

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**CHENNAI BENCH**  
**Company Appeal (AT) (CH) (Ins) No. 387 of 2023**  
**(IA No. 1176 of 2023)**

**IN THE MATTER OF:**

**Sanjeev Mitla**  
**Versus**

**...Appellant**

**Mr. Madhusudhan Rao Gonugunta & Anr.**  
**Present**

**...Respondent**

**For Appellant** : Mr. S. Rajagopalan, Advocate

**For Respondent** : Mr. Vivek Reddy, Senior Advocate

For Ms. Mumaneni Vazra Laxmi, For Caveator

**ORDER**

**(Virtual Mode)**

**Per: Justice Rakesh Kumar Jain (Oral)**

**29.11.2023:** This appeal is directed against the order dated 08.09.2023 by which an application filed by the appellant under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (for short 'Code') read with Rule 11 of NCLT Rules, 2016(rules) against the liquidator of the Corporate Debtor that the Appellant, being a shareholder, submitted a scheme of compromise of the Corporate Debtor under Section 230 of the Companies Act, 2013 (for short 'the act') read with Regulation 2B of IBBI (Liquidation Process) Regulations, 2016 (Regulation) but the same was rejected by the liquidator.

Shorn of unnecessary details, the appellant submitted a compromise scheme to the liquidator for restructuring of the debt of the corporate debtor which is stated to have been rejected by the Stakeholders Consultation Committee (SCC) by 97% vote because the scheme submitted by the Appellant was to the tune of Rs. 90 Crores in comparison to the reserve price of Rs. 155 Crores set by the SCC for auction of the Corporate Debtor as a going concern.

Counsel for the Appellant has submitted that the Respondent (liquidator) has violated Section 230 (1) as he did not present the scheme proposed by the Appellant before the SCC, therefore, the appellant could not persuade the SCC in respect of the scheme submitted. In this regard he has also relied upon a decision of the NCLAT rendered the case of 'Ramesh Kumar Chaudhary & Ors. vs. Anju Agarwal & Ors.' reported as (2022) 171 SCC Online 655.

On the other hand, Counsel for the Respondent has referred to paragraph 3 of the 5<sup>th</sup> SCC meeting which is reproduced as under:

**“3. To Discuss on the two compromise or arrangement schemes received from two stakeholders and apply for extension of the period if required;**

*The Liquidator circulated the two Compromise or Arrangement proposals received to all the SCC members and Liquidator informed that the as per the Regulation 2B of IBBI (Liquidation) Regulations, 2016, Compromise or arrangement proposal under Sec 230 of the Companies Act, 2013 should be completed within 90 days. The Liquidation commencement date is 18<sup>th</sup> April 2023 for the Corporate Debtor and the period completed by 16<sup>th</sup> July 2023 itself but both the applicants sent the proposal in email with CC to lenders on 13<sup>th</sup> July 2023 (86<sup>th</sup> Day only) without the supporting documents including no notarized affidavit under sec 29A. Mr. Arun Kumar Agarwal has sent few supporting documents on 24<sup>th</sup> July 2023 without notarized affidavit under sec 29A and another Applicant i.e Mr. Sanjeev Mitla has sent few supporting documents on 27<sup>th</sup> July 2023 @9.19 PM. Mr. Sanjeev Mitla has not submitted proposal and any original documents till date. Both the Applicants have not submitted the EMD of 15% by way of DD in the name Corporate Debtor (requested by the Liquidator) towards as per the Sub Regulation 3 of Regulation 2B of the INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (LIQUIDATION PROCESS) REGULATIONS, 2016 dated 25<sup>th</sup> July 2019 and also prove the real intention towards their proposals. Mr. Arun Kumar Agarwal and his wife presented before SCC members and briefed their proposal to all the SCC members and Mr. Arun Kumar Agarwal informed to all the SCC members that they are ready to offer consolidated total consideration of Rs.123 Crores (which*

*included some of the items which do not constitute the liquidation cost or share of FCs/OCs/W&E) and all SCC members noted the same. All the SCC lenders had separate deliberations on both the proposals, reasons for failure of OTS proposal given to the promoters and number of the years lost in recovery due to the failure of none payment of OTS proposal given during the CIR process, possibility of recovery in the public E auction, present increase of land prices in Telangana, Liquidation Value mentioned in the Liquidation Order, the possibility of payment of Rs.123 Crores where the same applicant already unable to pay even very lesser OTS amount of Rs.86 Crores, etc., and informed that they will communicate their decision on this agenda item by considering next agenda item and few SSC members requested for voting by email and requested to time till 05<sup>th</sup> Aug 2023 and Liquidator agreed for the same.*

