

NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.2 - IA/23(MP)2023
in
TP 179 of 2019 [CP(IB) 532 of 2019]

Proceedings under Section 7 IBC

IN THE MATTER OF:

Abhimanyu Agro Pvt Ltd (Financial Creditor)
V/s
Gajra Bevel Gears Ltd

.....Applicant

.....Respondent

Order delivered on 25/01/2024

Coram:

P. Mohan Raj, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

IA/23(MP)2023

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

A. Bhadauria

Sd/-

**P. MOHAN RAJ
MEMBER (JUDICIAL)**

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH

IA/23/MP/2023

In

TP/179/MP/2019

CP(IB)/532/2019

*(An application under Regulation 32 A of the IBBI (Liquidation Process)
Regulations, 2016 r.w. NCLT Rules)*

In the matter of:

M/s Kalyan Toll Infrastructure Limited

CIN: U45203MP2002PLC015157

Having address at:

Vidya Deep, 15/3, Manorama Ganj,
Indore, Madhya Pradesh- 452001

.....Applicant

Versus

Mr. Navin Khandelwal

Liquidator of Gajra Bevel Gears Limited

Having Address at:

206, Navneet Plaza, Old Palasia,
Indore, Madhya Pradesh- 452018

.....Respondent

In the main matter of TP/179/MP/2019, CP(IB)/532/2019

(An application under section 7 of the Insolvency and Bankruptcy Code, 2016)

Abhimanyu Agro Private Limited

Village Lohar Pipliya,

Near Kshipra, A. B. Road,

Dewas, Madhya Pradesh- 455001

.....Financial Creditor

Versus

Gajra Bevel Gears Limited

Industrial Area, A. B. Road,

Dewas, Madhya Pradesh- 455001

.....Corporate Debtor

Order pronounced on: 25.01.2024

Coram: P. Mohan Raj, Member (J)

Kaushalendra Kumar Singh, Member (T)

Appearance:

For Applicant: Ld. PCS Mr. Pratik Tripathi

For Liquidator: Ld. Adv. Mr. Rohit Dubey

ORDER

1. The present application has been filed by M/s Kalyan Toll Infrastructure Limited (Applicant), under Regulation 32A of the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) read with NCLT Rules, 2016, seeking approval of prayers made in the present application.

2. Averments made by the applicant and presented/argued by the learned PCS Mr. Pratik Tripathi appearing on behalf of the applicant are summarized here as under:

(i) The financial creditor i.e. M/s Abhimanyu Agro Private Limited filed an application under section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code) against the corporate debtor i.e. Gajra Bevel Gears Limited. This Adjudicating Authority, vide order dated 12.06.2020, admitted the corporate debtor in the Corporate Insolvency Resolution Process (CIRP) and appointed Mr. Navin Khandelwal as an Interim Resolution Professional.

(ii) Due to failure of CIRP, this Adjudicating Authority vide order dated 10.12.2021 in IA/98/MP/2021, ordered the liquidation of the corporate debtor and appointed Mr. Navin Khandelwal as a liquidator of the corporate debtor and directed the liquidator to endeavor to sell the corporate debtor firstly as a going concern.

(iii) As a part of the process, the liquidator issued a public notice dated 14.11.2022 in terms of Regulation 12 of the Liquidation Regulations and the process document for calling the interested bidders to submit their Expression of Interest (EOI) for acquisition of the Company.

(iv) Pursuant to said public notice and process document, the applicant herein submitted a binding bid of Rs 18,71,00,000/- (Final Consideration) and pursuant to review of EOI and supporting documents submitted with the liquidator and submission of Earnest Money Deposit (EMD) in terms of the process document, the applicant company was identified as the qualified bidder.

(v) Thereafter, the bidding process was undertaken by way of an e-auction process as on 08.12.2022, whereby the applicant was declared as the successful bidder.

(vi) Liquidator issued the Letter of Intent (LOI) dated 09.12.2022 to the successful bidder, subject to fulfillment of the conditions specified therein including inter-alia the payment of consideration in the manner and within the timelines prescribed therein, which was duly accepted by the successful bidder on 10.12.2022.

(vii) Pursuant to issuance of the LOI, the successful bidder has paid part amount of Rs 3,00,00,000/- towards the final consideration on 05.01.2023 in the liquidation account of the corporate debtor and Rs 15,71,00,000/- is balance payable as per the terms of LOI dated 09.12.2022.

