

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**COURT - 2**

ITEM No.302

IA/471(AHM)2022 in CP(IB) 135 of 2017

**Orders under Section 60(5) IBC r.w Regulations 32 C & 32A of IBBI 2016**  
**(Liquidation Process) Reg r.w Rule 11 of NCLT Rules, 2016**

**IN THE MATTER OF:**

Arrihum Tradelink Private Limited

.....Applicant

V/s

Shri Manoj Khattar Liquidator of Vimal Oil & Foods Limited

.....Respondent

**Order delivered on: 07/10/2024**

**Coram:**

**Mrs. Chitra Hankare, Hon'ble Member(J)**

**Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)**

**ORDER**

The case is fixed for pronouncement of order.


The order is pronounced in open Court vide separate sheet.

-SD-

**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

Sd/-

**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**



**BEFORE THE ADJUDICATING AUTHORITY  
THE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD (COURT - II)**

**IA No. 471/NCLT/AHM/2022  
IN  
CP (IB) No. 135/NCLT/AHM/2017**

(Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with regulation 32C and 32A of IBBI (Liquidation Process) Regulations, 2016 r/w Rule 11 of the NCLT Rules)

**MEMO OF PARTIES**

Arrhum Tradelink Private Limited  
A Company registered under the Companies Act,  
Having its address at  
56/a, Sthanakvasi, Jain Society,  
Usmanpura, Ahmedabad.

...Applicant

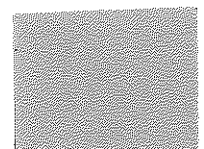
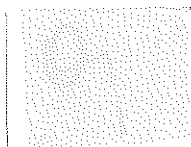
Versus

Shri Manoj Khattar  
Liquidator of Vimal Oil & Foods Limited  
Having address at  
912, Venus Atlantis Corporate Park Anand Nagar,  
Main Road, Prahalad,  
Ahmedabad-380015.

...Respondent

**In the matter of**

Bank of Baroda  
Head Office: Baroda House,  
Mandvi, Baroda, Gujarat,  
And acting through its





Branch at 1<sup>st</sup> Floor, Vallab Sadan,  
Opp: Natraj Cinema,  
Ashram Road, Ahmedabad

Versus

Vimal Oil and Foods Limited  
Registered Office at  
4<sup>th</sup> Floor, Heritage,  
Near The Grand Bhagwati,  
Sarkhej-Gandhinagar Highway,  
Ahmedabad-380054, Gujarat.

**Order pronounced on 07.10.2024**

**CORAM:**

**MRS. CHITRA HANKARE  
HON'BLE MEMBER (JUDICIAL)**

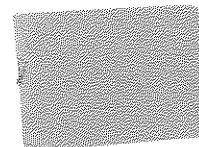
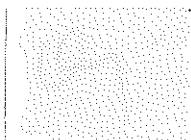
**MR. VELAMUR G VENKATA CHALAPATHY  
HON'BLE MEMBER (TECHNICAL)**

**Present:**

For the Applicant	:Mr. Aadit Sanjanwala, Adv.
For the Liquidator	:Mr. Vishal Dave. Adv. a.w. Mr. Mayur Jugawat, Adv.
For SEBI	:Mr. Nikunt Raval, Adv. a.w. Mr. Ayush Bhandari, Adv.
For the Respondent	: Mr. Aditya Tripathi, Adv. for R-13
For the NSE	: Ms. Tanya Hasija, Adv. for Mr. Atul Sharma, Adv.

**JUDGEMENT**

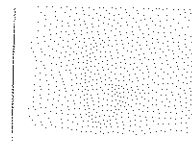
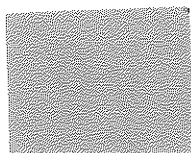
1. The applicant who is the successful purchaser of the  
Corporate debtor presently under Liquidation (R1) as a






going concern under Regulation 32(e) of IBC (liquidation Process) Regulation 2016 for Rs.69,95 crores which was also approved by the Stakeholders Consultative Committee and paid the entire consideration which has been distributed amongst the lenders of the corporate debtor. The corporate debtor was admitted in to CIRP vide order dated 19.02.2017 by this Tribunal in CP IB 135 of 2017. As no resolution plan was approved by the CoC, this Authority approved the liquidation of the corporate debtor vide orders dated 19.12.2019 in MA No.17 of 2018.

