

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT II
KOLKATA**

I.A. (IB) No. 521/KB/2022

in

C.P (IB) No. 972/KB/2018

*An application under Section 60(5) of the Insolvency and Bankruptcy Code,
2016.*

In the matter of

Bell Finvest (India) Limited

...Financial Creditors

Versus

Duckbill Drugs Private Limited

[CIN: U24232WB1994PTC063258]

... Corporate Debtor

IA (IB) No. 521/KB/2022

In the matter of

Paul Brothers

...Applicant/Successful Bidder

Versus

Santanu Brahma, liquidator of Duckbill Drugs Private Limited

...Respondent

Order pronounced on: 24th February 2023

Coram:

Smt. Bidisha Banerjee : Member (Judicial)

Shri Balraj Joshi : Member (Technical)

Appearances (via video conferencing/physical hearing):

For the Applicant :1. Mr. Joy Saha, Senior Advocate
2. Mr. Avishek Guha, Advocate
3. Ms. Urmila Chakraborty, Advocate

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4. Mr. Chitrsh Saraogi, Advocate

5. Ms. Arnika Dutta, Advocate

For the Liquidator

: 1. Mr. Shaunak Mitra, Advocate

2. Ms. Debaleena Ganguly, Advocate

ORDER

Per Bidisha Banerjee, Member (Judicial)

1. This court convened *via* hybrid mode.
2. This is an Interlocutory Application filed under section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) by Mr Asoke Paul, Partner, Paul Brothers (*'Applicant' or 'Successful Bidder'*), duly authorised *vide* Letter of Authority dated 02 May, 2022, against the liquidator of Duckbill Drugs Private Limited (*'Corporate Debtor'*), seeking the following reliefs:-
 - a. To bring on record the Sale of the Corporate Debtor to the Applicant, as a going concern in terms with the Sale Certificate dated 11 May 2022.
 - b. To grant the waivers and reliefs as sought in Para 10 fo the present Application; and
 - c. The Liquidator be directed to extend all cooperation pursuant to the grant of reliefs prayed for herein;
 - d. For such other reliefs as this Tribunal may deem fit in the facts and circumstances of the present case.
3. *The Ld. Counsel appearing on behalf of the Applicant submits as follows:*
 1. The Corporate Debtor was admitted into Corporate Insolvency Resolution Process (*'CIRP'*) on 17 December 2019 by this Adjudicating

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Authority and Mr. Bhupendra Singh Narayan Singh Rajput was appointed as the Interim Resolution Professional. An order dated 13 April 2021 was passed initiating the commencement of liquidation process of the Corporate Debtor and Mr. Santanu Brahma, the Applicant was appointed as the Liquidator.

2. In accordance with regulation 12 of the Liquidation Regulations, the Liquidator issued Public Announcement in Form B on 23 April 2022 in *Business Standard* (English) and *Aajkal* (Bengali).
3. In compliance of section 35 of the Code read with regulations 32, 32A and 33 of the Liquidation Regulations, the Liquidator issued a sale notice dated 23 April 2022 to conduct an e-auction on 09 May 2022 in two newspapers, viz., *Business Standard* [English] and *Aajkal* [Bengali].
4. The E-Auction was conducted on 09 May 2022. The Applicant submitted a binding bid of Rs.5,00,00,000/- (Rupees Five Crore only) for taking over the Corporate Debtor as a going concern.
5. The Liquidator issued LoI to the Applicant on 10 May 2022 which was unconditionally accepted by the Applicant. Upon payment of Rs.5,00,00,000/- (Rupees Five Crore only), the Liquidator issued the Sale Certificate dated 11 May 2022 in favour of the Applicant under clause 1(13) of the Liquidation Regulations.
6. Learned Senior Counsel appearing on behalf of the Applicant submitted that the Applicant purchased the Corporate Debtor as a going concern, rather than on piecemeal asset's basis, and to purchase the Corporate Debtor on a "Clean Slate Theory" has sought for certain waivers and concessions.

