



IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

IA (IBC) No. 196 /CB/2023

In

CP (IB) No. 249/CB/2020

In the matter of:

Application under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 seeking direction in respect of the Acquisition Plan of the corporate debtor as a whole going concern.

-And-

In the matter of:

Mr. Shikhar Chand Jain, Liquidator of the Corporate debtor having its office at: Ist Floor, Mahavir Gaushala Complex, K.K. Road, Moudhapara, Raipur (C.G) 492 001, Reg No- IBBI/IPA-001/IP-P00495/2017-18/10883;

...Applicant/Liquidator

-Versus-

Rashik Bihari Food Private Limited (Successful Bidder of the Corporate debtor)

Through its Authorised Representative, having registered office at: Mini Mata Chowk, Janjgar Road, Village: Taroud, Akaltara, Chhattisgarh- 495 552.

...Respondent

-In-

In the matter of:

Hariom Rice Mill Private Limited., a company incorporated under the Companies Act, 1956 having its registered office situated at: Vill. & Post- Darrighat Masturi Road, Bilaspur- 495 551, Chhattisgarh.

...Corporate Debtor

Coram:

Shri P. Mohan Raj : Member (Judicial)

Shri Kaushalendra Kumar Singh : Member (Technical)

Appearances (through Video Conference)

For the Applicants : Ms. A. Nehra Adv.

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CUTTACK BENCH

IA (IBC) No. 196 /CB/2023

In

CP (IB) No. 249/CB/2020

In re: Hariom Rice Mills Private Limited

For the Respondents : Mr. Sukanta Behera, Adv.
Mr. S. Bajaj, Adv.
Mr. A Choudhary, Adv.
Mr. S. Tiberwal, Adv.

Order reserved on: 18.09.2023

Order pronounced on: 11.10.2023

ORDER

1. This Application has been filed under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 by the Liquidator **Mr. Shikhar Chand Jain** (hereinafter referred as "**applicant**") of Hariom Rice Mill Private Limited (hereinafter referred to as "**Corporate Debtor**") seeking permission of this Adjudicating Authority to execute and conclude the purchase/acquisition of the Corporate Debtor as a whole on a going concern basis under Liquidation by way of implementation of the acquisition plan submitted by the Applicant and seek certain reliefs, concessions, directions, dispensations, and exemptions from this Adjudicating Authority which are necessary to acquire Hariom Rice Mill Private Limited (the corporate debtor) as a going concern. | 2

2. **The averments as made in the application are summarized hereunder:**

- (i) The corporate Insolvency Resolution Process (hereinafter referred as "**CIRP**") in respect of the corporate debtor was initiated under Section 10 IBC, 2016 in Application No. CP(IB) No. 249/CB/2020 vide order dated 09.06.2021 by this Adjudicating Authority. During the CIRP, Mr. Pratim Bayal having reg. No. IBBI/IPA-003/IP-N00213/2018-2019/12385 was appointed as the Interim Resolution Professional (hereinafter as "**IRP**") and was subsequently was confirmed as the Resolution Professional by the CoC of the corporate debtor in its first meeting. As no Resolution Plan was approved by the Committee of Creditors during the CIRP of corporate debtor and as a result of the same, this Adjudicating

51

51

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IBC) No. 196 /CB/2023

In

CP (IB) No. 249/CB/2020

In re: Hariom Rice Mills Private Limited

Authority *vide* order dated 03.08.2022 passed the liquidation order for liquidating the corporate debtor as a going concern. The RP did not submit the consent to act as the liquidator of the corporate debtor, The Adjudicating Authority *vide* same order appointed **Mr. Shikar Chand Jain bearing reg no. IBBI/IPA-001/IP-P00495/2017-18/10883**; as the liquidator of the corporate debtor. A Copy of the Admission Order dated 09.06.2021 is annexed to Application as **Annexure-B**. Copy of the liquidation order dated 03.08.2022 passed by the Adjudicating Authority is annexed to Application as **Annexure-C**.

