

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)**

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 10.04.2023 AT 10.30 AM**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP(IB)/ 27/7/AMR/2020	Main Case	7 of IBC	State Bank of India Vs Prathyusha Resources & Infra pvt Ltd
	IA (IBC)/82/2023	60(5) of IBC	M/s. Pism Ventures LLP, Successful Bidder Vs. Sri K. Siva Lingam, Liquidator

ORDER

IA (IBC)/82/2023:

Ms. D. Achala Siri, Counsel for the Applicant present. Mr.Sridhar, Counsel for the Respondent present. Orders pronounced. IA(IBC)/82/2023 is allowed, vide separate orders.

Sd/-
**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

RSN

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI**

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**IA(IBC)/82/2023
IN
CP (IB)/27/7/AMR/2020**

**Under Section 60 (5) of Insolvency and Bankruptcy Code, 2016 Read
with Regulation 32A of IBBI (Liquidation Process) Regulations, 2016
and Rule 11 of NLCT Rules, 2015**

**In the matter of
M/s. PRATHYUSHA RESOURCES & INFRA PVT LTD**

Between:

M/s.Prism Ventures LLP
A Limited Liability Partnership Firm,
Registered Office at D-44, Phase-IV Extension,
IDA Jeedimetla, Gajularamaram, Hyderabad -500055
Represented by its Designated Partner,
Balaji Nagabushanam Tammineedi

.....Applicant/Successful Bidder

And

Mr.K.Sivalingam,
Liquidator for M/s. Prathyusha Resources & Infra Pvt Ltd.,
O/o. Flat No.1603, Tulive Horizon Residencies,
Arunachalam Road, Saligramam,
Chennai, TN -600093

.... Respondent/Liquidator

Date of Pronouncement of Order: 10.04.2023

CORAM:

Justice Telaprolu Rajani, Member Judicial

Appearance:

For Applicant : Ms. D.Achala Siri, Advocate.
For Respondent : Mr.M.Sridhar, Advocate

ORDER

Per: Justice Telaprolu Rajani, Member Judicial

1. This is an Application filed by the Applicant/Successful Bidder under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 Read with Regulation 32A of IBBI (Liquidation Process) Regulations, 2016 and Rule 11 of NCLT Rules, 2016 seeking following reliefs:
 - a. *That from the date of issuance of the Certificate of Sale i.e., 23.12.2022 (“Execution Date”), the applicant had acquired all rights, title and interest in the whole and every part of the Corporate Debtor, including but not limited to contracts, intellectual property rights etc., free from charges, encumbrances, security interest, claims, counter claims or any demur; and the sale consideration paid shall be distributed by the Respondent/ Liquidator in terms of Section 53 of the IBC.*
 - b. *That from the Execution Date, the applicant acquired and vested with the right, title and interest in all the assets of the Corporate Debtor free and clear of all encumbrances, which includes the properties (whether freehold, leasehold or licence basis), movable and immovable, fixed, operating and non-operating in nature except for the Non-Readily Realisable Assets (“NRRAs”) and certain assets not forming part of liquidation estate as mentioned in Annexure-1 of the Certificate of Sale.*
 - c. *That 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 Statutory/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 sources, goods and service tax, custom duty, value added tax, service tax, wealth tax, cess, DGFT dues, etc.) whether direct or indirect, whether admitted or not due to contingent or overdue, asserted or unasserted, crystallized or uncrystallized, known or unknown, secured or unsecured, disputed or undisputed in relation to any period prior to the Execution Date shall be written off in full and shall stand permanently extinguished;

