

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

IA(IBC)/1018(CHE)/2022

IN

CP/759/(IB)/CB/2018

*(FILED UNDER SECTION 60(5) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 READ WITH
REGULATION 32A (e) OF IBBI (LIQUIDATION PROCESS) REGULATIONS, 2016)*

IN THE MATTER OF **ST JOHN FREIGHT SYSTEMS LIMITED**
(Sale as a Going Concern of the Corporate Debtor)

MR. R. VENKATAKRISHNAN

Liquidator, St John Freights Systems Limited
Rajparis Trimeni Towers, 1st Floor,
147, G.N Chetty Road,
Chennai – 600 017

... Applicant

-Versus-

GC LOGISTICS INDIA PRIVATE LIMITED

22, Bharathi Park,
7th Cross, Saibaba Colony,
Coimbatore – 641 011

... Respondent

Along with

IA(IBC)/1094(CHE)/2022

IN

CP/759/(IB)/CB/2018

(FILED UNDER SECTION 60(5) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016)

MR. KARTHIKEYAN

Proprietor,
MSK Lorry Booking Office,
B/90/2, North Street, thiruchendur Main Road,
Muthaiyapuram,
Tuticorin – 628 005

... Applicant

-Versus-

MR. R. VENKATAKRISHNAN

Liquidator, St John Freights Systems Limited
Rajparis Trimeni Towers, 1st Floor,
147, G.N Chetty Road,
Chennai – 600 017

... Respondent

Along with



IA(IBC)/1167(CHE)/2022 IN IA(IBC)/1094(CHE)/2022

IN

CP/759/(IB)/CB/2018

(FILED UNDER SECTION 60(5) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016)

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Tuticorin – 628 005

-Versus-

1. MR. R. VENKATAKRISHNAN

Liquidator, St John Freights Systems Limited

Rajparis Trimeni Towers, 1st Floor,

147, G.N Chetty Road,

Chennai – 600 017

... Applicant

2. GLOBAL CORP LOGISTICS LLC

Head Office:

Mussallm Abdullah Al Abadi Building,

Way No. 2730, Building No. 1832,

7th Floor, Flat No. B7,

CBD- Muscat

Postal Address:

Post Box No. 556,

Postal Code – 114, Muttrah,

Sultanate of Oman

3. CG LOGISTICS (INDIA) PRIVATE LIMITED

22, Bharathi Park,

7th Cross, Saibaba Colony,

Coimbatore – 641 011

... Respondents

Along with



IA(IBC)/1095(CHE)/2022

IN

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... Applicant

-Versus-

MR. R. VENKATAKRISHNAN

Liquidator, St John Freights Systems Limited
Rajparis Trimeni Towers, 1st Floor,
147, G.N Chetty Road
Chennai – 600 017

... Respondent

Along with

IA(IBC)/1228(CHE)/2022 IN IA(IBC)/1095(CHE)/2022

IN

CP/759/(IB)/CB/2018

(FILED UNDER SECTION 60(5) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016)

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... Applicant

-Versus-

MR. R. VENKATAKRISHNAN

Liquidator, St John Freights Systems Limited
Rajparis Trimeni Towers, 1st Floor,
147, G.N Chetty Road
Chennai – 600 017

... Respondent

Along with

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In the matter of
PHOENIX ARC PRIVATE LIMITED

... Financial Creditor

-Versus-

ST. JOHN FREIGHT SYSTEM LIMITED

... Corporate Debtor

APPEARANCES:

For Liquidator : T.K. Bhaskar, Pranav Gopalakrishnan
Niveditha Narayana, Advocates

For Applicant in
MA/20/2022 : Subhang P. Nair, Advocate

For Applicant in IA(IBC)/922(CHE)/2022;
IA(IBC)/1094(CHE)/2022;
IA(IBC)/1095(CHE)/2022 : V. Prakash, Senior Counsel
for Pradeep Raj, Advocate

For Purchaser : Anirudh Krishnan
Rupikaa Srinivasan, Advocates

Order Pronounced on 19th January 2023

CORAM

DR. DEEPTI MUKESH, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

COMMON ORDER

1. PREFATORY

CP/759/IB/2018 is an application under section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the I&B Code, 2016) filed by Phoenix ARC Private Limited in the capacity of a Financial Creditor against the Corporate Debtor viz., St. John Freight System Limited. An order admitting the Corporate Debtor into Corporate Insolvency Resolution Process (CIRP) was passed by this Adjudicating Authority vide order dated 10.12.2018. The Liquidator herein was appointed as the Interim Resolution

Professional. In brief, the dates and events subsequent to initiation of CIRP is tabled as hereunder,

S.No	DATE	EVENTS
1.	26.11.2019	Liquidation was Ordered in MA/ 989/2019 in CP/ 759/ (IB)/ 2018
2.	04.12.2019	Stay against the Liquidation order was passed by the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 1402 of 2019.
3.	04.03.2020	Company Appeal (AT) (Insolvency) No. 1402 of 2019, appeal dismissed stating that there is no merit in the appeal.
4.	11.03.2020	Public Announcement in Form-B was published with last date as 10.04.2020 10 th which was later extended to 31 st August 2020.
5.	02.09.2020	List of Stakeholders from claims received till 02.09.2020 was submitted before this Adjudicating Authority on 04.09.2020
6.	23.10.2020	1 st Expression of Interest (EoI) was published.
7.	16.12.2020	1 st SCC Meeting – Discussion about Sale of the corporate debtor as a going concern was done and discussions regarding the 3 proposals received were made.
8.	02.03.2021	2 nd SCC Meeting- Discussions were made with the prospective buyers.
9.	08.03.2021	3 rd SCC Meeting- Discussions with prospective buyers regarding revised proposal.
10.	16.03.2021	4 th SCC Meeting- Above proposals were put to vote – all 3 were rejected unanimously.
11.	10.06.2021	5 th SCC Meeting – It was decided to issue fresh EoI.
12.	16.06.2021	2 nd Expression of Interest was published.
13.	02.08.2021	6 th SCC Meeting- fresh proposals received were put to discussion before the SCC.
14.	07.09.2021	Civil Appeal No. 2113/2020 against the order of Hon'ble NCLAT preferred before the Hon'ble Supreme Court was Dismissed.
15.	28.09.2021	7 th SCC Meeting – Members of the SCC had requested Liquidator to negotiate the proposals received and present best proposal before the SCC during the next meeting.
16.	08.10.2021	8 th SCC Meeting- Comparison of Global Corp and Galaxy Freight proposals put to vote along with a 3 rd option of Swiss challenge.

