

**THIRU AROORAN SUGARS LIMITED**  
(IN LIQUIDATION)  
CIN: L15421TN1954PLC002915

**RAMAKRISHNAN SADASIVAN**

B.COM., F.C.A., A.C.M.A., D.I.S.A. (ICA), RV-SFA  
LIQUIDATOR

IBBI REGN NO: IBBI/IPA-001/IP-P00108/2017-18/10215

3<sup>rd</sup> May, 2022.

National Stock Exchange Ltd Exchange Plaza C-1, Block G Bandra Kurla Complex Bandra (E) Mumbai - 400 051	BSE Ltd Phiroze Jeejeebhoy Towers Dalal Street Mumbai – 400 001
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Sir,

**Sub: Disclosure under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 - Receipt of NCLT Order sanctioning the Scheme of Compromise or Arrangement submitted by M/s. KALS Distilleries Private Limited for takeover of M/s. Thiru Arooran Sugars Limited (in liquidation).**

**Ref: THIRU AROORAN SUGARS LTD - Security Name / Code - THIRUSUGAR / 507450**

Pursuant to Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, we wish to inform you that the Chennai Bench of the National Company Law Tribunal (NCLT), vide its order dated May 2, 2022, in the matter of the Application No. CP(CAA)/30(CHE)/2022 in CA(CAA)/113(CHE)/2021 in IBA/243/2019, filed by the undersigned, has approved the Scheme of Compromise or Arrangement proposed by M/s. KALS DISTILLERIES PRIVATE LIMITED for takeover of M/s. THIRU AROORAN SUGARS LIMITED (IN LIQUIDATION).

Copy of the NCLT Order is enclosed herewith for your records.

Kindly take the above notice on record.

Thanking you,

Yours faithfully

For THIRU AROORAN SUGARS LTD

*R. Sadasivan*

RAMAKRISHNAN SADASIVAN  
LIQUIDATOR OF THIRU AROORAN SUGARS LTD  
REG. NO. IBBI/IPA-001/IP-P00108/2017-18/10215



Encl: As above

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH - II, CHENNAI**

**CP(CAA)/30(CHE)/2022**

**In**

**CA(CAA)/113(CHE)/2021**

**In**

**IBA/243/2019**

*(Under Sections 230(1), 66 of the Companies Act, 2013 read with applicable provisions of the Insolvency and Bankruptcy Code, 2016 and its related Regulations and Rule 11 of NCLT Rules, 2016)*

**In the matter of *M/s. Thiru Arooran Sugars Limited***

Ramakrishnan Sadasivan  
Liquidator of  
M/s. Thiru Arooran Sugars Limited  
Old No.22, New No.28,  
Menod Street, Purasawalkam,  
Chennai – 600 007

.. .. *Petitioner / Liquidator*

**Order Pronounced on 2<sup>nd</sup> May 2022**

CORAM

**Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)  
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Petitioner* : B. Dhanraj, Advocate  
Mohammed Umar, Advocate  
R. Sadasivan, Liquidator

*For Objectors* : Niranjan Rajagopal, Advocate  
Abhinav P Sarathy, Advocate  
*For Farmers*

R. Giridharan, Advocate  
Dominic S David, Advocate  
*For Applicant in Inv. P/2/2022*

Raj Jhabakh, Advocate  
*For Central Excise, GST*

KSR & Co., Manjula Devi, Advocate  
For Jain Irrigation

Rahul Balaji, Advocate  
Vishnu Mohan, Advocate  
For Shareholders

AS Arvind, Advocate  
For Sethu Transports

Vis Legis Law,  
For ED&F Man Commodities

## **ORDER**

**Per: ANIL KUMAR B, MEMBER (TECHNICAL)**

This is a Company Petition viz. CP(CAA)/30(CHE)/2022, which is sequel to the CA(CAA)/113(CHE)/2021, filed by the Liquidator of M/s. Thiru Arooran Sugars Limited, under Section 230(1) and 66 of the Companies Act, 2013 read with applicable provisions of the Insolvency and Bankruptcy Code, 2016 and attendant Regulation framed thereunder read with Rule 11 of NCLT Rules, 2016 for sanction of a Scheme of Compromise / Arrangement and its Creditors and for takeover of its assets and properties by M/s. Thiru Arooran Sugars Limited

### **1. CORPORATE INSOLVENCY RESOLUTION PROCESS & LIQUIDATION PROCESS OF M/S. THIRU AROORAN SUGARS LIMITED**

1.1. In an Application filed by a Financial Creditor viz. State Bank of India, under Section 7 of the Insolvency and Bankruptcy Code, 2016, this Tribunal vide its order dated 07.06.2019 has initiated the

Corporate Insolvency Resolution Process as against the Corporate Debtor viz. M/s. Thiru Arooran Sugars Limited and appointed one Mr. R. Raghavendran as the Interim Resolution Professional. Thereafter, it is seen that in the 1<sup>st</sup> CoC meeting dated 06.07.2019, the Applicant herein was appointed as the Resolution Professional in respect of the Corporate Debtor.

1.2. It was submitted that during the CIRP of the Corporate Debtor, the RP has received a Resolution Plan, which came to be rejected by the CoC and hence the Resolution Applicant preferred an Application bearing IA/1186/IB/2020 seeking Liquidation of the Corporate Debtor as resolved by the CoC in its 23<sup>rd</sup> CoC meeting dated 30.11.2020.

1.3. It was submitted that this Tribunal vide order dated 08.04.2021 passed an order of Liquidation as against the Corporate Debtor and appointed the Applicant herein as the Liquidator to carryout the Liquidation proceedings in respect of the Corporate Debtor.

1.4. It was submitted that in pursuance of the order of Liquidation, the Applicant has caused Public Announcement informing commencement of Liquidation of the Corporate Debtor and calling for claims to be published in Form – B on 12.04.2021 in English “The Hindu” and Tamil daily in “Dinamalar” in Chennai, Thiruvapur,

Thanjavur and Cuddalore Edition and fixed the last date for submission of claims on 08.05.2021.

1.5. It was submitted that one of the erstwhile Promoters of the Corporate Debtor, aggrieved by the order of Liquidation passed by this Tribunal, has preferred an Appeal before the Hon'ble NCLAT in Company Appeal (AT)(Ins) No. 59 of 2021 and the Hon'ble NCLAT vide its order dated 19.05.2021 dismissed the said Appeal observing that the order passed by this Tribunal is free from any legal infirmities.

1.6. It was submitted that the Stakeholders Consultation Committee (SCC) was constituted by the Liquidator on 30.06.2021 and that due to the sudden raise of phase II of Covid - 19, the Liquidator received various claims beyond the prescribed due date and the same were collated, verified and admitted by the Liquidator, totalling of about 14,727 claims. The Liquidator has filed the preliminary Report dated 28.06.2021, the Asset Memorandum dated 28.06.2021 and List of Stakeholders dated 30.06.2021 before this Tribunal.

1.7. It was submitted that in view of the complete lockdown and various restrictions imposed by the State of Tamil Nadu due to Covid - 19 phase - II, the inspection and factory visit of manufacturing units of the Corporate Debtor i.e. Thirumandangudi Unit and Chittur



Unit got delayed and the same was resulted in procuring time for compilation of information for the purpose of issue of Expression of Interest (EoI) for Compromise and Arrangement under Section 230 of the Companies Act, 2013 as per Regulation 2B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

1.8. It is submitted that the Liquidator while compiling the information for the purpose of EoI, he came across additional information warranting for modification of the List of Stakeholders of the Corporate Debtor and accordingly moved IA/852(CHE)/2021 before this Tribunal seeking modification of List of Stakeholders of the Corporate Debtor and the same was allowed by this Tribunal vide order dated 21.01.2022. Subsequently the Liquidator has filed the Revised List of Stakeholders of the Corporate Debtor before this Tribunal on 02.02.2022.

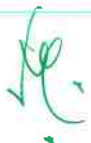
1.9. It is submitted that the Liquidator has published the Expression of Interest (EoI) on 14.07.2021 in English Daily, "Business Standard" at PAN India Edition and in Tamil daily "Dinasuriyan", at Chennai edition and fixed the last dated for Expression of Interest on 13.08.2021.

1.10. It was submitted that pursuant to the above issuance of EoI, the Liquidator has received interest from (i) M/s. KALS Distilleries

Private Limited (KALS) and (ii) M/s. Agniti Industrial Parks Private Limited along with M/s. Meridian Global Ventures Private Limited, which was later replaced solely by M/s. Meridian Global Ventures Private Limited (MGVPL) for submitting a composite scheme for compromise and arrangement under Section 230 – 232 of the Companies Act, 2013.

1.11. It is submitted that the KALS and MGVPL have submitted their Scheme to the Liquidator and the Scheme value of MGVPL was far less compared to the Scheme value proposed by KALS and after giving adequate opportunity, to enhance the Scheme value, MGVPL has not enhanced their scheme value and accordingly, EMD paid by MGVPL was returned back to them and the same was also recorded in the 3<sup>rd</sup> SCC meeting held on 18.10.2021.

1.12. It is submitted that the Scheme Proponent viz. KALS submitted their Expression of Interest on 13.08.2021 and further on 13.10.2021, and submitted a Final Composite Scheme of Compromise and Arrangement under Section 230 of the Companies Act, 2013 providing for Compromise with Secured / Unsecured Financial Creditors, Operational Creditors, Equity Shareholders and other Stakeholders and raising / arranging funds by way of Equity Capital / Debt to meet the requirement of funds for payments as envisaged in the Scheme and for revival of the Company and the same was discussed in the 3<sup>rd</sup> SCC meeting held on 18.10.2021.



1.13. It is submitted that the raw materials for the Corporate Debtor's sugar manufacturing is sugarcane and the Corporate Debtor had been procuring sugarcane from the Farmers and the Farmers represented by the respective District Collectors of Thanjavur and Cuddalore have submitted a conjoint claim to the Liquidator and after due verification, the Liquidator admitted a sum of Rs.78,48,21,000/- (Rupees Seventy-Eight Crore Forty-Eight Lakhs Twenty-One Thousand Only). It was submitted that the Scheme proponent proposed for the farmers to a tune of Rs.45,01,46,000/- (Rupees Forty-Five Crore One Lakh Forty-Six Thousand Only) with a provision for 57.36% which is higher than the provision for the Financial Creditor of the Corporate Debtor (17.59%)

**2. FIRST MOTION APPLICATION FILED BY THE LIQUIDATOR OF M/s. THIRU AROORAN SUGARS LIMITED UNDER SECTION 230 OF COMPANIES ACT, 2013**

2.1. The Liquidator had filed CA(CAA)/113(CHE)/2021 under Section 230 of the Companies Act, 2013 before this Tribunal seeking constitution of Stakeholders Committee and to convene the Meetings of the Stakeholders of the Corporate Debtor and amongst other relief. This Tribunal vide Order dated 24.12.2021, directed the Liquidator to convene the meeting by constituting the Stakeholders



Committee in terms of Regulation 31A of the IBBI (Liquidation Process) Regulations, 2016. Further, detailed directions as to the voting of each class of creditor / stakeholders were stipulated in the said Order dated 24.12.2021 and also the Chairman to the said Meeting was appointed by this Tribunal.

2.2 Thereafter, the Liquidator has filed an Application bearing MA/02(CHE)/2022 before this Tribunal for appointment of Authorized Representative for the class of Creditors / Members of the Corporate Debtor and the same was allowed by this Tribunal vide order dated 13.01.2022.

2.3. The Learned Counsel for the Liquidator submitted that the notice of meeting was sent individually to the Secured Financial Creditors, Unsecured Financial Creditors, Operational Creditors – Statutory Authorities, Operational Creditor – Farmers, Operational Creditor – Workmen and Employees, Operational Creditor – others and Shareholders as per order dated 24.12.2021 together with a copy of the Compromise or Arrangement and the Explanatory Statement required under Section 231, 232 read with Section 230 of the Act and Ballot papers.

2.4. The Learned Counsel for the Liquidator submitted that the meeting was also advertised as directed in the above order of

this Tribunal in '*Times of India*' (English, All India Edition) and in '*Daily Thanthi*' (Tamil, Chennai Edition) and the affidavit of service in relation to the same is also filed vide SR No. 537 dated 31.01.2022 before this Tribunal.

2.5. The Learned Counsel for the Liquidator submitted that on 07.02.2022, the Secured Financial Creditor individually and the respective Authorized Representative of other class / categories of the Corporate Debtor viz. Unsecured Financial Creditors, Operational Creditor (Statutory Authorities), Operational Creditors (Farmers), Operational Creditors (Employees and Workmen) and Operational Creditors (Other Creditors) and Shareholders attended the meeting held at the office of the Liquidator at Old No. 22, New No. 28, Menod Street, Purasawalkam, Chennai – 600 007 through video conferencing and the Mr. V. Nallasenapathy, as appointed by this Tribunal was the Chairperson of the Meeting.

