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Securities and Exchange Board of India

Schemes of Arrangement by Listed Entities & Relaxation in Securities Contracts (Regulation) Rules, 1957

The Securities Exchange Board of India ("**SEBI**") issued a *Circular dated November 3, 2020* ("**Circular**") notifying a streamlined framework for processing of draft schemes filed with stock exchanges.

Circular amends the circular issued by SEBI Circular No. CFD/DIL3/CIR/2017/21 dated March 10, 2017 ("**Circular 2017**"), which laid down the framework for schemes for merger, demerger, amalgamation or arrangement by listed entities and relaxation pursuant to Rule 19(7) of the Rules on Securities Contracts (Regulation), 1957. The purpose of the changes is to ensure that recognized stock exchanges refer draft schemes to SEBI only on the basis that they are completely satisfied that the listed entity complies with regulatory norms. Some of the major modifications introduced are as follows:

1. The Circular revised Para 2(c) of Circular 2017, which provides the audit committee's comments on the valuation report on the need for merger/demerger/ amalgamation/arrangement, the reason for the scheme, the business synergies of the entities involved, the effect on shareholders and the scheme's cost-benefit analysis.

2. The Circular inserts Para I A(2)(i) to Circular 2017 setting out a report on the recommendation of the draft scheme by the committee of independent directors, considering, inter alia, whether the scheme is detrimental to shareholders.

3. Paragraph 4(a) of the Circular 2017 is amended by this Circular and defines the concept of 'registered valuer'. As per the amendment, the registered valuer shall be a person, registered as a valuer, having such qualifications and experience and being a member of an organization recognized, as specified in Section 247 of the Companies Act, 2013 read with the applicable rules.

4. The Circular also amends the explanation of paragraph 9(b)(v) of the Circular 2017 and specifies that in any financial year the expression "substantially the whole of the undertaking" means in terms of consolidated net worth or consolidated total income during the previous financial year, twenty percent or more of the value of the undertaking as referred to in Section 180(1)(a)(ii) of Companies Act, 2013.

5. In coordination with each other, the stock exchanges would have to send a 'no-objection' letter to SEBI on the draft scheme. In addition, upon receipt of a 'no-objection' letter from exchanges having nationwide trading terminals, SEBI will issue a comment letter.

6. This Circular has deleted the word 'observation letter or' in paragraph C (1) and Para C(2c) of the Circular 2017. Circular 2017 provided for the observation letter or no-objection letter to be sent by stock exchanges to SEBI.

7. According to the Circular, within 60 (sixty) days of receipt of the order of the High Court or the National Company Law Tribunal, the listing and trading of stated securities shall commence simultaneously on all stock exchanges on which the equity shares of the listed entity (or transfer entity) are/were listed. This timeframe had earlier been 45 (forty-five) days [*Para III (A)(5) of Circular 2017*].

8. Before commencing trading, the transferee entity, in addition to disclosing the information in the form of an information document on the exchange website, shall give a newspaper advertising providing details of the business model, the reason for the amalgamation and the internal risk factors.

9. Additionally, the transferring entity would be expected to provide information of the promoter group's shareholdings, group companies, the names of its ten (10) largest shareholders and the percentage of the shares owned by each of them. If any regulatory action taken by SEBI or stock exchanges against promoters in the last five financial years will have to be announced and brief details of outstanding criminal proceedings against promoters will have to be provided.

10. Paragraph III(B) of the 2017 Circular, which provided for 'Application by a listed entity for Listing of Equity Shares with Differential Rights as to Dividend, Voting or Otherwise,' has been removed by this Circular.

For all schemes filed with the stock exchanges after November 17, 2020 the new framework will apply. With respect to the listing framework, the changes will be applicable after November 3, 2020 to entities seeking listing and/or trading approval from the stock exchanges.

Securities Exchange Board of India— Amendment to the Guidelines for Preferential Use and Institutional Placement of Units by a Listed InvIT

The Securities Exchange Board of India (**"SEBI"**) in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 and Regulation 33 of the Infrastructure Investment Trusts Regulations, 2014 issued a *Circular dated November 17, 2020* introducing amendments to the guidelines for preferential issue and institutional placement of units by a listed Infrastructure Investment Trusts ("**InvIT**") contained in SEBI *Circular dated November 27, 2019* ("**Circular 2019**").

