

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 1

ITEM No 1
IA/391(AHM)2021
in
CP(IB) 37 of 2017

Order under Section 10 IBC

IN THE MATTER OF:

Nitin Jain Liquidator of PSL Ltd.
V/s
Lucky Holdings Pvt. Ltd.

.....Applicant

.....Respondent

Order delivered on ..08/09/2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Virendra Kumar Gupta, Hon'ble Member(T)

PRESENTS:

For the Applicant :
For the IRP/RP :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.

(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD**

**IA 391 (AHM)/2021 in
CP (IB) 37 (AHM) 2017**

[The Application under Section 35(1)(n) r.w. Section 60(5) of the IBC, 2016 r.w. Regulation 32A of the IBBI (Liquidation Process) Regulations, 2016]

In the matter between:

PSL Limited

....Applicant

Versus

Edelweiss Assets Reconstruction Co. Ltd. Ors.

..Financial Creditor

In the matter of:

Nitin Jain,

Liquidator,

PSL Limited,

E-10A, Kailash Colony, Delhi-110048

....Applicant

Versus

Lucky Holdings Private Limited

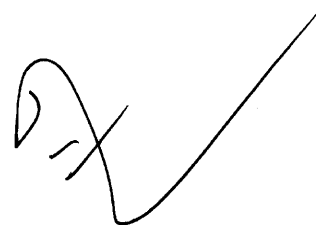
16B, Shakespeare Sarani, 2nd Floor,

Kolkata-700071

....Respondent

**Order reserved on 31st August, 2021
Order delivered on 08th September, 2021**

**Coram: MADAN B. GOSAVI, MEMBER (J)
 VIRENDRA KUMAR GUPTA, MEMBER (T)**



Appearance...

Applicant : Advocate, Mr. Gaurav Mitra a.w. Advocate, Mr. Aditya Gauri, Mr. Amar Vivek and Ms. Shriya Raychaudhri.

Respondent : Advocate, Mr. Alok Dhir a.w. Advocate, Ms. Varsha Banerjee, Mr. Amir Bavani, Mr. Mukund Rawat, Ms. Rishika Kumar.

ORDER

[PER: VIRENDRA KUMAR GUPTA, MEMBER (T)]

1. Through this application the Liquidator is seeking approval/directions for implementing the sale of the Corporate Debtor as a going concern to the successful bidder under the Liquidation Process of the Corporate Debtor.
2. It is further stated that the object of this application is to facilitate the execution of such sale process with reliefs for providing amenity to the successful bidder.
3. The Corporate Debtor had filed an application under Section 10 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as to "IBC, 2016") for initiation of CIRP, as it was unable to pay debts to its creditors, which was admitted by this Adjudicating Authority vide its order dated 15.02.2019.

4. Original IRP was replaced and the present Liquidator was appointed as Resolution Professional. In absence of suitable resolution plan, the COC in its 11th meeting dated 19.06.2020 passed resolution for liquidation of the Corporate Debtor with 95.63% votes. Thereafter, an application for appropriate order of this Adjudicating Authority was filed under Section 33(1) of the IBC, 2016. This Adjudicating Authority passed order of initiation of liquidation process as no resolution plan had been received even during the extended period of 330 days.
5. It is also worthwhile to mention that in the said order dated 11.09.2020, this Adjudicating Authority had directed the Liquidator to first try to sell the Corporate Debtor as going concern. It is stated by the Liquidator that efforts were made to run the Corporate Debtor as a going concern as well as to sell the Corporate Debtor as a going concern and liquidation process was conducted in terms of relevant provisions of IBC, 2016 as well as Liquidation Process Regulations, 2016.

6. The Liquidator published sale notice on 27.11.2020 for selling the Corporate Debtor as going concern, in response to which certain interests were received, however, time period of 90 days from date of receipt of order of liquidation passed by Adjudicating Authority for completing such sale expired on 14.12.2020, which was extended by this Adjudicating Authority by a period of 90 days vide its order dated 12.01.2021.

7. It is further noted that E-auction had been scheduled on 28.12.2020 which was cancelled. The Liquidator republished sale notice on 05.01.2021 scheduling E-auction on 28.01.2021, however, said date was extended to 16.02.2021 at the requests received from various prospective bidders. While this process was on, summon from Directorate of Enforcement dated 15.01.2021 had been received seeking certain documents regarding the demand loan of Rs. 300 crores sanctioned by one of the lenders and directing Liquidator to not to proceed with sale. An application was filed with this Adjudicating Authority seeking directions against the Directorate of Enforcement, which was, however,

dismissed. The Liquidator, thereafter, filed writ petition before the Hon'ble Delhi High Court. The Hon'ble Delhi High Court vide its order dated 17.03.2021 permitted the Applicant to proceed with the sale of the Corporate Debtor in accordance with the provisions of the IBC, 2016. Thereafter, in 5th meeting of the stakeholders' consultation committee dated 19.03.2021, it was decided to pursue three options, which are as under:

- A. Option A- for sale under Liquidation that being sale of the Corporate Debtor as a going concern;
- B. Option B- the operational assets of the Corporate Debtor are being sold under slump sale;
- C. Option C- the non-core assets and select financial assets are being sold on a piece meal basis.

8. The Liquidator, thereafter, republished the sale notice on 20.03.2021 and issued E-auction Process Information Document. The E-auction was to be held on 09.04.2021. All the three options for sale under liquidation were specified in such E-auction notice and process documents.

9. As per terms and conditions of such E-auction notice, the Liquidator was required to make an application to this

Adjudicating Authority after receiving the first installment from the successful bidder as per the terms and conditions of such sale notice.

10. Further, as per clause 8.2 of E-auction document, it is noted that auction is subject to receipt of final approval order from this Adjudicating Authority and the process for completion of the sale as a going concern as per the terms of E-auction process document would commence from the date of final approval order of this Authority. As per terms of the said document, the period has been specified for payment of total consideration including current operational liabilities as on the date of issue of sale certificate as 30 days from the final order of the approval. On the balance amount interest @ 12% p.a. accrues till the date of payment. It is also stated that the successful bidder meet all the conditions as specified in the E-auction notice as well as E-auction Process Information Documents.

11. It is pertinent to mention that eligibility of the bidder in terms of Section 29A of the IBC, 2016 has also been verified by the

Liquidator and it has been stated that Successful Auction Bidder is eligible under such section to participate in the process.

12. It is noted that 20 bidders participated for different options, as mentioned in E-auction notice and only one interest was shown for Option A i.e. Corporate Debtor being sold as a going concern. It is also mentioned that in case a bid as per this option is received, the bid received under Option B and C would stand automatically closed. It is also noted that EMDs received from all other bidders, whose bids were cancelled have been returned on 19.04.2021 and letter of intent issued by the Liquidator was accepted by the successful bidder i.e. Lucky Holdings Private Limited. On 23.04.2021 first instalment of Rs. 30 Crore was received. In addition to that a sum of Rs. 5 Crore was also received. The remaining amount of Rs. 390.5 Crore plus Rs. 25 Lakhs towards net current operational liabilities is required to be paid by such bidder within 30 days from the date of approval of sale of the Corporate Debtor as going concern. The successful bidder has provided the proposed acquisition

structure as well as shareholding pattern which would come into force after the completion of sale. Further, affidavit and undertaking, as required for establishing the fact that the successful bidder is not ineligible as per Section 29A of the Code is also enclosed. In the application the Liquidator has referred to the concept of going concern and mentioned relevant regulations 32 and 32A of Liquidation Regulations r.w. Section 35(1)(f) of the IB Code to show that sale of the Corporate Debtor as going concern is as per regulatory framework. The Liquidator has also drawn our attention to the minutes of meeting of IBBI dated 26.06.2018 held before making suitable amendments to the IBBI (Liquidation process) Regulations, 2016. The discussion as referred to in this meeting, is reproduced hereunder:

"The Corporate Debtor may be sold as a going concern, as provided in the extant regulations. As the company survives, there will be no need for dissolution of the company in terms of Section 54 of the IB Code. The assets along with all attendant claims, limitations, licenses, permits or business authorizations remain in the company. the company survives as it was; the ownership of the Company is transferred by the liquidator to the acquirer."

The Liquidator shall make an application to the AA for approval of the sale of the corporate debtor as a going concern and the AA may pass an order with respect to:-

- a) Sale of the Corporate Debtor to the intended buyer as a going concern.*
- b) Transfer of shares of the Corporate Debtor to the intended buyer.*
- c) Transfer of the going concern of the Corporate Debtor to the buyers.*
- d) Continuation of the authority, powers and obligations of the Liquidator to complete the liquidation process as provided under the Code and the regulations including the control, operations and continuation of the liquidation bank account of the Corporate Debtor.*
- e) Payment to stakeholders in accordance with Section 53 from the liquidation bank account, and*
- f) Protection of the intended buyer from all claims and liabilities pertaining to the period prior to the sale of the Corporate Debtor as a going concern.*

In such a case, the final report of liquidator, as required under clause (3) of regulations 45, shall form part of the application for the closure of the liquidation process of the Corporate Debtor and not for the dissolution of the Corporate Debtor to the AA to be made under Section 54."

13. As regard to nature of sale of a Corporate Debtor as going concern under liquidation being similar to resolution of Corporate Debtor as a going concern under resolution plan, reference to Section 5 (26) has also been made and accordingly, it has been prayed that benefits/privileges/exemptions available in relation to the insolvency of the Corporate Debtor under Part II would also

be available to sale of a Corporate Debtor as going concern under liquidation process.