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Analysis and Findings

7. We have heard the Ld. Counsel appearing on behalf of the Applicant and perused the reliefs, waivers and concessions as sought and as given in at Paragraph 10 of the Application. While some of the reliefs, waivers and concessions sought by the Successful Bidder come within the purview of the Code and the Companies Act 2013, while many others fall under the power and jurisdiction of different government authorities/departments. This Adjudicating Authority has power to grant reliefs, waivers and concessions only with respect to the reliefs, waivers and concessions that are directly in relation to the Code and the Companies Act, 2013 (within the powers of the NCLT). The reliefs, waivers and concessions that pertain to other governmental authorities/departments shall be dealt with the respective competent authorities/forums/offices, Government or Semi Government of the State or Central Government with regard to the respective reliefs, waivers and concession. The competent authorities including the Appellate authorities may consider grant such reliefs, waivers and concessions keeping in view the spirit of the code (IBC 2016) .
8. The reliefs, waivers and concessions shall be consistent with extant law. Further 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.
9. With respect to the waivers with regard to extinguishment of claims which arose Pre-CIRP and which have not been claimed are granted in terms of *Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset*

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*Reconstruction Company Ltd*¹ wherein the Hon'ble Supreme Court has held that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders. 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.

10. With respect to the waivers sought in relation to guarantors, the judgment of *Lalit Kumar Jain v Union of India &ors*,² 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.
11. Now, the only 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. In our opinion, the sale of the Corporate Debtor as a going concern is akin to a de-facto CIRP, and therefore the judgments are applicable in the present case of a going concern sale too, shall therefore be applicable in the present case as well.

¹2021 SCC OnLine SC 313 decided on 13.04.2021.

² 2021 SCC OnLine SC 396 decided on 21.05.2021.

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12. In view of the above the reliefs and waivers sought and granted for the smooth running of business of the Corporate Debtor as a going concern, are as follows:

<i>S.No.</i>	<i>Reliefs and Waivers</i>	<i>Orders</i>
1.	The date of issue of the Sale Certificate being 11th May, 2022 should be deemed to be the date of acquisition ("Acquisition Date") of the Corporate Debtor, by the Applicant on a going concern basis;	Granted, since it is a going concern sale, and the Applicant should not be saddled with the liabilities prior to the issue of Sale Certificate.
2.	The Applicant seeks that all known or unknown, claimed or unclaimed, disclosed or undisclosed, crystallised or uncrystallised liabilities/obligations / risks, of any nature whatsoever, as on 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;	<i>Granted, strictly as per</i> the decision by the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd³</i> .
3.	The Applicant seeks that the Applicant 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;	Granted.

³2021 SCC OnLine SC 313 decided on 13.04.2021.

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4.	The Applicant seeks that 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;	Granted.
5.	The Applicant seeks that if any electricity dues are pending or disputed at any authority with respect to the Corporate Debtor, in relation to any period prior to the Acquisition Date or arising on account of the sale of the Corporate Debtor, the said dues/charges should be extinguished;	<i>Granted, strictly as per</i> the decision by the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd⁴</i> .
6.	The Applicant seeks a direction that, the sale of the Corporate Debtor shall be binding on all utility providers and all the utility providers shall continue to supply the utilities to the Corporate Debtor, as may be required for the operations of the Corporate Debtor;	Such a Carta Blanche cannot be granted. The Successful Bidder would need to approach the Appropriate Authorities, who would support the applicant in the spirit of the IBC 2016.
7.	The Applicant seeks a recognition that pursuant to the execution of the Sale Certificate, the Applicant has received all the rights, titles, entitlements and interest in every part of the Corporate Debtor (except for the Excluded Assets, if any);	Granted subject to payment of renewal fees, if any, to such licensing authorities.
8.	The Applicant seeks a direction that, if any penalties, liabilities, duties etc, arise on account of taxes (such income tax, deduction at source, tax collection at source, goods and service tax, custom duty, value added tax, service tax, wealth tax, cess, DGFT dues etc) whether direct or indirect in nature, whether admitted or not, whether due or contingent, whether asserted or	<i>Granted, strictly as per</i> the decision by the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd⁵</i> .

⁴2021 SCC OnLine SC 313 decided on 13.04.2021.

⁵2021 SCC OnLine SC 313 decided on 13.04.2021.