2.6. The Chairperson has filed his Report of the result of the meeting before this Tribunal on 14.02.2022 and the hardcopy on 15.02.2022 vide SR No. 982 and it is seen that in terms of the said Report, that the Scheme was approved with a thumping majority of 89.41% of the Stakeholders / Members present and voting. The consolidated voting Result of the meeting is tabulated hereunder;



S. No	CLASS OF CREDITORS	VALUE OF CLAIMS ADMITTED (IN LAKHS)	ASSENT IN VALUE (IN LAKHS)	% OF VOTING SHARE WHO ASSENTED	DISSENT IN VALUE (IN LAKHS)	% OF VOTING SHARE WHO DISSENTED
1	Secured Financial Creditors	45,467.84	39,402.44	26.38	6,065.40	4.06
2	Unsecured Financial Creditors	98,305.05	90,097.06	60.32	8,207.99	5.50
3	Operational Creditors - Statutory Authorities	850.64	582.91	0.39	267.74	0.18
4	Operational Creditors - Farmers	1,950.19	1,950.19	1.31	---	---
5	Operational Creditors - Workmen and Employees	1,450.44	1,405.46	0.94	44.98	0.03
6	Operational Creditors - Others	656.76	101.46	0.07	555.29	0.37
7	Shareholders	670.00	0.20	0.00	669.80	0.45
	<b>Total</b>	<b>1,49,350.93</b>	<b>1,33,539.73</b>	<b>89.41</b>	<b>15,811.20</b>	<b>10.59</b>

2.7. Based on the aforesaid facts and circumstances, the Liquidator has submitted that the Scheme of Compromise or Arrangement as proposed by KALS for the Stakeholders of the Corporate Debtor is the most fair and reasonable one and that it was submitted that the sanction of the Scheme will benefit the Corporate Debtor and is in the interest of all the stakeholders of the Corporate Debtor and the general public, especially the larger interest of the farmers. Therefore, it was submitted that it would be just and equitable that the Scheme be sanctioned as the same is bound to benefit the Corporate Debtor and its shareholders.

**3. SCHEME OF COMPROMISE AND ARRANGEMENT- M/S. THIRU AROORAN SUGARS LIMITED**

**3.1. ABOUT THE SCHEME PROPONENT**

3.1.1 M/s. KALS Distilleries Private Limited (KALS) who is the Scheme proponent in the present case has a tangible net worth as on 31<sup>st</sup> March 2021 as per the net-worth certificate issued by the Chartered Accountant is Rs.237.29 Crore.

3.1.2 It is also submitted that the Scheme proponent and their connected persons are eligible to submit this Scheme in accordance with Section 29A of IBC, 2016 read with Regulation 2B of IBBI (Liquidation Process) Regulations, 2016 and the Affidavit certifying eligibility under Section 29A of IBC, 2016 pertaining to the Scheme proponent and their connected persons have been submitted along with the Scheme.

**3.2. FINANCIAL PROPOSAL:**

3.2.1. The Learned Counsel for the Liquidator submitted that the Scheme proponent shall pay an aggregate amount of Rs.14,521.52 Lakh plus Liquidation Expense at actuals ('Financial Proposal') for the revival of the Corporate Debtor and payments towards unpaid CIRP costs or unpaid Liquidation Costs and repayment and settlement of all the Creditors out of which a sum of Rs.798.88 Lakh shall be paid towards CIRP and Liquidation costs shall be paid at the actuals. Further, a sum of Rs.13,722.64 Lakh to be paid to the various classes of Creditors of the Company towards full and



final settlement of their claims as detailed in Clause 4 of the Scheme.

### **3.3. SOURCE OF FUNDING**

3.3.1. It was submitted that the Scheme proponent shall fund for the acquisition of the Corporate Debtor and infuse / raise the funds as laid down in this Scheme and the Scheme proponent is a registered Company and is financially capable to fund and complete this proposed scheme as evident from the net worth of the Scheme proponent.

3.3.2. The Learned Counsel for the Liquidator submitted that the scheme proposes to infuse and or raise the amount offered under the scheme to various stakeholders as well as towards Refurbishment costs and working capital amounting in total to Rs.25,921.52 Lakh by way of following sources:

<b>SOURCES</b>	<b>RS. IN LAKH</b>
Equity/Unsecured Loans from Group Companies	7,921.52
Term Loan from Banks / Institutions	10,000.00
Working Capital Loan from Banks / Institutions	8,000.00
<b>Total Sources</b>	<b>25,921.52</b>

3.3.3. It was also submitted that the Scheme Proponent proposes to infuse and / or raise an amount of approximately Rs.13,021.52 Lakhs plus the Liquidation expenses at actuals over a period of 12 months from the Closing Date to make payment towards various classes of Creditors, financing capital expenditure requirements, towards working capital purposes and for improvement of the business operations. The balance amount of Rs. 1500 lakhs towards the Secured Financial Creditors shall be payable in equal instalments at the



end of 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> year respectively which shall be secured by way of Corporate Guarantee to be issued by KALS Distilleries Private Limited. The payment towards settlement of Creditors is detailed in Clause 4 (Resolution Plan/Scheme of Compromise or arrangement Strategy and Debt Settlement Offer) of this Scheme.

### **3.4. TREATMENT OF SECURED FINANCIAL CREDITORS**

3.4.1. The Liquidator states that there are Seven (7) Creditors under the category of Secured Financial Creditors of the Corporate Debtor, whose total admitted claims stands for a sum of Rs. 45,467.84 Lakhs. Out of which, an amount of Rs.8,000 Lakhs (17.59%), is provided for as Full and Final Settlement for their entire dues and the same shall be paid to the Secured Financial Creditors on pro-rata basis, in the manner stated under Clause 3 of the Debt Settlement Offer as mentioned in the Scheme. The Settlement to Secured Financial Creditors on the admitted claims shall be made as under:

S. NO	NAME OF THE BANK/GROUP BANK	CLAIMS ADMITTED (IN Rs LAKHS)	SETTLEMENT AMOUNT (IN Rs LAKHS)
1	State Bank of India, SAMB	21,580.44	3,797.05
2	Union Bank of India	1,002.20	176.34
3	IDBI Bank	14,193.90	2,497.40
4	ICICI Bank	996.41	175.32
5	UCO Bank	5,063.19	890.86
6	Standard Chartered Bank	1,745.69	307.15
7	Punjab National Bank	886.01	155.89
	<b>Total</b>	<b>45,467.84</b>	<b>8,000.00</b>

3.4.2. Payment Schedule of the above said Secured Financial Creditors: From the Effective date (ie., from the date

of final approval of the scheme of arrangement by NCLT), the payment will be made as given below,

<b>PAYMENT DAYS STARTING FROM "EFFECTIVE DATE"</b>	<b>TOTAL SETTLEMENT AMOUNT IN RS LAKH</b>
0-90 Days	812.50
91 - 180 days	1,625.00
181 - 270 days	1,787.50
271 - 365 days	2,275.00
End of 3 <sup>rd</sup> year	500.00
End of 4 <sup>th</sup> year	500.00
End of 5 <sup>th</sup> year	500.00
<b>Total</b>	<b>8,000.00</b>

### **3.5. TREATMENT OF UNSECURED FINANCIAL CREDITORS**

3.5.1. The Liquidator states that there are Seventeen (17) Creditors under the category of the Unsecured Financial Creditors of the Corporate Debtor, whose total admitted claims stands for a sum of Rs.99,990.73 Lakhs. Out of which, an amount of Rs.499.95 Lakhs (0.50 %) is provided for as Full and Final Settlement for their entire dues and the same shall be paid to the Unsecured Financial Creditors on pro-rata basis, in the manner stated under Clause 4 of the Debt Settlement Offer as mentioned in the Scheme.

<b>S. No</b>	<b>Name of the Bank/Group Bank</b>	<b>Claims Admitted (in Rs Lakh)</b>	<b>Settlement Amount (in Rs Lakh)</b>
1	SBI-Sirupakkam	633.66	3.17
2	SBI -Vriddhachalam	41.39	0.21
3	SBI -Kavuveppalankurichi	493.73	2.47
4	SBI, Kaludur	991.8	4.96
5	SBI, Papanasam	549.91	2.75
6	IDBI, CG SASL	17,869.87	89.35
7	SBI, Kodavasal	47.38	0.24

8	SBI, CG Terra Energy	3,358.20	16.79
9	SBI, CG SASL	1,421.02	7.11
10	PNB – CG SASL	43,637.19	218.19
11	Union Bank of India	7,455.90	37.28
12	Union Bank of India – formerly Corporation Bank, Kootu Road	752.09	3.76
13	ICICI Teynampet	390.1	1.95
14	Canara Bank	11,582.58	57.90
15	E.D&F Man Commodities I P Ltd	1,010.62	5.05
16	Bank of Baroda	146.87	0.73
17	L&T Finance Limited	9,608.42	48.04
	<b>Total</b>	<b>99,990.73</b>	<b>499.95</b>

3.5.2. Each of the Unsecured Financial Creditor will have settlement of their admitted claim which amounts to a total settlement amount of Rs 499.95 Lakhs;

PAYMENT DAYS STARTING FROM "EFFECTIVE DATE"	% OF TOTAL SETTLEMENT	TOTAL SETTLEMENT AMOUNT IN RS LAKH
0-90 Days	25%	124.99
91 - 180 days	25%	124.99
181 - 270 days	25%	124.99
271 - 365 days	25%	124.99
<b>Total</b>		<b>499.95</b>

### 3.6. TREATMENT OF OPERATIONAL CREDITORS - FARMERS

3.6.1. The Liquidator states that there are 14,144/- Creditors under the category of the Operational Creditors – Farmers and their claims were submitted by the District Collector, Thanjavur on behalf of 7592 Farmers and District Collector, Cuddalore on behalf of 6552 Farmers, whose total admitted claims stands for a sum of Rs.7,848.21 Lakhs. Out of which, an amount of Rs.4,501.46 Lakhs (57.36%) is provided for as Full and Final Settlement for their entire dues and the same shall be paid to the Farmers on pro-rata basis, in the manner stated under Clause 5 of the Debt Settlement

Offer as mentioned in the Scheme. The Payout schedule for the Settlement of Cane dues to each of those farmers is hereunder:

PAYMENT DAYS STARTING FROM "EFFECTIVE DATE"	% OF TOTAL SETTLEMENT	TOTAL SETTLEMENT AMOUNT IN RS LAKH
0-90 Days	25%	1,125.37
91 - 180 days	30%	1,350.44
181 - 270 days	35%	1,575.51
271 - 365 days	10%	450.15
<b>Total</b>		<b>4,501.46</b>

### **3.7. TREATMENT OF OPERATIONAL CREDITORS - SUPPLIERS**

3.7.1. The Liquidator states that there are Thirty-Six (36) Creditors under the category of the Operational Creditors - Suppliers of the Corporate Debtor, whose total admitted claims stands for a sum of Rs 874.69 Lakhs. Out of which, an amount of Rs.8.75 Lakhs (1.00%) is provided for as Full and Final Settlement for their entire dues and the same shall be paid to the Operational Creditors - Suppliers on pro-rata basis, in the manner stated under Clause 6 of the Debt Settlement Offer as mentioned in the Scheme. The Settlement to each of those Suppliers is hereunder:

PAYMENT DAYS STARTING FROM "EFFECTIVE DATE"	% OF TOTAL SETTLEMENT	TOTAL SETTLEMENT AMOUNT IN RS LAKH
0-90 Days	100%	8.75
<b>Total</b>		<b>8.75</b>

### **3.8. TREATMENT OF OPERATIONAL CREDITORS – TRANSPORT OPERATORS**

3.8.1. The Liquidator states that there are Twenty-Three (23) Creditors under the category of the Operational Creditors – Transport Operators, whose total admitted claims stands for

a sum of Rs. 47.61 Lakhs. Out of which, an amount of Rs.0.48 Lakhs (1.01%) is provided for as Full and Final Settlement for their entire dues and the same shall be paid to the Operational Creditors - Transport Operators on pro-rata basis, in the manner stated under Clause 7 of the Debt Settlement Offer as mentioned in the Scheme. The Settlement to each of those Suppliers is hereunder:

PAYMENT DAYS STARTING FROM "EFFECTIVE DATE"	% OF TOTAL SETTLEMENT	TOTAL SETTLEMENT AMOUNT IN RS LAKH
0-90 Days	100%	0.48
<b>Total</b>		<b>0.48</b>

### **3.9. TREATMENT OF OPERATIONAL CREDITORS - EPFO - STATUTORY AUTHORITY**

3.9.1. The Liquidator states that there are two (2) Creditors under the category of the Operational Creditors - EPFO - Statutory Authority, whose total admitted claims stands for a sum of Rs. 336.73 Lakhs. Since, the EPFO stands outside Liquidation Estate, the Full Amount of Rs. 336.73 (100%) is provided for as a Full and Final Settlement for their dues and the same shall be paid, in the manner stated under Clause 2 of the Debt Settlement Offer as mentioned in the Scheme.

