

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**

I.A. (I.B.C.) 953/KB/2022

In

CP(IB) No. 515/KB/2018

*An Application under section 60(5) of the Insolvency and Bankruptcy Code,
2016 read with rule 4 of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016*

In the matter of:

UCO Bank

....Financial Creditor

Versus

Bhuvée Stenovate Private Limited

.....Corporate Debtor

And

In the matter of:

Laser Solar LLP

....Applicant

Versus

**Kannan Tiruvengadam,
the liquidator of
BhuvéeStenovate Private
Limited**

....Respondent

Date of pronouncing the order: 17.10.2023

Coram:

Rohit Kapoor

: Member (Judicial)

Balraj Joshi

: Member (Technical)

Appearances (via video conferencing/ physical):

For the Applicant in IA 953/KB/2022:

Ms. Manju Bhuteria, Adv.
Mr. Supriyo Gole, Adv.
Ms. Madhuja Barman, Adv.

For the Liquidator:

Mr. Saptarshi Mandal, Adv.

ORDER

Balraj Joshi, Member (Technical)

1. This Court convened through hybrid mode.
2. The interlocutory application being I.A. No. 953/KB/2022 has been filed by the Applicants herein being the guarantors of the Corporate Debtor under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (IBC) seeking the following reliefs:
 - a. *Direct that 25th June, 2022 i.e., the date of issue of the sale certificate by the Respondent Liquidator shall be deemed to be the date of acquisition ("Acquisition Date") of the said Company by the Applicant on a going concern basis;*
 - b. *Direct the Registrar of Companies, Ministry of Corporate Affairs and all other statutory bodies connected thereto and/or regulatory authorities regulating and overseeing the business of Corporate Debtor to ensure a seamless transition and/or transposition of the Applicant and its nominees as the shareholders, directors and/or key managerial persons of the said Corporate Debtor;*
 - c. *Declaration that no creditor of the said Corporate Debtor whether operational and/or financial, having any claim of any nature whatsoever in respect of a period prior to the Acquisition Date can raise such claim or demand payment in respect thereof from the Applicant;*
 - d. *Declaration that the Applicant is entitled to all licenses and approvals and is entitled to all contractual rights and benefits of*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT I)**

Laseer Solar LLP vs. Kannan Tiruvengadam
I.A.(IBC) 953/KB/2022 in CP (IB) 515/KB/2018

the said Corporate Debtor and that such licenses and approvals and/or contractual rights and benefits would continue to vest in the said restructured and revived company and/or in the Applicant. of India;

- e. Declaration that the Applicant and/or the revived and restructured Corporate Debtor is not liable in respect of any tax liability accruing before and/or prior to the Acquisition Date.*
- f. Declaration that the Applicant and/or the restructured and revived company have no liability for any past actions and/or omissions and/or for any noncompliance of the applicable laws by the erstwhile directors, shareholders and/or key managerial persons of the said Corporate Debtor;*
- g. Declaration that the Applicant and/or the said revived and restructured Corporate Debtor has no liability in respect of any litigation investigation enquiries and/or liabilities connected there with and/or arising there from in respect of any claim deed action or thing which has taken place prior to the Acquisition Date;*
- h. Declaration that the Applicant is entitled to the continuation of all rights, leases and/or other benefits attached to any land belonging to and/or held by the said Corporate Debtor;*
- i. Declaration that the Applicant is entitled to all co-operation and support from Government Agencies, Statutory authorities and/or other entities discharging public duties and functions to carry out the objectives of the Code in restructuring and reviving the said Corporate Debtor as a 'going concern';*
- j. Direct that the utility providers for the essential services e.g. power Supply Company, water supply authority to restore uninterrupted supply of power and water with immediate effect;*
- k. Direct that no utility supplier, should withhold / delay supply of utility on the ground of non-payment of dues prior to the Acquisition Date.*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT I)**

Laseer Solar LLP vs. Kannan Tiruvengadam
I.A.(IBC) 953/KB/2022 in CP (IB) 515/KB/2018