14. Thereafter, in the application, it has also been stated that the sale of assets of a Corporate Debtor as a going concern during liquidation process was first recognized by Kolkata Bench of NCLT in the case of Gujarat NRE Coke Limited order dated 01.11.2018 so that livelihood of workers could be saved to maximise the value of the assets of the Corporate Debtor. It has also been stated that thereafter IBBI in its discussion paper dated 27.04.2019 recognized the need for regulations as regard to sale of Corporate Debtor or its businesses as a going concern during liquidation process and amended/incorporated Regulation 32 and 32A under Liquidation Process Regulations, 2016. It has also been stated that after the sale of Corporate Debtor as a going concern under Regulation 45(3) of Liquidation Process Regulations, 2016 closer of liquidation process is to be done by Liquidator by filing application with the Adjudicating Authority.

15. Thereafter, the Liquidator has referred to the decision of the Hon'ble Supreme Court in the matter of Ghanashyam Mishra and Sons Pvt. Ltd. through Authorised Signatory Vs. Edleweiss Asset Reconstruction Company Ltd. through the Director & Ors. in support of its claim that since sale of Corporate Debtor as a going concern under liquidation process is akin to approval of resolution plan and, therefore, to enable the Successful Auction Bidder to continue with the operations of the Corporate Debtor on a clean slate, all claims stand extinguished and no person would be entitled to initiate or continue any proceeding in respect of a claim including a claim not made during the liquidation process.
16. It has also been prayed that liabilities, claims, demands etc. would stand extinguished and unconditionally waived upto effective date and any time thereafter. It has also been stated in that application that applications filed under Section 43, 45, 49 and 66 of the IBC, 2016 will be pursued by the Liquidator and any amount/assets received on determination of such applications shall not form part of this liquidation sale but shall form part of liquidation estate. It has also been

stated that any legal cost in regard to such applications shall be borne by the Liquidator and be payable out of liquidation account.

17. The Liquidator has also given description of properties which are to be dealt with in specific manner. Relevant para 53 of the application is reproduced hereunder:

53. That in addition, for the B-96 Greater Kailash 1, New Delhi 110048 property the Liquidator has filed an application under Section 66 of the IBC, 2016 with a prayer that NCLT allow cancellation of sale deed dated 10.02.2012 and direct the respondents to transfer the Second Floor along with rights of roof upto sky with 50% undivided share in the freehold land underneath the aforesaid property bearing plot No. 96, block no. B admeasuring 1000 Sq. Yards in Greater Kailash-I New Delhi 110048 to the Corporate Debtor, which shall not be part of the sale under this E-auction and was not part of the liquidation estate. Further, the land situated at Mauje Rampura 2, Taluka Rajula, District Amreli, Gujarat had an original Land Area, (mix of Industrial and Agri land) as follows – Non Agri Land 683,719 square metres or 169 acres; and Agri Land: 289, 562 square metres. The liquidation estate comprised of the Non-Agri Land measuring 683,719 square metres or 169 acres only, as the Agri land measuring 289,562 square metres had been transferred in the name of Government. In the event, any assets are reversed to the ownership of the Corporate Debtor, the Successful Bidder herein shall provide all support and facilitate sale of the assets as required by the Liquidator or the Bank/Financial Creditor to whom the asset is mortgaged, for enabling the same to be sold and transfer the proceeds received less legal or transfer costs borne if any to the liquidation account of the Corporate Debtor. It is pertinent to mention that any cost legal or other as

the case may be in regards to aforesaid transaction shall be borne by the Liquidator and be payable out of Liquidation Account.

18. As regard to the personal guarantees issued by the promoters/other group companies of the Corporate Debtor, it has been mentioned that creditors in whose favour such guarantees have been issued can pursue recovery of these personal guarantees. It has also been mentioned that in the event of such guarantees being invoked by creditors and after making payment in relation to such guarantees, guarantors will not have any right of subrogation and claim against the Corporate Debtor.
19. As regard to grant of relief and concessions, the Liquidator has placed reliance on the decision of National Company Law Tribunal, Hyderabad Bench in the matter of M/s V.K Global Vs M/s SMAAT India Private Limited, wherein, the National Company Law Tribunal, Hyderabad Bench observed as under:

10- No Doubt the Liquidation Regulation do not provide granting specific type of reliefs to the Applicant. However, when the Corporate Debtor is being sold as a going concern, naturally the purchaser is entitled for consequential reliefs to

achieve the object of running the Corporate Debtor as Going Concern.

20. For the same purpose, the Liquidator has also placed reliance on the decision of National Company Law Tribunal, Hyderabad Bench in the matter of Dr. Devaiah Pagidipati Vs Southern Online Bio Technologies Limited, wherein it was observed that:

Regulation 32 of the Liquidation Process Regulations provides for sale of assets of the Corporate Debtor as going concern. The object of the Code is not for liquidation but for resolution. In the instant case, the Unit was sold as going concern which is more or less in the nature of resolution of the Corporate Debtor. The Applicant came forward for purchasing the unit as on going concern. The mere purchase of the Unit as going concern without granting certain other reliefs that would be essential and necessary to run the business as on going concern is of no use. In other words, purchasing the Unit as going concern without granting the reliefs to the Applicant does not serve the purpose of purchasing the Unit as going concern. Most of the reliefs sought for in the Application are in the nature of certain compliances required to be done under the Companies Act, 2013. The Applicant is bound to follow the law laid down under the Companies Act, 2013 since he is the purchaser of the Corporate Debtor Unit as going concern. It is but natural that he is to be granted necessary reliefs in order to enable him to follow the procedure prescribed under the Companies Act, 2013 so as to make the Company as ongoing concern. Section 60(5)(c) empowers the Adjudicating Authority to grant necessary reliefs even during liquidation. It is therefore submitted that this Hon'ble Tribunal is vested with the jurisdiction to allow the reliefs and directions as sought for in the instant Application.

21. The Liquidator in regard to reliefs and concessions, further placed strong reliance on the decision of the National Company Law Tribunal, Mumbai Bench in the matter of Bank of Baroda Vs M/s Topworth Pipes & Tubes Private Limited and has referred to various paragraphs of this order against specific reliefs/concessions sought by the Liquidator in the present application.
22. As far as various reliefs are concerned, one prayer which has been made is regarding exclusion of 51 days from the liquidation period and also to provide further extension of 90 days so as to enable the Liquidator to conclude the sale of Corporate Debtor as a going concern to the successful bidder. As far as this ground is concerned, considering the facts and circumstances of the case wherein successful bidder has already deposited a substantial sum of Rs. 35 Crore and has also provided an undertaking as regard to its capability and availability of liquidity with it to make the balance payment within the stipulated time, if the extension was granted. Thus, in view of this, we accept ground B and C. Accordingly, period of 51 days is excluded from the liquidation period and

we further extend the liquidation period by 180 days from 13.04.2021 to complete the sale as period of 90 days as prayed in the application would not be sufficient now.

23. Coming to the specific reliefs and concessions sought by the Liquidator, the Bench during the course of hearing made it clear that in principle the Bench agreed with the proposition that certain reliefs and concessions can be given in case of sale of a Corporate Debtor as a going concern under liquidation process on the analogy of sale of Corporate Debtor through resolution plan under CIRP. However, reliefs and concessions can be granted only to the extent which are permissible under the relevant provisions of IBC, 2016 and regulations made thereunder. Accordingly, the Liquidator was directed to submit revised reliefs and concessions which could be granted. Thus, reliefs and concessions made in original application stand substituted with the reliefs in revised chart submitted through an additional affidavit before this Adjudicating Authority. The reliefs so claimed are reproduced hereunder:

Prayer No. – “D”	Brief	Relevant Provision / Precedents
D(i)	- Direction for approval of the Sale of the corporate debtor as a Going Concern under Regulation 32(e) of the Liquidation Process Regulations, 2017. The date of payment of entire Liquidation Sale Amount will be treated as Effective Date. - Direction for payment of the Sale Consideration amounting to Rs. 425.50 Crores plus operational liabilities capped up to Rs. 25 Lakh, and the remaining Rs. 390.50 plus operational liabilities capped up to Rs. 25 Lakh to be paid by the Successful bidder within 30 days of the approval of the sale of the corporate debtor as a going concern and in accordance with Paragraph 1(12) of Schedule I of the Liquidation Process Regulations, 2017. - Direction for rights, title and interest in whole and every part (assets) of the Corporate Debtor to vest in the Corporate Debtor free from all security interest, encumbrance, claims and counter claims.	See E Auction Process Information Document @ Pg. 168 – 169 of the Application filed by the Liquidator. Paragraph 1(12) and 1(13) of Schedule I of the Liquidation Process Regulations, 2017 Section 35(1)(f) r/w Section 35(1)(n) r/w Regulation 32 r/w Regulation 32A of the Liquidation Process Regulations, 2017. M/s. Topworth Pipes & Tubes Private Limited C.P. (IB) No. 1239/MB/2018 – para 34(b) and (j).
D(ii) & D(xxi)	- Direction that upon Effective Date, all rights and entitlements of, claims or demands (including in relation to or on account of tax) made by or liabilities or obligations owed or payable to any creditor / claimant / statutory authorities, etc. by the Corporate Debtor pertaining to period prior to Effective Date shall be deemed to be permanently settled and discharged by the Liquidator in accordance with section 53 of the Insolvency and Bankruptcy Code, 2016 (“IBC”). - Direction that the Corporate Debtor /	Section 53 of the IBC. M/s Topworth Pipes & Tubes Private Limited C.P (IB) No.1239/MB /2018 – Para 34(c).