Clause 4.1 of Annexure I of the Circular 2019 has been modified to state as follows:

> *"Preferential issue of units shall not be made to any person who has sold or transferred any units of the issuer during the six months preceding the relevant date."*
>
> *Explanation: Where any person belonging to sponsor(s) has sold/ transferred their units of the issuer during the six months preceding the relevant date, the sponsor(s) shall be ineligible for allotment of units on preferential basis.*

Securities Exchange Board of India - Introduction of "Flexi Cap Fund" as a new category under Equity Schemes

The Securities Exchange Board of India ("**SEBI**") in exercise of the powers conferred upon it under Section 11 (1) of the SEBI Act, 1992 read with Regulation 77 of the SEBI (Mutual Funds) Regulations, 1996 issued a *Circular dated November 06, 2020* with a view to protect the interests of investors in securities and to promote the development of the securities market and to regulate the same.

SEBI by referring to its Circular dated October 06, 2017 wherein it had issued guidelines regarding categorization and rationalization of Mutual Fund Schemes, notified that in order to give more flexibility to the mutual funds and taking into account the recommendations of the Mutual Fund Advisory Committee ("**MFAC**"), a new category named "**Flexi Cap Fund**" under Equity Schemes shall be available bearing the following scheme characteristics:

Category of Scheme	Scheme Characteristics	Type of scheme (uniform description of scheme)
Flexi Cap Fund	Minimum investment in equity & equity related instruments - 65% of total assets	An open ended dynamic equity scheme investing across large cap, mid cap, small cap stocks

1. The Asset Management Company ("**AMC**") is entrusted with the responsibility to ensure that a suitable benchmark is adopted for the Flexi Cap Fund.

2. The scheme name is kept same as the scheme category for easy identification by investors and to bring uniformity in names of schemes for a particular category across Mutual Funds.

3. Mutual Funds will have the option to convert an existing scheme into a Flexi Cap Fund subject to compliance with the requirement for change in fundamental attributes of the scheme in terms of Regulation 18(15A) of SEBI (Mutual Funds) Regulations, 1996.

4. It is notified that this new category scheme shall be launched with effect from the date of this Circular.

Reserve Bank of India

Establishment of Branch Office (BO)/ Liasison Office (LO)/ Project Office (PO) or any other place of Business in India by Foreign Law Firms

Reserve Bank of India had ("**RBI**") under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 ("**FEMA Act, 1999**") issued *Circular dated October 29, 2015* ("**Circular 2015**"), following the interim orders dated July 4, 2012 and September 14, 2015 ("**Interim Orders**") passed in the case of ***Bar Council of India v. A.K Balaji,*** whereby the Hon'ble Supreme Court of India ("**SC**") had ordered RBI not to grant permission, after the date of the Interim Orders, to any foreign law firm to establish liaison offices in India.

By means of Circular 2015, all Category-I Authorised Dealer Banks ("**AD Category-I Banks**") were directed not to grant any fresh permission to open liaison offices in India to any foreign law firm until existing policies are checked on the basis of, inter alia, the final disposal of the aforesaid case by the Hon'ble SC. While foreign law firms which had obtained permission to open liaison offices prior to the interim orders were permitted to continue operating the offices, no renewal of such an existing permission was allowed.

On March 13, 2018 ("**Final Order**"), the SC matter was disposed of and it was held that Advocates enrolled under the Advocates Act, 1961 alone are entitled to practice law in India and that foreign law firms/companies or foreign lawyers cannot practice law in India. The Hon'ble SC also held that the establishment of a branch office, liaison office, project office or any other place of business under the FEMA Act, 1999 for the purposes of practicing legal profession in India is not permitted to foreign law firms/companies or foreign lawyers or to any other individual residing outside India.

In compliance with the Final Order of the Hon'ble SC, the RBI in the exercise of its powers under the FEMA Act, 1999 issued a *Circular dated November 23, 2020* and ordered AD Category-I Banks not to give approvals to any branch office, liaison office, project office or any other place of business to practice law in India under the FEMA Act, 199. The AD Category-I Banks were also instructed to bring any such violations of the Advocates Act,1961, that may come to their attention, to the notice of the RBI.

Arbitration and Conciliation Act, 1996

The Arbitration and Conciliation (Amendment) Ordinance, 2020

The Ministry of Law and Justice in exercise of powers conferred under Clause (1) of article 123 of the Constitution, the President of India has passed an Ordinance to amend the Arbitration and Conciliation Act, 1996 ("**A&C Act, 1996**") vide its *Notification dated November 04, 2020*.