- d. *That the Corporate debtor shall not be held responsible/liable for any liabilities arising out of or relating to enquiries, investigations, assessments, notices, criminal cases, civil cases, suits, claims, disputes, litigations, arbitrations or other judicial, regulatory administrative proceedings or in relation to or in connection with the Corporate Debtor pending or threatened, present or future, during any period prior to Execution Date;*
- e. *That all financial and pecuniary liabilities and guarantees of the Corporate Debtor, including without limitation, whether monetary or non-monetary, statutory, crystallised , claimed or not claimed, admitted or not admitted, disputed or undisputed, confirmed or contingent or due or overdue or future due, decrees obtained for satisfaction of debt, any penalty, interest, fines or fees and any other liabilities and/or obligations which may have a financial impact in relation to any period prior to Execution Date shall stand to be extinguished;*
- f. *That any non-compliance of provisions of any laws, rules regulations, directions, notifications, circulars, guidelines, policies, licenses, approvals, consents or permissions by the Corporate Debtor prior to the Execution Date shall stand to be extinguished , regularised and/or compounded without imposition of any penalty, fees, etc., as applicable to the appropriate case;*

- g. *That all the liabilities of the Corporate Debtor in relation to the employees, workers, either in full time employment or contractual, including, but not limited to, the dues with respect to the Salaries and Wages, Employee State Insurance, Provident Fund, Gratuity etc., shall stand extinguished from the Execution Date;*
- h. *That the Corporate Debtor shall have a right to review and terminate any contract that was entered into prior to the Execution Date without any penalty, charges, fees, fines, liabilities and damages arising out of or in relation thereto;*
- i. *That all the existing shares and the rights and claims of the existing shareholders, whether Equity or Preference, of the Corporate Debtor shall stand extinguished from the Execution Date, without any consideration or recourse to rights and liabilities arising out of or in relation to such extinguishment of the share capital;*
- j. *To permit the Applicant to adjust the sale consideration paid as per the Certificate of Sale dated 23.12.2022 in the following manner: (i) Rs.1,00,000/- (Rupees One Lakh Only) by way of investment into the equity shares of the Corporate Debtor; and (ii) the balance amount of Rs.2,99,00,000/-(Rupees Two Crores Ninety Nine Lakhs only) in the form Unsecured Loan;*
- k. *That from the Execution date, the Board of Directors of the Corporate Debtor be reconstituted as per the Companies Act, 2013 and that the following individuals be permitted to act as Directors of the Corporate Debtor duly appointed under the provisions of the Companies Act, 2013, and direct the Registrar of Companies to do all such acts, deeds and things that are necessary to appoint the following individuals as directors of the Corporate Debtor, who are individuals recommended by the Applicant, in order to enable the Corporate Debtor to file relevant returns required by applicable law;*

Name of the Proposed Directors	DIN
1. Balaji Nagabhushanam Tammineedi	00127833
2. Sailaja Tammineedi	00127831

- l. That all subsisting consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled shall, notwithstanding any provision to the contrary in their terms and irrespective of the commencement of the insolvency/liquidation proceedings under the Code, in relation to the Corporate Debtor be deemed to continue without disruption, for the benefit of the Corporate Debtor for a period of twelve (12) months form the Execution Date or until such date as renewed by the relevant authorities, whichever is later;*
- m. That the Corporate Debtor shall be deemed to be eligible from the Execution Date to receive all consents, licenses, exemptions, approvals, rights, entitlements, extensions, waivers, benefits, and privileges whether under law, contract, lease or license, which includes without limitation, permission for change of land use by the concerned Governmental and/or Regulatory Authorities as may be required to be made available to the Corporate Debtor;*
- n. That all claims of the Corporate Debtor against third parties and its related parties, shall remain outstanding, due and recoverable in accordance with their respective terms and the new management of the Corporate Debtor shall have full right to recover/proceed against such party to safeguard the right, title and interest of the Corporate Debtor acquired under the Certificate of Sale dated 23.12.2022;*
- o. Pass an order directing the Respondent No.1/Liquidator to cooperate with and provide all necessary support and assistance to the Applicant for smooth implementation of sale of Corporate Debtor as a going concern, including but*

not limited to perfecting/amending/modifying/creating the land records in relation to all parcels of land, the immovable properties and other assets belonging to the Corporate Debtor.