### **3.10. TREATMENT OF OPERATIONAL CREDITORS - OTHER THAN EPFO - STATUTORY AUTHORITY**

3.10.1. The Liquidator states that there are Six (6) Creditors under the category of the Operational Creditors - Other than EPFO - Statutory Authority, whose total admitted claims stands for a sum of Rs. 513.91 Lakhs. Out of which, an amount of Rs. 1.77 Lakhs (0.34%) is provided for as Full and



Final Settlement for their entire dues and the same shall be paid to them, on pro-rata basis, in the manner stated under Clause 9 of the Debt Settlement Offer as mentioned in the Scheme. The payout schedule for the said settlement amount to each of the statutory department is hereunder:

PAYMENT DAYS STARTING FROM "EFFECTIVE DATE"	% OF TOTAL SETTLEMENT	TOTAL SETTLEMENT AMOUNT IN RS LAKH
0-90 Days	100%	1.77
<b>Total</b>		<b>1.77</b>

### **3.11. TREATMENT OF WORKMEN**

3.11.1. The Liquidator states that there are 438 Workmen of the Corporate Debtor, whose total admitted claims stands for a sum of Rs.1,900.83 Lakhs. Out of which, an amount of Rs.319.48 Lakhs (16.81%) is provided for as Full and Final Settlement for their entire dues and the same shall be paid to them, in the manner stated under Clause 9 of the Debt Settlement Offer as mentioned in the Scheme. the payout schedule to all those workers is hereunder;

PAYMENT DAYS STARTING FROM "EFFECTIVE DATE"	% OF TOTAL SETTLEMENT	TOTAL SETTLEMENT AMOUNT IN RS LAKH
0-90 Days	50%	159.74
91 - 180 days	50%	159.74
<b>Total</b>		<b>319.48</b>

### **3.12. TREATMENT OF EMPLOYEE DUE**

3.12.1. The Liquidator states that there are 67 Employees (Approx.) of the Corporate Debtor, whose total admitted claims stands for a sum of Rs. 344.83 Lakhs. Out of which, an amount of Rs. 51.73 Lakhs (15%) is provided for as Full and Final Settlement for their entire dues and the same shall be

paid to them on pro-rata basis, in the manner stated under Clause 10 of the Debt Settlement Offer as mentioned in the Scheme. The Payout schedule to each of the Employee shall be in the below bucket of days from effective date.

PAYMENT DAYS STARTING FROM "EFFECTIVE DATE"	% OF TOTAL SETTLEMENT	TOTAL SETTLEMENT AMOUNT IN RS LAKH
0-90 Days	100%	51.73
<b>Total</b>		<b>51.73</b>

### **3.13. TREATMENT OF DUES OF OTHER CREDITORS**

3.13.1. The Liquidator states that there is one (1) Claim under the category of Dues of Other Creditors of the Corporate Debtor whose, total admitted claims stands for a sum of Rs.229.04 Lakhs. Out of which, an amount of Rs.2.29 Lakhs (1%) is provided for as Full and Final Settlement for their entire dues and the same shall be paid to them on pro-rata basis, in the manner stated under Clause 11 of the Debt Settlement Offer as mentioned in the Scheme. The Payout schedule to each of the parties is here under:

PAYMENT DAYS STARTING FROM "EFFECTIVE DATE"	% OF TOTAL SETTLEMENT	TOTAL SETTLEMENT AMOUNT IN RS LAKH
0-90 Days	100%	2.29
<b>Total</b>		<b>2.29</b>

### **3.14. SUPERVISION AND IMPLEMENTATION OF THE SCHEME**

3.14.1. During the Implementation Period, the Liquidator is proposing to act as the Chairman of the Monitoring Committee and the members of the SCC shall form part of the Monitoring Committee till the tenure of completion of the Scheme.

### **3.15. SCHEME FOR REDUCTION OF SHARE CAPITAL**

3.15.1. As an integral part of the Scheme, on approval of the Scheme of Compromise or arrangement, the entire paid-up share capital comprising 1,13,16,724 equity shares each with a face value of Rs.10/- of the Corporate Debtor shall stand cancelled. The existing shareholders will not be paid anything in settlement and their share certificates will become null and void.

4.15.2. The Corporate Debtor will issue new equity shares for value equivalent to the Equity Proposed to be infused to the Scheme Proponent / Associates / Promoters of the Scheme Proponent each of Rs 10/- as the face value. The Scheme Proponent / New Shareholders will then decide on maintaining the listing status or delist the shares from the Exchanges. The New Board will be constituted as per the new shareholding pattern.

### **3.16. EFFECT OF THE PROMOTERS / DIRECTORS / KEY MANAGERIAL PERSONS & RELATIVES OF THE CORPORATE DEBTOR**

3.16.1. The Corporate Debtor is under Liquidation as per the provisions of IBC, 2016. The Promoters, Directors, Key Managerial Persons and other relatives of the Corporate Debtor shall be discharged with effect from the date of the Liquidation Order. Nevertheless, the Ex-Directors, Promoters, Key Managerial Persons and Relatives of the Corporate Debtor do not have any material interest, concern or any other interest in the Scheme.



3.16.2. All the liabilities of the Corporate Debtor present / contingent toward the Promoters, Directors, Key Managerial Persons, Related Party and Relatives of the Corporate Debtor, whether in respect of loans, goods, services, Directors' Fees, Professional Fees or of any other descriptions shall stands completely and fully written off. However, the same shall not prejudice, the right of the Corporate Debtor to recover any amount due to the Corporate Debtor form any of the Promoters, Directors, Key Managerial Persons, Related Parties and other relatives of the Corporate Debtor.

3.16.3. There shall be no Liability on the Corporate Debtor, by virtue of any Corporate Guarantee issued in the past by the Corporate Debtor to anyone including its part or present Subsidiary / Group / Associate Companies.

**TABULAR COLUMN OF THE PROPOSED SETTLEMENT PROVIDED IN THE SCHEME:**

*(All Figures are in Lakhs)*

S. No.	LIABILITY	ADMITTED CLAIM	SETTLEMENT AMOUNT PAYABLE	% OF CLAIM SETTLED TO CLAIM ADMITTED
1.	Liquidation Cost	On Actuals	On Actuals	100.00
2.	Secured Financial Creditors	45,467.84	8,000.00	17.59
3.	Unsecured Financial Creditors	99,990.73	499.95	0.50
4.	Farmers for Cane Dues	7,848.21	4,501.46	57.36
5.	Suppliers	874.69	8.75	1.00
6.	Transport operators	47.61	0.48	1.01
7.	Statutory dues EPFO	336.73	336.73	100.00
7.1	Statutory dues other than EPFO	513.91	1.77	0.34
8.	Workers	1,900.83	319.48	16.81
9.	Employees	344.83	51.73	15.00
10.	Other Creditors	229.04	2.29	1.00
11.	CIRP cost	798.88	798.88	100.00
	<b>Total</b>	<b>1,58,353.31</b>	<b>14,521.52</b>	<b>9.17</b>

**TABULAR COLUMN OF THE PROPOSED SCHEDULE FOR PROPOSED SETTLEMENT**

*(All Figures are in Lakhs)*

S. No.	LIABILITY	ADMITTED CLAIM	SETTLEMENT AMOUNT PAYABLE	% OF CLAIM SETTLED TO CLAIM ADMITTED
1	Liquidation Cost	On Actuals	On Actuals	100.00
2	Secured Financial Creditors	45,467.84	8,000.00	17.59
3	Unsecured Financial Creditors	99,990.73	499.95	0.50
4	Farmers for Cane Dues	7,848.21	4,501.46	57.36
5	Suppliers	874.69	8.75	1.00
6	Transport operators	47.61	0.48	1.01
7	Statutory dues EPFO	336.73	336.73	100.00
7.1	Statutory dues other than EPFO	513.91	1.77	0.34
8	Workers	1,900.83	319.48	16.81
9	Employees	344.83	51.73	15.00
10	Other Creditors	229.04	2.29	1.00
11	CIRP cost	798.88	798.88	100.00
	<b>Total</b>	<b>1,58,353.31</b>	<b>14,521.52</b>	<b>9.17</b>

**3.17. MANAGEMENT AND CONTROL DURING THE RESOLUTION PLAN/SCHEME OF COMPROMISE OR ARRANGEMENT**

3.17.1. The Resolution Applicant/its nominees shall take over the management and control of Thiru Arooran Sugars Limited on payment of last instalment as per NCLT order and the same will be monitored in line with IBC norms as per the committee constituted by the Liquidator to ensure the rollout of the Resolution Plan/Scheme of Compromise or arrangement and to restore the eco-system. All the present directors of the Thiru Arooran Sugars Limited shall be deemed to have resigned / removed from the board of directors of Thiru Arooran Sugars Limited on approval of the Resolution Plan/Scheme of Compromise or arrangement. The Resolution Applicant shall nominate his representative/s who shall join



the Board of Directors of Thiru Arooran Sugars Limited after approval of Resolution Plan/Scheme of Compromise or arrangement by Hon'ble NCLT. The representatives nominated by the Resolution Applicant shall be deemed to have joined the board of directors of Thiru Arooran Sugars Limited on the approval of the Resolution Plan/Scheme of Compromise or arrangement by Hon'ble NCLT.

3.17.2. The reorganized board of directors of Thiru Arooran Sugars Limited as above shall have management and control of the operations of Thiru Arooran Sugars Limited. The newly appointed directors shall be authorized to inform / make filing with the Registrar of Companies / Ministry of Corporate Affairs, regarding removal / resignation of present board of directors.

3.17.3. The reorganised board of directors shall further appoint Key Managerial Personnel and set up systems and control for management of operations of Thiru Arooran Sugars Limited

#### **4. OBJECTIONS TO THE SCHEME**

##### **4.1. ASSISTANT COMMISSIONER OF GST AND CENTRAL EXCISE – TRICHY AND CUDDALORE**

4.1.1. The Objector, viz. The Assistant Commissioner of GST and Central Excise GST & Central Excise Division has filed its written objection to the present Scheme and it has been stated that the Corporate Debtor has not filed the returns in ER-1 for the period May 2017 for a sum of Rs.53,54,916/- and for the month of June 2017 for a sum of Rs.16,50,936/- and had failed to pay the duty totalling to Rs.70,05,852/-. It was submitted that the interest accrued on the said admitted



amount of default being Rs.4,32,864/- till 31.07.2021 and penalty up to 31.07.2021 is Rs.34,63,047/-. Apart from the above it was submitted that pursuant to the order – in – original No. 1 / Commr / CE/2019 – Cx dated 10.01.2019 itself to the tune of Rs.1,11,862/-. Thus the total amount of due of recoverable and payable amounted to Rs.1,49,13,625/-.

4.1.2. It was submitted that the objector accordingly lodged a claim on 03.08.2021 itself in accordance with law and since the Corporate Debtor had collected the amount but not paid the same and it amounts to ploughing the amount of duty back into the business resulting in the place of the “secured creditors” and not otherwise. However, it was submitted that the objector was surprised to receive a notice stating that pursuant to the proposed meeting to be held on 07.02.2022 on the proposal of the scheme submitted by KALS Distilleries Pvt. Ltd. there are around 4 claims received from the statutory dues other than the Provident Fund to the tune of Rs.513.91 Lakh out of which only a miniscule amount of 0.34% to be settled as full and final settlement in view of the arrangements made by the Respondent.

4.1.3. It was further submitted that the claims of the objector have not been received a fair and equitable treatment and the scheme of arrangement has failed to balance the interest of all the operational creditors. Thus, it was submitted that the Scheme proponent may be directed to disburse the entire amount of Rs.1,43,23,856/- to the objector.

#### **4.2. OBJECTIONS RAISED BY FARMERS**

4.2.1. The Applicant viz. D. Rajendran claims to represent a group of farmers who are owed statutory cane price with statutory interest from the Corporate Debtor. It was

submitted that the Applicant has filed his claims through respective District Collectors and placed their objections before the Respondent and requested to settle the dues of the farmers in priority.