(viii) Acquisition Plan may be considered and forms an integral part and parcel of the bid submitted by the applicant in the e-auction dated i.e. 08.12.2022. The plan has been prepared by the applicant on the basis of the information shared with it in relation to the company by the liquidator, including under the process document and such other information as available in the public domain.

3. Submissions made by the applicant in response to the clarification raised by this Adjudicating Authority vide order dated 30.11.2023, are as under:

(i) The applicant has made the entire payment of sale consideration on 07.01.2023 against the LOI dated 09.12.2022, issued by the liquidator, and consideration was required to be paid within 30 days and in case of delay within 90 days with interest. The liquidator in turn issued a sale certificate dated 17.01.2023 in confirmation of the payment to the sale consideration of Rs 18,71,00,000/-. It is also pertinent to mention that the present application was notarized and filed on 07.01.2023, so the simultaneous payment done on 06.01.2023 and 07.01.2023 and the sale certificate issued on 17.01.2023 could not be filed at the time of filing of the present application. The liquidator

has already issued an e-mail dated 09.01.2023, for receipt of entire consideration on 07.01.2023. Hence, the entire payment is made within time.

(ii) There is no correlation between the application for implementation of acquisition plan and seeking certain relief and concessions, and the application to be filed by the liquidator for closure of the liquidation process, as the entire consideration is already paid by the applicant. As the liquidator has received the entire amount of sale consideration then he will distribute the sale proceeds according to waterfall mechanism to the stakeholders and thereafter by doing all the compliances, will file the application for closure of the liquidation process including Form H. Whereas, the current application is for better implementation of the acquisition plan which is not dependent on the conclusion of the liquidation process.

4. The applicant vide an additional affidavit dated 25.12.2023, has submitted that it is not pressing upon the approval of the Acquisition Plan filed with the application. Moreover, in the affidavit dated 20.09.2023, it has reduced the list seeking relief and concessions.

5. As such, the applicant has sought for following reliefs, benefits, and concessions for the acquisition of the corporate debtor as a going concern:

(i) Upon effective date, the acquirer shall be deemed to have granted all the rights, title, and interest in the whole and every part of the company, including but not limited to assets, properties, contracts, and approvals free and clear of all security interest;

(ii) Final consideration shall be distributed by the liquidator in accordance with section 53 of the Code, and in this regard direct that the acquirer/corporate debtor shall have no financial obligation or liability to any person or stakeholder of the corporate debtor apart from payment of final consideration to the liquidator, and the maximum amount payable by the acquirer shall in no manner whatsoever exceed the final consideration in any event whatsoever.

(iii) All existing equity shares held by the promoter and promoter group shall stand fully cancelled, extinguished, written-off, non-usable, and non-tradeable for nil consideration.

(iv) All existing equity shares held by the public (Non-Promoter shareholder of the corporate debtor) shall stand fully cancelled, extinguished, written-off, non-usable, and non-tradeable for nil consideration. There shall endeavour to achieve at least 5% public shareholding by fresh issue and allotment of equity shares at the terms and conditions similar to the successful bidder, through such mode of offer made to the non-promoter public shareholders. The offer to acquire shares/allotment would be made in an equitable manner to such public equity shareholders. The entire process of offering to the existing public shareholders to acquire the shares of the new resultant entity would be tech enabled at exchanges as per the applicable rules and Regulations of SEBI. Any acquirer/the corporate debtor is authorized to take such decision(s) as may be necessary to achieve a minimum 5% public shareholding as required by SEBI.

(v) The successful bidder and its nominees/associates/subsidiary/group companies shall be allotted fresh equity shares to the extent that they will have 95% of the total paid-up share capital of the corporate debtor after acquisition.

(vi) There will be no requirement to add the words “and reduced” in the name of the company.

(vii) The equity shareholding structure of the corporate debtor immediately after giving effect to the above restructuring and issuance of equity shares shall be the paid-up share capital of the company after acquisition will be Rs 11,00,00,000/- divided into 1,10,00,000 equity shares having face value of Rs 10/- each. Out of the total final consideration, Rs 10,45,00,000/- shall be paid/adjusted by way of investment into the equity shares of the corporate debtor by that upon the payment of it, 1,04,50,000 equity shares of Rs 10/- each which shall constitute 95% of the share capital of the corporate debtor shall

be issued and allotted by the corporate debtor to the successful bidder/acquirer/nominees/associates/subsidiary/group companies and be credited to their Demat account in the ratio of holding between the successful bidder/acquirer/nominees/associates/subsidiary/group companies as set forth in paras above, without further requirement of any further deeds, acts or whatsoever, and such allotment shall be in accordance with the requirement of the applicable law. Balance amount of consideration paid by the acquirer (above Rs 10.454 crore) shall be recorded as debt in the books of the corporate debtor any excess over and above.