- p. Pass an order directing the respondent/Liquidator to immediately, write off/write back all the liabilities of the Corporate Debtor, including creditors, term loans, working capital loans, tax liabilities, other statutory liabilities etc., which are not payable and reflect the total liabilities at the amount of the consideration (as reduced by the amount of insolvency resolution process costs and the liquidation costs) determined in the auction;*
- q. Pass and order directing the Respondent No.1/Liquidator that all the compliances for the period up to the Execution Date including filing of necessary documents and returns with the Registrar of Companies, Income Tax Authorities and any other Government Authorities should be completed;*
- r. That the Corporate Debtor shall be allowed to participate in auction sale/tenders/offers/proposals of all departments/authorities/public sector undertakings for a period of 3 (Three) years from the execution date without having to submit the details on the past revenue, past performance, profitability records, net worth etc.,*
- s. That the Corporate Debtor shall be entitled to all the benefits under the new GST regime on retrospective basis and the status of the Corporate Debtor be reinstated without imposing any fees/penalties, if such benefits were lapsed/ineligible due to non-maintenance of requisite record or non-filing of the returns by the Corporate Debtor prior to the Execution Date;*
- t. That the Registrar of Companies shall waive off all penalties for non-compliances by the erstwhile management and to allow the new management of the Corporate Debtor*

to file the old records such as Balance Sheets, Annual Reports, other Returns etc., without any penalty;

- u. Pass an order directing the Registrar of Companies to change the status of the Corporate Debtor in ROC records from 'under liquidation' to 'active' with immediate effect.*
- v. That any bond, surety, guarantee, power of attorney, undertaking issued by the Corporate Debtor to any person, either in India or outside India prior to the Execution Date shall stand cancelled and permanently revoked;*
- w. That Sale of the Corporate Debtor as a going concern shall be binding on all stakeholders including the utility providers such as electricity, gas, water, etc., and all the utility providers shall continue to supply the utilities as may be required for survival of the Corporate Debtor."*

2. The brief facts of the Application are:

- i. The Company Petition i.e., CP (IB)/27/7/AMR/2020 was filed under section 7 of the Insolvency and Bankruptcy Code, 2016 by **State Bank of India (Financial Creditor)** (in short **FC**) to initiate the Corporate Insolvency Resolution Process (CIRP) against **Prathyusha Resources & Infra Pvt Ltd (Corporate Debtor)** (in short **CD**) for the default committed in discharging the debt and was admitted by the Hon'ble Tribunal vide its order dated 03.11.2021. Mr. K.Sivalingam (Respondent herein), appointed as Interim Resolution Professional (IRP) to take charge of the CD and to take necessary steps in furtherance of the CIRP. Despite publications of Expression of Interest (EoI) inviting Prospective Resolution Applicants (PRAs) for submission of resolution plan, no resolution plans were received.

- ii. In the 5th Committee of Creditors (“CoC”) Meeting held on 03.03.2022, the CoC resolved to liquidate the CD. In the 6th CoC meeting held on 14.03.2022, the CoC recommended to the respondent to sell the CD as a going concern in the manner envisaged under Regulation 39C of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- iii. Considering the recommendations of the CoC, the respondent filed an application bearing I.A.No.60/2022 in the present CP, seeking orders for Liquidation of Corporate Debtor and the same was allowed by this Tribunal vide order dated 04.07.2022 and the Respondent herein was appointed as liquidator.
- iv. In pursuance of the order dated 04.07.2022, the respondent issued sale notice on 30.09.2022 and subsequently on 30.09.2022 Revised Invitation to submit Expression of Interest (EoI) for the CD (“Revised EoI) inviting EoI from prospective bidders to participate in the E-auction sale process in consonance with Regulation 32 and Regulation 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 (“Liquidation Regulations”.)
- v. The prospective bidders were directed to bid an amount of minimum Rs.3 Crores, it being the reserve price stipulated under Heading IV of the Revised EoI for the assets forming part of Liquidation Estate for acquiring the Corporate Debtors as a going concern. However, certain immovable properties which are

charged with the Indian Bank and certain actionable claims arising out of dispute with Orissa Steel Expressway Private Limited were not included as a part of the liquidation estate. Therefore, the E-Auction was held on "AS IS WHERE IS, AS IS WHAT IS WHATEVER THERE IS AND WITHOUT RECOURSE BASIS" for all assets, except for certain assets not forming part of Liquidation estate as mention in Appendix-A to the Revised EoI.