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	unasserted, crystallized or uncrystallized, known or unknown, secured or unsecured, disputed or undisputed, and these relate to a period prior to the Acquisition Date then, they should be written off in full and should be permanently extinguished;	
9.	The Applicant seeks that all investigations, assessments, notices, causes of action, suits, claims, disputes, litigations, arbitration, or other judicial, regulatory or administrative proceedings against, or in relation to, or in connection with the Corporate Debtor or the affairs of the Corporate Debtor (other than against the erstwhile promoters or former members of the management of the Corporate Debtor), pending or threatened, or stopped due to moratorium, present or future, in relation to any period prior to Acquisition Date, shall stand abated/withdrawn/dismitted against the Corporate Debtor;	Granted to the extent of those covered by Section 32 A of the code.
10.	The Applicant seeks that all financial and pecuniary liabilities of the Corporate Debtor, (including without limitation, any penalty, whether contingent, assessed, known or unknown, interest, fines or fees and any other liabilities and/or obligations which may have a financial impact in relation to any period prior to Acquisition Date should be deemed to be extinguished;	<i>Granted, strictly as per</i> the decision by the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd⁶</i> .
11.	The Applicant seeks that the erstwhile directors of the Corporate Debtor, namely Mr. Swapan Mukherjee and Mr. Arjun Mukherjee are removed from the board of directors of the Corporate Debtor and appropriate instructions	Granted with respect to the removal of the erstwhile directors. The Successful bidder shall file the requisite forms along with the fees with the RoC for

⁶2021 SCC OnLine SC 313 decided on 13.04.2021.

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	are issued to the registrar of companies, Kolkata;	removal and addition of new Directors.
12.	The Applicant seeks that the share capital of the Corporate Debtor is restructured whereby (a) the existing shares of the Corporate Debtor are cancelled/extinguished; (b) that no amounts are due and payable to the existing shareholders of the Corporate Debtor on account of the cancellation/extinguishment of shares as stated in (a) above; (c) that all amounts that are payable to the existing shareholders of the Corporate Debtor by the way of unclaimed dividend, share application money or otherwise are extinguished and appropriate instructions are issued to the registrar of companies, Kolkata;	Granted, where internal approvals are required, however, the company shall file all necessary forms and applications along with applicable fee with the Registrar of Companies, if required.
13.	The Applicant be permitted to restructure the share capital of the Corporate Debtor in such manner and for such amount as it may consider appropriate for the working capital of the Corporate Debtor and all stamp duty in relation to the same be waived;	Granted, where internal approvals are required, however, the company shall file all necessary forms and applications along with applicable fee with the Registrar of Companies, if required.
14.	The Applicant seeks that the status of the Corporate Debtor in the records of the registrar of companies should be reflected as active on and from the Acquisition Date and appropriate instructions are issued to the registrar of companies, Kolkata;	Granted, since sale of the corporate debtor as a going concern is akin to a resolution of the corporate debtor, and therefore enables the corporate debtor to start on a clean slate. However, the same shall be subject to the applicant filing the necessary forms along with a copy of this order with the RoC.

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15.	The Applicant/ Corporate Debtor shall be at liberty to rationalise the employee strength of the Corporate Debtor in order to keep it as a going concern;	Granted.
16.	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 Acquisition Date without having to submit the details on the past revenue, past performance, profitability records, net worth etc.	Granted to the extent that relaxation may be granted by the concerned departments/PSUs for the time between initiation of CIRP and completion of liquidation sale.
17.	The Applicant seeks a direction from the Hon'ble Tribunal that, neither should the Applicant, nor the Corporate Debtor, nor their respective directors, officers and employees appointed on and as of the Acquisition Date be held liable for any violations, liabilities, penalties or fines with respect to or pursuant to the Corporate Debtor not having in place requisite licenses and approvals, including but not limited to the licenses issued by the Ministry of Environment, Forest and Climate Change, the Central Pollution Control Board and the State Pollution Control Board, required to undertake its business as per applicable law, or any non-compliances of applicable law by the Corporate Debtor;	Granted, since it is a going concern sale, and the Applicant should not be saddled with the liabilities prior to the issue of Sale Certificate. The Applicant shall apply for renewal of licenses to the appropriate authorities, wherever necessary.
18.	The Applicant seeks a direction from the Hon'ble Tribunal that, the Corporate Debtor should have a period of one (1) year from the NCLT Order Date to rectify, modify, reinstate, renew and/or revalidate the licenses as stated under para (t) above, lease, leave and license agreements / arrangements. At the time of renewal of licenses, approvals, consents, permissions attached to the Corporate Debtor, all the fees, cost or penalty	Granted, subject to payment of renewal fees, if any, to the licensing authorities.