(viii) The equity shareholding structure of the corporate debtor immediately after giving effect to the above restructuring and issuance of equity shares shall be as follows:

Category	Existing equity capital of the corporate debtor (As on date)		Equity share capital of the corporate debtor (After acquisition by the bidder)	
	No. of shares	% holding	No. of Shares	% holding
Public Shareholding	64,95,479	69.09%	5,50,000	5%
Erstwhile promoter/promoter group (Refer Note 1 Below)	29,05,271	30.90%	NIL	NIL
Successful bidder/ its nominees/associates/ subsidiary/ Group companies	NIL	NIL	1,04,50,000	95%
TOTAL	94,00,750	100%	1,10,00,000	100%

Note 1: It is hereby clarified and confirmed that post restructuring of the share capital of the corporate debtor, as provided in this plan, the erstwhile promoter/promoter group of the corporate debtor shall not have any rights (including any rights as are available to a promoter and

promoter group under the applicable laws). The successful bidder undertakes that it shall ensure that necessary filings/disclosures to the stock exchange, for reclassification of shares 'promoter' or 'promoter group' to public is made by the company under the relevant applicable laws in particular Listing Obligations and Disclosure Requirements (LODR) Regulations.

(ix) It is hereby clarified and confirmed that the successful bidder and/or the corporate debtor will take necessary steps within such timelines as allowed under the applicable laws in order to ensure the minimum public shareholding of the corporate debtor as prescribed under the SEBI (Issue of Capital and Disclosure Requirements) Regulation, 2018 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

(x) The aforesaid reduction, extinguishment and issuance of the paid-up share capital of the corporate debtor, as mentioned above, shall be effected as an integral part of the plan as approved by the Adjudicating Authority. The order of Adjudicating Authority approving the plan shall be deemed to be an order under section 42, 61 and section 66 of the Companies Act, 2013 and any other applicable laws and no separate sanction or approval or compliance under section 42, 61 or section 66 of the 2013 Act or any other provisions of the applicable law shall be necessary.

(xi) The acquirer shall acquire the corporate debtor on a clean slate/fresh slate and accordingly, all the liabilities of the corporate debtor relating to any period prior to the effective date shall immediately, irrevocably and unconditionally stand extinguished, cancelled and settled in accordance with the section 53 of the Code, irrespective of whether or not such liability was notified to or claim against the company at any time, and whether or not such person or Governmental Authority was aware of such claim at such time, and no person shall have any further rights of claims against the corporate debtor in this regard and the corporate debtor shall be entitled to

recast/revise its financial statements with effect from effective date. The acquirer/corporate debtor shall not be liable for any dues, claims, fees or liabilities prior to effective date, raised or not raised by any person including employees, Government or Local Authorities including DIC, MPEB, pollution board etc.

(xii) The acquirer shall be provided a clean break from the period prior to the effective date and the acquirer and/or the corporate debtor shall not be liable for any non-compliances, defaults and breaches etc. during the period prior to the effective date and for failure to take or obtain any approval from Governmental Authority or make any filing with the Government Authorities and the acquirer, the corporate debtor, its employees or officers or directors, shall not be directly or indirectly, held responsible or liable in relation to, and shall not in any manner be implicated in or in any manner adversely impacted by, or have any liability in relation to any actions or litigations pertaining to period prior to the effecting date and in this regard.

(xiii) The board of directors of the corporate debtor shall be re-constituted from the effective date such that the individuals proposed by the acquirer be permitted to act as directors of the corporate debtor and be duly appointed as directors under the provisions of the Companies Act and SEBI Regulations and concerned RoC be directed to do all such acts, deeds and things that are necessary to appoint the said individuals as the directors of the corporate debtor and the existing board of directors and existing KMPs of the corporate debtor shall be deemed to be resigned/vacated the office by the approval of acquisition plan with effect from effective date.

(xiv) All the approvals, licenses, rights, entitlements, lease held or availed by the corporate debtor from any Government Authority and all rights, interests and benefit therein shall be deemed to have been held by the corporate debtor and shall stand renewed by the Governmental Authorities and to continue remain valid, effective and enforceable on the same terms and conditions to the extent permissible in applicable

laws (notwithstanding any provision relating to change of control or shareholding or management of the corporate debtor or any non-compliance by the company prior to the effective date) and any costs/liabilities in this regard shall stand settled in accordance with section 53 of the Code and any and all liabilities pending thereafter (including but not limited to payment of any fines, charges or penalties) shall be deemed to be cancelled and extinguished and waived.