vi. The Applicant being interested in purchasing the CD, submitted the Earnest Money Deposit (EMD) of Rs.5,00,00/- and thereafter, offered its bid price of Rs.3,00,00,000/- towards full and final consideration for acquiring CD as a going concern. Being the sole bidder, the applicant was declared the successful bidder vide Letter of Internet dated 24.11.2022, where under, the EMD deposited by the applicant was considered as the 1st Instalment of sale consideration and the balance amount of Rs.2,95,00,000/- was directed to be paid within 90 (ninety) days from the date of issuance of the LoI. e

vii. *Clause 4 of the said LoI is relevant and is extracted hereunder:*

"The Liquidator agrees that simultaneously upon payment of Sale Consideration and any applicable taxes, if any, the Liquidator shall execute a Certificate of Sale, listing all the assets, except for certain assets not forming part of Liquidation Estate as mentioned in Appendix A, in your favour, certifying the sale of the Company as a going concern on a AS IS WHERE IS, AS IS WHAT IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS except for certain assets not forming part of

*Liquidation Estate as mentioned in Appendix A, without any representations and warranties on the part of the Liquidator for any encumbrances/contractual or statutory liabilities etc., confirming herein that he has taken into account all of the claims as reflected in the book and/ or those received, up to date and that he has satisfied and settled all of these claims/ liabilities from the consideration received, as provided and permitted under law".
(Emphasis Supplied)*

- viii. Consequently, on 23.12.2022, the applicant deposited the balance sale consideration of Rs.2,95,00,000/- and on the same date, a Certificate of Sale was signed and issued to the applicant, confirming the sale of the CD as a going concern, excluding Non-Readily Realisable Assets ("NRRAs") of the Company and certain assets not forming part of liquidation estate as mentioned in Annexure-1 of the said Certificate.
- ix. In normal parlance "going concern" sale is transfer of assets along with the liabilities. However, as far as the 'going concern' sale in liquidation under IBC Code is concerned, it is the acquisition of the corporate debtors and its assets without any encumbrance or charge and free from the action of the Creditors or other statutory liabilities. In case of the Corporate Debtor as a going concern, the Corporate Debtor continues to retain its character and identity of a corporate entity and accordingly continues to be the owner of the assets which form part of the Corporate Debtor, i.e., the bouquet of assets forming part of 'sale as a going concern'.

- x. The said issue has been considered and settled by various NCLTs across the country, which have held that sale on “going concern” basis in liquidation would necessarily entail extinguishment of liabilities after distribution as per the waterfall mechanism under Section 53 of the IBC Code. The fact that the sale consideration would be distributed under Section 53 of IBC Code is evident from Clause 5 of the LoI, which reads as follows:

“The transfer of ownership of the Company as a going concern shall take place by way of writing off the entire existing shareholding of the Company (as a result of settlement in accordance with Section 53 of the Insolvency and Bankruptcy Code, 2016) and issuance of fresh equity shares to the Successful Bidder or related entities/ Sponsored funds associated with or controlled by the Successful Bidder in or related entities/ sponsored funds associated with or controlled by the Successful Bidder in compliance with Section 29A of the Insolvency and Bankruptcy Code, 2016. This process shall be undertaken by the Liquidator in consultation with the Successful Bidder” (Emphasis Supplied)

- xi. The reserve price quoted by the respondent is on value of CD and its assets sans liabilities and is also evident from a perusal of the Certificate of Sale, which clearly stipulates that the corporate debtor has been acquired as a whole on a going-concern basis by the applicant free of all encumbrances, pending obligations & Liabilities, including statutory liabilities in accordance with the code and applicable legal frame work. It is also stated that all the liabilities of the creditors, including statutory liabilities, stand extinguished and stand Nil from the date of Certificate of Sale. However, in order to ensure smooth running of the business of

the Corporate Debtor, it is imperative that certain additional reliefs, concessions, relaxations and/ or permissions are to be granted by this Tribunal, which would be essential and necessary to continue the Corporate Debtor as a 'going concern'.

