



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**Interlocutory Application No. 209/KB/2024  
In  
Company Petition (IB) No. 1694/KB/2018**

*Under section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read  
with Rule 11 of the National Company Law Tribunal Rules, 2016*

**IN THE MATTER OF:**

**Sendoz Commercials Private Limited**

**... Operational Creditor.**

**Verses**

**Kohinoor Paper and Newspaper Private Limited ... Corporate Debtor.**

**And**

***In the matter of :***

**Dwarakapati Smelters Private Limited**

**.....Applicant No.1**

**Bhagwati Vintrade Private Limited**

**.....Applicant No. 2**

**Verses**

**Ms. Ranchana Jhunjunwala**

**.....Respondent**

**Date of Pronouncement: February 23, 2024.**

**CORAM:**

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)**

**SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

**Appearance:**

**Ms. Shreya Choudhary, Adv. ] For the liquidator**

**Mr. Priyadarshan Kumar, Adv.**

**Ms. Rachna Jhunjunwala, Liq.-in-person**

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**Mr. Abhradip Maity, Adv. ] For GST Authority  
Ms. Shatabdi Sen, Adv.**

**Ms. Rakhi Purnima Paul, Adv. ] For IFCI Ltd.**

**Mr. Madhu Sudan Sarkar, Adv. ] For WBSEDC**

**ORDER**

***Per: Bidisha Banerjee, Member (Judicial):***

1. This Court is congregated through hybrid mode.
2. Heard the Learned Counsels for both parties.

**3. *Facts in a nutshell:***

**3.1** The liquidation against the Corporate Debtor was initiated by this Hon'ble Tribunal on 12.07.2021 and Mr. Uday Narayan Mitra was appointed as the Liquidator.

**3.2** The Stakeholders Consultation Committee ("SCC") members decided to replace Mr. Uday Narayan Mitra as the Liquidator Ms. Rachna Jhunjhunwalal was appropriate liquidator, vide this Tribunals order dated 28.06.2023.

**3.3** Sometime in and around, 20.09.2023, a consortium was formed between Dwarakapan Smelters Private Limited and Bhagwati Vintrade Private Limited who submitted their EOI for acquiring the Corporate Debtor for a consideration of Rs. 53,45,00,000/- and deposited an EMD of Rs. 5,34,00,000.

**3.4** To acquire the Corporate Debtor as a going concern by way of a private sale and only the assets the consortium was declared as the successful bidder.

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- 3.5** The LOI was issued by the Liquidator on 25.09.2023 to the consortium for payment of the balance sale consideration amounting to Rs. 48,11,00,000/- after adjustment of the EMD amount of Rs. 5,34,00,000/-
- 3.6** The Applicant consortium made the entire payments towards the said sale consideration for acquiring the Corporate Debtor as a going concern.
- 4.** The applicant consortium by way of this application to seek certain reliefs and waivers . The Applicants have also sought for approval of a scheme of demerger of the Corporate Debtor's undertaking into the Applicant No. 1/Dwarakapati Smelters Private Limited pursuant to the provisions of the Sec 230-232 of the Companies Act, 2013.
- 5.** To support their prayers the applicants have relied upon the following judgements:
- a. **Jasamrit Designers Pvt.Ltd vs. Mr. Gian Chand Narang & Anr- 2023 SCC Online NCLAT 334** Paragraphs 10 and 11 as the right of a successful bidder to seek reliefs and concessions.
  - b. **Gaurav Jain vs. Sanjay Gupta, Liquidator of Pipes and tubes Private Limited-** 2021 SCC Online NCLT 489 paragraphs 20,25,26,28,29,30 and 34 on the nature of reliefs and concessions that are permitted.
  - c. **Nitin Jain, Liquidator of PSL Limited vs. Lucky Holdings Private Limited** -2021 SCC Online NCLT 3108 paragraphs 15,29,30 and 36 to 42 as the nature of reliefs and concessions that are permissible.
  - d. **Ramesh Chaudhary &Anr. Vs. Anju Agarwal, Liquidator of Shree Bhawani Paper Mills Limited** IA No. 195/2023 in C.P No.

