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Liquidation the last resort under IBC

Considering that the primary focus of the IBC is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters /those who are in management., Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests.

Recently, holding up to the core objective of Insolvency and Bankruptcy Code, 2016, to revive the corporate debtor, the NCLAT, New Delhi allowed the Resolution Professional of HDO Technologies Limited and Hindustan Dior Limited, Mr. Amit Gupta to get into arrangement and compromise as per the provisions applicable provisions.

Considering that the corporate debtor is under liquidation it shall be governed by provisions of IBC as well as Companies Act. Once the liquidation order as per Section 33 of the code, the Liquidator as per Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, may also sell the corporate debtor as a **going concern**. Therefore, as per provisions of section 230 of the Companies Act, 2013 and regulation 32 of Liquidation Rule, Liquidator may enter any kind of compromise and arrangement in accordance of the law.

What is Section 230 of Companies Act?

Section 230 of Companies Act, 2013 empowers NCLT to make an order on the application of the company or creditor/member or in the case of company being wound up of the liquidator for the proposed compromise or arrangements including **Corporate Debt Restructuring (CDR)**.

Compromise generally implies if there is existence of a dispute with a member or creditor. However, where there is no dispute the company may resort to arrangement.

Therefore, in other words compromise and arrangement is a way to restructure the outstanding debt of corporate debtor under liquidation.

Along with provisions of the applicable acts, Appellate Authority also placed its resort on the judgements pronounced in the matter of ***Meghal Homes Pvt. Ltd. vs. Shree Niwas Girni K.K. Samiti & Ors. – (2007) 7 SCC 753 by the Hon’ble Supreme Court.***

In the Meghal Homes supra, the Supreme Court observed and held that applicability of section 390 of Companies Act, 1956 [Now replaced by section 230 of the Companies Act, 2013] should not be restricted considering the purpose for which it is enacted, namely, revival of a company including a company that is liable to be wound up or is being wound up and the attempt must be made to ensure that rather than dissolving a company it is allowed to revive. Further, now Section 230 of the companies Act clearly states that Liquidator of the company being wound up may also apply under section 230.

Hence, in view of the provision of Section 230 and the decision of the Hon’ble Supreme Court in ‘*Meghal Homes Pvt. Ltd.*’ and ‘*Swiss Ribbons Pvt. Ltd.*’, the NCLAT directed the ‘Liquidator’ to proceed in accordance with law. The Liquidator was directed to verify claim; take custody and control of all the assets, property, effects and actionable claims of the ‘corporate debtor’, and should carry on the business of the ‘corporate debtor’ for its beneficial liquidation etc. as prescribed under Section 35 of the I&B Code.

But before taking steps to sell the assets of the ‘corporate debtor(s)’ (Hindustan Dior Limited and HDO Technologies Limited), the Liquidator will take steps in terms of Section 230 of the Companies Act, 2013. Only on failure of revival, the Adjudicating Authority and the Liquidator will first proceed with the sale of company’s assets wholly and thereafter, if not possible to sell the company in part and in accordance with law. The said supra, therefore could be termed as landmark judgement as it provides clarity and reasons of allowing arrangements and compromise even after the liquidation order has been passed by the Adjudicating Authority, i.e. National Company Law Tribunal (NCLT). Further, with this

ruling, many companies who have been pushed into Liquidation for lack of Resolution Plan shall get another chance to revive before its corporate death though Liquidation.