(xv) All litigations made, commenced or initiated by any person against the corporate debtor in relation to period prior to the effective date shall be deemed to have irrevocably and unconditionally abated, withdrawn, settled and/or extinguished with 'nil' liability against the corporate debtor and/or acquirer.

(xvi) As on the effective date, all powers of attorney and/or authorizations or mandates issued by the corporate debtor to any person (including but not limited to any director, officers, employees, or agent) to enable such person to carry out various functions of the corporate debtor to sign, execute and various documents and/or represent the corporate debtor and to operate bank accounts (except Liquidation Bank Account) of the corporate debtor shall stand revoked, withdrawn and cancelled with immediate effect and the re-constituted board of directors of the company shall be entitled to authorize such persons as it may deem fit to carry out such functions of the company, sign and execute various documents and/or represent the corporate debtor, and to operate the bank accounts of the corporate debtor. the liquidation bank account shall be closed in compliance with applicable provisions of the Code in due course.

(xvii) The liquidator shall be empowered and permitted to undertake all such actions and deed in order to give effects to the acquisition structure as set out under this plan (including in relation to facilitation of process of extinguishment and cancellation of the existing shares, issuance and allotment of fresh shares, change in directors, removal of suspension of trading of shares and continuation of listing of shares of

the company and filing the necessary document but not limited to filing intimation to Registrar of Companies, Stock Exchanges, Depositories or Depositories Participant and other Governmental Authorities for implementing the provisions of this plan and NCLT order.

(xviii) The liquidator shall cooperate with, and provide all necessary assistance to the acquirer for a maximum period of 180 days from the effective date and such other mutually extended term agreed between the acquirer and liquidator to ensure smooth handover of the corporate debtor and its records to the acquirer and smooth transition to the new management, pursuant to the acquisition plan.

(xix) The compliance required in relation to the reduction of the share capital viz the cancellation and extinguishment of the share capital of the company shall be deemed to have completed by virtue of approval of this plan by the Adjudicating Authority, however the corporate debtor shall file necessary forms and documents with the authorities in due course.

(xx) The Registrar and share transfer agent, depository and depository participant shall undertake all actions for the cancellation of existing shares in the account of the existing shareholders, and issuance and allotment of the new shares of the corporate debtor, free of encumbrances, and credit of allottees as proposed/mentioned under this plan.

(xxi) Any and all secured financial creditors or security trustees appointed for all such secured financial creditors shall handover all the financial documents/title deeds in relation to any security interest created in their favour and any other original documents pertaining to the company in their possession to the company within 7 days from the distribution date.

(xxii) That the order of this Adjudicating Authority and payment of entire consideration of Rs 18,71,00,000/- by the acquirer to the liquidator, there shall be no liability of the acquirer/corporate debtor on any kind or nature relating to period prior to effective date. The

distribution of the final consideration in accordance with section 53 of the Code to the stakeholders by the liquidator shall be deemed to be the full and final discharge towards their dues against the corporate debtor and they shall be deemed to have given their No objection/dues certificate to the corporate debtor/successful bidder towards their dues against the corporate debtor, nothing will remain payable by the acquirer or corporate debtor to any creditor i.e. secured or Government entity or local authority or other after final distribution by the liquidator on account of corporate debtor and all the rights of such creditors shall be stand extinguished and closed upon distribution. Any claim of the stakeholder/s out of the claim before the liquidator, is always payable out the final consideration by the liquidator.

(xxiii) After distribution under section 53 of the Code, any and all creditors (whether financial or operational or otherwise) of the corporate debtor shall be under an obligation to provide necessary support and cooperation including but not limited to providing no objection/dues certificate to the company/successful bidder towards settle of their dues against the corporate debtor obligation within 7 days from the distribution date.

(xxiv) On and from the effective date, the existing Memorandum of Association and Articles of Association of the corporate debtor shall stand fully replaced and substituted in entirety with the updated/revised articles and memorandum in compliance with the applicable laws such as Companies Act and SEBI Regulations and approval by NCLT shall be treated as if the necessary approval have been obtained under the Companies Act and SEBI Regulations including the consent of shareholder of the corporate debtor under the Companies Act and SEBI Regulations together with the proposal laid down under there under and duly complied with.