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110/ALD/ 2017, by NCLT, Allahabad Bench, vide its order dated 26.05.2023 paragraphs 11, 15, 16, 17, and 25 to 31 as the nature of reliefs and concessions that are permissible.

e. **Kashri Power & Steel Pvt. Ltd & Ors. vs. WBSEDCLS** as WPA 6327 OF 2020 (12.08.21,) rendered by Hon'ble High Court at Calcutta an Regulation 32A of Liquidation Process Regulations 2016.

6. The Applicants would submit that the reliefs and concessions, along with approval of the Scheme of Demerger as sought for by the Applicants are necessary for conducting the smooth operations of the Corporate Debtor. Further , by way of the Scheme of Demerger the Applicants are seeking to essentially, demerge the undertaking of the Corporate Debtor into the Applicant No. 1 thereby leading to reduction and cancellation of new equity shares to be issued by the Applicant No. 1 to the existing shareholders of the Corporate Debtor, as on 30.09.2023 and subsequently dissolution of the Corporate Debtor. That an approval of the reliefs and concessions, along with the Scheme of Demerger will aid in meeting the ends of justice.

7. Reliance has been placed upon **Ghanashyam Mishra and Sons Private Limited VS. Edelweiss Asset Reconstruction Company Limited** 2021 SCC OnLine SC 313, that upon approval of the resolution plan, the claims as recorded in the plan stands frozen and will be binding on its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders.

**8. The Reliefs and Waivers:**

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<b>Sl. No</b>	<b>Reliefs, waivers, concessions and dispensation sought for</b>	<b>Precedents cited</b>	<b>Order</b>
1.	Direct that the status of the Corporate Debtor in the records of the Registrar of Companies and on the website of the Corporate Debtor be reflected as "Active" from the status being shown currently, as "Under Liquidation".	<p>a. <b>Gaurav Jain vs. Sanjay Gupta, Liquidator (Supra)</b></p> <p>b. <b>Nitin Jain, Liquidator of PSL Limited vs. Lucky Holdings Private Limited (Supra)</b></p>	<b>Granted</b>
2.	<p>Grant the reliefs, concessions, waivers for the successful implementation of the Acquisition Plan as set out in Schedule -A annexed to the Present Application, including but not limited to the following, that:</p> <ul style="list-style-type: none"> <li>• the Applicants shall acquire the Corporate Debtor on a clean slate/fresh slate with a "clean break" from</li> </ul>	<p>a. <b>Gaurav Jain vs. Sanjay Gupta, Liquidator (Supra)</b></p> <p>b. <b>Nitin Jain, Liquidator of PSL Limited vs. Lucky Holdings Private Limited (Supra)</b></p>	<b>Granted</b>

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	<p>the period prior to 30.09.2023 i.e., the date of its acquisition.</p> <ul style="list-style-type: none"> <li>any and all Liabilities of the Corporate Debtor relating to any period prior to the Effective Date including those resulting out of its acquisition by the Applicants shall immediately, unconditionally irrevocably stand and extinguished, accordance with Section 53 of the Code.</li> <li>direct the requisite governmental/ non-authorities, agencies, e forums, to grant reliefs, concessions, woul waivers, etc.</li> </ul>	<p>Ref. 1. Company Application (AT) (INS) 650 OF 2020. <b>2. Ghanshyam Mishra Essar Steel 2020(8) SCC 531.</b></p>	<p>Granted as Subsequent to distribution of sale proceeds under Section 53 of the Code, no other entity including any Government entity can claim any past unpaid or outstanding dues against the purchaser of the CD as a going concern .Claims not submitted either during CIRP or the Liquidation stage cannot be foisted upon the applicants/ purchaser of the Company.</p> <p>No blanket order can be issued. Applicant shall seek relevant reliefs etc from such authorization who shall</p>
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			consider the prayers and grant the some in accordance with the law .
3.	<p>Recasting of accounts and drawal of Balance Sheet:</p> <p>Based on the audited receipt and payments along with the audited balance sheet as on the liquidation commencement date, that is 12.07.2021, as provided / to be provided by the Liquidator, the Successful Bidder / CD shall be permitted to</p> <p>(1) recast the accounts and re-draw the balance sheet of the CD (granted)</p> <p>(ii) claim all the reliefs and concessions relating thereto, including no penal</p>	<p><b>a. Gaurav Jain vs. Sanjay Gupta, Liquidator (Supra)</b></p> <p><b>b. Nitin Jain, Liquidator of PSL Limited vs. Lucky Holdings Private Limited (Supra)</b></p> <p><b>c. Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited (Supra)</b></p> <p><b>d. Gaurav Jain vs. Sanjay Gupta, Liquidator (Supra)</b></p>	<p style="text-align: center;"><b>Granted</b></p> <p style="text-align: center;"><b>Granted</b></p>