4.2.2. It was also submitted that the sugarcane is an 'essential commodity' as defined under the Essential Commodities Act, 1955. Further it was submitted that in exercise of the power conferred under Section 3 of the Act, the Central Government has made the Sugarcane (Control) Order, 1966 towards regulating the production, supply and distribution of sugarcane. As per Clause 6(2) of the Control Order specifically mandates that every sugarcane grower and factory concerned is bound to supply or purchase the quantity of sugarcane covered by the Agreement. It was submitted that the purpose of the Act is to ensure equitable distribution and availability at fair price of the essential commodities and in pursuance of this specifically with regard to the sugarcane, the Control Order seeks to ensure that there is adequate supply of cane during every sugar season for the production of sugar, having regard to the demand for sugar for domestic consumption.

4.2.3. It was also submitted that aforesaid claims of the farmers including the applicant were not considered by the Respondent or the Committee of Creditor and that it has come to the knowledge of the Applicant that the Respondent has moved this Tribunal in CP(CAA)/30(CHE)/2022 with undue haste to hive off the assets of the Corporate Debtor to M/s. KALS Distilleries Private Limited through a proposed Scheme of Compromise which offers the petitioners only a fraction of their dues / entitlement under the Sugar Cane (Control) Order leaving them in lurch.



4.2.4. It was submitted that there was no voting by the farmers in this regard to the said scheme and none of the petitioners herein have received the ballot papers and that 3 persons from Sugar Mills were caught to hold to mobilize signature and forcing some persons to sign and faking many signatures by forgery, balloting is shown to be done. That it was submitted some of the farmers have are colluding with the said KALS Distilleries Pvt. Ltd. for the personal benefit to the detriment of 14000 plus remaining farmers.

4.2.5. It was also submitted that the due of the Corporate Debtor towards the farmers is Rs.78.48 Crore and that M/s. KALS Distilleries Private Limited is paying only a sum of Rs.45.01 Crore and that the claims submitted by the Farmers have not been considered by the Respondent and the CoC in arriving at this figure. It was submitted that the sugarcane farmers cannot be treated as other creditors owing to the distinct position they hold under the law and in the nature of contract.

4.2.6. It was submitted that the Respondent has classified the farmers as unsecured operational creditors, which is totally contrary to law as the Essential Commodities Act and the Statutory Order thereunder, being part of the Ninth Schedule of the Constitution cannot be ignored and there is no conflict between the provisions of the Companies Act, Insolvency and Bankruptcy Code and the Essential Commodities Act and the same must be read harmoniously. Further, it was submitted that as per Section 2 of the Tamil Nadu Revenue Recovery Act, 1864 read with Sugarcane Control Order, the Applicant and other farmers would have to be treated as secured creditors by operation of law.



4.2.7. It was submitted that there has not been fair voting on the scheme from the side of the farmers and in the absence of proper of the same, the scheme cannot be sanctioned. Further, it was submitted that the Applicant and many others object to the Scheme and that no farmer can have an objection to get an higher price. Under the said circumstances, the Learned Counsel for the Applicant prayed that the present Scheme should be rejected.

#### **4.3. OBJECTIONS RAISED BY ED & F MAN COMMODITIES**

4.3.1. The Applicant / Objector is an Unsecured Financial Creditor who has filed its claim with the Liquidator for a sum of Rs.10,10,62,400/- on 06.05.2021 and the same was admitted by the Liquidator in its entirety. The objector has abstained from voting in the process and has intimated its decision to the Authorized Representative viz. Ms. Ramela Rangaswamy.

4.3.1. It was submitted that the payments proposed to be made to the creditors pursuant to the proposed scheme are not in accordance with the waterfall mechanism contained in Section 53 of IBC, 2016 and it is clear from the fact that various Operational Creditors such as farmers, suppliers and transport operators and 'other creditors' are being paid dues to the extent of 57%, 1%, 1.01% and 1% respectively whereas the unsecured financial creditors are being paid their dues to the extent of 0.5% only on a pro rata basis. It was submitted that there is no explanation provided in the scheme or the Liquidator Application as to why the waterfall mechanism under Section 53 of IBC, 2016 was not adhere to.





4.3.2. It was submitted that the valuation of the Corporate Debtor's assets seems to be suspect and the same appears to be significantly undervalued. Further it was submitted that as per the Audited Financial Statements of the Corporate Debtor for the year ending 31<sup>st</sup> March 2021, full information in respect of inventories and bank accounts maintained by the Corporate Debtor was not made available to the Independent Auditors. Further, it was submitted that in the Audited Financial Statements of the Corporate Debtor for the year ending 31<sup>st</sup> March 2021, inventory to the extent of what material was available to the Independent Auditor was valued at Rs.131.8 million and that in the table annexed to the Liquidator's Application, the inventory does not seem to have been considered.

4.3.3. Thus, it was submitted that the present Scheme was not just and fair and is neither in the interest of the Corporate Debtor nor its creditors and that the Scheme proposed by M/s. KALS Distilleries Private Limited does not appear to be in public interest and appears to serve private interest at the cost of the bonafide creditor's interest and hence sought rejection of the Scheme.

#### **4.4. OBJECTIONS RAISED BY SETHU TRANSPORTS & JAIN IRRIGATION**

4.4.1. The Applicant / Objector is an Operational Creditor in respect of the Corporate Debtor and has submitted his claim to the Liquidator for a sum of Rs.2,41,42,276/- and the same was also admitted by the Liquidator. It was submitted that the Applicant has perused the Scheme of M/s. KALS Distilleries Private Limited and that the Scheme has made provision for

differential treatment among operational creditors which is unsustainable under IBC, 2016.

4.4.2. It was submitted that the concept of different class of creditors among Operational Creditors under IBC is impermissible and that Section 53 of IBC, 2016 does not discriminate inter-se between class of Operational Creditors and that all Operational Creditors are in equal footing and cannot be given differential treatment among Operational Creditors. Further, the objectors have also claimed that the assets of the Corporate Debtor has been undervalued and hence the Scheme is also presented with a low value.

4.4.3. It was submitted that the present scheme had classified Operational Creditors in different class like suppliers, Transport Operators, Cane Farmers dues and other creditors and has provided different % of settlement for each of the class of Operational Creditor. It was further submitted that the scheme is discriminatory as it provides for certain class of operational creditor for 57.36% and for certain classes such as the Applicant for merely 1% of the admitted claims.

4.4.4. It was submitted that the Applicant has been wrongly classified as supplier, when the Applicant is admittedly a transport operator which has been given higher % of admitted claim vis-à-vis the class of supplier. It was submitted that the applicant has sent its dissent to the proposed resolution to be considered in the meeting held on 07.02.2022 and despite the Applicant dissent, the Scheme is approved by the stakeholders. Thus, it was submitted that the present scheme is required to be rejected since the scheme

approved by the stakeholders is prejudice to the interest of various similarly placed operational creditors vis-à-vis a particular class which is allotted 57.36% of admitted claim as opposed to 1% provided to the class in which the Applicant is segregated.

#### **4.5. OBJECTIONS RAISED BY THE SHAREHOLDERS**

4.5.1. The shareholders of the Corporate Debtor viz. Mr. Ram Tyaragarajan has also made his oral submissions as to the objection to the Scheme and it was submitted that the valuation of assets has decreased from 220 Crore (approx.) during CIRP Period to Rs. 137 Crore during Liquidation. It was also submitted that the terms of the EOI was modified so as to suit the EOI submitted by M/s. KALS Distilleries Private Limited. Further, it was alleged that the Valuation Report was not filed with this Tribunal.

### **5. REPLY BY THE LIQUIDATOR TO THE OBJECTIONS RAISED BY OBJECTORS**

#### **5.1. REPLY TO THE OBJECTIONS RAISED BY ASSISTANT COMMISSIONER OF GST AND CENTRAL EXCISE – TRICHY AND CUDDALORE**

5.1.1. The Learned Counsel for the Liquidator states that the Objection is not maintainable as the Objector has not satisfied the minimum threshold limit as provided in Proviso to the Section 230 (4) of the Companies Act, 2013, to raise objections towards the Scheme of Compromise or Arrangement.

5.1.2. Further, it was submitted that as per the List of Stakeholders dated 30.06.2021 and the Revised List of Stakeholders of the Corporate Debtor dated 02.02.2022, the

demand raised by the Objector amounts to Rs 1,49,13,625/- which constitutes around 0.25% of the total outstanding debt of the Corporate Debtor as per the last Audited Financials for the Financial year 2020-21 and hence the same will not satisfy the minimum threshold, to raise objections to the Scheme as per the proviso to Sub-Section 4 of Section 230 of the Companies Act, 2013.

5.1.3. It was submitted that the Provident Fund dues payable by the Corporate Debtor – not being the assets owned by the Corporate debtor but belong to the workers – are not included within the liquidation estate. It was submitted that what does not form part of the liquidation estate cannot be appropriated or sold by the Liquidator and cannot be distributed to the stakeholders of the Corporate Debtor – any violation of which would amount to 'unjust enrichment,' not contemplated by law. Since the EPF dues are a source of the livelihood of the workmen/employees when the company goes bust, the same are to be settled in full and priority over other dues and hence does not fall under the waterfall mechanisms under Section 53 of the IBC.

5.1.4. The Respondent/Liquidator also places reliance on the judgements of **State Bank of India vs. Moser Baer Karamchari Union & Anr** wherein the provident fund, pension fund, and gratuity fund were not included in the liquidation estate upholding the provisions of Code. Further reliance was also placed in the Judgment of **Nagalingam Muthiah vs. Office of Recovery Officer, EPFO** wherein it was held that it was the duty of IRP/RP to realize the claim of EPFO in full before paying any other creditor.

5.1.5. Further, it was submitted that in the matter of **Precision fasteners** case wherein it was held that the dues of provident fund, pension fund and gratuity fund have to be deemed as an asset of the workmen or employees irrespective of whether they have been maintained in a separate account or not by the company under liquidation. It further observed that by including all sums due to any workmen or employee from the provident fund, the pension fund and the gratuity fund under the Section 36(4)(a) (*assets owned by a third party which are in possession of the corporate debtor*), an overarching interest and title has been created in favour of the workmen in respect of the provident fund, etc. Thus, the workmen / employees are free to realise their provident fund, pension fund and gratuity fund dues without being included in the order of priority for distribution of liquidation assets as set out in Section 53 of the IBC.

5.1.6. It was submitted that the GST & Central Excise Department is clearly not a secured creditor and the debt owed to the Department is in the nature of dues that clearly adds to the consolidated fund of the state and thus, should be settled as per the waterfall structure mentioned in Section 53(1)(v) of IBC, 2016. Further, reliance was also placed by the Judgment of the Hon'ble High Court in the matter of **Leo Edibles & Fats Ltd. Vs. The Tax Recovery Officer (Central) IT Dept.** (Writ Petition No.8560 of 2018) wherein the Hon'ble High Court has settled this long-standing dilemma regarding the ascertainment of the nature of crown debts and the supremacy of the Code over the Statutory dues wherein it



further clarifies that the interest of secured creditors prevail over crown debts.

5.1.7. Further, the Learned Counsel for the Liquidator submitted that the Scheme of arrangement does not prevent or prohibit the department from pursuing other remedies under the Goods and Services Tax Act 2017 and that as per the provisions of IBC, 2016, it is relevant to point out the Non-obstante Clause, i.e., Section 238 of IBC, 2016, which clearly states that *"The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."* Therefore, the Code clearly overrides the GST Act.

5.1.8. The Learned Counsel for the Liquidator submitted that the Operational Creditors of the Corporate Debtor will not get any amounts as per Section 53 of IBC, 2016, as there would be no surplus available post payments to the Secured Financial Creditor and Workmen of the Corporate Debtor. Thus, it was submitted that in order to safeguard the interest of all the Stakeholders, the present Scheme was considered since it proposes for a reasonable amount to all the stakeholders of the Corporate Debtor. Therefore, the above contentions of the Objector are factually wrong and misconceived.

5.1.9. The Learned Counsel for the Liquidator submitted that the settlement in the Scheme, proposed for 17.60% for the Secured Financial Creditors towards their total claims admitted and moreover, the class of Creditors of the



Corporate Debtor during their Meeting held on 07.02.2022 discussed the Scheme and voted in favor of the Scheme. Therefore, the contentions of the Applicant questioning the amounts allocated to the different classes of Stakeholders is not well within their purview and the same is liable to be dismissed *in limine*. Under the said circumstances, the Learned Counsel for the Liquidator submitted that the contentions set forth in the Written Objections are not maintainable in law and hence, the Scheme is fit and proper for better interest of the stakeholders of the Corporate Debtor including the better revival of the Corporate Debtor from the clutches of the insolvency proceedings.