	Successful Bidder to have no liability for any claim or demand whether filed / admitted / verified or not, due or contingent, known or unknown including any liability arising out of non-compliance of provisions of any laws, rules, regulations, notifications, guidelines up to the Effective Date and the same shall be discharged / handled by the liquidator as per the provisions of Section 53 of IBC. • Direction to enable the liquidator to continue the liquidation with the bank account with HDFC Bank, "PSL Limited in Liquidation" for settlement of claims and demands in terms of Section 53 and making provision for future claims and maintaining it till the closure of the Liquidation Process in terms of Regulation 45 (3) (a) of the Liquidation Process Regulations, 2017.	
D(iii)	• Direction for continuance of the licenses, approvals, contracts and leases granted in favour of the Corporate Debtor without disruption due to commencement of insolvency / liquidation proceedings. Direction that any pecuniary liability or obligation, if any out of any non-compliance (including in relation to or on account of tax) of the Corporate Debtor till the Effective Date to be settled and discharged by liquidator under Section 53 of IBC and they shall be deemed as satisfied.	M/s Topworth Pipes & Tubes Private Limited C.P (IB) No. 1239/MB /2018 – Para 34(g). Gujarat Urja Vikas Nigam Limited Vs. Amit Gupta & Ors., Civil Appeal No. 9241 of 2019
D(iv) & D(xvii i)	• Direction for corporate debtor to have right to review and terminate any existing contracts in order to ensure business viability. • Direction that all claims of Corporate Debtor against third parties and related parties shall remain recoverable and Corporate Debtor	M/s Topworth Pipes & Tubes Private Limited C.P (IB) No. 1239/MB /2018– Para 34(h).

	shall have right to proceed against those parties, whose account is recoverable in the books of Corporate Debtor as on the Effective Date. And in case of recoveries of any such amounts or any amounts which have been previously written off, the Corporate Debtor shall be the sole beneficiary of such amounts.	
D(v), D(vi) & D(xv)	• Direction granting immunity to the Corporate Debtor from inquiries, investigations or any other proceedings whether civil, criminal including in relation to or on account of tax for offences or proceedings of any nature for any period prior to the Effective Date in terms of Section 32 A of the IBC. • Direction seeking no disability of the Corporate Debtor or Successful Bidder in terms of Section 29A of IBC for default of subsidiaries of Corporate Debtor.	Section 32 A /Manish Kumar Vs. Union of India & Anr., Writ Petition (C) No.26 of 2020 with other writ petitions. The Directorate of Enforcement Vs. Sh Manoj Kumar Agarwal and Ors. CA (AT) (Ins) No. 575-576 of 2019. M/s. Topworth Pipes & Tubes Private Limited C.P.(IB) No. 1239/MB/2018 –Para 34(d) and (i).
D(vii), D(x), D(xi)	• Direction granting extinguishment of promoter shareholding and non-public without consideration. • Direction granting approval of acquisition structure as per Annexure A13 including but not limited to reduction of public shareholding as specified therein. • Direction empowering the liquidator to issue equity shares of the corporate debtor to be subscribed by Successful Bidder or its nominees to the extent of Rs. 24,15,73,600/- as provided in the structure out of the total sales amount received by the Liquidator from the Successful Bidder. (Subject to Sec. 29A). • Direction permitting infusion of	M/s Topworth Pipes & Tubes Private Limited C.P (IB) No. 1239/MB/2018. Insolvency & Bankruptcy Board of India Minutes of Meeting dated 26.06.2018.

	balance sale consideration by Successful Bidder or any of its nominees, by way of issuance of securities or any other instrument or grant of loan by newly appointed Board of Directors without the requirement of any further corporate or regulatory approvals.	
D(viii), D(xvii) & D(xix)	• Direction seeking change in status of the Corporate Debtor in records of the ROC from “under liquidation” to “active”. • Direction providing exemption to the Corporate Debtor from using the words “and reduced” in its name. • Direction that encumbrances over assets of the corporate debtor shall stand satisfied and MCA • / ROC to record the satisfaction of all charges against the Corporate Debtor on payment of balance consideration as on effective date, in accordance with the order passed by NCLT.	M/s Topworth Pipes & Tubes Private Limited C.P (IB) No. 1239/MB /2018 –Para 34(e).
D(ix)	• Direction empowering the Liquidator to reconstitute the Board of Directors by removal of existing directors and appointment of new directors nominated by the Successful Bidder subject to compliance of Sec. 29A.	M/s Topworth Pipes & Tubes Private Limited C.P (IB) No. 1239/MB /2018– Para 34(f).
D(xii), D(xiii) & D(xiv)	• Direction that sale of Corporate Debtor as a going concern should be treated in the same manner as to implementation of resolution plan under corporate insolvency resolution process and all attendant benefits, privileges and exemptions under various laws including but not limited to benefit of any tax holiday, exemption, deduction, carry forward of losses of any prior years and set-off against the income of any financial year under the taxation laws, as they are available to a resolution plan shall be available to this sale of Corporate Debtor under liquidation process.	M/s Topworth Pipes & Tubes Private Limited C.P (IB) No. 1239/MB /2018 –Para 34(q & s).

	• Direction seeking tax benefits and exemptions to continue to be applicable to the Corporate Debtor from effective date including benefits under Section 79(2)(c) of the Income Tax Act, 1961 as applicable in the event the Corporate Debtor does not remain listed in future. • Direction seeking exemption from levy of taxes, levies, surcharges, cesses, fees, transfer charges, stamp duty, registration charges, transfer premiums and other charges arising in relation to sale of the corporate debtor as a going concern. • Direction enabling the liquidator for facilitating the sale by making requisite accounting entries for smooth transmission.	
D(xvi)	• Direction seeking benefits and exemption provided under Regulation 158(2) and 170 of SEBI (Issue of Capital and Disclosure Requirement) Regulations 2018 and Regulation 3(2) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2018; and under Rule 19A(5) of the Securities Contracts (Regulations) Rules 1995 and under Regulation 31(A) of SEBI (Listing and Disclosure Obligations) Regulations 2015 for reclassification of shareholding to apply mutatis mutandis to the corporate debtor as applicable to a successful resolution applicant on approval of resolution plan under Section 31 of IBC.	
D(xx) & D(xxii)	• A direction be issued that the assets not included in the sale process, as defined in the E- Auction Information Memorandum document, being proceeds if any out of the Application filed under Sections 43, 45, 49, 66 under IBC 2016 (preferential	

	transaction, avoidance of undervalued transaction, transactions defrauding creditors, fraudulent transactions) shall not form of the E-Auction sale and proceeds if any shall be deposited in the Liquidation Account. Any cost legal or other as the case may be in regards to such application shall be borne by the Liquidator/ beneficiaries and be payable out of Liquidation Account. • That Asset not included in the sale process under liquidation, being Second Floor along with rights of roof up to sky with 50% undivided share in the property B-96 Greater Kailash 1, New Delhi 110048 for which the Liquidator has filed an application with Honourable NCLT; and the agricultural land measuring 289,562 square metres situated at Mauje Rampura 2, Taluka Rajula, District Amreli, Gujarat, which has been transferred by the Government in its name, shall not form part of the E-Auction Sale. Any cost legal or other as the case may be in regards to aforesaid transaction shall be borne by the Liquidator/beneficiaries and be payable out of Liquidation Account.	
D(xxii i)	• Direct that the Corporate Debtor / the Successful Bidder shall be at liberty to approach this Hon'ble Tribunal to address any difficulties faced with respect to implementation of the Corporate Debtor as a going concern.	

24. The Successful Auction Bidder also participated in the hearing. Apart from adopting the arguments made by the Liquidator as regard to granting of reliefs and concessions,

the learned counsel appearing on behalf of such bidder also argued that this Adjudicating Authority has all the requisite legal support by way of various judicial decisions to grant such reliefs and concessions as sale of Corporate Debtor as going concern in liquidation which was akin to resolution plan and such reliefs are required to enable the Successful Auction Bidder to run the Corporate Debtor as a going without any hindrance or unexpected liability. As regard to exemption from applicability of Section 29A of IBC, 2016, it was specifically pointed out that as on date no such disability exists. However, considering the fact that in future, the Successful Auction Bidder may become ineligible for submitting resolution plans or purchase of any other Corporate Debtor as a going concern or assets of any other Corporate Debtor in liquidation on account of subsidiary of Corporate Debtor being NPA, hence, this exemption has been sought.

25. We have considered the submissions made on behalf of Liquidator, Successful Auction Bidder and material on record. It is noted that in the present case, sale of Corporate

Debtor is being done under Regulation 32(e) of Liquidation Process Regulations, 2016 as a going concern. The entire assets of the Corporate Debtor except few are being sold. The Successful Auction Bidder is also liable to make payment of Rs. 25 Lakhs in regard to net current operational liabilities which have also been defined in the sale notice/proposed documents. The auction is being done on "as is where is basis". The Successful Auction Bidder has also deposited the EMD and some additional sum in terms of such sale notice. The Application for approval of sale and permitting the liquidator to issue sale certificate is being considered by this Adjudicating Authority. Generally, much deliberation is not required as Liquidator is vested with requisite powers under IBC, 2016 r.w. Liquidation Process Regulations, 2016 to complete the liquidation process and in the present case, he is duly supported by Stakeholders Consultation Committee. However, considering the fact that various reliefs and concessions are being sought by the Successful Auction Bidder and Liquidator, the legal framework relating liquidation of a Corporate Debtor needs some deliberation.

Accordingly, we consider it pertinent to look into following aspects:

- 1) What is the role and responsibility of a Liquidator as regard to sale of assets and distribution of sale proceeds in respect of Corporate Debtor going under liquidation?
- 2) What is the scope of authority/jurisdiction of Adjudicating Authority in this regard under Section 60(5)(c) of IBC, 2016 while issuing directions or passing order under Section 35(1)(n) of IBC, 2016?

