

IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH-I

IA No. 5288/MB/C-I/2023

In

C.P (IB) No.2794/MB/C-I/2019

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

Filed by

**Lokdhun Telemedia Private Limited**

**...Applicant**

Versus

**Arun Kishanlal Bagaria**

Liquidator of

Matrix Bizcom Services Private Limited.

**...Respondent**

In the matter of

**Punjab National Bank**

**...Financial Creditor**

Versus

**Matrix Bizcom Services Private Limited ... Corporate Debtor**

**Order Pronounced on: 13.02.2024**

**Coram:**

Hon'ble Member (Judicial) : Justice V.G. Bisht (Retd.)  
Hon'ble Member (Technical) : Mr. Prabhat Kumar

**Appearances:**

For the Applicant : Mr. Ranit Basu, Advocate  
For the Respondent : Mr. Arun Bagri, Liquidator

**ORDER**

**Per: Prabhat Kumar, Member (Technical)**

1. The present Application is filed by the Successful Bidder seeking the approval of acquisition plan of the Corporate Debtor as a whole on-going concern basis under

Liquidation along with certain reliefs, concessions, waivers and exemptions.

2. The Corporate Debtor was admitted in CIRP vide Order dated 13.12.2019. Since, no Resolution Plan was received, the Corporate Debtor was Liquidated vide Order dated 23.02.2021 and the Respondent herein was appointed as the Liquidator
3. Subsequently, the Respondent/Liquidator in accordance with the IBBI (Liquidation Process) Regulations issued an E-Auction Sale Notice dated 21.06.2023 vide publication in Free Press Journal for conducting an e-auction/bidding for the sale of the Corporate Debtor as a whole on a going concern basis. Pursuant to E-Auction Notice dated 21.06.2023, the Applicant submitted its Bid Application Form along with the supporting documents and Earnest Money Deposit ('EMD') of Rs. 2,00,000/- (Rupees Two Lakhs Only) in terms of the E-Auction Process Memorandum. The Applicant was identified as one of the 'Qualified Bidder' by the Liquidator to participate in the E-Auction Process dated 24.07.2023.
4. The Applicant was the only bidder in the bidding process of the Corporate Debtor and he made the bid of Rs. 30,50,000/- (Rupees Thirty Lakhs and Fifty Thousand Only) and based on the same, he was declared as the successful bidder.
5. Pursuant to declaration as Successful Bidder, the Respondent/Liquidator issued a Letter of Intent ('LOI') dated 26.07.2023 upon the Applicant subject to the fulfilment of conditions specified therein and in accordance with the terms and condition of E-Auction Process Memorandum dated 22.06.2023 along with its amendment dated 31.07.2023, to provide advance consideration amounting to Rs. 5,62,500/- (Rupees Five Lakhs Sixty-Two Thousand and Five Hundred Only) [i.e. payment of 25% of the bid value, after adjusting the EMD amount of Rs. 2,00,000/-] by 15.08.2023 and further to pay the balance consideration of Rs. 22,87,500/- (Rupees Twenty-Two Lakhs Eighty-Seven Thousand and Five Hundred Only) within a period of 30 days

of the date of issuance of LOI i.e. till 31.08.2023 (without interest) and/or within a maximum period of 90 days along with interest @12% per annum i.e. till 30.10.2023.

6. The Applicant submits that he has already paid an advance consideration of Rs. 5,62,500/- on 15.08.2023 (after adjusting the EMD Amount) and the balance sale consideration of Rs. 22,87,500/- along with interest shall be paid within a period of 90 days towards full and final settlement of all the liabilities of the Corporate Debtor as on Effective Date (i.e. date of approval of the acquisition plan by this Hon'ble Adjudicating Authority).
7. The Applicant further submits that in order to acquire the Corporate Debtor on a going concern basis in terms of Regulation 32(e) of the Liquidation Process Regulations and further to maximize the value of the Corporate Debtor, the Applicant would require certain reliefs, concessions, waivers and exemption from this Adjudicating Authority which are already mentioned in detail in the Acquisition Plan and are also prayed in the present application.
8. The Applicant in support of its contention submits that the waivers and reliefs ought to be granted, has expounded on the proposition that the waivers and reliefs sought by the Successful Bidder herein are akin to the reliefs and concessions granted to the Resolution Applicant for the purpose of Resolution Plan under Section 32A of the Code. The Applicant submits that the reliefs and concessions sought are vital to run the Corporate Debtor on a clean slate basis.
9. At this juncture, we deem it appropriate to refer to the Judgment of the Hon'ble NCLAT in the matter of *M/s Shiv Shakti Inter Globe Exports Pvt. Ltd. vs M/s KTC Foods Private Limited Company Appeal (AT) (Insolvency) No. 650 of 2020*. The relevant paragraphs are reproduced herein:

*"21. Adverting to the contention of the Learned Counsel for the Appellant that the*

