

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CA (CAA)/109/MB-IV/2023

*In the matter of the Companies Act,
2013;*

AND

In the matter of

*Sections 230 to Section 232 r/w
section 66 of the Companies Act,
2013 with IBC, 2016*

*read with Companies
(Compromises, Arrangements and
Amalgamation) Rules, 2016;*

AND

*In the matter of
The Scheme of Arrangement
Between*

Mr. Nikhil Jain
("Acquirer No. 1")

And

**Rohstoffe International Private
Limited**
("Acquirer No. 2")

And

Wendt Finance Private Limited
("Acquirer No. 3")

With

Birla Cotsyn (India) Limited
(in Liquidation)

*('BCIL" or 'the Company' or
'Corporate Debtor')*

And

their respective Creditors and Shareholders. ('Scheme' or 'the Scheme')

Mr. Anil Goel

Liquidator- M/s Birla Cotsyn (India) Ltd.
E-10A, Kailash Colony,
Greater Kailash-I, New Delhi 110048

... Applicant

Order delivered on: **02.05.2023**

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (through video conferencing) :

For the Applicant(s)/ Liquidator : Adv. Rohit Gupta along with
Adv. Amar Vivek, Adv. Aditya
Gauri for Liquidator.

For the Acquirer(s) : Mr. Viraj Parikh a/w Mr.
Umang Mehta i/b Dhruve
Liladhar and Co.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Bench is convened through Video Conferencing.
2. The present Application is a filed by Anil Goel, the Liquidator of Birla Cotsyn India Limited, a company in Liquidation, for a Composite Scheme of Compromise and Arrangement between Mr. Nikhil Jain ('Acquirer No. 1'), Rohstoffe International Private Limited ('Acquirer No. 2') and Wendt Finance Private Limited ('Acquirer No. 3') together referred to as ('the Acquirer') and the Corporate Debtor ('**BCIL**' or '**the Company**' or '**Corporate Debtor**') and its Creditors and Shareholders.

3. The background for the present Application is as follows:
- a. An Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 was filed by Edelweiss Asset Reconstruction Company Limited in April 2018 before the Hon'ble National Company Law Tribunal, Mumbai Bench (hereinafter referred to as "**NCLT**"). It is pertinent to mention that vide Order dated 20.11.2018 of this Hon'ble Tribunal, the Corporate Insolvency Resolution Process of the Corporate Debtor commenced therein, and Ms. Sujata Chattopadhyay was appointed as the Interim Resolution Professional.
 - b. In the 15th meeting of Committee of Creditors held on 16.08.2019, a resolution was passed with voting percentage of **91.24%** seeking initiation of the Liquidation Process of the Corporate Debtor and accordingly an application for initiation of Liquidation Process of the Corporate Debtor was filed before the Hon'ble NCLT, Mumbai Bench.
 - c. The Liquidation Process of the Corporate Debtor was initiated on 24.09.2019 vide Order of this Tribunal and Applicant was appointed as the Liquidator of the Corporate Debtor.
 - d. In accordance with Regulation 5(1) (a) read with Regulation 13, and as per Regulation 5(1) (b) read with Regulation 34 of the IBBI (Liquidation Process) Regulations, 2016 the Liquidator filed Preliminary Report, Asset Memorandum and List of Stakeholders before this Hon'ble Tribunal in the following manner:

Sr. No.	Details of Quarterly Reports	Period of Filing	Date of Filing
1	Preliminary Report	Within 75 days from liquidation commencement	28.10.2019
2	Asset Memorandum	Within 75 days from liquidation commencement	28.10.2019
3	List of Stakeholders	Within 75 days from liquidation commencement	28.10.2019

e. In accordance with the provisions of the Code, the Stakeholders Consultation Committee was constituted by the Liquidator. The Stakeholders Consultation Committee comprises of all the creditors of the Corporate Debtor and has been crystallised and finalised after inviting claims and scrutiny of claims by the Liquidator.

f. Vide order dated 16.03.2020, the Hon'ble High Court granted a stay on further sale/auction of the assets of the Corporate Debtor by the Liquidator, in the Writ Petition No. 755 of 2020. The relevant extract from the said order of the Hon'ble High Court is re-produced hereunder:

"1. Heard. The Learned Counsel for the Liquidator submits that, in E-Auction dated 13.03.2020 they received a Bid only in respect of Lot No. B i.e., Plant and Machinery at Sy. No 54/2, Ghatanji, Post Box No.1, District Yavatmal, Maharashtra. She submits that, for remaining properties, it will take some time.

