Ref : LIQ/MSK/DSCL/2023-01
Date: 29th June, 2023

To,
National Stock Exchange,
Exchange Plaza,
Plot no. C/1, G Block,
Bandra-Kurla Complex, Bandra (E)
Mumbai - 400 051.

Dear Sir/Madam,

Sub: Intimation of Liquidation order passed by the Hon'ble NCLT against the Corporate Debtor **M/s. Dharani Sugars and Chemicals Limited.**

Ref: Liquidation order no **IA/(IBC)/380/CHE/2023 in IBA/976/2019** dated **27th June, 2023.**

The Corporate Insolvency Resolution Process ("CIRP") of Dharani Sugars and Chemicals Limited (DSCL) under the Insolvency and Bankruptcy Code, 2016 ("IBC") commenced pursuant to order dated 29th July 2021 in IBA/976/2019 passed by Hon'ble NCLT Chennai Bench and the undersigned has been appointed as the Interim Resolution Professional ("IRP"). Moratorium has also been ordered under Section 14 of IBC prohibiting any recovery actions/proceedings against the company with effect from 29th July 2021.

Pursuant to unsuccessful CIRP Process, Liquidation has been ordered by the Hon'ble NCLT, Chennai Bench vide their order no: IA/(IBC)/380/CHE/2023 in IBA/976/2019 dated 27th June, 2023 and I, the undersigned, have been appointed as Liquidator to the manage the liquidation process. A suitable public announcement is being caused shortly in compliance with the provisions of IBC.

It may be further noted that if there are any due from the corporate debtor, the same may be submitted in the requisite claim form to the corresponding address of the Liquidator:

CA. Mahalingam Suresh Kumar,
Liquidator – Dharani Sugars & Chemicals Limited,
SPP Insolvency Professionals LLP,
No.27/9, Nivedh Vikas, Pankaja Mill Road,
Puliyakulam, Coimbatore- 641045.

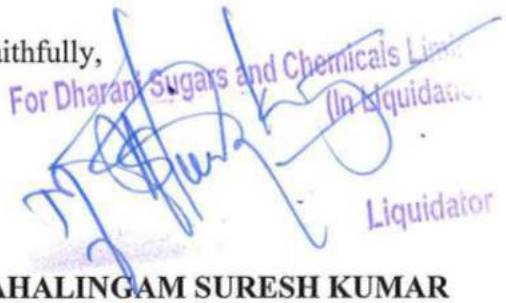
For Dharani Sugars and Chemicals Limited
(In Liquidation)

Liquidator

I hereby attach the copy of the Liquidation Order for your kind reference. The Public announcement will be shared with the stock exchange suitably in due course.

Thanking You.

Yours faithfully,



CA. MAHALINGAM SURESH KUMAR
Liquidator of M/s. Dharani Sugars and Chemicals Limited (Under Liquidation).
AFA No. AA1/10217/02/201123/104851 valid upto 20.11.2023

IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH – I, CHENNAI

IA(IBC)/380(CHE)/2023 IN IBA/976/2019

(filed under Section 12 and 60(5) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016)

Along with

IA(IBC)/490(CHE)/2023 IN IBA/976/2019

(filed under Section 12 and 60(5) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016)

Along with

IA(IBC)/1023(CHE)/2023 IN IBA/976/2019

(filed under Section 33(1)(a) and 34(1) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016)

CA M. Suresh Kumar
Resolution Professional of
Dharani Sugars and Chemicals Limited
No.27/9, Nivesh Vikas,
Pankaja Mill Road, Puliyakulam,
Coimbatore – 641 045

... Applicant

Along with

INV.P/IBC/5(CHE)/2023 IN IBA/976/2019

(filed under Section 12 and 60(5) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016)

Dr. Palani G Periasamy
Promoter and Suspended Director
Dharani Sugars and Chemicals Limited
Samudra Dugar, 4th Floor,
3/4A, Raja Rangasamy Avenue,
Tiruvanmiyur, Chennai – 600 041

... Applicant

Present:

For RP	:	*ARL Sundaresan, Senior Advocate* *A.G. Sathyanarayana, Advocate*
For Intervenor	:	*J. Manivannan, Advocate*
For Suspended Director	:	*T.K. Bhaskar, Advocate*
For CoC	:	*Sundarrajan, Advocate*

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

Order Pronounced on ***27th June 2023***

ORDER

Per: **SAMEER KAKAR, MEMBER (TECHNICAL)**

The issues which arise for consideration and decision by this Adjudicating Authority in the present set of Applications are;

(i) *Whether CIRP period is a time bound process? Can the CIRP period be extended beyond 330 days? If so, under what circumstances?*

(ii) *Whether unlimited extension of CIRP period can be permitted hoping that one day a Resolution Plan or 12A proposal would be voted in favour by the CoC?*

(iii) *Whether the RP after filing of an Application for Liquidation of the Corporate Debtor can argue that extension of CIRP period should be granted?*

(iv) *If the CIRP period has expired, what orders can the Adjudicating Authority pass?*

FACTUAL BACKGROUND

2. A thumbnail sketch of sequence of facts which are necessary for disposal of the present set of applications are as follows;

2.1. The Corporate Insolvency Resolution Process in respect of the Corporate Debtor was initiated by this Tribunal vide its order dated 29.07.2021 and one Mr. S. Rajendran was appointed as the 'Interim Resolution Professional'. Aggrieved by the said order, the suspended Director of the Corporate Debtor preferred an Appeal before Hon'ble NCLAT in Company Appeal (AT)(CH)(Ins) No. 208 of 2021. The Hon'ble NCLAT vide its order dated 27.08.2021 directed the IRP to defer the 1st CoC meeting. Subsequently only on 26.04.2022, the Hon'ble NCLAT vacated the said interim order and directed the IRP to proceed further in the manner in accordance with law.

2.2. Thereafter, the IRP convened the 1st CoC meeting on 02.05.2022. The IRP filed an application for exclusion of CIRP period and the same was allowed by this Tribunal vide its order dated 10.10.2022 and as such the 180th day of CIRP in respect of the Corporate Debtor was extended till 23.09.2022.

2.3. Pursuant to the decision taken in the 1st CoC meeting held on 02.05.2022, the IRP issued Form – G inviting Expression of Interest to submit the Resolution Plan. As on the last date for receipt of Expression of Interest i.e. 01.07.2022, the RP received 7 Expression of Interest, which were examined and all the 7 EoIs was shortlisted for submission of Resolution Plan. The Information Memorandum was shared on 10.06.2022 and the RFRP was issued to all the Prospective Resolution Applicants (PRAs) on 22.06.2022.

2.4. The IRP received 4 Resolution Plans as on 26.07.2022. All the 4 Resolution Plans were opened in the 3rd CoC meeting held on 03.08.2022 and Resolution was passed through e-voting to negotiate with the Resolution Applicants and allow for modification of the Resolution Plan once as per Regulation 39(1A) of CIRP and RFRP terms.

2.5. In the meantime, in the 5th CoC meeting held on 08.09.2022, the CoC approved with 83.71% of the voting share to replace Mr. S. Rajendran with the Applicant herein as the Resolution Professional in respect of the Corporate Debtor. Accordingly, this Tribunal vide its order dated 18.11.2022 passed in IA(IBC)/1248(CHE)/2022 appointed the Applicant herein as the 'Resolution Professional'. Further, an application seeking extension of time period of 90 days was filed by the RP and this Tribunal vide its order dated 18.11.2022 in IA(IBC)/1289(CHE)/2022 extended the CIRP period for 90 days and accordingly the 270 days CIRP period in respect of the Corporate Debtor expired on 22.12.2022.

2.6. Thereafter, the erstwhile IRP had a detailed negotiation with the Resolution Applicants (RAs) for further improvements in the resolution plan. Revised resolution plan was received from PRAs on 15.10.2022 and the same was placed for the consideration of the COC members.