26. Before we start the discussion on the above two aspects and deal with regulatory framework/structure as provided in IBC, 2016 r.w. Liquidation Process Regulations, 2016, we consider it a must to take into consideration the guidelines provided by the Hon'ble Supreme Court in the case of Arun Kumar Jagatramka Vs Jindal Steel and Power Ltd. & Anr. In this case, the Hon'ble Supreme Court was concerned with the issue of applicability of Section 29A of IBC, 2016, as regard to a scheme of arrangement being formulated under Section 230 of the Companies Act, 2013 at the instance of the

Liquidator. The Hon'ble Supreme Court examined the legal scheme and after considering various pleadings made by the respective parties held that provisions of Section 29A of IBC, 2016 were applicable to such scheme. The Hon'ble Supreme Court also held that primary object of IBC, 2016 was to revive and continue the operations of a Corporate Debtor. It was further held that Three modes i.e. (I) sale via Resolution Plan under CIRP, (II) Sale during liquidation process and (III) sale through scheme under Section 230 of Companies Act, 2013 during liquidation process were prescribed under IBC, 2016 and Liquidation Process Regulations, 2016 which were alike or similar, hence, conditions attached to one mode were also to be applied to other modes. Thus, Hon'ble Supreme Court has also held that sale of a Corporate Debtor under Resolution Plan and under Regulation 32(e)/32(f) r.w. Regulation 32A(I) are similar in nature and object is also same. Further, in our view, all benefits or disabilities attached to one mode of sale normally will also be attached to other modes of sale of Corporate Debtor as a going concern. Thereafter, guideline which was given by the Hon'ble

Supreme Court is that the NCLT, as Adjudicating Authority under IBC, should interfere at bare minimum in the framework envisaged under the IBC, 2016. The relevant findings of the Hon'ble Supreme Court are as under:

89. At this juncture, it is important to remember that the explicit recognition of the schemes under Section 230 into the liquidation process under the IBC was through the judicial intervention of the NCLAT in *Y Shivram Prasad (supra)*. Since the efficacy of this arrangement is not challenged before us in this case, we cannot comment on its merits. However, we do take this opportunity to offer a note of caution for the NCLT and NCLAT, functioning as the Adjudicatory Authority and Appellate Authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from the NCLT and NCLAT should be kept and its bare minimum and should not disturb the foundational principles of the IBC. This conscious shift in their role has been noted in the report of the Bankruptcy Law Reforms Committee (2015) in the following terms:

"An adjudicating authority ensures adherence to the process

At all points, the adherence to the process and compliance with all applicable laws is controlled by the adjudicating authority. The adjudicating authority gives powers to the insolvency professional to take appropriate action against the directors and management of the entity, with recommendations from the creditors

committee. All material actions and events during the process are recorded at the adjudicating authority. The adjudicating authority can assess and penalise frivolous applications. The adjudicator hears allegations of violations and fraud while the process is on. The adjudicating authority will adjudicate on fraud, particularly during the process resolving bankruptcy. Appeals/actions against the behaviour of the insolvency professional are directed to the Regulator/Adjudicator."

90. Once again, we must clarify that our observations here are not on the merits of the issue, which has not been challenged before us, but only limited to serve as guiding principles to the benches of NCLT and NCLAT adjudicating disputes under the IBC, going forward.

The guidelines given by the Hon'ble Supreme Court are required to be followed by us without any exception. We further consider it appropriate to mention that the cautious approach is also required to be followed by COC, Resolution Professional, Liquidator, valuers and all other participants so as to make IBC a real success. We further expect that even the legal fraternity would also take note of such guidelines and advice their clients to be realistic and less litigative so that the objectives of the IBC can be achieved. Having stated so, we state that the issue of reliefs and concessions claimed by the Successful Auction Bidder need to be considered in accordance with the foundational principles of IBC, 2016 and

accordingly, the decisions of the Coordinate Benches need to be taken into consideration in the background of above guidelines provided by the Hon'ble Supreme Court.

Role, Responsibilities and Powers of Liquidator

27. As regard to Role, Responsibilities and Powers of liquidator, firstly, we have to broadly look into structure of IBC, 2016 relating to Insolvency Resolution for Corporate Persons. Part II of IBC, 2016 deals with insolvency resolution and liquidation process. Chapter I contains definitions. Chapter II deals with Corporate Insolvency Resolution Process. Chapter III deals with liquidation process. After admission of a Corporate Debtor into CIRP under Section 7, 9 or 10 of IBC, 2016 CIRP starts. The preferred mode is resolution, however, in a particular case, if such resolution is not possible within the specified time or if the COC decides before the expiry of that period, then, liquidation order may be passed under Section 33(1) or 33(2) of IBC, 2016. It may be noted that explanation has been added in Sub-section (2) of Section 33 of IBC, 2016 for early liquidation of the Corporate Debtor w.e.f. 16.08.2019. Generally, early liquidation order is passed

where there are no chances of resolution or assets do not exist. Once order of initiation of liquidation is passed, liquidator is appointed under Section 34(1) of IBC, 2016. Powers and duties of liquidator are defined under Section 35 of IBC, 2016. Such powers are “subject to the directions of Adjudicating Authority.” Thus, the liquidator is authorised in general to exercise powers mentioned in various clauses of Section 35(1) of IBC, 2016, however, in case a situation arises where any party aggrieved by the decision of liquidator because of exercise of such powers approaches Adjudicating Authority and directions, if any, are given by Adjudicating Authority in that regard then those would be binding on the liquidator. The liquidator, on its own, can also seek directions from Adjudicating Authority under Section 35(1)(n) of IBC, 2016. The liquidator may also perform such other functions as may be specified by the Board (IBBI). The powers and duties of liquidator can be categorized as under:

- I. To invite, verify and settle the claims of creditors and claimants and distribute proceeds in accordance with the provisions of IBC, 2016;

- II. To take into custody/control all the assets, properties, actionable claim of the Corporate Debtor, evaluate such assets and prepare a report, take such measures to protect and preserve such assets and properties and to carry on the business of Corporate Debtor for its beneficial liquidation as he considers necessary and for this purpose various powers have been given to the liquidator.
- III. To sell immovable and movable property including actionable claims, if any, of the Corporate Debtor by public auction or private contract and the liquidator has the power to transfer such property to any person or body corporate. Liquidator can also sell the same in parcels in such manner as may be specified. However, liquidator cannot sell such property or actionable claims to any person who is not eligible to be a resolution applicant under Section 29A of IBC, 2016.
- IV. For the purposes of liquidation of the Corporate Debtor as per Section 36(1) of IBC, 2016, the liquidator is required to form a liquidation estate which will include the assets as

specified in Section 36(3) of IBC, 2016 but it shall not include assets specified in Section 36(4) of IBC, 2016. The most important aspect of liquidation process is contained in Section 36(2) of IBC, 2016 which states that the liquidator holds the liquidation assets as a fiduciary for the benefit of all the creditors. Thus, it is incumbent upon the liquidator to take care of interests of all the creditors and, therefore, the liquidator cannot, in any way, liquidate the assets of the Corporate Debtor which do not benefit all creditors.

28. Having discussed this legal framework, now we have to consider various aspects involved in the present case. First of all it has to be noted that there is no objection by any of the parties who had participated in the auction process. Secondly, all stakeholders, being financial lenders, have given their consent to sell Corporate Debtor as a going concern under auction at reserve price. There is no reservation also on the aspect of limiting the liability of Successful Auction Bidder in respect of net current operational liabilities to the extent of Rs. 25 Lakhs as extra

liability would be met by the Liquidator out of the sale consideration as per the provisions of Section 53 of IBC, 2016. Stakeholders Committee has also given consent and requisite approval on these issues from time to time. The Hon'ble Delhi High Court has given a go ahead to the Liquidator to proceed with the sale of the Corporate Debtor as a going concern subject to only one condition that sale proceeds will be distributed only after the approval of the Hon'ble Delhi High Court and that stage would arise only when this Adjudicating Authority confirms the sale process and authorises the Liquidator to issue the sale certificate. Thus, basic conditions such as valuation, grouping of assets and liabilities, other requisite approvals as per relevant Regulations stand satisfied.

Scope of Jurisdiction and Powers of Adjudicating Authority

29. Now having dealt with the aspect of role and powers of the Liquidator and finding that there is no hindrance to issue sale certificate as such, the second issue, as to what is the extent of jurisdiction of this Adjudicating Authority as regard to grant of reliefs and concessions to the Successful Auction

Bidder. As noted earlier, IBBI made amendments in CIRP Regulations as well as Liquidation Process Regulations, 2016 enabling the sale of business of Corporate Debtor or Corporate Debtor as a going concern in addition to sale of its assets as such under Liquidation process. However, the basic provisions of IBC, 2016 have remained unchanged. Further, basis of such amendments by IBBI is judicial decisions of NCLT/Hon'ble NCLAT. The object of such changes is to maximize the value of the Corporate Debtor and to secure the interests of workers/employees and other creditors thereby benefiting the economy as a whole.