*More than required Majority of the SCC members have accepted to fix the reserve price for Rs. 155 Crores and this Agenda item not considered and Liquidator rejected the above two proposals”.*

Counsel for the Respondent has then referred to paragraph 20 and 21 of the impugned order which are also reproduced as under:

*“20. About the case of Ramesh Kumar Choudhary & Ors. cited on behalf of the Applicant, Ld. Counsel firstly distinguished it on facts. He pointed out that in that case, value of the proposed compromise scheme was of Rs. 45.21 crores compared to the reserve price of Rs. 45 crores set by SCC, as seen from para 4 of that order. In the present case, he continued, that the compromise scheme proposed by the applicant is of only Rs. 90 crores in comparison to the reserve price of Rs. 155 crores set by the SCC for auction of the Corporate Debtor as a going concern. He then referred to para 27 of the order of Hon’ble NCLAT, where it was held that “...the Scheme under Section 230... ought to have consent of not less than 75% of the Secured Creditors, and an affidavit to that effect ought to accompany with the scheme” and stated that this deficiency alone rendered the compromise scheme proposed by the Applicant as a non-starter. He cited another judgment of Hon’ble NCLAT in the case of Harish Sharma to support his claim further.*

*21. We have given anxious consideration to the arguments put forth by both sides. In our considered opinion, the Applicant's prayer to grant ad-interim stay on the E-Auction is not warranted, as we find that his prayer to convene meeting of SCC members to take decision on the compromise scheme was already answered on 28<sup>th</sup> July 2023. In that meeting, the SCC not only considered but (as revealed from the minutes of that meeting) decidedly rejected the proposed compromise scheme offering only Rs. 90 crores against the outstanding debt of Rs. 469.84 crores and went in for auction of the corporate debtor as a going concern for the reserved price of Rs. 155 crores”.*

Counsel for the Respondent has also submitted that the order of liquidation dated 18.04.2023 was subject matter of an appeal before this Tribunal in CA (AT) (Ins) No. 109 of 2023 which was further taken up to the Hon'ble Supreme Court in Civil Appeal No. 5031 of 2023 in which the following order was passed:

*“We do not find any good grounds and reasons to interfere with the impugned judgment and hence, the appeal is dismissed.*

*However, we clarify that the impugned judgment/order and the dismissal of the present appeal would not come in the way of M/s Cantors Fitzgerald from applying and submitting Expression of Interest in terms of sale notice dated 06.08.2023.*

*Pending application(s), if any, shall stand disposed of”.*

It is thus submitted that already decision has been taken by the SCC by not less than 97% vote share that the proposal submitted by the appellant is not viable and has been rejected.

However, Counsel for the Appellant has submitted that though the proposal has been rejected by more than 75% vote share by the SCC but the fact remains that the proposal made by the Appellant was never put before the SCC in his presence. This fact is not denied by the Respondent after taking instructions from the liquidator.

In view thereof, we are of the considered opinion that it would be just an expedient if the proposed scheme propounded by the appellant is put before the SCC in his presence on which the SCC may take a decision.

After hearing the matter for some time, we put this question to the Counsel for the Respondent, who asked for a pass over in order to seek instructions from the liquidator and after taking the instructions he has submitted that the proposed scheme of the appellant may be put to the SCC on 01.12.2023 which shall be considered by the SCC on that day and take the decision accordingly. Counsel for the Appellant has not shown any averseness to this proposal made by the Counsel for the Respondent. As a result, thereof, while disposing of this appeal, we direct, as per the agreement between the parties, that the scheme propounded by the appellant, in terms of the Section 230 of the act, shall be presented before the SCC on 01.12.2023. the meeting shall be convened by the liquidator on 01.12.2023 by giving time, date and place to the parties concerned and in that meeting the scheme shall be considered by the SCC a decision shall be taken in accordance with law.

With these observations, the present appeal is hereby disposed of.

It is made clear that the order passed by us today shall not come in the way of auction which is fixed for 16.12.2023.

**[Justice Rakesh Kumar Jain]**  
**Member (Judicial)**

**[Shreesha Merla]**  
**Member (Technical)**

sr/rr/kr