This Ordinance shall be called the Arbitration and Conciliation (Amendment) Ordinance, 2020 and will come into effect retrospectively from October 23, 2015.

The amended provision are as follows:

- In Section 36 (3) of A&C Act, 1996, the following shall be inserted and shall be deemed to have inserted with effect from October 23, 2015:

  "Provided further that where the Court is satisfied that a prima facie case is made out,—

  (a) that the arbitration agreement or contract which is the basis of the award; or

  (b) the making of the award,

  was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under Section 34 to the award."

  Explanation – For the removal of doubts, it is hereby clarified that the above proviso shall apply to all court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015.

- In Section 43J of A&C Act, 1996, the following shall be substituted, namely: --

  "43J. The qualifications, experience and norms for accreditation of arbitrators shall be such as may be specified by the regulations.".

- The Eight Schedule to the A&C Act, 1996 shall be omitted.

Case Summary

Case Name : ***M/S Venus Recruiters Private Limited Vs. Union Of India And Ors - W.P.(C) 8705/2019 & CM APPL. 36026/2019***

Court Name : Hon'ble Delhi High Court

Order Date : November 26, 2020

Facts of the case:

1. On July 26, 2017, the State bank of India under the Insolvency and Bankruptcy Code, 2016 ("**IBC, 2016**") made an application for initiation of Corporate Insolvency Resolution Process ("**CIRP**") against Respondent No. 3 viz. Bhushan Steel Ltd ("**Corporate Debtor**") before the National Company Law Tribunal ("**NCLT**"), New Delhi. By admitting the CIRP application NCLT appointed an Interim Resolution Professional ("**IRP**") for the Corporate Debtor and a call for submissions of claims was made. The IRP was confirmed as the Resolution Professional ("**RP**") for the Corporate Debtor in the meeting of the Committee of Creditors ("**CoC**").

2. On March 20, 2018, the CoC approved the Resolution Plan, proposed by Respondent No. 2 Tata Steel Ltd. which was then filed by RP with NCLT under Section 31 of IBC, 2016 for its approval.

3. After the CoC had approved the resolution plan, a Forensic Audit Report of the Forensic Consultant was submitted to the RP, based on which the RP on April 09, 2018 filed an avoidance application before NCLT under Section 25(2)(j), Sections 43 to 51 and Section 66 of the IBC, 2016 wherein following transactions were enumerated as "**suspect transactions**" allegedly entered into by the Corporate Debtor with related parties –
   a. Potential excess payment of lease rent to Vistrat Real Estate Pvt. Ltd.
   b. Preferential credit to various international customer sand long outstanding receivables to entities such as Shree Steel Djibouti FZCO and Shree Global Steel FZE;
   c. Excess payments to Manpower companies/ Contractors;
   d. Uncontracted payment of interest on advance to Peak Minerals and Mining Private Ltd. for cancelled sale-and-lease back transactions.

4. The Petitioner was stated to be one such manpower contractor in the suspect transaction who has been paid ten percent (10%) extra for supply of manpower, which has caused loss to the Corporate Debtor and in effect, there was diversion of the Corporate Debtor's funds and the said transaction "**could have been pref-**

5. The Hon'ble NCLT approved the Resolution Plan proposed by the Resolution Applicant vide a detailed judgment dated May 15, 2018 without passing any separate order in avoidance application in respect of suspect/preferential transaction. The Resolution Plan was closed on May 18, 2018 and the new management took over the Corporate Debtor. However, on July 24, 2018, the NCLT passed an order in the avoidance application which was filed prior to the approval of the Resolution Plan.

6. NCLT's order dated May 15, 2018, was thereafter upheld by the National Company Law Appellate Tribunal ("**NCLAT**") vide its judgment dated August 10, 2018. However, on August 14, 2018, a fresh memo of parties was filed in the avoidance application by the "**Former RP**" and notice was issued to the non-applicants.

7. The Petitioner was also issued a notice on October 25, 2018 and was impleaded in the said matter upon the application made by the RP, which is being challenged in the present petition.

Questions arose before the Hon'ble Delhi High in the present case is as follows:

i) Whether a RP can continue to act beyond the approval of the Resolution Plan?
ii) Whether an avoidance application can be heard and adjudicated after the approval of the Resolution Plan?
iii) Who would get the benefit of an adjudication of the avoidance application after the approval of the Resolution Plan?