30. In this process, new issues have emerged which mainly concern as to what reliefs and concessions can be granted to the Successful Auction Bidder. Admittedly, Section 35(1)(n) of IBC, 2016 requires Liquidator to seek such orders or directions from Adjudicating Authority as are necessary for liquidation of Corporate Debtor. The word "necessary" used in Section 35(1)(n) of IBC, 2016 gives enough discretion to Adjudicating Authority, however, the Adjudicating Authority can pass orders or give directions in accordance with the

provisions of IBC, 2016. This leads us to find out the scheme of IBC, 2016 so as to deliberate on the scope of jurisdiction and powers of Adjudicating Authority under Section 60(5)(c) of the IBC, 2016. Section 60(1) to 60(3) of the IBC, 2016 give territorial as well as legal jurisdiction to Adjudicating Authority for entertaining and disposing of issues relating to insolvency resolution and liquidation of Corporate Person including Corporate Debtor and Personal Guarantors. Section 60(4) vests NCLT, being Adjudicating Authority, with the powers of DRT. Section 60(5) of the IBC, 2016, gives overriding jurisdiction to NCLT over anything contrary contained in any other law for the time being in force. This provision has got two implications i.e. (1) no other Court would have jurisdiction over issues covered under IBC, 2016 which is also mandate of Section 63 and 231 of IBC, 2016 (2) anything contrary contained in any other law may not have the effect as far as disposal of case under IBC, 2016 is concerned. This position is also further supported by the provisions of Section 238 of IBC, 2016. This position of law also makes it clear that under Section 60(5) of IBC, 2016, the

specific provisions of IBC, 2016 would have to be given effect to while exercising jurisdiction under Section 60(5) of IBC, 2016 and any decision contrary to such specific provisions of IBC, 2016 or Rules/Regulations made thereunder would not be appropriate and legally sustainable. However, when under IBC, 2016 or regulations made thereunder, there is no provision as such for any specific situation, the question which would require our consideration is that to what extent jurisdiction under Section 60(5) of IBC, 2016 can be exercised by the Adjudicating Authority and what should be the guiding source or limiting factor. In this regard, we are of the view that Preamble and overall Structure of IBC, 2016 are the sources which can be put into service to arrive at the decision in a given set of facts. Secondly, Section 60(5)(c) of the IBC, 2016 itself provides for disposal of the issues "arising out of" or "in relation to" insolvency resolution or liquidation proceedings which mean that such issues must be in respect of insolvency resolution or liquidation proceedings and if any issue which is not so, the Adjudicating Authority, in general, would not have jurisdiction to decide the same. To put it

differently, scope and reach of jurisdiction of Adjudicating Authority is defined by the legislature by enacting the provisions of Section 60(5)(c) of IBC, 2016 in this manner. The scope of jurisdiction of this Adjudicating Authority came up for consideration of the Hon'ble Supreme Court in a substantial manner, firstly in the case of M/S Embassy Property Developments (Pvt) Ltd. vs The State of Karnataka wherein, the Hon'ble Supreme Court held that NCLT as Adjudicating Authority could not direct the statutory authorities/government to act in a particular manner while dealing with the insolvency resolution/liquidation of a Corporate Debtor. It was also held that such authorities were having exclusive jurisdiction under governing statutes. The Hon'ble Supreme Court, however, having regard to the structure of IBC, 2016 held that where such Authorities/Government are Operational Creditors under IBC, 2016, in respect of their claims, Adjudicating Authority would have full jurisdiction. After this pronouncement, amendments were made in provisions of Section 14 of IBC, 2016. However, legal position that the Adjudicating

Authority, though being created as one stop solution provider for Insolvency proceedings, does not possess unlimited jurisdiction under IBC, 2016 remains still valid and re-affirmed by Hon'ble Supreme Court in the case of Gujarat Urja Vikas Nigam Limited Vs. Amit Gupta and Ors. [2021 SCC Online Hon'ble Supreme Court of India 194] wherein Hon'ble Supreme Court again dealt with the issue of scope of jurisdiction of NCLT under Section 60(5)(c) of the IBC, 2016. In this case, Hon'ble Supreme Court was concerned with the matter relating to the jurisdiction of NCLT/NCLAT over dispute arising out of commercial arrangements/contracts. In this context, the Hon'ble Supreme Court took note of the words "arising out of" and "in relation to" used in Section 60(5)(c) of IBC, 2016. The relevant observations of the Hon'ble Supreme Court in para 71 to 74 are reproduced hereunder:

- 71.** *The institutional framework under the IBC contemplated the establishment of a single forum to deal with matters of insolvency, which were distributed earlier across multiple fora. In the absence of a court exercising exclusive jurisdiction over matters relating to insolvency, the corporate debtor would have to file and/or defend multiple proceedings in different fora. These proceedings may cause undue delay in the insolvency resolution process due to multiple proceedings in trial courts and courts of appeal. A delay in completion of the insolvency*

proceedings would diminish the value of the debtor's assets and hamper the PART I prospects of a successful reorganization or liquidation. For the success of an insolvency regime, it is necessary that insolvency proceedings are dealt with in a timely, effective and efficient manner. Pursuing this theme in *Innoventive* (supra) this court observed that —one of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up of the insolvency process¹. The principle was reiterated in *Arcelor Mittal* (supra) where this court held that —the non-obstante Clause in Section 60(5) is designed for a different purpose: to ensure that the NCLT alone has jurisdiction when it comes to applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings¹. Therefore, considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the Corporate Debtor. **However, in doing so, we issue a note of caution to the NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the Corporate Debtor. The nexus with the insolvency of the Corporate Debtor must exist.**

72. It is appropriate to refer to the observations in the Report of the BLRC, wherein it noted the role of the NCLT, as the Adjudicating Authority for the CIRP, in the following terms:

—An adjudicating authority ensures adherence to the process

At all points, the adherence to the process and compliance with all applicable laws is controlled by the adjudicating authority. The adjudicating authority gives

powers to the insolvency professional to take appropriate action against the directors and management of the entity, with recommendations from the creditors committee. All material actions and events during the process are recorded at the adjudicating authority. The adjudicating authority can assess and penalise frivolous applications. The adjudicator hears allegations of violations and fraud while the process is on. The adjudicating authority will adjudicate on fraud, particularly during the process resolving bankruptcy. Appeals/actions against the behaviour of the insolvency professional are directed to the Regulator/Adjudicator.

- 73.** *As such, it is important to remember that the NCLT's jurisdiction shall always be circumscribed by the supervisory role envisaged for it under the IBC, which sought to make the process driven by trained resolution professionals.*
- 74.** *In the present case, the PPA was terminated solely on the ground of insolvency, since the event of default contemplated under Article 9.2.1(e) was the commencement of insolvency proceedings against the Corporate Debtor. In the absence of the insolvency of the Corporate Debtor, there would be no ground to terminate the PPA. The termination is not on a ground independent of the insolvency. The present dispute solely arises out of and relates to the insolvency of the Corporate Debtor.*

31. Findings in para 97 of the said order are also relevant and thus reproduced as under:

- 97** *The residuary jurisdiction of the NCLT under Section 60(5)(c) of the IBC provides it a wide discretion to adjudicate questions of law or fact arising from or in relation to the insolvency resolution proceedings. If the jurisdiction of the NCLT were to be confined to actions*

prohibited by Section 14 of the IBC, there would have been no requirement for the legislature to enact Section 60(5)(c) of the IBC. Section 60(5)(c) would be rendered otiose if Section 14 is held to be the exhaustive of the grounds of judicial intervention contemplated under the IBC in matters of preserving the value of the corporate debtor and its status as a going concern'. We hasten to add that our finding on the validity of the exercise of residuary power by the NCLT is premised on the facts of this case. We are not laying down a general principle on the contours of the exercise of residuary power by the NCLT. However, it is pertinent to mention that the NCLT cannot exercise its jurisdiction over matters dehors the insolvency proceedings since such matters would fall outside the realm of IBC. Any other interpretation of Section 60(5)(c) would be in contradiction of the holding of this Court in Satish Kumar Gupta (supra).

32. Thus, considering these findings of the Hon'ble Supreme Court, it is crystal clear that this Adjudicating Authority has got adequate jurisdiction as regard to most of the issues raised in this application, being issues arising out of or insolvency resolution as well as are in relation to liquidation proceedings of the Corporate Debtor.

33. Thereafter, Hon'ble Supreme Court while dealing with the core issue of termination of PPA and its impact on the going concern status of the Corporate Debtor going under CIRP referred to the provisions of Section 14 of IBC, 2016 as amended after the decision of Hon'ble Supreme Court in the

case of M/S Embassy Property Developments and held that the object of such amendment was to ensure that the status of the Corporate Debtor going CIRP remains as going concern. The relevant findings of Hon'ble Supreme Court in para 176 to 180 are as under:

176 *Section 14(2) provides that supply of essential goods or services, as may be specified, cannot be terminated, suspended or interrupted during the moratorium. Section 14(2A) was added with effect from 28 December 2019. It provides that, where the IRP or RP considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage its operations as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, Para 8.7 except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified. The order of moratorium has effect till the culmination of insolvency resolution process.*

177 *The inclusion of the Explanation to Section 14(1) and Section 14(2A) indicates that Parliament has been amending the IBC to ensure that the status of a corporate debtor as a going concern' is not hampered on account of varied situations, which may not have been in contemplation at the time of enacting the IBC. It will be relevant to note that in a recent three judge Bench decision of this Court in P Mohanraj vs Shah Brothers Ispat Pvt. Ltd.¹²⁸, Justice Rohinton Fali Nariman, speaking for the Court, expounded upon the object of Section 14 in the following terms:*

...the object of a moratorium provision such as Section 14 is to see that there is no depletion of

a corporate debtor's assets during the insolvency resolution process so that it can be kept running as a going concern during this time, thus maximising value for all stakeholders. The idea is that it facilitates the continued operation of the business of the corporate debtor to allow it breathing space to organise its affairs so that a new management may ultimately take over and bring the corporate debtor out of financial sickness, thus benefitting all stakeholders, which would include workmen of the corporate debtor.

178 *Further, the scheme of the IBC, inter alia, in terms of Sections 20(2)(e), 25(1) and definition of resolution plan shows that it aims to preserve the Civil Appeal No. 10355 of 2018 decided on 1 March 2021 corporate debtor as a going concern'. The relevant portion of Section 20 is extracted below:*

20. *Management of operations of corporate debtor as a going concern*

(1) *The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.*

(2) *For the purposes of sub-section (1), the interim resolution professional shall have the authority—*

.....

to take all such actions as are necessary to keep the corporate debtor as a going concern.

179 *It is also relevant to note that Section 25(1) provides:*

Section 25 - Duties of resolution professional

(1) *It shall be the duty of the resolution professional to preserve and protect the assets of the corporate*

debtor, including the continued business operations of the corporate debtor.

180 *Resolution plan is defined under Section 5(26) of the IBC as follows:*

(26) "resolution plan" means a plan proposed by 3[resolution applicant] for insolvency resolution of the corporate debtor as a going concern in accordance with Part II;

Explanation.--For the removal of doubts, it is hereby clarified that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger.