- (ii) Subsequently, the applicant issued the Public Notice in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (Liquidation Regulations) and the Process Memorandum for calling the stakeholders to submit their claims with requisite documents.
- (iii) The Applicant then undertook the process of selling the Corporate Debtor as a whole, on a clean slate as a going concern, in terms of Regulation 32(e) of the Liquidation Regulations to maximize the value of the Corporate Debtor.
- (iv) In accordance with the provision of the Liquidation Regulations, the Liquidator had, *vide* public notice, published on 29.12.2022 in the vernacular newspaper inviting EOIs inviting participation in e-auction pertaining to sale of the Corporate Debtor as a whole on a going concern basis on a "as is where is", "as is what is "as is how is" and "without recourse basis" on the terms and conditions prescribed by the Liquidator, wherein the reserve price was fixed at INR 6,47,05,000/- (Rupees Six Crores Forty- Seven Lakhs and Five Thousand Only). The Applicant has also provided the Process

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Sd

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IBC) No. 196 /CB/2023

In

CP (IB) No. 249/CB/2020

In re: Hariom Rice Mills Private Limited

Memorandum dated 29.12.2022, wherein the terms and conditions of the auction were described.

- (v) Pursuant to the verification/review of the expression of interest (hereinafter referred as "EOI") along with supporting documents and submission of Earnest money in terms of Process Memorandum, "*Rashik Bihari Food Private Limited*" was declared as the Successful Bidder for the highest submitted bid of Rs. 10,31,05,000/- (Rupees Ten Crores Thirty-One Lakhs and Five thousand Only).
- (vi) Pursuant to the review of the expression of interest ("EOI"), supporting documents submitted with the Respondent, and submission of the earnest money deposit ("EMD") in terms of the Process Document, upon verification of the EOI along with EMD and supporting documents, submitted by the Bidder, the Liquidator declared the Bidder as a "Qualified Bidder" on 30.01.2023. Thereafter, the bid was undertaken by way of an e-auction process on 01.02.2023, whereby the respondent was declared as the Successful Bidder.
- (vii) Subsequently, the applicant issued the Letter of intent dated 03.02.2023 (hereinafter referred as "LOI") to the Successful Bidder, subject to the fulfillment of the conditions specified therein, including inter alia the payment of INR 2,25,41,250 (two crore twenty-five lakhs forty-one thousand two hundred and fifty only) being equivalent to 25% (twenty-five percent) of the Final Consideration ("**Upfront**") and the Balance consideration amount INR 7,73,28,750 (Seven crore seventy-three lakhs twenty-eight thousand seven hundred and fifty only). Copy of the Letter of Intent dated 03.02.2023 is annexed herewith as **Annexure- "F"**.

Sd

Sd

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IBC) No. 196 /CB/2023

In

CP (IB) No. 249/CB/2020

In re: Hariom Rice Mills Private Limited

- (viii) The Applicant, pursuant to issuance of LOI, and in compliance of the terms and conditions of the LOI, has duly paid the Upfront Payment of INR 2,25,41,250 (Two Crore Twenty-Five Lakh Forty-One Thousand Two Hundred and Fifty Only) on 07.02.2023, and a Balance consideration of INR 7,73,28,750 (Seven Crore Seventy-Three Lakhs Twenty-Eight Thousand Seven Hundred and Fifty Only) in parts on 03.03.2023 and 3.04.2023, and Amount of Rs. 4,93,151/- (Rupees Four Ninety Three Thousand One Hundred and Fifty One Only) towards interest into the Liquidation Account which has been duly acknowledged and accepted by the Respondent.
- (ix) In pursuance of the above, the liquidator issued the Sale Certificate dated 07.04.2023 along with the possession Memo dated 07.04.2023. It is submitted that from 07.04.2023 (hereinafter referred as “**Handover Date**”) the respondent was entitled to all benefits arising out of the corporate debtor. Copy of the Sale Certificate dated 07.04.2023 is annexed herewith as **Annexure “G”** and **Annexure “H”** respectively. In pursuance of the letter dated 04.05.2023, the liquidator submitted the Form INC-28 with the Registrar of Companies, which is presently appearing with the status “Under Processing”.
- (x) Further, pursuant to the issuance of LOI, and in accordance with the Process Document, the Applicant has submitted the Acquisition Plan for acquiring the Corporate Debtor on a going concern in accordance with the Section 32A of the Code and for setting out the reliefs, concessions, exemptions in respect of the acquisition of the Corporate Debtor.

3. We have heard the learned counsel for the parties and on a perusal of the record, we are of the considered view that since that Corporate Debtor has been

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Sd

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IBC) No. 196 /CB/2023

In

CP (IB) No. 249/CB/2020

In re: Hariom Rice Mills Private Limited

sold as a going concern, the reliefs sought for in the form of waivers and concessions, by the applicant can be granted for the smooth transition of the corporate debtor and continuation of the business by the Applicant, as below.