## **5.2. REPLY TO THE OBJECTIONS RAISED BY THE FARMERS**

5.2.1. The Learned Counsel for the Liquidator submitted that the Objection is not maintainable as the Objector has not satisfied the minimum threshold limit as provided in Proviso to the Section 230 (4) of the Companies Act, 2013, to raise objections towards the Scheme of Compromise or Arrangement.

5.2.2. It was submitted that as per the List of Stakeholders dated 30.06.2021 and the Revised List of Stakeholders of the Corporate Debtor dated 02.02.2022, the claim of the Objector to the tune of Rs.2,06,136/- was admitted which constitutes only 0.003% of the total outstanding debt as per the Last Audited Financials for the Financial year 2020-21 and the same will not satisfy the minimum threshold, to raise objections to the Scheme as per the proviso to Sub-Section 4 of Section 230 of the Companies Act, 2013. Therefore, it was submitted that the present

Objection is liable to be dismissed for want of satisfaction of minimum threshold limit by the Objector.

5.2.3. The Learned Counsel for the Liquidator submitted that the dues owed by the Corporate Debtor to all the Farmers have been considered as claims and admitted under the Category of Operational Creditors - Farmers. In fact, the Applicant herein claims that the Corporate debtor owes him an amount of Rs. 1,77,568/-, when in actual, the claim has been admitted at an amount of Rs. 2,06,136/- (inclusive of interest).

5.2.4. The Learned Counsel for the Liquidator submitted that pursuant to the Order of Liquidation, the Liquidator had published the Invitation for Expression of Interest (EOI) for Scheme on 14.07.2021 and the last date for submission of EOI was on 13.08.2021. However, only 2 parties i.e., the Scheme Proponent and one M/s. Meridian Global Ventures Private Limited ("MGVPL") have submitted their Scheme. The Respondent further submitted that due to unprecedented farmers problems, MGVPL has not enhance their proposal for more than Rs. 10,100 Lakh and considering the higher value provided by the Scheme Proponent, the Scheme of the Scheme Proponent was considered and accordingly, the Scheme was approved by the class of Creditors of the Corporate Debtor. It was submitted that despite provision of adequate time, only one EOI had qualified the parameters for obtaining the approval of the Stakeholders. Thus, it would have become futile if the EOI was not considered and further extensions were proposed for new entrants.



5.2.5. The Learned Counsel for the Respondent submitted that issuance of a new EOI or acceptance of a mere proposal in paper with no concrete levels of Commitment would have lead to losing even the single proposal on hand and would have derailed the entire process which could have even lead to the possibility of selling the Corporate Debtor on a piecemeal basis at the cost of farmers and other creditors due to the lapse of time, erosion in the value of the assets and absence of financially established buyers. Thus, it was submitted that issuance of a new EOI or acceptance of mere paper proposal from any other parties may only leave the stakeholders, especially the Farmers high and dry. It was only in this context considering the plight of the Farmers the Scheme of KALS Distilleries was considered for approval and filed with the NCLT for their sanction, so that the Farmers engrossed in the stream of financial difficulties may gain something from the speedy realisations. Furthermore, it was submitted that the Liquidation being a time bound process which is to be completed within a period of 1 year cannot be kept open for a long time without any fruits of benefits.

5.2.6. The Learned Counsel for the Liquidator submitted that there are around 14,000 farmers (approx.) widespread across 850 villages (approx.) in and around the district of Thanjavur and Cuddalore respectively. Due to the widespread dispersion of the Farmers, it was thought fit to assemble the Farmers at different locations and obtain their votes in the Ballot papers physically. In pursuance to the same, around 14,000 Ballot Papers were printed containing the Name of the Farmer and their RYOT Number. The erstwhile staffs of the Corporate Debtor were deployed for the purpose of identifying and co-ordinating with the Farmers and collecting and



collating the duly signed Ballot Papers. As a matter of additional facility, the copy of the Resolutions to be voted upon were served in English as well as in Tamil. However, some of the Farmers were agitated by the fact that only an amount of Rs. 4,501.46 lakhs representing 57% of their debts is being settled to them under the scheme and had hence organised a meeting to thwart the entire process. Infact, few of the farmers had intervened during the course of the process and took possession of all the Ballot papers and that they destroyed the signed as well as yet to signed ballot forms by dumping the Ballot Forms in water.

5.2.7. The Learned Counsel for the Liquidator submitted that the Liquidator as well as the Authorised Representative for Farmers – Ms. Renuka Devi Rangaswamy had received calls from various farmers stating that they are willing to cast their votes in favour of the Scheme since its high time they have seen any realisations or recovery. They stated that few of the Farmers amongst them are preventing them signing the Ballot Papers. Taking into account, the requests received from various Farmers, efforts were taken to restart the process of getting the Ballots signed physically. However, this time it was proposed that instead of calling the Farmers to assemble at specific locations it would be preferable to organise mobile camps which would approach the farmers at their proximity locations, for them to cast their votes. This was to a large extent successful although there were resentment at certain places. It was submitted that despite all these difficulties, the undersigned has obtained votes from 1086 farmers. The aforementioned facts were also mentioned in detail in the Report of the Authorised Representatives – Farmers which





forms part of the Chairman's Report filed with this Hon'ble Tribunal on 14.02.2022.

5.2.8. The Learned Counsel for the Liquidator submitted that the Operational Creditors of the Corporate Debtor will not get any amounts as per Section 53 of IBC, 2016, as there would be no surplus available post payments to the Secured Financial Creditor and Workmen of the Corporate Debtor. In order to safeguard the interest of the Operational Creditor especially the Farmers who being the weaker section in the society, the present Scheme proposes for a reasonable amount to all the stakeholders of the Corporate Debtor. Therefore, the above contentions of the Applicant are factually wrong and misconceived.

5.2.9. The Learned Counsel for the Liquidator submitted that considering the larger interest of the Operational Creditors – Farmers who being the weaker section of the society and indispensable for carrying out the business operations, their retention becomes vital, thereby resulting in a reasonable amount of settlement to them and the same was agreed by majority of the stakeholders of the Corporate Debtor. In fact, the settlement in the Scheme, proposed for 17.60% for the Secured Financial Creditors towards their total claims admitted. Moreover, the class of Creditors of the Corporate Debtor during their Meeting held on 07.02.2022 discussed the Scheme and voted infavor of the Scheme. Therefore, the contentions of the Applicant questioning the amounts allocated to the different classes of Stakeholders is not well within their purview and the same is liable to be dismissed in limine.



5.2.10. The Learned Counsel for the Liquidator submitted that as per Section 3(30) of IBC, 2016 "secured creditor" means a creditor in favour of whom security interest is created" and as per Section 3(31) of IBC, 2016, "security interest" means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person". It was submitted that a bare perusal of the aforementioned two definitions provides explicitly that amount owed to the Farmers who have supplied Sugarcane to the Corporate debtor arise out of operation of the company/corporate debtor and the goods and services are essential for the company/corporate debtor as a going concern and therefore the same fall within the ambit of 'operational debt'.

5.2.11. Moreso, it was submitted that as per the provisions of IBC, 2016 and more particularly Section 238 of IBC, 2016, which clearly states that "The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law." Therefore, it was submitted that the provisions of IBC, 2016 clearly overrides the provisions of Tamil Nadu Revenue Recovery Act, 1984 read with Sugarcane Control Order. Thus, it was submitted that a mere classification of Farmers as Secured Creditors by such Revenue Recovery laws do not amount to a 'security' and does not confer the status of a secured creditor to the Farmers.



5.2.12. The Learned Counsel for the Liquidator submitted that the Liquidator has been receiving calls persistently from the Farmers requesting the Liquidator to speed up the process under Liquidation so that they can get some realisations after a long period of 2 and ½ years. In fact , it was submitted that the Joint Director, Thanjavur District who had submitted claims on behalf of the Farmers had mentioned in one of the Stakeholders Consultation Committee that they wanted the process to be completed at the earliest, since the farmers were left high and dry for the last 2 and ½ years and that the amount of settlement as per the scheme would be distributed proportionately to the farmers.

5.2.13. The Learned Counsel for the Liquidator submitted that a Farmers Association - Kaveri Pasanam Veerachozhanaru Aandhancherry Vaikal Pasandharargal Sabai registered with around 2000 Farmers has filed an intervention petition viz. Inv.(CA)/P/2/2022 to be impleaded as a party to the hearing of this scheme application with a prayer to the Adjudicating Authority to sanction and confirm the Scheme of Compromise/Arrangement submitted by M/s. KALS Distilleries. Thus, this clearly evidences that a larger group of the Farmers are interested in the approval of the Scheme whilst few farmers are creating hindrances and disrupting the entire process based on the instigation of few unscrupulous persons.

5.2.14. The Learned Counsel for the Liquidator submitted that issuance of a new EOI or invitation of any new schemes would lead to losing even the single proposal on hand and would have derail the entire process which could even lead to the possibility of selling the Corporate Debtor on a piecemeal



basis at the cost of farmers and other creditors due to the lapse of time, erosion in the value of the assets and absence of financially established buyers. It will only leave the Farmers high and dry. Restarting the process afresh at this juncture would prejudice the interests of all stakeholders and would render all the maximisation efforts futile. Under the said circumstances, the Learned Counsel for the Liquidator submitted that the contentions set forth in the application are not maintainable in law and hence the Scheme is fit and proper for better interest of the stakeholders of the Corporate Debtor including the better revival of the Corporate Debtor from the clutches of the insolvency proceedings.

### **5.3. REPLY TO THE OBJECTIONS RAISED BY ED & F MAN COMMODITIES**

5.3.1. The Learned Counsel for the Liquidator submitted that the Objection is not maintainable as the Objector has not satisfied the minimum threshold limit as provided in Proviso to the Section 230 (4) of the Companies Act, 2013, to raise objections towards the Scheme of Compromise or Arrangement.

5.3.2. The Learned Counsel for the Liquidator submitted that as per the Revised List of Stakeholders of the Corporate Debtor dated 02.02.2022, the claim admitted with respect to the Objector amounts to Rs.10,10,62,400/- which constitutes only 1.67% of the total outstanding debt as per the last Audited Financials for the Financial year 2020-21 and the same will not satisfy the minimum threshold, to raise objections to the Scheme as per the proviso to Sub-Section 4 of Section 230 of the Companies Act, 2013. Therefore, the



present Objection is liable to be dismissed for want of satisfaction of minimum threshold limit by the Objector.

5.3.3. The Learned Counsel for the Liquidator submitted that the total outstanding dues payable to the Secured Financial Creditors stands for Rs.4,54,67,84,000/-, Unsecured Financial Creditors stands for Rs.9,99,90,73,000/-, Workmen stands for Rs. 12,41,56,000/- and Employees stands for Rs.2,92,66,000/-. In case, the properties of the Corporate Debtor put to sale, based on the waterfall mechanism as per Section 53 of IBC, 2016, the sale proceeds would not even satisfy the dues of the Secured Financial Creditors and the Workmen of the Corporate Debtor. Thus, it was thought fit to opt for a Scheme of Compromise/Arrangement under Section 230 of the Companies Act, 2013 rather than an auction sale wherein the sale proceeds would be distributed in accordance with Section 53 of IBC, 2016.

5.3.4. The Learned Counsel for the Liquidator submitted that in case the scheme proceeds are to be distributed in accordance with the Waterfall mechanism stipulated under Section 53 of IBC, 2106, then no stakeholders barring Secured Financial Creditors and Workmen would gain anything. In other words, the Unsecured Financial Creditors or the Operational Creditors of the Corporate Debtor will not get any amounts as per Section 53 of IBC, 2016, as there would be no surplus available post payments to the Secured Financial Creditor and Workmen of the Corporate Debtor. In order to safeguard the interest of all the Stakeholders, the present Scheme was considered since it proposes for a reasonable amount to all the stakeholders of the Corporate Debtor.





Therefore, the above contentions of the Applicant are factually wrong and misconceived.

5.3.5. The Learned Counsel for the Liquidator submitted that the Farmers being the weaker section of the society would be the most affected class of creditors if an ordinary auction sale is resorted to and the proceeds are distributed in accordance with Section 53 of IBC, 2016. It is further submitted that the farmers in and around the premises of the corporate debtor are mainly reliant on the sugarcane crops and their main procurer was the Corporate Debtor. In case the present scheme is not approved, the same would result in the corporate debtor being sold piece meal and the same would not benefit the future of the farmers would be gravely prejudiced.

5.3.6. The Learned Counsel for the Liquidator submitted that the applicant herein would not receive any amount being an Operational Creditor, nevertheless in the best interests of all the stakeholders, the scheme attributes some allocation to all classes of stakeholders. Thus, the scheme addresses all the classes of stakeholders and none of them are left high and dry.