*Adjudicating Authority has erred in denying the sale of the 'Corporate Debtor' as a 'going concern' to the Appellant without including any contingent liabilities, we hold that it is a settled law that when the sale proceeds of a 'Corporate Debtor' are duly distributed in the Order of priority and in the manner prescribed under Section 53 of the Code, claims of any other Creditor cannot be entertained contrary to the provisions entailed under Section 53; subsequent to the distribution of sale proceeds under Section 53 no other entity including any Government entity can claim any past unpaid or outstanding dues against the Appellant who has purchased the 'Corporate Debtor Company' as a 'going concern'. It is significant to mention that the second Respondent/Liquidator has specifically submitted that even these claims by the Uttar Haryana Bijili Vitran Nigam were not submitted in the prescribed form either during the CIRP Process or at the Liquidation stage. We are of the considered view that at this stage subsequent to the sale of the 'Corporate Debtor Company' as a 'going concern', these claims cannot be foisted upon the Appellant. The scope and objective of the Code is to extinguish all claims specifically the ones which were not even made during the CIRP or in the Liquidation stage, to aid the purchaser of the Company as a 'going concern' to start on a 'clean slate'. The Hon'ble Supreme Court in 'Ghanshyam Mishra & Sons Pvt. Ltd.' Vs. 'Edelweiss Asset Reconstruction Company Ltd. & Ors.', Civil Appeal No. 8129 of 2019 and in 'CoC of Essar Steel India Ltd.' Vs. 'Satish Gupta & Ors.' (2020) 8 SCC 531 has laid down the proposition that the purchaser of the Company even in the Liquidation stage cannot be burdened with past liabilities when it is not mentioned in the 'Sale Notice'.*

*22. It is no longer Res Integra that while approving a 'Corporate Debtor' sale as a 'going concern' in Liquidation Proceedings without its dissolution in terms of Regulation 32(e) of the Liquidation Process Regulations, 2016, it is essential to see that the 'Corporate*

*Debtor' is not burdened by any past or remaining unpaid outstanding liabilities prior to the sale of the Company as a 'going concern' and after payment of the sale proceeds distributed in accordance with Section 53 of the Code."*

10. Further, the Hon'ble NCLAT in the matter of ***Jasamrit Designers Private Limited, vs Mr. Gian Chand Narang Company Appeal (AT) (Insolvency) No. 258 of 2023*** has held as follows:

*"12. We while granting such liberty to the Appellant observe that law is well settled, a successful bidder who is declared as successful bidder of sale as going concern can seek access of the Adjudicating Authority and may pray for necessary directions in accord with and in consonance with the process document in the liquidation proceedings. In result, we partly allow this Appeal and hold that applicant's prayers i.e. relief/concessions/directions needs consideration by the Adjudicating Authority for which we grant liberty to the Applicant to make a fresh Application containing prayers which may be commensurate and in accord with terms and conditions of the process document of e-auction process document. The Appellant may submit a fresh application praying for reliefs, concessions and directions which may be considered and decided by the Adjudicating Authority in accordance with law. The Appeal is disposed of, accordingly"*

11. The reliefs, concessions and our orders thereon are summarized herein below:

<b>S. No</b>	<b>Particulars</b>	<b>Concessions / Reliefs / Directions sought</b>	<b>Orders</b>
1.	Reorganization of Workforce	The Acquirer would be free to re-organize staff, employees and workers without any kind of burden/obligation resulting from the pre-acquisition operations and to design its own model of employment which includes contractual, fixed term, in the form of	Granted

		consultants, on probation, on a regular basis from anywhere without any reservation for a particular state or region.	
2.	Treatment of Related Party Claims	All claims against the Company by any related party and all liabilities of the Company towards any related party/unrelated party, as on and for the period prior to <b>Effective Date</b> i.e. <i>date of approval of this Acquisition Plan/Term Sheet by Hon'ble NCLT</i> , shall be deemed to be owed and due as of the liquidation commencement date. All such liabilities shall immediately, irrevocably and unconditionally stand fully and finally discharged and settled with there being no further claims whatsoever (against the Company and/or the new management of Company), on the Effective Date pursuant to the Hon'ble NCLT Approval Order. The order of the Hon'ble NCLT approving this Acquisition Plan/Term Sheet shall operate as automatic extinguishment of all other liabilities of the Company, without the requirement of any further act or deed by the Acquirer and/or Company.	Granted in terms of the clean slate principle.
3.	Bank guarantee, if any	The Acquirer shall not be liable for any payment arising out of contingent liabilities which may include liabilities on account of bank guarantees issued on behalf of Matrix Bizcom Services	Granted. However, in case the bank guarantee is renewed after the sale certificate

