IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH COURT III

I.A. 868/2022

In

C.P. No. (IB) 1397/MB/C-III/2017

Under Section 35(1)(n) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

RDB Realty & Infrastructure Limited)
Through its Authorized Signatory,)
Registered office at:)
Bikaner Building,)
8/1, Lal Bazar Street,)
01st Floor, Room No. 10,)
Kolkata – 700 001.)

... *Applicant/ Successful Auction Purchaser*

Vs.

Mr. Atul Rajwadkar (Liquidator))
Gupta Infrastructure (India) Private Limited)
47, Hindusthan Colony,)
Wardha Road, Nagpur – 440 015.)
E-mail Id: liquidatorgiipl@gmail.com)

... *Respondent/ Liquidator*

IN THE MATTER OF

Bank of India ... *Financial Creditor*

Vs

Gupta Infrastructure (India) Private Limited ... *Corporate Debtor*

Order pronounced on: 10.12.2024

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati (Technical)

Appearances:

For Applicant: Adv. Aniruth Purushottam a/w Aditya Chopra and Mr. Ambrin Khan i/b Victorian Legal Advocates and Solicitors

For Liquidator: Mr. Sandeep Bajaj, Ms. Aakansha Nehra, Ms. Gunjan Nayyar

Per: Ms. Lakshmi Gurung, Member (Judicial)

ORDER

1. The present I.A. is filed by RDB Realty & Infrastructure Limited **('the Applicant/Successful Bidder')**, under Section 32A, Section 53 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 **('the Code'/ 'IBC')** read with Rule 11 of the National Company Law Tribunal Rules, 2016, seeking following reliefs:

   i. *Declare that on and from 23.02.2022 (being the date after the Cut-Off date as specified in the Sale Certificate), all the claims or demands made by, or liabilities or obligations owned or payable to any actual or potential creditors of the Corporate Debtor including the Government Dues (including but not limited to Tax demand liabilities, interest and penalties, duties, etc. on account of income-tax, tax deduction at source, tax collection at source, S.G.S.T, C.G.S.T, I.G.S.T, Registrar of Companies, authorities under applicable labour laws, custom duty, value added tax, service tax, wealth-tax, cess, DGFT dues, Power dues, Pollution Control Board, Municipal Taxes etc.) whether direct or indirect, whether admitted or not, due or contingent, asserted or unasserted, crystallized, uncrystallized, known or unknown, secured or unsecured, disputed or undisputed in relation to any period prior to 23.02.2022 shall stand permanently extinguished.*

ii. *Declare that the Corporate Debtor shall be entitled to continue to carry forward its accumulated losses and set off the losses incurred in any year prior to conclusion of liquidation proceedings against the income of the Corporate Debtor that may accrue thereafter, in terms of Section 79(2)(c) of the Income Tax Act, 1961.*

iii. *Declare that all the inquiries, investigations, assessments, notices, causes of action, suits, claims, disputes, litigations, arbitration, or other judicial, regulatory or administrative proceedings against, or in relation to, or in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future, in relation to any period prior to 23.02.2022 shall not be continued against the Corporate Debtor;*

iv. *Declare all financial and pecuniary liabilities of the Corporate Debtor, including without limitation, any penalty, whether contingent, assessed, known or unknown, interest, fines or fees and any other liabilities and/or obligations which may have a financial impact in relation to any period prior to payment of the Sale Consideration and consequent sale of the Corporate Debtor shall be deemed to be extinguished in relation to any period up to 22.02.2022.*

v. *Issue necessary directions to the Registrar of Companies (i) that all the existing shares of the Corporate Debtor shall be extinguished without any consideration, and rights and liabilities arising out of the same shall also be extinguished and (ii) that Applicant/ Corporate Debtor shall be entitled to issue fresh equity shares to the Applicant(s) of such value and such quantum as submitted by the Applicant(s) within a span of 1 month from the date of issuance of sale certificate;*

vi. *Declare that the Corporate Debtor shall be entitled to apply and obtain fresh consents, licenses, approvals, entitlements, privileges whether* *under law, contract, lease or licenses granted in favour of the Corporate Debtor or their renewal, where so required; without being held accountable for any non-compliance committed by the Corporate Debtor, if any, prior to 23.02.2022, including from Pollution Control Board, State level Environment Impact Assessment Authority, Municipal Corporation, Electricity Board, Fire department, Health and Safety Department, Factory license and any other department for smooth operation of the business of Corporate Debtor;*

vii. *Direct the Respondent to assist and enable the Applicant (to the extent possible) to complete all the necessary compliances including pertaining to filing of necessary documents and returns with the Registrar of Companies, Income Tax Authorities, GST authorities, authorities under applicable labour laws, any other Government Authorities or when required, assist the Applicant in completing the same.*

viii. *Issue necessary directions to GST, CGST, SGST, Income Tax Department, Registrar of Companies, Labour department and all other statutory organizations to waive all taxes, penalties, fines and prosecutions under the applicable Provisions against the Corporate Director.*