2. The liquidator (R1) had published a sale notice dated 02.11.2020 in public newspapers inviting bidders to purchase the corporate debtor as a going concern at a reserve price of Rs.69.70 crores and an e-auction was conducted on 01.12.2020. The applicant was found to be the highest and successful bidder in the e-auction thereby the corporate debtor was sold as a going concern and a sale agreement was executed on 03.03.2021 by the liquidator in favour of the applicant. Thereby the acquisition of the corporate debtor was complete and the applicant acquired all the assets, with nil liability, dues, claims, obligations





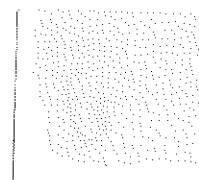
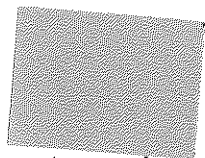
whatsoever, of any type which has been done as per Regulation 32 of IBBI (LP) Regulations 2016. The applicant therefore prays for necessary grant of the reliefs and concessions as prayed to continue the corporate debtor as a going concern.

3. The applicant refers to some of judgments passed by various NCLT's and Courts. The applicant pleads and seeks similar concessions given in the case of approval of resolution plan in the process of CIRP, also be given when there is a sale as a going concern, which is the present case for which this application is filed. The concept of clean slate would be available even in relation to the resolution of the corporate debtor in liquidation through the process of Section 230 scheme which is similar to granting the benefit of clean slate in relation to resolution through CIRP or through Sec 230 in the context of applicability of Sec 29A of the IBC.
4. The applicant further pleads that mere purchase of the corporate debtor as a 'going concern' as per liquidation process does not suffice and certain additional reliefs/concessions/relaxations/ and permissions may be



allowed which would be essential to run the corporate debtor as a going concern, otherwise the purpose of revival of corporate debtor cannot be achieved in order to achieve value maximisation. Further applicant submits that this Adjudicating Authority is empowered to grant such concessions under Sec 60(5)(c) of the code. The applicant seeks the following reliefs:

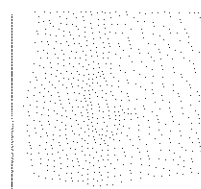
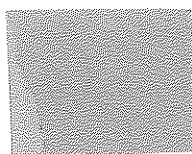
- a) Direction be issued to the applicant company to classify the amount deposited with the liquidator as follows:
  - i. Equity Capital – Rs.15 crores
  - ii. Unsecured Loans – Rs.60.20 crores;
  - iii. All the existing shares of the corporate debtor including in the Demat mode or Physical mode shall be extinguished without any consideration, and rights and liabilities arising out of the same shall be extinguished;
  - iv. A direction be given to allot the shares in the following manner without following any further process of Companies Act 2013:





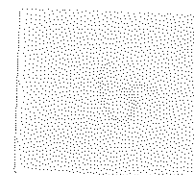
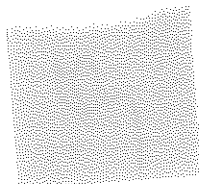
S. No.	Name of Shareholders	No.of shareholders
1	Arrhum Tradelink Pvt Ltd	1,49,99,400
2	Rakesh Lahoti	100
3	Baluram Lahoti	100
4	Jyoti Lahoti	100
5	Raghav Lahoti	100
6	Kamladevi Lahoti	100
7	Baluram Lahoti HUF	100
	Total	1,50,00,000


- v. Existing ISIN issued by NSDL & CDSL shall stand cancelled/revoked & issue new ISIN, if required
- vi. Existing authorised preference share capital be converted in to authorised equity share capital
- b) a direction be issued that the listing rights of the corporate debtor be restored and the shares of the corporate debtor allotted pursuant to liquidation process shall get listed on BSE and NSE;