34. The Hon'ble Supreme Court in para 181 and 183, which are reproduced as under, also defined parameters for assumption of jurisdiction and limitations on the scope of jurisdiction of NCLT under Section 60(5)(c) of the IBC, 2016 and how such jurisdiction can be exercised:

181 *Although various provisions of the IBC indicate that the objective of the statute is to ensure that the corporate debtor remains a 'going concern', there must be a specific textual hook for the NCLT to exercise its jurisdiction. The NCLT cannot derive its powers from the 'spirit' or 'object' of the IBC. Section 60(5)(c) of the IBC vests the NCLT with wide powers since it can entertain and dispose of any question of fact or law arising out or in relation to the insolvency resolution process. We hasten to add, however, that the NCLT's residuary jurisdiction, though wide, is nonetheless defined by the text of the IBC. Specifically, the NCLT cannot do what the IBC consciously did not provide it the power to do.*

183 Given that the terms used in Section 60(5)(c) are of wide import, as recognized in a consistent line of authority, we hold that the NCLT was empowered to restrain the appellant from terminating the PPA. However, our decision is premised upon a recognition of the centrality of the PPA in the present case to the success of the CIRP, in the factual matrix of this case, since it is the sole contract for the sale of electricity which was entered into by the Corporate Debtor. In doing so, we reiterate that the NCLT would have been empowered to set aside the termination of the PPA in this case because the termination took place solely on the ground of insolvency. The jurisdiction of the NCLT under Section 60(5)(c) of the IBC cannot be invoked in matters where a termination may take place on grounds unrelated to the insolvency of the corporate debtor. Even more crucially, it cannot even be invoked in the event of a legitimate termination of a contract based on an ipso facto clause like Article 9.2.1(e) herein, if such termination will not have the effect of making certain the death of the corporate debtor. As such, in all future cases, NCLT would have to be wary of setting aside valid contractual terminations which would merely dilute the value of the corporate debtor, and not push it to its corporate death by virtue of it being the corporate debtor's sole contract (as was the case in this matter's unique factual matrix).

35. Thus, Hon'ble Supreme Court, in our humble view, has created a balance between overall Object, Structure and Scheme of IBC, 2016 with the text and context of Section 60(5)(c) of IBC, 2016. The key message is that the jurisdiction is confined to issues being central to insolvency resolution or liquidation proceedings of a Corporate Debtor and, thereafter,

foundational principles of IBC, 2016 can be put into service to find out a solution of a problem in a given set of circumstances, if there exist no specific provisions to provide solution thereto. This aspect is further supported by the observations of the Hon'ble Supreme Court in this very case in para 185 to 188 in the last part of its order under the head Dialogical Remedies wherein Hon'ble Supreme Court has highlighted the necessity of intervention of the Court in the situations wherein no specific provisions exist in a statute till such situation is remedied by the legislature. Such findings are reproduced as under:

K.3 *Dialogical Remedies*

185 *As indicated above in section —J.3 of this judgment, we would like to take this opportunity to note the desirability of Parliament providing its legislative vision on the broader validity of ipso facto clauses. We have outlined some of the complex considerations in paragraph 138.*

186 *In the past, this Court has adopted such dialogical remedies – where the Court engages in a dialogue in its judgments with the other two organs of government so that each organ can best perform its constitutionally assigned role. To illustrate, in its judgement in S. Sukumar vs The Secretary, Institute of Chartered Accountants of India¹³⁰, a two judge Bench of this Court, speaking through Justice Adarsh Kumar Goel, held as follows:*

53.1. The Union of India may constitute a three-member Committee of experts to look into the question whether and to what extent the statutory framework to enforce the letter and spirit of Sections 25 and 29 of the CA Act and the statutory Code of Conduct for the CAs requires revisit so as to appropriately discipline and regulate MAFs. The Committee may also consider the need for an appropriate legislation on the pattern of Sarbanes Oxley Act, 2002 and Dodd Frank Wall Street Reform and Consumer Protection Act, 2010 in US or any other appropriate mechanism for oversight of profession of the auditors. Question whether on account of conflict of interest of auditors with consultants, the auditors' profession may need an exclusive oversight body may be examined. The Committee may examine the Study Group and the Expert Group Reports referred to above, apart from any other material. It may also consider steps for effective enforcement of the provisions of the FDI policy and the FEMA Regulations referred to above. It may identify the remedial measures which may then be considered by appropriate authorities. The Committee may call for suggestions from all concerned. Such Committee may be constituted within two months. Report of the Committee may be submitted within three months thereafter. The UOI may take further action after due consideration of such report.

187 Conscious as we are of the fact that this case is about statutory and not constitutional interpretation, we think it would be apposite to quote the following observations by Anne Meuwese and Marnix Snel:

The core of constitutional dialogue between the judiciary and the legislature is that they engage in a conversation about constitutional meaning, in which both actors (should) listen in order to learn

from each other's perspectives, which can then lead to modifying their own views accordingly... In this way, 'dialogue' represents the 'middle way between judicial supremacy on the one hand, and legislative supremacy on the other'.

188 The Court is at its heart, an institution which responds to concrete cases brought before it. It is not within its province to engraft into law its views as to what constitutes good policy. This is a matter falling within the legislature's remit. Equally, when presented with a novel question on which the legislature has not yet made up its mind, we do not think this Court can sit with folded hands and simply pass the buck onto the Legislature. In such an event, the Court can adopt an interpretation – a workable formula – that furthers the broad goals of the concerned legislation, while leaving it up to the legislature to formulate a comprehensive and well-considered solution to the underlying problem. To aid the legislature in this exercise, this Court can put forth its best thinking as to the relevant considerations at play, the position of law obtaining in other relevant jurisdictions and the possible pitfalls that may have to be avoided. It is through the instrumentality of an inter-institutional dialogue that the doctrine of separation of powers can be operationalized in a nuanced fashion. It is in this way that the Court can tread the middle path between abdication and usurpation.

36. Thus, in case of a newly enacted law all situations may not be contemplated and cannot be taken care of by the legislature at the time of enactment in spite of best efforts.

There will always remain necessity and scope for further amendments to take care of all situations which may arise

during the course of implementation of a specific statute. The process of amending the law to take care such situations certainly takes some time, hence, how such situations can be addressed in the intervening period? It is for this reason only residuary powers in addition to fundamental jurisdiction are given to the concerned statutory authority which implements a specific statute. In the present case, NCLT is Adjudicating Authority, hence, it is duty bound to provide solutions to various situations which are not specifically provided/covered under IBC, 2016 and Rules/Regulations made thereunder. However, such solution will have to be provided as per the established judicial practices which necessarily prescribe that arbitrariness or judicial adventurism should be avoided and for this purpose, the assistance of well settled principles of interpretation of statute are put into service. As stated earlier, Preamble to a statute can be used as guide. In the Preamble to IBC, 2016, liquidation process is not mentioned at all, which fact itself shows that the legislature intended that the Insolvency of a Corporate Debtor would be tackled mainly through

resolution. Section 5(26) of IBC, 2016 also indicates so as it provides that resolution plan is a process whereby Corporate Debtor is sold as a going concern. It is also to be noted that framework for sale of Corporate Debtor as a going concern during liquidation process has been specified by IBBI pursuant to various judicial decisions which also took note of this Scheme of IBC, 2016, hence, this regulatory framework can be considered as institutionalized in terms of provisions of Preamble to IBC, 2016. However, there still remains a vacuum as neither the basic provisions under Code nor regulations made so far prescribe as to what reliefs and concessions can be granted to a Successful Auction Bidder who takes over a Corporate Debtor as a going concern like a resolution applicant so as to enable such person to run the affairs of the Corporate Debtor as a going concern in a smooth manner and without any hiccups.

37. Thus, for this kind of situation, there is necessity that legislature should provide necessary framework for granting reliefs and concessions in specific manner in case of sale of Corporate Debtor as a going concern or its businesses as a

going concern under liquidation process. However, in the interim, NCLT as Adjudicating Authority is under legal obligation to exercise its jurisdiction under Section 60(5)(c) of IBC, 2016 in accordance with the object, scheme and structure of IBC, 2016 which is applicable to both insolvency resolution as well as to liquidation proceedings. The Hon'ble Supreme Court, as stated in earlier part of this order, has already held that the broad objective of IBC, 2016 is the revival and continuation of the Corporate Debtor as a going concern and all modes prescribed under IBC, 2016/Regulations made thereunder try to achieve and thus all legal provisions related to these modes may have some interplay. Considering this broad objective which is adequate to grant reliefs, we are of the view that still it is imperative for us to look for major similarities between Corporate Debtor being sold/transferred under resolution plan and Corporate Debtor being sold as going concern under liquidation process to appreciate the claims made by the Applicant. These similarities are as under:

I. The Corporate Debtor is transferred as going concern under resolution plan which is approved under Section 31 of IBC, 2016. Section 5(26) of the IBC, 2016 specifically defines resolution plan as plan for insolvency resolution of Corporate Debtor as a going concern. On parallel lines, Regulation 32(e) and 32(f) of Liquidation Process Regulations, 2016 r.w. Regulation 39C of CIRP Regulations provide for sale of Corporate Debtor or its businesses as going concern. Modalities of going concern remain same for both process and only mode of distribution of consideration received is different.

II. Though there is no specific provision like Section 31 of IBC, 2016 which govern the binding nature of sale of Corporate Debtor under Liquidation Process on all its stakeholders but there are no exception or exclusions also in this regard. Further, the jurisdiction of Adjudicating Authority is under Section 35(1)(n) of IBC, 2016 whereby Adjudicating Authority is competent to give such orders or directions as may be necessary for the liquidation of the Corporate Debtor. In our considered view binding nature of such orders/directions on

all stakeholders cannot be disputed or doubted as if it is interpreted otherwise then the Chapter III of Part II cannot be implemented at all. Thus, though not worded on the lines of Section 31 of IBC, 2016, once the sale is approved by Adjudicating Authority under Section 35(1)(n) r.w. Section 60(5)(c) of IBC, 2016, it becomes binding on all stakeholders. Thereafter, like resolution plan, implementation starts. The sale proceeds received by the Liquidator are distributed amongst various stakeholders in terms of priorities as set out in Section 53 of IBC, 2016 like distribution of amounts paid by a resolution applicant for various stakeholders under a resolution plan as per provisions of Section 30(2) of the IBC, 2016.