2.7. In the meantime, since the 270th day of CIRP was coming to an end on 22.12.2022, a resolution to extend the CIRP timeline by a further period of 60 days was placed in the 8th CoC meeting held on 02.12.2022 as Agenda No.15. In the said meeting, the CoC members holding 94.44% voting

share approved the same and authorized the RP to file appropriate application. The application seeking extension of CIRP period by 60 days i.e. IA/34(CHE)/2023 was filed on 19.12.2022 and the same was allowed by this Tribunal vide order dated 30.01.2023. Accordingly, the 330th day of CIRP in respect of the Corporate Debtor came to an end on 19.02.2023.

2.8. Thereafter, the 11th CoC meeting was held on 08.02.2023 wherein the need for extension of CIRP beyond 330 days was deliberated in detail. Various members of the CoC expressed the need for extending the voting timelines. The CoC with a majority vote of 69.30% passed a Resolution extending the CIRP period for further 30 days from 20.02.2023 to 21.03.2023. Accordingly, on 15.02.2023, the RP filed IA(IBC)/380(CHE)/2023 before this Tribunal seeking extension of CIRP for 30 days beyond 330 days.

2.9. When the above said Application viz. IA(IBC)/380(CHE)/2023 was pending adjudication before this Tribunal, the CoC in its 13th meeting held on 18.03.2023 passed a Resolution with a majority vote of 74.19% to extend the CIRP for a further period of 60 days from 22.03.2023 till 20.05.2023 on the ground that the CoC has got a proposal from NARCL ARC for assignment of their entire

debt. Since NARCL laid a pre-condition that they have to scrutinize the plans available with the CoC and carry out due diligence, the CoC voted for extension of CIRP period. Hence, the RP has filed IA(IBC)/490(CHE)/2023 before this Tribunal.

2.10. The erstwhile promoters of the Corporate Debtor have filed INV.P/5(CHE)/2023 before this Tribunal and it is stated in para viii, ix, xi, xii and xiii as follows;

> "viii. Meanwhile, 330 days of the CIRP period ended on 19.02.2023 and the COC recommended an extension of 30 days beyond 330 days, the RP filed an application bearing IA/380/2023, and the same is posted for further hearing on 10.04.2023. It is relevant to note that before adjudicating the said application, the period sought for the extension also ended on 21.03.2023
>
> ix. It is respectfully submitted that the aforesaid situations may lead to the liquidation of the Corporate Debtor and hence the Intervener herein requested the COC members by his letter dated 15.03.2023 to explore the possibility of extension of the CIRP period beyond 330 days to enable them to complete the 12A proposal in line with the recommendations made by them. In the meanwhile, the RP convened the COC meeting and discussed the way forward of the CIRP wherein the COC recommended seeking further extension of the CIRP period preferably 60 days from the date of 22.03.2023 in view of the submission of the lead member of the

consortium banks that consortium lenders are not able to vote upon the resolution plans/12A Proposal due to ongoing discussions with NARCL (Supra) and various other internal approval reasons and in pursuance of which the RP filed the impugned application for extension of CIRP period.

xi. It is respectfully submitted that in order to protect the interest of all stakeholders, especially Farmers, Workmen & Employees, Banks, and Customers of the Corporate Debtor, the revival of operations of the Corporate Debtor is highly indispensable and crucial and the very object of the Code is the resolution of falling Corporate Debtor and not liquidation of Corporate Debtor. It is respectfully submitted the basic premises on which Code is built is that on the failure of the Company in discharging its dues, its debt to be restructured, for continuing the Company as a going concern, by giving a company to any person who found financially and technically capable to take over the Company.

xii. As stated supra, in view of the NARCL proposal, the COC members are not able to consider our 12A proposal and pending Resolution Plans. The proposed extension will enable us to negotiate with the upcoming assignee of the lenders i.e., NARCL, and may arrive settlement under Section 12A thereby safeguarding the Corporate Debtor from liquidation.

xiii. It is submitted that it would be in the interest of justice that the intervenor may be permitted to intervene in the aforesaid application to support the prayers made by the RP/COC i.e., the extension of the CIRP period beyond 330 days, and try to render

necessary assistance that would help in dealing with the issue at hand, as any decision against the extension of CIRP would have far-reaching and wide ramifications."

