

Pgi Gmbh -Playglobal International vs Mr. Vijaykumar V. Iyer Liquidator Of ... on 8 December, 2021

National Company Law Appellate Tribunal
Principal Bench, New Delhi
I.A. 2484 of 2021

in

COMPANY APPEAL (AT) (INSOLVENCY) No. 140 of 2021
(Arising out of Order dated 18th December, 2020 passed by National Company Law Tribunal, Mumbai Bench, Special Bench, Court No. II, in I.A. No. 3702 of 2019 in C.P. (IB) No.- 292/MB/2017).

IN THE MATTER OF:

Prakash Chandra Kapoor,
S/o Late Sh. Hansraj Kapoor
Aged about 75 Years,
R/o Flat No. 46, 5th Floor, CCI Chambers,
Dinshaw Wachha Road, Churchgate,
Mumbai - 400020.

Vijay Kumar
S/o Late Sh. Sukdeo Srivastava
Aged about 75 Years
R/o Ruia Park, 410, E-Wing,
J.R. Mhatre Road, Juhu,
Mumbai - 400049.

...Appellants

Versus

1. Vijay Kumar Iyer, (Liquidator)
At Deloitte Touche Tohmatsu India LLP
Indiabulls Finance Center,
Tower 3, 27th Floor, Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai - 400013, Maharashtra.

...Respondent No. 1

2. Edelweiss Asset Reconstruction Company
Limited Through its Chairman/Managing
Director
Edelweiss House, Off. C.S.T Road,
Kalina, Mumbai MH - 400098.

...Respondent No. 2

-2-

Appellants: Mr. Vikash Dhawan & Mr. Arun K. Srivastava, Sr.
Advocates along with Ms. Meenakshi Rawat,
Mr. Rajesh Chhetri, Mr. Nalin Kohli, and Mr. Saju
Jacob, Advocates.

Applicant: Mr. Gaurav Pathak, Advocate in I.A. 2484 of 2021.
Respondents: Mr. Sumesh Dhawan, Vatsala Kak, Mr. Swarnendu Chatterjee, Mr. Abhishek Swaroop, Mr. Naman Kamdar, Mr. Anupam Prakash, Ms. Geetika Mittal, Advocates for R-1.
Mr. Sandeep Singhal, Ms. Anushree Kapadia, Ms. Priyanka Rathi, Advocates for R-2.
Liquidator: Mr. Vijay Kumar Iyer, Advocate for Liquidator

WITH

COMPANY APPEAL (AT) (INSOLVENCY) No. 165 of 2021
(Arising out of Order dated 18th December, 2020 passed by National Company Law Tribunal, Mumbai Bench, Special Bench, Court No. II, in I.A. No. 3702 of 2019 in C.P. (IB) No.- 292/MB/2017).

IN THE MATTER OF:

PGI GmbH - Playglobal International
Reitschulgasse - 3
9500 Villach,
Austria.

Versus

1. Vijay Kumar V. Iyer,
Liquidator of Bharati Defence and
Infrastructure Limited,
Deloitte Touche Tohmatsu India LLP
Indiabulls Finance Center,
27th Floor, Tower 3, Senapati Bapat Marg,
Elphinstone (W), Mumbai,
Maharashtra, 400013.

...Respondent No

2. Bharati Defence and Infrastructure
Through the Liquidator
Oberoi Chambers-II, Ground Floor,
Link Road, Near Lakshmi Industrial Estate,
Andheri (W), Mumbai - 400053.

...Respondent No

Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021,
With
Company Appeal (AT) (Insolvency) No. 165 of 2021
&
Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021
-3-

Appellant: Mr. Vikash Dhawan & Ms. Meenakshi Arora, Sr.

Respondents: Advocates along with Mr. Rajesh Chhetri, Advocates.
Mr. Sumesh Dhawan, Advocate for R-1.
Liquidator: Mr. Vijay Kumar Iyer, Advocate for Liquidator.

WITH

I.A. 2346 of 2021

in

COMPANY APPEAL (AT) (INSOLVENCY) No. 243 of 2021
(Arising out of Order dated 18th December, 2020 passed by National Company Law
Tribunal, Mumbai Bench, Special Bench, Court No. II, in I.A. No. 3702 of 2019 in
C.P. (IB) No.- 292/MB/2017).

IN THE MATTER OF:

Bhartiya Kamgar Sena
Workmen Union of BDIL,
Thought is Vice-President Sh. Ajit Salvi,
Prafoolbhan Society, R.K. Vaidya Road,
Dadar West, Mumbai - 400028.

Versus

1. Vijay Kumar Iyer, (Liquidator)
At Deloitte Touche Tohmatsu India LLP
Indiabulls Finance Center,
Tower 3, 27th Floor, Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai - 400013, Maharashtra

...Respondent No.

2. Edelweiss Asset Reconstruction Company
Limited Through its Chairman/Managing
Director
Edelweiss House, Off. C.S.T Road,
Kalina, Mumbai MH - 400098.

...Respondent No.

Appellant: Mr. Vikash Dhawan, Sr. Advocate along with
Ms. Meenakshi Rawat and Mr. Rajesh Chhetri,
Advocates.

Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021,
With

Company Appeal (AT) (Insolvency) No. 165 of 2021

&

Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021

-4-

Applicant: Mr. Ashok Kumar Jain, Advocate in I.A. 2346 of

2021.
Respondents: Mr. Sumesh Dhawan, Advocate for R-1.
Mr. Sandeep Singhal, Ms. Anushree Kapadia &
Ms. Priyanka Rathi, Advocates for R-2.
Liquidator: Mr. Vijay Kumar Iyer, Advocate for Liquidator.

JUDGEMENT

[Per; Shreesha Merla, Member (T)]

1. These Appeals namely Company Appeal (AT) (Insolvency) No. 140 of 2021, preferred by 'Prakash Chandra Kapoor and Anr.' (the Erstwhile Director of the 'Corporate Debtor Company'), Company Appeal (AT) (Insolvency) No. 165 of 2021 preferred by 'M/s. PGI - GmbH - Playglobal International' (hereinafter referred to as M/s. PGI Global) and Company Appeal (AT) (Insolvency) No. 243 of 2021 preferred by 'Bhartiya Kamgar Sena Workmen Union of BDIL', challenge the Common Impugned Order dated 18.12.2020 in I.A. No. 3702 of 2019 in CP (IB) No. 292/(MB)/2017 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Special Bench, Court No. II) under Section 61(1) of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as the 'Code').

2. By the Impugned Order, the Learned Adjudicating Authority has allowed I.A. No. 3702 of 2019 filed by the Liquidator of Bharati Defence Infrastructure, (the 'Corporate Debtor') seeking directions in the Liquidation Process and Sale of the assets of the 'Corporate Debtor' and observed as follows:-

Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 "8. An Additional Affidavit filed by the Applicant states that the financial position and deteriorating condition of the assets lying in the shipyards of the CD. The cash flow position of the CD has deteriorated and the Applicant is finding difficult to run the CD as a going concern. The Affidavit also states that there are 250 employees of the CD at Ratnagiri, whose salaries are outstanding for the past 8 months. The salary of the employees needs to be released for protection of the assets of the CD. Manpower is essential to maintain the shipyards and vessels. It is also stated that the Applicant has received threats of suicide from the employees of the CD due to nonpayment of salaries.

9. The Applicant states that due to Nisarga cyclone which hit various parts of Maharashtra, it also affected the Dabhol shipyard causing extensive damage. Due to heavy rainfall the condition of the assets has deteriorated adversely affecting its value.

In case the assets of the CD are not sold soon, it will be difficult to control the damage caused to the assets due to non-availability of funds.

10. The Applicant states that the Financial Creditor had already contributed an amount of Rs.

1,97,19,474 and the said amounts have been utilized for making payments towards renewal of insurance for fixed assets and stock of the CD. The Applicant once again requested the Financial Creditors to contribute funds to ensure that the assets of the CD are safeguarded and protected. In view of the fact that no compliant Scheme is received for the CD along with EMD, the Applicant seeks directions for sale of the assets of the CD.