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	<p>pertaining to the period prior to NCLT Approval Date shall be waived off and the Corporate Debtor shall not be liable to pay any fees/costs/ penalty whether due or not.</p>	
19.	<p>The Applicant seeks a direction that, existing contracts and arrangements of the Corporate Debtor, if any, with the Existing Promoters/ Directors and Related Parties of the Corporate Debtor, should stand terminated on and from the Acquisition Date;</p>	<p>Being a 'going concern' sale, and as such the buyer is free to take all decisions after the date of acquisition.</p>
20.	<p>The Applicant seeks the right to review and terminate any contract that was entered into prior to the Acquisition Date without any penalty, charges, fees, fines, liabilities, damages in relation thereto. Save and except the contracts and arrangements which shall be terminated by the Corporate Debtor/ Applicant, all other contracts and arrangements shall remain in existence on the same terms and conditions;</p>	<p>Being a 'going concern sale, and as such the buyer is free to take all decisions after the date of acquisition.</p>
21.	<p>The Applicant seeks that this Tribunal provides directions to the relevant tax authorities that, the exemptions available to a resolution applicant in the case of the implementation of a resolution plan under Section 79 of the Income Tax Act, be extended to the Applicant and the Corporate Debtor as the Applicant has bought the Corporate Debtor, on going concern basis</p>	<p>The Applicant may approach the authority concerned who would consider such request under the Income Tax Act, 1961, keeping in view the spirit of the IBC legislation.</p>
22.	<p>The Applicant seeks that GST be exempted since the Corporate Debtor has been bought on a going concern basis. W. The Applicant seeks that this Tribunal directs the relevant tax authorities that, any change in</p>	<p>The Applicant may approach the authority concerned who would consider such request under the relevant law,</p>

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	shareholding of the Corporate Debtor should not (a) result in in lapse of any carry forward accumulated Tax losses of the Corporate Debtor; and (b) be considered as void under Section 81 of the Central Goods and Service Tax Act, 2017 and concerned authority shall not impose any successor liability on the Applicant and the Corporate Debtor;	keeping in view the spirit of the IBC legislation.
23.	The Applicant seeks that this Tribunal directs the relevant tax authorities, that all brought forward tax losses and unabsorbed depreciation of the Corporate Debtor will be permitted to be carried forward and set off against future income of the Corporate Debtor;	The Applicant may approach the authority concerned who would consider such request under the Income Tax Act, 1961, keeping in view the spirit of the IBC legislation.
24.	The Applicant seeks that this Tribunal directs the relevant tax authorities, that any Write back/ written down liabilities of the Corporate Debtor shall not be treated as taxable income of the Corporate Debtor/ Applicant under the Income Tax Act, 1961 and any write-offs shall be allowed as a tax deduction in the year of such write-off;	The Applicant may approach the authority concerned who would consider such request under the Income Tax Act, 1961, keeping in view the spirit of the IBC legislation.
25.	The Applicant seeks that the name of the Corporate Debtor shall be excluded/ deleted from the credit information bureau, as a defaulter;	The Applicant shall have to approach the RBI in this regard.
26.	The Applicant seeks that this Hon'ble Tribunal directs the relevant tax authorities, to allow setting off of losses and unabsorbed depreciation for the purpose of computation of book profit as permitted under section 115JB of Income Tax Act, 1961;	The Applicant may approach the authority concerned who would consider such request under the Income Tax Act, 1961, keeping in