2.11. Thus, the Intervenor viz. erstwhile promoters of the Corporate Debtor also supported the decision of the CoC seeking extension of CIRP period beyond 330 days.

2.12. Thereafter, the RP filed another Application on 22.05.2023 vide E-filing Diary No.3305118/01516/2023 seeking extension of CIRP of the Corporate Debtor from 21.05.2023 till 18.08.2023.

2.13. Pending approval of extension of CIRP period in IA(IBC)/380(CHE)/2023 and IA(IBC)/490(CHE)/2023 and E-filing Diary No.3305118/01516/2023, the RP on 05.06.2023 filed an Application seeking Liquidation of the Corporate Debtor under Section 33(1)(a) of IBC, 2016 in IA(IBC)/1023(CHE)/2023.

2.14. The voting on Resolution Plan was extended till 17.05.2023 and the final results on the Resolution Plan voting was declared on 18.05.2023. The two Resolution Plan were put for voting and were rejected by 91.92% of voting rights.

Under the aforesaid facts and circumstances of the case, the issues which are framed as extracted *(supra)* are required to be answered.

A. ISSUES NO. (I) AND (II)

3. The CIRP in respect of the Corporate Debtor was initiated by this Tribunal as early as on 29.07.2021. In the appeal filed by the erstwhile promoters of the Corporate Debtor, the Hon'ble NCLAT in Company Appeal (AT)(CH)(Ins) No. 208 of 2021 passed the following order on 27.08.2021;

> Since the main instant Company Appeal is taken up for Hearing, the I.A.No.418 of 2021 filed by the 'Appellant'/'Petitioner' seeking urgent hearing of the main Company Appeal stands closed.
>
> Heard the Learned Counsel Mr.T.K. Bhaskar, Advocate appearing for the 'Appellant' in the present main Company Appeal.
>
> At this stage, the Learned Counsel for the 1st Respondent/Bank of India Mr.T. Ravichandran informs this' Tribunal' that he appears for the 1st Respondent and prays for time to file 'Vakalat' and accordingly he is permitted to file Vakalat. He is also permitted to file Reply/Response/Counter of 1st Respondent within 10 days from today, before the 'Office of the Registry' not only through e-filing but also through Hardcopy and the same shall be exchanged between the parties well in advance before the next date of Hearing.
>
> Soon after the receipt of the copy of the Reply/Response/Counter of the 1st Respondent, it is open to the Learned Counsel for the Appellant to file 'Rejoinder', if any, within three days thereafter, before the 'Office of the Registry' (not only through e-filing but also through Hardcopy) and the copy of the same shall be served to the other side well in advance before the next date of Hearing.
>
> In the meanwhile, the Learned Counsel for the 2nd Respondent is directed to file 'Status Report' before the 'Office of the Registry' (not only through e-filing but also through Hardcopy) and the copy of the same shall be served to the otherside without fail.

Till the next date of Hearing, the meeting of 'Committee of Creditors' slated today i.e. 27.08.2021 at 3.30 p.m. shall stands deferred.

The 'Office of the Registry' is directed to List the matter on 14.09.2021.

4. Thereafter, on 18.04.2022 when the matter came up before Hon'ble NCLAT, following order was passed;

"At request of Mr. T.K. Bhaskar, the Learned Counsel for the Appellant coming out with the reason that due to the 'intervening holidays' during the last week, the Appellant was not in a position to mobilize 'Money' and hence prays for a week's time.

It is 'abundantly' and 'lucidly' made quite clear that, if the Appellant, is not availing this opportunity, without any further reference to the Appellant, the 'interim order' granted earlier by this 'Tribunal' stands vacated automatically.

The 'Office of the Registry' is directed to List this matter on 26.04.2022."

5. On 26.04.2022, when the matter came up for hearing before Hon'ble NCALT, following order was passed;

"Adequate opportunity has been provided to the Appellant. As such, the order dated 18.04.2022 passed by this 'Tribunal' is not availed by the Appellant, as of today. Hence, it is made clear that there is no 'Interim Order' prevailing in the instant 'Appeal'.

Added further, the Interim Resolution Professional / Respondent No.2 is to proceed further in the manner known to law and in accordance with the law.