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	<p>interest, charges etc. to be levied or liability of whatsoever (including any tax liability) to accrue for any non-compliance of any regulatory provision including Companies Act or any non-filing under any statutory provisions for the period prior to 30.09.2023.</p>	<p><b>e. Nitin Jain, Liquidator of PSL Limited vs. Lucky Holdings Private Limited (Supra)</b></p> <p><b>f. Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited (Supra)</b></p>	
4.	<p>Permission to restructure the paid-up capital of Gaurav the Corporate Debtor by extinguishing the existing Gupta, paid-up capital and allow issuance of new equity shares to the Applicants in terms of the Clause 15 Tubes of the Sale Certificate dated 30.09.2023</p>	<p><b>Gaurav Jain vs. Sanjay Gupta, Liquidator (Supra)</b></p>	<p><b>Granted</b></p>

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5.	The Tribunal may take on record the reconstitution of the board of directors of the Corporate Debtor and the Registrar of Companies do take note of the relevant forms when filed by the Applicants in this regard.	<p><b>a. Gaurav Jain vs. Sanjay Gupta, Liquidator (Supra)</b></p> <p><b>b. Nitin Jain, Liquidator of PSL Limited vs. Lucky Holdings Private Limited (Supra)</b></p>	Reconstitution of Board not placed upon us. ROC be approached
6.	<p>Extinguishment of liabilities Corporate Debtor:</p> <p>a. All claims or demand made by or liabilities or obligations owed or payable to any actual or potential creditors of the Corporate Debtor including Governmental dues, whether direct or indirect, whether admitted or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed,</p>	<p><b>a. Gaurav Jain vs. Sanjay Gupta, Liquidator (Supra)</b></p> <p><b>b. Nitin Jain, Liquidator of PSL Limited vs. Lucky Holdings Private Limited (Supra)</b></p> <p><b>c. Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited (Supra)</b></p>	<b>Granted</b>  Granted in terms of cited decisions

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	<p>whether reflected in the books of accounts of the Corporate Debtor or not, in relation to any period prior to 30.09.2023 or arising on account of acquisition of the control by the Applicants over the Corporate debtor including those arising out of writing off the loans in its books will be written off in full and shall stand permanently exhausted.</p> <p>b. All pending litigations against the Corporate Debtor before any court and/or tribunal and/ or arbitration and/or any Quasi-Judicial authority shall ipso facto stand terminated without passing of any order in any manner adverse to the interest</p>	
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	<p>of the Corporate Debtor/ Applicants and will no longer be permissible to be prosecuted or enforced against the Applicants or the Corporate Debtor.</p> <p>c. Any and all judgement, decree, order passed by any court and/or tribunal and/or arbitration and/or Quasi-Judicial authority shall ipso facto stand extinguished and shall become incapable of execution as against the Corporate Debtor/Applicants. The Corporate Debtor/Applicants shall not be answerable to any such judgement, decree or order.</p>		<p><b>Not granted</b> as this Tribunal cannot grant termination of proceeding pending before other Courts/Tribunals or Statutory Authorities.</p>
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	<p>d. The charges registered with concerned ROC in respect of encumbrances over the assets of the Corporate Debtor on or before the 30.09.2023 shall stand discharged and satisfied.</p>		<p><b>Not granted</b></p>
	<p>e. All proceedings initiated against the Corporate Debtor for recovery of monies by all classes of creditors including secured creditors and those who did not file their claims with the Liquidator shall stand, in respect of period on or before 30.09.2023 shall stand dismissed and extinguished.</p>		<p><b>Granted</b> as Subsequent to distribution of sale proceeds under Section 53 of the Code, no other entity including any Government entity can claim any past unpaid or outstanding dues against the purchaser of the CD as a going concern. Claims not submitted either during CIRP or the Liquidation stage cannot be foisted</p>

