

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
AT CHENNAI  
(APPELLATE JURISDICTION)**

**Company Appeal (AT) (CH) (Ins) No.302/2021**

**(IA Nos.639/2021, 641/2021, 640/2021, 97/2022, 340/2022,  
622/2022, 92/2022, 942/2022, 1052/2022 & 417/2023)**

**In the matter of:**

**M/s. Kineta Global Limited**

**In consortium with Power Mech Projects Limited**

**Rep. by Authorised Signatory & Asst. General Manger**

**Mr. P. Satyanarayana**

**4<sup>th</sup> Floor, Kineta Towers,**

**Plot No. 51 to 54, Journalist Colony,**

**Road No. 3, Banjara Hills,**

**Hyderabad – 500034.**

**... Appellant**

**In**

**V**

- 1. M/s. IDBI Bank Limited,  
Branch Office at 115,  
Anna Salai, Saidapet,  
Chennai – 600015.**
- 2. Bank of India  
Branch Office at:  
Chennai Mid Corporate Branch  
IV Floor, Tarapur Towers  
No. 826, Anna Salai,  
Chennai – 600002.**
- 3. Pridhvi Asset Reconstruction and Securitization  
Company Limited  
No. 1-55, Raja Prasadamu  
4<sup>th</sup> Floor, Wing 1, Majid Banda Road  
Kondapur,  
Hyderabad – 500001.**
- 4. Bank of Baroda,  
Stressed Asset Management Branch  
No. 45, Moor Street,  
IBAS Building, 4<sup>th</sup> Floor  
Chennai – 600001.**

Company Appeal (AT) (CH) (Ins) No.302/2021

5. **Indian Overseas Bank**  
**Branch Office at:**  
**Asset Recovery Management Branch**  
**No 762 Anna Salai,**  
**Chennai – 600002.**
6. **The District Cooperative Central Bank Ltd.**  
**Branch Office at:**  
**Panuganti Vari Street,**  
**R.R. Pet, Eluru,**  
**West Godavari District – 534002.**
7. **Mr S. Harikarthik**  
**Liquidator of**  
**M/s. The Jeypore Sugar Company Limited**  
**No. 3, A Block, Tamil Nadu Police Housing Quarters,**  
**Bharathi Avenue,**  
**2<sup>nd</sup> Street, Kottur,**  
**Chennai – 6000085.**
8. **M/s. Aaria Projects Limited**  
**Represented by Mr. C H Venkateswara Rao**  
**Flat No. 1-206, Divya Sakthi Complex Green Lands**  
**Ameerpet,**  
**Hyderabad – 500016.**
9. **M/s Synergy Holdings**  
**Rep. By Mr. Inuganti Murali Krishna**  
**1101, A Block, Quiescent heights,**  
**Raheja Mind Space, Madhapur,**  
**Hyderabad – 500081.** **...Respondents**

**Present :**

**For Appellant :** **Mr. P. Wilson, Senior Advocate**

**For Respondents :** **Mr. Arun Kathpalia, Senior Advocate For Mr.**  
**Varun Srinivasan, Advocate, For R1-R6**  
**Mr. J. Manivannan, Advocate, For R7 Mr. V.**  
**Venkata Sivakumar, (For Impleadment)**

## **Judgement**

## **Justice M. Venugopal**

### **Appellant's Submissions**

The Learned Sr. Counsel for the Appellant /Company submits that the 'Rayagada Property' was included in the 'Valuation Report' submitted during CIRP process and further that the valuation conducted during CIRP process include the 2<sup>nd</sup> valuation report on land and buildings and the '2<sup>nd</sup> valuation report', was on 'plant and machinery'.

2. According to the Appellant the ‘valuation report’, during ‘CIRP Process’, is mentioned as under in a tabular form:-

Valuation Report during CIRP Process	
29.05.2019	Land and building Valuation Report Submitted By Chandran (Pg. – 504,900)
30.05.2019	Land and Building Valuation Report by Sugumar (pg. 637)
18.04.2019	Plant & Machinery valuation by Jayaraman (Pg. 642)
	Plant & Machinery valuation by Santha Kumar (Pg. 643)

3. It is represented that the appointment of these ‘valuers’, was acknowledged in the ‘third CoC meeting’ (vide pg. 719 of Appellant’s Appeal Paper Book, para 3a) and slight modification with respect to ‘plant and machinery valuation’, was submitted by Santha Kumar was suggested by the

‘Committee of Creditors’, considering the closure of factories (vide para 3(b)(ii).

4. Added further, it is projected on the side of the Appellant, that during the ‘Fourth Committee of Creditors’, meeting, the ‘Resolution Professional’, had explained ‘issues’, pertaining to the ‘Rayagada Land’, and he was directed to secure a ‘legal opinion’ by the ‘Committee of Creditors’ .

5. It is the stand of the Appellant/Company that resting upon the aforesaid, legal opinion, was secured from Advocate Mr. Nrushing Nath Panda whereby, it was mentioned that the Land in question is in ‘OLR proceedings’ and

as such, it was 'not marketable' and it could not be disposed of or mortgaged.

6. The submission of the Appellant, is that in the 14<sup>th</sup> CoC meeting, the 'Committee of Creditors' checked upon the 'valuation' and in their 'wisdom', had directed the 'valuers' to make necessary corrections based on this Legal opinion. That apart, the 'Rayagada Property' value was brought down to 'nil', on the direction of 'Committee of Creditors' during 15<sup>th</sup> Committee of Creditors meeting and the same was accepted by the Committee of Creditors, which was acknowledged in the '17<sup>th</sup> CoC meeting'.

7. It is pointed out on behalf of the Appellant, that the 'Liquidator' had followed the direction of the 'Committee of Creditors' and based on the direction of the 'Committee of Creditors', the direction in regard to the 'value' of the 'Rayagada Property' was changed to 'nil' and that the 'Liquidation', was ordered on 29.05.2020. Also, that a 'revised valuation', was ordered, because more than one year was passed, since the 'earlier valuation report' and the after math of 'COVID 19', was also required to be considered. In reality, there will be a reduction around 20-30% in value of machineries was also acknowledged in the

‘15<sup>th</sup> Committee of Creditors meeting’. Indeed, the reason for revised valuation was mentioned by the ‘Liquidator’ through his letter dated 2.10.2020 and the methodology adopted and the impact of COVID was analysed in the Report.

8. The plea, put forward by the Appellant’s side, is that based on the ‘revised valuation’ was submitted by one Mr. Chandran for landline Building and Mr. Sharat Kumar for ‘Machineries’, and the ‘valuation’ had dropped around Rs. 100 crores/- compared to earlier one, and reasons were clearly explained again by Mr. Chandran through his letter.



9. The Land and Building Report furnished by Mr. Chandran dated 01.11.2020 is in pg. 644 of the Appeal Paper Book. In fact, the 'Liquidation Value' was mentioned as Rs. 166 crore and Mr. Santha Kumar had valued the 'plant and machinery' at Rs. 57.11 crore.

10. Apart from that, the second set of 'revised valuation' was secured and there was a delay in the 'process', because of prevailing COVID 19 restrictions during that period. In fact, the Land and Building report was given by Mr. Poovanan and in fact the valuation of plant and machinery was done by Mr. Karthikeyan of Veracity Associates.

11. The main contention advanced on behalf of the Appellant, is that the 'Rayagada Property', was included in the audited financial statement dated 31.03.2020 and the value of the said property in the valuation was changed to nil, based on the direction of the 'Committee of Creditors'.

12. Besides this, the property' was considered as 'Liquidation Estate' but valued as nil, based on legal opinion and the direction of the 'Committee of Creditors'. As such, the 'Adjudicating Authority/Tribunal' had mentioned that the 'Rayagada Assets', were not included in Liquidation Estate being

misconceived and the failure of appreciating of what is meant by the 'Liquidation Estate'.

13. The stand of the Appellant is, that the value of the 'Rayagada Property' was not changed, ever since the 'Liquidation' was initiated, as it was 'valued', nil during 'CIRP proceeding' itself and there are no documents to suggest that the 'Corporate Debtor' had 'Title' over the property and only, there are revenue records, which do not confer Title i.e. a valid title in law.

14. The Learned Counsel for the Appellant relies upon the judgement of the **Hon'ble Supreme Court in the matter of Tata**

## **Consultancy Services V Vishal Ghusulal**

**Jain**, 2022, 2 SCC 583 wherein it was observed and held that the rights in the realm of public law cannot be heard by the National Company Law Tribunal (NCLT) vide para 37.

15. The submission of the Learned Counsel for the Appellant is that the ingredients of Section 60(5) of the I&B Code, 2016 can be used only in cases of contracts and people directly involved in insolvency. In the instant case it was utilised for looking upon the title in ‘Rayagada Property’, being the subject matter of ‘dispute’, between the ‘Debtor’ and the ‘Orissa Government’, which

is an excess jurisdiction. In short, an endeavour is made to delay the whole process', and when the matter had reached final stages, the issue being brought, almost two years later for discussion.

16. According to the Appellant, the impugned order in IA /255/IB/2021 in CP/1307 (IB) 2018 passed by the Adjudicating Authority/Tribunal was a wrong one, wherein it was held by mentioning that Liquidator had not adopted the 'value' arrived during 'CIRP process' and ordered for 'fresh valuation', which was not in accordance with Regulation 35 of IBBI (Liquidation process) Regulations as

the two registered valuers must be appointed within 07 days of commencement of Litigation.

17. In fact, the Court had only pointed out ‘one set of valuation’, was followed and set aside the valuation conducted on 01.11.2020 and 30.09.2020 and ordered for fresh valuation.

18. Furthermore, the only connection between the Companies Act, 2013 and the ‘Liquidation Process Regulations’ introduced on 2016, confines to the Regulation 2B of Liquidation Process and Section 29A and Regulation 35(1)(f) of the I&B Code, 2016 deals with disqualifications’. All other process, is

covered under section 230 of the Companies Act, 2013 as it can be inferred from the decision in **Arunkumar Jagartram vs. Jindal steel power Ltd.** As a matter of fact in this case the Hon'ble Supreme Court had held that 'I&B' Code, 2016 will not apply to the proceedings under Section 230 of the Companies Act, 2013 (vide para 91, 92, 95 and 97.)

19. Proceeding further, the Learned Counsel for the Appellant adverts to Section 230(2)(v) of the Companies Act, 2016 which prescribes only a valuation by a 'registered

valuer’ and there is no requirement of ‘two valuers’ under the Companies Act, 2013.

The plea of the Appellant is that the Adjudicating Authority / Tribunal had failed to consider the scheme of compromise as per Section 230 of the Companies Act, 2013 and on behalf of the Appellant, a reference is made to the scheme of compromise’ as per Section 230 of the Companies Act, 2013 and specifically to the companies (Compromise, Arrangement and Amalgamation) Rules, 2016 particularly Rule 3(1), Rule 6(3)(v)(c) with explanation, and Rule 9. Also that the liquidator despite envisaged under Section



230 of the Companies Act, 2013, the 'Liquidator' also complied with the Regulation 35 of the I&B Code, 2016.