- l. Grant the reliefs and concessions as prayed for in Annexure A;*
 - m. Ad-interim order in terms of the prayers made above;*
 - n. Such further or other order or orders be passed and/or direction or directions be given as this Hon'ble Tribunal may deem fit and proper.*
3. **Submissions of the Applicant in I.A. no. 953/KB/2022:**
- 3.1 The case of the Applicants herein is that the Adjudicating Authority, upon the filing of a petition being CP (IB) 515/KB/2018 under section 7 of the Code by UCO Bank, the Financial Creditor, admitted the Corporate Debtor into Corporate insolvency Resolution Process (CIRP) on 12.03.2019. thereafter, the Adjudicating Authority was ordered to be liquidated vide order dated 07.02.2020¹.
- 3.2 In compliance with the Code and in accordance with the Insolvency and Bankruptcy Board of India (Liquidation Process Regulation) 2016 (hereinafter referred to as the "Liquidation Process Regulation"), the Respondent from time to time invited offers for sale of all the assets of the said Company as going concern. As many as 10 auction publication was made by the Respondent without any success.
- 3.3 With intention of running the Corporate Debtor as a going concern, the Applicant approached the Respondent to acquire the assets of the Corporate Debtor through a private sale for a price of Rs. 50.05 Crore vide letter dated 11th May 2022². However, inspite of the failure of the auction process for 9 times, the Respondent, vide letter dated 13th May, 2022³ refused to accept the offer of the Applicant and also refused to conduct a private sale for the applicant based on the grounds as mentioned in the aforementioned letter dated 11th May, 2022.

¹ Annexure C

² Annexure D

³ Annexure E

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT I)**

Laseer Solar LLP vs. Kannan Tiruvengadam
I.A.(IBC) 953/KB/2022 in CP (IB) 515/KB/2018

- 3.4 The Respondent immediately after the rejection of the offer of the Applicant again advertised for sale of the assets of the Corporate Debtor as a going concern. Due to the rejection of the offer of the Applicant by the Respondent, the Applicant filed an application being IA(IBC)/KB/469/2022 before this Hon'ble Tribunal praying for an order directing the Respondent to accept the offer of the Applicant and sale and transfer the Corporate Debtor through a private sale.
- 3.5 During the pendency of IA(IBC)/KB/469/2022, one Jindal Stainless Limited filed an application by seeking to intervene in IA(IBC)/KB/469/2022 and to put in a rival bid to the offer submitted by the Applicant. In order to give a fair opportunity, this Adjudicating Authority directed both the sides to place their bids by way of a sealed cover vide order dated 10 June 2022⁴.
- 3.6 On 16th June, 2022, during the hearing, the bids were opened in open court, it appeared that Applicant had submitted a bid of Rs. 61,05,00,000/- for the assets of the Corporate Debtor whereas the bid of Jindal Stainless Limited was Rs. 52,50,00,000/-. Therefore, this Adjudicating Authority, vide the order dated 16th June, 2022⁵, confirmed the sale by private treaty (placement) in favour of the highest bidder, i.e., Applicant. The Adjudicating Authority also directed the Liquidator to take further steps in accordance with law.
- 3.7 In terms of the aforesaid order dated 16th June, 2022, the Respondent Liquidator had issued the Sales Certificate dated 25th June, 2022 in favour of the Applicant. The purchase of the said assets by the Applicant as a 'going concern' imposed an obligation on the Applicant to restart and run the said Corporate Debtor.
- 3.8 The process of restarting the company involves the induction of a large amounts of funds towards working capital. The estimated working capital required to restart the said factory and to recommence the business of the said company to is Rs. 25 Crore. In the

⁴ Annexure F

⁵ Annexure G

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT I)**

Laseer Solar LLP vs. Kannan Tiruvengadam
I.A.(IBC) 953/KB/2022 in CP (IB) 515/KB/2018

circumstances, the total outlay of the Applicant in purchasing the assets and properties of the said company (in liquidation) and recommencing the business of the said company (in liquidation) would amount to a total sum of Rs. 146.05 Crore.

3.9 It has been stated that since the direct investment of the Applicant in purchasing the assets and properties of the said Corporate Debtor (in liquidation) is Rs. 61.05 Crore and an additional sum of Rs. 85 Crore will be required to recommence and restart the business of the said Corporate Debtor, the Applicant must stand absolved of any and all liability of the said Corporate Debtor has arisen prior to the date of acquisition of the said Corporate Debtor by the Applicant. Accordingly, the Applicant requires the necessary protection of this Adjudicating Authority to ensure that the financial and operational creditors of the said Corporate Debtor do not continue to raise their claim. against the said Corporate Debtor and/or the Applicant in respect of any part or portion of their unsatisfied claims.

3.10 The Applicant has stated that the claim of financial and operational creditors of the said Corporate Debtor must be paid and/or satisfied from the sale proceeds of the said company in terms of the waterfall mechanism embodied in section 53 of the Code and as such the Applicant cannot be called upon to make any other or further payment of any other or further liability of the said company on the ground and/or pretext that the said Corporate Debtor has been sold to the Applicant as a 'going concern'.

3.11 The Applicant had already made full payment of the entire promised sales consideration of Rs. 61.05 Crores. Upon payment of the entire sales consideration the liquidator had issued a sale certificate dated 22nd June, 2022⁶ and the Applicant had taken possession of the assets and properties of the said Corporate Debtor.

