



**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD  
(COURT NO. II)**

**IA/53/2022**

**IN**

**CP (IB) 116/7/NCLT/AHM/2017**

(Under Section 60(5)(c) of the Insolvency & Bankruptcy Code, 2016 read with Regulation 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and Rule 11 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

**In the matter of:**

**OFB Tech Private Limited**

**...Applicant/Successful Bidder**

**Versus**

**Alok Kailash Saxena  
Liquidator of  
Gujarat Foil Limited**

**...Respondent**

**In the matter of:**

**M/s. Allahabad Bank**

**...Financial Creditor**

**Versus**

**M/s. Gujarat Foil Ltd.**

**...Corporate Debtor**

**Order Pronounced on: 01/02/2023**

**Coram:**

**DR. DEEPTI MUKESH,  
HON'BLE MEMBER (JUDICIAL)  
AJAI DAS MEHROTRA,  
HON'BLE MEMBER (TECHNICAL)**

**IA/53/2022**

**IN**

**CP (IB) 116/7/NCLT/AHM/2017**



## **MEMO OF PARTIES**

**OFB Tech Private Limited,**  
Through its authorized Signatory  
Mr. Shailendra Tiwari  
Having Registered Office at:  
Shop No. G-22C (UGF),  
D-1 (K-84) Green Park Main,  
New Delhi-110016.

**...Applicant**

### **Versus**

**Alok Kailash Saksena,**  
Liquidator of  
Gujarat Foils Limited  
Address- First Floor, Laxmi Building,  
Sir Phirozshah Mehta Rd,  
Mumbai, Maharashtra - 400001.

**...Respondent/Liquidator**

### **Present:**

For the Applicant:

Mr. Rasesh Sanjanwala, Sr. Adv. a.w.  
Mr. Nilesh Udernani, Adv. & Mr.  
Parth Shah Adv.

For the Liquidator:

Mr. Nipun Singhvi, Adv. a.w. Mr.  
Mayur Jugtawat, Adv

## **ORDER**

1. The instant Interlocutory Application is filed under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 (for brevity 'Code') read with Regulation 32A of the Insolvency and Bankruptcy Board of India



(Liquidation Process) Regulations, 2016 and Rule 11 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by the Successful bidder of corporate debtor M/s. OFB Tech Private Limited (for brevity 'Applicant') in the E-auction for the sale of the assets of the corporate debtor as a going concern during the liquidation process seeking several reliefs and concessions. The applicant, through additional affidavit dated 04.05.2022, curtailed the reliefs and concessions sought and withdrew many prayers. The concessions sought, and our decisions therein, as well as the prayers withdrawn are discussed in the operational part of the order, and for brevity the prayers are not reproduced here.

2. A Financial Creditor (Allahabad Bank) had filed an application under section 7 of the Code for initiation of the Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") of M/s. Gujarat Foils Limited which was admitted vide order dated 30.11.2017, and Mr. Alok Kailash Saksena was appointed as Interim Resolution Professional. Vide order dated 16.09.2019, corporate debtor was ordered to be liquidated and Mr. Alok Kailash Saksena was appointed as the Liquidator of corporate debtor.
3. The applicant submits that the liquidator issued the E-auction memorandum and public announcement publication on 22.11.2021 and Earnest Money Deposit ('EMD') of Rs. 4.76 Crores was deposited on 06.12.2021 by the applicant. Subsequently, the liquidator conducted the E-auction process on 10.12.2021, to sell the corporate debtor as a going concern in terms of



Regulation 32(e) of the Liquidation Regulations on an “as is where is basis”, “as is what is basis”, “whatever there is basis” and “no recourse basis” as per the E-auction Memorandum.

4. The applicant was declared as the successful bidder and the Letter of Intent(‘LoI’) was issued on 11.12.2021. The applicant accepted the LoI and informed the liquidator through an e-mail dated 13.12.2021. An agreement For Sale and Certificate of Sale was signed and issued by the liquidator to the applicant on 11.01.2022.
5. The respondent liquidator filed its reply to the present application and submitted that there is no objection/denial on the part of the liquidator with respect to the relief sought by the applicant and appropriate orders may be passed.
6. Learned counsel for the applicant relied upon the various Orders passed by the co-ordinate Benches, judgement passed by the Hon’ble NCLAT and also relied on judgement passed by the Hon’ble Supreme Court with respect to reliefs and concessions sought by the successful bidder during liquidation of the corporate debtor as going concern basis.
7. Vide order dated 22.09.2022, the Bench sought clarification with respect to the section 35(1)(f) of the Code, no certificate is furnished by the liquidator and whether the applicant of this application is eligible to file an application for the concessions?