- xii. In a case with similar circumstances, where the successful bidder therein had filed an application seeking several reliefs/concessions, the NCLT, Hyderabad Bench vide Order dated 30.06.2022 in I.A.No.157 of 2021 in C.P. IB 329/7/HDB of 2018 (SREI Equipment Finance Ltd. Vs. Vishwa Infrastructures & Services Pvt. Ltd) observed as follows:

“Since the decision to sell the Corporate Debtor as a going concern is taken by the Liquidator in consultation with the creditors/ stakeholders and the proceeds from the sale of assets are going to be utilized for distribution to the creditors in the manner specified under Section 53 of the Code, all the creditors of the Corporate Debtor get discharged and the assets are transferred free of any encumbrances. We are of the considered view that it is a fit case to grant certain reliefs in favour of the purchaser”.

- xiii. The purpose of achieving the value maximization by receiving the CD envisaged under the Liquidation Regulations will be possible only if the above mentioned reliefs (i.e., reliefs “a” to “w”), exemptions and concessions are granted.
- xiv. The applicant approached the respondent seeking the aforesaid reliefs/concessions to be granted in favour of the CD. However, the respondent informed the applicant that the Liquidator has no authority under the provisions of the IBC to grant such

reliefs/concessions; and had advised the applicant to approach this Tribunal for seeking the appropriate reliefs/concessions. In pursuance of the same, the applicant filed this application.

- xv. The applicant relied on the judgment in the case of RMY Industries LLP Versus Apple Industries Pvt. Ltd., through its Official Liquidator (Company Appeal (AT) (Insolvency) No.1114 of 2022), where in the NCLAT, Delhi vide Order dated 12.10.2022 observed as follows-

- “2. Appellant was the Successful Auction Purchaser in the liquidation proceeding where assets were sold as going concern on ‘as is where is’ basis. In the application I.A.No.880 of 2022, the Appellant in Para 28 has claimed about 30 reliefs and concessions. The Adjudicating Authority has rejected the application, observing that no reliefs and concessions can be granted.*
- 3. Learned Counsel for the Appellant has relied on the judgment of this Tribunal in “Company Appeal (AT) (Ins.) No.650 of 2020, M/s. Shiv Shakti Inter Globe Exports Pvt. Ltd., Vs. M/s.KTC Foods Private Limited”. In the aforesaid case, with regard to liquidation sale as going concern, the Liquidator has filed application for certain reliefs which were related to the past dues and prayer for extinguishment of past /remaining unpaid outstanding liabilities, which was permitted.*
- 4. We are of the view that the Adjudicating Authority is empowered to consider any application filed by the Liquidator or Successful Auction purchaser, which may arise with regard to terms and conditions of auction sale or sale as a going concern as per the Liquidation Regulation. We, thus, are of the view that ends of justice be served in giving liberty to the Appellant to file an appropriate application before the Adjudicating Authority, which may*

arise from the terms and conditions of the auction sale or sale as going concern, which may be considered by the Adjudicating Authority. The Appeal is disposed of with liberty aforesaid”.