Decision:

1. The Hon'ble Delhi High Court after due analysis of the Hon'ble Supreme Court's judgement in ***Committee of Creditors of Essar*** and Section 23 of the IBC, 2016 held that the RP's authority is limited in nature and in any event, cannot extend beyond the order passed under Section 31 of IBC, 2016. The continuation of a RP or filing of an application for the purpose of prosecuting an avoidance application as a "**Former RP**" is beyond the contemplation of the IBC.

   While referring to Section 35A of the IBC, 2016 the Court has emphasized the timeline in respect of objectionable transactions including preferential transactions, in a Resolution process and held that the RP cannot continue beyond an order under Section 31 of the IBC, 2016 as the CIRP comes to an end with a successful Resolution Plan having been approved. The IBC does not contemplate the continuation of the RP beyond the CIRP period.

Thus, the Hon'ble Court while answering the first issue in negative held that the RP's role cannot continue once the Resolution Plan is approved and the successful Resolution Applicant takes charge of the Corporate Debtor.

2. The Court while answering to the second issue held that if an avoidance application for preferential transactions is permitted to be adjudicated beyond the period after the Resolution Plan is approved, in effect, the NCLT would be stepping into the shoes of the new management to decide what is good or bad for the Company. Once the Plan is approved and the new management takes over, it is completely up to the new management to decide whether to continue a transaction or agreement or not. Thus, if the CoC or the RP are of the view that there are any transactions which are objectionable in nature, the order in respect thereof would have to be passed prior to the approval of the Resolution Plan.

   In the present petition, the Resolution Plan for a Corporate Debtor was approved by the NCLT and an application is sought to be filed by the RP as former RP through its counsel. The Court further held that the RP cannot wear the hat of the ***"Former RP"*** and pursue an avoidance application in respect of preferential transactions after the hat of the Corporate Debtor has changed and it no longer remains a Corporate Debtor. This would be wholly impermissible in law as the mandate of the RP has come to an end.

It was held that the NCLT also has no jurisdiction to entertain and decide avoidance applications, in respect of a Corporate Debtor which is now under a new management unless provision is made in the final Resolution Plan.

3. The Court while answering to the third issue held that the avoidance applications are neither for the benefit of the Resolution Applicants nor for the company after the resolution is complete. It is for the benefit of the Corporate Debtor and the CoC of the Corporate Debtor. The RP whose mandate has ended cannot indirectly seek to give a benefit to the Corporate Debtor, who is now under the control of the new management/Resolution Applicant, by pursuing such an application. The ultimate purpose is that any benefit from a preferential transaction should be given to the Corporate Debtor prior to the submission of bids and not thereafter.

Thus, by allowing the present petition the Hon'ble Delhi High Court set aside the order of NCLT in impleading the Petitioner and the proceedings qua the Petitioner before the NCLT under the avoidance application was quashed. All pending applications were disposed of.

Case Summary

Case Name	***: Madras Bar Association Vs. Union of India & Anr. –Writ Petition (C) No. 804 of 2020***
Court Name	: The Supreme Court of India
Order Date	: November 27, 2020
Sections cited	: Article 32 of the Constitution of India; Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020.

Facts of the case:

The present petition is filed by the Madras Bar Association ("**Madras Bar**") challenging the vires of the *Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020 (***"Rules, 2020**") for violating the principle of separation of powers and the independence of the judiciary. According to the Madras Bar, the Rules, 2020 pose a threat to the independence of the judiciary and to the efficient and effective administration of justice. Further, Madras Bar alleged that the Rules, 2020 were ex-facie against the Supreme Court's rulings, in particular ***Rojer Mathew vs. South Indian Bank Limited*** [(2020) 6 SCC 1] (**"Rojer Mathew case"**).

The series of events of the present case is set forth below:-

(i) Like many other nations, India recognized the need for Tribunalisation of justice to provide for adjudication by persons with ability to decide disputes in specific fields as well as to provide expedited justice in certain kinds of cases. Thus, certain amendments were made in the Constitution of India to enables the Parliament to constitute administrative tribunals for adjudication of the disputes.

(ii) Thereafter various acts and rules were formulated for formation and administration of Tribunals. These said acts and rules were challenged in various judgments as they pose a threat to independence of judiciary. This court in various judgments pronounced the legality and modifications of the said acts and rules in order to adhere with independence of judiciary.