The "Office of the Registry" is directed to 'List' the matter on 14.07.2022."

6. Thus, on 26.04.2022 the Hon'ble NCLAT vacated the interim stay and directed the IRP to proceed further in the matter. Thereafter, the RP filed applications seeking exclusion and the same was granted by this Tribunal. After granting one exclusion and two extensions, in the present case, 330 days CIRP period in respect of the Corporate Debtor came to an end on 19.02.2023. Thereafter, the RP filed three Applications seeking extension of CIRP period beyond 330 days which are as follows;

(i) IA(IBC)/380(CHE)/2022 – 20.02.2023 to 21.03.2023
(ii) IA(IBC)/490(CHE)/2022 – 22.03.2023 to 20.05.2023
(iii) Diary No. 3305118/01516/2023 – 21.05.2023 to 18.08.2023

7. Further, during pendency of these Applications, the RP filed another Application seeking liquidation of the Corporate Debtor viz. IA(IBC)/1023(CHE)/2023.

8. The voting on the Resolution Plans is recorded in the minutes of the 15th CoC meeting held on 18.05.2023, from which it is seen that both the Resolution Plans did not pass the requisite muster and were **rejected** with a majority vote of 91.92%. The normal course of action in the said

scenario was to file an application for liquidation of the Corporate Debtor since, the 330-day period in respect of the Corporate Debtor had already come to an end as early as on 19.02.2023. The RP accordingly filed IA(IBC)/1023(CHE)/2023 before this Tribunal seeking liquidation of the Corporate Debtor.

9. In so far as extension of CIRP period beyond 330 days, the Hon'ble Supreme Court in the matter of Committee of Creditors of Essar Steels **through Authorized Signatory Vs Sathish Kumar Gupta & Others** *(2020) 8 SCC 531,* in para 127 has held as follows;

> **127.** Both these judgments in *Atma Ram Mittal* [*Atma Ram Mittal* v. *Ishwar Singh Punia,* (1988) 4 SCC 284] and *Sarah Mathew* [*Sarah Mathew* v. *Institute of Cardio Vascular Diseases,* (2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721] have been followed in *Neeraj Kumar Sainy* v. *State of U.P.* [*Neeraj Kumar Sainy* v. *State of U.P.*, (2017) 14 SCC 136 : 8 SCEC 454] , SCC paras 29 and 32. Given the fact that the time taken in legal proceedings cannot possibly harm a litigant if the Tribunal itself cannot take up the litigant's case within the requisite period for no fault of the litigant, a provision which mandatorily requires the CIRP to end by a certain date — without any exception thereto — may well be an excessive interference with a litigant's fundamental right to non-arbitrary treatment under Article 14 and an excessive, arbitrary and therefore unreasonable restriction on a litigant's fundamental right to carry on business under Article 19(1)(*g*) of the Constitution of India. This being the case, we would ordinarily have struck down the provision in its entirety. However, that would then throw the baby out with the bath water, inasmuch as the time taken in legal

proceedings is certainly an important factor which causes delay, and which has made previous statutory experiments fail as we have seen from *Madras Petrochem* [*Madras Petrochem Ltd.* v. *BIFR*, (2016) 4 SCC 1 : (2016) 2 SCC (Civ) 478] . Thus, while leaving the provision otherwise intact, we strike down the word "mandatorily" as being manifestly arbitrary under Article 14 of the Constitution of India and as being an excessive and unreasonable restriction on the litigant's right to carry on business under Article 19(1)(*g*) of the Constitution. The effect of this declaration is that *ordinarily* the time taken in relation to the corporate resolution process of the corporate debtor must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. However, on the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and/or Appellate Tribunal, the delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it may be open in such cases for the Adjudicating Authority and/or Appellate Tribunal to extend time beyond 330 days. Likewise, even under the newly added proviso to Section 12, if by reason of all the aforesaid factors the grace period of 90 days from the date of commencement of the Amending Act of 2019 is exceeded, there again a discretion can be exercised by the Adjudicating Authority and/or Appellate Tribunal to further extend time keeping the aforesaid parameters in mind. It is only in such exceptional cases that time can be extended, the general rule being that 330 days is the outer limit within which resolution of the stressed assets of the corporate debtor must take place beyond which the corporate debtor is to be driven into liquidation.