⁶ Annexure H

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT I)**

*Laseer Solar LLP vs. Kannan Tiruvengadam
I.A.(IBC) 953/KB/2022 in CP (IB) 515/KB/2018*

- 3.12 The word having spread and the Applicant having taken possession of the assets and properties of the said Corporate Debtor a host of alleged creditors of the said Corporate Debtor had started approaching the Applicant for payment of their balance dues and/or consideration and had even threatened to thwart and/or prevent the Applicant from recommencing production and restarting the said company unless their dues were paid.
- 3.13 Further, there are a host of formalities to be complied, with the Registrar of Companies and other statutory authorities to ensure the complete transition of the management and control of the Applicant and its nominees over and in respect of the said company and to further ensure a seamless change and/or takeover of the said Corporate Debtor by the Applicant.
- 3.14 In light of the aforementioned circumstances, the Applicant had filed the instant application, praying the Adjudicating Authority to absolve the Applicant of any liability to make payment of any dues of any nature whatsoever of the said company which have arisen and/or accrued prior to the Acquisition Date by the Applicant.
- 3.15 The reliefs claimed in Annexure A to the application are provided hereinunder:

| <i>Table A</i> | |
|------------------------------|--|
| <i>Reliefs Sought</i> | |
| <i>1.</i> | <i>Compliances under Companies Act, 2013 and other applicable laws and the applicable rules thereunder for corporate actions envisaged</i> <ol style="list-style-type: none">a. Entire Issued, subscribed and paid up Share Capital of the said Company shall be reduced to Nil: any consideration payable to the Shares holders of the said Company including any due towards any unpaid dividend, share application money etc, shall stand extinguished.b. No approval / consent shall be necessary for cancellation of the existing share capital of the said Company in terms of Section |

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT I)

Laseer Solar LLP vs. Kannan Tiruvengadam
I.A.(IBC) 953/KB/2022 in CP (IB) 515/KB/2018

| | |
|----|--|
| | <p>66 and other provisions of the Companies Act, 2013, including rules made thereunder and other applicable laws.</p> <p>c. No approval / consent shall be necessary for issuance of New Equity Shares in accordance with Section 42 and Section 62(1)(c) of the Companies Act, 2013 and other applicable law.</p> <p>d. On and from the Acquisition Date of the Corporate Debtor, the status of the Corporate Debtor in the records of the Registrar of Companies should be reflected as 'active' from the status of 'under liquidation' and necessary instructions in this regard are issued to the Registrar of Companies;</p> <p>e. a direction be issued for issue of equity shares amounting to Rs.1,00,00,000/- divided into 10,00,000 equity shares of Rs. 10 each, by the Corporate Debtor in the name of nominees of the Applicant;</p> <p>f. From the Date of Acquisition, the Board of Directors of the said Company be reconstituted as per the Companies Act, 2013 by removing the erstwhile directors and appointing the directors nominated by the Applicant and the Registrar of Companies do all such acts, deeds and things that are necessary in that regard and to enable the said Company to file relevant returns required by law;</p> <p>g. The Registrar of Companies to record satisfaction of all charges that have been created and remained unsatisfied prior to the Date of Acquisition and liquidator to submit necessary compliance including filing of prescribed returns in this regard with Registrar of Companies and making necessary entries thereof in the Statutory Records of said Company.</p> |
| 2. | <p><i>No action by creditors</i></p> <p>a. On and from the Acquisition Date, no Financial Creditors or Operational Creditors shall be entitled to take, initiate, institute or continue any suits, steps or proceedings against the said</p> |

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT I)

Laseer Solar LLP vs. Kannan Tiruvengadam
I.A.(IBC) 953/KB/2022 in CP (IB) 515/KB/2018

Company or its assets (whether by way of demand, legal proceedings, alternative determination process including arbitration or an expert determination process), the levying of distress, execution of judgment, decree or order, or otherwise) in any court of law, tribunal, arbitration panel or other authority in any jurisdiction whatsoever (including taking any action to foreclose, recover or enforce any security interest created by the said Company in respect of its property (including any action. under SARFAESI)) for the purpose of obtaining payment of any liability;

- b. The creditors (secured or unsecured) of the said Company shall deemed to have issued no-objection on the Acquisition Date and the security created in favour of the secured creditors shall be released, extinguished and all the financing and security documents shall terminate without any further act of the said Company; It is further prayed that the secured creditors shall be directed to return all the title deeds and documents deposited with the respective secured creditors be returned to the said Company/Applicant on an immediate basis;
- c. Any bond, surety, guarantee, power of attorney, undertaking issued by the Corporate Debtor to any person, either in India or outside India before the Acquisition Date shall stand cancelled and permanently revoked;
- d. Direction be issued to the Liquidator to, immediately, (i) write back all the liabilities of the Corporate Debtor, including creditors, term loans, working capital loans, tax liabilities, other statutory liabilities, other payables 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; and (ii) the assets which are not recoverable