(iii) Further, the validity of Finance Act, 2017 ("**FA, 2017**") and the Tribunal, Appellate Tribunal and other Authorities (Qualification, Experience and Other Conditions of Service of Members) Rules, 2017 (**"Rules, 2017"**) came up for consideration before this Court in Rojer Mathew case. The Supreme Court struck down the Rules, 2017 as being contrary to the basic principles of the Constitution of India and directed appointments to the Tribunals, Appellate Tribunals and the other Authorities were held in accordance with the respective statutes till a fresh set of Rules were made by the Central Government.

(iv) Thereafter, by a Notification dated February 12, 2020, the Central Government in exercise of the power conferred by Section 184 of the FA, 2017 framed the Rules, 2020. The Rules, 2020 which deal with the qualification and appointment of members by recruitment, procedure for inquiry into misbehavior, House Rent Allowance and other Conditions of Service are the subject matter of challenge in the present petition along with other petitions.

(v) The prime issues raised in the present petition are that the 2020 Rules are unconstitutional as:

a. The Search-cum-Selection Committee (**"Selection Committee"**) provided for in the Rules, 2020 did not conform to the principles of judicial dominance;

b. Appointment of persons without judicial experience to the posts of Judicial Members/Presiding Officer/ Chairpersons is in contravention to the earlier judgments of this Court;

c. The term of office of the Members for four years is contrary to the earlier decisions of this Court;

d. Advocates are not being made eligible for appointment to most of the Tribunals;

e. Administrative control of the executive in matters relating to appointments and conditions of service is violative of the principles of separation of powers and independence of judiciary and demonstrates non-application of mind.

Findings/ Decisions:

I. NATIONAL TRIBUNALS COMMISION

The Hon'ble Supreme Court observes that there is an imperative need for the Tribunals to function independently and free from executive control thus, there should be a wholly independent agency for the administration of all the Tribunals. Thus, the amicus curiae suggested that there should be a National Tribunals Commission manned by retired Judges of the Supreme Court, Chief Justices of the High Courts and Members from the Executive.

In light of the above, the Hon'ble Supreme Court directed the Union of India to set up a National Tribunals Commission as suggested by this Court by its order dated May 07, 2018 at the earliest. Further, a separate wing should be formed at the Ministry of Finance to cater the requirements of the tribunals till the constitution of National Tribunals Commission.

II. SEARCH-CUM-SELECTION COMMITTEE

The Hon'ble Supreme Court after analyzing its various upheld that Column (4) of the Schedule to the Rules, 2020 which shall be modified in order to accommodate more members to the committee instead of the four (4) member committee as provided in the Rules 2020.

III. TERM OF OFFICE

The Hon'ble Supreme Court direct the Union of India to amend Rule (1) of the Rules, 2020 by making the term of Chairman, Chairperson or President as five years or till they attain 70 years, whichever is earlier and other members dealt with in Rule 9(2) of Rules, 2020 as five (5) years or till they attain 67 years, whichever is earlier.

IV. HOUSE RENT ALLOWANCE

The Hon'ble Supreme Court directed Union of India to make serious efforts to provide suitable housing to the Chairman or Chairperson or President and other members of the Tribunals. If providing housing is not possible, then the Union of India shall pay house rent allowance to members of Tribunals as directed in this judgment. This direction shall be effective from January 1, 2021.

V. ADVOCATES AS JUDICIAL MEMBERS

The Hon'ble Supreme Court directed to amend the Rules, 2020 to make advocates with an experience of at least ten (10) years eligible for appointment as judicial members in the Tribunals. The Selection Committee shall consider experience and specialization of Advocate during the appointment.

VI. ELIGIBILITY OF MEMBERS OF INDIAN LEGAL SERVICE

The Hon'ble Supreme Court upheld that the members of Indian Legal Service shall be entitled to be considered for appointment as a judicial member subject to their fulfilling the other criteria which advocates are subjected to.

VII. REMOVAL OF MEMBERS

The Hon'ble Supreme Court directed that the Rule 8 of the Rules, 2020 shall be amended to reflect that the recommendations of the Selection Committee in matters of disciplinary actions shall be final and shall be implemented by the Union of India.

VIII. TIME LIMIT FOR APPOINTMENT

The Hon'ble Supreme Court directed the Union of India to make appointments to Tribunals within three months from the date on which the Selection Committee completes the selection process. Further, it directed that the Rules, 2020 have prospective effect and will be applicable from February 02, 2020. Also, appointments made prior to Rules, 2017 and appointments made during the Rojer Mathew judgment shall be governed by the statutes concerned.