		None of the 3 bids got majority – 66% approval as per Regulation 31 A of Liquidation Regulations
17.	06.10.2021	Offer Letter of Global Corp.
18.	30.10.2021	9 th SCC Meeting - Discussion on fresh proposals pursuant to no clear instruction from SCC, MA 122 of 2021 was filed to get permission of this Adjudicating Authority to conduct Swiss challenge auction to sell the corporate debtor
19.	09.11.2021	The Review Petition in R.P (C) No. 001117-/2021 filed before the Hon'ble Supreme Court was dismissed.
20.	11.03.2022	Order in MA/122/2021 approving Swiss Challenge Method with Global Corp's Logistics LLC offer as base price was passed by this Adjudicating Authority.
21.	16.03.2022	Intimation regarding Swiss Challenge Method to be held on 28.03.2022 was sent to all interested parties.
22.	23.03.2022	Intimation regarding time and place of the Swiss Challenge Method was sent to the interested parties.
23.	30.03.2022	Communication regarding change in date of Swiss challenge auction was sent.
24.	11.04.2022	Letter of Intent was issued by the Liquidator for sale of the business and assets of the Corporate Debtor as a going concern to Global Corp Logistics LLC.
25.	20.06.2022	Communication letter putting forth that the Purchase will be made through G C Logistics, an associated entity of Global Corp Logistics.

2. ORDER PASSED IN MA/122/2021 DATED 11.03.2022

The Application in MA/122/2021 was filed by the Liquidator seeking adoption of Swiss challenge method and to adopt Proposal –A as the base price. On 11.03.2022, the Liquidator was Allowed to fix "Proposal-A" submitted by Global Corp Logistics LLC as the base price and accordingly adopt "Swiss Challenge" for sale of the Corporate Debtor as a going concern as prayed for in MA/122/2021. Thereafter, the Application in

IA(IBC)/1018(CHE)/2022 in CP/759/IB/2018 is filed for approval of the sale of the Corporate Debtor as going Concern.

3. ABOUT ST. JOHN FREIGHT SYSTEM LIMITED, THE CORPORATE DEBTOR

3.1 The Corporate Debtor herein is operating for over 30 years now providing end-to-end Logistics services to various customers in four different continents around the world including various Companies in Tier 3 Cities pan India. It is further submitted that the Company has numerous accolades such as Nithyashree Award from The Ministry of Commerce, AEO certification from International Customs and Certificates for Quality Management System from Bureau Veritas (BVQI). It is submitted that the Subsidiary Companies of the Corporate Debtor had ventured into developing logistics projects based on initial interest from strategic and equity partners after carrying out detailed studies of the opportunity. However, slowdown in the industry and global financial market led to delay in financial closure as a whole.

3.2 It is submitted that the Company has been continuing its business and has been making enough profits to sustain the business even after its prevalent Insolvency and subsequent liquidation process. The Company has been consistently making profits ever since its incorporation and has been employing numerous employees in Tuticorin. The Company is one of the

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topmost categories performing the logistic business and is one which if revived will have better business opportunities.

4. LIST OF REPRESENTATIVES OF STAKEHOLDERS CONSULTATION COMMITTEE

10. In accordance with the list of stakeholders filed, the liquidator had constituted the Stakeholders' Consultation Committee ('SCC') as per regulation 31A of the Liquidation Regulations. The composition of the consultation committee is as follows:

S No	Class of Stakeholders	Name of Representative
1.	Secured financial creditors, who have relinquished their security interests under section 52	1. Phoenix ARC Private Limited trustee of Phoenix Trust-FY16-26 2. State Bank of India 3. IDBI Bank Limited
2.	Unsecured financial creditors	1. Indian Overseas Bank 2. SREI Infrastructure Finance Limited
3.	Workmen and employees	1. G Thomas
4.	Governments *	1. Employees Provident Fund Organisation
5.	Operational creditors other than Workmen, employees and Governments *	1. MSK Lorry Booking Office

5. Be that as it may, on 08.12.2022 when the matter in IA(IBC)/1018(CHE)/2022 in CP/759/IB/2018 was taken up for final hearing the connected applications were also heard and reserved

for orders, considering the number of applications dealt, the orders passed herein are partitioned under each heads as follows,

S. No.	PARTICULARS	PAGE NO.
1	ORDER IN IA(IBC)/1095(CHE)/2022 IN CP/759/IB/2018 ALONG WITH IA(IBC)/1228(CHE)/2022 IN IA(IBC)/1095(CHE)/2022	10
2	ORDER IN IA(IBC)/1094(CHE)/2022 IN CP/759/IB/2018 ALONG WITH IA(IBC)/1167(CHE)/2022 IN IA(IBC)/1094(CHE)/2022	15
3	ORDER IN IA(IBC)/922(CHE)/2022 IN CP/759/IB/2018	17
4	ORDER IN MA/20/2022 IN CP/759/IB/2018	19
5	ORDER IN IA(IBC)/1018(CHE)/2022 IN CP/759/IB/2018	21

6. ORDER IN IA(IBC)/1095(CHE)/2022 IN CP/759/IB/2018 ALONG WITH IA(IBC)/1228(CHE)/2022 IN IA(IBC)/1095(CHE)/2022

6.1 IA(IBC)/1095(CHE)/2022 in CP/759/IB/2018 is an application filed on 15.10.2022 by Mr. Karthikeyan, Proprietor of M.S.K Lorry Booking Office in the capacity of an Operational Creditor seeking reliefs as follows,

- a) To allow the instant application
- b) To pass an order by replacing the respondent and appoint some other person as liquidator in the interest of the creditors in the matter of M/s. St. John Freight Systems Limited, under Liquidation.
- c) Any other relief(s) as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case and thus render justice.



6.2 IA(IBC)/1228(CHE)/2022 in IA(IBC)/1095(CHE)/2022 is also an application filed by Mr. Karthikeyan, Proprietor of M.S.K Lorry Booking Office in the capacity of an Operational Creditor seeking reliefs as follows,

- a) *To permit the Applicant to file the documents mentioned in para 20 of the Application as additional documents in I.A. No. 1095 of 2022 in CP/759/IB/2018.*
- b) *To pass such further and other orders as this Hon'ble Court may deem fit an proper in the facts and circumstances of the case and thus render justice.*

6.3 It is submitted by the Learned Senior Counsel for the Applicant herein that, the Applicant is an Operational Creditor of the Corporate Debtor and has sought replacement of the Liquidator pointing out that no SCC Meeting was convened after 30.10.2021 (i.e., after 9th SCC) which is nearly for a year and that the Liquidator had not communicated anything regarding the Liquidation Process to the SCC during the above said period.