ix. *Issue necessary direction to the Ministry of Corporate Affairs to update the status of the Corporate Debtor in the records of Registrar of Companies as 'active' from the status 'under liquidation'.*

x. *Declare that charges registered with concerned ROC in respect of encumbrances over the assets of the Corporate Debtor shall stand satisfied and vacated upon the completion of the sale of the Corporate Debtor as a going concern and the order of this Hon'ble Tribunal shall be sufficient proof to enable the Applicant/ Respondent to satisfy the charges on secured assets in the records of ROC and other statutory* *and regulatory authorities, if any, upon completion of sale and issuance of the Sale Certificate.*

xi. *Direct that liabilities, if any, arising out of non- compliance of provisions of any Laws, Rules, Regulations, Directions, Notifications, Circulars, Guidelines, Policies, Licenses, Approvals, Consents or Permissions prior to effective date shall stand extinguished qua the Applicant and the same shall be settled by Respondent in accordance with the provisions of Section 53 of IBC, 2016.*

xii. *Declare that the Applicant shall not be liable for any action/ responsibility of the Corporate Debtor or its erstwhile management as per provisions of Section 32A of IBC, 2016.*

xiii. *Declare that all liabilities arising prior to 01.02.2018 (being the insolvency commencement date) stand absolved/ waived/ satisfied.*

xiv. *Direct the Registrar of Companies to accept the reconstitution of the board of directors under the management of the Applicant and to accept the requisite filings in this regard, being authenticated by the Liquidator and/ or such person as authorised by the Applicant.*

xv. *Direct secured creditors and IDBI Trusteeship Limited (Security Trustee) to handover the title documents after deleting all encumbrances shown against the assets secured with them, including by way of assignment.*

xvi. *Waive the interest and direct the Respondent to refund interest of INR 1,98,30,375/- (Rupees One Crore Ninety Eight Lakhs Thirty Thousand Three Hundred and Seventy Five Only).*

xvii. *Declare that all litigations (including but not limited to civil and criminal proceedings) pending against the Corporate Debtor be forthwith* *concluded and/ or rejected to the extent of the reliefs sought against the Corporate Debtor.*

xviii. Declare that the older GST registration, bearing Number 22AACCG4824H1ZY stands cancelled and all liabilities, arising therefrom, of any nature whatsoever, stand extinguished.

xix. Declare that the Applicant's recasting of the balance sheet and accounts of the Corporate Debtor in light of the provisions of the IBC, 2016 and the extant regulations promulgated thereunder in the facts of the present case, is valid and shall be duly accepted and acted upon by all governmental authorities

xx. Pass such other orders as this Hon'ble Tribunal may deem fit and necessary under the circumstances in the interest of Equity and Justice.

Submissions made by the Applicant, in brief:

2. The Applicant is a company incorporated in India under the provisions of the Companies Act, 1956, having its registered office at Bikaner Building, 8/1, Lalbazar Street, 01st Floor, Room No. 10, Kolkata – 700 001. The Applicant is engaged in retail business area and focuses on to develop, manage and lease or sell shopping malls. It is already operating Star Shopping Mall at Kolkata.

3. Gupta Infrastructure (India) Private Limited (**'the Corporate Debtor'**) is involved in the business of providing construction services as designing, building, and operating hyper markets, shopping malls, hotels, retail stores, parking lots pubs, and offices.

4. Upon an application filed by Bank of India under Section 7 of the Code, the Corporate Debtor was admitted into Corporate Insolvency Resolution Process **('CIRP')** vide Order dated 01.02.2018.

5. Subsequently, as no resolution plans were received, a C.P. 1397 of 2017 was filed for initiating liquidation of corporate debtor. The Corporate Debtor was admitted into liquidation process vide this Tribunal's order dated 02.01.2019 in M.A. No. 11386 of 2018 **('said Order'/ 'said liquidation commencement date')**. In pursuance to the said Order, Mr. Atul Rajwadkar **('Respondent'/ 'Liquidator')**, was appointed as the Liquidator of the Corporate Debtor.

6. Further, the corporate debtor received claims to the tune of Rs. 5177.99 crores from various creditors which is given hereunder:

Sr. No.	Name	Amount Admitted (in Rs.)
1.	Secured Financial Creditors	4545,84,94,518.05
2.	Unsecured Financial Creditors	582,95,14,560.96
3.	Unsecured Operational Creditors	49,19,23,126.57
	Total	**5177,99,32,205.58**

**Unsecured Operational Creditors includes a debt of Principal Commissioner, CGST and Central Excise; Raipur Development Authority/ Raipur Municipal Corporation and Blue Star Limited of Rs. 21,19,41,933.35; 26,73,03,328.09 and 1,26,77,865.13, respectively.*

7. The Liquidator issued notice dated 02.11.2021 inviting Expression of Interest **('EoI')** to participate in the auction process for sale of the Corporate Debtor on a going concern basis. The public e-auction was to be held on "as is where is basis", "as is what is basis", "whatever there is basis" and "without recourse basis" on 22.11.2021 **('said auction sale')**.