20. The contention of the Appellant is that in respect of 'Fresh valuation' Liquidator would have appointed valuers, within seven days of commencement of 'Liquidation Process'. In the instant case, according to the Appellant, the 'Liquidator' had adopted the valuation of CIRP Process as per 'Regulation 35(1)' of IBBI (Liquidation process) regulation and that the 'time' had passed and the impact of 'COVID' was to be considered a 'revised valuation' was obtained by him. In this connection, on behalf

of the Appellant a reference is made to Regulation 35 (2) which clearly mentions that when the valuation was not covered by regulation 35 (1) the Liquidator can order fresh valuation if he wants and this was explained in the decision in ***Amit Ahirrao vs Anagha Anasingharaju reported in 2023 SCC online NCLAT, 216*** (vide paragraph 15), wherein it was held that ‘where valuation was covered under Regulation 35 (1), the average of valuation arrived at by the ‘two valuers’, must be taken into account.

21. It is pointed out on behalf of the Appellant that there was a significant lapse of

time, as the 'First valuation', was conducted 15 months earlier, and hence, that was the reason or the 'revised valuation' being conducted. As a matter of fact, it was clearly mentioned in the decision ***Bhula ram V. Union of India* 2014 11 SCC 307 (vide paragraph 8)** wherein it was held that the valuer must take into account various aspect while valuing the Land/property.

22. The Learned Counsel for the Appellant, adverts to the decision in ***Miheer V. Mafatlal* 1997 1 SCC pg. 579**(vide Paragraph 29), whereby it was clarified that it is not the Tribunal job to go into valuation, as it needs

commercial wisdom, which can only be exercised by the committee of creditors under the court had given no reason or rejecting the valuation, ignoring the reasons for reduction given by the valuer.

23. The clear cut submission of the Appellant is that the Adjudicating Authority/ Tribunal had ordered for a relief, which was not even prayed for, as they had prayed to defer the negotiations, until the fresh valuation report, but they had ordered for invitation of application, from prospective Applicants, by ignoring the previous order of negotiation dated 12.02.2021 with Kineta

global and Aaria projects, where Kineta was chosen as 'H1 Bidders' and a plea, is taken on behalf of the Appellant that the 'Court', cannot grant a relief, which was not prayed for.

24. The other stand of the Appellant, is that in the decision in ***Miheer V. Mafatlal*** 1997 (1 SCC 579) (Vide para 29), wherein it was observed that the 'Court', cannot scrutinise and find out whether 'better scheme' could be adopted and it should be left to the 'shareholders'.

25. The Learned Counsel for the Appellant points out that in similar case of ***Jaypee Industries V. NBCC*** (vide Paragraphs 170,

171, 280), the Hon'ble Supreme Court had addressed all the infirmities and no fresh process was ordered.

26. **The pleas of R-1 to R-6**

The Learned Counsel for R-1 to R-6 submits that R-1 to R-6 are the major stakeholders of the Corporate Debtor 'in Liquidation' with a claim to an extent of Rs.571.50 crores due and recoverable from the liquidation process holding a total voting share of 98.68%.

27. The Learned Counsel for R-1 to R-6 points out that pursuant to the Corporate Debtor being order to be liquidated by the

Adjudicating Authority/Tribunal, the Respondent No. 7/Liquidator had called for an invitation of expression of interest for proposing a scheme for compromise or arrangement under Section 230 of the Companies Act, 2013 (Called and referred to as 'scheme') pursuant to which, the Appellant/M/s Kineta Global Ltd., was declared the H1 Bidder by the Liquidator/Respondent No. 7, as against the requirements of Section 230 of the Companies Act, 2013.

28. According to the Respondents Nos 1 to 6, the 7<sup>th</sup> Respondent/Liquidator, in the meanwhile had conducted a 'Fresh valuation

of the Assets’ of the ‘Corporate Debtor’ and for the reasons best known to him, had excluded a ‘key Asset of the Corporate Debtor’ in ‘Rayagada, Orissa State’, with a market value of over Rs. 1,000 Crores, as mentioned by the 7<sup>th</sup> Respondent/ Liquidator and had assigned it with a ‘Nil’ valuation. Also, that the Respondent No7/ Liquidator had not complied with the requirement of Regulation 35 of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (‘Liquidation Regulations’) while conducting the ‘valuation of the assets of the Corporate Debtor’.



29. It is represented on behalf of R-1 to 6 (Secured Creditor) that the 7<sup>th</sup> Respondent/Liquidator had filed an application in CA/816/CAA/2020 in CP/1307/IB/2018, which was opposed by the Secured Creditors/ Respondents, for a very reason of ‘viability’ and ‘feasibility’ of the ‘scheme’, when significant ‘issues’ of the ‘valuation of the property’ were in question.

30. The Learned Counsel for R-1 to 6 (Secured Creditor) points out that an I.A/255/IB/2021 in IA No. 71 (CHE)/2021 in IA/819/IB/2021 and IA 10/IB/2021 in CP No. 1307/IB/2018 primarily on the under

mentioned grounds, only, as against the Respondent No. 7/Liquidator.

(i) That the valuation report submitted by the Respondent No.7/Liquidator portrayed a drastic reduction in the liquidation value of the Corporate Debtor's assets, which was initially valued at Rs.332.52 Crores during the course of CIRP and subsequently valued at Rs.223.21 Crores, which is almost Rs. 100 Crores lesser than the previous valuation.

(ii) That there was absolutely no basis/explanation on which the said valuation had been arrived at and as to why there has been such a significant drop in such a short period of time. The Secured Creditors had also clearly communicated their stand, during the 3rd SCC held on 02.11.2020, that the re-valuation as conducted by the Respondent No. 7/Liquidator was not acceptable to them.

(iii) That additionally, the Respondent No.7/Liquidator had also shared these draft valuation report to the Potential Resolution Applicants, including the Appellant and the Respondent Nos. 8&9 herein, without even informing the stakeholders about the same. By doing so, it has thereby led to the potential Resolution Applicants quoting offers much below the old liquidation value of Rs.332.52 Crore, thereby severely undervaluing the assets of the CD, which ultimately goes against the principle of maximization of assets as envisaged by the Code.

(iv) That the manner in which the revised valuation, which was conducted by the registered valuers, namely, Mr. Shanthakumar and Mr.R.Chandran, who were appointed by the Respondent No.7/Liquidator on the Assets of the CD, was not in accordance with the procedure established under Regulation 35(3) of the Insolvency and Bankruptcy

Board of India (Liquidation Process) Regulations, 2016.

(v) That consequently, the Respondents sought for a direction to set aside the improper process adopted by the Respondent No. 7/Liquidator for valuation of the 'Assets of the Corporate Debtor', amongst other reliefs.

31. The Learned Counsel for R-1 to R-6 bring to the notice of this Tribunal, that IA/ 256/IB/2021 was filed by R-1 to R-6, seeking to intervene raised their objections in the Section 230 Application of the Companies Act, 2013, filed by the 7<sup>th</sup> Respondent/Liquidator in CA/861/2021 and these application were allowed on 17.11.2021 by the 'Adjudicating Authority/Tribunal' and in terms of Paragraph 46 of the order, directions were issued to

the 7<sup>th</sup> Respondent/Liquidator to carry out a 'Fresh valuation' and thereafter call for 'Fresh scheme', as per Section 230 of the Companies, Act, 2013.

32. It comes to be known that during a pendency of the instant Comp. App. (AT) (CH) (Ins.) No. 302 of 2022 the Corporate Debtor had filed WP (C) No. 4490 of 2015 before the 'Hon'ble Orissa High Court' and on 16.03.2022, an order was passed directing the concerned authority to compute the sum in respect of ceiling 'surplus lands', to an extent of Ac.506.690 decimal, as per Section 47 of the Orissa Land Reforms Act and Rules framed thereunder and make the payment.

33. As a matter of fact, the Respondent No.7/Liquidator, had addressed an email, to the answering Respondents on 16.03.2022, wherein it

was mentioned that the Corporate Debtor is entitled to “281 Acres (whose guideline value is Rs. 600 Crores with market value of more than Rs. 1000 Crores) (Sic)”.

34. It is projected on the side of the Respondent No. 1 to 6 that out of a total 784 Acres of Lands of the Corporate Debtor available at Rayagada, Orissa (i) 281 Acres (whose guideline value is Rs. 600 Crores with market value of more than Rs. 1000 Crores), as per the mail of the Respondent No.7/Liquidator dated 16.03.2022, has been made available at present and

(ii) that compensation for 506.690 acres, as per the order dated 16.03.2022 passed by the Hon’ble High Court of Orissa, should be computed and paid by

the concerned authority within a period 6 months from the date of the order.

35. In view of the above, the stand of R-1 to 6 (Secured Creditor) is validated and their findings and conclusions in terms of the impugned order dated 17.11.2021 is validated and findings and conclusion are so arrived at, as per the impugned order is correct and requires no interference in the hands of the this 'Tribunal' sitting in Appellate Jurisdiction.

36. According to the Respondent 1 to 6, the Respondent No. 7/Liquidator, had stated that he had complied with the requirements of Regulation 35 of the IBBI (Liquidation Process Regulations, 2016) considering that he had procured a 'Report' from a '2<sup>nd</sup> valuer', subsequently, during the

pendency of the ‘Applications’, filed by the answering Respondents but the procurement of the 2<sup>nd</sup> report by the Respondent No. 7/ Liquidator, subsequently, still does not demonstrate the compliance of the Regulations, for the under mentioned reasons.

(i) Regulation 35 of the Liquidation Regulations contemplates that the report be procured simultaneously from two independent registered valuers on the realizable value of the assets or business under clauses (a) to (f) of Regulation 32 of the Corporate Debtor. However, in the present case, as elaborated in detail in the pleadings, the Liquidator has procured only one report on the plant and machinery and another report on the land and building, which is in gross derogation of the procedure contemplated under the Regulations.



ii) Further, the said valuation done was without (including a 'Prime Asset of the Corporate Debtor', in Rayagada, Orissa State.

(iii) That additionally, the Respondent No.7/Liquidator had also shared these 'Draft Valuation Report' to the Potential 'Resolution Applicants', including the Appellant and Respondent Nos. 8 to 9 herein.

37. It is the submission of R- 1 to R-6 side, that the 'conclusion' arrived at Paragraph 40 of the impugned order by the 'Adjudicating Authority/Tribunal' that the 7<sup>th</sup> Respondent/Liquidator had not complied with the procedure as required under the Regulations.