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	<p>f. The secured creditors be directed to handover the title documents and related documents, deeds and papers duly noting discharge of all encumbrances in relation thereto.</p>		<p>upon the applicants/purchaser of the Company.</p> <p><b>Granted</b> in terms of <b>Ghanshyam Mishra Essar Steel 2020(8) SCC 531.</b></p>
7.	<p>Extinguishment of Guarantees given by the Corporate Debtor:</p> <p>a. All liabilities and guarantees extended by the Corporate Debtor whether monetary and non-monetary, statutory, crystallised or uncrystallised, claimed or not claimed, disputed or undisputed,</p>	<p><b>a. Gaurav Jain vs. Sanjay Gupta, Liquidator (Supra)</b></p> <p><b>b. Nitin Jain, Liquidator of PSL Limited vs. Lucky Holdings Private Limited (Supra)</b></p> <p><b>c. Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset</b></p>	<p><b>Granted</b> to the extent permissible in light of the judgements cited.</p>

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	<p>confirmed or contingent or due or future due, decrees obtained for satisfaction of debt and all such obligations of the Corporate Debtor shall stand extinguished and discharged in full against the Corporate Debtor.</p> <p>b. All shares of the Corporate Debtor pledged with any party shall stand extinguished and no liability upon the Corporate Debtor/ Applicants shall accrue in terms of S 32A of the Code.</p>	<p><b>Reconstruction Company Limited (Supra)</b></p>	
8.	<p>Extinguishment of Liability for past deeds:</p> <p>a. The liabilities, if any, arising out of non-compliance of provisions of any laws, rules,</p>	<p><b>d. Gaurav Jain vs. Sanjay Gupta, Liquidator (Supra)</b> <b>e. Nitin Jain, Liquidator of PSL</b></p>	<p><b>Granted to the extent permissible in terms of cited decisions as a, b and c.</b></p>

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	<p>regulations, directors, notifications, circulars, guidelines, policies, approvals, consents or permissions prior to effective date shall stand extinguished against the Corporate Debtor/ successful bidder.</p> <p>b. The Applicants/Corporate Debtor shall not be held responsible/liable for any past liabilities of the Corporate Debtor in enquiries, investigations, assessments, notices, criminal cases, civil cases, claims, disputes, litigations, arbitrations or other judicial, regulator, administrative proceedings or in relation to or in connection with the Corporate Debtor on or before 30.09.2023.</p>	<p><b>Limited vs. Lucky Holdings Private Limited (Supra)</b></p> <p><b>f. Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited (Supra)</b></p>	
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	<p>c. The Applicants shall not be liable for any action/responsibility of the Corporate Debtor or its erstwhile management as per the provisions of section 32A of IBC 2016.</p>		
<p>9.</p>	<p>Vesting of all assets including Intellectual Property rights and financial assets of the Corporate Debtor:</p> <p>a. All rights, title and interest in whole and every part of the Corporate Debtor Tube continue to vest in the Corporate Debtor 2021 and the assets, rights, titles and interest of 489 the Corporate Debtor shall become free from encumbrances, charges, security, interest, claims and counter claims.</p>	<p><b>a. Gaurav Jain vs. Sanjay Gupta, Liquidator (Supra)</b></p> <p><b>b. Nitin Jain, Liquidator of PSL Limited vs. Lucky Holdings Private Limited (Supra)</b></p> <p><b>c. Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited (Supra)</b></p>	<p><b>Granted</b> as permissible in terms of judgments cited.</p>

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	<p>b. All intellectual property rights of the Corporate Debtor including in respect of Trademark, Patent, Design, whether registered or unregistered shall continue to remain vested with the Corporate Debtor.</p> <p>c. All financial assets including receivables and actionable claims of the Corporate Debtor shall remain recoverable by the Corporate Debtor in accordance with their respective terms.</p>		
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- 9.** With the above directions, **IA(IB)No. 209/KB/2024 is disposed of.**
- 10.** The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 11.** Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

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**D. Arvind  
Member (Technical)**

**Bidisha Banerjee,  
Member (Judicial)**

Signed on this the 23<sup>rd</sup> day of February 2024

V. Tiwari (LRA)/M. Jana (P.S.)