2. Considering these facts, following order is passed:

a. Office is directed to place the matter on board 23.03.2020

b. Till the next date, the Liquidator is directed not to take any final decision in the re-auction of the remaining properties.”

As a result of the stay, no progress whatsoever could be made in the liquidation process in so far as sale of assets was concerned.

- i. On 15.02.2022, a Scheme of Compromise and Arrangement for the Corporate Debtor was submitted by the Acquirer for the first time. Thereafter, it underwent various changes at the request of the Liquidator and the Stakeholders Committee to ensure that it complies with the law and acceptable to the Stakeholders.
 - ii. On 29.11.2022, the Signed Scheme of Compromise and Arrangement for the Corporate Debtor was submitted by the Acquirer. That the Acquirer also submitted an Earnest Money Deposit of Rs. 1 crore.
 - iii. On 08.12.2022, the Tribunal has excluded the period from 16.03.2020 to 08.12.2022 from the timelines for liquidation on account of the stay granted by the High Court.
 - iv. On 08.12.2022, the 10th Stakeholders' Consultation Committee Meeting was convened and, in the meeting, the Revised Scheme was put to vote before the Committee, which was permitted upto 7th February 2023. The Scheme was approved by 78.22% vote (by value) of the Stakeholders Consultation Committee.
 - v. Accordingly, the present Scheme has been filed before this Tribunal under Section 230 of the Companies Act, 2013 on 11.04.2023.
4. The Counsel for the Applicant submits as follows:

- a. That the Acquirers under the Scheme are eligible under Section 29-A of the Insolvency and Bankruptcy Code, 2016.
- b. This Scheme is under the provisions of Sections 230, 66 and other relevant provisions of the Companies Act, 2013 and Insolvency & Bankruptcy Code, with the following benefits:
 - i. The Scheme will enable the Company to continue as a going concern. Revival of the Company by way of infusion of necessary funds would enable it to revive its and/or carry-on suitable business operations, and which would lead to current and future employment generation, expansion and/or enlargement and/or diversification of business activities and increase in the overall economic value of the enterprise.
 - ii. The Company is engaged in textile business and new Government policies and schemes notified by Government would provide further impetus to business growth of the Company.
 - iii. Certainty and timeline for payment to the stakeholders is clearly defined and outlined in the Scheme which may be totally uncertain in case of liquidation on a piece-meal sale of assets. As a part of this Scheme, the Acquirer is assuring to invest significant amount of money for repayment to stakeholders as outlined in the Scheme. Revival of the Company shall present business opportunities for various small and medium size suppliers and provide employment at local level as well.
 - iv. The Scheme is framed in the interest of the creditors and all other stakeholders of the Company under Liquidation

and is not prejudicial to the interests of the concerned creditors or the public at large.

- v. Acquirers, are well-versed with the textile sector, have right experience and understanding of business, have financial capability and hence, are suited to revive the Company due to their business understanding, local network and local presence.

5. The Applicant submits that the Broad overview of Financial Proposal under the Scheme is as under:

Claimant	Claim Admitted	Proposed Payment	Clause reference of the Scheme
Pending CIRP Cost during the CIRP Period		3.18	Clause 1 of Part III (Compromise and Arrangement with Creditors and Shareholders of the Company) of the Scheme
Liquidation Costs up to 30th September 2022 plus Liquidator Fees		4.18	Clause 1 of Part III (Compromise and Arrangement with Creditors and Shareholders of the Company) of the Scheme
Scheme related Costs (including estimated Liquidation Costs from 2nd February 2022 till Scheme Effective Date)		0.92	Clause 1 of Part III (Compromise and Arrangement with Creditors and Shareholders of the Company) of the Scheme
Secured Financial Creditors	656.78	37.70	Clause 4.1 to 4.5 of Part III (Compromise and Arrangement with Creditors and Shareholders of the Company) of the Scheme
Unsecured Financial Creditors	33.96	1.00	Clause 4.6 to 4.8 of Part III (Compromise and Arrangement with Creditors and Shareholders of the Company) of the Scheme
Workmen and Employee Dues	2.48	1.22 (Refer Note in next column)	Clause 5 of Part III (Compromise and Arrangement with Creditors and Shareholders of the Company) of the Scheme