38. In addition, there was a conflict as well as between the 'Two Reports', which were shared, in the initial report provided on the Land and Building, the valuer had assessed value of Rayagada lands to be Rs. 1087.90 crores. Later, based on the information furnished by the 7<sup>th</sup> respondent/ Liquidator and on the basis of opinion furnished by the 'Advocate', he arrived at a conclusion that the value of the said Lands in 'Rayagada' should be determined as 'Zero'. Consequently, the basis for arriving at the Zero valuation, was solely based on the opinion of the Learned Advocate alone, which is not viable under any 'scenario' and hence, was never approved by the 'Committee of Creditors/Stakeholders consultative Committee' as wrongly alleged by the 7<sup>th</sup> Respondent /Liquidator.

39. The Learned Counsel for R-1 to 6, refers to the decision in ***Periasamy Palani Gounder and Ors.***

***V. Radhakrishnan Dharmarajan, RP of Appu Hotels Ltd. and Ors. Company reported in MANU/NL/0118/2022***, whereby this ‘Tribunal’ had dealt with in detail, the importance of the process of valuation, including the process to be followed as per Regulations 35 and the same runs as under:

*“176. A valuation consisting of mere naked values without a detailed report is not a valid. It is a settled proposition that the Valuation exercise is conducted to facilitate the CoC decision-making process. Therefore, the existence of a valid and accurate valuation report is a sine qua non for the COC to exercise its commercial*

Company

*wisdom. A natural sequitur to the aforesaid would be that a detailed valuation report is necessary for the CoC to exercise its Commercial Wisdom objectively.”*

*“177. The Adjudicating Authority’s observation that a statutory provision regulating a matter of practice or procedure will generally be read as a directory and not mandatory is erroneous. Compliance with statutory requirements in regulating a matter of practice and procedure are mandatory. The Tribunal is a creature of statute, any by interpretation, it cannot dilute the statutory compliances.”*

40. The contention of the R-1 to 6 is that once the I&B Code, 2016 process is triggered, then ‘All

Acts' including the Companies Act, 2013 should harmoniously work along with the object and purpose of the I&B Code, 2016 and Regulations.

41. Also, that the valuation of the property at Rs. Zero, is against the ingredients of Section 36 (3) (e) of the I&B Code, 2016 and mere cursory glance of the Section 36 (3) (e) of the Code clearly points that the Assets subject to the determination of ownership, by the Court or Authority shall form part of the Liquidation Assets, which would thereby include the Lands of the 'Corporate Debtor in Rayagada'. But the order of the Hon'ble Orissa High Court dated 16.03.2022 passed in WP No. 4490 of 2015, unerringly points out that 'in terms of the order' passed, in the aforesaid 'writ petition' that compensation is to be provide as which was

confirmed, later by the liquidator/ Respondent No. 7 through its email 16.03.2022, which would imply that the 'valuation' ought to be conducted 'a fresh' and 'fresh schemes', to be called for. Indeed, as per the impugned order at Paragraph 33 it was clearly recorded that the 7<sup>th</sup> Respondent/ Liquidator, while submitting the Asset Memorandum on 21.09.2020, had not included the said Asset, as part of the 'Asset Memorandum' and had arrived at value of Rs. 217.52 crores.

42. The plea taken on behalf of R-1 to 6, is that the Liquidator/Respondent No. 7 had circulated the 'valuation reports' of the Corporate Debtor, which includes confidential information, to

the Respondent No. 7 to 9, who are the 'potential resolution applicants.

43. Furthermore, the 'Valuation reports' submitted by the Respondent No. 7/Liquidator, must be kept as an extremely confidential document and 'any leakage' of such information of the Report would lead to adverse consequences. Considering, the fact that it is also illegal and against the I&B Code, 2016 the Regulations, to circulate the valuation reports, without the permission of the Adjudicating Authority, because of this reason, the Adjudicating Authority/Tribunal through the impugned order at Paragraph 43 had rightly held and observed that the 'Liquidator' ought not to have shared the 'confidential information'.

44. In this connection, the a refence is made to Regulation 34 of the Insolvency and Bankruptcy Board of India (Liquidator Process) Regulations 2016, and as per Regulation 34 (4), the 7<sup>th</sup> Respondent/ Liquidator shall file the 'Asset Memorandum' along with the preliminary report to the 'Adjudicating Authority'. Regulation 34 (5) mandates that the 'Asset Memorandum' shall not be accessible to any person during the course of Liquidation, unless permitted by the Adjudicating Authority. Regulation 34 (2) (a) clearly states that the asset memorandum would include the value of the asset as arrived at in accordance with Regulation 35. Consequently, the Respondent No. 7/ Liquidator by sharing the 'Reports' with the



potential resolution Applicants, has acted in disregard to the above Regulation.

45. It is contended that when the aforesaid provisions are read along with Regulation 21 of the Insolvency and Bankruptcy Board of India, (Insolvency Professional) Regulations, 2016, it is quite clear that an 'Insolvency Professional' must ensure that 'Confidentiality' of the 'information' relating to the Insolvency Resolution Process, Liquidation or Bankruptcy process is maintained at all times.

46. In the instant case, the 7<sup>th</sup> Respondent/ Liquidator had acted in violation and against the interest of the 'Corporate Debtor' and stakeholders was dealt with in the 'impugned order' as well as in the 'Reply of the Respondents'.

47. The Learned Counsel for R-1 to 6 cites the decision of the Hon'ble Supreme Court in *The Karad Urban Cooperative Bank Ltd. V. Swapnil Bhingardevay and Ors.* reported in MANU/SC/0672/2020 wherein at paragraph 19 & 38 it is observed as held as under:

*“19. It is true that in the last paragraph of the impugned order, namely paragraph 14, the Appellate Tribunal holds that the CIRP suffered from material irregularities and the Resolution Plan approved suffers from feasibility and viability. But then the operative portion of the impugned order does not take the findings on other issues to their logical end. For instance, the Tribunal holds that the advertisement inviting Expression of Interest itself was defective and that there was breach of confidentiality in as much as the liquidation value appears to have been leaked out. These findings should have taken the Appellate*

*Tribunal to the point of setting aside the entire process and directing the Resolution Professional to start the process all over again from the stage of issue of a fresh advertisement. The NCLAT did not do so. In the operative portion, NCLAT merely remanded the matter back to the Adjudicating Authority with a direction to send back the Resolution Plan to the Committee of Creditors to resubmit the plan after taking into consideration the law laid down by this Court.*

*38. ....The question of breach of confidentiality and leakage of confidential information can easily be tested on the touchstone of the benefit that accrued to the party who got the information. In the case on hand, no benefit accrued to the SRA.”*

48. The Learned Counsel for R-1 to 6 refers to the judgement of this Tribunal in the matter of Bank of Maharashtra & Ors. V. Videocon Industries Ltd. & Ors. (vide Comp. App. (AT)(Ins.)

No. 503, 505, 529, 545 and 650 of 2021) reported in MANU/NL/0010/2022 wherein at paragraph 43 it is observed and held as under:-

*....9.... As per the CIRP Regulations the Liquidation Value and Fair Market Value is kept as confidential and informed to the CoC Members only at the time of finalizing the resolution plan.....Therefore, even if the confidentiality clause is in upon the confidentiality clause being in real time use therefore, we request the IBBI to examine this issue in depth so to ensure the confidentiality clause is followed unscrupulously, without any compromise in letter and spirit by all the concerned parties, entities connected in the CIRP...”(Sic.)*

49. The Learned Counsel for R-1 to 6 adverts to the decision in Periasamy Palani Gounder and

Ors. Vs. Radhakrishnan Dharmarajan, RP of Appu Hotels Limited and Ors. MANU/NL/0118/2022 wherein it is observed as under:-

*“77... A. Objections about Valuation of the Corporate Debtor (h)...”Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016.*

*35. Fair value and Liquidation value ... (3) The Resolution professional and registered valuers shall maintain confidentiality of the fair value and the liquidation value.....*

*175. Further, Adjudicating Authority observation that Regulation 35 of the IBBI (IRPCP) Regulations 2016 contemplates sharing of only fair value and liquidation value figures on obtaining confidentiality undertaking from the members of the CoC is*

*incorrect. Finding that since the Promoter is not a member of the CoC, the values were shared with the Promoter and that there are not requirements under the law for the RP to share the valuation report is also erroneous.” (Sic.)*

50. According to the Learned Counsel for R-1 to 6 that the ‘violation of the confidentiality’ by circulating the ‘Liquidation Reports’, had compromised the ‘sanctity of the process’ and further, if the ‘impugned order’ passed by the Adjudicating Authority / Tribunal is not affirmed by this Tribunal, then the Appellant, being the ‘H1’ bidder and who had offered Rs. 207 crores/- as its ‘bid’ in comparison, the ‘Asset valuation’ which is worth more than Rs. 1000 crores, as mentioned by the Liquidator / 7<sup>th</sup> Respondent, will be against the

object of the Code, which is to ensure that maximisation of the value of 'Assets of the Corporate Debtor' is achieved.

51. The Learned Counsel for R-1 to 6 refers to the order passed by the Hon'ble High Court of Orissa in WP (C) No. 4490/2015 wherein the order was passed that the Corporate Debtor' has a right to compensation, over the ceiling surplus of lands at 'Rayagada Property' to an extent of 506.690 acres.

52. According to the Learned Counsel for R-1 to 6 side, the relevant portion of the order passed by the Hon'ble High Court of Orissa in WP (C) No. 4490/2015 runs as under:-

*“5.....The Petitioner -Company is entitled to the amount in respect of ceiling surplus land to an extent of Ac. 506.690 decimal.*

*7. Taking into consideration the rival contentions of the parties, this Court is of the considered opinion that since ceiling surplus land has already been determined, immediate steps should be taken by the authorities under the Act to compute the amount in respect of ceiling surplus land to an extent of Act. 506.690 decimal in terms of Section 47 of the Act and Rules framed thereunder and make the payment at an early date, if not paid in the meantime.*

*8. The writ petition is therefore disposed of without interfering with the impugned orders under Annexures -7, 8 and 9 directing the authorities*



*under the Act to compute the amount under Section 47 of the Act and Rules framed thereunder, as expeditiously as possible, preferably within a period of six months from today, if not already done and payment shall be made by that dated to the person(s) authorized in that behalf.’(Sic.)*

53. The Learned Counsel for R-1 to 6 points out that the Liquidator / 7<sup>th</sup> Respondent in its e.mail on 16.03.2022 addressed to the R1 to R6 had mentioned that the ‘Corporate Debtor’ is entitled to “281 Acres (*whose guideline value is Rs. 600 Crores with market value of more than Rs. 1000 Crores*)(sic.)”.