6.4 It is further submitted by the Learned Senior Counsel for the Applicant that neither Proposal A nor Proposal-C was approved by the SCC and that the liquidator has failed to honour the proposal submitted by the Suspended Director/ Promoter who was willing to offer Rs. 170 Cr under a Scheme of Arrangement under Sec 230 of Companies Act, 2013.



6.5 It is further submitted by the Learned Senior Counsel for the Applicant that in the absence of co-operation by the Liquidator the Applicant having left with no other option had approached the Hon'ble NCLAT, Chennai against the order passed by this Adjudicating Authority in MA/122/2021 dated 11.03.2022. The Hon'ble NCLAT vide its order dated 11.07.2022 had dismissed the appeal as barred by limitation.

6.6 It is further submitted by the Learned Senior Counsel for the Applicant that the Liquidator had sold the Corporate Debtor as a going Concern to the successful bidder and had obtained full and final settlement to the tune of Rs. 44.64 Crore which is less than the Liquidation Value.

6.7 The Liquidator had filed counter to the para wise submissions made by the Applicant. The Learned Counsel appearing on behalf of the Liquidator is placing his reliance upon the Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2022 wherein Rule 31A (11) prescribes that a mandate of not less than 66% of the vote of the Consultation Committee is required to replace the Liquidator that too only after recording the reasons for the same and that the Liquidator is only mandated to convene the first meeting of the consultation committee within seven days from the Liquidation Commencement date and thereafter convene meeting if necessary,

on a request made by one or more members of the consultation committee.

6.8 Heard the submissions made by both the parties. Upon perusal of the documents including the rejoinder filed, it can be seen from the Minutes of the 8th CoC meeting held on 08.10.2021 that the SCC after detailed discussion had accorded to vote on both the proposals received at that point of time. Following which the e-voting was held between 21.10.2021 to 27.10.2021. The results of the e-voting is as discussed in MA/122/2021 dated 11.03.2022, it is further submitted that another member of the SCC had sent its communication in favour of the Proposal A and Swiss Challenge Method after the closure of e-voting.

6.9 Mere perusal of IBBI (Liquidation Process) Regulations 2016, it is clear that the said regulations does not confer any power upon the Consultation Committee to apply for replacement of Liquidator unless and until the allegations made against the Liquidator is proved beyond reasonable doubt in certain exceptional cases. Even for a moment assuming that it is an exceptional case, neither the documents submitted nor from the pleadings, there is any whisper as to any resolution passed regarding change of Liquidator in the SCC. That be the case the instant application prima facie is not maintainable in law or facts.



6.10 Moreover, two financial creditors viz., M/s. Phoenix ARC Pvt. Ltd. and State Bank of India whose collective claim is of about 55.86% in the SCC had consented for sale as a going concern of the corporate debtor by way of individual affidavits dated 23.11.2022 and 25.11.2022 respectively. The same is recorded. The table showing the percentage of voting share is as extracted hereunder,

S.No.	Name of the Representatives	Individual claim amount	% of their individual claims in the SCC
1.	Phoenix ARC Private Limited Trustee of Phoenix Trust - FY16-26	1,00,68,65,665	39.22%
2.	State Bank India	42,72,90,841	16.64%
3.	IDBI Bank Limited	18,75,21,249	7.30%
4.	Indian Overseas Bank	44,47,35,924	17.32%
5.	SREI Infrastructure Finance Limited	32,81,28,927	12.78%
6.	MSK Lorry Booking Office	3,98,61,003	1.55%
7.	Thomas	9,88,11,259	3.85%
8.	Employee Provident Fund Organisation	3,41,56,114	1.33%
9.	Total	2,56,73,70,982	100%

6.11 The above referred affidavits manifest that the majority of the SCC has no issue with the Liquidator. It is seen that the application in IA(IBC)/1018/(CHE)/2022 was filed on 06.09.2022 which is well before the IBBI (Liquidation Process) (Second Amendment) Regulations 2022, dated 16.09.2022. Therefore, the Liquidator along with the SCC has decided on the sale as going concern well before 16.09.2022, and thereby the necessity to reconstitute the SCC does not arise. This be the case, the amended 31A regulation will only come into effect after such reconstitution of SCC. For a moment assuming that the Liquidator has

reconstituted the consultation committee by virtue of 31A (11) IBBI (Liquidation Process) (Second Amendment) Regulations 2022, even then a majority of 66% vote is required to replace the Liquidator. In the absence of the same in the instant matter and from the above facts and circumstances, this Adjudicating Authority is of considered view to dismiss **IA(IBC)/1095(CHE)/2022** in CP/759/IB/2018 and is accordingly rejected & disposed of. As **IA(IBC)/1228(CHE)/2022** in **IA(IBC)/1095(CHE)/2022** was filed for taking additional documents on record in IA(IBC)/1095(CHE)/2022, the same is rejected and has become infructuous and is **disposed of**.

7. **ORDER IN IA(IBC)/1094(CHE)/2022 IN CP/759/IB/2018 ALONG WITH IA(IBC)/1167(CHE)/2022 IN IA(IBC)/1094(CHE)/2022**

7.1 IA(IBC)/1094(CHE)/2022 in CP/759/IB/2018 is an application filed by Mr. Karthikeyan, Proprietor of M.S.K Lorry Booking Office in the capacity of an Operational Creditor seeking reliefs as follows,

- a) *To direct the respondent to maintain status quo till the disposal of the present application*
- b) *To set aside the sale of the Corporate Debtor as a going concern as per minutes of the stakeholders committee meeting held on 14.09.2022, the letter of intent was given to the buyer on 11.04.2022*
- c) *To direct the Liquidator to share the valuation report obtained from various valuers during the CIRP and liquidation period.*

d) Pass such further and other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice

7.2 IA(IBC)/1167(CHE)/2022 in IA(IBC)/1094(CHE)/2022 is an application filed by Mr. Karthikeyan, Proprietor of M.S.K Lorry Booking Office in the capacity of an Operational Creditor seeking reliefs as follows,