11. This Authority vide order dated 04.03.2020 in IA No. 3897 of 2019, had directed Seven Star Securities Private Limited to deposit the EMD of Rs. 25 crores by 31.03.2020 (Rs. 5 crores to be deposited by 20.03.2020 and remaining Rs. 20 crores by 31.03.2020). Due to the nationwide lockdown declared by Central Government in view of Covid-19 pandemic, this Tribunal's work was closed. Subsequently vide a Notice dated 22.04.2020, the Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 Principal Bench allowed this Tribunal to take urgent matters through video conferencing.

12. The matter came up for hearing on 22.06.2020 and this Authority gave a last chance to Seven Star Securities Private Limited to deposit the EMD. Learned Counsel for Seven Star Securities Private Limited submitted that due to Covid-19 pandemic, the Company was not in a position to arrange the funds but however assured to deposit Rs. 5 crores by 29.06.2020. The matter came up for hearing on 29.06.2020. The Counsel for Seven Star Securities Private Limited submitted that they had failed to comply with the Order dated 22.06.2020 and therefore in accordance with the said order, no further time was granted to deposit the EMD and the present Application was heard.

13. As the circumstances narrated supra would indicate, all possible steps have been taken to revive the Company and they have not yielded any fruitful result. The assets of the CD are lying idle and due to lack of business the CD, it has not been able to provide for its employees. That in turn has affected the maintenance of the assets, which has resulted in depreciation of its value and worth. Thus, it would accordingly be appropriate to order sale of its assets, before they further deteriorate. Hence ordered.

ORDER The IA be and the same is allowed. The Applicant is directed to take further appropriate steps for liquidation of the CD, including sale of assets, collectively or in parcels or individually, as per the provisions of the Code and Rules made thereunder. He is directed to complete the process at the earliest."

(Emphasis Supplied) Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021

3. Submissions of the Learned Senior Counsel appearing on behalf of the Appellant/Directors - 'Prakash Chandra Kapoor & Vijay Kumar' in Company Appeal (AT) (Insolvency) No. 140 of 2021:

Learned Senior Counsel submitted that in 2014 Edelweiss Asset Reconstruction Company Limited (hereinafter referred to as 'Edelweiss') acquired aggregate debt of

Rs.6248.84 Crores/- for Rs.1813.90 Crores/-. A severe haircut was taken by the lenders of approximately 71%. Edelweiss with assignment of debt has about 83% of the total Secured Debt and as such dominates the CoC. On 06.06.2017 Section 7 was filed by Edelweiss and the same was admitted.

Edelweiss had no intention to resolve the Insolvency of the 'Corporate Debtor' and from day one had the intention to sell the Company only to maximise its own interest.

Out of the five plans, only one plan prepared by the firm of Ernst & Young for Edelweiss was sent to CoC which was controlled by Edelweiss and rest of the four plans were thrown out of the window.

The entire CIRP was conducted illegally by an Attorney holder masquerading as an RP. 'Edelweiss' being in control of CoC and E&Y through its partner ensured that during CIRP no serious bid was received as it was already pre-conceived that the 'Corporate Debtor' Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 should be sold in pieces and Edelweiss would monetize its investment without having to wait for the long-term Resolution of Insolvency. The Liquidator ignored the observations, of the Adjudicating Authority in its previous Order dated 14.01.2019 which went to the root of the failure of the CIRP and consequently led to the failure to sell the 'Corporate Debtor' as a 'going concern'. Vide Order dated 14.01.2019, the Adjudicating Authority stated that 'we think that prospective buyers of the Company could be present across the world and the publication of advertisement calling for EoI should have been published internationally'.

The Liquidator either turned a blind eye to the observations of the Adjudicating Authority for publication of advertisement internationally or deliberately did not do so to ensure that serious bids were not received.

The advertisement inviting EoI was made as unattractive as possible and did not refer to the huge value that the 'Corporate Debtor' brought to a prospective bidder.

The Liquidator did not follow the requirements of Schedule-I of the IBB (Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016). Liquidator was required to follow the regulations which envisaged preparation of a marketing strategy taking help of market professionals, preparing information sheets for the assets, Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 liaising with the agents etc. None of this was done by the Liquidator.

The Impugned Order has signed the death warrant of the 'Corporate Debtor' considering the statements of the Liquidator as the gospel truth without taking into consideration that the Liquidator did not put forth the offer of Playglobal International before the Adjudicating Authority, which had written to the Liquidator committing 800 Million Dollars approximately on 14.12.2020. However, the Liquidator simply replied on 17.12.2020 that the time was up and rejected the offer. This offer was not brought to the notice of the Bench deliberately by Edelweiss and the Liquidator

on the date, the Order was passed i.e. on 18.12.2020.

As the 'Corporate Debtor' has a good reputation in the global market, International Companies are interested in purchasing it as a 'going concern'.

4. Submissions of the Learned Senior Counsel appearing on behalf of 'PGI GmbH - Playglobal International' in Company Appeal (AT) (Insolvency) No. 165 of 2021 (hereinafter referred to as 'M/s. PGI Global'):

Learned Senior Counsel contended that the Appellant is a Company incorporated under the laws of Austria and is a diversified Multibillion Dollar investment and Asset Management Company with significant presence in United Kingdom, Austria, Switzerland, Germany etc. and Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 has successfully executed various projects all over the world. It is strenuously argued that the Appellant had clearly expressed its interest to acquire the 'Corporate Debtor'; that the Appellant had stated that subject to due diligence, it is ready to invest amounts substantially higher than the liquidation value of the 'Corporate Debtor' i.e. (Rs.615 Crores/-) and if the Appellant is allowed to submit the scheme, it would save the Company from Corporate Death.

If the Liquidator is permitted to proceed with the Sale of the assets, a far lesser sum would be available for distribution to the Creditors.

The 'Corporate Debtor' is a Company of National Importance providing employment to hundreds of workers and is directly engaged in the business of building defence and warships, submarines etc. supplying its production directly to the Ministry of Defence. The IRP had not given wide publicity internationally which is a material irregularity.

This Tribunal vide Order dated 14.05.2019 upheld the Order of Liquidation but directed the Liquidator to attempt to enter into a scheme of compromise or arrangement and in the failure to do so, sell the 'Corporate Debtor' in the outright sale. It is submitted that the judgement of the Learned Adjudicating Authority is contrary to the judgement of this Tribunal dated 14.05.2019 as it has directed piecemeal sale of the assets.

Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 The Appellant is the bona fide investor and is willing to put down the Earnest Money Deposit within a period of 30 days from the date this Tribunal allows the Appeal.

Maximisation of the Assets of the 'Corporate Debtor' can be fulfilled only if the 'Corporate Debtor' is sold as a 'going concern'; that no prejudice would be caused to the stakeholders if the Appellant is allowed to provide the Earnest Money Deposited.

Because of the pandemic and the lockdown, the Appellant could not submit its bid and a mere procedural delay should not result in grave injustice and lead to Corporate Death of the Company and hence prays for M/s. PGI Global to be allowed to submit a scheme under Section 231 & 232 of the Companies Act 2013.

Learned Counsel relied on the following Judgements in support of their case:-

o 'Y. Shivaram Prasad' Vs. 'S. Dhanpal & Ors.' 2019 SCC OnLine NCLAT 172 (Paragraphs 10-14).

o 'Arun Kumar Jagatramka' Vs. 'Jindal Steel and Power Ltd. & Anr.' 2021 SCC OnLine SC 220 (Paragraphs 75-76).

o 'GSEC Green Energy Pvt. Ltd.' 2021 SCC OnLine NCLT 36 (Ahmedabad) - The prospective applicant was allowed to submit a scheme after 177 days of delay.

Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 o 'Forward Shoes (India) Pvt. Ltd. & Anr.' 2021 SCC OnLine NCLT 6 (Chennai, Division Bench) - The prospective Applicant was allowed to submit a scheme after 1005 days of delay.