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT I)

Laseer Solar LLP vs. Kannan Tiruvengadam
I.A.(IBC) 953/KB/2022 in CP (IB) 515/KB/2018

| | |
|----|---|
| | <p>(debtors, inventories and loans and advances, etc.) should be written down to their realizable value; in the financial statements (Profit and Loss Account and the Balance Sheet) of the Corporate Debtor as on 31 March 2022. The said financial statements should be prepared and filed by the Liquidator with the relevant regulators such as Registrar of Companies, Income Tax Authorities, etc.;</p> <p>e. Direction be issued that all known or unknown, claimed or unclaimed, disclosed or undisclosed, crystallised, uncrystallised, contingent or assessed dues/liabilities/obligations/risks/penalties etc., of any nature whatsoever and may have a financial impact, as on the Acquisition Date and for the period prior to the Acquisition Date, including but not limited to, prior claims of all creditors (whether secured or unsecured), workers, employees, statutory authorities on account of Income Tax, Sales Tax, GST, Service Tax, DGFT, Excise, Customs etc. or shareholders, should be extinguished/ waived/infructuous, once the distribution of the Purchase Consideration is made by the Liquidator, as per the provisions of the Code and Regulations thereof and specifically as per section 53 of the Code, as full and final settlement of their dues.</p> |
| 3. | <p><i>Related to Licenses/ Approvals/Contractual Rights and Benefits</i></p> <p>a. All subsisting consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the said Company or to which the said Company is entitled to, including but not limited to slag procurement license, 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</p> |

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT I)

Laseer Solar LLP vs. Kannan Tiruvengadam
I.A.(IBC) 953/KB/2022 in CP (IB) 515/KB/2018

| | |
|-----------|--|
| | <p>to the said Company be deemed to continue without disruption, for the benefit of the said Company; and</p> <p>b. All subsisting consents, licenses, approvals in respect of the factory of the said Company, shall be renewed/ regularised, subject to all compliances in that regard by the by the said Company/applicant on and from the Acquisition Date;</p> <p>c. All the existing contracts and arrangements with the Existing Promoters/ Directors of the said Company shall stand terminated on and from the Acquisition Date. Save and except the contracts and arrangements which shall be terminated by the said Company / Applicant, all other contracts and arrangements shall remain in existence on the same terms and conditions.</p> <p>d. The Liquidator to complete all compliances for the period up to the Date of Acquisition including but not limited to filing of necessary documents and returns with the Registrar of Companies, Income Tax Authorities, GST Authorities, Provident Fund Authorities any other Government or Statutory or Regulatory Authorities should be completed and necessary entries in that regard be made in the statutory records of the said Company.</p> <p>e. Delays in filing of the statutory records by the said Company prior to the Acquisition Date be condoned without any liability of whatsoever nature. Any filing done to regularize the records shall be deemed to have been filed in the normal course within the stipulated time;</p> <p>f. The said Company / Applicant would be entitled to use any valid warranties or guarantees related to any plant and machineries or other assets purchased prior to the Acquisition Date.</p> |
| 4. | <i>Related to Taxes</i> |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT I)**

Laseer Solar LLP vs. Kannan Tiruvengadam
I.A.(IBC) 953/KB/2022 in CP (IB) 515/KB/2018

- a. Approved 'private bid' be considered as a 'resolution plan' approved by Hon'ble NCLT, under any law for the time being in force, in view of the spirit of IBC legislation;
- b. The bid submitted by the Applicant should be considered as resolution plan under Section 79 of the Income tax Act, 1961 after providing an opportunity of being heard to the income tax authority;
- c. The brought forward tax losses of the Corporate Debtor be permitted to be carried forward and set-off against the taxable income (notwithstanding anything to the contrary contained in section 79 of the Income tax Act, 1961) as change of shareholding of the Corporate Debtor is happening pursuant to the bid submitted by the Applicant under the E-Auction Process. For doing so, an opportunity of being heard may be provided to the income tax authority;
- d. The requirement and applicability of certificate under section 281 of the Income-tax Act, 1961 and provisions of taking over its predecessor's tax liability under Section 56 and Section 170 of the Income Tax Act, 1961 shall be deemed to be complied with (consider 'waived) on the Acquisition Date;
- e. Any write back / written down of liabilities should not be treated as taxable income subject to tax, as per the provisions of the Income tax Act, 1961 (including provisions of section 115 B), as the said waiver is on account of private bid approved by the Hon'ble NCLT. For doing so, an opportunity of being heard may be provided to the income tax authority;
- f. The relevant tax authorities to allow setting off of summation of book losses and unabsorbed depreciation for the purpose of computing book profit under section 115 B of the Income tax Act, 1961. For doing so, an opportunity of being heard may be provided to the income tax authority;