		<p>Pvt. Ltd. by Banks, Bank Commission for renewing existing Bank Guarantees as and when required, indemnity bond, promissory note or any kind of promise even if not mentioned here, given to Customer or any other entity, income tax, sales tax, service tax, excise duty, custom duty and any other duty, tax, cess, levies etc. due to Central, State or any local government bodies whether or not mentioned in the E-Auction Process Memorandum dated 17.06.2023 and Addendum to the said document dated 31.07.2023.</p> <p>The Acquirer agrees that in the event of receipt of any original document pertaining to such contingent liabilities (BG's/ bonds/ promissory notes) upon return/ cancellation/ annulment of the underlying obligations under such documents it shall arrange for the same to be handed over to the concerned banks/ or as the as may be, to the person who had executed such document.</p>	<p>date, the guarantee commission if any payable thereon and the liability under such renewed guarantee shall be obligation of the Successful Buyer.</p>
4.	<p>Ability to Utilise Service Tax credit (if any) etc. in the books of the Company</p>	<p>In case of non-maintenance of requisite records or non-filing of the returns by the Company, which has resulted in lapsing/ineligibility of the said benefits, under the new GST regime, benefits to be available on retrospective basis / reinstated, without</p>	<p>Granted subject to payment of requisite fees, filing of all returns and maintenance of record.</p>

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		fees / penalties.	
5.	Issuance / Renewal of all kinds of Licenses / Permissions / Approvals required for operation of the Business / Factory Operations	Central / State Government Departments / Local Bodies to renew / issue fresh licenses/ permissions / approvals on application of the same within 30 days of the said Application. Temporary License shall be granted / provided to operate the Business Operations within 7 days of application for the Interim Period if required. Unfulfilled export obligations, if any, or any liability on account of the same will not be fulfilled by the reconstituted Company and the same shall stand extinguished.	The Authorities shall consider the request for renewal/issuance of fresh licenses/ permissions / approvals in accordance with the relevant law and procedure laid down thereunder shall be followed. However, the renewal or issuance licenses/ permissions / approvals shall not be denied on the ground of non- payment of dues settled under the Code.
6.	Grace period to comply with various future statutory / regulatory requirements	(6) months grace period (from the date of NCLT approval) to be provided to the Company to comply with the provisions of the various Acts / Regulations, to enable Company to ascertain the status of various compliances and take necessary steps to regularize the same. During the said grace period, no additional charges/ fees	The successful bidder shall apply to the relevant authorities and bear the charges/fee s prescribed

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		etc. to be charged including on account of interest, penal interest, penalty, interest on penalty, any kind of late fee or damages.	thereunder. However, the authorities shall not levy any additional fees for a period of 6 months for delayed compliance.
7.	Cancellation/ Termination of all existing Negotiable Instruments (if any) issued by or on behalf of the Company	As on the Liquidation commencement date (i.e. 23.02.2021), all outstanding negotiable instruments, issued by Company or any other person on behalf of Company shall be deemed to have been cancelled/ shall stand terminated and no liability shall arise on the same.	Granted
8.	Power of Attorneys	The Acquirer shall be entitled to review all the power of attorneys provided to any person by the Company and at its sole discretion, be entitled to revoke all or any powers and/ or replace the attorney (s) appointed thereunder.	Granted
9.	Waiver/Exemption/ Reliefs under the Income Tax Act, 1961	Waiver / Exemption from requirement of No Objection Certificate under Sec 281 of the Income Tax Act, 1961 by the selling shareholders, provision of taking over predecessor's tax liability under Sec 170 of the Income Tax Act, 1961 and specific order for treating	The provisions of section 281 of the Income Tax Act shall be deemed to have been complied and necessary no

		<p>such transactions as void under Section 281 of the Income Tax Act, 1961 for any claims in respect of tax or any other sum payable by selling shareholders.</p> <p>Income Tax Department to grant relief under Section 28(iv), Section 41(1), Section 56, Section 72(3), Section 79, Section 115 JB, and Section 170 against any Income Tax liability arising due to Capital Reduction in the Corporate Debtor, write off/ write down/ write back of various liabilities, including liabilities pertaining to all the Financial Creditors, Workmen and Employees, Operational Creditors, Other Creditors, write back of impairment of assets, investments, inventories, trade &amp; other receivables, loans &amp; advances, and other current &amp; non-current assets etc. without any impact on carried forward loss and further waive all liabilities whether crystallized or not in respect of Taxes (including interest and penalty thereon) pertaining to the period prior to the date on which the Acquirer takes control of the Corporate Debtor ('Closing Date').</p>	<p>objection shall be deemed to be in place discharging the Corporate Debtor as well as assets thereof from any tax liability in relation to the period upto the date of sale certificate.</p> <p>The provision under Section 170 of the Income Tax Act shall not be applicable.</p> <p>The applicability of Section 28(iv), Section 41(1), Section 56, Section 72(3), Section 79, and Section 115 JB, shall be subject to compliance with the necessary conditions provided in the relevant section.</p>
10.	Waiver of Valuation of	Approval of this Acquisition Plan/Term Sheet by Hon'ble NCLT	The valuation of pricing of shares