5. Submissions of the Learned Senior Counsel appearing on behalf of 'Bhartiya Kamgar Sena Workmen Union of BDIL' in Company Appeal (AT) (Insolvency) No. 243 of 2021:

Learned Senior Counsel submitted that the 'Corporate Debtor' holds licence from Ministry of Defence to build warships and has substantial orders under execution. This matter relates to National Importance attached to the product line of the Company, involving a workforce of 850 employees.

The Liquidator published Expression of Interest dated 12.06.2019 on 16.01.2020 in Business Standard in Mumbai and five other Newspapers in different regional vernacular languages. The Liquidator preferred M.A.3702 of 2019 seeking directions in the Liquidation Process and Sale of Assets of the 'Corporate Debtor', which Application was listed on 02.01.2020, 04.03.2020 and on 23.03.2020, the Adjudicating Authority differed the Application in view of the Orders passed in M.A.3987/2019. The Applicant in M.A.3897/2019 was directed to deposit EMD of Rs.25 Crores/- with a sum of Rs.5 Crores/- to be deposited on or before 20.03.2020 and the remaining amount of Rs.20 Crores/- on or before 30.03.2020. But because of the lockdown, the directions could not be complied with.

Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 It is submitted that the Liquidator had no intention from the beginning to sell the 'Corporate Debtor' as a 'going concern' which is ex-facie evident from the manner in which the advertisement was given only in the local/regional newspapers in vernacular languages and not internationally in the major cities. This Tribunal vide Order dated 14.05.2019 had given an unequivocal direction that the work should be taken from the existing employees and workmen to ensure that the Company remains a 'going concern'. A profile of M/s. Skein Corp. India was given to the Liquidator for consideration as Skein Corp. was willing to invest Rs.3200 Crores/- after doing due diligence. The same was communicated to the Liquidator that they were ready to deposit Rs.32 Crores/- on or before 23.12.2020 but the same was not considered. An Interlocutory Application was preferred by M/s. Skein Corp. India on 14.12.2020 placing on record its intent to submit the Resolution Plan but the same was not brought on record by the Liquidator when the hearing was held on 18.12.2020.

It is submitted that the value of the 'Corporate Debtor' has reduced drastically in a span of less than 6 months, eroding the value. Any further auction will reduce the value, leaving the Company to be sold at a scrap value. It was strenuously contended that the Liquidator and the 'Financial Creditor' were not working in the interest of the Company which provides employment for more than 850 employees, Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 and hence prays for the proposal given by M/s. PGI Global also to be considered and also to direct that all wages and statutory dues including provident fund and gratuity since 2012 to be paid to the workers immediately.

6. I.A. 2346 of 2021:

I.A. 2346 of 2021 has been filed by M/s. Goldman Securities Limited seeking impleadment as one of the Respondents in Company Appeal (AT) (Insolvency) No. 243 of 2021 (preferred by Workmen Union of the 'Corporate Debtor'). The Applicant in this I.A. seeks a direction to consider the proposal being given by the Applicant and permit the Applicant to acquire and to run the 'Corporate Debtor' as a 'going concern' as per the proposed Terms of Acquisition. The submissions of the Learned Counsel appearing for the Applicant in I.A. 2346 of 2021 are as follows:-

Learned Counsel for the Applicant submitted that the Applicant's 'Terms of Acquisition' is in line with the Appeal preferred by the promoters and workmen in this Tribunal. It is stated that in the present case, the value of the 'Corporate Debtor' has reduced drastically from Rs.615 Crores/- to Rs.340 Crores/- in a span of less than 6 months. The value of the Company has eroded by almost 45% as a whole and various parcels have also reduced drastically.

It is stated that the Applicant has given its proposal for Acquisition of the Company at Rs.405 Crore/- + refurbishment and Working Capital Requirements amounting to

approximately Rs.150 Crores/-. Learned Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 Counsel relied on the Judgement of this Tribunal in 'Gaurav Jain' Vs. Sanjay Gupta Liquidator of the Topworth Pipe and Tubes Pvt. Ltd.' and also in 'M/s. Mohan Gems & Jewels Private Limited' Vs. 'Vijay Verma & Anr.' wherein this Tribunal has held that every attempt should be made to revive the Company and continue it as a 'going concern'.

It is for the Liquidator to take a decision about the sale as per Section 35 of the Code and the Liquidator can consult the stakeholders as per Section 35(2) of the Code but cannot call upon the Applicant to approach the stakeholders. Section 35(2) of the Code empowers the Liquidator to consult any of the stakeholders entitled to a distribution of proceeds under Section 53.

It is prayed that their proposal be considered as it has been submitted as per the 'Terms of Acquisition' in Company Appeal (AT) (Insolvency) No. 243 of 2021.

7. Submissions of the Learned Counsel appearing on behalf of the Liquidator:

Learned Counsel submitted that the Appeal by the promoters has become infructuous in view of the fresh Public Announcement dated 23.02.2021, to sell the 'Corporate Debtor' as a whole on a 'going concern basis'.

The direction of the Adjudicating Authority to sell the asset collectively has been wrongly construed by the Appellants. As per the directions Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 given in the Order dated 14.05.2019, the Liquidator is taking measures in complying with the directions therein. This Tribunal vide Order dated 14.05.2019 has directed to sell the 'Corporate Debtor' on the whole as a 'going concern basis' and hence Public Announcement was given inviting Expressions of Interest for participation by interested bidders. In addition to issuing Public Announcement, Liquidator has issued an invitation to each of the persons that have evinced an interest in submitting a 'Scheme' to participate in the aforementioned bidding process. It is submitted that a perusal of the said Public Notice, shows that the Liquidator is admitting to sell the 'Corporate Debtor' as a 'going concern' only. In the seventh Meeting of the stakeholders of the 'Corporate Debtor', the Liquidator informed the stakeholders that the next steps and only if the Company cannot be sold as a 'going concern' as a whole, the next step would be shipyard wise sale for the various yards of the 'Corporate Debtor', the next subsequent step would be selling the Assets in parcels. Selling the 'Asset' as a piecemeal sale would be the last resort.

The pandemic cannot be a reason to delay the entire process where two years have already been spent in the CIRP process. The Appellant M/s. PGI Global never participated in the process and never approached the Liquidator with the compliant scheme. The name of the Appellant cropped up only for the first time in an email dated Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A.

2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 15.12.2020 of another entity called Capital Edge Investment Limited (CEIL) and no scheme along with the EMD was ever submitted by CEIL.

The Appellant/PGI Global was neither a party to I.A. No. 3702 of 2019 nor did it intervene in the proceedings before the Adjudicating Authority and therefore has no locus standi to file this present Appeal. M/s. PGI Global first communicated directly with the Liquidator only on 09.03.2021, after the Impugned Order was passed. Apart from not having submitted any scheme during the 6 month window period as per the Order of this Tribunal dated 14.05.2019, despite multiple Public Announcements issued after the Order dated 18.12.2020, no EOI has been submitted by M/s. PGI Global.

Learned Counsel vehemently contended that there is a deliberate misrepresentation of the Liquidation Order dated 14.01.2019 and this Tribunal's Order dated 14.05.2019 whereby this Tribunal has held that on failure to sell the 'Corporate Debtor' as a 'going concern', steps should be taken for outright sale of the 'Corporate Debtor'. Despite sincere efforts and steps followed in terms of Order of this Tribunal dated 14.05.2019, the Liquidator did not receive any compliant scheme under Section 230 of the Companies Act, 2013 within the time duration of 6 months as stipulated in the Liquidation Regulations. M/s PGI Global is only trying to derail and delay the Liquidation Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 Process as it has repeatedly failed to participate within the prescribed timelines.

248 workmen forming part of the Appellant Union have accepted the Settlement Letters offered to them by the Liquidator. A total of 713 Settlement Letters have been offered, out of which 708 workmen and employees, have accepted for 4 employees (out of the 345) and one workmen (out of 368) owing to reachability issue. The workmen have also been informed that their dues pertaining to the period prior to the Liquidation commencement date shall be settled from the Liquidation Estate of the 'Corporate Debtor' as per Section 53 of the Code. This Tribunal on 08.12.2020 directed the Adjudicating Authority, Mumbai to accord topmost priority to I.A. No.3702 of 2019 and passed an Order within a weeks' time, which itself shows the urgency accorded by this Tribunal to this matter and hence the allegations by the Directors, the Workmen and the Unsuccessful Applicant against the Liquidator, are all denied and it is prayed that their Appeals are dismissed with cost.