The reserve price for the said auction sale was Rs. 103,89,00,000/-. Following is the brief description of the property put forth for e-auction process as referred to in Exhibit-'B' of the present application **('said property')**:

M/S. GUPTA INFRASTRUCTURE (INDIA) PVT. LTD.
AS A GOING CONCERN
(CIN U45200MH2005PTC157219)
BRIEF DESCRIPTION

*CORPORATE DEBTOR WHICH HAS CONSTRUCTED AND OPERATING A SHOPPING MALL CUM MULTIPLEX COMMONLY KNOWN BY THE NAME "CITY CENTRE MALL" (HAVING PARTIAL BARE SHELL STRUCTURE AND PARTIALLY NON-RELINQUISHED PORTION BY SOME STAKEHOLDERS) AT DEVENDRA NAGAR, PANDHIRI, RAIPUR, CHHATISGARH: ON A LAND LEASED BY RAIPUR DEVELOPMENT AUTHORITY ON **"BOOT"** BASIS IS TO BE SOLD AS A GOING CONCERN*

8. The EoI was issued under Regulation 32(e) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 **('Liquidation Regulations, 2016')** through competitive bidding. A note in the EoI dated 02.11.2021 was given as under:

*"**Note:-***

- *Details mentioned above are on the basis of details with the Liquidator. Interested parties are requested to do their due diligence at their own cost.*
- *Nothing contained herein shall constitute a binding offer or a commitment to sell the corporate debtor as a going concern or any of its assets under IBC, 2016 or its relevant Regulation.*
- *Bidders must note that the aforementioned auction process is being conducted in accordance with the Insolvency and Bankruptcy Code, 2016 ("Code") and the relevant regulations thereunder.*

- *Any assets realized/ not relinquished by existing charge holders in pursuance of Section 52 of the Code are excluded from the ambit of the auction process being conducted by the liquidator.*
- *The liquidator reserves the right, without giving reasons, at any time to amend and/ or annul this invitation.*
- *Payment timeline for making payment by successful bidder has been increased from 15 days to 90 days vide order of Hon'ble NCLT dated 26.08.2021"*

9. The Liquidator issued the **'Information Memorandum'** (*Annexure-C* to the application) extract of which is given below-:

"..........

Background/Overview

Area held as security interest and not released by 3 Secured Creditors: namely, Tata Capital Financial Services Ltd., L&T Infrastructure Finance Company Ltd. & Reliance Commercial Finance Ltd. aggregating approximately 6410 Sq. Mtr. is also not available for sale in the Liquidation Process.

- *Raipur Municipal Corporation has raised a Compounding Fees of around Rs. 17.44 Crores through RDA for some construction of the mall being not as per the approved plan.*

- *RDA has also raised a claim for unpaid rent and surcharge on it of around Rs. 9.59 Cr.*

............."

10. The Applicant had furnished Earnest Money Deposit **('EMD')** of Rs. 5,19,45,000/- on 18.11.2021. Auction was conducted on 222.11.2021 and the Applicant emerged as the 'successful bidder' for bid value of Rs. 109,19,00,000/-. The sale consideration including interest was paid as per details below: -

a. *INR 5,19,45,000/- (Rupees Five Crores Nineteen Lakhs Forty Five Thousand Only) on 18.11.2021 as the Earnest Money Deposit;*

b. *INR 103,99,55,000/- (Rupees One Hundred Three Crores Ninety Nine Lakhs Fifty Five Thousand Only) on 22.02.2022 as the Balance Sale Consideration, within the stipulated period of 90 days;*

c. *INR 1,98,30,375/- (Rupees One Crore Ninety Eight Lakhs Thirty Thousand Three Hundred and Seventy Five Only) being the accrued interest at the rate of 12% per annum, paid on 22.02.2022.*

11. The applicant has furnished an affidavit under Section 29A of the Code stating that it is run, managed and controlled by completely distinct persons and entities from the Corporate Debtor.

12. The Respondent/ Liquidator then issued a Letter of Intent (LOI) dated 26.11.2021 in favor of the applicant. The description of assets and liabilities as stated in the said Letter of Intent, which is annexed as Annexure – 'E' to the present application, is stated herein below-:

*"**APPENDIX-A***

Description of Assets & Liabilities of the "CD to be Sold as Going Concern" u/r 32(e) of Liquidation Regulations

The Corporate Debtor is being sold as a going concern in terms of the present bid as envisaged under Regulation 32(e) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations. The following are intended to be transferred to the successful bidder, subject to any directions from Hon'ble NCLT, if any.