5.3.7. It was submitted that the settlement in the Scheme, proposed for 17.60% for the Secured Financial Creditors towards their total claims admitted. Moreover, the class of Creditors of the Corporate Debtor during their Meeting held on 07.02.2022 discussed the Scheme and voted in favor of the Scheme with a prodigious majority of 89.41%. Therefore, the contentions of the Applicant questioning the



amounts allocated to the different classes of Stakeholders is not well within their purview and the same is liable to be dismissed *in limine*.

5.3.8. The Learned Counsel for the Liquidator submitted that the rationale behind consideration of a Scheme over ordinary liquidation process is captured in detail in the Notice for the Stakeholders Committee Meeting held on 07.02.2022. The rationale for considering a scheme was also deliberated in the Stakeholders Consultation Committee Meetings as well as the Financial Creditors Meeting. Having known all the facts for consideration of a scheme, raising bald denials as a novice person appears to be quite surprising.

5.3.9. The Learned Counsel for the Liquidator submitted that the Liquidator has acted in terms of provisions of IBC, 2016 and the attendant Regulations framed thereunder and that as per Regulation 35 of IBBI (Liquidation Process) Regulations, 2016 the Liquidator had appointed six registered IBBI Valuers, to determine the realisable value of the assets / business of the Corporate Debtor who have submitted their Valuation Report after properly valuing the assets of the Corporate Debtor. Therefore, the contentions of the Applicant are not sustainable in law and facts and devoid of merits.

5.3.10. The Learned Counsel for the Liquidator submitted that the assets of the Corporate Debtor was valued at Rs. 183 Crores during the CIRP Period in August 2019 and due to Covid-19 Lockdown imposed by the State Government and unrest among the Farmers for their Cane dues the valuation during the Liquidation Period could not be processed further.



Hence as per Regulation 35 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the Liquidator had considered the CIRP Valuations, based on which the Asset memorandum was filed with this Tribunal on 28.06.2021. However, it was submitted that after considering the relaxations permitted by the State Government, the Liquidator has appointed two (2) IBBI Registered Valuers under the each category of assets namely Plant & Machinery, Land & Building and Securities & Financial Assets in the month of October 2021 to value the assets of the Corporate Debtor.

5.3.11. The Learned Counsel for the Liquidator submitted that the registered IBBI Valuers appointed for the purpose of valuation of the assets of the Corporate Debtor have considered all the assets of the Corporate Debtor and submitted their Reports to the Liquidator. The bare perusal of the Summary of the Valuation Report would reveal that the Average Fair Value to a tune of Rs.178,13,18,698/- and the Average Liquidation Value to a tune of Rs.137,42,03,251/-. In fact, the Scheme is proposed for a sum of Rs. 145,21,52,000/- plus Liquidation Expenses at actuals which is more than the Average Liquidation Value of the Corporate Debtor.

5.3.12. The Learned Counsel for the Liquidator submitted that the decrease in the valuation to the tune of 25% is attributable to the factors such as erosion-wear and tear of Plant and Machinery of the Corporate Debtor which were not in operation for the last 4 years and the adverse effects and global slowdown caused due to Covid pandemic. Therefore, the allegation that assets are undervalued is not sustainable in law. Furthermore, it was submitted that as per Section

230(2)(c) of the Companies Act, 2013, a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer will have to be disclosed to the Tribunal by way of an affidavit only when a scheme of Corporate Debt Restructuring (CDR) has been consented to by 75% of the Secured Financial Creditors. However, in the instant case of Thiru Arooran Sugars Limited, the Scheme was not in the nature of CDR and hence valuation reports were not filed separately with the Tribunal. However, the summary of Valuation was placed before this Tribunal.

5.3.13. The Learned Counsel for the Liquidator submitted that the summary of Liquidation Value was mentioned in the explanatory statement to the notice of Stakeholders Committee Meeting dated 07.02.2022 and Clause 7(d) of the notice also explicitly provided that Valuation Reports obtained from Registered Valuers will be open for inspection by the stakeholders at the office of the Liquidator on all working days except Saturdays and Sundays between 11 AM and 1 PM up to the date of the ensuing Meeting and at the Meeting during the Meeting hours.

5.3.14. The Learned Counsel for the Liquidator submitted that all the requisite information to the extent available was completely provided to the Auditor based on which the Audited Financials were issued and the Applicant claims that the Liquidator has not disclosed the assets which were valued. It was submitted that the summary is just an outline of the Valuation Reports and the detailed list of the assets were clearly captured in the Valuation Reports. The contention of



the applicant that the Liquidator has not disclosed the assets valued when in fact the valuations reports were already at his disposal clearly evidences the negligent attitude of the Applicant. It was submitted that the Applicant was not even bothered to peruse the Valuation Reports already shared with him in the month of November 2021 and now making false accusations that the assets are undervalued after a delay of nearly 5 months. It is clearly an after-thought act by the Applicant merely to derail the entire process.

5.3.15. Thus, the Learned Counsel for the Liquidator submitted that the rejection of the Scheme at this juncture would lead to losing even the single proposal on hand and would have derail the entire process which could even lead to the possibility of selling the Corporate Debtor on a piecemeal basis at the cost of farmers and other creditors due to the lapse of time, erosion in the value of the assets and absence of financially established buyers. It will only leave the all the stakeholders barring Secured Financial Creditors high and dry.

#### **5.4. REPLY TO THE OBJECTIONS RAISED BY SETHU TRANSPORTS AND JAIN IRRIGATION**

5.4.1. The Learned Counsel for the Liquidator submitted that the Objection is not maintainable as the Objector has not satisfied the minimum threshold limit as provided in Proviso to the Section 230 (4) of the Companies Act, 2013, to raise objections towards the Scheme of Compromise or Arrangement.

5.4.2. The Respondent / Liquidator states that as per the List of Stakeholders dated 30.06.2021 and the Revised List of Stakeholders of the Corporate Debtor dated 21.01.2022, the





claim admitted with respect to the Objector amounts to Rs.2,40,79,858/- which constitutes only 0.40% of the total outstanding debt as per the last Audited Financials for the Financial year 2020-21 and the same will not satisfy the minimum threshold, to raise objections to the Scheme as per the proviso to Sub-Section 4 of Section 230 of the Companies Act, 2013. Therefore, the present Objection is liable to be dismissed for want of satisfaction of minimum threshold limit by the Objector.

5.4.3. The Learned Counsel for the Liquidator submitted that the total outstanding dues payable to the Secured Financial Creditors stands for Rs.4,54,67,84,000/-, Unsecured Financial Creditors stands for Rs.9,99,90,73,000/-, Workmen stands for Rs. 12,41,56,000/- and Employees stands for Rs.2,92,66,000/-. In case, the properties of the Corporate Debtor put to sale, based on the waterfall mechanism as per Section 53 of IBC, 2016, the sale proceeds would not even satisfy the dues of the Secured Financial Creditors and the Workmen of the Corporate Debtor.

5.4.4. The Learned Counsel for the Liquidator submitted that the Operational Creditors of the Corporate Debtor will not get any amounts as per Section 53 of IBC, 2016, as there would be no surplus available post payments to the Secured Financial Creditor and Workmen of the Corporate Debtor. In order to safeguard the interest of all the Stakeholders, the present Scheme was considered since it proposes for a reasonable amount to all the stakeholders of the Corporate Debtor. Therefore, the above contentions of the Applicant are factually wrong and misconceived.



5.4.5. The Learned Counsel for the Liquidator submitted that the Hon'ble Apex Court of India had in the case of **Committee of Creditors of Essar Steel India Limited (through authorized signatory) v. Satish Kumar Gupta and Others** has held that even within a class of secured financial creditors, differential treatment based on the value of security of such creditors would be permissible. Further, the Liquidator placed reliance on the above judgement in support of the present case. It was submitted that a Scheme during Liquidation is similar to a Resolution Plan during CIRP Period and similar to the distinction made amongst the class of Financial Creditors, distinction can also be made amongst the Operational Creditors. It was submitted that there can be different classes within a class of the Stakeholder in the interest of justice and the same stand was taken in certain judicial precedents.

5.4.6. The Learned Counsel for the Liquidator submitted that the Farmers being the weaker section of the society would be the most affected class of creditors if an ordinary auction sale is resorted to and the proceeds are distributed in accordance with Section 53 of IBC, 2016. It is further submitted that the farmers in and around the premises of the corporate debtor are mainly reliant on the sugarcane crops and their main procurer was the Corporate Debtor. In case the present scheme is not approved, the same would result in the corporate debtor being sold piece meal and the same would not benefit the future of the farmers would be gravely prejudiced.



5.4.7. Further, it was submitted that under the Sugarcane (Control) Order, 1966, the farmers are required to supply their produce to the sugar mills at the price fixed by the Statutory Authorities and do not have any say on the price of their produce. The Farmers do not have the commercial wisdom and knowledge to demand the price for their produce and are at the mercy of the Authorities and Agents of the Sugar Mills to fix the minimum price of the sugar cane produce. Thus, it was submitted that on the basis of the facts contemplated above, the farmers ought to be treated as a separate class for it is in the interest of fairness and justice. Hence from this distinction, it is clear that there is no residual jurisdiction not to approve a Scheme on the ground that it is unfair or unjust to a class of creditors, so long as the interest of each class has been looked into and taken care of. It was submitted that the applicant herein would not receive any amount being an Operational Creditor, nevertheless in the best interests of all the stakeholders, the scheme attributes some allocation to all classes of stakeholders. Thus, it was submitted that the scheme addresses all the classes of stakeholders and none of them are left high and dry.

5.4.8. The Learned Counsel for the Liquidator submitted that the Operational Creditors under the Category of "Other Creditors" comprises of Suppliers, Transport Operators and Others. It was submitted that majority of the Creditors who have submitted their claims under the aforesaid categories have not provided their E-Mail IDs or Mobile Number for the purpose of Correspondence and that the only available data for enabling communication with these Operational Creditors were their addresses as provided in the claim form. Hence, in order to elicit the response of the Operational Creditors -



Other Creditors to the Scheme proposed by M/s. KALS Distilleries Private Limited for M/s. Thiru Arooran Sugars Limited, the Authorised Representative had issued physical copies of the Ballot Papers to these categories of Creditors at their respective addresses and sought their votes. The response received from all the Creditors under this category, including the applicant herein were clearly recorded in the Report submitted by the Authorised Representative – Ms. Rajalakshmi Varadarajan and the same was placed before the Chairman of the Meeting for his perusal. It is very upsetting to note the false accusations raised by the applicant, when in fact the Authorised Representative had undertaken all possible efforts in accumulating the decision of the creditors and had made adequate representations on their behalf in the stakeholders Committee Meeting held on 07.02.2022.

5.4.9. The Learned Counsel for the Liquidator submitted that the Ballot Papers were sent to the respective Creditors via Registered post at the addresses mentioned in the claim Form. As a matter of ease, the Ballot papers were also accompanied with Reply Envelopes, so that the Creditors may send their Ballot Papers to the undersigned via the same. Thus, it was submitted that the rejection of the Scheme at this juncture would lead to losing even the single proposal on hand and would have derail the entire process which could even lead to the possibility of selling the Corporate Debtor on a piecemeal basis at the cost of farmers and other creditors due to the lapse of time, erosion in the value of the assets and absence of financially established buyers. It will only leave the all the stakeholders barring Secured Financial Creditors high and dry.



## **5.5. REPLY TO THE OBJECTIONS RAISED BY SHAREHOLDERS**

5.5.1. The Learned Counsel for the Liquidator submitted that the Objection is not maintainable as the Objector has not satisfied the minimum threshold limit as provided in Proviso to the Section 230 (4) of the Companies Act, 2013, to raise objections towards the Scheme of Compromise or Arrangement.

5.5.2. The Learned Counsel for the Liquidator submitted that as per the latest Audited Financials of the Corporate Debtor for the year ended 2020-21, the net worth of the Corporate Debtor has completely eroded and the accumulated losses have far more exceeded the Share Capital. However, even if the entire paid up shareholding is considered, without offsetting the accumulated losses, the entire shareholding of the Applicant in his individual capacity would still constitute only 0.72% of the total shareholding and the same will not satisfy the minimum threshold of 10% of shareholding, to raise objections to the Scheme as per the proviso to Sub-Section 4 of Section 230 of the Companies Act, 2013. Therefore, the present Application is liable to be dismissed for want of satisfaction of minimum threshold limit by the Applicant.