- c) a direction be issued that, applicant company/successful bidder may have the right to appoint the new board of directors of the company;
- d) a direction be issued that all claims or demands made by, or liabilities or penalty or obligations whatsoever, of any kind owned or payable to any actual or potential creditors including secured creditors of the corporate debtor including Government dues or to any statutory authorities whether direct or indirect, whether admitted or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed in relation to any period prior to the date of acquisition will be written off in full and shall stand permanently extinguished;
- e) a declaration be made to the effect that all charges/lien on the land and building and other assets of the corporate debtor including bank accounts of the corporate debtor by any statutory authority including any banks, ROC, Stamp authority, Tax Authority, shall





stand permanently extinguished from the date of acquisition;

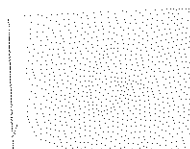
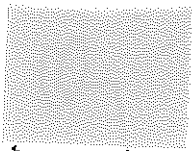
- f) a direction be issued that all inquiries, investigations, assessments, notices, cause of actions, suits, claims disputes, litigations, arbitration, or other judicial, regulatory or administrative proceedings against, or in relation to; or in connection with the corporate debtor affairs of the corporate debtor (other than against the erstwhile promoters or former members of the management of the corporate debtor), pending or threatened, present or future, including any third party dispute, 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;
- g) a direction be issued that any non-compliance of provisions of any laws including non-compliance with the statutory authorities including ROC, BSE, NSE, IEPF, CSR and SEBI and non-compliance of any rules and regulations, directions, notifications, etc., prior to



the date of acquisition shall be deemed to be complied or extinguished.

- h) A direction be issued that all criminal proceedings that may have been filed against the corporate debtor before the date of acquisition, shall be deemed to have been extinguished;
- i) a direction be issued that the bid submitted by the applicant be considered to be a resolution plan under Sec 79 of the IT Act, 1961;
- j) A direction be issued that the bid submitted by the applicant be considered as resolution plan for the purposes of compliances with the BSE, NSE, SEBI, etc.
- k) a direction be issued that the brought forward tax losses of the corporate debtor be permitted to be carried forward and set off against future income as change of shareholding of the corporate debtor is pursuant to the bid submitted by the applicant is under the e-auction process;

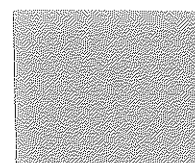
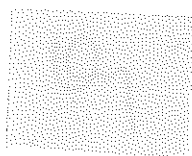
5. Further, the applicant submits that, the applicant has filed IA 734 of 2021 before this Hon'ble Adjudicating Authority seeking directions for cancellation of sale for the reason





stated in the said application. This application is being filed without prejudice to the rights and contentions raised in IA 734 of 2021.

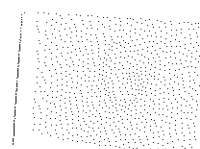
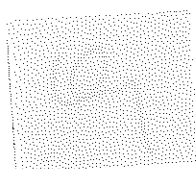
6. The applicant submits that as the applicant apprehended implication in false FIR registered against Vimal Oil & Foods Limited, applicant filed quashing petition before the Hon'ble High Court of Gujarat vide Criminal Miscellaneous Application No.11557 of 2021, wherein the applicant was granted interim relief in terms of Para 8(c) vide orders dated 28.07.2021 staying further investigation/proceedings of the FIR. The interim relief is getting extended from time to time.
7. The applicant was directed vide orders 10.10.2023, to issue notices to all the authorities with whom reliefs were sought. The tribunal also taken note vide orders dated 23.02.2024 that the liquidator had not sought any permission for sale and the purchaser had filed this IA. The liquidator has also not filed any reply in this IA but had filed separate IA to be relieved of his responsibilities as he had sold the corporate debtor as a going concern. There was no reply from the Income tax or other departments to whom notices were served by the applicant.