Asset Class	***Description***
I. Leasehold Rights	*Leasehold land admeasuring 23,082 sq. Mtrs. Land belongs to RDA (Raipur Development Authority). This land has been given on lease by the Corporate Debtor for 30 years from 03/03/2010 ending on 02/02/2040 and*

	extendable for 2 further periods of 30 years each subject to terms & conditions.
II. Building constructed by the CD on Leasehold Land except the Exclusions subject to terms and conditions of the agreement with RDA	*The building consists of:* ➤*Basement 3 Lower Basement* ➤*Basement 2- Upper Basement* ➤*Lower Ground Floor (LGF)* ➤*Ground Floor* ➤*First Floor* ➤*Second Floor* ➤*Third Floor* ➤*Fourth Floor* ➤ *Hotel Block* *The total area of the building admeasures approximately 80394 Sq. Mtr. excluding the areas held as security and not relinquished by Tata Capital Financial Services Ltd., L&T Infrastructure Finance Company Ltd. & Reliance Commercial Finance Ltd. aggregating approximately 6412 Sq. Mtrs. and area handed over to RDA as per agreement measuring approximately 4000.00 Sq Mtrs.*
III. Current, Non-Current Assets & Investments	*All the current, non-current assets & Investments of the CD except for those specifically excluded.*
IV. Liabilities	*Description as below. Please note that as this is an ongoing business following liabilities may undergo changes to some extent being a going concern*
	Item 1: INR 2.96 Crores *Received by the Corporate Debtor towards security deposit from the tenants (as described in the Information Memorandum). This figure may undergo changes on the date of auction/ transfer as the business in ongoing.*

	Item 2: INR 6.39 Crores *Received from certain entities in light of the agreements to sell executed by the Corporate Debtor (as described in the Information Memorandum).*
	Item 3: INR 23.59 Crores *This relates to the admitted value of the claim filed by the Raipur Development Authority as an unsecured Operational Creditor reduced by the payment already made for CIRP period of FY 18-19 along with its GST at the rate of 18% (RDA Claims includes the claim in respect of the compounding fees imposed by the Raipur Municipal Corporation and Ground Rent).*

Remark: The values of the above liabilities are variable in nature, since the Corporate Debtor has been operational as a going concern.

13. It is noticed that the liabilities of the Corporate Debtor are variable in nature as the corporate debtor was operating as a going concern. Therefore, the liabilities as on the date of liquidation, i.e. 02.01.2019 get settled as per Section 53 of the Code.

14. A Sale Certificate is issued in terms of Regulation 32(e) and Schedule I read with Regulation 33 of the Liquidation Regulations, 2016 was executed between the liquidator and the applicant on 14.03.2022 **('said Sale Certificate')**. The said Sale Certificate mentions the payment details including EMD, balance payment of Rs. 103,99,55,000 plus Rs. 1,98,30,375 towards interest. The interest was paid for a period of 58 days after the expiry of period of 30 days from the date of issuance of Letter of Intent. The said Sale Certificate confirming the sale of Corporate Debtor in Liquidation as a going concern, was issue. The relevant portion of the Sale Certificate is reproduced below: -

राष्ट्रीय कम्पनी विधि अधिकरण
NATIONAL COMPANY LAW TRIBUNAL
मुंबई न्यायपीठ
MUMBAI BENCH

"1. The present Sale Certificate is being issued to confirm and acknowledge that the Corporate Debtor – Gupta Infrastructure (India) Private Limited - In Liquidation as a going concern, comprising of assets described in ***Schedule IB*** *with specified liabilities (as described in* ***Schedule ID)*** *has been sold to RDB Realty and Infrastructure Limited on and from 22.02.2022* ***('Cut-Off Date')*** *(being the date of receipt of balance Bid amount) on "as is where is, as is what is, whatever there is basis" and "no recourse" basis. In light of this acquisition, RDB is the owner of the Corporate Debtor as per the provision of the Code in terms of the Sale Certificate.*

xxxxx

6. The Parties hereby acknowledge that no liability of the Corporate Debtor, whether past or present, contingent or otherwise upto the Cut-Off date, is being taken over by RDB, except to the extent specifically mentioned in Schedule ID ("Specified Liabilities"). All liabilities other than the specified liabilities shall be discharged as per Section 53 of the Code.

xxxxxxxxxx"

15. We note that as per para 6 of the Sale Certificate "All liabilities other than the specified liabilities shall be discharged as per Section 53 of the Code." We are also supported by the LoI dated 26.11.2021 which states that the liabilities of the Corporate Debtor are variable in nature as the corporate debtor was operating as a going concern. Therefore, the liabilities as on the date of liquidation, i.e. 02.01.2019 get settled as per Section 53 of the Code and other direct variable operational liabilities do not get extinguished.

16. Further, following is the description of the assets and liabilities forming part of sale of corporate debtor, as provided in the Sale Certificate, is reproduced as under:

"

....

Schedule 1B

The assets forming a part of the Corporate Debtor being acquired by RDB comprises the following:

A. *All rights and interests in the following Leasehold Land as held by the Corporate Debtor to the extent prescribed under the Process Document:*
All that piece and parcel of Leasehold land measuring 23,082 sq. Mtrs. (Approx. 5.7 Acres), as part of Khasra No- 515 PC 106 A of Raipur Khas & Khasra No 117/2, 136/1 of village Pandri & Patwari Halka No 109 of Revenue Circle & Te3hsil Raipur located newar Pandri cloth market in Raipur City as particularly described in the Agreement executed on 11.11,2005 between the Raipur Development Authority & Gupta Infrastructure (India) Pvt. Ltd.

belonging to RDA (Raipur Development Authority), which was taken on lease by the Corporate Debtor for 30 years from 3rd March, 2010 ending on 2nd February, 2040 and extendable for 2 further periods of 30 years each, subject to terms and conditions as mentioned in Lease Deed dated 3rd March, 2010.