- a) To permit the Applicant to implead the proposed 2nd and 3rd respondent herein as 2nd and 3rd respondent in IA. No. 1094 of 2022 in CP/759/IB/2018*
- b) Pass such further and other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice.*

7.3 On mere perusal of the Application it is seen that the applicant has averred similar allegations against the Liquidator and the irregularities in Liquidation process as averred in IA(IBC)/1095(CHE)/2022. Not moving further, the prayer as extracted above in itself is vague and ambiguous. When there is no such order of sale of the Corporate Debtor as a going concern is passed by this Adjudicating Authority the same cannot be set aside. For a moment even if we consider the prayer, the said prayer requesting status quo cannot be entertained by this Adjudicating Authority considering the object and time mandate as prescribed by the Code and moreover no such necessity is materialized at this stage. As far as prayer (c) is concerned it shall

be discussed in IA(IBC)/922(CHE)/2022 where a similar prayer is sought by the same applicant. Accordingly, **IA(IBC)/1094(CHE)/2022** in CP/759/IB/2018 is **dismissed** as devoid of merits and is accordingly disposed of. And that **IA(IBC)/1167(CHE)/2022** in IA(IBC)/1094(CHE)/2022 becomes **infructuous** as the same was filed to implead parties in IA(IBC)/1094(CHE)/2022. Thus in view of the application in IA(IBC)/1094(CHE)/2022 being dismissed the application in IA(IBC)/1167(CHE)/2022 is also **dismissed and disposed of**.

8. **ORDER IN IA(IBC)/922(CHE)/2022 IN CP/759/IB/2018**

8.1 IA(IBC)/922(CHE)/2022 in CP/759/IB/2018 is also an application filed by Mr. Karthikeyan, Proprietor of M.S.K Lorry Booking Office in the capacity of an Operational Creditor seeking reliefs as follows,

- a) *To direct the Respondent to inform the Stakeholder Committee including the Applicant who is one of the member of the Stakeholder Committee regarding the status of the assets of the Company under Liquidation and also at every stage of the sale process and*
- b) *To direct the Liquidator to share valuation report received during CoC and SCC Meeting.*
- c) *To direct the Liquidator to share how the Swiss Challenge was conducted, how many bidders participated with details, whether public or private announcements were made before conducting this challenge*

d) Pass such further and other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice.

8.2 In the back drop of the facts recorded above and on perusal of the Application along with its reply, rejoinder and documents filed with this Adjudicating Authority, it is found that the Liquidator as and when required had convened the SCC meeting and has brought things before the SCC and has also filed regular status report before this Adjudicating Authority. Not protracting further, considering the memo submitted by the Liquidator in IA(IBC)/1018(CHE)/2022 in relation to the process carried out by him regarding the communication about the Swiss Challenge Method to the prospective applicants, it is evident that the Liquidator has sent communications to those who had envisaged their interest including to those who came after the prescribed time limit. The same is as extracted hereunder,

Description of E-Mail	Mail sent to Prospective Buyer intimating the Swiss Challenge will be conducted on 28th March 2022 Annexure-1 Collectively	Mail sent to the Prospective Bidders indicating the Venue of Swiss Challenge Annexure-2 Collectively	Mail sent to the Prospective Buyers indicating the Swiss Challenge will be conducted on later date due to request for time to submit EMD by Couple of Prospective Bidders Annexure-3 Collectively	Mail sent to the Prospective Buyers indicating the Swiss Challenge will be conducted on 06-04-2022 Annexure-4 Collectively
Prospective Buyers				
Global Corp Logistics LLC	16.03.2022	23.03.2022	26.03.2022	30.03.2022
Janaki Traders	16.03.2022	23.03.2022	26.03.2022	30.03.2022
Bollere Transport & Logistics	16.03.2022	23.03.2022	26.03.2022	30.03.2022
Orissa Stevedores Private Limited	16.03.2022	23.03.2022	26.03.2022	30.03.2022
VKS & PKS Family Trust	16.03.2022	23.03.2022	26.03.2022	30.03.2022
Mr. Jackson	16.03.2022	23.03.2022	26.03.2022	30.03.2022
Galaxy Freight System Limited	16.03.2022	23.03.2022	26.03.2022	30.03.2022

In view of the facts and circumstances, we do not deem it fit to discuss further as the issues which are in present application were dealt with and disposed of in the earlier applications. Thus as a consequence **IA/922(IBC)/CHE/2022** seems to be redundant and is accordingly **dismissed** and disposed off.

9. ORDER IN MA/20/2022 IN CP/759/IB/2018

9.1 MA/20/2022 in CP/759/IB/2018 is an application filed by Mr. G.V.R.S Manian, in the capacity of a Financial Creditor seeking reliefs as follows,

- a) *To grant an order of interim stay against all further proceedings in the ongoing liquidation process, during the pendency of the present application;*
- b) *To direct that a fresh valuation (including an enterprises valuation) of the corporate debtor be conducted in accordance with regulation 35 of the IBBI (Liquidation Process) Regulations, 2016. The companies (Registered valuers and valuation) Rules, 2017, the applicable valuation standards and other applicable laws in force;*
- c) *Direct the consequent steps be taken to maximize the value of the proposals based on the revised valuation, and to fully realize the value of the assets of the corporate debtor;*
- d) *Declare that all proceedings before the illegally constituted stakeholders' consultation committee with a duly nominated representative of unsecured financial creditors;*
- e) *Direct that the respondent liquidator be replaced with an eligible insolvency professional, in accordance with law; and*
- f) *Pass any further or other order in the interests of justice, equity and good conscience.*

9.2 On mere perusal of the Application filed in MA/20/2022 it can be seen that the submissions as made by the applicant seems to be of no relevance at this stage of Liquidation. The averments made in the said application are frivolous without any supportive nature and seem to have been made with an intention to stall the Liquidation process. Thus, this Adjudicating Authority deems it fit to **dismiss** the application **MA/20/2022**.