8. Submissions of the Learned Counsel appearing on behalf of Liquidator in I.A. 2346 of 2021:

This I.A. has been filed on 21.10.2021 during the stage of final arguments.

Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 Learned Counsel for the Liquidator submitted that this I.A. is not maintainable as it is filed for impleadment and for consideration of the Applicant's bid under Rule 11 of NCLAT Rules, 2016, read with Section 31 of the Code. The entire process which deals with approval of

Resolution Plan has no applicability in the Liquidation Process and the Applicant seeking consideration of its 'Terms of Acquisition' and offer akin to a Resolution Plan, at the stage of Liquidation Proceeding under Chapter 3 of the Code, is impermissible.

It is further submitted that the 'Terms of Acquisition' suffers from various issues detailed as hereunder:-

o inclusion of assets of the Corporate Debtor which are lying at the premises owned by subsidiary of the 'Corporate Debtor'. o inclusion of assets already sold during the various auction processes already conducted i.e., assets at Bhandarli and Ghodbunder yards and the Kolkata yard and the Goa yard (excluding assets stored in the premises owned by Gultare Energy Projects limited).

o a long drawn payment schedule of 4 years for the proposed consideration of INR 405 Crores in contravention to the requirement of payment within 15 days from the date when he is invited to provide the same, as per the Liquidation Regulations. o non-submission of an undertaking under Section 29A of the I&B Code. Additionally, the Applicant has also suppressed the factum of Divya Mercantile, one of the interested bidders of Corporate Debtor, being a holder of 13.2% shareholding in the Applicant.

The Liquidator had presented the offer before the stakeholders of the 'Corporate Debtor' in the Meeting dated 12.11.2021 and having deliberated upon it at length, out of the 14 Members attending the Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 Meeting, 6 Members were not in favour of the offer and the remaining 8 Members did not offer any view of the proposal.

Allowing this Application by M/s. Goldman Securities Limited would cause grave prejudice to all the interested bidders who had participated and continued to participate in the auction process as per the provisions of the Code and to the interest of all the stakeholders of the 'Corporate Debtor'.

9. I.A. 2484 of 2021:

I.A. 2484 of 2021 is preferred by one 'Pyrotech Resources Corp.' in Company Appeal (AT) (Insolvency) No. 140 of 2021 seeking intervention in this Appeal. A perusal of the Application shows that it is being filed by one Mr. B.G. Nayak, Director of Summer Holding Private Limited, Mumbai who is duly authorized by Francois Bravo Ferrer, the CEO of 'Pyrotech Resources Corp.'. The Learned Counsel appearing for the Proposed Intervener submitted that they would like to acquire 100% equity asset of the 'Corporate Debtor' and has addressed a Letter dated 14.10.2021 to the Liquidator.

It is significant to mention that this I.A. was filed on 30.10.2021. The matter was reserved on 16.11.2021. During the course of arguments, Learned Counsel Mr. Sumesh Dhawan appearing for the Liquidator submitted that he has not received any copy of the I.A. and sought to file Reply but as sufficient time has lapsed, and the final arguments Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 had concluded, an opportunity was given to file Written Submissions after a copy was served on him.

10. Submissions of the Learned Counsel appearing on behalf of Edelweiss Asset Reconstruction Company Limited/Financial Creditor:

Learned Counsel submitted that this Appeal is not maintainable as ex-

promoter do not have any locus standi to file the Appeal as they are ineligible under Section 29(A) of the Code to submit scheme to acquire Assets of the 'Corporate Debtor' in liquidation. The Appellants have failed to establish any grounds as to how they are personally aggrieved by the Impugned Order.

The Public Announcement has been made inviting EoIs once again to sell the 'Corporate Debtor' as a whole, rendering the Appeal as infructuous. At the stakeholders Meeting on 22.01.2021 the liquidator informed that the first object would be to sell the 'Corporate Debtor'/its business as a whole and subsequently if the same is not successful, the next step would be shipyard wise sale. In the event, such a sale does not succeed, the next step would be selling the asset in parcels, such that there is a possibility to realize higher value from combination of assets before proceeding to piecemeal sale of the Asset.

Vide Public Announcement dated 23.02.2021, the 'Corporate Debtor' was to be sold as a 'going concern' only.

Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 Significant time has lapsed since the passing of the Liquidation Order where numerous efforts have been made by the Liquidator to sell the 'Corporate Debtor' as a 'going concern'. There were no submissions of EMD by any Applicant since 14.05.2019.

22 months have lapsed since passing of the Order of the Adjudicating Authority, and the process has been delayed unreasonably.

It is further submitted that even after the passing of the Impugned Order, the Creditors are willing to consider the 'Scheme' to revive the Company at any point subject to observing the bona fide of the Applicants being established by way of

deposit of 'Earnest Money'.

However, none of the prospective Resolution Applicants who submitted their EoIs furnished any amount in the form of Earnest Money Deposit.

The Order dated 04.03.2020 provided the Resolution Applicant time till 20.03.2021 for deposit of Rs.5 Crores/- and balance Rs.20 Crores/- by 30.03.2021, therefore, the prospective Applicant had plenty of time before imposition of lockdown to gather requisite funds.

The promoters must not be allowed the backdoor entry and prayed for dismissal of the Appeal with costs.

Assessment:

11. This Tribunal in Company Appeal (AT) (Insolvency) No. 195 of 2019 arising out of the Order dated 14.01.2019 passed by the Adjudicating Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in CP 292/I&B/NCLT/MAH/2017) while confirming the Order impugned therein, gave a direction to the Liquidator 'to act in accordance with observations and decision of this Appellate Tribunal. The work should be taken from existing employees and workmen to ensure that the Company remains in as a going concern'.

12. The Adjudicating Authority vide Order dated 14.01.2019 ordered for Liquidation under Section 33 read with Regulation 32(b) & (e) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, as more than 270 days has passed, the Adjudicating Authority had passed the Order of Liquidation and this Tribunal found no ground to interfere with that Order and directed the Liquidator to ensure that the Company remains a 'going concern' and follow the directions of this Tribunal in 'Y Shivram' Vs. 'S. Dhanpal & Ors.' in Company Appeal (AT) (Insolvency) No. 224 of 2018.

13. Section 230 of the Companies Act, 2013 reads as follows:-

"230. Power to compromise or make arrangements with creditors and members (1)
Where a compromise or arrangement is proposed--

(a) between a company and its creditors or any class of them; or

(b) between a company and its members or any class of them, the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator appointed under this Act or under the Insolvency and Bankruptcy Code, 2016 as the case may be, order a meeting of the creditors or class of creditors, or of the members or class of

Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

Explanation.-- For the purposes of this sub- section, arrangement includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

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

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

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

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

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

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

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

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

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

(3) Where a meeting is proposed to be called in pursuance of an order of the Tribunal under sub-section (1), a notice of such meeting shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company, individually at the address registered with the company which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, key managerial personnel, promoters and non- promoter members, and the debenture-holders and the effect of the Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 compromise or arrangement on any material

interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed:

Provided that such notice and other documents shall also be placed on the website of the company, if any, and in case of a listed company, these documents shall be sent to the Securities and Exchange Board and stock exchange where the securities of the companies are listed, for placing on their website and shall also be published in newspapers in such manner as may be prescribed:

Provided further that where the notice for the meeting is also issued by way of an advertisement, it shall indicate the time within which copies of the compromise or arrangement shall be made available to the concerned persons free of charge from the registered office of the company.

(4) A notice under sub-section (3) shall provide that the persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot to the adoption of the compromise or arrangement within one month from the date of receipt of such notice:

Provided that any objection to the compromise or arrangement shall be made only by persons holding not less than ten per cent. of the shareholding or having outstanding debt amounting to not less than five per cent. of the total outstanding debt as per the latest audited financial statement.