54. The Learned Counsel for R-1 to 6, points out that in view of the above, ‘Assets of the Corporate Debtor’ have to be ‘revalued’ in

accordance with Regulation 35 of the Liquidation Process Regulations by the Liquidator / 7<sup>th</sup> Respondent, without any further delay. Apart from that, the valuers, who are to be appointed have to be of international standard, as per Regulation 35 and Rule 8 of the Companies (Regd. Valuers and Valuation) Rules, 2017, has held by this Tribunal in the decision in ***Periasamy Palani Gounder and Ors. V Radhakrishnan Dharmarajan, RP of Apu Hotels Ltd. & Ors. Company MANU/NL/0118/2022.***

55. The Learned Counsel for R-1 to 6, contends that because of the change in circumstances of the case, it is only in the interest of justice and for the benefit of all the 'stakeholders' and the 'Corporate Debtor' itself, a 'fresh valuation'

be conducted and that, the Section 230 of the Companies Act 2013 process be conducted 'afresh'.

56. It is projected on the side of the R1 to R6 that as per Section 230 (2) of the Companies Act, 2013, there is a requirement for a 'mandatory approval of the Creditors' with the voting share of more than 75%, for the scheme to be an operational one and brought to force, in addition to the other conditions being fulfilled.

57. According to R1 to R6, the 7<sup>th</sup> Respondent / Liquidator had not taken the 'Approval of the Secured Creditors', to bring to the effect of the ingredients of Section 230 Scheme under the Companies Act, 2013. However, the said 'scheme' was thrust to be accepted by R1 to R6, without

heeding to the genuine concerns of the Respondents.

58. The Learned Counsel for R-1 to 6 places reliance upon the decision of this Tribunal in ***Ramesh Kumar Chaudhary & Ors. V. Anu Agarwal & Ors., (vide Company Appeal (AT)(Ins.) No. 957 of 2021)***, for the proposition that the Section 230(2) Procedure under the Companies Act, 2013 should be complied with, provided it is not in derogation of any other law, including the I&B Code, 2016.

59. The Learned Counsel for R-1 to 6 points out that the object of the I&B Code, 2016 is for the maximisation of the value of the Assets of the Corporate Debtor, which is paramount and that all steps are to be taken to revive the Company as per

decisions in **Maharashtra Seamless Limited V. Padmanabhan Venkatesh and Others (Civil Appeal No. 4242 of 2019, 2020 SCC Online SC 67; Binani Industries Ltd. V. Bank of Baroda & Another (CA (AT)(Ins.) 82/2018 & Others; Lal Mohammad and Ors. Vs. SU KAM Power System Ltd. and Ors. (29.04.2019 – NCLAT) : MANU/NL/0177/2019; K Kuppusamy V. State Bank of India and Ors. (08.08.2019) – NCLAT : MANU/NL/0365/2019; Kshitiz Gupta V. Asset Reconstruction Company (India) Limited and Ors. (02.12.2019 – NCLAT) : MANU/NL/0591; R.Vijay Kumar and Ors. vs. Kasi Vishwanathan and Ors. (05.04.2019 – NCLAT) : MANU/NL/0128/2019.”**

60. The Learned Counsel for R-1 to 6 emphatically points out that the instant Appeal does not hold water, as the 'Rayagada Property' has to be made part of the 'Asset Memorandum' and a 'fresh value of the assets of the Corporate Debtor', has to be made in terms of the procedure, prescribed by law, for the reasons of 'maximisation of the value of the assets of the Corporate Debtor'. As such, it is the plea of the Appellant that the 'Bid submitted by the Appellant, remains as an otiose one and, therefore, only after a fresh valuation process is conducted, then the Section 230 process under the Companies

Act, 2013 can be started afresh and placed for an approval before the 'stakeholders committee'.

61. Also it is pointed out on behalf of R1 to R6 that the 7<sup>th</sup> Respondent / Liquidator was specifically made clear by the answering Respondent that a legal opinion, only from the Hon'ble 'Rtd. Judge or a Sr. Advocate' specialising in the 'Land Reforms' Laws of Orissa State. can be taken, as seen in the 4<sup>th</sup> Committee of Creditors 'Minutes', taking into account of the seriousness of the 'issues', involved.

62. The Learned Counsel for R-1 to 6 points out that Section 230 of the Companies Act, 2013 'scheme' ought to be read in consonance with the procedures prescribed under the I&B Code, 2016 and if, there is a contradiction, between the I&B Code, 2016 and Section 230 scheme under the Companies 2013 an harmonious interpretation needs to be reported to further the object of the I&B, Code, 2016. In fact, the stance of the Appellant that the I&B Code, 2016 and Regulations ought to be given a go by, and must yield to the ingredients of Section 230 of the Companies Act, 2013 is a mis-conceived one.

63. In the 'Reply' filed by the 1<sup>st</sup> Respondent /Bank (for itself and on behalf of R2 to R6 in respect of the instant) Appeal it is made mention of



that the R1 to R6 are the ‘major stakeholders’ of the Corporate Debtor in Liquidation, with a claim to the tune of 571.50 crores dues and recoverable from the ‘Liquidation process’ and where ‘members of the Committee of Creditors of the Corporate Debtor during the ‘CIRP process’, holding a total voting share of 98.68%.

64. According to the R1 to R6, the subject, ‘Applications’ along with other pending ‘Applications’ in the subject CP 1307/2020, including the Application of the liquidator / 7<sup>th</sup> Respondent, for proposing the ‘scheme’ under Section 230 application (under the Companies Act, 2013) viz. CA 816 of 2021 was listed for ‘Hearing’, on numerous occasions, and all the interested parties, including that of the Appellant, who was

represented by the Counsel was present and at no point of time, chose to object to the Application filed by the Respondents and finally, the 'impugned order' came to be passed by allowing the Applications.

65. The Learned Counsel for R-1 to 6 points out that when the 'valuation' itself, is 'fundamentally flawed', then, the reasons for the 'delay in valuation' will be an 'irrelevant one' and it will not in any way overcome the 'wrongful actions of the Liquidator'.

66. The Learned Counsel for R-1 to 6, contends that the 'impugned order' at paragraph 33 had clearly recorded that the 'Asset Memorandum' furnished by the 'Liquidator', on 21.09.2020 had not included the property of the

‘Corporate Debtor’ in ‘Raygada’ and that he had arrived at a ‘realisable value of Rs. 217.52 crores’. However, the ‘Liquidator’ before the ‘Adjudicating Authority’ took a contra stand that the ‘Assets in Raygada’ do form part of the ‘Asset Memorandum’. As such, the Adjudicating Authority/Tribunal had rightly concluded that the said property, which was excluded by the Liquidator due to Rs. zero valuation ascribed, is to be included as part of the ‘Asset Memorandum/Liquidator Estate’.

67. The Learned Counsel for R-1 to 6 proceeds to point out that in the ‘initial report’ provided, on the Land and Building, the ‘valuer’ had assessed the value of the Raygada Lands to be Rs. 1087.98 crores. Thereafter, and only based on the information furnished by the ‘Liquidator’ and basis

of the opinion given by the 'Advocate', he came to the conclusion that the value of the said Lands in 'Raygada' ought to be determined as 'zero'.

### **The 7<sup>th</sup> Respondent / Liquidator's contentions**

68. According to the 7<sup>th</sup> Respondent / Liquidator the scheme proponent has no vested right to be necessarily declared or considered as a 'scheme proponent'. Further, a 'bidder' has no vested rights in the 'process', merely by taking part and indeed, in the decision of the Hon'ble Supreme Court Arcelor Mittal (India)(P) Ltd. V. Satish Kumar Gupta, reported in 2019 2 SCC at pg. 1 it was observed that a Resolution Applicant has no vested right that is 'Resolution Plan' be considered and also that 'there is no vested right' or 'fundamental

right’ in the ‘Resolution Applicant’ to have its ‘Resolution Plan’ approved.

69. It is represented on behalf of the 7<sup>th</sup> Respondent / Liquidator that the ‘Liquidator’ in terms of the I&B Code, 2016 and as per the terms and conditions of the invitation documents is to examine the ‘schemes’ furnished by the ‘numerous proponents’ in all respects before submitting them to the ‘Stakeholders Consultation Committee’ and confirm that the scheme does not contravene any of the provisions of the ‘law’ for the time being in force including Section 29A of the I&B Code, 2016.

70. It is the stand of the 7<sup>th</sup> Respondent / Liquidator that the ‘Liquidator’ is not empowered to decide the ‘feasibility’ and ‘viability of the scheme’ and declare someone as an ‘H1 proponent’, without

the concurrence of 'stakeholders consultative committee'.

71. The plea of the 7<sup>th</sup> Respondent / Liquidator is that the instant Appeal proceedings, are an 'abuse of process of law' and are only an arm-twisting practice, to consider the Appellant's proposal alone.

72. The stand of the 7<sup>th</sup> Respondent / Liquidator is that the 'erstwhile Liquidator' had completely ignored the views expressed by the 'stakeholders consultative committee/Secured Lenders'. Also, that the erstwhile Liquidator had illegally classified the Appellant as an H1 proponent, without the concurrence of SCC/ Secured Lenders and he moved an application before the 'Adjudicating Authority / Tribunal' for

an appropriate direction to consider the alleged scheme in violation of the process document.

### **8<sup>th</sup> Respondent's contentions**

73. According to the 8<sup>th</sup> Respondent it made a payment of Rs. one lakh on 24.07.2020 and submitted its “Expression of Interest” and the 1<sup>st</sup> Respondent/Bank acknowledged the receipt of payment on 30.07.2020. Also that the 1<sup>st</sup> Respondent/Bank advanced the deadline to submit the ‘scheme proposal’ from 25.09.2020 to 15.08.2020. That apart, the 1<sup>st</sup> Respondent/Bank, also advanced the time line for payment of earnest money deposit of Rs.2 crores from 25.09.2020 to 15.08.2020. Moreover the 1<sup>st</sup> Respondent had submitted the ‘Information Memorandum’, valuation Reports, and the provisional financial

statement for the year ended 31.03.2008 by email dated 01.08.2020. On 03.08.2020, the answering respondent was eligible and was shortlisted for submitting 'scheme proposal'.

74. The Learned counsel for the 8<sup>th</sup> Respondent submits that due to an increase number of 'Covid cases' in August, 2020 and the 'Lock downs', the 8<sup>th</sup> Respondent could not submit the 'scheme proposal' together with EMD of Rs.2 crores in time to the 1<sup>st</sup> Respondent. Furthermore, the 8<sup>th</sup> Respondent brought to the notice of the 1<sup>st</sup> Respondent the difficulties faced by it in mobilising the funds and had prayed for more time, to make the payment. A "Letter of Request" was addressed by the 8<sup>th</sup> Respondent to the 1<sup>st</sup> Respondent/IDBI Bank, the 'Lead Banker' had informed the 8<sup>th</sup>



Respondent that the Liquidation process was going on and the 8<sup>th</sup> Respondent can get in touch with the 1<sup>st</sup> Respondent/Bank, to participate in the bidding process.