	<p>Pricing of Shares by Registered Valuer</p>	<p>will be treated as waiver of the requirements of the Valuation of Pricing of Shares by Registered Valuer to be computed for Issuance of Equity Shares through Preferential Allotment / Warrants / Preference Shares / Convertible Debentures to Acquirer for a period of 24 Months. The request for such waiver is due to the fact that current valuation of the Company on the basis of book value or net assets value basis / realizable valuation of assets adjusted to current liabilities or discounted cash flow of the business will be "negative", whereas the Acquirer is paying revised face value considering the future business potential of the Company.</p>	<p>by registered valuer shall be done in accordance with provisions of Companies Act, 2013 and rules made thereunder</p>
<p>11.</p>	<p>Liabilities that may accrue under various corporate laws and Acts, Rules and Regulations</p>	<p>Approval of this Acquisition Plan/ Term Sheet will be treated as Waiver Approval by Hon'ble NCLT for any past liabilities, penalties and any form of payment by way of late fees, damages/proceedings/penalties/recovery etc., which occurred or become due because of any non-compliances related to the below stated Acts from Commencement of Insolvency Resolution Process till 6 months from the date of the Hon'ble NCLT Approval of Proposed Acquisition Plan/Term Sheet as it will provide the Acquirer the time period to review the</p>	<p>The successful bidder shall not be burdened with past liabilities, penalties and any form of payment by way of late fees, damages/proceedings/penalties/recovery etc., which occurred or become due because of any non-compliances arising prior to</p>

		<p>current compliance status of the Company under these Acts, Rules and regulations in terms of Compliances and action to be taken in this regard. The stated list is inclusive but not exhaustive of —</p> <p>The Companies Act, 2013 (the Act) and the Rules made there under;</p> <p>Foreign Exchange Management Act, 1999 and the Rules and Regulations made there under to the extent of Overseas Direct Investment;</p> <p>DRT, ED/PMLA etc.</p>	<p>date of sale certificate.</p>
12	<p>Liabilities accrued / may accrue under various Acts &amp; laws</p>	<p>Approval of this Acquisition Plan/ Term Sheet will be treated as Waiver / Approval from past liabilities, payments of fees and all dues including any penalties as well as any form of payment by way of interest, late fees, damages etc., related to all Government Authorities with regard to non-compliances of various statutes to be adhered related to consent, fees, certification etc. by the Company prior to the Effective Date which is inclusive but not exhaustive of Factories Act, 1948:</p> <ul style="list-style-type: none"> <li>• Industrial Disputes Act, 1947</li> <li>• Payment of Wages Act, 1936</li> <li>• The Minimum Wages Act, 1948</li> <li>• The Employees State Insurance Act, 1948</li> </ul>	<p>The Successful buyer shall not be fastened with the past liabilities, payments of fees and all dues including any penalties related to Government Authorities with regard to non-compliances of various statutes by the Company prior to date of sale certificate.</p> <p>However, the applicability of various statutes in</p>

		<ul style="list-style-type: none"> <li>• The Employees Provident Fund and Miscellaneous Provisions Act, 1952</li> <li>• The Bonus Act, 1965</li> <li>• The Payment of Gratuity Act, 1972</li> <li>• Legal Metrology Act, 2009</li> <li>• Negotiable Instruments Act, 1881</li> <li>• Environment (Protection) Act, 1986</li> <li>• Water (Prevention and Control of Pollution) Act, 1981</li> <li>• Air (Prevention and Control of Pollution) Act, 1974</li> <li>• Hazardous Waste (Management and handling) Rules, 1989</li> <li>• Goods and Service Tax</li> <li>• State Fire Safety Act</li> <li>• The MSME Act</li> <li>• Electricity Act, 2003</li> <li>• Trademarks Act, 1999</li> </ul> <p>The waiver also includes any dues relating to interest, penal interest, penalty, interest on penalty, any kind of late fee as well as damages known by any other name.</p> <p>Approval of this Acquisition Plan/Term Sheet will be treated as waiver by Hon'ble NCLT for any liability (includes Tax, MAT, interest, fine, penalty etc.) against the Company, Acquirer on account of various actions proposed in the Approved Acquisition Plan/Term Sheet including but not limited to liabilities, if any, under</p>	<p>relation to period on or after date of sale certificate shall be subject to compliance/adherence to the relevant provision and procedure laid down thereunder.</p>
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		<p>Section 56, Section 43, Section 28, Section 115JB and Section 79 of the Income Tax Act, 1961.</p> <p>Post the payment as per the terms of the Acquisition Plan/Term Sheet, the excess of the consideration paid shall be written off completely by the financial creditors and any liability in respect of MAT or any other tax liabilities arising pursuant to such write off shall be waived and no demand pertaining to the said write off shall be raised to the Company or the Acquirer by the Income Tax Authorities. Further, the Company shall also be exempted from any tax liability (including on account of MAT) as may arise on account of various steps as proposed in this Acquisition Plan/Term Sheet, including but not limited to tax liabilities, if any (under Section 41 (1), Section 56, Section 28 and Section 115JB, arising on account of write back assignment/ resolution of book value of debt of financial/operational creditors in excess of the settlement consideration to those creditors), levies, fees transfer charges, transfer premium, cess and surcharge that arise from or relate to implementation of the Acquisition Plan/Term Sheet; without any impact on the ability of the Company to carry</p>	
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		forward the accumulated losses.	
13	Claims by Government Authorities	<p>Approval of this Acquisition Plan/ Term Sheet will be treated as Approval by Hon'ble NCLT that claims of government authorities including GST department (central &amp; state both), in relation to all taxes etc. for period pertaining prior to the liquidation commencement date and till the date of NCLT orders, shall stand extinguished and ineffective.</p> <p>All past assessments either by Excise department, PF &amp; ESI, State VAT departments, Customs department, GST department (central &amp; state both), RBI or any central or state of local authority would stand firm and final as on date of approval of this Acquisition Plan/Term Sheet and it would not be open to such authorities to open such assessments against the reconstituted Company.</p> <p>) It is prayed that all dues of any nature which have fallen due on the date of approval of this Acquisition Plan/ Term Sheet including but not limited to dues towards Excise department, PF &amp; ESI, State VAT departments, Customs department, GST department (central &amp; state both), RBI or any central or state of local authority would be dealt as mentioned in this Acquisition Plan/ Term Sheet and it would not be open to</p>	<p>As far as waiver qua claim by government authorities is concerned the same is granted in terms of clean slate principle. Further, on the issue of renewal of lease the said request may be considered by the relevant government authorities subject to payment of requisite fees/transfer charges on the renewal de hors the past non compliances.</p>