8. In compliance of order dated 22.09.2022, the liquidator filed an additional affidavit on 26.09.2022 with respect to the section 35(1)(f) of the Code. With respect to the second query, the applicant filed and relied on the judgement passed on 12.10.2022 by the Hon'ble NCLAT, in the case of RMY Industries LLP Versus Apple Industries Pvt. Ltd. Through its Official Liquidator (Company Appeal (AT) (Insolvency) No. 1114 of 2022) wherein the Hon'ble NCLAT held that:

*“2. Appellant was the Successful Auction Purchaser in the liquidation proceeding where assets were sold as going concern on ‘as is where is’ basis. In the application I.A. No. 880 of 2022, the Appellant in Para 28 has claimed about 30 reliefs and concessions. The Adjudicating Authority has rejected application observing that no relief and concession can be granted.*

*3. Learned counsel for the Appellant has relied on judgment of this Tribunal in “Company Appeal (AT) (Ins.) No. 650 of 2020, M/s Shiv Shakti Inter Globe Exports Pvt. Ltd. vs. M/s KTC Foods Private Limited”. In the aforesaid case with regard to liquidation sale as going concern Liquidator has filed application for certain relief which was related to the past dues and prayer for extinguishment of past/ remaining unpaid outstanding liabilities, which was permitted.*

*4. We are of the view that the Adjudicating Authority is empowered to consider any application filed by the Liquidator or Successful Auction Purchaser, which may arise with regard to terms and conditions of auction sale or sale as going concern as per the Liquidation Regulation. We, thus, are of the view that end of justice be served in giving liberty to the Appellant to file an appropriate application before the Adjudicating Authority, which may arise from the terms and conditions of the auction sale or sale as going concern, which*



*may be considered by the Adjudicating Authority. The Appeal is disposed of with liberty aforesaid.”*

9. Heard submissions and perused documents placed on record. Applicant placed arguments that successful bidder would run the businesses of the corporate debtor and if the liabilities are also transferred during sale as going concern basis, and if the bidder is burdened with the liabilities of the corporate debtor prior to sale, then it will amount to unfair treatment vis-à-vis the successful resolution applicant, who when takes over corporate debtor under resolution plan is getting the control of corporate debtor as a clean slate, as decided by the Hon'ble Supreme Court in Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors. (Civil Appeal No. 8129 of 2019). The relevant part of this judgement is reproduced hereinbelow:

*“86. ....The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.*

*87. We have no hesitation to say, that the word “other stakeholders” would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of I&B Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief.....”*



It is seen that in respect of reliefs and concessions, various coordinate Benches have made it clear that only such reliefs would be granted which the Adjudicating Authority is empowered.

10. We also refer to the Judgement dated 25.02.2022 of Hon'ble NCLAT in M/s Shiv Shakti Inter Globe Exports Pvt. Ltd. Versus M/s. KTC Foods Pvt. Ltd. Through Liquidator Mr. Anup Kumar Singh and Anr. (Company Appeal (AT)(Insolvency) No. 650 of 2020). On reading the Order, we found following paras relevant to this case to decide the issue before us:

*“21. ... 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’....*

*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. The Impugned Order in I.A. 889 of 2020 is modified to the extent that the sale of the first Respondent as a ‘going concern’ is upheld and the direction sought for in prayer (c) & (e) in CA No. 1189 of 2019 seeking extinguishment of past/remaining unpaid outstanding liabilities including contingent liabilities, prior to the sale as a ‘going concern’, after payment of sale proceeds distributed in accordance with Section 53 of the Code, is allowed.”*

11. During the hearing, concise explanation was sought with regard to



various prayers of reliefs and concessions, which was filed as revised chart of concise explanation of all prayers. It is noted that the clauses 17 and 20 (more specifically sub-clause-1.7 of clause 20) of the E-auction process memorandum which mentions that the successful bidder may, after 100% payment of the bid amount and receipt of the certificate of sale, approach Adjudicating Authority for various reliefs and concessions and also for restructuring of the capital (cancellation of old equity capital and issue of new shares) of the corporate debtor. Further, as per the Schedule-I of the “Agreement For Terms Of Sale” which starts with the heading of “Reliefs Sought Before the NCLT” wherein clause ‘A’ mentions that the sale of the corporate debtor as going concern should be treated in the same manner as a Resolution Plan approved under section 31 of the Code (including but not limited to the operation of section 31 sub-section 1 and section 32A of the Code) and all attendant benefits, privileges and exemptions under various laws maybe sought before NCLT. It is understandable that terms and conditions of “E-auction process memorandum” and terms and conditions of the “Agreement for Terms Of Sale” are approved by the Stakeholder Consultation Committee(‘SCC’) and as per the nature and object of the E-auction mentioned in the “E-auction process memorandum” E-auction of the corporate debtor was conducted as per the regulation 32(e) of the liquidation process regulations. After considering the facts and