B. Building constructed by the Corporate Debtor on the Leasehold Land to the extent prescribed under the Process Document and subject to the terms and conditions of the agreement of the Corporate Debtor with RDA ("Building"):

Name of the Building	**Year of Buildup**	**Brief Specification**	**Area in Sq. Mts.**
Commonly known as CHATISGARH CITY CENTRE MALL & MULTIPLEX	2010	➤*Basement 3 Lower Basement* ➤*Basement 2- Upper Basement* ➤*Lower Ground Floor (LGF)* ➤*Ground Floor*	80394* (approx.)

		➤*First Floor* ➤*Second Floor* ➤*Third Floor* ➤*Fourth Floor* ➤ *Hotel Block*	

the total area of building does not include the portions described in* ***Schedule I C.*

C. *Current and non-current assets and investments:*
All the current, non-current assets & investments of the Corporate Debtor except for those specifically excluded (as detailed in ***Schedule II****).*

SCHEDULE IC

Portion of the Building not forming a part of the Corporate Debtor being acquired by RDB

(a) Following areas in respect of which the security interest was not relinquished by the following Secured Financial Creditors by exercising their rights under Section 52 of the Code

Name of Creditors	***Area held by the Creditor and description (approximately)***	***Remarks***
Phoneix ARC Private Limited (assignee of L&T Infrastructure Finance Company Ltd.)	*1360.62 sq. mtrs.*	*Area on Ground Floor as precisely mentioned in the respective mortgage documents*
Tata Capital Financial Services Ltd.	*2041.64 sq. mtrs.*	*Area on First Floor as precisely mentioned in the respective mortgage documents*
Reliance Commercial Finance Ltd.	*1064.50 sq. mtrs.*	*Various spaces on Third Floor as precisely mentioned in*

		respective mortgage documents.
Tata Capital Financial Services Ltd & Reliance Commercial Finance Ltd.	*1944.99 sq. mtrs*	*Part of Hotel block on Third Floor mortgaged to both the Secured Financial Creditors as precisely mentioned in respective mortgage documents*
Total	*6411.75 sq. mtrs*	

(b) Area handed over to RDA as per Agreement, admeasuring approximately 4000.00 Sq Mtrs. As per Clause 3.3 of the Agreement dated 11th November, 2005.

SCHEDULE ID
SPECIFIED LIABILITIES

Only the following specified liabilities are being transferred as a part of the Corporate Debtor:

a. *INR 2,96,00,000/- (Rupees Two Crores Ninety Six Lakhs Only) or such amount as may be actually due up to **the Cut-Off Date** in the books of account of the Corporate Debtor: Security deposit received by the Corporate Debtor from its tenants*

*It is clarified that the afore-described liability shall not include security deposit pertaining to areas described in **Schedule IC**.*

b. *INR 6,39,00,000/- (Rupees Six Crores Thirty Nine Lakhs Only) or such amount as updated up to the Cut-Off Date in the books of account of the Corporate Debtor: Amounts received from certain entities in light of the agreements to sell or such other documents executed by the Corporate Debtor.*

c. *INR 17,44,34,450/- (Rupees Seventeen Crores Forty Four Lakhs Thirty Four Thousand Four Hundred and Fifty Only): Value of the claim submitted by the Raipur Development Authority towards the compounding fees claimed by Raipur Municipal Corporation, as admitted by the Liquidator under the provisions of the Code.*

d. *INR 6,14,17,966.39/- (Rupees Six Crores Fourteen Lakhs Seventeen Thousand Nine Hundred and Sixty Six and Paise Thirty Nine Only): Value of the claim submitted by the Raipur Development Authority on account of ground rent (reduced by the payment already made in respect of the dues arising during the currency of the corporate insolvency resolution period during Financial Year 2018-19) along with applicable GST at the rate of 18% per annum.*

*It is hereby clarified that the amounts specified in this **Schedule ID** will not be satisfied from the liquidation estate of the Corporate Debtor under Section 53 of the Code and the said liabilities in respect of the said claim are transferred as a part of the Corporate Debtor, in favour of RDB. Furthermore, apart from the above-mentioned liabilities, no other liabilities (**pertaining to period prior to Cut-Off Date**) shall be transferred as a part of the Corporate Debtor to RDB.*

.............."

17. The present application has been filed by the Applicant seeking necessary concessions and reliefs, set out in Para 1 above.

18. Learned Counsel for the Applicant refers to the decision of this Tribunal dated 09.03.2021 in ***Bank of Baroda versus Topworth Pipes & Tubes Private Limited (C.P. (IB) No. 1239/MB/2018)*** wherein it was held that during sale of corporate debtor as a going concern in liquidation would provide a clear difference that only assets are transferred to the auction purchaser and the liabilities of the Corporate Debtor has to be settled in accordance with Section 53 of the Code hence, the auction purchaser takes over these assets without any encumbrance or charge and free from the action of the creditors.