		<p>such claimant to demand such pending dues from the reconstituted Company. Further, all dues of any nature which have not fallen due on the date of approval of this Acquisition Plan/Term Sheet including dues towards Excise department, PF &amp; ESI, State VAT departments, Customs department, GST department (central &amp; state both), RBI or any central or state of local authority, pertaining to period prior to Closing Date (as mentioned below), would be completely null &amp; void against reconstituted Company.</p> <p>All claim that may be made or arising against the Company for any breach, contravention or non-compliance of any applicable law including but not limited to (Employee Provident Fund and Miscellaneous Provisions Act, 1952, Payment of Bonus Act, 1972, Minimum Wage Act, Employees State Insurance Act, Environmental Laws, Labour Cess, Sales Tax, Service tax, GST, Income tax, wealth tax unpaid and due water and electricity bill, dues of local authorities of the past and statutory liabilities of any other kind), any violation of the applicable building by laws, standards etc. whether or not such claim was notified to or claimed against the Company on or before the</p>	
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		<p><b>Closing Date</b> (i.e. <i>Upon payment of the entire Sale Consideration pursuant to approval of this Acquisition Plan/ Term Sheet by the Hon'ble NCLT, the Liquidator and the Acquirer shall mutually agree on a date on which the Company shall stand transferred to the Acquirer</i>) and whether or not such government entity files such claims within such date, any claims filed at any time thereafter , in respect of such applicable laws, matters and proceedings, shall stand extinguished and annulled.</p> <p>Any departments of State/Central government shall continue/renew/to restore the lease agreement entered with the Company and shall waive the charges/fee of any nature on renewal/restoration of lease agreement. The concerned relevant government authority including state and central government shall waive the transfer charges and any fee of whatsoever nature as applicable on the transaction of the takeover of assets of the Company in terms of this Acquisition Plan/Term Sheet.</p> <p>Approval of the Acquisition Plan/Term Sheet will be treated as Specific Order and Approval by Hon'ble NCLT that any contract subsisting with respect to workmen</p>	
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		/contractual labor before the approval of this Term Sheet shall be duly extinguished and be ineffective.	
14	Liability to earlier promoters / recourse against the Personal or Corporate Guarantees / Right of Subrogation	<p>It is to be noted that post approval of the Acquisition Plan/ Term Sheet by the Hon'ble NCLT, the Acquirer/New Management by virtue of the Approved Term Sheet will have no obligation or any liability towards the erstwhile promoters under any circumstances whatsoever.</p> <p>It is to be noted that the recourse against the Personal or Corporate Guarantees shall be free from any subrogation rights of the Guarantors. This arrangement in relation to the Personal or Corporate Guarantees shall in no way or manner permit the Guarantors to claim any right of subrogation, indemnity, security, recompense or any claim of whatsoever nature (whether under contract, equity or Applicable Law) against the Company or the Acquirer, and all such rights and obligations stand irrevocably and unconditionally extinguished in perpetuity.</p>	Granted in terms of the clean slate principle
15	Extinguishment/ Revocation of Workmen Contract	In case at any stage, the extinguishment or cancellation, as per this Acquisition Plan/Term Sheet, of the right of subrogation available to any person	Granted in terms of the clean slate principle