10. In our Considered view IA(IBC)/1095(CHE)/2022;
IA(IBC)/1228(CHE)/2022; IA(IBC)/1094(CHE)/2022;
IA(IBC)/1167(CHE)/2022; IA(IBC)922(CHE)/2022; MA/20/2022
sans merit. It is observed that many frivolous and malicious applications are filed before this Adjudicating Authority whenever a "Resolution Plan" or a "Sale as a going concern" application is put up for approval just to delay the entire process and clog the board of this Adjudicating Authority. Such kind of Interim Applications are filed by the Ex-Promoters or the Operational Creditors acting for and on behalf of the Suspended Directors, dissenting creditors raising non-issue in the process and thereby causing hindrance and delay in the justice delivered. These kind of practices are to be strictly denounced as considerable time of this Adjudicating Authority is spent hearing these applications. Since each of the IA requires a reply and rejoinder to be filed coupled with detailed hearing considering considerable judicial time. To denounce the

conduct of the Applicant in AI(IBC)/1095(CHE)/2022;
IA(IBC)/1228(CHE)/2022; IA(IBC)/1094(CHE)/2022;
IA(IBC)/1167(CHE)/2022; IA(IBC)/922(CHE)/2022; MA/20/2022.
We hereby levy a cost of **Rs. 2,00,000/-** for each of the
**Interim Applications filed by Mr. Karthikeyan and Mr.
G.V.R.S. Manian.**

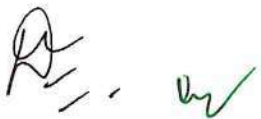
11. ORDER IN IA(IBC)/1018(CHE)/2022 IN CP/759/IB/2018

The Application in IA(IBC)/1018(CHE)/2022 in CP/759/IB/2018 is an upshot of the order dated 11.03.2022 passed by this Adjudicating Authority in MA/122/2021 in CP/759/IB/2018 seeking relief as follows,

- a) *Approve the sale of the corporate debtor as a going concern subject to the terms contemplated in the draft purchase agreement annexed herewith and permit the Applicant to execute the draft purchase agreement so as to give effect to the proposed sale of the corporate debtor as a going concern as per the terms set out therein;*
- b) *Approve the aforesaid sale of Corporate Debtor without its dissolution;*
- c) *That the order be passed that after distribution of the proceeds of the sale of the Corporate Debtor as a going concern as per order of priority provided in section 53 of the insolvency and bankruptcy code, 2016, the remaining unpaid outstanding liabilities of the Corporate Debtor shall be extinguished against the corporate debtor, and any claims including that by financial creditor,*

operational creditors and statutory dues etc, be satisfied out of the liquidation estate comprising of the excluded assets;

- d) Direct the extinguishment of the current equity shares and any outstanding shares issuable to the current promoters, if any, of the corporate debtor and the issuance and allotment of fresh equity shares to the respondent/ purchaser as per the terms of the Draft Purchase Agreement;*
- e) Direct that the nominees of the Respondent/ Purchaser be appointed as the newly constituted Board of Directors of the Corporate Debtor;*
- f) Direct that the Corporate Debtor shall no longer be 'in liquidation' and all relevant authorities shall change the status of the Corporate Debtor such that it is no longer shown to be subject to liquidation proceedings;*
- g) Declare that the excluded assets as specified in Schedule 1 and identified assets as specified under Clause 1.1 of the Draft Purchase Agreement which are held in the name of the corporate debtor shall constitute the liquidation estate of the corporate debtor and shall be held in trust under the sole trusteeship of the Applicant herein for the benefit of the Liquidation Estate of the corporate debtor and shall be held in trust under the sole trusteeship of the Applicant herein for the benefit of the Liquidation estate of the corporate debtor and shall be dealt with as per the terms of the Draft Purchase Agreement which is approved by this Hon'ble Tribunal;*
- h) Declare that the applicant shall be permitted to continue to prosecute the pending claims as referred to herein above and apply any amounts realised therefrom towards settlement of all stakeholders under section 53 of the code;*



- i) *Direct any licensing or other statutory authority governing the business of the corporate debtor to recognise and give effect to the sale of the corporate debtor as a going concern as approved by the Adjudicating Authority and refrain from cancellation of any licenses on account of such sale; and*
- j) *Pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*

Before venturing into the instant application, the brief description about the purchaser herein is as follows,

Global Corp Logistics LLC is a limited liability Company having its identification number as 1/07054/6 incorporated in the Sultanate of Oman, initially it was this Company whose offer was fixed as base price for the Swiss Challenge method and thereafter vide letter dated 20.06.2022 it was communicated to the Liquidator that in the interest of time and speedy transaction they have decided to proceed with its associated Indian entity GC Logistics (India) Pvt. Ltd. with CIN - U61100TZ2021PTC037590 assigning its rights obligations. The same was accepted by the Liquidator. Therefore, the purchaser herein is GC Logistics (India) Pvt. Ltd.

11.1 It is submitted by the Learned Counsel for the Liquidator that, the Liquidator was allowed to fix Proposal -A as base price and accordingly adopt Swiss Challenge Method including the proposals received after the specified timeline considering the



fact of maximization of the value of the Corporate Debtor vide order dated 11.03.2022 in MA/122/2021.

11.2 It is further submitted by the Learned Counsel for the Liquidator that pursuant to the above refereed order to conduct a Swiss Challenge Auction, the Applicant had issued a Process Document (Annexure 22) to all prospective applicants on 16.03.2022 specifying the timelines for completion of the Swiss Challenge auction and the requirements of Earnest Money Deposit ('EMD') to the extent of 10% of the proposed offer price within 7 days. The meeting to conduct the Swiss Challenge Auction was fixed on 28.03.2022 but was then rescheduled to 06.04.2022 owing to the request made by the prospective bidders to submit EMD. Despite the said extension only one of the prospective bidder viz., Global Corp Logistics LLC (base bidder) was able to submit its proposal along with a bank guarantee for EMD - Therefore, in the absence of any other challengers, the proposal submitted by Global Corp Logistics LLC was accepted by the Applicant as the best bid subject to the terms set out in the minutes of the said meeting (Annexure 25).

11.3 It is submitted by the Learned Counsel for the Liquidator that the proposal submitted by the Global Corp Logistics LLC on 06. 10.2021 (Annexure 26) originally contemplated



purchase of the *business of the Corporate Debtor as a going concern* and that on the basis of the said proposal, the Liquidator had issued a Letter of Intent dated 11.04.2022 (Annexure 27) to Global Corp Logistics LIC stating that the offer to purchase the business and assets of the Corporate Debtor as a going concern has been accepted. In response thereto, by letter dated 22.04.2022, Global Corp Logistics LLC communicated its willingness to proceed with the purchase of the business of the Corporate Debtor as a going concern. It is further submitted that the Global Corp Logistics LLC had decided to nominate the Respondent / Purchaser, being the 100% subsidiary of Global Corp Logistics LLC, herein to purchase the business of the Corporate Debtor as a going concern. The same was communicated vide letter dated 20.06.2022 (Annexure-28).