4. We have perused the facts pleaded and the reliefs prayed in the petition. The relief/concession as sought by the applicant are listed in the Column (2) in table below. Column (3) therein contains our remarks as to the extent such relief/concession being allowed.

Reliefs and Concessions sought, and orders thereon, are tabulated below.

S. No. (i)	Relief sought by the Applicant (2)	Remarks/Orders thereon (3)
5. 1.	Considering the similarities between resolution of a corporate debtor (under corporate insolvency resolution process under the Code) on a going concern basis, and sale of a corporate debtor (under liquidation under the Code) on a going concern basis, all benefits, privileges, rights, exemptions, and other entitlements as are usually available to a resolution applicant, whether under the Applicable Laws shall be equally applicable to the Bidder under this Acquisition Plan. Similar to a resolution applicant who intends to acquire a corporate debtor undergoing corporate insolvency resolution process on a clean slate basis, the Bidder shall, pursuant to this Acquisition Plan, acquire the Corporate Debtor as a going concern on a clean slate basis.	Granted
5.2.	As such, this Acquisition Plan upon its approval by Adjudicating Authority shall be binding on all Stakeholders and shall provide the benefit of	Granted

Sd

Sd

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IBC) No. 196 /CB/2023

In

CP (IB) No. 249/CB/2020

In re: Hariom Rice Mills Private Limited

	<p>continuing the business of the Corporate Debtor on a clean slate. Without prejudice to the generality of the above, and in addition to the benefits as may be available to the Bidder for acquiring the Corporate Debtor under liquidation, the benefits as are applicable to insolvency resolution under Applicable Laws shall be applicable to this Acquisition Plan.</p>	
5.3.	<p>Upon receipt of the NCLT Approval Order, no separate or further approval, actions, steps or deeds shall be required for the completion of any actions contemplated under this Acquisition Plan, including reduction/extinguishment of the share capital of Corporate Debtor held by the existing shareholder, issuance of fresh equity shares of the Corporate Debtor, delisting of shares from the stock exchanges and there will be no requirement to add 'and reduced' to the name of the Corporate Debtor. Any procedural requirements such as filings to the RoC, RBI, SEBI or the stock exchanges shall be filled by the Corporate Debtor, in compliance of the Applicable Law.</p>	<p>The Company shall prepare and file necessary forms and application along with applicable fee with the concerned Registrar of Companies, if required. The concerned RoC and other authorities shall consider it keeping in view the intent & spirit of IBC.</p>
5.4.	<p>As the bidder is required to take over the Corporate Debtor on a going concern' all Permits (including ,consents, licenses, approvals, clearances, 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 or accustomed to shall continue</p>	<p>Such a blanket relief cannot be granted. If the corporate debtor approaches the concern competent Authorities, they shall consider the request in terms of</p>

Sd

Sd

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IBC) No. 196 /CB/2023

In

CP (IB) No. 249/CB/2020

In re: Hariom Rice Mills Private Limited

	<p>to remain valid, notwithstanding any provision to the contrary in their terms, and provided that in case of Permits that have expired or lapsed, notwithstanding that they may have already lapsed or expired due to any breach Non-Compliance or efflux of time, be deemed to continue without disruption for the benefit of the Corporate Debtor until either such Permit is renewed or a fresh Permit is issued by the relevant Governmental Authority in favour of the Corporate Debtor, in accordance with the procedure provided under the Applicable Law. For the sake of clarity, the relevant Person or the Governmental Authority shall be required to renew such Permit or issue a fresh Permit on similar terms as the current Permit, to the extent possible. Without prejudice to the aforesaid, the Corporate Debtor shall continue to receive the benefit of Permits and Essential Contracts to maintain its 'going concern' status, and no Permit shall be allowed to be cancelled or suspended or terminated or disrupted, and no Essential Contract shall be allowed to be terminated or not performed or disrupted by the counterparties for at least 36 (thirty-six months from the Acquisition Date (unless, in case of Essential Contract, the same is terminated earlier by the Corporate Debtor pursuant to the terms of this Acquisition Plan or as per Applicable Laws).</p>	<p>judgment of the Supreme Court in Ghanashyam Mishra and sons - vs- Edelweiss Asset Reconstruction Company 2021 SCC online SC 313 and keeping in view the intent & spirit of the IBC.</p>
5.5	Neither the Bidder, nor any of its affiliates or connected persons, will be disqualified, or	