		<p>other than the Company which has guaranteed / secured the existing debts availed by the Company, is held to be invalid or not sustainable in law by a court or tribunal of competent jurisdiction, and such persons take any action to enforce their right of subrogation against the Company and the Company makes such payment (on account of binding legal obligation as decided by a court of competent jurisdiction), the Acquirer and the Company shall be entitled to claim such amount as paid by the Company to such persons, from the respective financial creditors who have received the corresponding amounts as invoked under the Guarantees / Securities. Each such Financial Creditor shall immediately and in any event within 15 (fifteen) days of demand, without protest or demur, pay such amounts to the Company. Notwithstanding the above, the Acquirer / Company shall however, not make any payments to any person other than the Company which has guaranteed / secured the existing debts availed by the Company, unless it is legally compelled to do so.</p>	
16.	VAT/Income Tax/Customs Duty/	Upon payment to statutory authorities as proposed under this Acquisition Plan/Term Sheet and provisions of Sec	Granted in terms of clean slate principle

	waiver	53(1), no further amounts will become due and payable by the Company after this Acquisition Plan/Term Sheet is approved by Hon'ble NCLT. These authorities will be required to drop all proceedings against the Company upon approval of this Acquisition Plan/Term Sheet by the Hon'ble NCLT.	
17.	Contingent and operational other liabilities	<p>Other than the claims and dues reported in the E-Auction Process Memorandum and the List of Stakeholders, whether confirmed or disputed, all others are proposed to be waived.</p> <p>It is proposed that other than the stakeholders reported in the E-Auction Process Memorandum and the List of Stakeholders, operational creditors of the Company (within India or elsewhere) including the stakeholders who have not submitted their claims in the CIRP process to the Liquidator or whose claim has not been admitted by the Liquidator, shall be deemed to have been settled or waived off as per the above terms of this Acquisition Plan/Term Sheet. Additionally, any operational debt incurred by the Company on or after the liquidation commencement date shall be paid in the normal course of business.</p> <p>Additionally, all proceedings against</p>	Granted in terms of clean slate principle

		<p>the Company by any financial debt, operational creditor in any court of law / forum / panel of arbitrators or any other adjudicating authority in India or elsewhere shall stand dismissed and no fresh / further proceedings can be commenced against the Company for any cause of action occurring on or before the date of approval of this Acquisition Plan/Term Sheet.</p> <p>Any award / order/ judgment / decree in any court of law / forum / panel of arbitrators or any other adjudicating authority in India as well as outside India against the Company/ Company shall stand discharged. No execution proceedings for any such award / order / judgment / decree shall remain pending or can be given effect to or allowed against the Company in India or elsewhere after the Closing Date (as described supra).</p> <p>Any claim for contingent liability of the Company over and above captured in the E-Auction Process Memorandum shall stand fully discharged/ settled / waived as per the provision of the Code.</p>	
18.	Disqualification under IBC	Neither the Acquirer, nor any of its Affiliates or connected persons, will be disqualified from or considered ineligible under the Code for proposing and /or implementing a term sheet in	Granted

		relation to the insolvency resolution of any person (other than the Company), merely on account of the implementation of this Acquisition Plan/Term Sheet by the Acquirer.	
19.	Preferential Transactions	In the event of any preferential transaction, the Acquirer shall initiate/continue the proceedings at its own cost the cases with appropriate authority to restore back those preferential transaction into the Company account. Further, the Acquirer shall not be impacted and will be kept indemnified financially or otherwise against any of the negative impact / observation / findings of Forensic Audit. The Acquirer and the Company shall not be impacted and will be kept safeguarded against any of the negative impact / observation / findings of Forensic Audit. Further, neither the Company nor any member of the new promoter group shall be made party to any proceedings (legal or otherwise) arising out of such forensic audit.	Such right shall be allowed only if prosecution of these applications by the successful buyer was within the scope of assets sold under the auction. Further such right if any shall be subject to provisions of the Code. The acquirer and the company shall have immunity insofar as observation / findings of Forensic Audit have negative impact.
20.	Carry forward of losses	To obtain fiscal viability, the Company shall be allowed to carry forward and set off the accumulated business losses, unabsorbed appreciation, accumulated capital losses etc., as per Income Tax Act, 1961, against the	The specific reliefs sought under the Income Tax Act shall be put forth before the relevant tax authorities that

		<p>income of the subsequent years under the income tax laws after take over (100% acquisition) of the Company by the Acquirer and also the business/capital losses lapsed during the last eight assessment years for further period of eight assessment years subsequently total assessment year in which this Acquisition Plan/Term Sheet is approved by the Hon'ble NCLT.</p>	<p>may consider the same subject to adherence to the conditions/procedure under the Income Tax Act.</p>
21.	Assets of Company	<p>All assets (including movable &amp; immovable properties whether freehold, leasehold or license basis and intangible assets including technical knowhow, licenses, patents, copyrights, logo, knowledge, brand, franchise agreement etc.) and investments in subsidiaries/ other entities held by the Company shall be re-vested with the Company from the Closing Date.</p> <p>The Acquirer assumes that all assets of the Company are handed over in the condition as represented to Acquirer and as listed in the E-Auction Process Memorandum subject to standard wear and tear.</p> <p>The encumbrances of any nature whatsoever (like attachments / possession / attachments in land revenue records etc.) on the assets of the Company shall cease to have any</p>	<p>Granted.</p> <p>However, the assets shall be vested in the manner as provided in E-Auction Process Memorandum.</p>