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

(6) Where, at a meeting held in pursuance of sub-section (1), majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a

company being wound up, on the liquidator appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be, and the contributories of the company.

(7) An order made by the Tribunal under sub-section (6) shall provide for all or any of the following matters, namely:--

(a) where the compromise or arrangement provides for conversion of preference shares into equity shares, such preference shareholders shall be given an option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable;

(b) the protection of any class of creditors;

(c) if the compromise or arrangement results in the variation of the shareholders' rights, it shall be given effect to under the provisions of section 48;

(d) if the compromise or arrangement is agreed to by the creditors under sub-section (6), any proceedings pending before the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall abate;

(e) such other matters including exit offer to dissenting shareholders, if any, as are in the opinion of the Tribunal necessary to effectively implement the terms of the compromise or arrangement:

Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section

133.

(8) The order of the Tribunal shall be filed with the Registrar by the company within a period of thirty days of the receipt of the order.

(9) The Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety per cent. value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement.

(10) No compromise or arrangement in respect of any buy- back of securities under this section shall be sanctioned by the Tribunal unless such buy-back is in accordance with the provisions of section 68.

Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 (11) Any compromise or arrangement may include takeover offer made in such manner as may be prescribed:

Provided that in case of listed companies, takeover offer shall be as per the regulations framed by the Securities and Exchange Board.

(12) An aggrieved party may make an application to the Tribunal in the event of any grievances with respect to the takeover offer of companies other than listed companies in such manner as may be prescribed and the Tribunal may, on application, pass such order as it may deem fit.

Explanation.--For the removal of doubts, it is hereby declared that the provisions of section 66 shall not apply to the reduction of share capital effected in pursuance of the order of the Tribunal under this section."

14. This Tribunal while confirming the Order of the Adjudicating Authority, which has approved Liquidation, keeping in view the observations made in 'Y Shivram' (Supra) and 'Meghal Homes Pvt. Ltd.' Vs. 'Shree Niwas Girni K.K. Samiti & Ors.', (2007) 7 SCC 753 observed as follows:-

"18. During proceeding under Section 230, if any, objection is raised, it is open to the Adjudicating Authority (National Company Law Tribunal) which has power to pass order under Section 230 to overrule the objections, if the arrangement and scheme is beneficial for revival of the 'Corporate Debtor' (Company). While passing such order, the Adjudicating Authority is to play dual role, one as the Adjudicating Authority in the matter of liquidation and other as a Tribunal for passing order under Section 230 of the Companies Act, 2013. As the liquidation so taken up under the 'I&B Code', the arrangement of scheme should be in consonance with the statement and object of the 'I&B Code'. Meaning thereby, the scheme must ensure maximisation of the assets of the 'Corporate Debtor' and balance the stakeholders such as, the 'Financial Creditors', 'Operational Creditors', 'Secured Creditors' and 'Unsecured Creditors' without any discrimination. Before approval of an arrangement or Scheme, the Adjudicating Authority (National Company Law Tribunal) should follow the same principle and should allow the 'Liquidator' to constitute a 'Committee of Creditors' for its opinion to Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 find out whether the arrangement of Scheme is viable, feasible and having appropriate financial matrix. It will be open for the Adjudicating Authority as a Tribunal to approve the arrangement or Scheme in spite of some irrelevant objections as may be raised by one or other creditor or member keeping in mind the object of the Insolvency and Bankruptcy Code, 2016.

19. In view of the observations aforesaid, we hold that the liquidator is required to act in terms of the aforesaid directions of the Appellate Tribunal and take steps under Section 230 of the Companies Act. If the members or the 'Corporate Debtor' or the 'creditors' or a class of creditors like 'Financial Creditor' or 'Operational Creditor' approach the company through the liquidator for compromise or arrangement by making proposal of payment to all the creditor(s), the Liquidator on behalf of the company will move an application under Section 230 of the Companies Act, 2013 before the Adjudicating Authority i.e. National Company Law Tribunal, Chennai Bench, in terms of the observations as made in above. On failure, as observed above, steps should be taken for outright sale of the 'Corporate Debtor' so as to enable the employees to continue.

20. Both the appeals are disposed of with aforesaid observations and directions. No cost."

(Emphasis Supplied)

15. At the outset, we address to the issue raised by the Appellants/Erstwhile Directors of the 'Corporate Debtor', the Workmen and M/s. PGI Global that the Liquidator had not made the publication of advertisement calling for EOI internationally and hence marred prospective buyers across the globe from participating, and has acted arbitrarily without adhering to the directions of this Tribunal.

Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021

16. For better understanding of the case on hand, the chronological sequence of events is detailed as hereunder:-

14.01.2019 The first Respondent was appointed as Liquidator of the 'Corporate Debtor' vide Order dated 14.01.2019. 14.05.2019 One of the shareholders of the 'Corporate Debtor' preferred an Appeal namely Company Appeal (AT) (Insolvency) No. 195 of 2019 before this Tribunal against the Liquidation Order, which was upheld (with the aforesaid directions to the Liquidator as specified in para 13).

12.06.2019 The Liquidator issued a Public Announcement for submission of EOI in 6 newspapers and also on the official website of the 'Corporate Debtor'. 28.06.2019 A Notice of extension of time was issued by the Liquidator and the date of submission of EOI was extended till 19.07.2019, the last date for submission of the 'Scheme' was 01.08.2019. 19.07.2019 The Appellants/Prakash Chandra Kapoor and Vijay Kumar submitted their EOI. On 01.08.2019 a draft 'Scheme' of Compromise and Arrangement was submitted.

13.08.2019 The Liquidator filed M.A. No. 2803 of 2019 before the Adjudicating Authority seeking an extension of time. A collective view was taken by the stakeholders that if more time is spent on revival, the value of the Assets of the 'Corporate Debtor' might be further deteriorated.

28.01.2019 The Appellant/Prakash Chandra Kapoor and Vijay Kumar submitted an Additional Document in Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 furtherance of the 'Scheme'.

23.08.2019 SRDIPL submitted a draft 'Scheme' of proposal for Compromise and Arrangement.

26.08.2019 The Adjudicating Authority extended the time by 90 days for inviting Prospective Schemes under Section 230 of the Companies Act 2013, and to sell the 'Corporate Debtor' as a 'going concern'. The Liquidator was also directed to ensure that there was some reasonable financial commitment to be taken in the favour of an EMD, from Rs.1 Crore/- to 2% of the 'Scheme' value.

28.08.2019 SRDIPL sought extension of time till March 2020.

The next date the Liquidator clarified that the details of the draft 'Scheme' were not clear and hence held the 'Scheme' to be ineligible.

03.09.2019 A notice of extension was published on the official website of the 'Corporate Debtor' for submission of 'Scheme' on Compromise and Arrangement on or before 30.09.2019. It was intimated by the Liquidator that the last date for submission of 'Scheme' was 18.10.2019 and that the EMD was fixed to 2% of the 'Scheme' value.

16.10.2019 The Liquidator clarified that no EMD was furnished, the proposal did not amount to a 'Scheme'.

18.10.2019 A draft proposal was received from the Appellants/Directors without proof of compliance of eligibility criteria and without the EMD. 25.10.2019 The final 'Scheme' was received from the Appellants/Directors again without the EMD and without other requisite documentation.

Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 26.10.2019 A draft proposal was received from Geotech Investment and Holding Inc., without EMD. 02.11.2019 The Liquidator requested M/s. Geotech to submit a compliant 'Scheme', but there was no response. 07.01.2019 The Liquidator received 'Schemes' from (a) Green Sapphire Horizon LLP, (b) Samudraratna Innovations Private Limited (c) One Four Square Trading Company, but all these Companies failed to submit a final 'Scheme' compliant as per Section 230 of

the Companies Act and all failed to deposit the EMD. 08.11.2019 M/s. Capitaledge Investment Limited sought extension of 6 weeks for filing the 'Scheme' for the 'Corporate Debtor'.