75. It is represented on behalf of the 8<sup>th</sup> Respondent that an email dated 6.10.2020 was issued by the 8<sup>th</sup> Respondent, outlining its 'intent' to maximise the value of the corporate debtor and to bring in terms, higher than the 'Liquidation Value' of the corporate debtor. In fact, the 8<sup>th</sup> Respondent's request for further time to bring in funds and to participate in the 'Bidding process' was turned down by the Liquidator on 7.10.2020 and 8<sup>th</sup> Respondent was not permitted to participate in the 'Bidding process'.

76. It is the version of the 8<sup>th</sup> Respondent that it sent its “Scheme Proposal” to the ‘Liquidator’ on 12.10.2020 and expressed its intent to deposit the ‘earnest money deposit’ and had prayed for inclusion of it as an Eligible Bidder but the 1<sup>st</sup> Respondent/Bank had refused to entertain the application of the 8<sup>th</sup> Respondent. Moreover, the 8<sup>th</sup> Respondent was ready and willing to deposit a sum of Rs.2 crores as EMD and submitted “Scheme Proposal” for the resolution of the corporate debtor but the Liquidator had not permitted the 8<sup>th</sup> Respondent and the Learned ‘Adjudicating Authority’ had permitted the 8<sup>th</sup> Respondent to deposit a sum of EMD of Rs. two crores which was deposited by it.

77. The stance of the 8<sup>th</sup> Respondent is that the ‘Adjudicating Authority/Tribunal’ had permitted the liquidator through an order dated 12.02.2021 to begin fresh negotiations with prospective bidder namely the 8<sup>th</sup> Respondent and the Appellant. Indeed, the ‘Adjudicating Authority/Tribunal’ had directed Synergy Holdings to satisfy the Liquidator about the genuineness of the Bank guarantee before the Liquidator can even consider the scheme proposal of the said prospective bidder.

78. According to the 8<sup>th</sup> Respondent, the proposed scheme of it was not placed by the Liquidator for the consideration by the ‘Stakeholder Committee’. In the meanwhile, R2 to R7 before considering the scheme filed an IA 255/IB/2021 among other things, seeking a direction to the 1<sup>st</sup>

Respondent/Bank to take steps, to include the property at Rayagada, Orissa and update the Asset Memorandum, as per Regulation 34 of the IBBI(Liquidation Process) Regulations, 2016.

79. According to the 8<sup>th</sup> Respondent, the Liquidator had shortlisted the candidate, who are prospective bidder for the purpose of submitting the proposed scheme and the 8<sup>th</sup> Respondent is one of them. The 8<sup>th</sup> Respondent continues to remain as an interested in the Corporate Debtor and its Assets. In fact the Liquidator during the pendency of Appeal, had disqualified the 8<sup>th</sup> Respondent by citing Section 29A of the Code. The Adjudicating Authority by an order dated 12.02.2021 had directed the Liquidator to conduct fresh negotiations between R2 to R7 and R8.

80. The Learned Counsel for the 8<sup>th</sup> Respondent brings it to the notice of this Tribunal that it has assailed the disqualification made the by liquidator in IA 120/2021 and the same was 'Heard' and Reserved for orders by the 'Adjudicating Authority/Tribunal' through an order dated 22.03.2022.

81. The contention of the 8<sup>th</sup> Respondent is that the instant Company Appeal (AT)(CH)(Ins) No.302/2021 filed by the Appeal/Prospective Bidder is maintainable and the impugned order does not affect the rights of the Appellant in any manner. Further the Appellant who has not made an entry to the 'doors of resolution', cannot be an 'Aggrieved', in any manner by the impugned order, which directs the inclusion of Assets, in 'Asset

Memorandum’ and Valuation of Assets of Corporate Debtor.

82. Apart from the above it is submitted on behalf of the 8<sup>th</sup> Respondent that the Appellant is merely ‘Bidding’ for the corporate debtor and further, it is not a stakeholder who can question the ‘issues’ concerned.

83. According to the 8<sup>th</sup> Respondent, the Appellant suffers from disqualification under Section 29A of the Code and Mr. Bala Showry, MD of the Appellant company was disqualified as per Section 164(2) of the Companies Act, 2013, mentioning that he is disqualified for a period from 01.11.2016 to 31.11.2021 and despite the same, the Appellant, is endeavouring to ‘Bid’ for this company, long before completion of this period.

84. The Learned Counsel for the 8<sup>th</sup> Respondent, points out that in regard to the 'Fraud' committed in the Appellant's company an arrest memo dated 18.11.2020 was issued by the Directorate General of GST Intelligence, Hyderabad Zonal Unit against the General Manager of the Appellant's company, for having colluded with the Managing Director of Appellant/Company, in hatching a 'Conspiracy' to fraudulent avail, utilize and pass on irregular Input Tax Credit and for indulging in fictitious transactions without actual supplies, with an intent to 'defraud' 'Government Exchequer'.

85. According to the 8<sup>th</sup> Respondent, the 'Liquidator' cannot take an 'Adversarial view', in such matters, as the interest of the 'Corporate Debtor' and the 'maximisation' of value of corporate

debtor is paramount. There are no 'counter claims' disputing the inclusion of Rayagada property in the Liquidation Estate.

86. The Learned counsel for 8<sup>th</sup> Respondent points out that the 8<sup>th</sup> Respondent is interested in transparent process of bidding and maximisation of value of assets of corporate debtor. The valuation exercise is to be undertaken, in respect of the assets of the corporate debtor, so as to enable the 'stakeholders' to have the benefit of 'liquidation value' which will act as a guide to 'Stakeholders' in taking a decision on the proposed scheme, to be submitted by the bidder.

87. The Learned counsel for 8<sup>th</sup> Respondent prays for an opportunity being granted to 8<sup>th</sup> Respondent by issuance of directions to the



Liquidator, to participate in the Bid, with a view to enable the 8<sup>th</sup> Respondent to submit scheme in respect of the assets of the corporate debtor. Also that the liquidator is in possession of the EMD of the 8<sup>th</sup> Respondent and hence the 8<sup>th</sup> Respondent, may be permitted to submit its proposal. In any event, the instant Appeal, preferred by the Appellant is 'not maintainable in Law and on Facts'. In other respects, the 8<sup>th</sup> Respondent adopts the arguments of Learned counsel for R2 to R6.

### **Appraisal**

88. Before the Adjudicating Authority / NCLT, Chennai Bench the Petitioners / IDBI Bank Ltd. and 5 others had projected an IA 255/IB/2021 in IA 71/2021 in IA No. 819/IB/2020 and IA

10/IB/2021 in CP/1307/IB/2018 (under Section 60(5) of the I&B Code, Rule 11 of NCLT Rules, 2016) and sought for the undermentioned reliefs:-

(i) To direct the 1<sup>st</sup> Respondent/Liquidator to take necessary steps and include, as part of the Liquidation Estate of the Corporate Debtor, the property/assets of the Corporate Debtor situated at Rayagada, Orissa/State and accordingly update the Asset Memorandum as per Regulation 34 of the IBBI (Liquidation Process) Regulations, 2016;

(ii) Set aside the valuation conducted on 30.09.2020 & 01.11.2020, it being notion compliance with Regulation 35 of the IBBI (Liquidation Process) Regulations, 2016;

(iii) In interest of maximising the value of the assets of the Corporate Debtor, to defer the negotiations with Respondent Nos. 2 and 3, or Respondent No. 4, if found eligible as ordered by this Hon'ble Tribunal vide order dated 12.02.2021 in IA No. 71 of 2021 in IA No. 819/IB/2020 & IA/10/2021 in CP/1307/IB/2018, until the compliance of the relief as prayed for above under prayer (a) by the Respondent No. 1/Liquidator and the relief granted by this Hon'ble Tribunal under prayer b).

(iv) Or in the alternate to prayer c), requirement of the Applicants/Secured Creditors to complete the negotiations and submit the final decision as prayed for by the 1<sup>st</sup> Respondent / Liquidator in prayer (iv) of IA No. 71 of 2021 in IA NO.

819/IB/2020 & IA/10/IB/2021 in CP/1307/IB/2018, until the compliance of the relief as prayed for above under prayer a) by the Respondent No. 1/Liquidator and the relief granted by this Hon'ble Tribunal under prayer b).

89. It is evident from the Petitioners' IA 255/2021 in IA No. 71 of 2021 in IA No. 819/IB/2020 & IA/10/IB/2021 in CP/1307/IB/2018 that the Petitioners are the major stakeholders of the Corporate Debtor with a claim to an extent of 567.59 crore due and recoverable from the liquidation process, as compared to the total outstanding debts of the Corporate Debtor viz. Rs. 567.59 crore and were members of the Committee of Creditors of the

Corporate Debtor during the CIRP process, holding a total voting share of 98.68%.

90. As a matter of fact, the liquidation of the Corporate Debtor was ordered by the Adjudicating Authority/NCLT, Chennai Bench on 29.05.2020 and the stakeholders consultation committee was constituted and secured creditors came to conduct the joint lender meeting from 21.09.2020.

91. In fact, the 1<sup>st</sup> Respondent / Liquidator called for the invitation, for proposing a scheme for compromise or arrangement as per section 230 of the Companies Act, 2013, to submit the Resolution Plans to the Liquidator on or before 25.08.2020. A revised valuation report was sought for by the 1<sup>st</sup> Respondent / Liquidator, with a view to reflect the

financial position of the Corporate Debtor before the Committee of Creditors which was deliberated before the 1<sup>st</sup> meeting that took place on 26.08.2020. Before this, on 03.07.2020, an expression of interest was invited by the 1<sup>st</sup> Respondent / Liquidator from the interested Applicants to submit schemes of arrangement on the basis of the liquidation value arrived at by the revised valuation report for its revival. Later there were 9 Applicants who submitted a scheme by making a non-refundable deposit of a sum of Rs. 1,00,000/- as application fee.

92. In the second COC meeting, the four Applicants out of the nine who submitted their proposal scheme made their presentation, on their

proposal before the stakeholders and they were subsequently asked by the stakeholders, to revise their respective schemes. Indeed, the liquidator filed CA 816/CAA/2020 in CP/1307/IB/2018 to which all the secured creditors had objected due to infirmities in the proposed application, which were brought to the attention of the liquidator by way of several e-mails.

93. When the aforesaid application was pending before the Adjudicating Authority/Tribunal, interalia applications were filed by the second and third Respondent, the 1<sup>st</sup> Respondent /Liquidator had filed an IA No. 71(CHE)/2021 in IA/819/IB/2021 & IA 101/IB/2021 in CP/1307/IB/2018 praying that

Tribunal may be pleased to dismiss the application IA/10/IB/2021 filed by the 4<sup>th</sup> Respondent, on account of submitting fraudulent bank guarantee which was also admitted by him, further confirmed by the 6<sup>th</sup> Respondent that BG was not issued by them and the same was recorded in the minutes of the 4<sup>th</sup> SCC meeting, that took place on 02.02.2021 and as per the Letter IDBI/T/JSCL/JLM/2020-21/02-01 of the 1<sup>st</sup> Respondent dated 02.02.2021 and for other reliefs.