		<p>effect and will be vacated as against reconstituted Company.</p> <p>A direction be issued to the Liquidator to cooperate with and provide all necessary support and assistance to the Acquirer, including but not limited to perfecting /amending/ modifying/ creating the land records in relation to all parcels of land, the immovable properties and assets, belonging to the Company in favor of the reconstituted Company at the very earliest but not later than the date of NCLT approval of this Acquisition Plan/Term Sheet.</p>	
22.	Compliances	<p>The jurisdictional Registrar of Companies to take on record and implement this Acquisition Plan/Term Sheet, upon approval by Hon'ble NCLT, without any further compliances and re-instate all the approvals and waive all the financial or other penalties/ interest / prosecution of all type and nature including in respect of restructuring of capital as per this Acquisition Plan/Term Sheet including reduction/cancellation of capital, enhancement of authorized share capital and allotment of fresh shares to the Acquirer. Registrar of Companies (RoC) be directed Registrar of Companies (ROC) be directed to waive the past noncompliance and exempt the reconstituted Compliance</p>	<p>The Acquirer shall follow and comply with the provisions of the Companies Act in relation to filing of the requisite forms and payment of fees and penalties in respect of restructuring of capital as per this Acquisition Plan/Term Sheet including reduction/cancellation of capital, enhancement of authorized share</p>

		and exempt the reconstituted Company from filings & compliances for period prior to approval of this Acquisition Plan/Term Sheet. ROC be further directed that on and from the Closing Date, the status of the Company in the records of the Registrar of Companies should be reflected as 'Active' from the status of 'Liquidation'. The financial creditors to satisfy the charges filed with the Ministry of Corporate Affairs against the Company or any other directory / repository like CERSAI/reporting to CIBIL etc.	capital and allotment of fresh shares to the Acquirer. The past non-compliance and satisfaction of charge shall be regularized/carried out subject to filing of the prescribed forms and payment of normal filing fees. The status of the Corporate Debtor shall be changed within one week.
23.	Suspended Board of Directors	Immediately from the date of approval of this Acquisition Plan/Term Sheet by the Hon'ble NCLT, the existing directors shall cease to be the Directors of the Company and the persons nominated by the Acquirer shall be appointed to constitute the new Board, without any further approval from any agency/authority.	Granted
24	Legal Proceedings including project related claims filed by the Company	The Acquirer and the Company shall be provided immunity in respect of the Police/CBI/ED/Money Laundering Cases pending or arising out of the actions of the existing management of the Company and the Acquirer /Company shall not be impacted by the	The Acquirer and Corporate Debtor shall be immune from any proceedings/action of any authority in respect of the

		<p>adverse result of the said cases. Further, any adverse/Material impact on the Company/the Acquirer due to the said cases, the Company/Acquirer shall be indemnified against such adverse impact by the erstwhile directors/management/promoters of the Company in their individual capacity.</p> <p>All enquiries, investigations and proceedings whether civil or criminal, suits, claims, disputes, proceedings in connection with/ against the Company, present or future in relation to any prior period to the Effective date, or arising on account of implementation of this Term Sheet shall stand withdrawn and dismissed. Upon approval of this Acquisition Plan/Term Sheet, all the enquiries, investigations, notices, suits, claims, litigations, arbitration or other judicial regulatory or administrative proceedings will be deemed to be barred and will not be initiated or admitted against the Company and/or its new management in relation to any act or omission pertaining to the period prior to the Effective Date.</p> <p>All the litigations pending before any court, tribunal or any other forum by the financial creditor/operational creditors/workmen past or</p>	<p>Police/CBI/ED/ Money Laundering Cases pertaining to the period upto the date of sale certificate</p>
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		<p>present/employees past or present/any other person shall stand withdrawn /cease to exist/ come to an end against reconstituted Company on the approval of this Acquisition Plan/Term Sheet without any further payment for any of their claim other than those specifically stated to be paid under this Acquisition Plan/Term Sheet.</p> <p>For removal of any ambiguity or any doubt, it is clarified that all legal and arbitration proceedings initiated by the Company against employers towards claims pertaining to various projects shall continue and any award passed in such proceedings shall accrue to the benefit of the Company including but not limited to the cases pending under arbitration with the Company as a party whether before or after the approval of the Acquisition Plan/ Term Sheet by the Hon'ble NCLT).</p>	
25	Consent of Existing directors, Promoters and shareholders	<p>The bare reading of Section 53 of the Insolvency &amp; Bankruptcy Code, 2016 only mentions about settling of the liabilities i.e., distribution of the sale proceeds which are received from the assets of the Company. It is nowhere provides that there shall not be any act prone to litigation by erstwhile directors/ guarantors of the Company.</p> <p>The consent is deemed to be provided</p>	<p>The consent of Existing directors, Promoters and shareholders shall be deemed to the said sale in favour of the acquirer</p>