(xxv) Any or all veto rights or preferential rights associated with available to any existing shareholders shall stand cancelled and extinguished and approval of shareholders shall be deemed to be have

given for effecting such revision of agreement, constitutional document, on approval of this plan by the Adjudicating Authority.

(xxvi) The corporate debtor shall continue to be listed on Stock Exchange and avail exemptions applicable to a resolution plan under the Code as per the applicable SEBI Regulations for continue listing of new equity shares allotted pursuant to this Acquisition plan.

(xxvii) Exemptions available under Regulation 158(2) of the SEBI (ICDR) Regulations to the issuance of specified securities by way of preferential issue pursuant to resolution plan approved under the Code shall be available to issuance and allotment of shares of the acquirer and/or allottees under this plan.

(xxviii) Exemptions available under various Regulations relating to listing of fresh equity shares and disclosure requirement as the case may be as available to resolution plan to issuance, allotment and listing of shares to the acquirer and/or allottees under this plan.

(xxix) Direct that the approval of the Adjudicating Authority for (a) issuance and allotment of shares, (b) cancellation and extinguishment of the existing shares, (iii) continuation of listing of the shares of the company as envisaged under this plan shall be sufficient for implementation of such steps without the requirement of any filing of separate application to the Adjudicating Authority or obtaining separate approval of SEBI or any Authority.

(xxx) Direct the MCA and RoC to approve and to undertake necessary actions in relation to the following:

(a) The cancellation and extinguishment of the existing share capital of the company as contemplated in this plan without the additional requirement adding 'and reduced' in the name of the company.

(b) The registered office of the company to be changed to any other address as finalized by the acquirer without any further act or deed.

(c) The name of the company to be changed to any other name (as may be allowed by the RoC/MCA) finalized by the acquirer without any further act or deed.

(d) Satisfaction of the charges if any registered with the MCA/ROC and that the Adjudicating Authority order shall be sufficient proof for satisfaction of the charges already existing on secured assets of the company in the records of MCA/RoC and other statutory and Regulatory Authorities on the effective date.

(e) Change the status of the company in records of RoC from 'under liquidation' to 'active'.

(xxxi) Direction to the effect that the time taken for approval of this acquisition plan and reliefs, concessions, directions and dispensations shall be excluded, not taken into consideration, for reckoning the time period for distribution of the final consideration as required under the Regulation 42(2) of the Liquidation Regulations.

(xxxii) Direct the respective Governmental Authorities (including but not limited to DIC, Electricity Board/Department, CBDT, Central Board of Excise and Custom/respective VAT/GST Authorities, Tribunals, Arbitral Body, land revenue records, Stamp Authorities etc.) to:

(a) Provide relief to the company from all past litigation pending at different levels and provide waiver from all tax including interest and penalties on such litigation.

(b) Provide that income/gain/profits, if any, arising as a result of giving effect to the plan should not be subject to tax including MAT in the hand of the company as per section 115JB of the Income Tax Act, 1961.

(c) Provide that any book losses generated out of write-off of assets shall set-off against the book profits going forward.

(d) Provide relief from applicability and payment of taxes if any which may arise as result of implementation of this plan either on the acquirer of the company or any other person who is likely

to be impacted due to implementation of the plan but not limited to under section 50CA, section 45, 50D, 56 under the Income Tax Act, 1961 as well as the GST.

(e) Grant exemption /waiver from applicability of section 281 of the Income Tax Act, 1961 including from the requirement of obtaining NOC from the Income Tax Authorities in respect of implementation of the plan.

(xxxiii) Direct that in spirit of section 32A of the Code, the acquirer, company, nominees of the acquirer on the board and its future directors, officers, employees shall not be subject to any investigation by any regulatory authority that may include CBI, SFIO, ED for any actions committed by the corporate debtor and or its erstwhile promoters, director, officers, related parties, pertaining to period prior to the effective date.

(xxxiv) Further, it is requested that necessary directions may be issued by the Adjudicating Authority that the following shall be deemed to have occurred upon passing of the order:

(a) All litigations pertaining to the period prior to the effective date, against the corporate debtor which may be pending or sub judice before any forum (including by not limited to any Court, Tribunal, Arbitration, Governmental Authorities, Tax Authorities, Regulatory Authorities, etc.) are deemed to be withdrawn /disposed off/extinguished and the relevant authorities or courts may be communicated with regards to the same.

(b) The loan account of the corporate debtor prior to effective date shall be treated as regularized and their asset classification shall be 'standard' for the future funding purpose.