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT I)

Laseer Solar LLP vs. Kannan Tiruvengadam
I.A.(IBC) 953/KB/2022 in CP (IB) 515/KB/2018

- g. The Applicant and / or its nominees will have a liberty to undertake the necessary measures towards revival of the Corporate Debtor / business of the Corporate Debtor, as may be necessary to maximize the value / utility of the Corporate Debtor or its businesses / assets, including but not limited to corporate restructuring by way of merger or demerger or amalgamation, consolidation of shares etc. in view of the spirit of insolvency legislation;
- h. Direct that, any requirements to obtain waivers from any tax authorities including in terms of Section 115 B of the Income Tax Act, 1961 shall be deemed to have been granted on the Acquisition Date and the procedure stated under the aforesaid sections shall be deemed to be complied with on the Acquisition Date;
- i. Direct that the transactions contemplated for sale of the assets of the said Company under the e-auction notice shall not be considered as void under Section 81 of the Central Goods and Service Tax Act, 2017 and the concerned authority shall not impose any successor liability on the Applicant and the said Company in respect of such sale of the assets of the said Company;
- j. All assessment/ re-assessment/ revision/ penalty/ appellate or other proceedings pending in the case of the said Company as on the Acquisition Date, relating to the period prior to that date, shall stand terminated and all consequential liabilities, if any, shall be waived and shall be considered to be not payable by the said Company;
- k. All notices issued under the provisions of the respective Acts to initiate any proceedings viz. assessment/ re-assessment/ revision/ penalty/etc. against the said Company in relation to the period prior to the Acquisition Date shall be considered

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT I)

Laseer Solar LLP vs. Kannan Tiruvengadam
I.A.(IBC) 953/KB/2022 in CP (IB) 515/KB/2018

| | |
|----|--|
| | <p>withdrawn and shall not be proceeded against; 1.</p> <p>l. Any proceedings which were kept in abeyance in view of insolvency process or otherwise shall not be revived after the Acquisition Date;</p> <p>m. No further demand for period prior to the Acquisition Date shall be raised by the respective Departments;</p> <p>n. All tax litigations, prosecutions, tax legal proceedings, suits, demands, notices, show-cause notices, demand notices, actions, arbitration or administrative, judicial, quasi-judicial, regulatory, government or any enforcement agencies, pending or threatened against the said Company or whose outcome adversely effects the said Company arising prior to or after the Acquisition Date, shall be deemed to have been withdrawn or dismissed and will be deemed to have been barred with effect from the Acquisition Date;</p> <p>o. Relevant authorities to provide unconditional exemption from stamp duty, registration fee and similar local taxes levied pursuant to the acquisition of the Corporate Debtor;</p> <p>p. The Applicant or its nominees or the Corporate Debtor are allowed to file the return of income or revised return of income, as the case may be, if required to give the effect of Acquisition of the Corporate Debtor.</p> |
| 5. | <p><i>Related to liability for past actions or omissions or non-compliances under applicable laws</i></p> <p>a. Direct that any non-compliance of provisions of any laws rules, regulations, directions, notifications, circulars, guidelines, policies, licenses, approvals, consents or permissions including any suspension, cancellation, revocation or termination, by the said Company and/or its Directors and/or Key Managerial Persons prior to the Date of Acquisition shall be deemed to be extinguished and/or</p> |

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT I)

Laseer Solar LLP vs. Kannan Tiruvengadam
I.A.(IBC) 953/KB/2022 in CP (IB) 515/KB/2018

| | |
|----|--|
| | <p>regularised automatically, as the case may be, on the Acquisition Date, without imposition of any penalty or fine or interest or similar charge;</p> <p>b. The relevant Governmental Authorities shall not initiate any proceeding in relation to any non-compliances with Applicable Law by the said Company during the period prior to the Acquisition Date. Neither shall the Applicant, nor the said Company, nor the directors, officers and employees thereof appointed on and from the Acquisition Date be liable for any violations, liabilities, penalties or fines with respect to or pursuant to the said Company not having in place requisite licenses and approvals required to undertake its business as per applicable law, or any non-compliances of applicable law by the said Company.</p> |
| 6. | <p><i>Litigations, liabilities, inquiries, investigations etc.</i></p> <p>a. Direct that the all 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 said Company or the affairs of the said Company (other than against the Erstwhile Promoters or former members of the management of the said Company), pending or threatened, present or future, in relation to any period prior to the Date of Acquisition or arising on account of the acquisition shall be deemed to be withdrawn or dismissed, without imposition of any penalty or fine or interest or similar charge.</p> |
| 7. | <p><i>Land and property related reliefs:</i></p> <p>a. Each asset (including properties, whether freehold, leasehold or license basis) of the said Company shall be vested in the said Company free and clear of all encumbrances from the Acquisition Date;</p> |