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		by the Ex-Directors/ Promoters/ Guarantors/existing shareholders of the Company for the changes in the capital structure and other corporate actions proposed in this Acquisition Plan/ Term Sheet.	
26	No dues Certificate	All the Secured Lenders shall issue No Dues Certificate confirming that there shall be no liability against the Company in any manner as well as the consent issued by the Ex-Promoters/ Directors/ Lenders of the Company as mentioned above.	Granted
27	Legal Cases	All the litigations which have been initiated by the Secured Creditors either pending before DRTs and also before any local court/ city court, have to be withdrawn, confirming that the complete cases have been withdrawn and no further liability or claim shall be made and/or entitled against the Company. Any award/order/judgment/decree in any court of law / forum / panel of arbitrators or any other adjudicating authority in India as well as outside India against the Company/ Company shall stand discharged. No execution proceedings for any such award / order/ judgment/ decree shall remain pending or can be given effect to or allowed against the company in India or elsewhere. Any claim for contingent	Granted in terms of clean slate principle

		liability of the Company over and above captured in the E-Auction Process Memorandum and Addendum to the same, shall stand fully discharged/ settled/ waived as per the provision of the Code.	
28	Balance sheet	The balance sheet of the Company has to be audited on the Closing Date when the entire process is completed for taking over of the Company. The audited balance sheet has to be signed to record/ restate the statement of affairs of the Company; assets and liabilities details as on the Closing Date and the new promoters shall be managing the affairs of the company from the immediate date after the Closing Date and any liabilities arising after the Closing Date for the future business/ statutory liabilities and all other operational creditors/ liabilities shall be borne by the Company and all previous liabilities of any kind of the Company on the Closing Date shall be the responsibility which shall be settled from the proceeds deposited for taking over of the Company. Upon payment to statutory authorities as proposed under this Acquisition Plan/ Term Sheet and provisions of Sec 53(1), no further amounts will become due and payable by the Company after this Acquisition Plan/Term Sheet is approved by the	The financial statement shall be drawn up and audited in accordance with the provisions of Companies Act, 2013.

		Hon'ble NCLT. The authorities will be required to drop all proceedings against the Company upon approval of this Acquisition Plan/Term Sheet by the Hon'ble NCLT.	
29	Old Liabilities	All the liabilities as on the Closing Date shall cease to exist and all claims/ demand over the Company or its assets in future against the liabilities for the period prior to Closing Date shall be deemed to be waived off.	Granted

12. The Applicant submits that the balance sale consideration of Rs. 22,87,500/- along with interest shall be paid within a period of 90 days towards full and final settlement of all the liabilities of the Corporate Debtor as on Effective Date (i.e. date of approval of the acquisition plan by this Hon'ble Adjudicating Authority). The balance sale consideration as per Regulation 12 of Schedule I has to be paid within 90 days from the date of such demand, further it is also provided that payment made after 30 days shall attract interest at the rate of 12% p.a. Further, the sale shall be cancelled if payment is not received within 90 days.
13. The E-Auction Process Memorandum dated 17.06.2023 clearly stipulates the outer limit of 90 days for payment of balance consideration is 30.10.2023. It is relevant to note the clause 13 of E-Auction process Memorandum which reads as follow:

*“13. Balance Sale Consideration*

- a. The Successful Bidder shall be required to pay the balance sale consideration within 30 (thirty) days of the date of issuance of the Lol in a single tranche payment after adjusting the EMD amount already paid.*
- b. The successful bidder can make the payment after 30 days (but not later than*

*90 days from the date of issuance of Lol) with interest at the rate of 12%, provided that the sale shall be cancelled if the payment is not received within ninety days.*

*c. Where the Successful Bidder has provided Earnest Money by remittance of cash to the bank account of the Company, the balance sale consideration shall be an amount equal to the bid sum (plus any applicable GST/taxes, registration fees, etc, if any, on 100% of the bid sum) as reduced by the Earnest Money already paid.*

*d. All the payments of the bid amount made by the Successful Bidders shall be made through DD/RTGS/NEFT modes as per the details mentioned in Clause 5 above.”*

14. It is clear from a bare reading of the aforesaid clause and Regulation 12 Schedule I of the Liquidation Regulations, 2016 that the balance consideration has to be paid within 90 days along with interest of 12% p.a and not from the effective date as proposed by the Applicant herein. It is apposite to note that the Applicant has stipulated in Clause 3(i) of the acquisition plan that the balance sale consideration shall be paid within 90 days from the date of demand issued by the Liquidator. For the purpose of ascertaining the date of demand, the date of issuance of letter of intent on the Applicant dated 26.07.2023 can be considered.
15. The Applicant was liable to make payment of the balance sale consideration in terms of E-Auction Process Memorandum and Addendum to the E-Auction Process Memorandum latest by 30.10.2023 along with interest of 12% p.a. However, the Applicant has not paid the balance sale consideration in terms of the timeline. Considering the fact that a substantial amount of time has elapsed since commencement of CIRP of the Corporate Debtor, we direct the Applicant to deposit the balance sale consideration within 15 days along with interest of 12% p.a. to be computed from 31.08.2023. In case the Applicant fails to pay the money

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the Liquidator shall be at liberty to forfeit the money already deposited by the Applicant herein.

16. In terms of the above direction, IA No. 5288 of 2023 is disposed of as **partly allowed**.

**Sd/-**

**PRABHAT KUMAR**  
**MEMBER (TECHNICAL)**

13.02.2024

Priyal

**Sd/-**

**JUSTICE V.G. BISHT**  
**MEMBER (JUDICIAL)**