III. The affairs of the Corporate Debtor and maintenance of status of Corporate Debtor as a going concern is the responsibility of the Liquidator under Liquidation Process like the responsibility of Resolution Professional during Corporate Insolvency Resolution Process. Further, powers of Liquidator are more wide and conclusive as compare to Resolution Professional as Liquidator functions independently and there

is no COC though Stakeholders Consultation Committee is formed but directions of this Committee are not binding.

- IV. Managements of Corporate Debtor changes after the approval of resolution plan and likewise the same process occurs when the Corporate Debtor is sold as a going concern during liquidation process.
- V. All legal compliances like RP are done by Liquidator during liquidation process.
- VI. Master data or incorporation data of the Corporate Debtor remains the same during both process when Corporate Debtor is being sold as a going concern.
- VII. All limitations/restrictions which are applicable to a resolution plan approved under Section 31 of IBC, 2016 of IBC shall also be applicable to a situation covered under Section 32(e) or 32(f) of Liquidation Process Regulations, 2016. In case of non-implementation of the sale/transfer of Corporate Debtor as a going concern by the Successful Auction Bidder, EMD given by Successful Auction Bidder can be forfeited on the lines of similar action against Successful Resolution Applicant. Further, in our view, disability to

participate in such processes in future, in respect of resolution plan or auction processes of other Corporate Debtor, would also be attached to such auction bidder.

38. Thus, in our considered view, the reliefs and concessions on the parallel line of an approved resolution plan can be granted subject to one condition that such reliefs/concessions must be central issues and also in relation to or arising out of liquidation proceedings of a Corporate Debtor so as to confer jurisdiction on Adjudicating Authority under Section 60(5)(c) of the IBC, 2016.

39. Having discussed the legal position, we again reiterate that various clarifications were sought as regard to the basis of valuation of businesses/assets of the Corporate Debtor, compliance of Regulation 39C of CIRP Regulations, 2016 as well as Regulation 35 of Liquidation Process Regulations, 2016 and also of approval of final sale auction notice dated 19.03.2021 by Stakeholders Consultation Committee whereby the net current operational liabilities were restricted

to Rs. 25 Lakhs and the Liquidator has provided necessary clarifications.

40. Considering the above facts and legal position, we pass following order:

Order

- 1) Prayer "B" and "C" have been allowed in terms of our findings in para 23 hereinbefore and liquidation process period stands extended in terms of such findings.
- 2) We hereby approve the sale of the Corporate Debtor as a going concern as prayed by the Liquidator for consideration of Rs. 425.50 Crores plus net Current Operational Liabilities (Cap upto Rs. 25 lakh). The Successful Bidder shall complete the sale process by paying balance consideration amount within 30 days from the date of this order and upon payment of entire sale amount all the rights and title and interest in whole and every part of the Corporate Debtor including but not limited to intellectual property rights continue to vest in the Corporate Debtor.

- 3) Permission is accorded to the Liquidator to issue sale certificate to the Successful Auction Bidder in lieu of consideration of Rs. 425.50 Crore being received for sale of Corporate Debtor as a going concern to the Successful Auction Bidder.
- 4) We direct that the Liquidator shall disburse the amount so received to all stakeholders/beneficiaries in terms of provisions of Section 53 of IBC, 2016 after necessary approval by the Hon'ble Delhi High Court.
- 5) We hold that all permits, licenses, copy rights, trademarks or other statutory rights shall remain vested with the Corporate Debtor as it is being sold as a going concern. However, compliances, if any, required under concerned Statute/Laws/Rules/ Regulations/Statutory Orders due to change in the ownership and management of the Corporate Debtor would have to be done by the Successful Auction Bidder.
- 6) We hold that rights, title and interest in whole or every part of the Corporate Debtor (as specified in Option A and subject

to exclusion of assets not being part of this sale) shall remain vested in the Corporate Debtor. We further hold that such assets, rights, titles and interest shall become free from security interest, claims and counter claims on satisfaction of charges/encumbrance as per directions 7(f).

7) The Liquidator has claimed various reliefs, concessions and directions. However, we hold that reliefs, concessions and directions sought in prayer D of the Application (as mentioned hereinbefore) are granted in the following manner and to this extent only:

a. We authorise Liquidator to issue equity shares or any other security/investment of the Corporate Debtor on or after the effective date and the same shall be subscribed and allotted to the Successful Bidder or any of its nominee subject to compliance with Section 29A of the Code, in lieu of the "Liquidation Sale Amount" received by the Liquidator in the Liquidation account of the Corporate Debtor. No further approval would be required under Companies Act, 2013 or SEBI Regulations, however, procedural Compliances, if any,

in terms of SEBI Regulations or listing agreement with the respective stock exchange in relation thereto shall be done by the Liquidator/Successful Auction Bidder.

- b. We hold that existing share capital held by promoters/their associate concerns and non-public shareholders other than the existing public shareholding in the Corporate Debtor shall stand extinguished. Public shareholding in the Corporate Debtor shall be maintained as per prescribed norms and relevant guidelines of SEBI and/or IBBI.
- c. We direct that the Board of Directors of the Corporate Debtor would be reconstituted by removing board of directors as existing on effective date and appointment of new Board of Directors nominated by the Successful Auction Bidder subject to the affidavit and undertaking that none of such directors of Board of Directors are disqualified under Section 29A of IBC, 2016.
- d. We direct the ROC to change the status of the Corporate Debtor in its records from the effective date as active from the status of "under liquidation".

- e. We grant exemption to the Corporate Debtor from the use of word "and reduced" in its name as required under the provisions of Companies Act, 2013.
- f. We hold that the charges registered with concerned ROC in respect of encumbrances over the assets of the Corporate Debtor shall stand satisfied and vacated upon the completion of the sale of the Corporate Debtor as a going concern and this order shall be sufficient proof to enable the Liquidator/Successful Auction Bidder to satisfy the charges on secured assets in the records of ROC and other statutory and regulatory authorities, if any, upon completion of sale and issuance of the Sale Certificate. The Liquidator/Successful Auction Bidder shall do necessary filings and comply with procedural formalities in this regard as per the provisions of Companies Act, 2013 or under other relevant statutes, if any.
- g. We hold that all claims of the Corporate Debtor against third parties and its related parties shall remain outstanding, due and recoverable in accordance with their respective terms. Further, all creditors shall be the beneficiary of any amount

recovered by the Corporate Debtor post acquisition, previously written off by the Corporate Debtor and the Liquidator/Successful Bidder shall have full right to recover/proceed against the party, whose account is recoverable in the books of Corporate Person as on the Effective Date. The recoveries so made shall be deposited in bank account and be distributed to all creditors as per the provisions of Section 53 of IBC, 2016. In case, the liquidation process has been closed and recoveries are made, thereafter, then the Successful Auction Bidder shall be under an obligation to distribute such sum in the same manner failing which, if brought to the notice of this Adjudicating Authority, appropriate action, at any stage, may be taken against Successful Auction Bidder.

- h. We hold that the assets not included in the sale process, as defined in the E-auction Information Memorandum document, being proceeds out of the Application filed under Sections 43, 45, 49, 66 under IBC 2016 (preferential transaction, avoidance of undervalued transaction, transactions defrauding creditors, fraudulent transactions)

shall not for of the E-auction sale and proceeds if any shall be deposited in the Liquidation Account. Any cost legal or other as the case may be in regards to such application shall be borne by the Liquidator/beneficiaries and be payable out of Liquidation Account. In case, the liquidation process has been closed and recoveries are made, thereafter, then the Successful Auction Bidder shall be under an obligation to distribute the sum in the same manner failing which, if brought to the notice of this Adjudicating Authority, appropriate action, at any stage, may be taken against Successful Auction Bidder.

i. We hold that Successful Auction Bidder shall have a right to review and terminate any contract that was entered into prior to the commencement of CIRP of the Corporate Person in accordance with the terms and conditions specified in such contract.

j. We direct that the Liquidator shall continue to hold the bank account with HDFC Bank, "PSL Limited in Liquidation" and fixed deposits pertaining to the amount received as sale

consideration from the Successful Bidder, till the closure of the Liquidation Process in terms of Regulation 45(3)(a) of the Liquidation Process Regulations so that sale consideration and other money, if any, received can be distributed amongst all Creditors/Shareholders in accordance with the provisions of Section 53 of IBC, 2016. Further, the Liquidator is empowered to issue directions to the banks to change the operating signatories of bank accounts of the Corporate Debtor on or after effective date other than the Liquidation Bank Account held by the Liquidator, for smooth transition of the Corporate Debtor to the Successful Bidder.

- k. We hold that property/assets being Second Floor along with rights of roof upto sky with 50% undivided share in the property B-96 Greater Kailash 1, New Delhi 110048 for which the Liquidator has filed an application with NCLT and the agriculture land measuring 289, 562 square metres situated at Mauje Rampura 2, Taluka Rajula, District Amrely, Gujarat, which has been transferred in the name of the Corporate Debtor, shall not form part of this Sale. Any costs in regard to the preservation or disposal of aforesaid property shall be

borne by the Liquidator/ beneficiaries and be payable out of Liquidation Account. In case, the liquidation process has been closed and recoveries in respect of this property are made thereafter, then the Successful Auction Bidder shall be under an obligation to distribute the sum to all creditors in the manner as specified in Section 53 of IBC, 2016 and failing which, if brought to the notice of this Adjudicating Authority, appropriate action, at any stage, shall be taken against Successful Auction Bidder.