11.4 It is further submitted by the Learned Counsel for the Liquidator that during the course of conducting due diligence, deliberations were made considering the interest of the Corporate Debtor that *the proposal submitted by Global Corp Logistics LLC on 06.10.2021 be treated as one for purchase of the Corporate Debtor as a going concern rather than one for purchase of the business of the Corporate Debtor as a going concern.* It is further submitted that the said deliberation came up solely considering the business nature of the Corporate Debtor which is a freight transportation services which requires numerous licenses, permits, approvals,

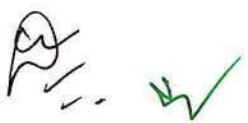
memberships, etc. The Liquidator has further submitted that if only the business of the Corporate Debtor is to be purchased as a going concern as originally contemplated, it would necessitate the transfer and / or change of these licenses, permits, and approvals from the Corporate Debtor to that of the Respondent / Purchaser. Therefore, in order to revive the Corporate Debtor with a smooth transition in the management with minimal disruption to the business activities of the Corporate Debtor, it is proposed that the Corporate Debtor be sold as a going concern.

11.5 It is submitted by the Learned Counsel for the Liquidator that a Draft Purchase Agreement (Annexure 30) mutually agreed between by the Applicant and the Respondent / Purchaser has been herewith placed before this Adjudicating Authority for its consideration and approval. As per the terms of the said Draft Purchase Agreement, the Respondent / Purchaser proposes to acquire the Corporate Debtor as a going concern against payment of consideration of Rs 44.64 crore as against the liquidation value of Rs 54.81 crore.

11.6 It is further submitted by the Learned Counsel for the Liquidator that certain assets as set out in Schedule 1 of the Draft Purchase Agreement stands excluded from the proposed sale of the Corporate Debtor as a going concern and will continue to be held in

the name of the Corporate Debtor in trust for the Liquidation Estate of the Corporate Debtor under the sole trusteeship of the Liquidator. The Draft Purchase Agreement contemplates the sale of these excluded assets within 9 months from the date of approval of the instant application by the Liquidator. As per Clause 7 of the Draft Purchase Agreement, if such assets cannot be sold within 9 months from the date of approval of the present application or a further period of 3 months as contemplated therein, the Liquidator will assign or transfer such assets to a third-party against consideration and such consideration shall form part of the Liquidation Estate of the Corporate Debtor and shall be distributed as per section 53 of the IBC and no part thereof shall be applied for the benefit of the Corporate Debtor.

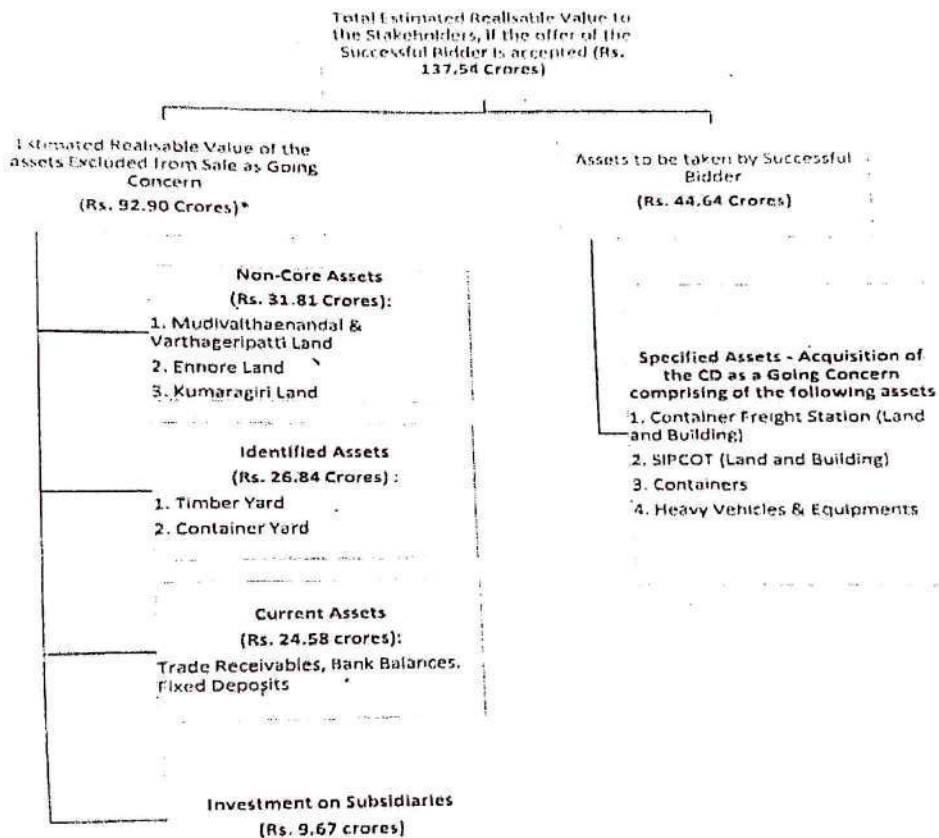
11.7 It is further submitted that, the Draft Purchase Agreement has contemplated certain "identified assets" which do not form part of the *sale of the Corporate Debtor as a going concern* but which, if not sold by the Applicant within 9 months from the approval of the present application, would be subject to an option (not obligation) to be exercised by the Respondent / Purchaser to purchase the said "identified assets" at the specified price of Rs 7.02 crores. Subject to the present transaction being approved by the Hon'ble Tribunal, the liquidation estate would comprise of the consideration of Rs. 44.64 Crore being paid by the



Respondent, the Excluded assets set out under Schedule 1 of the Draft Purchase Agreement, and the Identified Assets as set out under Clause 1.1(21) of the Draft Purchase Agreement and all claims including that of the financial creditors, operational creditors and statutory authorities etc. would be only against such assets. The Schematic Flow describing the assets which would be sold to the purchaser and the assets kept under the sole trusteeship of the Liquidator is as extracted hereunder,

St John Freight Systems Limited


Schematic Flow of Sale



Note : *For the assets excluded, the estimated realisation value is taken as Liquidation Value

11.8 It is further submitted by the Learned Counsel for the Liquidator that the proposed sale of the Corporate Debtor as a going concern represents the best prospect of revival of the Corporate Debtor and maintaining it as a going concern which will continue to provide gainful employment to 320 direct employees and 220 indirect / contract / seasonal employees. The Corporate Debtor has been maintained as a going concern throughout the CIRP and the liquidation process and has been operating with a satisfactory business performance (Annexure 29). And that the Corporate Debtor has the potential to be revived and carry on its operations with minimal hindrance under the new management of the Respondent / Purchaser.