94. According to the petitioners in IA 255/IB/2021 in CP/1307/IB/2018, the manner in which the revised valuation which was made by the registered valuers (i) Mr. Shanta Kumar and Mr.R. Chandran, who were appointed by the 1<sup>st</sup>



Respondent/Liquidator on the assets of the Corporate Debtor, was not in accordance with the procedure specified under Regulation 35(3) of the Insolvency and Bankruptcy Board of India (liquidation process) Regulations 2016 which enjoins that the valuation of the Corporate Debtor shall be conducted by the two registered valuers, who shall conduct their valuation independently on the entire assets of the Corporate Debtor and the average of the two estimates received shall be taken as the value of the assets or business of the Corporate Debtor.

95. Although, the valuation of the assets of the Corporate Debtor was conducted by the two registered valuers, the valuation was conducted

separately on the plant and machinery by Mr. Shanta Kumar, a registered valuer and on the land and building conducted by Mr. R. Chandran, instead of the same being conducted holistically on the entire assets of the Corporate Debtor. In reality, the revised valuation 'is in negation' to the established procedure under the I&B Code, 2016.

96. According to the 1<sup>st</sup> Respondent / IDBI Bank Ltd. & Ors. (petitioners in IA 255/IB/2021 in CP/1307/IB/2018, although the petitioners/secured creditors do not have any objection in negotiating with either the R2 and 3 or any other eligible Resolution Applicant and are solely interested in the maximising the value of the assets of the Corporate Debtor, in the event that the

negotiations were to be taken forward with R2 and R3 or R4, if found eligible as directed by this Tribunal dated 12.2.2021, the petitioners in IA 255/IB/2021 in CP/1307/IB/2018 submit that the said negotiations would not yield much result, considering the fact any proposal presented by the R2 and 3 or R4, if found eligible, would be on the basis of imprecise valuation presented by the 1<sup>st</sup> Respondent/Liquidator and may not be feasible for the petitioners to accept. Also, this process would accordingly not result in producing and realising the 'best valuation of the assets' of the Corporate Debtor and resultantly, would be detrimental to the interests of all the 'stakeholders' including the IDBI Bank Ltd. (Applicant) and that of the Corporate Debtor as well. In the event of reliefs sought for in

IA 255/IB/2021 in CP/1307/IB/2018 are not granted, it will finally result in delaying and frustrating the resolution process of the Corporate Debtor, besides leading to incurring of unnecessary cost and expenditure.

**The pleas of Erstwhile Liquidator / 1<sup>st</sup> Respondent of M/s. Jeypore Sugar Company Ltd.**

97. According to the erstwhile Liquidator of 1<sup>st</sup> Respondent / M/s. Jeypore Sugar Company Ltd., it was the decision of the Committee of Creditors led by the Petitioner/IDBI Bank Ltd. who wanted removal of the whole value of land situated at Raygada. In fact, the Respondent, as advised by the Committee of Creditors referred to the expert legal opinion, based on the said opinion, it was the

valuers' who made the changes and the same was approved by the Committee of Creditors and also the Adjudicating Authority/Tribunal.

98. It is a version of the 1<sup>st</sup> Respondent / erstwhile Liquidator that the said property was not mortgaged or realisable because of Orissa Land Reforms Act Proceedings and they are reflected in the balance sheet of the Company, which was listed in the stock exchange and the money was lent by the Public Sector Undertakings Bank after knowing fully well about the facts. As a matter of fact, the 1<sup>st</sup> Respondent / Liquidator, who was earlier as Resolution Professional kept the 'Lenders' informed of all the proceedings on a day today basis and during the SCC meetings. Also that the lenders

were in concurrence with all the acts / decisions of the Respondents never raised any objections.

99. The stand of the 1<sup>st</sup> Respondent / Liquidator is that from 1.6.2020 till 1.4.2021, the ‘secured creditors’ unanimously had concurred with all the decisions and in fact, directed the liquidator to negotiate with the Resolution Applicants, M/s Kineta Global Ltd. (H-1) Synergy Holdings (H2) after the dis-qualification of the other two Resolution Applicants M/s Kineta Global Ltd. was in the fray.

100. According to the 1<sup>st</sup> Respondent / erstwhile Liquidator the joint lenders forum led by the petitioner/bank had no grievance in regard to the present Resolution Applicant M/s. Kineta Global Ltd. when their offer at that time was only

Rs. 159 Crores which was subsequently increased to Rs. 207 Crores (by Rs. 48 Crores) based on the negotiations Held by the liquidator.

101. The plea of the 1<sup>st</sup> Respondent / erstwhile Liquidator is that the efforts towards the scheme of compromise' began with the liquidation order passed by this Tribunal, on 29.05.2020 and from June, 2020 till April, 2021, for nearly ten months, the Petitioner was in complete approval and suddenly in April, 2021 when the matter was about to be concluded, filed IA 255/2021, thereby exposed to the 'Doctrine of Estoppel is based on the principle that it would unjust, if a person intentionally by conduct or in any other manner has induced other person to believe and act upon such a representation, neither he or those representing

can in a subsequent Court proceedings deny the truth’.

102. It is projected by the 1<sup>st</sup> Respondent / erstwhile Liquidator that the Joint Lenders Forum lead by the Petitioner / IDBI Bank in their e.mail expressed their intention to exercise the option of selling the assets, secured by them u/s 52 of the Code, for exercising this option. The secured creditors must conduct ‘fair valuation of theirs as per Section 52 of the I&B Code within 90 days. However, till date even after 360 days the IDBI Bank / Petitioner had not complied with the Regulations.

103. The 1<sup>st</sup> Respondent / erstwhile liquidator before the Adjudicating Authority / Tribunal had prayed for the dismissal of the IA 255 of 2021.



104. It is the stand of the 1<sup>st</sup> Respondent / erstwhile liquidator that the 'liquidation value' of the assets of the Corporate Debtor situated at Raygada Asset (782 acres) was initially determined that Rs. 763.186 crores and accordingly the liquidation value was decided. Subsequently, at the instance / direction of the Committee of Creditors, a legal opinion was secured, wherein it was revealed that the Rayagada asset, is in litigation and that the asset neither can be mortgaged nor can be sold. Going by the opinion of Advocates and ground situation the Resolution Professional had appointed during the Corporate Insolvency Resolution Process 'two valuers', based on the average of the valuation secured for the second time from the valuers.

105. It is evident that the Resolution Professional had taken the average of the two liquidation values and decided the liquidation value of the Assets of the Corporate Debtor at Rs. 332.52 crores and the same was not objected or assailed by the same 'Creditors' at any point of time, either during CIRP or after initiation of Liquidation, atleast until before the scheme application was filed, the IDBI/ Bank cannot newly question the liquidator over Raygada Asset issue.

106. The contention of the 1<sup>st</sup> Respondent / erstwhile Liquidator before the Adjudicating Authority / Tribunal is that if the IDBI Bank and other Creditors believe the 2<sup>nd</sup> valuation that came into picture by the persuasion of the same creditors was to go because the value of the Raygada Assets

of Corporate Debtor was excluded, these Creditors should have assailed the second valuation decided during 'CIRP', but they had not done it because they themselves had got that Asset excluded from valuation.

107. According to the 1<sup>st</sup> Respondent / erstwhile Liquidator going by the legal opinions obtained suggesting that those Lands in Orissa are in Litigation before the Hon'ble High Court of Orissa, and 'Revenue Authorities' had clarified that those lands are not transferable ignoring all those historical facts, still on record, now the IDBI / Bank and other Creditors canvas that Corporate Debtor was put to a loss of around Rs. 1000 crore because of the fact that Raygada Asset Value is shown as nil in the fresh valuation ordered by the Liquidator.

108. The version of the 1<sup>st</sup> Respondent / erstwhile Liquidator is that knowing pretty well that the average of two valuations is the mandate to decide the liquidation value, he had later requested another set of valuers to do the valuation independently and further that the second set of valuers had given their valuation, after inspecting the location of the Corporate Debtor. Apart from that the IDBI / Bank came out with IA 255/2021 in CP/1307/IB/2019 by looking at a 'draft valuation', not even on 'final Valuation Report'.

109. According to the 1<sup>st</sup> Respondent / erstwhile Liquidator, having ordered for two valuations to take the average of them as liquidation value, the grievance of the IDBI Bank that the procedure followed was an irregular one, had

become an infructuous one and further the contention that two valuations were not taken into consideration to arrive at Liquidation value was not tenable any more, in as much the average taken was based on two independent values given by the two sets of the 'independent valuers'.

110. The erstwhile liquidator in IA 255/2021 took a stand that for discharging the functions as per Section 35(1) of the I&B Code, 2016 he was not under an obligation either to consult or abide by the suggestions of the stakeholders. As a matter of fact, the only obligation u/s 35(2) of the I&B Code, 2016 is that the liquidator, in case he consults any stakeholder he shall make that record available to other stakeholders, but he is not under

any obligation to oblige the suggestion given by the Stakeholders.

111. The erstwhile liquidator had taken a stand that in respect of the scheme, the IDBI/Bank cannot call itself as an 'Aggrieved', because it does not need assistance to reject the 'scheme proposal'.

112. The version of the liquidator is that the IDBI /Bank cannot attribute malafides to him mentioning that he had omitted valuing the property situated at Rayagada. Further, the Committee of Creditors at its instance had asked for fresh valuation based on the legal opinion and that the valuation of the property, accordingly was shown as zero during CIRP. Also that now he as a liquidator cannot make the property valuable or count in the valuation of asset situated at

Rayagada, which was earlier discarded by the ‘Committee of Creditors’.

113. The erstwhile liquidator refers to the decision of the **Hon’ble Supreme Court in Dr Renuka Datla (Mrs.) v. solvay Pharmaceuticals B.V. and Others (2004) 1 SCC 49).**

114. According to the erstwhile liquidator it is the duty of the IDBI /Bank to point out how the valuation furnished by the valuers was fundamentally an erroneous one and the same was not explained by the Bank.

115. The erstwhile liquidator takes a plea that IDBI / Bank cannot be treated as an ‘aggrieved person’ either by the proposal of the scheme or by an order of Adjudicating Authority / Tribunal directing the ‘Creditors’ to negotiate with the plan

applicants because neither the Liquidator saying the Creditors or under an obligation to approve the scheme nor was the 'Tribunal' stating that the Creditors to approve the 'scheme' so that the Creditors were not tied down either to approve the scheme or reject the same and viewed in that perspective the IA 255 of 2021 was to be dismissed.

116. At this juncture, the Appellant's Ld. Sr. Counsel points out that the IDBI / Bank has no Locus Standi, to contest the instant Appeal 302/2021, since it is not a part of the stakeholders consultation committee and further the proviso clause Regulation 31A of IBBI (liquidation process) Regulation, 2016 mandates that a secured Creditor who had not relinquished its security interest u/s 52 shall not be part of the consultation committee.