3. Respondent filed counter, contending that on payment of the full amount, the sale of the CD shall stand completed and the Liquidator shall execute a certificate of sale to consummate the sale transaction as contemplated under this document and the Liquidation Regulations. The Liquidator does not take or assume any responsibility for any dues, statutory or otherwise, of the CD, including such dues if any, which may affect transfer of the CD in the name of the Successful Bidder and such dues, if any, will have to be borne/paid by the Successful Bidder. The Bidder shall be responsible for fully satisfying the requirements of the IBC and the related Regulations as well as all Applicable Law(s) that are relevant for the sale of the CD. The Successful Bidder shall be responsible for obtaining requisite regulatory or third-party approvals, no objections, permission or consents, if any, that are or may be required under Applicable Law(s) in respect of the sale of CD as going concern basis as contemplated in this EOI. The successful bidder paid the entire consideration of Rs.3 crores within 30 days in terms of the notice of the sale and the LoI dated 24.11.2022 upon which the Certificate of Sale dated 23.12.2022 was issued to the successful bidder. As such, the successful bidder was handed over the assets of the CD sold as a going concern, except assets not forming part of the liquidation estate and the non-readily realizable assets (“NRRR”) of the CD. The amounts received from the applicant have also been distributed to the stakeholders as on

23.12.2022. The LoI also states that subject to receipt of sales consideration, a certificate of sale shall be issued, certifying sale of Corporate Debtor as a going concern on a **“AS IS WHERE IS, AS IS WHAT IS, WHATEVER THERE IS and WITHOUT RECOURSE BASIS”**. The Certificate of Sale executed on 23.12.2022 conveys the same position on the sale of Corporate Debtor as a going concern to the Applicant. Further, the Certificate of Sale states that:

“The Company shall be acquired as a whole (except for assets mentioned in Annexure-1 and NRRAs of the Company) on a going concern basis, by the Successful Bidder free of all encumbrances, pending obligations and liabilities in accordance with the code and applicable legal frame work.

Further, the Successful Bidder shall be responsible for obtaining required regulatory or statutory or third party approvals, no objections, permission or consents, if any, that are or may be required under applicable law(s) for consummation of sale of the Company on going concern basis.

Subject to the above, this is to certify that the Successful Bidder has acquired the Company as a whole on a going concern basis, with all the Assets except for certain assets not forming part of Liquidation Estate as mentioned Annexure-1 and NRRAs of the Company and save as otherwise provided in this Certificate of Sale, all the liabilities of all the creditors including statutory liabilities hereby stand extinguished and that the same stand to Nil, on the date of this Certificate Sale and the undersigned acknowledges the receipt of the sale price of INR 3,00,00,000 (Indian Rupees Three Crores Only) in consideration of such acquisition, in full. In light of this acquisition, it is deemed that the Liquidator has handed over the possession, custody and control of the Company and the Successful Bidder is the absolute owner of the Company from the date of this Certificate of Sale along with the associated assets of the Company”.

4. The Respondent further contended that the reliefs sought against the Respondent/Liquidator at Para 19 (o) to (q) are:

- a. In response to the concession “o” that the Respondent executed the sale of CD as a going concern as per the terms and conditions stipulated in Sale Notice and Detailed EoI, consequent to which suitable LoI and Certificate of Sale has been issued, the applicant has acquired the CD on **“AS IS WHERE IS, AS IS WHAT IS, WHATEVER THERE IS and WITHOUT RECOURSE BASIS”** and being the absolute owner of the Corporate Debtor as on date of Certificate of Sale, the Applicant is required to undertake necessary actions in relation to acquisition of the Corporate Debtor. The Respondent, apart from facilitating the obtaining of necessary NOC from the relevant stakeholders, is not mandated under the Code or Liquidation Regulation to perfect/amend/modify/create land records, immovable properties and other assets belonging to the Corporate Debtor, as the same has been bought by the Applicant as a going concern.

The property records of the CD would continue as they were during the CIRP and Liquidation Process, as it is not individual parcels of property that have been sold. The Respondent has transferred the title and rights that were available with him, along with the Corporate Debtor, and now cannot provide the Applicant with a better title or right than which he himself possessed. It was orally stated during the first hearing of the present application on 17.03.2022 that the applicant would need

to remove encumbrances etc., however the same is not pleaded in the application. The Liquidation Estate, for enabling sale of CD as going concern, was identified based on the relinquishment of security interest by the secured creditors. Hence, the Respondent is given to understand that, as on date, there is no encumbrance on the properties which were sold as part of the going concern auction. Moreover, the other reliefs sought by the Applicant, particularly at Para No.(b), (c), (d) and (h) are more than sufficient to clear encumbrances, if any.