(emphasis supplied)

10. The Hon'ble Supreme Court has categorically held that only under exceptional cases, the time can be extended by the Adjudicating Authority by exercising its discretion for a period beyond 330 days that too for '***short period***'. Further, the Hon'ble NCLAT in the matter of **Vivek Raheja, Resolution Professional,** *in CA(AT)(Ins) No. 331 of 2021,* in para 13 to 15 has held as follows;

> 13. In reality, the act of extending the 'Insolvency Resolution' beyond the time limit under section 12(3) of the Code is against the underlying policy of the Code for ensuring timely resolution of 'Company Insolvency'. Undoubtedly, an extension of time for extension of time for 'CIRP' is a 'critical arena'. However, the exercise of the power of extending the time limit by the 'Adjudicating Authority' in negation of the statutory provision of the Code may be desirable in an exceptional/extraordinary circumstances of a given case.
>
> 14. Be it noted, that 'speed' is the gist for the working of the 'Bankruptcy Code'. It cannot be gainsaid that the 'Corporate Insolvency Resolution' with approval of 'Plan of Resolution' is ultimately the exclusive domain of the 'Committee of Creditors'.
>
> 15. Bearing in mind the word 'mandatorily' found in Section 12(3) of the 'Insolvency & Bankruptcy Code, 2016' was struck down by the Hon'ble Supreme Court in the matter of Committee of Creditors of Essar Steels India Pvt.Ltd. V Satish Gupta reported in (2020) 8 SCC at Pg.531, this 'Tribunal' comes to a resultant conclusion that ordinarily the time taken pertaining to the Corporate Insolvency Resolution Process of the 'Corporate Debtor' must be completed within a period of 330 days from the date of commencement of Insolvency (including the extension and time consumed in legal proceedings). However, the exercise of power by the 'Adjudicating

> Authority' to extend the time period in negation of statutory provision of the 'Insolvency & Bankruptcy Code, 2016' may be desirable in an exceptional/extraordinary Circumstances of a given case by exercising sound 'Judicial discretion' with a view to find a suitable 'Resolution Plan' to prevent an aberration of justice
>
> *(emphasis supplied)*

11. The Hon'ble NCLAT has categorically held that the Corporate Insolvency Resolution Process of the 'Corporate Debtor' must be completed within a period of 330 days from the date of commencement of Insolvency (including the extension and time consumed in legal proceedings). Also, as per the Judgment of the Hon'ble Supreme Court in the matter of **Essar Steel** *(supra)*, the 330 days period of CIRP can be extended only under exceptional circumstances, for the reasons like, only a ***'short period'*** of time is required for approval of a Resolution Plan.

12. In the present case, there is neither any Resolution Plan which is pending nor any Application under Section 12A of IBC, 2016 is under consideration before this Tribunal. As such it is safe to conclude that the RP has no ground to file any application seeking extension of CIRP period beyond 330 days under Section 12 of IBC, 2016. The reason stated

for extension beyond 330 days is that the assignee of lenders i.e. NARCL ARC is requesting time to scrutinize the plans available with the CoC and to carry out due diligence. The said reason attributed for extension of time beyond 330 period, can, at no stretch of imagination be termed as *'exceptional circumstance'*. Further, the RP had received 2 Resolution Plans in respect of the Corporate Debtor and the same were put to vote and the CoC with a majority vote of 91.92% rejected the Resolution Plan. At this juncture, the CoC is very much aware of the fact that the 330 days' time period in respect of the Corporate Debtor is already over.