Submissions of the Liquidator/Respondent

19. The Liquidator/ Respondent has also referred to following judgments passed by various corresponding benches of National Company Law Tribunal as well as Hon'ble National Company Law Appellate Tribunal wherein the Adjudicating Authority has granted reliefs and concessions

in favour of the successful bidder vide Compilation of Judgments documents filed on 19.04.2024 as follows:

a. Judgment dated 21.11.2023 passed by the Hon'ble National Company Law Appellate Tribunal in the case of ***Punjab National Bank International Limited versus Perfect Day Inc. and Ors.*** – Company Appeal (AT) (Insolvency) No. 1427 of 2022

b. Judgment dated 25.02.2022 passed by the Hon'ble National Company Law Appellate Tribunal in the case of ***Shiv Shakti Inter Globe Exports Pvt. ltd. versus KTC Foods Private Limited and Anr.*** – Company Appeal (AT) (Insolvency) No. 650 of 2020

c. Order dated 09.03.2022 passed by the Hon'ble National Company Law Tribunal, Bench at Cuttack in the case of ***State Bank of India versus Coastal Projects Limited*** in I.A. No. 129 of 2021

d. Order dated 01.12.2022 passed by the Hon'ble National Company Law Tribunal, Bench at Hyderabad in the case of ***Power Finance Corporation Ltd. versus KVK Nilachal Power Pvt. Ltd.*** in I.A. No. 960 of 2022

e. Order dated 02.02.2023 passed by the Hon'ble National Company Law Tribunal, Bench at Kolkata in the case of ***Punjab National Bank versus Divine Vidyut Limited*** in I.A. No. 537 of 2022

f. Order dated 11.11.2022 passed by the Hon'ble National Company Law Tribunal, Bench at Mumbai in the case of ***Perfect Day Inc. versus Dr. Mamta Binani, Liquidator, Sterling Biotech Limited*** in I.A. No. 1585 of 2022.

Findings

20. We have perused the facts pleaded and the reliefs sought in the present application.

21. The Liquidation order dated 02.01.2019 was passed by this Adjudicating Authority and Mr. Atul Rajwadkar was appointed as a Liquidator. Thereafter, auction notice was issued on 02.11.2021 and the auction was conducted on 22.11.2021. The Applicant, M/s RDB Realty and Infrastructure Limited emerged as the successful bidder and deposited the entire sale consideration along with applicable interest.

22. Thereafter, the Liquidator issued a Letter of Intent dated 26.11.2021 and thereafter, a sale certificate dated 14.03.2022 was issued in favour of the Applicant. The terms of the LoI and Sale Certificate are already noticed in preceding paragraphs.

23. As regards reliefs and concessions, this Tribunal refers to the observations of the Hon'ble NCLAT in ***M/s Shiv Shakti Inter Globe Exports Private Limited vs. M/s KTC Foods Private Limited & Anr. (Company Appeal (AT) (Insolvency) No. 650 of 2020)*** decided on **25.02.2022:**

> *"21. ... it is a settled law that when the sale proceeds of a 'Corporate Debtor' are duly distributed in the Order of priority and in the manner prescribed under Section 53 of the Code, claims of any other Creditor cannot be entertained contrary to the provisions entailed under Section 53; subsequent to the distribution of sale proceeds under Section 53 no other entity including any Government entity can claim any past unpaid or outstanding dues against the Appellant who has purchased the 'Corporate Debtor Company' as a 'going concern'..... The Hon'ble Supreme Court in 'Ghanshyam Mishra & Sons Pvt. Ltd.' Vs. 'Edelweiss Asset Reconstruction Company Ltd. &*

Ors.', Civil Appeal No. 8129 of 2019 and in 'CoC of Essar Steel India Ltd.' Vs. 'Satish Gupta & Ors.' (2020) 8 SCC 531 has laid down the proposition that the purchaser of the Company even in the Liquidation stage cannot be burdened with past liabilities when it is not mentioned in the 'Sale Notice'.

22. It is no longer Res Integra that while approving a 'Corporate Debtor' sale as a 'going concern' in Liquidation Proceedings without its dissolution in terms of Regulation 32(e) of the Liquidation Process Regulations, 2016, it is essential to see that the 'Corporate Debtor' is not burdened by any past or remaining unpaid outstanding liabilities prior to the sale of the Company as a 'going concern' and after payment of the sale proceeds distributed in accordance with Section 53 of the Code."