11.11.2019 M.A.3702 of 2019 was filed by the Liquidator since no compliant 'Scheme' under Section 230 of the Companies Act, 2013, was received by the Liquidator and no EMD was deposited, seeking directions from the Adjudicating Authority to initiate Liquidation by sale of assets, collectively as a yard in parcel of assets etc. 19.11.2019 M.A.3897 of 2019 was filed by SRDIPL inter alia seeking to alter its EOI dated 08.09.2019 and reduce the EMD amount and also to extend the period of submission of proposal.

02.01.2020 Taking into consideration the request from the Prospective Applicants including SRDIPL, Adjudicating Authority revised the EMD amount from 2% of the 'Scheme' value to Rs.25 Crores/- and once again directed the Liquidator to issue fresh EOI. There was also direction to approach Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 Government of India PSUs, Mazagaon Dock and other Shipyards who are similarly situated like that of the 'Corporate Debtor'.

06.01.2020 A Public Announcement was issued for inviting EOI and a detail EOI was uploaded on the website of the 'Corporate Debtor'.

11.01.2020 MSDL vide email dated 20.03.2020 informed that they were not interested in the proposal.

21.02.2020 Representatives, of GRSE informed the Liquidator that they were not interested in submitting the 'Scheme'.

24.02.2020 SRDIPL issued a letter stating that they are withdrawing the offer and one of their Associates Companies Sevenstar, M/s. Securities and Services India Private Limited shall submit a bid and SRDIPL will assist them.

28.02.2020 The Liquidator raised preliminary objection to the 'Scheme' put forth by the sister concern that EMD has not been submitted and the 'Scheme' was not compliant in terms of the EOI published.

04.03.2020 On a request made by the sister concern, the Adjudicating Authority had given a last opportunity to pay the EMD in two trenches i.e. Rs.5 Crores on or before 20.03.2020 and Rs.20 Crores on or before 31.03.2020. 'The material on record establishes that SRDIPL has not paid any amount till this date'. 14.04.2020 An email was sent to the Liquidator stating that additional time was required to pay the EMD amount due to the pandemic. It is seen from the record that though time was given from January Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 2020 to deposit the EMD amount, it was not made till April 2020 and therefore the question of pandemic being the sole reason for not making the

deposit, does not hold any water.

15.05.2020 An Additional Affidavit was filed by the Liquidator seeking urgent hearing of I.A.3702 of 2019. The sister concern Special Security Services, intervened on 22.06.2020 and sought further time to pay the EMD amount. The Adjudicating Authority granted Special Security Services, a week's time as a last resort to pay the EMD and show their bona fides. Even as on 29.06.2020 Special Security Services failed to pay the EMD amount and I.A. 3702 of 2019 was reserved for Orders. In the meantime Edelweiss filed an Appeal before this Tribunal seeking direction before the Adjudicating Authority to pass Order in I.A.3702 of 2020 and this Tribunal disposed of the Appeal on 08.12.2020 directing the Adjudicating Authority to accord top priority and dispose of the matter within one week.

14.12.2020 M/s. Skein Corporation filed an Application before the Adjudicating Authority that it is ready to pay Rs.32 Crores/- and grant further time to file its 'Scheme' for an amount of Rs.3200 Crores/-. 18.12.2020 I.A.3702 of 2019 was pronounced. 08.01.2021 A Settlement Letter was sent to all the employees and workmen to settle their dues for the Liquidation period till 08.01.2021 and the same has been acknowledged by the employees. A team of 130 people has been identified by the management and Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 officers of the shipyard who would be re-engaged by the 'Corporate Debtor' on a short-term basis to facilitate the process of the Liquidation. Two valuers have also been appointed in accordance with the regulations for conducting the valuation of the 'Corporate Debtor'.

The material on record evidences that 2 years has lapsed since initiation of the Liquidation of the 'Corporate Debtor' and in compliance with the Order of this Tribunal dated 14.05.2019 to sell the 'Corporate Debtor' as a whole as a 'going concern', a Public Announcement dated 23.02.2021 and 08.04.2021 was published in the Business Standard (all Editions) Loksatta (all of Maharashtra), Kannada Prabha Mangalore, Dainik Herald Goa, Ajkal Kolkata, Daily Sagar Ratnagiri and also on the website of the 'Corporate Debtor' and invited Expressions of Interest for participation by interested bidders in the e-auction process of the sale of the 'Corporate Debtor' as a whole on a 'going concern basis'.

It is not in dispute that the Liquidator has issued an invitation to each of the persons that has evinced an interest in submitting a 'Scheme' to participate in the bidding process. Pursuant to the Public Announcement dated 23.02.2021, the Liquidator addressed an email on 24.02.2021 informing the Appellant about the e-auction process of the 'Corporate Debtor' as a 'going concern'.

Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021

17. The Liquidator has filed in his reply the emails sent to each of the persons who have evinced an interest in submitting a scheme to participate in the bidding process. Keeping in view all the aforementioned reasons we are of the considered opinion that the contention of the Appellants herein

that the Liquidator did not give sufficient publicity internationally and therefore Prospective Global Buyers could not participate in the bidding process, is untenable. At the cost of repetition, even the website of the 'Corporate Debtor' had all the details of the bidding process including the extension of timelines from time to time.

18. Further, the aforementioned sequence of events clearly shows that all requisites steps were followed in terms of the Order of this Tribunal dated 14.05.2019 but no compliant scheme under Section 230 of the Companies Act, 2013, was received within the time frame of 6 months as stipulated under the Liquidation Regulations. Therefore, the contention of the Appellant/Directors that the Liquidator did not take any steps as directed by this Tribunal, is unsustainable. The Public Announcement issued post 18.12.2020 establishes that the Liquidator had continued to provide auction for sale of the 'Corporate Debtor' as a 'going concern'.

19. Learned Counsel appearing for the Liquidator drew our attention to the email dated 10.06.2021 from M/s. PGI Global which states as follows:-

Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 (Emphasis Supplied) Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 Learned Counsel placed reliance on the aforementioned email to buttress his argument that M/s. PGI Global, did not have any account in India and the Company admits that they have participated in the proceedings and sought for request for extension of last date of registration which further goes to prove that M/s. PGI Global cannot now state that they were not given sufficient opportunity to put in their proposal. It is pertinent to mention that M/s. PGI Global is not a party before the Adjudicating Authority and has directly preferred an Appeal here.

20. It is also seen from the record that the contentions of the Appellants/Directors/ M/s PGI Global that the proposal of M/s. Skein Corp. India was deliberately not considered by the Liquidator, is not acceptable as the record shows that no potential sponsor had submitted/deposited any amount towards EMD as directed by the Adjudicating Authority.

21. As regarding the proposal of the Proposed Intervener in I.A. 2346 of 2021, the Liquidator has clearly submitted that the same was presented before the stakeholders in the Meeting dated 12.11.2021 and out of 14 Members, 6 Members were not in favour of the offer and the remaining 8 Members did not give their view. It was further submitted that the Applicant has suppressed the factum that Divya Mercantile one of the interested bidders of the 'Corporate Debtor' holds 13.2% shareholding in the proposed Applicant Company.

Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021

22. For all the aforementioned reasons we do not find any deficiency in the performance of functions of the Liquidator who has acted in accordance with the directions given by this Tribunal and as per the relevant regulations. 'Going Concern' under Liquidation:

23. A key benefit of selling the 'Corporate Debtor', as a 'going concern' in Liquidation as against other manners of sale is, it can preserve employment while maximising the result of stakeholders. We find merit in admitting sale of the 'Corporate Debtor' as a 'going concern' in this Liquidation Process.

24. The term 'Going Concern' is well understood in legal parlance. The jurisprudence in this regard is fairly well developed out of the Erstwhile Liquidation regime under the Companies Act, 1956. The Insolvency Law Committee in its Report dated 26.03.2016 noted that:-

"The phrase as a going concern implies that the CD would be functional as it would have been prior to initiation of CIRP, other than the restrictions put by the code. It may not, therefore, be defined. However, it may be explained that going concern means all such assets and the liabilities, which constitute an integral business or the CD, that must be transferred together, and the consideration must be for the business or the CD."