			Note - Workmen Claim and Employees claims to be paid as part of CIRP Cost amounting to INR 1,25,14,682 over and above INR 1.22 Crore amount
Statutory Dues (including contingent liabilities, if any for the period till Scheme Effective Date)	22.28	1.00	Clause 6 of Part III (Compromise and Arrangement with Creditors and Shareholders of the Company) of the Scheme
Operational Creditors (other than Statutory and Workmen and Employees Dues) (including contingent liabilities, if any, for the period till Scheme Effective Date)	5.51	0.22	Clause 7 of Part III (Compromise and Arrangement with Creditors and Shareholders of the Company) of the Scheme
Existing Equity Shareholders	-	Nil	Clause 8 of Part III (Compromise and Arrangement with Creditors and Shareholders of the Company) of the Scheme
Fund infusion towards Working Capital		3.00	The Acquirer shall raise / infuse additional funds in the Company towards working capital requirements, on need basis
Total Financial Proposal		52.43	

6. The Applicant further submits that the present Scheme presents the best possible option for recovery for the creditors of the Corporate Debtor. He points to the following facts:

- i. Only one resolution plan was received during the CIRP of the Corporate Debtor. That Resolution Plan was rejected by the COC.
- ii. The total recovery in the Resolution Plan was Rs. 14 Crores. The total recovery under the Scheme is Rs. 52.43 Crores, which is far higher.

- iii. The total recovery under the Scheme is Rs. 52.43 Crores which is higher than the liquidation value of the Corporate Debtor.
 - iv. Further, the Scheme also presents the best possible outcome for the revival of the Corporate Debtor. The Scheme ensures that the Corporate Debtor continues as a going concern, which is essential as it currently has 57 employees and 65 workmen.
 - v. Further, the Corporate Debtor is a manufacturing concern and at its peak, the Corporate Debtor used to have significant exports, generating foreign currency revenue and boosting the Indian economy. Therefore, the revival of the Corporate Debtor is in the best interests of the economy as a whole.
7. Considering the aforesaid, the Applicant submits that the Scheme ensures best recovery for creditors and revival of the Corporate Debtor and is an option preferred over liquidation and corporate death of the Corporate Debtor.
8. The Counsel for the Applicant submits that such a scheme is permissible for a Company in liquidation. For this purpose, he has relied on:
- i. Regulation 2B of the IBBI (Liquidation Process) Regulations, 2016.
 - ii. Section 230(6) of the Companies Act, 2013.
 - iii. Judgment of Hon'ble National Company Law Appellate in "S.C. Sekaran v. Amit Gupta" 2019 SCC OnLine NCLAT 517.
 - iv. Judgment of Hon'ble Supreme Court in "Arun Kumar Jagatramka v. Jindal Steel" 2021 7 SCC 474.

9. The counsel for the Applicant further submits that the Applicant seeks the following reliefs:
- i. The Tribunal may be pleased to condone the delay in filing application, if any, and kindly hear the matter on its merit in the interest of justice
 - ii. The Tribunal may be pleased to dispense with the meeting of Creditors of the Corporate Debtor as the Scheme has already been voted upon in a Stakeholders' Committee Meeting and received approval of 78% of the Creditors by value.
 - iii. This Tribunal may be pleased to dispense with the meeting of the Shareholders of the Corporate Debtor in line with the principles enshrined in Section 30 of the Insolvency and Bankruptcy Code, 2016 which deems that approval of Shareholders shall be deemed to have been given.
 - iv. The Hon'ble Tribunal may be pleased to direct the Applicant to send an intimation of the Scheme of Arrangement and Compromise dated 29th, November 2022 to the Statutory Authorities/ Stock Exchanges stating that *"If no response is received from the concerned Authorities within 30 days of the date of receipt of the notice it will be presumed that the concerned Authorities has no objection to the proposed Scheme"*.
10. The counsel for the Applicant submits that even though the Scheme is submitted after 90 days from the commencement of the Liquidation of the Corporate Debtor, there is no bar on the same. Under Regulation 2B(1) of the IBBI (Liquidation Process) Regulations, 2016, the Scheme for Compromise or Arrangement must be completed within 90 days of the Liquidation order. However, as is evident from a holistic

reading of Regulation 2B of the Regulations, the purpose of the timeline is only to provide a buffer before the Liquidation timelines commence. The 90 days period is excluded from the liquidation timelines. There is no bar on the submission of a Scheme even after 90 days.