24. Further, this Bench relies on the observations made by the Hon'ble Supreme Court in the matter of ***Sunil Kumar Jain versus Sundaresh Bhatt, Liquidator of ABG Shipyard, (2022) SCC OnLine SC 306*** The Hon'ble Supreme Court held that

> *"during liquidation, all the statutory liabilities do not automatically get extinguished. The Court clarified that when a corporate debtor is in liquidation, statutory dues like employee claims, taxes, and other dues are paid as per the waterfall mechanism provided in Section 53 of the IBC. This means that liquidation does not imply a clean slate, and all dues and claims are to be settled as per the specific priority laid down in the Code."*

25. As noticed, at the time of sale, the corporate debtor was running as a going concern and the liabilities of the Corporate Debtor were variable in nature as mentioned in the LoI. Further the Sale Certificate specifies the liabilities to be settled as per the provisions of Section 53 of the Code.

26. The judgments relied upon by the liquidator are relating to general reliefs and concessions to the Successful Bidder and liabilities are directed to be settled as per Section 53 of the Code.

27. Furthermore, this Tribunal has passed an order dated 08.06.2024 in ***Devendra Singh, Liquidator of Venus Rolling Mills Pvt. Ltd. versus Shantech International Private Limited, I.A. No. 610 of 2024 in C.P. (IB) No. 350/MB/C-III/2019***, which has been upheld by the Hon'ble National Company Law Appellate Tribunal by judgment dated 20.09.2024 in Company Appeal (AT)(Ins.) No. 1520 of 2024 stating that all dues up to pre-CIRP period shall stand and all claims/dues/liabilities up to the liquidation commencement date shall be dealt as per Section 53 of the Code.

28. In ***Devendra Singh, Liquidator of Venus Rolling Mills Pvt. Ltd. (supra),*** the Applicant therein had prayed for a relief/concession similarly as sought for with in this petition, which is reproduced as follows:

> *"**15.10** A direction that on and from the Acquisition date, all the claims or demands made by, or liabilities or obligations owned or payable to any actual or potential creditors, Financial Creditors, Operational Creditors, Workmen & Employees of the Corporate Debtor including the Government Dues (including but not limited to liabilities, interest and penalties, duties, etc. on account of income-tax, tax deduction at source, tax collection at source, goods and services tax, custom duty, value added tax, service tax, wealth-tax, cess, DGFT dues, FEMA, RBI regulations/guidelines etc.) whether direct or indirect, whether admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallized, known or unknown, secured or unsecured, disputed or undisputed in relation to any period prior to the Acquisition date be written off in full and shall stand permanently extinguished."*

29. The above referred prayer was not granted. However, the Applicant was given liberty to approach the appropriate and concerned authorities.

30. Accordingly, we pass the following order with respect to the specific reliefs and concessions prayed in Para 1 of the present application:

Sr. No.	**Reliefs/concessions sought by the Applicant**	**Orders thereon**
1.	Declare that on and from 23.02.2022 (being the date after the Cut-Off date as specified in the Sale Certificate), all the claims or demands made by, or liabilities or obligations owned or payable to any actual or potential creditors of the Corporate Debtor including the Government Dues (including but not limited to Tax demand liabilities, interest and penalties, duties, etc. on account of income-tax, tax deduction at source, tax collection at source, S.G.S.T, C.G.S.T, I.G.S.T, Registrar of Companies, authorities under applicable labour laws, custom duty, value added tax, service tax, wealth-tax, cess, DGFT dues, Power dues, Pollution Control Board, Municipal Taxes etc.) whether direct or indirect, whether admitted or not, due or contingent, asserted or unasserted, crystallized, uncrystallized, known or unknown, secured or unsecured, disputed or undisputed in relation to any period prior to 23.02.2022 shall stand permanently extinguished.	**Past dues upto the initiation of CIRP be treated as per Section 53 of the Code subject to the Specified Liabilities as referred to in Schedule ID of the Sale Certificate dated 14.03.2022. Further, the Applicant may apply to appropriate authorities of respective department in accordance with applicable law and procedure based on this Order.**

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2.	Declare that all the inquiries, investigations, assessments, notices, causes of action, suits, claims, disputes, litigations, arbitration, or other judicial, regulatory or administrative proceedings against, or in relation to or in connection with the Corporate Debtor, pending or threatened, present or future, in relation to any period prior to 23.02.2022 shall not be continued against the Corporate Debtor.	**Granted upto the period prior to the initiation of CIRP as per and subject to Section 32A of IBC subject to compliance of the applicable provisions of law, relevant procedures, and payment of fees or charges, if any.** **The above direction shall not apply to the specified liabilities mentioned in Schedule ID of the Sale Certificate dated 14.03.2022**
3.	Declare all financial and pecuniary liabilities of the Corporate Debtor, including without limitation, any penalty, whether contingent, assessed, known or unknown, interest, fines or fees and any other liabilities and/or obligations which may have a financial impact in relation to any period prior to payment of the Sale Consideration and consequent sale of the Corporate Debtor shall be deemed to be extinguished in relation to any period up to 22.02.2022.	**Granted upto the period prior to the initiation of CIRP**
4.	Issue necessary directions to the Registrar of Companies (i) that all the existing shares of the Corporate Debtor shall be extinguished without any	**Granted, subject to necessary compliance, if any, required.**