Sd

Sd

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IBC) No. 196 /CB/2023

In

CP (IB) No. 249/CB/2020

In re: Hariom Rice Mills Private Limited

	considered ineligible, under the Code for proposing and/or implementing a plan in relation to the insolvency resolution or liquidation of any person (other than the Corporate Debtor), merely on account of the implementation of this Acquisition Plan by the Bidder.	Not Granted
5.6.	Change in the shareholding of the Corporate Debtor as a result of the CD being sold as a going concern and pursuant to approval by the Adjudicating Authority leading to such change in shareholding shall not result in lapse of any carry forward losses and/or unabsorbed depreciation in the books of the Corporate Debtor as on takeover date. that are brought forward under the provisions of section 79 read with section 2(18) Income-tax Act, 1961.	The unpaid liabilities/existing share capital which are to be extinguished, are to be credited into "Capital Reserve" in accordance with applicable Indian Accounting Standards; and the accumulated losses, if any, as per the balance-sheet prior to the date of acquisition will have to be adjusted/set off as against such "Capital Reserve". The balance amount losses, if any, can only be considered for carry forward as per provisions of Sections 79(2) of the Income Tax Act, provided a reasonable

51

51

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IBC) No. 196 /CB/2023

In

CP (IB) No. 249 /CB/2020

In re: Hariom Rice Mills Private Limited

		opportunity is given to the Principal Commissioner of Income Tax.
5.7.	Without prejudice to anything set out in this Acquisition Plan, for any breaches or Non-Compliances with the provisions of Applicable Laws; or any litigations, investigations or disputes arising as a result of an alleged breach of contract, Applicable Law or otherwise; which have not been settled, cured, extinguished and are continuing even post the Acquisition Date, and which if not settled, cured or remedied may have a material impact on the business of the Corporate Debtor, the Bidder will investigate as to veracity of such allegations and if so required, take or cause to be taken remedial actions in this regard within a reasonable period of time, during which time the related litigations/ proceedings/investigations shall be kept in abeyance and that no coercive action be taken against the Bidder or the Corporate Debtor. The Bidder will require a period of 36 (thirty-six) months from the Acquisition Date to remedy any underlying breaches or non-Compliances which have not been extinguished or settled or abated as part of this Acquisition Plan, and are continuing post the Acquisition Date.	All the Past liabilities of corporate debtor and consequential actions of the corporate debtor and all the consequential actions upon the corporate debtor prior to the date of acquisition will stand permanently extinguished.

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Sl

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IBC) No. 196 /CB/2023

In

CP (IB) No. 249 /CB/2020

In re: Hariom Rice Mills Private Limited

5.8	All Government Authorities to grant any relief, concession or dispensation as may be required for implementation of the transactions contemplated under the Acquisition Plan in accordance with its terms and conditions.	The corporate debtor will have to approach the concerned authorities, who in turn, will consider the request keeping in view the intent and spirit of the IBC.
5.9.	The RoC to take on record and enable implementation of the Acquisition Plan, upon approval of the Acquisition Plan by Adjudicating Authority, without any further compliances. Without prejudice to the generality of above, the RoC shall, pursuant to the NCLT Approval Order, update its records to reflect the status of the Corporate Debtor as 'active' from the status of 'under liquidation'.	Granted with respect to the non-compliances by the corporate debtor before the date of acquisition. The RoC shall change the status of CD as 'active' from the status of "under liquidation".
5.10	The Corporate Debtor shall have the right to review and terminate any contract that it entered or executed prior to the date of the NCLT Approval Order. If any contract entered into or executed by the Corporate Debtor prior to the Acquisition Date contains a provision for termination in case of initiation of insolvency, bankruptcy, liquidation, winding up or any other proceedings of similar nature against the Corporate Debtor and such	Granted.

Sd.

Sd.