11. Without prejudice to the aforesaid, the counsel for the Applicant submits that the delay, if any, in submitting the Scheme can also be condoned. He states as follows:
 - i. By way of the Order dated 8th December 2022 in I.A 501/2022 this Tribunal has already excluded the period from 16.03.2020 till 08.12.2022 on account of the Stay granted by the Hon'ble High Court.
 - ii. Further, the period from 15.02.22 to 29.11.22 was also spent in tweaking the Scheme in order to ensure that it is legal and satisfactory.
 - iii. Further, a period from 29.11.22 to 07.02.22 was spent in giving sufficient time to creditors to decide whether they were in support of the Scheme. As such this time spent was also justified.
12. The counsel for the Applicant states that there is no bar on the Tribunal accepting a Scheme even after 90 days from commencement of Liquidation. The Hon'ble Supreme Court has held in "*Arun Kumar Jagatramka v. Jindal Steel and Power (2021) 7 SCC 474*", para. 68 that a scheme is one of the three modes by which a Corporate Debtor can be revived under the Code. Further, as held by the Hon'ble Supreme Court, the Hon'ble NCLAT and by this Tribunal on multiple occasions, the object of the Code being to revive the Corporate Debtor, delay, if any, can be condoned.

13. The counsel for the Applicant further states that the meetings of Creditors can be dispensed with. For this purpose, he submits as follows:

- i. The liquidator, who is an officer of the court, appointed under the Code, has conducted a meeting of the Stakeholders Consultation Committee (which comprises of all the Creditors of the Corporate Debtor). The Stakeholders Consultation Committee consists of the crystallised list of creditors, finalised after a public claim invitation and scrutiny process under the Code.
- ii. The Stakeholders Consultation Committee has already voted on the Scheme. Based upon the final results, it is pertinent to note that 78.22% of creditors have voted in favour of the resolution out of 93.82% of total members present and voting.
- iii. 78.22% of creditors having voted in favour of the Scheme, it already meets the threshold of 3/4th creditors voting in favour as required under Section 230(6) of the Companies Act.
- iv. In addition to the aforesaid, under the Scheme, the counsel for the Applicant submits that all creditors are receiving a value that is greater than their entitlement in the event of liquidation of the Corporate Debtor. Therefore, their interests are adequately protected. Further, it is now settled law that the power to dispense with meetings under Section 230 of the Companies Act, 2013 also extends even to schemes under liquidation as has been held by the Hon'ble NCLAT in "*K.G. Somani v. Rajnish Gupta*" 2022 SCC Online NCLAT 1609.

14. The Applicant further submits that Shareholders meeting is not required and can be dispensed with for the following reasons:

- i. The existing Shareholders have no real say in the future of the Corporate Debtor as their entitlement according to liquidation value is “*nil*”.
 - ii. Further, a majority of the existing Shareholding of the Corporate Debtor is held by its erstwhile Promoters. It is not the object and purpose of the Code to give erstwhile Promoters the power to derail a genuine scheme for revival of the Corporate Debtor.
 - iii. Further, even in cases of a Resolution Plan, Section 30 provides that if Shareholders consent is required for any purpose, the same shall be deemed to have been given. The identical principle must also apply when considering a Scheme under Section 230 of the Companies Act, 2013.
15. Further, the counsel for the Applicant submits that by way of abundant caution, the Liquidator shall publish notices in two papers (one in *English* and one in *Marathi*) notifying the public of the Scheme and inviting objections, if any, to the Scheme. This will act as an adequate and additional safeguard.
 16. This Bench heard the Counsel for the Applicant and perused the material available on record.
 17. This Bench finds that the present scheme of arrangement with the creditors and shareholders of the Corporate Debtor has been filed after completion of 90 days. This Bench feels that the intent and object of the Code is to keep the Corporate Debtor as a going concern, which is intended even in liquidation process, where ‘sale as going concern’ is to be explored at first instance and thereafter along with other option. This Bench considers that scheme of arrangement also enables to keep corporate debtor as going concern and even if such arrangement is possible in course of liquidation