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT I)

Laseer Solar LLP vs. Kannan Tiruvengadam
I.A.(IBC) 953/KB/2022 in CP (IB) 515/KB/2018

- b. Direction be issued that the Applicant or its nominees shall in no event be held responsible for any liabilities/ obligations/ risks of the Corporate Debtor, pertaining to the period prior to the Acquisition Date and the same should be dealt with as per the provisions of the Code;
- c. Waiver of any property tax, lease rent shall be deemed to have been permanently extinguished with effect from the Acquisition Date;
- d. All the assets including uninstalled assets, whether tangible or intangible, shall be free from any options, pledge, mortgage, lien, charge, security interest, adverse claim, pre-emptive right, attachment (whether any provisional or exceptional), restraint, covenants or conditions, claim, debenture, hypothecation, deposit by way of security, bill of sale, beneficial ownership (including usufruct and similar entitlements), public right, common right, way leave, any other interest held by a third party or such other encumbrance;
- e. Further the Adjudicating Authority may be pleased to direct that the change in control of the said Company pursuant to sale and transfer of the said Corporate Debtor as going concern shall not constitute any transfer of such land under Applicable Laws or under any contract of lease, sub-lease, rent or license and accordingly no further act, deed or thing shall be necessary to be complied with by the said Corporate Debtor under the Applicable Laws and it shall be deemed that all such statutory compliances/ compliances have stood complied with on the Acquisition Date so that the said Company continues to enjoy continuous ownership use possession and occupation of the lands in question without any interruption or objections or obstructions in order to keep the said Company a going concern;

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT I)

Laseer Solar LLP vs. Kannan Tiruvengadam
I.A.(IBC) 953/KB/2022 in CP (IB) 515/KB/2018

| | |
|-------------------------|--|
| | <p>f. The Adjudicating Authority may be pleased to direct that the Corporate Debtor or the Applicant shall not be liable to pay any charges levied and/or to be levied under any contract of lease, sub-lease, rent or license pursuant to the change in control of the said Corporate Debtor because of the sale and transfer of the said Corporate Debtor as going concern.</p> |
| <p>8. Others</p> | <p>a. The said Company / Applicant shall be allowed to pursue and/or contest any claim made by the said Company, including but without limitation, claims from the insurance and subsidy.</p> <p>b. The Applicant or its nominees be permitted to conduct the affairs of the Corporate Debtor, post the Acquisition Date in the manner as they may deem fit and consider appropriate;</p> <p>c. The name of the Corporate Debtor shall be excluded / deleted from the credit information bureau, as a defaulter and for availing fresh loans from the banks and financial institutions, past track records of the Corporate Debtor including defaults made should not be taken into the account;</p> <p>d. No adverse implications including but not limited to imposition of any fine, fee, interest, penalty, or similar nature, under any law or regulation or decree or notification or circular or agreement or contract etc, should be allowed pursuant to the change in shareholding and management of the Corporate Debtor;</p> <p>e. Statutory Authorities shall release any deposits, incentives, benefits, subsidies etc, if any, due to the said Corporate Debtor expeditiously to ensure an early revival of the business of the said Corporate Debtor;</p> <p>f. Corporate Debtor shall be allowed to participate in the auction/sale/ tender/ offer/ proposal of all department/ authorities/ public sector undertakings for a period of 3 years from the</p> |

| | |
|--|---|
| | <p>Acquisition Date without having to submit the details of past revenue, past performance, profitability records, net worth or criteria of similar nature;</p> <p>g. The Liquidator to cooperate with and provide all necessary support and assistance to the Applicant including handing over of all papers, documents, relevant letters/ notices, fixed asset register of the said Company, etc, for the period prior to the Acquisition Date.</p> |
|--|---|

4 **Submissions of the Applicant in Supplementary Affidavit dated 03.05.2023:**

4.1 The Applicant has submitted that after the Adjudicating Authority confirmed the sale by private treaty (placement) in favour of the highest bidder i.e., the Applicant vide order dated 16 June 2022, the liquidator had issued a Sale Certificate dated 25 June 2022 confirming the sale and handing over the Corporate Debtor as a going concern. Thereafter, the Applicant also filed an application claiming for certain reliefs and concessions so that the Corporate Debtor can be run in a smooth and efficient manner.