117. Continuing further, the 3<sup>rd</sup> Respondent had wrote a letter dated 29.07.2020, addressed to the Liquidator had articulated to realise its security interest as per Section 52 of the I&B Code, 2016 and had categorically stated that IDBI / Bank had not relinquished the security interest under the 'Liquidation Estate'. As such, the IDBI Bank cannot be a part of stakeholders consultation committee and it has no 'Locus' to contest the instant 'Appeal'.

118. The Learned Counsel for the Appellant refers to the decision of **Hon'ble Supreme Court in Vijay Kumar Jain Vs Standard Chartered Bank 2019 20SCC 455** wherein in respect of the interpretation of Regulation 21 it was held that there was no specific provision which states not to

share the 'valuation report' and in fact all the concerned persons should be given an access to the documents, which will be crucial for deciding the work of the 'Corporate Debtor'.

119. The Learned Counsel for the Appellant relies on the decision of the **Hon'ble Supreme Court in Shiv Shakti Coop Housing Society, Nagpur Vs Swaraj Developers and Other (2003) 6 SCC 659** wherein it was held that an Appeal is an continuation of the original proceedings and the provisions applied at the time of institution are considered to be operative even in respect of the Appeals and this is because of the fact there is a 'vested right' in the litigant to avail the remedy of an Appeal.

120. The Learned Counsel for the Appellant points out that the decision in Essar Steel vs. Satish Kumar Gupta reported in 2020 8 SCC 531 inapplicable to the instant 'Appeal', since the observations so made were in regard to the 'unsuccessful Resolution Applicant', and further, it was held in the said judgement that the 'unsuccessful Resolution Applicant' had no right to challenge the rejection of its plan by a 'Resolution Professional' or even by the 'Committee of Creditors' when the Plan does not receive 66% of the 'Committee's votes'.

121. In the instant Appeal, this Tribunal is to look into as to whether the assets of the Corporate Debtor situated at Raygada, Orissa, would form part of the Liquidation state of the Corporate

Debtor. Also that the valuation of the Raygada Property centres around the instant ‘Appeal’, in a ‘primordial’ manner.

122. The erstwhile liquidator (1<sup>st</sup> Respondent in IA 255/IB/2021) in CP 1307/IB/2018 had obtained a valuation from the IBBI registered valuer dated 25.09.2019 and the ‘total valuation of the Corporate Debtor’ is mentioned as under in a tabular form:-

S.No.	LOCATION	Value of Land (Crore)	Value of Building (Crore)	Total Value/ FMV (Crore)	Remarks
1	Chagallu Sugars + Yermaguderm	81.63	8.00	89.63	Yermaguderm land for Agricultural use
2	Chagallu Distillery	49.25	1.75	51.00	-
3	Pothavaram	75.33	22.51	97.84	-
4.	Jangareddigudam + Narasannapalem	38.23	1.54	39.77	Narasannapalem land for SSI use
5.	Raygada assets (5 places)	1087.98	2.56	1090.54	-
	<b>Total</b>	<b>1332.42</b>	<b>36.36</b>	<b>1368.78</b>	

123. In the instant case on hand it comes to light that the erstwhile liquidator had secured the

legal opinion from Mr. Nrushinga Nath Panda which proceeds to the following effect:-

*It is revealed from the records of J.S. Co. Ltd., that, the JS.Co. Ltd., is in possession of lands as per the R.O.R. to an extent of Ac. 784.90 in 13 numbers of Mouza (Revenue villages). But they are in physical possession of Ac. 565.75. They have already surrendered the lands to the State of Odisha to an extent of Ac. 117.96 and others (Rayagada People) have occupied to an extent of Ac. 101.19.*

*There are numbers of cases relating to the lands of J.S.Co. Ltd., from 1974. At present situation no Sugar Company and ferrow-manganese factory is running on the land of JS Co. Ltd., and no lands are used for raising of sugarcane for JS Co. Ltd., except few members to watch and ward the waste*

*materials of J.S. Co. Ltd. Nobody are working for J.S. Co. (Sugar Factory) and ferrow manganese factory. There is a dispute between the State & J.S. Co. Ltd., for no cause. So it can be sorted out, if J.S. Co. Ltd. will take a decision to mitigate the litigation.*

*I have gone through all the documents of the J.S. Co. Ltd., and found that except few lands there are recorded in Rayagada Nagar all are agricultural land. In view of that these lands cannot be enforceable under SARFAESI Act.*

*The lands are in dispute with the Government of Orissa. The Property is involved in OLR Proceedings with the Govt. under OLR Case No. 60/74 which is still pending before the Revenue Officer, Rayagada as the O.L.R. Proceedings are stayed by the Hon'ble High Court of Orissa in W.P.C. No. 4490/2015 by the*

*Company Appeal (AT) (CH) (Ins) No.302/2021*

*J.S. Co. Ltd.) There is no record before me (supplied by the J.S. Co. Ltd.) about the present status of the case in W.P.C. No. 4490/2015 of Hon'ble High Court of Orissa.*

*It reveals from the records of the (supplied by the J.S. Co. Ltd., Rayagada) that the lands in question are indulged in OLR proceedings. So, it is not marketable and it cannot be disposed of. It cannot be mortgaged.*

124. Resting upon the legal opinion tendered, Mr. R. Chandran had furnished the value for the property situated at Rayagada Orissa as zero and it is worth useful for this Tribunal for the purpose of better appreciation the relevant portion of the report is extracted as under:-

*“During the process of valuation, I have asked for latest legal opinion about all land owned /*

*possessed by ISCo. But I was provided with one, which the company seems to have received earlier for some other purpose. We did our valuation based on the information provided to us. But later, the NCLT Bench at Chennai declined to accept the valuation of assets in Odisha / Raygada, stating the legal dispute related to the land claimed to be owned by JSCo.*

*Hence, you have asked us to revisit the report and submit a revised report based on a new Legal opinion received from Advocate Nurshinga Nath Panda, of Rayagada. This Advocate has given a different opinion that the lands said to be owned by JSCo in Odisha can neither be sold nor be mortgaged now. This opinion completely changes the background and the values we have arrived at the earlier exercise.*



*Hence, I have given you a new report on 28<sup>th</sup> oct 2019. According to the said report the Odisha assets (including Land & Buildings) were valued as zero. So, the new value I arrived for the L&B assets of JS Co have come down 278.24 crore (Fair Value) and the Liquidation value as 212.80 crore.*

*Also, in the current exercise, which was done after the NCLT bench of Chennai accepted the JS Co case for Liquidation, the Odisha assets were not taken for valuation. Also, new situations like the COVID have emerged & impacted the market. Hence, the Realisable/Liquidation value of assets of JS Co currently stands as Rs. 1.66 crore.”*

125. The Erstwhile Liquidator, who had filed the Asset Memorandum on 21.09.2020, had not

included the 'Raygada Property Assets' but arrived at a 'realisable value' of 217.52 crores.

126. The valuation of the Raygada Property with a market value of more than Rs. 1000 crore as mentioned by the Liquidator / 7<sup>th</sup> Respondent was valued at Rs. Zero by the erstwhile liquidator without adhering to the mandatory requirement of Regulation 35 of IBBI (liquidation process) Regulations, 2016. Even the second value report secured by the 7<sup>th</sup> Respondent / liquidator does not exhibit the compliance of the Regulations because of the fact that in the instant case the liquidator / 7<sup>th</sup> Respondent had only obtained one Report on the plant and machinery and another report on the land and building which is in negation of the procedure as specified under the Regulations. In short, the

said valuation was made, without including a vital asset of the Corporate Debtor.

127. The Erstwhile Liquidator had shared the 'Draft Valuation Report' to the 'Resolution Applicants including the Appellant and Respondent No. 8 to 9.

128. In reality, the valuer in the initial report had assessed the value of Raygada lands to be Rs. 1087.98 crores later based on the information furnished by the 7<sup>th</sup> Respondent / liquidator and resting upon the opinion furnished by the Learned Advocate, the liquidator came to the conclusion that the value of the Raygada lands should be decided as zero. Resultantly, based on the opinion of advocate, coming to the zero valuation was not

approved by the Committee of Creditors / Stakeholders Consultation Committee.

129. It is pertinently pointed out by this Tribunal that the requirement of Regulation 35 of the liquidation process Regulations is a separate one from the process mentioned under Section 230 of the Companies Act, 2013 and Section 230 of the Companies Act, 2013 which envisages 'one valuer' cannot be the basis to 'By pass' the Regulation 35 of liquidation process Regulations.

130. A cursory glance of Section 36(3)(e) of the Code clearly exhibit that the Assets subject to the determination of ownership by the Court or authority shall form part of the Liquidation Asset, meaning thereby inclusive of the 'Lands of the Corporate Debtor at Raygada'.

131. From the order passed by the Hon'ble Orissa High Court on 16.3.2022 in W.P. No. 4490 of 2015 that compensation is to be given which was affirmed by the 7<sup>th</sup> Respondent / liquidator through his e.mail dated 16.3.2022. Therefore, it implies that the valuation should be conducted afresh and fresh schemes to be called for.

132. The Appellant, who was declared as H1 bidder by the 7<sup>th</sup> Respondent was furnished with an offer of Rs. 207 crores and that the value of 223.21 crores, was arrived at by the 7<sup>th</sup> Respondent / Liquidator near to the Liquidation value.

133. It is not out of place for this Tribunal to make a pertinent mention that as per Regulation 34(4) of the Insolvency & Bankruptcy Board of India (Liquidation Process Regulations), the Liquidator /

7<sup>th</sup> Respondent, ought to file the 'Asset Memorandum', together with the preliminary report to the Adjudicating Authority / Tribunal. More importantly, Regulation 34(2)(a) of the Insolvency & Bankruptcy Board of India (Liquidation Process Regulations) enjoins that the 'Asset Memorandum', will include the Value of the Asset, to be arrived at as per Regulation 35. Therefore, it is candidly quite clear that the Sharing of the Reports with the Potential Resolution Applicants by the 7<sup>th</sup> Respondent / Liquidator is quite contrary to the Regulation 34 (4) of the Insolvency & Bankruptcy Board of India (Liquidation Process Regulations), in the considered opinion of this Tribunal.

134. One cannot remain in oblivion of a prime fact that the aforesaid 'Regulations' read in

conjunction with Regulation 21 of the Insolvency & Bankruptcy Board of India (Insolvency Professionals Regulations, 2016) unerringly points out that an Insolvency Professional is to ensure that information to be of confidentiality in character pertaining to the Insolvency Resolution Process, liquidation or bankruptcy process and the same is to be maintained at all points of time.