(Emphasis Supplied)

25. Transfer of the Company under Liquidation on 'going concern' basis is not a new concept and it was first noticed by Hon'ble Chief Justice Marten of Bombay High Court in 1930, when he noted as follows:-

".... Thus as stated in Palmer, Edn.13, Part 2, p.376:

Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 "But it often happens that the business of the company is its most valuable asset, and in such a case it may be very proper to carry on the business, and sell it as a going concern: to stop it would impair, if not destroy, its value so also it may be proper to carry it on when there are pending contracts which can be carried out without much difficulty, and if not parried out would involve forfeiture or heavy claims against the company for damages. And so also where the company has partly manufactured materials, it may be proper to carry "on the business so far as may be necessary to complete the manufacture, if by so doing a loss will be avoided or a sale effected."

(Emphasis Supplied) Whilst the aforesaid case primarily dealt with the legality of certain 'dispositions' made post the winding up order to ensure that the company was run on a 'going concern' basis to preserve its value, in the case of M.C.T.M. Chidambaram Chettiar Vs. The Official Receiver, High Court, we note of an instance where the assets of the Madras Chemical Industries Ltd, which was in the process of being wound up, was ordered to be sold as a going concern.

26. Regulation 2B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, is as follows:-

2B. Compromise or arrangement.-(1) Where a compromise or arrangement is proposed under section 230 of the Companies Act, 2013 (18 of 2013), it shall be completed within ninety days of the order of liquidation under sub-sections (1) and (4) of section 33:

[Provided that a person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor, shall not be a party in any manner to such compromise or arrangement.] (2) The time taken on compromise or arrangement, not exceeding ninety days, shall not be included in the liquidation period.

Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 (3) Any cost incurred by the liquidator in relation to compromise or arrangement shall be borne by the corporate debtor, where such compromise or arrangement is sanctioned by the Tribunal under sub- section (6) of section 230:

Provided that such cost shall be borne by the parties who proposed compromise or arrangement, where such compromise or arrangement is not sanctioned by the Tribunal under sub-section (6) of section 230.] (Emphasis Supplied)

27. Regulation 32 & 32-A are being reproduced as hereunder:-

32. Sale of Assets, etc. - The liquidator may sell -

- (a) an asset on a standalone basis;
- (b) the assets in a slump sale;
- (c) a set of assets collectively;
- (d) the assets in parcels;
- (e) the corporate debtor as a going concern; or

(f) the business(s) of the corporate debtor as a going concern:

Provided that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security interest therein has been relinquished to the liquidation estate.

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

(2) For the purpose of the sale under sub-regulation (1), the group of assets and liabilities of the corporate debtor, as identified by the committee of creditors under sub-regulation (2) of regulation 39-C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall be sold as a going concern.

Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 (3) Where the committee of creditors has not identified the assets and liabilities under sub-regulation (2) of regulation 39-C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall identify and group the assets and liabilities to be sold as a going concern, in consultation with the consultation committee.

(4) If the liquidator is unable to sell the corporate debtor or its business under clause (e) or (f) of regulation 32 within ninety days from the liquidation commencement date, he shall proceed to sell the assets of the corporate debtor under clauses (a) to (d) of regulation 32.

(Emphasis Supplied) At this juncture, it is relevant to peruse Section 35 of the Code which deals with the 'Powers & duties' of a Liquidator:

35. Powers and duties of liquidator.--

(1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely:--

(a) to verify claims of all the creditors;

(b) to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor;

(c) to evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report;

(d) to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary;

Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021

(e) to carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary;

(f) subject to section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified;

[Provided that the liquidator shall not sell the immovable and movable property or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant.].

(g) to draw, accept, make and endorse any negotiable instruments including bill of exchange, hundi or promissory note in the name and on behalf of the corporate debtor, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business;

(h) to take out, in his official name, letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor, and in all such cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself;

(i) to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities;

(j) to invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code;

Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021

(k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of or on behalf of the corporate debtor;

(l) to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions;

(m) to take all such actions, steps, or to sign, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator;

(n) to apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board; and

(o) to perform such other functions as may be specified by the Board.

(2) The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under section 53:

Provided that any such consultation shall not be binding on the liquidator:

Provided further that the records of any such consultation shall be made available to all other stakeholders not so consulted, in a manner specified by the Board.

(Emphasis in bold supplied)

28. Regulation 31A speaks of the Constitution of the Stakeholders' Consultation Committee. It reads as follows:-

Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 [31A. Stakeholders' consultation committee.-(1) The liquidator shall constitute a consultation committee within sixty days from the liquidation commencement date, based on the list of stakeholders prepared under regulation 31, to advise him on the matters relating to sale under regulation 32.

(2).....

(3) The liquidator may facilitate the stakeholders of each class to nominate their representatives for inclusion in the consultation committee.

(4) If the stakeholders of any class fail to nominate their representatives, the required number of stakeholders with the highest claim amount in that class shall be included in the consultation committee.

(5) Subject to the provisions of the Code and these regulations, representatives in the consultation committee shall have access to all relevant records and information as may be required to provide advice to the liquidator under sub-regulation (1).

(6) The liquidator shall convene a meeting of the consultation committee when he considers it necessary and shall convene a meeting of the consultation committee when a request is received from at least fifty-one percent of representatives in the consultation committee.

(7) The liquidator shall chair the meetings of consultation committee and record deliberations of the meeting.

(8) The liquidator shall place the recommendation of committee of creditors made under sub-regulation (1) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, before the consultation committee for its information.

(9) The consultation committee shall advise the liquidator, by a vote of not less than sixty-six percent of Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 the representatives of the consultation committee, present and voting.

(10) The advice of the consultation committee shall not be binding on the liquidator:

Provided that where the liquidator takes a decision different from the advice given by the consultation committee, he shall record the reasons for the same in writing.]
(Emphasis Supplied)

29. It is submitted by the Financial Creditor M/s. Edelweiss that in the 14th meeting of the stakeholders of the 'Corporate Debtor' held on 12.11.2021, the Liquidator had apprised the stakeholders, inter alia, that the 12 EOIs were received, 5 for purchasing the 'Corporate Debtor' as a whole on a 'going concern' basis and 7 for assets pertaining to each shipyard. In the auction held on 24.11.2021 only assets pertaining to the Goa Shipyard has been sold and other assets are available for sale. It is submitted by Edelweiss that the reserve price of the assets as the 'going concern' has reduced from Rs.615 Crores/- as on 23.02.2021 to Rs.340 Crores/- as on 24.11.2021 in the last auction conducted. This excludes the 2 yards sold in the earlier auctions. It is significant to mention that Edelweiss constitutes 83% of the CoC and seeks that the proposal by 'Pyrotech Scheme' ought to be examined and placed before the Stakeholders Committee for deliberations and further negotiations.

30. As regarding the I.A. Application 2346 of 2021 filed on 21.10.2021 M/s. Goldman Securities Ltd. it was directed by this Tribunal vide Order Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT)

(Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 dated 28.10.2021 that a copy be served upon the Liquidator latest by 29.10.2021. During the hearing M/s. 'Pyrotech Resources Corp.' sought to intervene and was directed to file a Hard Copy of their Application by 29.10.2021.

31. During the course of final arguments on 16.11.2021 when the Learned Counsel for the Liquidator had submitted that he sought to file a reply for the said Application I.A. 2484 of 2021 in Company Appeal (AT) (Insolvency) No. 140 of 2021 (which was filed on 30.10.2021 during the fag end of the final arguments), an opportunity was given to make his submissions by way of final Additional Written Arguments not to delay the matter pending since a long time. It is pertinent to mention that the Liquidator in his Written Submissions filed on 30.11.2021 stated that he has presented the Application along with the offer of 'Pyrotech' before the stakeholders of the 'Corporate Debtor' for their views during the meeting held on 25.11.2021. It is submitted that out of the 11 Members who had attended the meeting, 4 Members expressed their views to carry out preliminary requirements and consider the proposal of 'M/s. Pyrotech' subject to 'due diligence' whereas the remaining 7 Members did not give any concrete view. It is submitted by the Liquidator that the Members of the stakeholders has neither approved nor accepted the proposal of the Applicant.