11.9 It is further submitted that, as mentioned hereinabove, the Corporate Debtor is engaged in the service industry of freight transportation and therefore sale of the company as a going concern represents the best option for maximization of value as opposed to selling the assets of the Corporate Debtor individually on a piecemeal basis. The licenses, permits, and approvals held by the Corporate Debtor are essential in the freight transportation industry and therefore central to its business activities. Without such licenses, permits, and approvals, it will not be possible for the Corporate Debtor to carry on as a going concern.



11.10 The sale of the Corporate Debtor as a going concern allows the proposed new management of the company to enjoy the benefit of such licenses, permits, and approvals which are necessary in the freight transportation industry. As such, the present application is made bona fide in the best interests of all stakeholders so as to enable the continuation of the Corporate Debtor as a going concern.

11.11 It is submitted that the Applicant, in his capacity as the Liquidator of the Corporate Debtor, has preferred certain applications including money claims (Pending Claims) under section 66 etc., against the ex-promoters of the Corporate Debtor and other third parties which shall continue to form a part of the Liquidation Estate of the Corporate Debtor and shall be distributed to the stakeholders in accordance with section 53 of the Code.

12. Ld. Senior Counsel Mr. Prakash appeared on behalf of the Applicant Mr. Karthikeyan. The two-fold submissions made by the Ld. Sr. Counsel were more of objections to the proposed sale as going concern approval. Firstly, on the order in MA/122/2021 dated 11.03.2022 passed by this Adjudicating Authority. Secondly, on the conduct of the process regarding the Swiss challenge method in compliance to the order dated 11.03.2022. In response

to the first submission, during the course of hearing it was explained by the bench that the appeal preferred against the order dated 11.03.2022 was dismissed by the Hon'ble NCLAT and that it was also confirmed that no appeal before the Hon'ble Supreme Court is also pending. As such, it is evident that the order dated 11.03.2022 has attained finality.

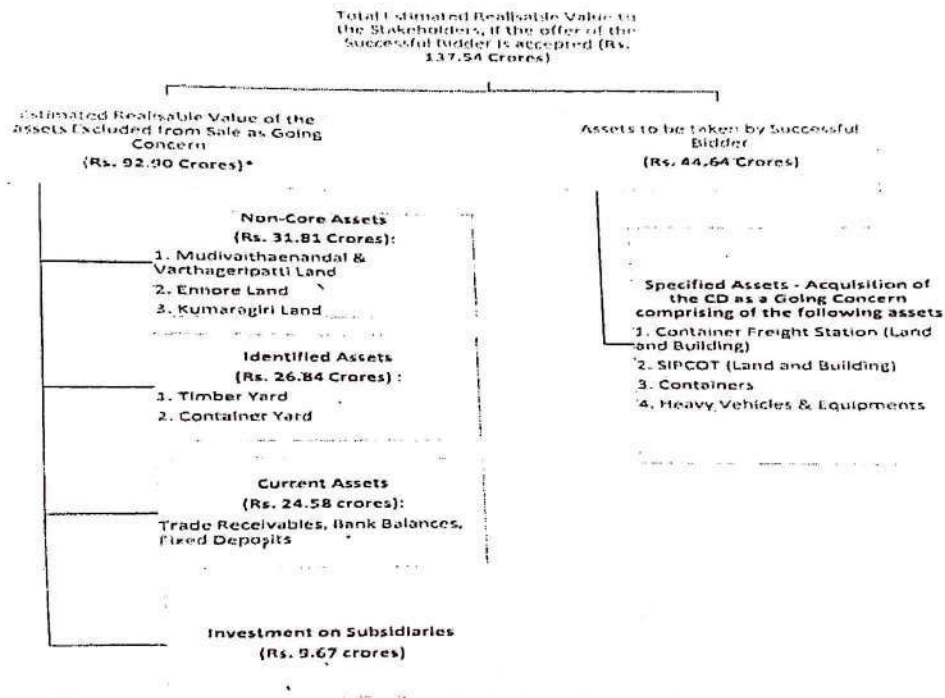
13. As regards to the second submission, this Adjudicating Authority requested the Ld. Sr. Counsel Mr. Prakash to be present during the course of Physical hearing on 08.12.2022 when the Ld. Counsel for the Liquidator presented the proceeds under the Swiss challenge method post the order dated 11.03.2022 in detail. All the documents were shown to the bench by the Counsel for the Liquidator; Ld. Sr. Counsel Mr. Prakash was given an opportunity to go through the entire process as submitted by the Liquidator. Thereafter, before concluding the hearing a question was posted by this Bench to Ld. Sr. Counsel Mr. Prakash asking his opinion regarding the conduct of the entire process. In reply Ld. Sr. Counsel was not in a position to find any fault in the conduct of the process as convened by the Liquidator.

14. Heard the submissions made by the Learned Counsel for the Liquidator and perused the documents on record. On mere perusal

of the application it is seen that the Liquidator has filed the instant application seeking approval of the sale of the Corporate Debtor as a going concern. On fine perusal of regulation 32A of IBBI (Liquidation Process) Regulations, 2016 it can be seen that the Regulation empowers the Liquidator to first attempt the sale of the Corporate Debtor as going concern or the business of the Corporate Debtor as a going concern if the Committee of Creditors has so recommended or where the Liquidator is of such opinion by himself for the best interest of the Corporate Debtor.