13. Further, the minutes of the 15th CoC would posit the fact that the CoC wishes to go ahead with a fresh issue of the EoI. The CoC, after rejecting the two Resolution Plans which were placed before them, cannot perpetually seek for another round of CIRP from Form – G stage, since such a situation would go against the timelines prescribed under IBC, 2016. At this juncture, it is relevant to refer to the Judgment of the Hon'ble NCLAT in the matter of **Kridhan Infrastructure Pvt. Ltd. (Now Known as Krish Steel And Trading Private Limited) & Anr. -Vs-**

Venkatesan Sankaranarayan & Anr. in *Company Appeal (AT) (Insolvency) No. 202 of 2020*, where in para 66 to 70 it was held as under;

"66. Be it noted, that 'speed' is the essence of the 'I&B' Code. A timely resolution of insolvency can always be preferred and it is improper for a court to stand over a winding up petition presented by a 'Creditor' for a very long and indefinite period of time, as per decision 'Re Boston Timber Fabrication Ltd.' (1984) BCLC 328(CA). In fact, the Legislature had made specific provisions in 'public interest' and to facilitate good 'Corporate governance'. It cannot be forgotten that the 'Bankruptcy Law Reforms Committee' elected certain principles within which 'I&B' Code would function and one such principle is that the 'I&B' code specifies the time bound process, which will not be extended, to better preserve the 'Economic Value of the Asset'.

67. Time limit specified in 'I&B' Code is the essence of the triggering process and the Insolvency Resolution Process. This is the prime reason behind the enactment of the Code. If an Adjudicating Authority extends the Insolvency Resolution Process beyond the time line mentioned u/s 12(3) of the code, the same will be in negation of the underlying policy behind the court of ensuring timely resolution of Company Insolvency. Per contra, the exercise of this power, in violation of statutory provision may be desirable in an exceptional / extraordinary circumstance(s). In fact, a 'Resolution Applicant' has no vested right that his 'Resolution Plan' be considered.

68. Ordinarily, the 'Adjudicating Authority' is to follow the discipline of 'I&B' code enacted by the Parliament,

especially to streamline the 'Resolution' of 'Corporate Insolvency matters' involving 'Corporate Insolvency' and the same require the experts' decision. Of course, it is not open to an 'Adjudicating Authority' to take upon itself, the onus of supervising the intricacies of 'Resolution Process'. Although, the resolution of 'Corporate Insolvency' to ensure the survival of a company / enterprise as a going concern is one of the key objectives of the 'I&B' code but the rider is this must not come at the cost of efficiency, as opined by this Tribunal. To put it succinctly, a 'Timely Liquidation' is preferred over endless 'Resolution process'.

69. One cannot brush aside an important fact that longer the delay, more likely it is the 'Liquidation' will only be the sensible answer. No doubt, the 'Liquidation value' tends to go down with an efflux of time as many 'Assets' suffer from high economic depreciation value. Looking at from the point of view of creditors a good realisation can generally be secured if a company/firm is sold as a going concern. If one construes in the teeth of the object sought to be achieved by the 'I&B' Code and in the light of consequences provided by Section 33 of the Code, therefore, makes it unerringly clear that the periods mentioned in Section 12 are mandatory and cannot be extended. If time specified by statute is changed, then it will give room for wider complications/implications, in the considered opinion of this Tribunal.

70. Also, even in 'Liquidation', the realisation will be lower when there are delays and in fact, delays cause value destruction/reduction. Moreover, the failure of some business plan is an integral part of the process of 'market economy'. "

(emphasis supplied)

14. Thus, as to the facts of the present case, the Applicant has not substantiated any exceptional circumstances to order for extension of CIRP, as per the decision of the Hon'ble Supreme Court in the matter of **Essar Steel** *(supra)*. Further, we are of the view that the entire CIRP process in relation to the Corporate Debtor cannot be started afresh from the stage of issuance of Expression of Interest, as the same would entirely upset the CIRP timelines prescribed under IBC, 2016.

15. In relation to the Intervention Application filed by the erstwhile Promoters of the Corporate Debtor, it is seen that they have already sought ample time from the Hon'ble NCLAT on the ground that payment would be made to the Financial Creditor and that the matter would be settled. However, in spite of granting sufficient opportunities the Hon'ble NCLAT finally on 26.04.2022 vacated the interim order and directed the RP to proceed in the matter.