IX. RETROSPESPECTIVITY OF RULES, 2020

Further, the parent statute and the rules according to which they were appointed shall regulate the chairpersons, vice-chairpersons and members of the tribunals appointed prior to February 12, 2020. The Rules, 2020 with the modifications set out in the judgment shall apply to those who have been appointed after 12 February 2020. Also, the Hon'ble Supreme Court extended the terms of office of chairpersons, vice-chairpersons and members of the tribunals till 31 December 2020 while reserving the case for judgment. The retirement of chairpersons, vice-chairpersons and judges of the tribunals shall, in the light of the final judgment, be in compliance with the rules applicable.

Held by the Court:

1. The Hon'ble Supreme Court upheld the validity of the Rules, 2020 with some modifications.
2. Directed the Government to strictly adhere to the given directions.

Case Summary

Case Name : ***Synew Steel Private Limited -CP (IB) No. 96/BB/2020***
Court Name : National Company Law Tribunal, Bengaluru
Order Date : November 16, 2020

Facts of the case:

1. An application under Section 10 of Insolvency and Bankruptcy Code, 2016 ("**IBC, 2016**") read with Rule 7 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 was filed by Synew Steel Private Ltd. ("Corporate Applicant") seeking to commence Corporate Insolvency Resolution Process (**"CIRP"**) in respect of Synew Steel Private Ltd. on the premise that it had defaulted in making payment to its Financial and Operational Creditors.

2. Pursuant to the Adjudicating Authority admitting the application for CIRP against Synew Steel Private Ltd. ("**Corporate Debtor**"), the Interim Resolution Professional ("**IRP**"), invited claims in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 ("**CIRP Regulations, 2016**").

3. The IRP received claims from three Financial Creditors, however all the said Financial Creditors were the related party in terms of Regulation 17 of CIRP Regulations, 2016 and Section 21 of IBC, 2016 and thus, the IRP was unable to constitute a Committee of Creditors (**"CoC"**) till date.

4. Also, the Corporate Debtor had no assets (movable or immovable) due to which the IRP is not in a position to proceed with CIRP or Liquidation of the Corporate Debtor and therefore, the present application for dissolution of the Corporate Debtor has been filed before the national company Law Tribunal ("**NCLT**"), Bangaluru.

Decisions:

In the course of this order, the Hon'ble Tribunal referred to various provisions and rules as made under IBC which are set forth below:-

(i) Section 33(2) of the IBC, 2016- Where the Resolution Professional at any time during CIRP but before confirmation of resolution plan, intimates the Adjudicating Authority ("**AA**") of the decision of the CoC approved by not less than 66% of the voting share to liquidate the Corporate Debtor, the Adjudicating Authority shall pass a liquidating order accordingly.

(ii) Section 54 of the IBC, 2016 - Where the assets of the Corporate Debtor have been completely liquidated, the liquidator shall make an Application to AA for the dissolution of such Corporate Debtor. (2) The AA shall on application filed by the liquidator order that the corporate debtor shall be dissolved from the date of that order. A copy of the said order shall within seven days from the date of such order be forwarded to the authority with which the corporate debtor is registered.

(iii) Rule 14 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 - Any time after the preparation of the Preliminary Report, if it appears to the liquidator that the realizable properties of the corporate debtor are insufficient to cover the cost of the liquidation process; and the affairs of the corporate debtor do not require any further investigation, he may apply to the AA for early dissolution of the corporate debtor and for necessary directions in respect of such dissolution.

(iv) Rule 11 of NCLT Rules, 2016 – Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the Tribunal.

From the perusal of the above provisions along with Section 64 of the IBC, 2016 it is amply clear that the objective of the IBC, 2016 is either to resolve the issue by way of resolution plan or to dissolve the Corporate Debtor as expeditiously as possible. In the present circumstances, no purpose would be achieved by proceeding under CIRP and thereafter, liquidation as it is certain that Corporate Debtor had nil assets and no funds in its accounts. Therefore, the Corporate Debtor was allowed for a direct dissolution.

The Hon'ble NCLT by its order dated November 16, 2020 directed immediate dissolution of Synew Steel Private Ltd., and thereby waived off the mandate to undergo the liquidation process.

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Warm Regards,

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