidation. We must not forget that the corporate debtor consists of several employees and workmen whose daily bread is dependent on the outcome of the corporate insolvency resolution process. If there is a resolution applicant who can continue to run the corporate debtor as a going concern, every effort must be made to try and see that this is made possible. A reasonable and balance construction of this statute would therefore lead to the result that, where a resolution plan is upheld by the appellate authority, either by way of allowing or dismissing an appeal before it, the period of time taken in litigation ought to be excluded. This is not to say that the NCLT and NCLAT will be tardy in decision-making. This is only to say that in the event of the NCLT, or the NCLAT, or this Court taking time to decide an application beyond the period of 270 days, the time taken in legal proceedings to decide the matter cannot possibly be excluded, as otherwise a good resolution plan

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may have to be shelved, resulting in corporate death, and the consequent displacement of employees and workers.

- c. The Hon'ble Supreme Court in *Swiss Ribbons Private Limited & Anr vs Union of India*, in paras 27 & 28 has reiterated the same principle:-

"27. As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganization is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximization of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme – workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximize their investment. Timely resolution of a corporate debtor who is in the red, by an effective legal framework, would go a long way to support the development of credit markets. Since

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more investment can be made with funds that have come back into the economy, business then cases up, which leads, overall, to higher economic growth and development of the Indian economy. 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 up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern. (See Arcelor Mittal [Arcelor Mittal (India) (P) Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1] at para 83, fn 3).

28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the

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resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends."

6. Regulation 32-A(1) stipulates:-

"32A. Sale as a going concern. (1) Where the committee of creditors has recommended sale under clause (e) or (f) of regulation 32 or where the liquidator is of the opinion that sale under clause (e) or (f) of regulation 32 shall maximize the value of the corporate debtor, he shall endeavor to first sell under the said clauses."

Regulation 32-A (1) emphasizes the importance placed on the transfer of the 'Corporate Debtor' or its business on a going concern basis.

7. Regulation 45(3) of Liquidation Process Regulations and 39C of the CIRP Regulations read as follows:-

"45. Final report prior to dissolution.

(3) [The liquidator shall submit an application along with the final report and the compliance certificate in form H to the Adjudicating Authority for –

(a) Closure of the liquidation process of the corporate debtor where the corporate debtor is sold as a going concern; or

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(b) for the dissolution of the corporate debtor, in cases not covered under clause (a).]”

“39C. Assessment of sale as a going concern.

(1) While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may recommend that the liquidator may first explore sale of the corporate debtor as a going concern under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or sale of the business of the corporate debtor as a going concern under clause (f) thereof, if an order for liquidation is passed under section 33.

(2) Where the committee recommends sale as a going concern, it shall identify and group the assets and liabilities, which according to its commercial considerations, ought to be sold as a going concern under clause (e) or clause (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(3) The resolution professional shall submit the recommendation of the committee under sub regulations (1) and (2) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.”

8. Regulation 39C of CIRP Regulations read with Regulations 32, 32A and 45(3) of Liquidation Process Regulations, it is clear that under Regulation 39C, the CoC may recommend that the Liquidator may first explore sale of the ‘Corporate Debtor’ as a going concern under

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Clause (e) of Regulation 32 or Sale of the business of the 'Corporate Debtor' under Clause (f) of Regulation 32. 32A provides that if the Liquidator is of the opinion that sale under Clause (e) or (f) of Regulation 32 shall maximize the value of the 'Corporate Debtor', he shall endeavor to sell under the said Clauses 32-(A)-2 provides that for the purpose of sale under Sub-Regulation (1) the group of assets and liabilities of the 'Corporate Debtor', as identified by the CoC under Sub-Regulation (2) of Regulation 32C of the CIRP Regulations, shall be sold as a going concern.

9. In view of the above observations, we are of the considered view that the Liquidator has rightly followed the procedure specified in Regulation 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and this Tribunal allows the Application as prayed.

Accordingly IA (IBC)/56/2024 in TCP (IB)/28/7/AMR/2019 is allowed and disposed of.

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SANJAY PURI
MEMBER (TECHNICAL)

Sd/-

RAJEEV BHARADWAJ
MEMBER (JUDICIAL)

Chandu, LRA