135. It is to be remembered that the Hon'ble High Court of Orissa in WP 4490/15 had passed an order to the effect that the Corporate Debtor as a right to compensation in respect of the 'ceiling surplus of Lands' after Raygada Property, to an extent of 506.690 acres. In fact, the Liquidator /7<sup>th</sup> Respondent in his e.mail on 16.3.22 addressed to R1 to R6 had mentioned that the Corporate Debtor

is entitled to 281 acres whose guideline value is Rs. 600 crores with market value of more than Rs. 1000 crores(sic)". Therefore, the 'Assets of the Corporate Debtor' are to be revalued by the 7<sup>th</sup> Respondent / Liquidator, in accordance with Regulation 35 of the Liquidation Process Regulations and the valuers are required to be appointed in terms of Regulations 35 and Rule 8 of the Companies (Regd.) valuers and valuation (Rules, 2017). No wonder, the 'valuation reports' are to be kept as confidential documents by the 7<sup>th</sup> Respondent / Liquidator.

136. It cannot be brushed aside that a fresh valuation is to be conducted with a view to benefit 'all the stakeholders' and then only, the Section 230 process under the Companies Act, 2013, is to be conducted afresh.



137. Continuing further, the 7<sup>th</sup> Respondent / Liquidator had not taken the approval of the secured creditors to bring effect to the section 230 scheme under the Companies Act, 2013. More than 75% of voting share mandatory approval of Creditors is a requirement under Section 230 (2) of the Companies Act, 2013 with a view to operate the scheme and to bring the same into effect.

138. To keep in line with the objective of the I&B Code, 2016, for ‘maximisation of the value of assets of the Corporate Debtor’, the Raygada Property has to be made a part of the Asset Memorandum and therefore a ‘Fresh Valuation of the Assets of the Corporate Debtor’, has to be done, in accordance with Law. As such, the ‘Bid’ of the Appellant is an exercise in futility and only after a fresh valuation

process being conducted, the section 230 process under the Companies Act can start 'afresh' and to be placed for an Approval before the Stakeholders Consultation Committee.

139. The other contention to be looked at by this Tribunal, is that Section 36 (3)(e) of the I&B Code. 2016 points out that the 'Assets' which are subject to the determination of 'ownership' by the 'Court or Authority/Tribunal' will form part of the 'Liquidation Estate of the Corporate Debtor'. Hence, in respect of the Raygada Property specifying the value, as zero, on the premise that the said property was under 'lis', will render the ingredients of section 36 (3)(e) of the Code, a 'fruitless and useless one'.

140. To be noted, merely because in respect of the 'Title of the property', if a 'Corporate Debtor' has no valid or any marketable title, ipso facto, the 'value of the property' cannot be described as Zero. No wonder, the Liquidator, holding the 'Liquidation Estate', in the interest and for the benefit of 'stakeholders', is to take into consideration as to which/what are all the properties? do form part of the 'Liquidation Estate'. By adhering to the ingredients of Section 36(3) of the I&B Code, 2016, the 'Registered Valuers', are to 'value' the property.

141. In the instant case, the Erstwhile Liquidator had not obtained the valuation from the second valuer and that the liquidation value was arrived at only by one valuer. Also that the erstwhile liquidator had gone for a fresh valuation

which clearly points out that Regulation 35(2) of IBBI (Liquidation Process) Regulations, 2016 was not followed. The stakeholders' plea/request to go for a fresh set of valuations was not acceded to by the Erstwhile liquidator.

142. Dealing with the aspect of that the plea of the Erstwhile Liquidator, that the IA 255/IB/2021 in CP/1307/IB/2018 is not maintainable, in 'view of the fact that that 'Secured Creditors' are having an option/alternative to turn down the 'proposal' by 'voting against the scheme' cannot be countenanced, in the eye of law, because of the fact, that the 'Secured Creditors' had assailed the process in which the scheme was projected before the Adjudicating Authority/Tribunal, by not following the ingredients of the I&B Code, 2016 and

there being ‘no proper valuation of assets’ being made in respect of the ‘valuation of the assets’, forming part and parcel of the ‘liquidation estate’.

143. It is to be remembered in IA 255/IB/2021 in CP 1307/IB/2018, on the file of the Adjudicating Authority/NCLT, Division Bench II, Chennai, the ‘Rayagada Property’, is to be valued and to be included in the Liquidation Estate. Also that to find out the exact/precise price of the said property, the same is to be valued, and in the absence of the same, one can safely and securely come to a clear cut conclusion that the ‘scheme’ under Section 230 of the Companies Act, 2013, as projected by the Liquidator cannot be discussed by the ‘Stakeholders’.

144. There is no two opinion of the vital fact that the Liquidator has not secured the 'Approval of the Creditors' to bring to an effect the 'scheme' under Section 230 of the Companies Act, 2013. In this connection, this Tribunal quite significantly points out that the procedure mentioned in Section 230(2) of the Companies Act, 2013 is to be adhered to and the same is not in exemption of any other Law, inclusive of the I&B Code, 2016.

145. A mere running of the eye of Section 230(2) (c) of the Companies Act, 2013 clearly mentions of a need of an Approval of the Creditors with a voting share of not less than 75% of the Secured Creditors in value etc., so as to enable the scheme to be an operational one and the same being effect to, coupled with the other conditions to be fulfilled.

146. In the instant case, on hand, this Tribunal, succinctly points out that the ‘scheme’ as per Section 230 of Companies Act, 2013 is to be followed in ‘true letter and spirit’ before the same being presented/projected before the Adjudicating Authority/Tribunal.

147. As far as the present case is concerned, the Rayagada Property, a ‘Very Valuable Good Asset’ of the ‘Corporate Debtor’, market value being more than Rs.1000 crores, according to Liquidator/7<sup>th</sup> Respondent, cannot by no stretch of imagination, be excluded, from the ‘ambit of Valuation’ in the considered opinion of this Tribunal, and that too detriment to the very ingredients of the I&B Code, 2016 is its Regulations.

148. Also, the 'Corporate Debtor' has a right to claim compensation in respect of the ceiling surplus land at 'Rayagada Property' considering the extent of 5096.69 acres, in the teeth of the order of the Hon'ble High Court of Orissa, in WP(C )4490/2015. Hence it is incumbent and on the part of the 7<sup>th</sup> Respondent/Liquidator to act in terms of the I&B Code, 2016 and Liquidation Regulation.

149. It can not be over emphasised, that the 'aim of the I&B Code, 2016' is for maximisation of the value of the assets of the Corporate Debtor and all endeavours ought to be taken, with a view to resurrect/revive the company. Viewed in that perspective, the 'Rayagada Property' is to made as a part and parcel of Asset Memorandum, and a Fresh Valuation of the Assets of the Corporate Debtor, has



to be done, as per procedure, prescribed by law and looking at from this perspective, this Tribunal, unhesitatingly, holds that the Bid furnished by the Appellant remains as an exercise in futility.

150. As a logical corollary, the conduct of ‘Fresh Valuation Process’ is the ‘fair’, ‘just’ and ‘inevitable one’ and then only, the process under Section 230 of the Companies Act, 2013 can begin afresh and the same being placed for getting, an Approval from the ‘Stakeholders Consultation Committee’.

151. Section 230 of the Companies Act, 2013 is quite broader and wider in its ‘purview’ and the I&B Code, 2016 and its Regulations are not to be ‘brushed aside’ and that the ‘Scheme’, under Section 230 of Companies Act, 2013 is to be read in an harmonious manner, without causing any

volatile damage/harm, being caused to the language employed therein, as opined by this Tribunal.

152. Although the Appellant has come out with a plea that as per Section 61(1) of the I&B Code, 2016 any 'aggrieved person' has a right to prefer an Appeal before this Appellate Tribunal, and further that a Litigant has a 'vested right' to avail the remedy of an Appeal, this Tribunal is of the considered view that in the instant case it is the Secured Creditors, who are the Beneficiaries of the 'Scheme' under Section 230 of the Companies Act, 2013 who would have been affected by the impugned order passed by the Adjudicating Authority/NCLT, Division Bench II, Chennai in

ordering the fresh valuation of the Assets of the Corporate Debtor.

153. The other crucial fact to be taken into consideration is that in the case on hand, the ‘valuation’ was not conducted in the teeth of the ingredients of I&B Code, 2016 and its Regulations. As such the Appellant, being a H1 Bidder (as declared by the erstwhile Liquidator) cannot be an ‘Aggrieved Person’ as per Section 61 of the I&B Code, 2016.

154. Added further, the Appellant, has ‘no say’ in respect of matters, pertaining to the valuation of assets of the Corporate Debtor. More importantly and to put it precisely, the point/issue, concerning the value of assets are only in the realm of the ‘Stakeholders’ of the ‘Corporate Debtor’ and that the

‘Appellant/Third Party/Prospective Bidder’, is not entitled to prefer the instant Company Appeal (AT)(CH)(Ins) No.302/2021 concerning the fact, that the impugned order passed by the Adjudicating Authority/Tribunal does not affect, any of the rights of the Appellant, in any manner. Also that, the Appellant cannot be called as one, who has/had any legal grievance in respect of the impugned order dated 17.11.2021 passed by the Adjudicating Authority/Tribunal in IA 255/IB/2021 in CP/1307/IB/2018. The Appellant cannot, claim, a vested right, or any fundamental right to seek for an ‘Approval of his Plan’, and thereby claim to be a person ‘Aggrieved’ in respect of the impugned order.

155. Apart from the above, even though on behalf of the Appellant's side, it is projected that the Adjudicating Authority/Tribunal on 12.02.2021, had directed the 'Committee of Creditors', to negotiate with the Appellant, and further its Resolution Plan was neither put to vote nor it was declared as an 'unsuccessful applicant' and as such his rights have been greatly affected, this Tribunal, in an 'unequivocal term' comes to a cocksure conclusion that it is not a 'Stakeholder', and in any event, it is not an 'Aggrieved Person' as per Section 61 of I&B code, 2016. As such, the instant Company Appeal (AT)(CH)(Ins) No.302/2021 preferred by the Appellant is 'not maintainable, per se' in the 'eye of law', because it is not deprived of a Legal

right or having not sustained any injury, as held by this Tribunal.

156. Be that as it may, on going through the impugned order dated 17.11.2021 passed by the Adjudicating Authority/NCLT, Division Bench II, Chennai in IA 255/IB/2021 in CP/1307/IB/2018, in directing a 'fresh valuation of the assets' of Corporate Debtor, including the 'Rayagada Property', as per Regulation 35(2) of the IBBI (Liquidation Process) Regulations, 2016 and consequently, to update the 'Asset Memorandum' and thereafter, to invite the 'Schemes', from the 'Prospective Scheme Proponents', as per Section 230 of the Companies Act, 2013, are free from any legal flaws. Resultantly the instant 'Appeal' sans merits.

## **DISPOSITION**

157. In fine, the instant Company Appeal (AT)(CH)(Ins No.302/2021 is dismissed. No costs. The earlier Interim Order, if any, granted by this Tribunal shall stand vacated. The connected pending applications, if any, are closed.

**[Justice M. Venugopal]**  
**Member (Judicial)**

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

**Date :16.01.2024**  
**Place : New Delhi**

ss/bm