8. The respondent SEBI has filed an affidavit reply in the matter. It submitted that it has no objection to reliefs and concessions sought against SEBI at Point No.5 of this IA. However, allotment of shares be done in accordance with the approval of the plan by NCLT and has to be in compliance with the Securities Contracts (Regulation) Act, 1956, Securities Contracts (Regulation) Rules 1957, Securities and Exchange Board of India Act, 1992 and various SEBI regulations including SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, as applicable from time to time. Apparently, this is conditional and the applicant has not given any declaration on capital issuance, the corporate debtor under liquidation being a listed entity, the proposal is meeting the regulatory requirements.

9. The NESL replied by affidavit dated 20.02.2024, there are dues amounting to Rs 22,61,390 payable by the corporate debtor, on account of SOP fines, penalty and for annual listing for non-compliance of listing agreement from time to time with interest for which a claim has been filed before the liquidator pursuant to the listing agreement dated



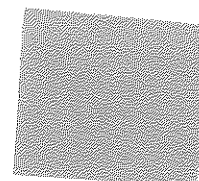
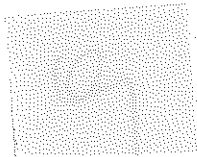


17.02.2016. The affidavit further states that the liquidator has till date not stated anything on the claim submitted. In case the penalties and claim amounts are paid (dues) till date of realisation, they will not have any objection to purchase of the corporate debtor.

10. On a perusal of the documents submitted, the application was moved by a financial creditor, Bank of Baroda who had an exposure of outstanding debt amounting to Rs. 205.46 crores.

a) There were various lenders in the consortium of lending. Further the IA 734/2021 referred in the application, is allowed to have been withdrawn as per orders dated 10.06.2022 as requested by the LD counsel appearing for the applicant.

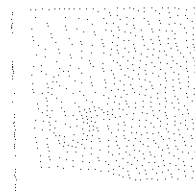
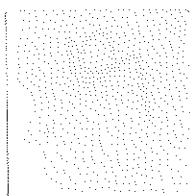
b) It is observed from the e-auction sale notice issued on 02.11.2020 by the liquidator, enclosed in page 37 of the application, that the entity under liquidation was sold (Sale of assets and properties owned by Vimal Oil & Foods Limited (in liquidation)) as going concern (excluding 7 receivables described in the auction process document). The e-auction is silent on the potential






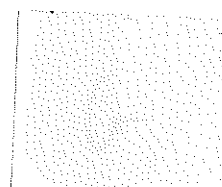
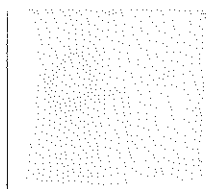
concessions that can be sought or given and merely states that it is conducted on “as is where is, whatever there is basis and without recourse basis” only. The Reserve price was quoted at Rs.69.70 crores. The applicant addressed a letter dated 10.11.2020 to participate in the auction, but never sought any concessions or any further details of the entity other than the process information document and deposited the EMD amount of Rs 1 lakh for participation apart from giving necessary disclosures under Sec 29A of IBC,2016.The advertisement does not reveal anything related to the status of the corporate debtor under liquidation, other than a mention of the e-Auction Process Information Document (containing details of the terms and conditions of online e- Auction, e-Auction Bid Form Eligibility Criteria, Declaration by bidders, EMD Requirement etc.,) which has not been enclosed to this application nor any mention is in the sale agreement.


- c) The sale agreement dated 03.03.2021 between Liquidator (R1) and the applicant submitted has been examined. It is observed that the assets excluded under the present






auction of 7 parties named in page 22 of the stated agreement (annexed to the application Page 44) amounts to Rs 508.47 lakhs, stated to be under litigation. There is also a caveat mentioned that the trade mark logo of the corporate debtor has been assigned by the suspended management to another third party for which there is an IA filed before this appellate authority. Further, in the agreement there is no mention between the applicant and the seller (liquidator) that the applicant can seek any concessions before this Appellate Authority or this can be considered as a resolution plan under CIRP, with a mention that the purchase consideration will be used for distribution to stakeholders in accordance with Sec 53 of the code. Buyer has acknowledged in the agreement to be in the knowledge of all the facts leading to liquidation and consequent sale of the company in Para 4.13 of the agreement. While the agreement clauses absolves any further liability on the liquidator, it does not mention anything about the passing off the liabilities of the corporate debtor (prior offences, dues etc.,) in clear terms and the consent is merely to sell the assets (restricted to