16. In the present case, upon perusal of the minutes of the CoC, it is amply made clear that there is no proposal from the erstwhile promoters of the Corporate Debtor under Section 12A of IBC, 2016 which is placed for consideration before the CoC. Hence, the reason stated by the

Intervenor that in view of the NARCL proposal, the COC members are not able to consider their 12A proposal cannot be considered as a valid ground to grant extension of CIRP period beyond 330 days.

17. Since we are inclined to dismiss the Application seeking extension of time period beyond 330 days, the Intervention Application requires no further adjudication.

18. Accordingly, issue no. (i) and (ii) is answered to the effect that the CIRP period is a time bound process and unlimited extensions cannot be granted beyond 330-day period on the ground that one day a Resolution Plan or a 12A proposal would be voted. Further, as to the facts and circumstances of the present case, no *'exceptional circumstance'* have been narrated by the Applicant to grant extension of CIRP beyond 330 days.

B. <u>ISSUE NO. (III) AND (IV)</u>

19. In so far as issue no. (iii) and (iv) are concerned, it is seen that the RP has filed three Applications seeking extension of CIRP period beyond 330 days which are as follows;

(i) IA(IBC)/380(CHE)/2022 – filed on 15.02.2023
(ii) IA(IBC)/490(CHE)/2022 – filed on 21.03.2023
(iii) Diary No. 3305118/01516/2023 – filed on 22.05.2023

20. Further, during pendency of these Applications, the RP has filed another Application seeking liquidation of the Corporate Debtor viz. IA(IBC)/1023(CHE)/2023 on 05.06.2023. It is to be noted here that superseding all the extension applications, the RP has finally filed an application for liquidation of the Corporate Debtor on 05.06.2023. The conduct of the RP in filing extension Application one after the other shows that the RP is biased in the entire matter. On the one hand the RP is filing an Application for Liquidation of the Corporate Debtor and on the other hand the RP wants to proceed with the extension application without any sufficient grounds.

21. During the Course of hearing held on 22.06.2023, the Learned Senior Counsel for the RP and the CoC has submitted that the CIRP timelines in respect of the Corporate Debtor is required to be extended. We are of the view that the RP cannot approbate and reprobate at the same breath.

22. Thus, once the RP has filed an Application for Liquidation of the Corporate Debtor and also placed his consent to act as a Liquidator in respect of the Corporate Debtor, the RP cannot reprobate and argue that timelines of the CIRP be extended. Accordingly, as to the facts and circumstances of the present case, issue no. (iii) is answered.

23. In so far as issue no. (iv) is concerned, it is already recorded in preceding paragraphs that no *'exceptional circumstance'* has been made out to order for an extension beyond 330 days. Further, the reason that the assignee of lenders i.e. NARCL ARC is requesting time to carry out due diligence cannot be termed as an *'exceptional circumstances'* in order to grant extension beyond 330-day period.

24. In view of the findings on the above issues, IA(IBC)/380(CHE)/2023; IA(IBC)/490(CHE)/2023; INV. P/5(CHE)/2023 are **dismissed**.

25. In so far as IA(IBC)/1023(CHE)/2023 is concerned, since the 330-day period in respect of the Corporate Debtor has already come to an end as early as on 19.02.2023 and that the extension application beyond

330 days has been dismissed by this Tribunal, in terms Section 33(1)(a) of IBC, 2016 we are inclined to order for Liquidation of the Corporate Debtor.

26. The Corporate Debtor is ordered for liquidation, **Mr. CA. Mahalingam Suresh Kumar, having Reg. No. IBBI/IPA-001/IP-P00110/2017-18/10217** the Applicant herein is hereby appointed as the Liquidator of the Corporates Debtor to carry out the liquidation process of the Corporate Debtor is concerned, subject to the following terms of the directions:-

a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended upto date enjoined upon her.

b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.

c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like

transactions including fraudulent preferences and file suitable application before this Adjudicating Authority.

d) The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;

e) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.

f) The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.

g) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.

h) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.

i) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the

Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.

j) Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor.

27. With the above said directions, **IA(IBC)/1023(CHE)/2023** stands **allowed**.

SAMEER KAKAR
MEMBER (TECHNICAL)

SANJIV JAIN
MEMBER (TECHNICAL

Raymond