	consideration, and rights and liabilities arising out of the same shall also be extinguished and (ii) that Applicant/ Corporate Debtor shall be entitled to issue fresh equity shares to the Applicant(s) of such value and such quantum as submitted by the Applicant(s) within a span of 1 month from the date of issuance of sale certificate;	
5.	Declare that the Corporate Debtor shall be entitled to apply and obtain fresh consents, licenses, approvals, entitlements, privileges whether under law, contract, lease or licenses granted in favour of the Corporate Debtor or their renewal, where so required; without being held accountable for any non-compliance committed by the Corporate Debtor, if any, prior to 23.02.2022, including from Pollution Control Board, State level Environment Impact Assessment Authority, Municipal Corporation, Electricity Board, Fire department, Health and Safety Department, Factory license and any other department for smooth operation of the business of Corporate Debtor;	**May apply to appropriate authorities of respective department in accordance with applicable law and procedure based on this Order.**
6.	Direct the Respondent to assist and enable the Applicant (to the	**Granted, subject to and in accordance with what is**

	extent possible) to complete all the necessary compliances including pertaining to filing of necessary documents and returns with the Registrar of Companies, Income Tax Authorities, GST authorities, authorities under applicable labour laws, any other Government Authorities or when required, assist the Applicant in completing the same.	**mentioned in the sale certificate issued by the Liquidator.**
7.	Issue necessary direction to the Ministry of Corporate Affairs to update the status of the Corporate Debtor in the records of Registrar of Companies as 'active' from the status 'under liquidation'.	**Granted subject to necessary compliance of the applicable provisions of law, relevant procedures, and payment of fees or charges, if any.**
8.	Declare that charges registered with concerned ROC in respect of encumbrances over the assets of the Corporate Debtor shall stand satisfied and vacated upon the completion of the sale of the Corporate Debtor as a going concern and the order of this Hon'ble Tribunal shall be sufficient proof to enable the Applicant/ Respondent to satisfy the charges on secured assets in the records of ROC and other statutory and regulatory authorities, if any, upon completion of sale and issuance of the Sale Certificate.	**Granted subject to necessary compliance of the applicable provisions of law, relevant procedures, and payment of fees or charges, if any.**

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9.	Direct that liabilities, if any, arising out of non- compliance of provisions of any Laws, Rules, Regulations, Directions, Notifications, Circulars, Guidelines, Policies, Licenses, Approvals, Consents or Permissions prior to effective date shall stand extinguished qua the Applicant and the same shall be settled by Respondent in accordance with the provisions of Section 53 of IBC, 2016.	**Granted upto the period prior to the initiation of CIRP.**
10.	Declare that the Applicant shall not be liable for any action/ responsibility of the Corporate Debtor or its erstwhile management as per provisions of Section 32A of IBC, 2016.	**Granted upto the period prior to the initiation of CIRP, subject to necessary compliance of the applicable provisions of law, relevant procedures, and payment of fees or charges, if any.**
11.	Declare that all liabilities arising prior to 01.02.2018 (being the insolvency commencement date) stand absolved/ waived/ satisfied.	**Granted, is to be dealt with Section 53 of the Code.**
12.	Direct the Registrar of Companies to accept the reconstitution of the board of directors under the management of the Applicant and to accept the requisite filings in this regard, being authenticated by the Liquidator and/or such person as authorized by the Applicant.	**Granted subject to necessary compliance.**

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13.	Direct secured creditors and IDBI Trusteeship Limited (Security Trustee) to handover the title documents after deleting all encumbrances shown against the assets secured with them, including by way of assignment.	**Granted, subject to necessary compliances.**
14.	Declare that all litigations (including but not limited to civil and criminal proceedings) pending against the Corporate Debtor be forthwith concluded and/ or rejected to the extent of the reliefs sought against the Corporate Debtor.	**Granted upto the period prior to the initiation of CIRP subject to necessary compliances**
15.	Declare that the older GST registration, bearing Number 22AACCG4824H1ZY stands cancelled and all liabilities, arising therefrom, of any nature whatsoever, stand extinguished.	**Granted upto the period prior to the initiation of CIRP.** **May apply to appropriate authorities of respective department based on this Order**
16.	Declare that the Applicant's recasting of the balance sheet and accounts of the Corporate Debtor in light of the provisions of the IBC, 2016 and the extant regulations promulgated thereunder in the facts of the present case, is valid and shall be duly accepted and acted upon by all governmental authorities	**Granted subject to necessary compliance of the applicable provisions of law, relevant procedures, and payment of fees or charges, if any.**

31. Any other relief and concession not mentioned in the above table shall be deemed to have been **not granted.** However, the Applicant may in

accordance with applicable law and procedure, approach the appropriate and concerned authority to seek the relevant reliefs and concessions as may be available to the Applicant, as per law.

32. Accordingly, I.A. No. 868 of 2022 is **disposed of** in above terms.

Sd/-
Charanjeet Singh Gulati
Member (Technical)

Sd/-
Lakshmi Gurung
Member (Judicial)

Akshita, LRA

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Deputy Registrar
National Company Law Tribunal Mumbai Bench