- b. In response to concession “p” that the CD has been sold to the Applicant as a going concern and the Respondent cannot, at this stage, deal with the accounts or books of the CD, the Respondent handed over the books of account of the CD to the Applicant and the Applicant is at liberty to carry out necessary accounting adjustments.

- c. In response to concession “q” that the Corporate Debtor has been sold to the Applicant as a going concern and the Respondent cannot, at this stage, deal with the filings of the Corporate Debtor, the Respondent has ensured compliances with applicable legal framework during CIRP and Liquidation Proceedings as per provisions of the Code. Relevant login credentials, for enabling further compliances of the Corporate Debtor has been handed over to the Applicant and the Applicant is at liberty to take steps, if any, with the relevant authorities.

- d. Only the auction of the NRRA is pending as on date. The distribution of the proceeds received from the auction of the Corporate Debtor as a going concern has already been completed in line with the waterfall mechanism specified under Section 53 of the Code. Hence, the sale of Corporate Debtor as going concern has consummated and the Applicant is bound by the terms of auction and certificate of Sale. Hence, in view of the above contentions, the application is liable to be dismissed.
5. Heard both the counsel. The counsel for the liquidator does not raise any objection for allowing the application with regard to the reliefs claimed by the applicant but raises objections with regard to granting of concessions sought for under the sub paragraphs o, p & q of paragraph 19 of the application. The concession sought for under “paragraph -o” is as follows:
- “Pass an order directing the Respondent/Liquidator to cooperate with and provide all necessary support and assistance to the Applicant for smooth implementation of sale of Corporate Debtor as a going concern, including but not limited to perfecting/amending/modifying/creating the land records in relation to all parcels of land, the immovable properties and other assets belonging to the Corporate Debtor.”*
6. The counsel for the Liquidator contends that the CD is sold away as a single unit and hence now the change of the same into parcels of land cannot be permitted. The counsel for the Applicant submits that in the sale certificate, it was undertaken by the company that the CD would be handed over free of all encumbrances, pending obligations & liabilities including statutory liabilities in accordance with the code

and applicable legal framework. However, the counsel for the liquidator concedes that they would be rendering such assistance on payment of the requisite fee to the liquidator and if the applicant is ready to bear all the expenses. It goes without saying that all the expenses and charges incurred and the fee of the liquidator for rendering assistance have to be borne by the Applicant. Hence, the concession sought for under “**paragraph o**” is allowed and the applicant shall bear all the expenses required for implementing the same along with the fee of the liquidator.

7. As regards, the objection regarding the concession sought at paragraph p” that the concession sought for is to write off all the liabilities of the CD, including creditors, term loans, working capital loans, tax liabilities, other statutory liabilities, etc., the counsel for the liquidator submits that the applicant can himself do all the necessary things and can write off all the liabilities of the CD since the liquidator is not concerned with the CD any longer. Hence, recording the said contention there shall be in an order that the applicant is at liberty to write off all the liabilities of the CD, including creditors, term loans, working capital loans, tax liabilities, other statutory liabilities, etc.
8. As regards, the concession sought for at Paragraph “q” of the application, the liquidator contends that since he is no longer concerned with the CD, he cannot make any compliances. But the counsel for the applicant submits that the concession sought for is only upto the period of the execution date. The Tribunal can see that what all is sought for is only the assistance of the liquidator in

compliances. Hence, the concession at paragraph “q” is allowed, subject to the compliance being made within two months as requested by the counsel for the liquidator and on payment of requisite fee commensurate with the services of the liquidator.

9. In view of the facts stated in the Application, this Tribunal allows the Application regarding all the concessions and reliefs i.e., reliefs (“a” to “w”) with the above directions. Accordingly, IA(IBC)/82/2023 in CP (IB)/27/7/AMR/2020 is allowed and disposed of.

Sd/-

JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

Swamy Naidu