process, the same should also be considered. This Bench finds that the Hon'ble NCLAT in the case of **Bharat Sharma, Resolution Applicant Vs. Reshma Mittal, RP & Anr. (2022) ibclaw.in 885 NCLAT** vide its order dated 31.10.2022 granted liberty for submission of a scheme of compromise/arrangement as contemplated under Section 230 of the Companies Act to the Liquidator within one month as well as to the Financial Creditors for their approval as contemplated under Section 230 of the Companies Act and directed completion of entire process be completed within three months' period as has been allowed under Regulation 2B of the IBBI (Liquidation Process) Regulations, 2016 from the date of order. In that case, the liquidation was ordered in the year 2021. This Bench notices that the Liquidation Process of the Corporate Debtor was initiated on 24.09.2019; the period from 16.03.2020 till 08.12.2022 was excluded on account of the Stay granted by the Hon'ble High Court; the scheme was received by the Liquidation on 15.02.2022; despite stay, the Liquidator considered it expedient to discuss the scheme with the acquirer and it could conclude on 29.11.22; thereafter, the scheme was placed before creditors to consider it, who took time from 29.11.22 to 07.02.22 to explore the feasibility of consideration of the scheme.

18. Considering above fact, this Bench is of the view that the period of 90 days from commencement of the liquidation prescribed in Regulation 2B of Liquidation Process Regulation is only for the purpose of exclusion of time from the total liquidation and there is no bar in consideration of arrangement scheme at any time within the time allowed for completion of liquidation process. The Applicant has confirmed the approval of scheme of arrangement by requisite

majority of SCC as well as deposit of EMD by the acquirer. Accordingly, this Bench does not find any legal disability in proceeding with the present scheme.

19. Considering the aforesaid submissions, this Bench is of considered view that the present Scheme of Arrangement and Compromise deserves the consideration of this Tribunal.
20. Further, considering the fact that the present scheme is already considered by SCC and approved by requisite majority; and approval of shareholders is deemed under the provisions of Code aforesaid submissions, this Bench dispenses with the meeting of creditors and shareholders.
21. Accordingly, this Bench passes the following order:
 - a) The proposed Scheme can be proceeded, subject to conclusion of whole process within 90 days from the date of this order.
 - b) The present Application is allowed with the following directions:
 - i. The meeting of the shareholders of the Corporate Debtor is dispensed with.
 - ii. The meeting of the creditors of the Corporate Debtor is dispensed with.
22. That the Applicant Companies are directed to serve notices along with copy of Scheme upon the-
 - i. Central Government through the office of Regional Director, Western Region, Mumbai;
 - ii. Jurisdictional Registrar of Companies;
 - iii. Securities Exchange Board of India;
 - iv. National Stock Exchange;

- v. Jurisdictional Income Tax Authority within whose jurisdiction the Applicant Company's assessment are made; and the Nodal Authority in the Income Tax Department having jurisdiction over such authority i.e. Pr. CCIT, Mumbai, Address:- 3rd Floor, Aayakar Bhawan, Mahrishi Karve Road, Mumbai – 400 020, Phone No. 022-22017654 [E-mail: mumbai.pccit@incometax.gov.in];
- vi. Jurisdictional GST Authority(s) (proper officer), within whose jurisdiction such companies are assessed to tax under GST law;
- vii. Bombay Stock Exchange and
- viii. Directorate General of Foreign Trade.
- ix. Reserve Bank of India.
- x. Ministry of Corporate Affairs; and
- xi. Any other Sectoral/ Regulatory Authorities relevant to the Petitioner Companies or their business.

under the provisions of Section 230 (5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

23. The Notice shall be served through by Registered Post-AD/ Speed Post/ Hand Delivery and email along with copy of Scheme and state that *“If no response is received by the Tribunal from the concerned Authorities within 30 days of the date of receipt of the notice it will be presumed that the concerned Authorities has no objection to the proposed Scheme”*. It is clarified that notice service through courier shall be taken on record only in cases where it is supported with Proof of Delivery having acknowledgement of the noticee.

24. The Applicant is directed to publish a notice in two newspapers viz. Free Press Journal (English) and Navsakti (Marathi) informing the public of the Scheme, and inviting any objections. The Applicant is directed to place on record any objections received.
25. The Applicant Companies shall file affidavit of service within 30 days from the last of the compliances as stated in above paragraphs are made and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.
26. Application is accordingly disposed of.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Kishore Vemulapalli
Member (Judicial)