1. The liabilities, if any, arising out of non-compliance of provisions of any Laws, Rules, Regulations, Directions, Notifications, Circulars, Guidelines, Policies, Licenses, Approvals, Consents or Permissions prior to effective date shall stand extinguished qua the Successful Auction Bidder and the same shall be settled by Liquidator in accordance with the provisions of Section 53 of IBC, 2016.
- m. The Successful Auction Bidder shall not be held responsible/liable for any past liabilities of the Corporate Debtor in enquiries, investigations, assessments, notices,

suits, claims, disputes, litigations, arbitrations or other judicial, regulatory, administrative proceedings on in relation to or in connection with the Corporate Debtor prior to effective date.

- n. The Successful Auction Bidder shall not be liable for any action/responsibility of the Corporate Debtor or its erstwhile management as per provisions of Section 32A of IBC, 2016.
- o. As regard to the cap of Rs. 25 lakhs on net current operational liabilities to be paid by Successful Auction Bidder over and above the reserve price, we hold that such cap would not, in any manner, result into deemed settlement or extinguishment of liabilities whether operational or non-operational standing as on liquidation commencement date and such liabilities shall be dealt with by the Liquidator in accordance with the provisions of Section 53 of IBC, 2016.
- p. We hold that operational liabilities arising after liquidation commencement date till the completion of sale, being liquidation cost in terms of provisions of Section 5(16) of IBC, 2016 r.w. Regulation 2(ea) of the Liquidation Process

Regulations, 2016, shall be paid out of sale consideration so received in terms of provisions of Section 53 of IBC, 2016 subject to permission of Hon'ble Delhi High Court.

q. We hold that all other liabilities existing as on the liquidation commencement date which have been consolidated, verified, admitted and valued by the Liquidator as per Section 38, 39, 40 and 41 of IBC, 2016 r.w. Regulations 16 to 30 of Liquidation Process Regulations, 2016 shall be settled and paid in terms of provisions of Section 53 of IBC, 2016. We further hold that after settlement of various creditors by the Liquidator in terms of provisions of Section 53 of IBC, 2016, no liability of any creditor shall remain pending or alive qua Successful Auction Bidder.

r. Successful Auction Bidder is seeking exemption from ineligibility under Section 29A for submitting bids in future for acquisition of another Corporate Debtor. Such exemption is being sought on the ground that if any of the subsidiaries of Corporate Debtor which is acquired by the Successful Auction Bidder as a part of Corporate Debtor may turn into

NPA making Successful Auction Bidder ineligible under Section 29A of IBC, 2016 to submit bids. In our view such exemption is neither contemplated under Chapter III of Part II nor under Liquidation Process Regulations, 2016 and as on date no such disability exists. Further, this is neither arising out of or in relation to present liquidation proceedings, hence, no jurisdiction is vested with us under Section 60(5)(c) of IBC, 2016 to grant such relief. Further, such exemption, if granted, would encroach upon the jurisdiction of concerned Adjudicating Authority dealing with the CIRP/Liquidation of that Corporate Debtor. Accordingly, this prayer of the Liquidator/Successful Auction Bidder is rejected.

- s. As regard to carry forward of losses under the Income Tax Act, 1961, we hold that the Corporate Debtor under the new management under Section 79(2) of Income Tax Act, 1961 would have to approach concerned Income Tax Authority who may grant such relief, is permissible under law.

- t. We hold that Liquidator and the Successful Auction Bidder shall take all steps required to make the accounting entries

in the books of account to give effect to the transactions entered into and executed for the purpose of sale of the Corporate Debtor as a going concern.

u. We direct Liquidator to provide all support and assistance to the Successful Auction Bidder for smooth implementation of sale of Corporate Debtor as a going concern.

41. Accordingly, this application stands allowed and disposed of in terms indicated above.

42. Urgent certified copy of this order, if applied for, be issued to all concerned parties upon compliance with all requisite formalities.



(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)



(MADAN B GOSAVI)
MEMBER (JUDICIAL)

Abhishek

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 1

ITEM No 2

IA 909 of 2020
in
CP(IB) 37 of 2017

Order under Section 10 IBC

IN THE MATTER OF:

Jindal Tubular (India) Ltd.

V/s

Nitin Jain Liquidator for PSL Ltd.

.....Applicant

.....Respondent

Order delivered on ..08/09/2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)

Virendra Kumar Gupta, Hon'ble Member(T)

PRESENTS:

For the Applicant :

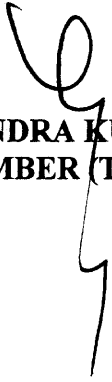
For the IRP/RP :

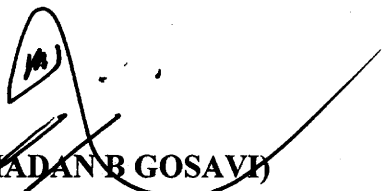
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD**

**IA/ 909(AHM) 2020 in
C.P.(IB) 37/NCLT/AHM/2017**

[An Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016]

In the matter of:

Jindal Tubular (India) Ltd.
A-1, UPSIDC Indl. Area, Nandgaon Road,
Kosi Kalan, Distt. Mathura,
Uttar Pradesh-281403

.... Applicant

Versus

Mr. Nitin Jain,
Liquidator of PSL Limited,
AAA Insolvency Professional LLP,
E-10A, Kailash Colony,
Greater Kailash-I, New Delhi-110048.

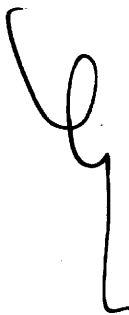
...Respondent

**Order reserved on 07th September, 2021
Order delivered on 08th September, 2021**

**Coram: MADAN B. GOSAVI, MEMBER (J)
 VIRENDRA KUMAR GUPTA, MEMBER (T)**

Appearance...

For the Applicant : Advocate, Rashesh Parikh.
For the Respondent : Advocate, Mr. Gaurav Mitra.



ORDER

[Per : VIRENDRA KUMAR GUPTA, MEMBER (T)]

- 1) Through this application, the Applicant is seeking stay on E-auction sale notice dated 27.11.2020 in respect of plant and machinery located at Pithampur Industrial Area, Madhya Pradesh and Pass appropriate orders/direction.
- 2) The facts, in brief, are that the Corporate Debtor is going under liquidation process. The Corporate Debtor has different facilities. The Liquidator invited proposals for sale of assets of the Corporate Debtor under different auctions as a consequence of order of this Adjudicating Authority dated 11.09.2020. First notice was published on 27.11.2020 which is under challenge. However, at this stage itself we may clarify that such E-auction notice was cancelled and final E-auction notice has been published on 20.03.2021. The Applicant was appointed as Manager for operation, maintenance and management and certain manufacturing coating facilities of the Company vide agreements dated 04.03.2015. However,

said agreement had validity of one-year subject to extensions as agreed between the parties. This agreement, admittedly, had not been extended. The Applicant has provided services thereafter based upon a different agreement entered into by and between the Applicant and one of the Financial Creditors being a member of COC of the Corporate Debtor.

- 3) The learned counsel appearing on behalf of Applicant submitted that as per the provisions of Clause 1.6 of agreement dated 04.03.2015, the Applicant was having right of first refusal in case the Corporate Debtor was selling identified properties. It was also claimed that the Applicant was still providing services and paying rent for use of such facilities. However, the impugned E-auction notice was published without complying with the requirements of said clause of the impugned agreement. Hence, the sale notice may be cancelled.
- 4) Learned counsel for the Liquidator appeared and submitted that impugned agreement was valid only for one year and was

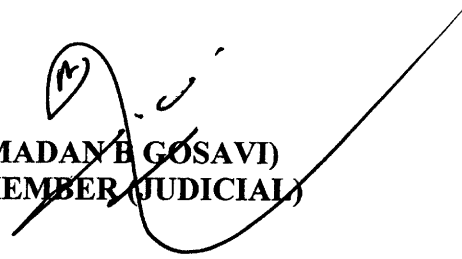
not extended by in between the Corporate Debtor and the Applicant or by the Resolution Professional/Liquidator when the Corporate Debtor was admitted into CIRP. Hence, any claim based on such terminated agreement was not having any validity in law. It was further contended that at present the Applicant was providing services at one facility in terms of agreement entered between the Applicant and one of the Financial Creditors of the Corporate Debtor and such arrangement had no such provision. It was also pointed out that the Applicant had no security interest in the assets of the Corporate Debtor in any manner. Hence, this application was liable to be dismissed with cost.

- 5) We have considered the submissions made by both the sides and material on record. We have also gone through the relevant provisions of the agreements dated 04.03.2015 which has not been renewed. Hence, at this point of time any condition of such agreement relied on by the Applicant is not valid. It is also noted that the Applicant is also aware of E-

auction process going on and Corporate Debtor is going under CIRP/liquidation as the Applicant is continuing operations at one identified facility in terms of an arrangement with one of the Financial Creditors of the Corporate Debtor. The terms and conditions of such arrangement do not give right of first refusal to Applicant. Further, no material has been brought on record that Applicant was excluded from participating in E-auction process as different options had been worked out therein. Further, in our view, there is no security interest or encumbrance of whatsoever nature in favour of the Applicant on the assets of the Corporate Debtor which form part of liquidation estate. We may also observe that as against offer of Rs. 4 Crore, the reserve price of the such assets has been worked out at 5.50 Crores. It is also noted that the claim of outstanding dues has already been filed as per the provisions of law and it would be dealt with in accordance with provision of Section 53 of IBC, 2016. Accordingly, we find no merits in any of the pleas made by Applicant.

- 6) In the result, this application stands rejected and disposed of accordingly.
- 7) Urgent certified copy of this order, if applied for, be issued to all concerned parties upon compliance with all requisite formalities.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B GOSAVI)
MEMBER (JUDICIAL)

Abhishek