4.2 However, when the application for reliefs and concessions was pending before this Adjudicating Authority, State Bank of India filed an appeal bearing Comp. App. (AT) (Ins.) No. 1013 of 2022 before the Hon'ble National Company Law Appellate Tribunal (NCLAT), stating that the procedure adopted by this Adjudicating Authority for conducting the sale was not as per the provisions laid down in the IBC. It was submitted that the IBC provides a manner and procedure for liquidation and as per section 33, it is the liquidator who can conduct the sale of assets either by public auction or by private sale and the said procedure finds mention in IBBI (Liquidation Process) Regulations, 2016.

- 4.3 In this connection, Hon'ble NCLAT passed order dated 25th January 2023 in Comp. App. (AT) (Ins.) No. 1013 of 2022.⁷
- 4.4 After the said order was passed by Hon'ble NCLAT, the liquidator invited bids under the Swiss Challenge Process for participation in the private sale process for the Corporate Debtor. The Corporate Debtor was to be sold as a going concern on "as is where is basis", "as is what is basis", "whatever there is basis" and "no recourse" basis through e-auction platform in compliance with the provisions of the Insolvency and Bankruptcy Code, 2016. The liquidator also issued the Swiss Challenge Process Document explaining the various criteria to participate in the said e-auction process. In this connection, the Liquidator made public announcement dated 20th February 2023⁸ and the respondent issued the process document⁹.
- 4.5 After the public announcement as well as the process document was issued, no bid was placed by any prospective applicant and hence, the bid amount of the Applicant was considered to be final as per the order dated 25th January 2023. The liquidator sent an e-mail¹⁰ dated 21 March 2023 to the Applicant stating that the e-auction as per the Swiss Challenge Mechanism was conducted, however, as no bid was received, the bid of the Applicant amounting to Rs. 61.05 Crores was confirmed.
- 4.6 Thereafter, the respondent had issued a fresh sale certificate dated 23rd March 2023¹¹ confirming the sale in favour of the Applicant. However, as per the order dated 25th January 2023 passed by the Hon'ble NCLAT, the new sale certificate issued on 23rd March 2023 shall be operative from 25 June 2022.

5 Analysis and Findings:

⁷ Annexure A to Supplementary Affidavit

⁸ Annexure B to Supplementary Affidavit

⁹ Annexure B to Supplementary Affidavit

¹⁰ Annexure C to Supplementary Affidavit

¹¹ Annexure D to Supplementary Affidavit

5.1 Heard the Ld. Counsel on behalf of the Applicant and the Ld. Counsel on behalf of the Respondent and perused the record.

5.2 According to the Applicant, it has already made full payment of the entire promised sales consideration of Rs. 61.05 Crores and the liquidator has accordingly issued a sale certificate dated 22nd June, 2022¹² in favour of the Applicant. The Applicant has also taken possession of the assets and properties of the said Corporate Debtor.

3.1 The *prima facie* claim of the Applicant in the instant application is that the revived company should not be made to pay for the past debts and liabilities of the Corporate Debtor accrued before its purchase as a going concern.

3.2 In this regard, we would like to refer to the decision taken by the Hon'ble NCLAT in the matter of *Shiv Shakti Inter Globe Exports Pvt. Ltd. vs. KTC Foods Private Limited and Ors.*¹³, wherein the Appellate Authority has held that:

“ 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. The Impugned Order in I.A. 889 of 2020 is modified to the extent that the sale of the first Respondent as a 'going concern' is upheld and the direction sought for in prayer (c) & (e) in CA No. 1189 of 2019 seeking extinguishment of past/remaining unpaid outstanding liabilities including contingent liabilities, prior to the sale as

¹² Annexure H

¹³ MANU/NL/0568/2022 : 25.02.2022

a 'going concern', after payment of sale proceeds distributed in accordance with Section 53 of the Code, is allowed."

3.3 Further, the Apex Court in ***Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd***¹⁴ has laid down the law in regard to the extinguishment of past liabilities of the Corporate Debtor once the resolution plan is approved. According to the Hon'ble Supreme Court, once a resolution plan has been duly approved by the Adjudicating Authority pursuant to section 31(1), the claims specified in the resolution plan shall stand frozen and be binding upon the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government, or any local authority, guarantors, and other stakeholders. All such claims that are not included in the resolution plan must be extinguished as of the day the Adjudicating Authority approves the resolution plan, and no individual shall have the right to begin or continue any proceedings with respect to a claim that is not included in the resolution plan. The Hon'ble Supreme Court has further ruled that, if not covered by the resolution plan, all debts to the Central Government, any State Government, or any local authority shall stand extinguished and that no further legal action may be taken to collect those debts for the time period prior to the date the Adjudicating Authority grants its approval under Section 31.