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IBC) No. 196 /CB/2023

In

CP (IB) No. 249/CB/2020

In re: Hariom Rice Mills Private Limited

	clause has not been triggered/used by the counter parties) till the Acquisition Date, it shall be deemed that the counter party(ies) has waived its right to claim termination of the contract on account of such provision, notwithstanding to the terms of such contract.	
5.11	Given that the Bidder will acquire control of the affairs of the Corporate Debtor on the Acquisition Date on a 'clean slate' basis, any penalties or any other liabilities, release attachments of Property and withdraw prosecution or Proceedings against Corporate Debtor, that may arise from any defaults or Non-Compliances by the Corporate Debtor prior to the Acquisition Date of Applicable Laws, including but not limiting to the provisions of the CA 2013, Contract Labour (Regulation and Abolition) Act, 1970, all relevant and applicable Tax laws, the relevant stamp acts of the different states of India, relevant environmental laws, anti-money laundering laws and laws for prevention of corruption shall be assumed to have been waived.	Granted. In terms of Section 32A of IBC, 2016.
5.12	The NCLT to extend the moratorium imposed under the Code in relation to the Corporate Debtor, until the Acquisition Date.	Granted with respect to the non-compliances by the corporate debtor before the date of acquisition.

Sj

Sj

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IBC) No. 196 /CB/2023

In

CP (IB) No. 249/CB/2020

In re: Hariom Rice Mills Private Limited

5.13	Capital Reduction (including extinguishment of the shares held by the existing promoter group), shall be written off and suitably capitalized as per the accounting standards and shall be deemed to be settled at NIL amounts and permanently extinguished by virtue of the order of the NCLT approving this Acquisition Plan and the Company or the Bidder shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.	Subject to remarks as against para 5.6
5.14	That the concerned Registrar of Companies be directed to associate the Directors Identification Numbers (DIN) of the Directors who would be taking charge collectively as Board of Directors of the Corporate Debtor pursuant to the approved Acquisition Plan upon necessary filings being made in accordance with Applicable Law.	Allowed. The Successful Bidders are at liberty to reconstitute the Board of Directors as per provisions of the Companies, Act, 2013 and the appropriate filings may be effected before the RoC concerned.
5.15	The cases pending/ decreed against the Corporate Debtor by any Court and/or Tribunal and/or any quasi- Judicial authority shall not be enforced against the Auction Purchaser and/or the Corporate Debtor.	The cases instituted, decree or order passed prior to the date of acquisition shall not be enforced against the corporate debtor, subject to Section 32A (3) of IBC, 2016.

51

51

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IBC) No. 196 /CB/2023

In

CP (IB) No. 249/CB/2020

In re: Hariom Rice Mills Private Limited

5.16	Auction Purchaser shall be allowed to suitably represent the true and fair picture of Financial Statement post-acquisition by suitably arranging/ re arranging/write off/ write back of various items of assets and liabilities and pursuant to such rearrangement/write-off and write back of assets and liabilities no income tax liability pursuant to such rearrangement and write-off/back shall accrue on the Auction Purchaser and the CD.	Subject to remarks as against para 5.6
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5. After having considered, the prayers of the applicant, we grant the reliefs and concessions as mentioned in column (2) of the table hereinabove, subject to the remarks as given in column (3) of the table. It is clarified that certain reliefs/concessions require the approval/consent of the concerned authorities under other laws and as such the corporate debtor/successful bidder will have to approach them who will consider it under such other law keeping in view the intent and spirit of the IBC.

6. It is also clarified that the unpaid liabilities/existing share capital of the corporate debtor, which are to be extinguished as per the reliefs and concessions granted hereinabove, are to be credited into the "Capital Reserve" in accordance with applicable Indian Accounting Standards; and the accumulated losses, if any, as per the balance-sheet prior to the date of acquisition will have to be adjusted/set off as against such "Capital Reserve". The balance amount of losses, if any, can only be considered for carry forward as per provisions of Section 79(2) of the Income Tax Act, provided a reasonable opportunity is given to the Principal Commissioner of Income Tax.

7. With the aforesaid observations the present **IA (IB) No. 196/CB/2023 in CP (IB) No. 249/CB/2020** stands **disposed of**.

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IBC) No. 196 / CB/2023

In

CP (IB) No. 249 / CB/2020

In re: Hariom Rice Mills Private Limited

8. 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.
9. Certified Copy of this order be issued, if applied for, upon compliance of all requisite formalities.



Kaushalendra Kumar Singh
Member (Technical)



P. Mohan Raj
Member (Judicial)

Signed on this, the 11th day of October, 2023.

Supriya P.S. / N. Tomar (Steno)