5.5.3. The Learned Counsel for the Liquidator submitted that the applicant has contended that the valuation of assets has decreased from 220 Crores (approx.) during CIRP Period to Rs. 137 Crores during Liquidation. The Applicant/Liquidator states that during the CIRP Period, the Valuation of the Plant and Machinery of the two valuers had a vast variation from each other. The variation was more than 25% in Rupee Value





and hence a meeting with both the valuers was convened and they confronted with the reports. However, even after two meetings the RP's team could not arrive at a reconciliation of values between the two valuers. Hence, the RP had appointed a 3<sup>rd</sup> valuer, as per Regulation 35(1)(b) of the IBBI (CIRP Regulations), so that the average of the two closest value shall be considered as the Liquidation value. The same fact was also clearly captured in the Minutes of the 4<sup>th</sup> CoC Meeting convened by the RP on 22<sup>nd</sup> November, 2019.

5.5.4. It was submitted by the Learned Counsel for the Liquidator that taking into consideration, the above cited facts, the average Liquidation Value of the assets of the Corporate Debtor was around Rs. 183 Crores during the CIRP Period. Due to Covid-19 Lockdown imposed by the State Government and unrest among the Farmers for their Cane dues the valuation during the Liquidation Period could not be processed further. Hence as per Regulation 35 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the Liquidator had considered the CIRP Valuations, based on which the Asset memorandum was filed with this Tribunal on 28.06.2021. However, after considering the relaxations permitted by the State Government, the Liquidator has appointed two IBBI Registered Valuers under each category of assets namely Plant & Machinery, Land & Building and Securities & Financial Assets in the month of October 2021 to value the assets of the Corporate Debtor.

5.5.5. It was submitted by the Learned Counsel for the Liquidator that the details of the EOI Process Documents contained certain Annexures stipulating the terms and



conditions forming the premises of the scheme of compromise or arrangement were to be submitted by the Prospective Applicants. It is pertinent to mention that upon publishing of the Invitation for Expression of Interest, only 2 Parties had evinced interest and sought for additional details enabling them to submit the scheme u/s. 230-232 of the Companies Act, 2013. The parties who had submitted their offer under the scheme were of the view that all the assets of the Corporate Debtor including investments should be part of the takeover and that any piecemeal exclusion would not be in their interest and any price increase would only be after including the Corporate Debtor investments under the scheme. Considering the fact that investment in Shree Ambika Sugars Limited is a company under CIRP and investments in Terra Energy Limited is also a company under CIRP for which an application for Liquidation has already been filed and minor share of investment in Trichy Distilleries and Chemicals Limited to the tune of 10% share, it was decided to include the same under the scheme.

5.5.6. Thus, it was submitted that with reference to the above, the following changes were proposed in the terms of EOI and the same was also placed before the Stakeholders in the 3<sup>rd</sup> Stakeholders Consultation Committee Meeting held on 18.10.2021.

S. No	REFERENCE	EXISTING CLAUSE	PROPOSED MODIFICATIONS
1.	"ANNEXURE - C"  Credentials to be fulfilled for seeking Asset Memorandum to be enclosed	Clause g:  If the Scheme is approved, then 25% of the amount of the bid has to be paid within 15 days of the NCLT ORDER, to show their bonafide and balance within 90 days or such other time limit as the	Clause g:  Subject to the approval of the scheme by the NCLT, the amount offered under the scheme to the various class of stakeholders shall be paid in accordance with the

	along with EOI	Hon'ble NCLT may stipulate or direct.	terms and conditions of payment as stipulated in the approved scheme.
2.	EOI Process Document :  Under the heading "Last date for submission of EOI"	Clause 9:  The Personal Guarantees, Corporate Guarantees issued by persons/ companies and third party collaterals, assets of the Corporate Debtor held in its Registered Office in the nature of Furniture & Fixture Office Equipments; and Investment held by the company in all group concerns shall not form part of the Scheme for Compromise/Arrangement and shall be outside the scope of this EOI.	Clause 9:  The Personal Guarantees, Corporate Guarantees issued by persons/ companies and third party collaterals, assets of the Corporate Debtor held in its Registered Office in the nature of Furniture & Fixture Office Equipments; shall not form part of the Scheme for Compromise/Arrangement and shall be outside the scope of this EOI.

5.5.7. The Learned Counsel for the Liquidator submitted that as per the terms embedded in the EOI the Liquidator reserves the right to cancel or modify the process without assigning any reason and without any liability since the EOI does not constitute an offer document and is issued with no commitment. Though the Liquidator is not bound to seek the approval of the members on the aforesaid modifications, the liquidator brought the changes to the notice of the members and no objections were raised by the Stakeholders in this regard, the facts of which are clearly evident from the Minutes of the 3<sup>rd</sup> Stakeholders Consultation Committee Meeting held on 18.10.2021.

5.5.8. The Learned Counsel for the Liquidator submitted that only two eligible parties had evinced interest towards the EOI and it shall suffice if any modifications in the EOI are brought to the notice of those two interested parties. Moreover, it was submitted that the modifications are

presumed not to have a bearing on any of the schemes received so far, since these terms were only ancillary clauses whilst the Prospective applicants have already satisfied the eligibility Criteria as stipulated in ANNEXURE B to the EOI Process Document. It was submitted that the terms of modifications were done with a sole intention to maximize the wealth of the Corporate Debtor and since only two schemes were received for the Corporate Debtor it may be prejudicial to the interests of stakeholders to object the schemes on the basis of technical ancillary clauses. No objections were raised by the stakeholders in this regard.

5.5.9. Thus, it was submitted that the rejection of the Scheme at this juncture would lead to losing even the single proposal on hand and would have derail the entire process which could even lead to the possibility of selling the Corporate Debtor on a piecemeal basis at the cost of farmers and other creditors due to the lapse of time, erosion in the value of the assets and absence of financially established buyers. It will only leave the all the stakeholders barring Secured Financial Creditors high and dry.

## **6. DISPOSITIVE REASONINGS OF THIS TRIBUNAL**

6.1. Before advertng to the objections as raised by the Operational Creditors / Shareholders / Farmers / Statutory Authorities of the Corporate Debtor in relation to the Scheme, it is to be first borne in mind that this present Scheme is not filed purely under Section 230 of the Companies Act, 2013. The present Scheme is also governed under Insolvency and Bankruptcy Code, 2016 and



the attendant Regulations framed thereunder. The Hon'ble NCLAT after elaborately considering the provisions of the erstwhile provisions of Section 391 of the Companies Act, 1956 as well as the present Section 230 of the Companies Act, 2013 and the decided case laws of the Hon'ble Supreme Court in relation to the powers vested in this Tribunal under the provisions of the Companies Act, 2013 to consider and deal with a compromise or make arrangement that may be proposed with creditors and members of a company including in relation to a company in liquidation, had directed the liquidator in para 8 of in the matter of **"S.C. Sekaran v. Amit Gupta & Ors. in Company Appeal (AT) (Insolvency) Nos. 495 & 496 of 2018** as follows;

"8. In view of the provision of Section 230 and the decision of the Hon'ble Supreme Court in 'Meghal Homes Pvt. Ltd.' and 'Swiss Ribbons Pvt. Ltd.', we direct the 'Liquidator' to proceed in accordance with law. He will verify claims of all the creditors; take into custody and control of all the assets, property, effects and actionable claims of the 'corporate debtor', carry on the business of the 'corporate debtor' for its beneficial liquidation etc. as prescribed under Section 35 of the I&B Code. The Liquidator will access information under Section 33 and will consolidate the claim under Section 38 and after verification of claim in terms of Section 39 will either admit or reject the claim, as required under Section 40. Before taking steps to sell the assets of the 'corporate debtor(s)' (companies herein), the Liquidator will take steps in terms of Section 230 of the Companies Act, 2013. The Adjudicating Authority, if so required, will pass appropriate order. Only on failure of revival, the Adjudicating Authority and the Liquidator will first proceed with the sale of company's assets wholly and thereafter, if not possible to sell the company in part and in accordance with law."





6.2. Further, the Hon'ble NCLAT in the matter of **Y. Shivram Prasad -Vs- S. Dhanapal & Ors.** in *Company Appeal (AT)(Ins.) No. 224 of 2018* has chosen to issue guidelines on how to proceed, if a Scheme is contemplated under Section 230 of the Companies Act, 2013 gets placed before this Tribunal in relation to a Company in liquidation under IBC, 2016 and in para 18 and 19 has held as follows;

18. During proceeding under Section 230, if any, objection is raised, it is open to the Adjudicating Authority (National Company Law Tribunal) which has power to pass order under Section 230 to overrule the objections, if the arrangement and scheme is beneficial for revival of the 'Corporate Debtor' (Company). While passing such order, the Adjudicating Authority is to play dual role, one as the Adjudicating Authority in the matter of liquidation and other as a Tribunal for passing order under Section 230 of the Companies Act, 2013. As the liquidation so taken up under the 'I&B Code', the arrangement of scheme should be in consonance with the statement and object of the 'I&B Code'. Meaning thereby, the scheme must ensure maximisation of the assets of the 'Corporate Debtor' and balance the stakeholders such as, the 'Financial Creditors', 'Operational Creditors', 'Secured Creditors' and 'Unsecured Creditors' without any discrimination. Before approval of an arrangement or Scheme, the Adjudicating Authority (National Company Law Tribunal) should follow the same principle and should allow the 'Liquidator' to constitute a 'Committee of Creditors' for its opinion to find out whether the arrangement of Scheme is viable, feasible and having appropriate financial matrix. It will be open for the Adjudicating Authority as a Tribunal to approve the arrangement or Scheme in spite of some irrelevant objections as may be raised by one or other creditor or member keeping in mind the object of the Insolvency and Bankruptcy Code, 2016.



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

6.3. Thus, in relation to the scheme proposed under Section 230 of the Companies Act, 2013 during the Liquidation of the Corporate Debtor, the Hon'ble NCLAT has held that this Tribunal is required to play dual role, one as the Adjudicating Authority in the matter of liquidation and other as a Tribunal for passing order under Section 230 of the Companies Act, 2013. Accordingly, this Tribunal has put in its logical attempts and efforts in combining the provisions of these two statutes in perfect harmony.

6.4. In relation to the objections raised by the Operational Creditors, it is to be noted that if we strictly apply Section 230(4) of the Companies Act, 2013, the proviso clause contemplates that any objections to the Scheme can be made by persons having outstanding debt amounting to not less than **Five** percent of the total outstanding debt as per the latest audited financial statement.

Admittedly, the Operational Creditors, in the present case have only **1.67%, 0.40%, 2.12%, 0.25%** hence, the objections as raised by the Operational Creditors need not be gone into by this Tribunal since the same does not satisfy the minimum threshold limit prescribed under proviso to Section 230(4) of Companies Act, 2013. However, it is to be noted that the present Scheme is envisaged not solely under Section 230 of the Companies Act, 2013 but read with the relevant provisions of Insolvency and Bankruptcy Code, 2016 and the attendant regulations framed thereunder.

6.5. Under IBC, 2016 for sanction of a Resolution Plan the mandate given is 66% to be voted in favour of the Plan. The Scheme as contemplated between Thiru Arooran Sugars Limited and KALS Distilleries Private Limited has already crossed the said threshold limit and presently holds 89.41% approval from the stakeholders. Interestingly, it is seen here that no minimum threshold limit for raising an objection to the Resolution Plan is contemplated under Section 30 and 31 of IBC, 2016. Thus, any stakeholders to the Resolution Plan can raise their objections to the Resolution Plan without being bogged down by the threshold limit of 5% or 10% as specified under Section 230 of the Companies Act, 2013. Since, the present Scheme is harmoniously intermingled with Section 230 of the Companies Act, 2013 read with Insolvency and Bankruptcy Code, 2016 and attendant Regulations framed thereunder, this



Tribunal do not want to dismiss the objections raised by the Operational Creditors on the ground of maintainability.

6.6. Adverting to the objections as raised by the Operational Creditors, it must be noted that even though the present Scheme is presented under Section 230 of the Companies Act, 2013 it should pass the muster as laid down under Section 30 and 31 of IBC, 2016, in such a way, it can be said that the present scheme should not be in violation of the provisions of the Insolvency and Bankruptcy Code, 2016.

6.7. The main objection raised by the Operational Creditors is that the scheme contemplates payment to be made to various Operational Creditors such as farmers, suppliers and transport operators and other creditors are being paid dues to the extent of 57%, 1%, 1.01% and 1% respectively. If we peruse the scheme, it is seen that apart from the farmers, who are being paid 57% of their admitted claim amount, the rest of the Operational Creditors are being paid 1% of their admitted claim.