(c) The acquirer/corporate debtor shall not be prejudiced in any manner or be held ineligible under section 29A of the Code on account of asset classification of the account of the corporate debtor prior to the effective date.

(d) All contractual arrangements of the corporate debtor shall continue to be applicable, for the benefit of the corporate debtor, unless otherwise provided in this plan.

(e) All Government schemes, subsidies, benefits, concessions, policies, registrations, licences, approvals, as applicable to the corporate debtor shall continue to be applicable to the corporate debtor unless otherwise provided in this plan.

(f) The corporate debtor and/or the acquirer shall not, at any point of time, be held financially or otherwise liable in relation to the liability of the corporate debtor as per the provisions of section 170 of the Income Tax Act, 1961 in respect of any transactions carried out before the effective date or contemplated under this plan or an account of any action pursuant to this plan including acquisition of control by the acquirer over the corporate debtor pursuant to this plan.

(g) The acquirer and/or the corporate debtor shall not be liable to pay any tax (direct or indirect) whatsoever arising (directly or indirectly) as a result of the action taken by the corporate debtor prior to the effective date. It may also be clarified that any tax liabilities pertaining to any period prior to the effective date whether assessed or un-assessed, by the relevant Tax Authorities shall be deemed to have extinguished and written-off on the effective date.

(h) All the loans, advances, security deposits etc. given by the corporate debtor to any third party shall continue with the corporate debtor and shall be available with benefit for the corporate debtor and/or acquirer. The acquirer/corporate debtor after the effective date shall be entitled to recover all the amounts that are payable to the company (including the unsecured loans) by any third party. In the event of any default shall also be entitled to enforce the security interest created in relation to such loans in the favour of the corporate debtor.

6. We have heard the learned PCS Mr. Pratik Tripathi and have also taken note of the pleadings made in the application. We note that the corporate debtor has been sold as a going concern through e-auction as provided under Regulations 32, 33, and Schedule-I thereof. Pursuant to that the liquidator has also issued a sale certificate. Now through this application, the applicant is seeking an approval of the acquisition plan. However, we do not find any provision for giving approval to any such acquisition plan. The sale certificate issued by the liquidator is sufficient. When this aspect was raised during the hearing the learned PCS has submitted that he would not be pressing upon the approval of the acquisition plan but pleaded for consideration and grant of relief and concessions. The relief and concessions as sought for or listed hereinabove in para 5 clause (i) to (xxxiv).

6.1 After careful consideration of the matter we allow the relief and concessions to the extent as stated herein under:

- (i) Existing equity shares of Corporate Debtor shall be cancelled without any consideration. The transfer of ownership of Corporate Debtor shall take place on issuance of afresh equity shares to the applicant. The required formalities in the RoC office will have to carry out by the liquidator/applicant by filing requisite form. The RoC shall consider the same keeping in view the intent and spirit of the IBC.
- (ii) From the date of acquisition the board of directors of the corporate debtor shall be reconstituted. The liquidator shall file the copy in this regard as per the applicable laws in the office of RoC, and RoC shall take necessary steps for appointment of new directors as recommended by the applicant to act as a director of the corporate debtor.
- (iii) All unpaid liabilities and the claims which are not filed with the liquidator shall get extinguished in entirety. The inquiries, investigations relating to the period prior to the date of acquisition against the Corporate Debtor shall be deemed to be settled, withdrawn or dismissed.

(iv) Upon distribution under Section 53 of the IBC, the security interest created by the Corporate Debtor, if any, over its assets shall stand satisfied and the concerned creditors shall provide the NOC for satisfaction of the charge created over the assets of the Corporate Debtor on the MCA Portal.

(v) On and from the date of the acquisition, the status of the Corporate Debtor in the records of the RoC should be reflected as 'active'.

(vi) It is also clarified that the extinguished liability of the existing equity shares and/or unpaid claims would get converted to either capital reserve, general reserve or would get credited to profit and loss account in accordance with the provision of the Income Tax Act, 1961.

(vii) As regards other relief and concessions, the applicant is free to approach the concerned Statutory Authorities for those relief and concessions, and the Authorities will consider the same in accordance with the relevant provisions of the applicable laws keeping in view the intent and spirit of the Code. We also clarify that the relief and concessions which are not specifically mentioned above should not be considered as allowed.

7. Accordingly, IA/23/MP/2023 in TP/179/MP/2019 [CP(IB)/532/2019] stands allowed to that extent and disposed off.

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KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-sd-

P. MOHAN RAJ
MEMBER (JUDICIAL)

Rohit/KN