judgements deciding the issue herein, we allow the following reliefs and concessions, with attendant directions:

| SL. NO. | RELIEF / CONCESSION SOUGHT FOR                                                                                                                                                                             | ORDERS THEREON                                                                                                                       |
|---------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|
| 1.      | Sale of the corporate debtor as a going concern under regulation 32(e) of the liquidation process regulation, 2017. The date of payment of the sale amount be treated as effective date, i.e., 11.01.2022. | Granted. As per auction notice terms.                                                                                                |
| 2.      | 1. Cancellation of existing shareholding without requirement of any approvals.<br>2. Delisting from the appointment date and such other and further consequential relief.                                  | Granted, Subject to the Provisions of the Code read with applicable provisions of the Companies Act, 2013 and other applicable laws. |
| 3.      | The assets, of every nature whatsoever, owned by the corporate debtor shall continue to vest with the applicant/successful bidder.                                                                         | Granted, as per Provisions of the Code and other applicable laws.                                                                    |



|    |                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                        |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4. | <p>a. Extinguishment of all previous claims by private parties and/ or Government Departments, etc. prior to the transfer date.</p> <p>b. Disposal of all pending civil and criminal liquidations/ Inquiries/ Complaints assessments, etc. against the corporate debtor pending against the corporate debtor prior to the transfer date (Annexure H).</p> | Granted in terms of the Judgement of the Hon'ble Supreme Court in Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors. (Civil Appeal No. 8129 of 2019)               |
| 5. | Pass a direction that the corporate debtor/ Applicant shall have a right to review and terminate any contract that was entered into prior to the transfer date.                                                                                                                                                                                           | Contracts relevant to running of the corporate debtor as a going concern, entered by the corporate debtor prior to the transfer date, may be reviewed Subject to the Provisions of the Code and other applicable laws. |
| 6. | Change of status of corporate debtor in the record of MCA and RoC, reflecting sale of corporate debtor as a going concern or reflecting new owner.                                                                                                                                                                                                        | Granted, Subject to compliance of applicable provisions of the Companies Act, 2013 r.w. I&B Code, 2016.                                                                                                                |
| 7. | Re-stating the books of the corporate debtor and also permission seeking reconstitution of Board of Directors of the corporate debtor, as more particularly prayed for by way of additional affidavit dated 22.02.2022.                                                                                                                                   | As per applicable provisions of the Companies Act, 2013, The books may be re-stated to give effect to the sale as a going concern and the Board of Directors may be reconstituted.                                     |



|     |                                                                                                                                                                                                                                                                                                             |                                                                                                                      |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|
| 8.  | Permission seeking right to recover from the debtors of the corporate debtor.                                                                                                                                                                                                                               | Granted, Subject to the Provisions of the Code and other respective applicable laws.                                 |
| 9.  | <p>a. Permissions seeking tax benefits and exemptions under the Income Tax Act, 1961.</p> <p>b. Pass a direction that the tax benefits and exemptions will continue to be applicable to the corporate debtor from the transfer date including benefits under section 79(2) of the Income Tax Act, 1961.</p> | Appropriate authorities to consider as per the provisions of tax laws respectively.                                  |
| 10. | The liquidator to provide all the support and assistance to the Successful bidder / Applicant for smooth implementation of the sale of the corporate debtor as a going concern.                                                                                                                             | Granted. Liquidator to assist till conveyance/sale deed is executed and entire process of handing over is completed. |
| 11. | Declaration of the corporate debtor as a willful defaulter, to cease from the date of completion of execution of handing over of corporate debtor to successful bidder.                                                                                                                                     | Granted, granted subject to compliance of applicable laws, rules & regulations.                                      |
| 12. | Liberty to apply for requisite permissions and approvals before SEBI and other regulatory authorities after the corporate debtor is released from the liquidation.                                                                                                                                          | Granted, subject to SEBI regulations and regulations of the concerned respective regulators.                         |
| 13. | Applicant would not be liable for any disability of the corporate debtor in terms of section 29A of the Code for default of subsidiaries of corporate debtor on or before the transfer date.                                                                                                                | Granted, Subject to the provisions of the Code and other applicable laws.                                            |



12.As per para 5 of the additional affidavit dated 04.05.2022 filed by the applicant, the prayers at S. Nos. B, H, N, O, R, S, V, Q, Y, AA TO DD, GG, MM, NN and RR are not pressed and the same can be considered as withdrawn. The above request is granted, and these prayers are treated as withdrawn.

13.The application is allowed in terms of above order and disposed of. Registry is directed to communicate a copy of this order to the parties.

**-Sd-  
AJAI DAS MEHROTRA  
MEMBER (TECHNICAL)**

**-Sd-  
DR. DEEPTI MUKESH  
MEMBER (JUDICIAL)**

Abhishek Singh  
LRA