15. The term '*going concern*' shall include the assets and liabilities of the Corporate Debtor as identified by the CoC under sub-regulation (2) of regulation 39C of the IBBI (CIRP) Regulations, 2016 where it is seen that when the CoC recommends sale of the Corporate Debtor as a going concern, it shall identify and group the assets and liabilities, which according to its commercial considerations ought to be sold as a going concern. And that if the CoC has failed to do the same during the CIRP stage the Liquidator shall identify and groups the assets and liabilities in consultation with the Consultation Committee for the sale of the Corporate Debtor as a going concern. The assets grouped for the purpose of this sale is as extracted hereunder,






Note : *For the assets excluded, the estimated realisation value is taken as Liquidation Value

In view of the same, the assets and liabilities have been grouped as above on mutual terms with the successful bidder/purchaser and the Liquidator, the Liquidator herein has approached this Adjudicating Authority for approval of the said sale of the Corporate Debtor as a going concern in terms of the draft purchase agreement submitted along with the application.

16. Be that as it may, the concept of sale of the Corporate Debtor as a going concern shall mean both assets and liabilities of the Corporate Debtor as understood from the provisions which is to be understood as "as is where is basis". Considering the present

proposal and the order passed by Hon'ble NCLAT in the matter of M/s. Visisth Services Ltd. Vs. Mr. S. V. Ramani, Liquidator of United Chloro-Paraffins Pvt. Ltd. Company Appeal (AT) (Ins) No. 896 of 2020 where it is held that as per Regulation 32A of the IBBI (Liquidation Process) Regulations, 2016 the sale of a 'Going Concern' means sale of assets as well as its liabilities and not assets sans liabilities. As far as the instant sale of the Corporate Debtor as a going concern with reference to the Draft Purchase Agreement is considered, the 'as is where is basis' shall be applied to such assets of the Corporate Debtor along with its liabilities excluding Part A of Schedule 1(Excluded Assets) and Part B of Schedule 1 (Identified Assets) which shall form part to the sole trusteeship of the Liquidator.

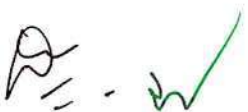
17. At this juncture, considering the business nature, MSME Status and the employees (since it is functioning unit) of the Corporate Debtor it is necessary to pave way for the smooth revival of the Corporate Debtor. And more particularly the schematic flow of the sale as extracted above in para 15 shows that the Non-Core Assets are located at different parts of the state which would quite in turn take some time to liquidate and realise. This proposal at this point of time seems to be conceivable in the eyes of this Adjudicating Authority anticipating few pennies in the hands of the creditors immediately and the remaining from the



excluded assets in the near future. Thus, we are satisfied as regards the sale of the Corporate Debtor as a going concern to GC Logistics (India) Private Limited (the purchaser) and that we deem it fit to **Approve** the Sale of the Corporate Debtor as a going Concern and considering the same it is hereby ordered that the Corporate Debtor shall not be dissolved and that the existing shares of the Corporate Debtor shall stand extinguished.

18. **WE DO FURTHER ORDER THAT**

- a) The status of the Corporate Debtor be changed from "*in liquidation*" to "*Active*" in the records of the Registrar of Companies subject to the purchaser filling the necessary forms along with a copy of this order.
- b) That any licencing or other statutory authorities governing the business of the Corporate Debtor is hereby directed to recognise and give effect to the sale of the Corporate Debtor as a going concern in a way not terminating any of its licenses subject to its compliances as envisaged under respective regulations.
- c) That a Sole Trusteeship appointing the Liquidator **Mr. R. Venkatakrisnan** as the trustee is hereby ordered to be constituted to deal with the assets as specified in the Draft Purchase Agreement under Part A of Schedule 1 (Excluded Assets) and Part B of Schedule 1 (Identified Assets).
- d) The Applicant/Liquidator is hereby permitted to continue and prosecute the list of pending claims as referred in the application and shall endeavour to recover such amount be realised towards the settlement of the stakeholders as per section 53 of the Code.
- e) That after distribution of the proceeds of the sale as per section 53 of the code, the remaining unpaid outstanding liabilities of the Corporate Debtor shall stand extinguished against the Present purchaser and that the claims shall be



satisfied realising the excluded assets and shall deal with in accordance with law and this Order.

- f) And that the assets as specified in Part A of Schedule 1(Excluded Assets) and Part B of Schedule 1 (Identified Assets) of the Draft Purchase Agreement shall remain in the name of the Corporate Debtor and shall constitute the Liquidation estate which shall be maintained by the trust under the sole trusteeship of the Liquidator, such excluded assets then be disposed of/dealt with in a manner as specified in terms mentioned above.
- g) With respect to the averments as recorded under para 11.7 above, it is hereby ordered that such purchase of the identified assets by the purchaser herein to the specified price of Rs. 7.2 Crore is to be the minimum price subject to the market conditions on the date of purchase.
- h) The Liquidator is hereby directed to submit status report on completion of 90 days from the date of this order as to the status of the assets left in the trust.

19. Dehors, the reliefs granted as above the purchaser is at liberty to file necessary application before the appropriate forum/ authority in order to avail the necessary relief and concessions if in accordance with law in view of the decision of the Hon'ble Supreme Court of India in the matter of Embassy Property Developments Pvt. Ltd. – Vs- State of Karnataka & Ors. (2020) 13 SCC 308.

20. Thus, the Application filed by the Liquidator for sale of the Corporate Debtor as a going concern stands **Allowed**. With this approval the Liquidator is hereby directed to disburse the consideration paid by the purchaser as per section 53 of IBC, 2016 and further expedite the process of disposal of excluded assets and

also pursue necessary applications against various parties for recovery if any.

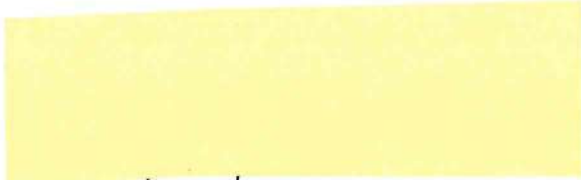
21. The Regional Director (Southern Region), Ministry of Corporate Affairs is hereby directed to look into possibilities of allotting a new CIN number to the Companies revived/Purchased from CIRP/Liquidation in order to create a fresh start easing all its practical difficulties.

22. With the above said directions, IA(IBC)/1018/(CHE)/2022 in CP/759/IB/2018 stands **Allowed** and disposed of.

23. Post IA(IBC)/1095(CHE)/2022; IA(IBC)/1228(CHE)/2022;
IA(IBC)/1094(CHE)/2022; IA(IBC)/1167(CHE)/2022;
IA(IBC)/922(CHE)/2022; MA/20/2022 on **16.02.2023** for **compliance.**



SAMEER KAKAR
MEMBER (TECHNICAL)



DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

Mohanapriya