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		view the spirit of the IBC legislation.
27.	The Applicant seeks that this Hon'ble Tribunal directs the relevant tax authorities, providing an exemption from any tax liability in terms of Section 115JB of the Income Tax Act, 1961;	The Applicant may approach the authority concerned who would consider such request under the Income Tax Act, 1961, keeping in view the spirit of the IBC legislation.
28.	All concerned authorities and parties be advised about the sale of the Corporate Debtor on going concern basis without antecedent liabilities of any kind as may be relevant for the operation of the Corporate Debtor, post its release from the liquidation;	This is for the successful bidder to do. Necessary filings be made with the RoC.
29.	That the Applicants be permitted to conduct the affairs of the company post its release from the liquidation in the manner as they may considered appropriate;	The successful bidder shall conduct the affairs of the Corporate Debtor as per the law.
30.	A direction be issued that the cases pending/decreed against the Corporate Debtor by any court and/or tribunal and/or any quasi-judicial authority will not be enforced against the Applicant or the Corporate Debtor;	Granted to the extent of provisions of Section 32A of the IBC 2016
31.	A direction be issued that all subsisting consents, licenses, approval, rights, entitlements, benefits and privileges whether under law, contracts, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled to shall notwithstanding any provision to the contrary in their terms, be deemed to continue without disruption for the benefit of the Corporate Debtor and all additional licenses including but not limited to drug license, registrations and consents to operate	Such a Carta Blanche cannot be granted. The Successful Bidder would need to approach the Appropriate Authorities.

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	required by the Corporate Debtor be made available to the Applicant for operations of the Corporate Debtor;	
32.	The Applicant be granted first right of refusal on extension of lease from West Bengal Small Industries Development Corporation Limited;	This is upto the appropriate authorities to consider, who may do so favourably in order to keep the Corporate Debtor as a going concern,
33.	The Applicant being permitted to file return of income and/or revised return of income, for the Assessment Years prior to the Acquisition Date;	Granted. The income tax authorities would be intimated by the Successful bidder about the period spent in CIRP and liquidation, during which the RP/liquidator may have filed the necessary returns.
34.	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, prior to the Date of Acquisition shall be deemed to be extinguished and/or regularised automatically, as the case may be, on the Acquisition Date;	Granted, since it is a going concern sale, and the Applicant should not be saddled with the liabilities prior to the issue of Sale Certificate, subject to the overriding effect of IBC over other laws as per law and as held by the competent courts from time to time.
35.	Any Non-Compliance(s) of the Corporate Debtor under the Companies Act, 1956 and/or Companies Act, 2013 and/or the notifications, circulars, rules and regulations enacted / notified	Granted, since it is a going concern sale, and the Applicant should not be saddled with the liabilities

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	thereunder, prior to the Acquisition Date shall stand compounded without imposition of any penalty, fees, etc;	prior to the issue of Sale Certificate.
36.	All accounts of the Corporate Debtor shall stand regularized and their asset classification shall be "standard".	This is for the Reserve Bank of India to consider.
37.	Compliances under the applicable law for all the statutory appointments of the Corporate Debtor including but not limited to the appointment of statutory auditors, company secretary, etc, will be complied within a period of 12 (Twelve) months from the Acquisition Date and the non-compliance within the period shall be deemed to be waived off/ condoned;	Granted.
38.	The Applicant shall have the liberty to restructure / re-align/ re-locate/ merge/ demerge / amalgamate the business operations / units of the Corporate Debtor.	Granted, the successful bidder shall make appropriate applications for the same.
39.	Direct the Liquidator to provide audited financial statement of Corporate Debtor for the period 01.04.2020 and 01.04.2021 till Acquisition Date within 60 days of the Acquisition Date; The applicant be allowed to carry out audit for all the pending financial years through a newly appointed auditor at the expense of the applicant.	Granted. Further the Liquidator has the responsibility of handing over all the documents that were procured by him during the CIRP and Liquidation Period and also preserve the records for the prescribed periods under IBBI(Liquidation process) Regulations 2016.
40.	To approve the change of the registered address of the Corporate Debtor from Behala Industrial Estate, Building No 1 620, D. H.	Granted, the Applicant shall file the necessary forms along with the

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	Road Kolkata - 700 034, West Bengal to 7, Kali Prasanna Chatterjee Lane, Kolkata- 700 034 and direct the registrar of companies, accordingly;	requisite fees for the change of registered address Corporate Debtor with the concerned RoC.
41.	That the secured creditors be directed to hand over the title documents, deleting all encumbrances mentioned in the assets secured to them, in relation to the Corporate Debtor.	Granted.

13. Accordingly, the *IA (IB) No. 521/KB/2022 in CP (IB) No.972/KB/2018* is disposed of.
14. 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.
15. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

The order is pronounced on the 24th day of February, 2023.

GGRB_LRA