32. "47. [Model time-line for liquidation process. The following Table presents a model timeline of liquidation process of a corporate debtor from the liquidation commencement date, assuming that the process does not include compromise or Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 arrangement under section 230 of the Companies Act, 2013 (18 of 2013) or sale under regulation 32-A:

Model Timeline for Liquidation Process Sl. Section/ Description Norm Latest Time-

No. (1)	Regulation (2)	(3)	(4)	line (5)
1	Section 33 and 34	Commencement of liquidation appointment of liquidator	LCD	0=T
2	Section 33 (1) (b) (ii)/Reg. 12 (1, 2, 3)	Public announcement in Form B	Within 5 days of appointment of liquidator.	T+5
3	Reg. 35 (2)	Appointment of registered valuers	Within 7 days of LCD	T+7
4	[Section 38 (1), Reg. 17, 18, 19, 20 and 21A]	Submission of claims; Intimation of decision on relinquishment of security interest	Within 7 days of LCD	T+7
5	Section 38 (5)	Withdrawal/ modification of claim	Within 14 days of submission of claim	T + 44
6	Reg. 30	Verification of claims received	Within 30 days from the last date	T + 60

		under regulation	for receipt of	
		12(2)(b)	claims	
7	Reg. 31A	Constitution of SCC	Within 60 days of LCD	T + 60
8	Section 40 (2)	Intimation about decision of acceptance/ rejection of claim	Within 7 days of admission or rejection of claim	T + 67
9	Reg. 31 (2)	Filing the list of stakeholders announcement to public	Within 45 days and from the last date of receipt of claims	T + 75

1. Inserted by No. IBBI/2019-20/GN/REG047, dated 25-7-2019 (w.e.f. 25-7-2019)

2. Substituted by No. IBBI/2020-21/GN/REG062, dated 5-08-2020 (w.e.f. 5-8-2020).

10	Section 42	Appeal by a creditor against the decision of the liquidator	Within 14 days of receipt of such decision	T + 81
11	Reg. 13	Preliminary report to the AA	Within 75 days of LCD	T + 75
12	Reg. 34	Asset memorandum	Within 75 days of LCD	T + 75
13	Reg. 15 (1), (2), (3), (4) and (5), and 36	Submission of progress reports to AA; Asset Sale report to be enclosed with every	First progress report	Q1 + 1
			Q-2	Q2 + 1
			Q-3	Q3 + 1
		Progress Report, if sales are made	Q-4	Q4 + 1
			FY: 1 Audited accounts of liquidator's receipt & payments for the financial year	15th A

Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 14 Proviso to Reg. 15 Progress report in Within 15 days of Date of (1) case of cessation of cessation as cessation + 15 Reg. 37 (2, 3) Information to Within 21 days of Date of secured creditors receipt of intimation + intimation from 21 secured creditor 16 Reg. 42 (2) Distribution of the

Within 3 months Date of proceeds to the from the receipt of Realisation stakeholders amount + 90 17 Reg.10 (1) Application to AA for Within 6 months T+6 months Disclaimer of from the LCD onerous property 18 Reg.10 (3) Notice to persons At least 7 days interested in the before making an onerous property or application to AA contract for [disclaimer].

19	Reg. 44	Liquidation of corporate debtor	Within one year	T +
20	Reg. 46	Deposit the amount of unclaimed dividends and undistributed proceeds	Before submission of application under regulation (3) of regulation 45	
21	Sch-1 Sl. No 12	Time period to H1 bidder to provide the balance sale consideration	Within 90 days of the date of invitation to provide the balance amount.]	

[AA: Adjudicating Authority, LCD: Liquidation Commencement Date, SCC:

Stakeholders' Consultation Committee]] (Emphasis in bold supplied) 47-A. Exclusion of period of lockdown.-Subject to the provisions of the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purposes of computation of the time-line for any task that could not be completed due to such lockdown, in relation to any liquidation process.]"

33. The aforementioned timelines under Regulation 47 for Liquidation Process, are directory. Procedural law should not be construed as an obstruction but as an aid to Justice. Extension of time under Liquidation may be allowed only on the satisfaction that there exists exceptional circumstances. The Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 Hon'ble Supreme Court in 'Smt. Rani Kusum' Vs. 'Smt. Kanchan Devi', reported in (2005) 6 SCC 705 concurring with the ratio laid down in 'Kailash' Vs. 'Nanhku and Ors.' (2005) 4 SCC 480 held as follows:

"10. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. ** **12. The

processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in the judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence, processual, as much as substantive. (See *Sushil Kumar Sen v. State of Bihar* [(1975) 1 SCC 774])

13. ** A procedural law should not ordinarily be construed as mandatory; the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. (See *Shreenath v. Rajesh* [(1998) 4 SCC 543; AIR 1998 SC 1827])"

34. Section 32(A)(4) should be read together with Section 35(1)(e) and Regulation 47. What is mandated in the Code in Section 35(1)(e) is to 'carry on business' for its 'beneficial Liquidation'. The Regulation therefore cannot Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 override the objective of 'beneficial liquidation' provided for in Section 35(1)(e) of the Code.

35. We are of the considered view that to achieve 'Beneficial Liquidation' provided for under Section 35(1)(e) and maximisation of the value of assets under Section 53, and having regard to all reasons given below, we find it just & expedient to exercise our inherent powers under Rule 11 of the NCLAT Rules, 2016 to extend the period by six weeks to enable the Liquidator to attempt the Sale as a 'Going Concern' at an appreciable value.

Two years have lapsed since the Liquidation Order was passed by the Adjudicating Authority, which Order has been confirmed by this Tribunal.

Several extensions were given to try for a 'Scheme' under Section 230 of the Companies Act, 2013, but despite several efforts, the same did not materialize.

The Counsel for the Liquidator submitted that he is still on Stage II of Regulation 32-A and seeks to sell the Company as a 'going concern' in compliance of the Orders of this Tribunal. M/s. Edelweiss/'Financial Creditor' constituting 83% of the CoC seek that the proposal given by M/s. Pyrotech be placed before the Stakeholders Committee for deliberations and further negotiations.

Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 Section 35(1)(e) of the code provides for carrying on the business of the 'Corporate Debtor' for its 'Beneficial Liquidation' as the Liquidator considers necessary.

Regulation 47 deals with only model timelines which are directory and not mandatory.

Regulation 47-A specifies that the time lost during lockdown may not be included in this period.

Keeping in view that the last two Meetings took place as recently as on 12.11.2021 and on 25.11.2021 and the auction on 24.11.2021, we are of the considered view that a total period of six weeks finally be given to the Liquidator to put forward the proposals, as per Regulation 31-A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, provided the deposit of EMD as ordered by the Adjudicating Authority is complied with, within a period of two weeks from the date of this Order. It goes without saying that the ratio of the Hon'ble Supreme Court in 'Arun Kumar Jagatramka' Vs. 'Jindal Steel and Power Ltd. & Anr.' reported in Civil Appeal No. 9664 of 2019 with respect to eligibility of a person under Section 29(A) would be adhered to. After the deposit of the EMD amounts, a further period of four weeks time is being given to the Liquidator for Sale of the Company as a 'Going Concern' failing which, needless to add, the Liquidator shall Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021 proceed in accordance with law. We have not expressed any view on the merits of the Proposals.

36. The Appeals & the IAs are disposed of with the aforementioned directions. To reiterate, we observe that the Liquidator has adhered to the directions of the Tribunal and has acted as per the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. This extension of six weeks is being granted to achieve the objective of 'Beneficial Liquidation' and attempt to keep the business of the Company as a 'Going Concern'.

37. The Registry is directed to upload the Judgement on the website of this Tribunal and send a copy of this Judgement to the Learned Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) forthwith.

[Justice Anant Bijay Singh] Member (Judicial) [Ms. Shreesha Merla] Member (Technical) NEW DELHI 08th December, 2021 ha Company Appeals (AT) (Insolvency) No. 140 of 2021 & I.A. 2484 of 2021, With Company Appeal (AT) (Insolvency) No. 165 of 2021 & Company Appeal (AT) (Insolvency) No. 243 of 2021 & I.A. 2346 of 2021