6.8. In the present case, the farmers, who are the backbone of our country and the weaker section of the society would be the most affected class of creditors if an ordinary auction sale is resorted to and the proceeds are distributed in accordance with Section 53 of

IBC, 2016. Hence, the Scheme proffered by the Scheme proponent has agreed to pay 57% of the admitted claim by the farmers. At this juncture, it is relevant to refer to the decision of the Hon'ble Supreme Court in the matter of **Committee of Creditors of Essar Steel India Limited -Vs- Satish Kumar Gupta & Ors.** *in Civil Appeal No. 8766 – 67 of 2019* dated 15.11.2019, wherein at para 54 it had held as follows;

"54. Indeed, if an "equality for all" approach recognizing the rights of different classes of creditors as part of an insolvency resolution process is adopted, secured financial creditors will, in many cases, be incentivized to vote for liquidation rather than resolution, as they would have better rights if the corporate debtor was to be liquidated rather than a resolution plan being approved. This would defeat the entire objective of the Code which is to first ensure that resolution of distressed assets takes place and only if the same is not possible should liquidation follow".

Again in para 56 and 57, it was held as follows;

"56. ....The amended Regulation 38 set out in paragraph 77 again does not lead to the conclusion that financial and operational creditors, or secured and unsecured creditors, must be paid the same amounts, percentage wise, under the resolution plan before it can pass muster. Fair and equitable dealing of operational creditors' rights under the said Regulation involves the resolution plan stating as to how it has dealt with the interests of operational creditors, which is not the same thing as saying that they must be paid the same amount of their debt proportionately. Also, the fact that the operational creditors are given priority in payment over all financial creditors does not lead to the conclusion that such payment must necessarily be the same recovery percentage as financial creditors. So long as the provisions of the Code and the Regulations have been met, it is the commercial wisdom of the requisite majority of the Committee of Creditors which is to negotiate and accept a resolution plan, which may involve differential payment to different classes of creditors, together with negotiating with a prospective



resolution applicant for better or different terms which may also involve differences in distribution of amounts between different classes of creditors.”

“57. ....Quite clearly, secured and unsecured financial creditors are differentiated when it comes to amounts to be paid under a resolution plan, together with what dissenting secured or unsecured financial creditors are to be paid. And, most importantly, operational creditors are separately viewed from these secured and unsecured financial creditors in S.No.5 of paragraph 7 of statutory Form H. Thus, it can be seen that the Code and the Regulations, read as a whole, together with the observations of expert bodies and this Court’s judgment, all lead to the conclusion that the equality principle cannot be stretched to treating unequals equally, as that will destroy the very objective of the Code - to resolve stressed assets. Equitable treatment is to be accorded to each creditor depending upon the class to which it belongs: secured or unsecured, financial or operational”.

6.9. Thus, it is a settled law that so long as the provisions of the Code and the Regulations have been met, it is the commercial wisdom of the requisite majority of the Committee of Creditors which is to negotiate and accept a resolution plan, which may involve differential payment to different classes of creditors, together with negotiating with a prospective resolution applicant for better or different terms which may also involve differences in distribution of amounts between different classes of creditors and hence for the said reasons, the objections made by the Operational Creditors are not sustainable.

6.10. Another major contention raised by the objectors is that the valuation of the assets of the Corporate Debtor. In this regard,

it was placed before us that the valuation of assets has decreased from 220 Crores (approx.) during CIRP Period to Rs. 137 Crores during Liquidation. It is seen that during the CIRP period the RP had appointed a 3<sup>rd</sup> valuer, as per Regulation 35(1)(b) of the IBBI (CIRP Regulations), so that the average of the two closest value shall be considered as the Liquidation value. The said fact was also clearly captured in the Minutes of the 4<sup>th</sup> CoC Meeting convened by the RP on 22<sup>nd</sup> November, 2019. Further it was also placed on record that due to Covid-19 Lockdown imposed by the State Government and unrest among the Farmers for their Cane dues the valuation during the Liquidation Period could not be processed further. However, it is also seen that as per Regulation 35 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the Liquidator had considered the CIRP Valuations, based on which the Asset memorandum was filed with this Tribunal on 28.06.2021.

6.11. Further, it is also seen from the records that the after considering the relaxations permitted by the State Government, the Liquidator has appointed two (2) IBBI Registered Valuers under the each category of assets namely Plant & Machinery, Land & Building and Securities & Financial Assets in the month of October 2021 to value the assets of the Corporate Debtor. It is seen that the registered IBBI Valuers appointed for the purpose of valuation of the assets of the Corporate Debtor have considered all the assets of the

Corporate Debtor and submitted their Reports to the Liquidator. The bare perusal of the Summary of the Valuation Report would reveal that the Average Fair Value to a tune of Rs.178,13,18,698/- and the Average Liquidation Value to a tune of Rs.137,42,03,251/-. In fact, the Scheme is proposed for a sum of Rs. 145,21,52,000/- plus Liquidation Expenses at actuals which is more than the Average Liquidation Value of the Corporate Debtor. While this being the case, we find no merit in the objectors attacking on the valuation Report obtained by the Liquidator. At this juncture, it is also relevant to refer to the decision of the Hon'ble Supreme Court in the matter of **Maharashtra Seamless Limited –Vs- Padmanabhan Venkatesh &Ors.** in *Civil Appeal No. 4242 of 2019* wherein at para 26 and 27 it has held as follows;

"26. No provision in the Code or Regulations has been brought to our notice under which the bid of any Resolution Applicant has to match liquidation value arrived at in the manner provided in Clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. This point has been dealt with in the case of Essar Steel (supra). We have quoted above the relevant passages from this judgment.

27. It appears to us that the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan properly. Once, a resolution plan is approved by the CoC, the statutory mandate on the Adjudicating Authority under Section 31(1) of the Code is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 thereof. We, per se, do not find any breach of the said provisions in the order of the Adjudicating Authority in approving the resolution plan."



6.12. Thus, as held by the Hon'ble Supreme Court, there is no provision in IBC, 2016 or in the Regulations which stipulates that the bid of the Resolution Applicant has to match the Liquidation value of the Corporate Debtor. In any case, the value offered by the scheme proponent is more than the Liquidation value. Thus the objections raised by the objectors as to the valuation of the Corporate Debtor also does not hold any merit.

6.13. Another objector to the scheme was one Mr. D. Rajendran, a farmer alleging that the scheme is discriminatory and that the farmers are also required to be treated on par with secured creditors and it was also alleged that the claim of the farmers are not considered by the Liquidator. In this regard it is seen that the claim of the Applicant has been admitted in full to the tune of Rs.2,06,136/-.

6.14. From the records it is seen that there are around 14,000 farmers who are spread across 850 villages in and around the district of Thanjavur and Cuddalore respectively. The Learned Counsel for the Respondent / Liquidator has already in his reply has stated in detail the difficulty faced by them in obtaining the vote from the farmers. Further, it is also required to be noted that as per the waterfall mechanism laid down under Section 53 of IBC, 2016, the Operational Creditors will not get any amounts, since there

would be no surplus available post payments to the Secured Financial Creditor and Workmen of the Corporate Debtor.

6.15. It is also pertinent to note here that the farmers payout is 57.36% of their admitted claim as compared to the Secured Financial Creditors who are being paid only 17.60% of the admitted claim. Further it was also brought to the notice of this Tribunal that a Farmers Association viz. Kaveri Pasanam Veerachozhanaru Aandhancherry Vaikal Pasandharargal Sabai registered with around 2000 Farmers has filed an intervention petition with a prayer to the Adjudicating Authority to sanction and confirm the Scheme of Compromise/Arrangement submitted by M/s. KALS Distilleries. Thus, this clearly evidences that a larger group of the Farmers are interested in the approval of the Scheme. Hence under the said circumstances, the objection raised by the objector / farmer is not tenable and required to be eschewed.

6.16. In relation to the dues of the Assistant Commissioner of GST and Central Excise – Trichy they want their claim to be paid in full on par with the EPF dues. In this regard, it is significant to refer to the object of IBC, 2016, which is as follows;

An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests



of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.

*(emphasis supplied)*

6.17. Thus, it could be seen that from the object of IBC, 2016 that it envisages alteration in the order of priority of payment of Government dues. It is to be borne in mind that during Liquidation, the dues of the EPF does not form part of the liquidation estate and hence the Scheme proponent has decided to pay the amount in full to the said authorities. However, the objector viz. Assistant Commissioner of GST and Central Excise – Trichy, at no point of time can be elevated to the status of a secured creditor. Thus, the dues of the Government are below the dues to be paid to the secured creditors / workmen and thus if the proceeds are to be liquidated then the Assistant Commissioner of GST and Central Excise – Trichy, would not be getting even a single rupee as per the waterfall mechanism laid down under Section 53 of IBC, 2016. Hence the objections raised by the Assistant Commissioner of GST and Central Excise – Trichy in this regard does not hold any merit and accordingly rejected.

6.18. In relation to the objections raised by the Assistant Commissioner of GST and Central Excise – Cuddalore, it is seen that they have submitted a Demand to the tune of Rs.12,84,24,409/- to the Liquidator after a delay of 257 days from the last date and the

said claim was rejected by the Liquidator and aggrieved against the same, the Assistant Commissioner of GST and Central Excise – Cuddalore has filed the objection to the scheme. In this regard it is to be noted here that the provisions of IBC, 2016 mandates that the Claimants are required to submit the claim to the Liquidator in such form and in such manner along with such supporting documents as specified by the Board. Thereafter, upon submission of the claim, the Liquidator is required to verify the claims within the time limits specified by the Board and in this connection referring to the relevant Regulations namely, IBBI (Liquidation Process) Regulations, 2016 and more specifically under Regulation 30, the Liquidator is required to verify the claim submitted within a period of 30 days from the last date of receipt of the claims and may either admit or reject in whole or part as the case may be of such claim. Section 40 of the I&B Code, 2016 mandates the Liquidator to record the reason in writing for rejection of the claim and the same is also required to be communicated to the Applicant. In relation to his decision of admission or rejection, the Liquidator is required to communicate to both the creditors and the Corporate Debtor within seven days of such admission or rejection of the claim. As against the rejection of the claim, Section 42 of I&B Code, 2016 provides for a time window of 14 days upon receipt of such decision to the creditor to file an appeal to the Adjudicating Authority against the said decision of the Liquidator.



6.19. Further, under Regulation 44(1) of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator is directed to liquidate the Corporate Debtor within one year from the date of commencement of the liquidation proceedings and Regulation 44(2) stipulates that, after the expiry of one year, the liquidator shall file an application to the Authority to continue the liquidation period along with a report and explain why the liquidation has not been completed. Thus, it can be seen that the Liquidation is a time bound process and the Liquidator is being made accountable and required to explain, if there is any delay caused in the liquidation process.

6.20. Hence, the Liquidator was right in rejecting the claim of Assistant Commissioner of GST and Central Excise – Cuddalore which has been submitted with a delay of 257 days from the last date and hence the objections raised in this regard also stands rejected.

6.21. The Scheme Proponents / KALS Distilleries Private Limited has sought for certain Waiver / Relief / Concessions from this Tribunal in Clause 8 of the Scheme. However, taking into consideration the Judgments of the Hon'ble NCLAT, and more particularly the decision of the Hon'ble Supreme Court of India in the matter of **Embassy Property Developments Pvt. Ltd. –Vs-**

**State of Karnataka & Ors.** in *Civil Appeal No. 9170 of 2019*, we

direct the Scheme proponent to file necessary application before the necessary forum / authority in order to avail the necessary Waiver / Relief and Concessions, if it is in accordance with law.

6.22. It is made clear that this Sanction of Scheme does not automatically construe that the approvals in relation to the statutory authorities or Government or any other authority is automatically granted.

6.23. During the Implementation Period, the Liquidator shall act as the Chairman of the Monitoring Committee and the members of the Stakeholders Committee shall form part of the Monitoring Committee till the tenure of completion of the Scheme.

6.24. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law

6.25. We direct that a copy of this Order be duly communicated to the Competition Commission of India (CCI) constituted under the Competition Act, 2002 (Act No. 12 of 2003), lest the Scheme should violate any provisions of the said Act.

6.26. Thus, the Scheme of Compromise or Arrangement submitted by M/s. KALS Distilleries Private Limited for takeover of assets and properties of M/s. Thiru Arooran Sugars Limited is hereby **approved** and is binding on the Corporate Debtor viz. Thiru Arooran Sugars Limited and all other stakeholders involved. The Liquidator is directed to file the certified copy of this order to the Registrar of Companies concerned for registration. As a consequence thereof, CP(CAA)/30(CHE)/2022 stands **allowed**. All other Applications filed by the objectors, if any which is pending, also stands **closed** in terms of this order.

-Sd-  
**B. ANIL KUMAR**  
MEMBER (TECHNICAL)

-Sd-  
**Justice (Retd.) S. RAMATHILAGAM**  
MEMBER (JUDICIAL)

*Raymond*