3.4 The relevant part of the **Ghanshyam Mishra judgment(supra)** in this regard is given below:

"61. All these details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities, that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the Corporate Debtor is revived and made a running establishment. The legislative

¹⁴2021 SCC OnLine SC 313 decided on 13.04.2021.

intent of making the resolution plan binding on all the stakeholders after it gets the seal of approval from the Adjudicating Authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in sub-section (2) of Section 30 is, that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is, that he should start with fresh slate on the basis of the resolution plan approved.

62. This aspect has been aptly explained by this Court in the case of Committee of Creditors of Essar Steel India Limited through Authorised Signatory (supra).

“107. For the same reason, the impugned NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta, 2019 SCC OnLine NCLAT 388] in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us

hereinabove. For these reasons, NCLAT judgment must also be set aside on this count.” “

3.5 We also place reliance on the recent judgement of Hon’ble High Court of Rajasthan in the matter of *EMC v. State of Rajasthan* wherein it has been *inter-alia* held that :

“Law is well-settled that with the finalization of insolvency resolution plan and the approval thereof by the NCLT, all dues of creditors, Corporate, Statutory and others stand extinguished and no demand can be raised for the period prior to the specified date.”

On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.

3.6 It is to be noted that the primary goal of a resolution plan as well as the sale of a Corporate Debtor as a going concern remains the same *i.e* revival of the Corporate Debtor’s business. The struggles faced by the purchaser during the sale of a Corporate Debtor as a ‘going concern’ and that of the Successful Resolution Applicant are similar, if not the same. As such, comparable reliefs and concessions ought to be granted in both cases. As such, the law laid down in *Ghanashyam Mishra (Supra)* ought to be made applicable to cases in which the Corporate Debtor has been sold as ‘going concern’.

- 3.7 The question that craves answer is the applicability of the ratio of above two judgements to the present question where the Corporate Debtor has been sold as a going concern. As already held by this Tribunal in the matter of ‘Divine Vidyut Ltd.’, the sale of the Corporate Debtor as a going concern is akin to a de-facto CIRP, and therefore the judgments (supra) are applicable in the present case of a going concern sale too, shall therefore be applicable in the present case as well.
- 3.8 It is further noted that while some of the prayers made in I.A. (IBC) No. 953/KB/2022 come within the purview of IBC and the Companies Act 2013, many others fall under the power and jurisdiction of different government authorities/departments. As such, the same shall be dealt with the respective competent authorities/forums/offices, Government or Semi Government of the State or Central Government keeping in view the spirit of the code. Since, this is a ‘Going concern sale’ , the Successful Bidder shall make necessary applications to the concerned regulatory or statutory authorities for renewal of business permits and supply of essential services, if required, and all necessary forms along with filing fees etc. and such authority shall also consider granting the same keeping in mind the objectives of the Code which is concerned with resolving of the insolvency of the Corporate Debtor.
- 3.9 Further, it is noted that the Applicant has sought that the contracts and arrangements except those with existing promoters/directors of the Corporate Debtor shall remain in existence on the same terms and conditions. In this regard, we are of the considered opinion that without having a clear picture of the various contracts between the Corporate Debtor and third-parties, carte blanche orders ought not be passed. As such, the prayers seeking carte blanche orders relating to contractual rights are not granted by this Adjudicating Authority.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT I)

Laseer Solar LLP vs. Kannan Tiruvengadam
I.A.(IBC) 953/KB/2022 in CP (IB) 515/KB/2018

- 3.10 With respect to the waivers sought in relation to guarantors, the judgment of *Lalit Kumar Jain v Union of India &ors*,¹⁵ wherein the Hon'ble Supreme Court held in para 133 that sanction of a resolution plan and finality imparted to it by section 31 does not *per se* operate as a discharge of the guarantor's liability shall apply. In view of the above position of law, the sale of the assets of the Corporate Debtor 'as a going concern' shall be binding on the Corporate Debtor and other persons, authorities etc.
- 3.11 With respect to the reliefs and waivers sought for all inquiries, litigations, investigations and proceedings shall be granted strictly as per the section 32 A of the Code.
- 3.12 With the above observations, the instant application is allowed. *IA (IBC) No.953/KB/2022* shall stand disposed of accordingly.
- 3.13 The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 3.14 A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

The order is pronounced on the 17th day of October, 2023.

SM_(LRA)

¹⁵ 2021 SCC OnLine SC 396 decided on 21.05.2021.