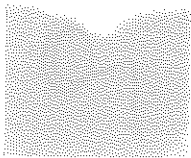


those mentioned in the agreement) on as is where basis and distribute it to the liquidation estate. There is nowhere a mention that being a listed company, the rights that exists before a stock exchange is transferred along with the purported sale or that its liabilities due in this regard would be met. There is no mention either of concessions or regarding prior offences of the suspended management in the agreement (Sec 32A of the IBC 2016). The applicant has submitted a written submission vide dated 20.08.2024.

- d) It is further observed that the sale of the entity as a going concern or as clean slate, even if was approved by SCC does not absolve him of any acts or liabilities as it is observed that inspite of other assets which are not recoverable, the corporate debtor being a listed entity had not revealed the exact status of the corporate debtor if was sold as a going concern and what has been agreed to be exchanged in the sale agreement are merely those land and building, plant and machinery which are listed in the sale agreement document. By restricting the sale in the agreement without including all the properties and its



rights including the right to recover the 7 receivables as mentioned in the application and in the order wherein huge amounts are yet to be recovered, this sale is not done on a “going concern basis” and without revealing the full details of the underlying liabilities, the liquidator has not effected, nor is authorised to have done the sale on a “clean slate basis” on which the applicant can file seeking any concessions, which is not appropriate, to be quashed as filed with a motive of acquiring the corporate debtor in connivance with the liquidator to seek concessions, especially when the liquidator who is made a party to this application does not file any reply, files a separate application that he is discharged of any liability to reply in the matter (when there are 4 pending IAs) and the applicant also withdrawing a petition filed earlier seeking quashing of this sale deed without modifying the prayers or stand in this application wherein he had sought these concessions subject to considering the other application wherein he sought quashing of the sale agreement.



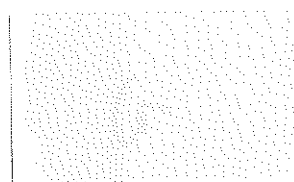
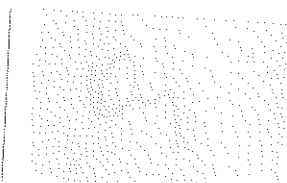



e) This application deserves to be dismissed treating the sale agreement as void, illegal and done with an intention to sell the liquidation estate without fully realising the proceeds by arbitrarily fixing a reserve price and allotting the same and through back door entry basis this applicant has sought certain concessions which cannot be granted, what so ever which include even penalties and punitive action that had been initiated, without considering the merits of the sale which has not included a large amount of receivables in the sale agreement, thereby the liquidator has done an “Undervalued transaction” of the corporate debtor to this applicant.

11. In view of the above, we pass the following orders:

**ORDER**

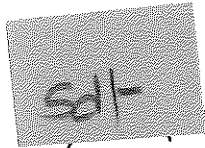
- I. The sale of the property of the corporate debtor as “going concern” is null and void.
- II. Penalty to be imposed for filing this application as having been done on “Clean Slate Basis”. Separate action to be initiated against the Liquidator in the IA filed seeking discharge from liquidator, who has done this act of sale when there are IAs including Sec 66



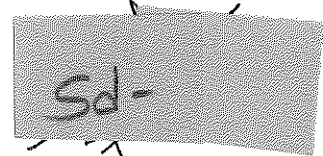


applications and recovery of Debts pending (which have been excluded from the sale) including the action of the SCC with directions to Registry to report to IBBI further disciplinary action against the liquidator on all acts and deeds committed during the liquidation process including passing necessary orders against the Resolution Professional not be enrolled in any of the CIRP matters till the matter is decided by the Disciplinary Committee.

- III. Pending IAs to be disposed at the earlier and the liquidation process to continue by appointing a new liquidator from the panel of IBBI.
- IV. IA 471 of 2022 in CP(IB) No.135/NCLT/AHM/2017 is dismissed.



**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**



**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**