IN THE NATIONAL COMPANY LAW TRIBUNAL,

COURT II, MUMBAI BENCH

INTERLOCUTORY APPLICATION NO. 5069 OF 2023

IN

COMPANY PETITION (IB) NO. 1331/MB/2017

Application u/s 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the N.C.L.T. Rules, 2016.

In the matter of:

Bhola Ram Steels Private Limited

Having its Corporate Office at: 02nd Floor, M-79, M M-Block Market, Greater Kailash-II, New Delhi, PIN Code-110048.

…Applicant/Successful Bidder

v/s

Sunil Kumar Agarwal,

Liquidator of Vistar Metal Industries Pvt. Ltd.

Residing at: G-805, Aakruti Orchid Park, Andheri-Kurla Road, Sakinaka, Andheri (East), Mumbai-400072.

…. Respondent/Liquidator

In the matter of between:

Satyaprakash Aggarwal & Ors.

…Financial Creditor

v/s

Vistar Metal Industries Private Limited

…. Corporate Debtor

Order pronounced on 20.12.2024.

Coram:

Shri. Kuldip Kumar Kareer : Member Judicial.

Shri. Anil Raj Chellan : Member Technical.

Appearances (in physical mode):

For the Successful Bidder : Counsel Kunal Kanungo a/w Tanushree Sogani and Atishya Jain appeared for the Applicant.

For the Liquidator : Counsel Ayush J. Rajani a/w Mitali Bhatt.

ORDER

Per: Coram.

1. This (I.A. No. 974 of 2023) is an application filed under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 11 of the N.C.L.T. Rules, 2016 filed by the Applicant, who is a Successful Bidder in the auction sale conducted by the Liquidator in the course of liquidation process of Vistar Metal Industries Private Limited ("Corporate Debtor"). The Respondent is the Liquidator of the Corporate Debtor appointed by this Tribunal vide Order dated 10.07.2023, by virtue of which the liquidation proceedings against the Corporate Debtor commenced. The Applicant is seeking reliefs from this Tribunal for implementing the sale of the Corporate Debtor as a going concern to the Applicant under the liquidation process of the Corporate Debtor.

2. During the course of the liquidation process, the Respondent made a Public Announcement on 31.08.2023 inviting bids for e-auction of the assets of the

Corporate Debtor under the provisions of the Code. Pursuant to the aforementioned public announcement, the Respondent conducted an auction sale of the Corporate Debtor on a going concern basis along with all assets on 28.09.2023. As per the e-auction information document, the e-auction was held on "As is Where is, As is What is, As is Whatever there is and Without recourse basis".

3. With a view and objective to expand its business, the Applicant participated in the e-auction and submitted a bid of INR 26.56 crores. On 28.09.2023, the bid submitted by the Applicant was declared as the highest bid and the Applicant was declared as the Successful Bidder in the above-mentioned auction sale. On 29.09.2023, the Respondent issued the Letter of Intent ("LoI") to the Applicant asking the Applicant to accept the LoI unconditionally and also setting out that an amount of INR 23.86 crores was payable by the Applicant after adjustment of the Earnest Money Deposit ('EMD') as a sale consideration to buy the Corporate Debtor as a going concern in auction under liquidation within 90 days from the date of auction.

4. Pursuant to the issuance of LoI and by way of part sale consideration for the purchase of the Corporate Debtor, the Applicant made a payment of auction price instalment of INR 5.51 crores and as the Applicant had already paid an Earnest Money Deposit ('EMD') of INR 1.70 crores, the Applicant, as on the date of this application, has remitted an amount of INR 7.21 crores in aggregate as part sale consideration. The Applicant is committed to its bid and will comply with the terms and conditions of the e-auction information document and the LoI.

5. The Applicant states that the nature of the sale of a Corporate Debtor as a going concern under liquidation is akin to the resolution of a corporate debtor as a going concern through a resolution plan route in a corporate insolvency resolution process. Therefore, the benefits, privileges, and exemptions available in relation to the insolvency of Corporate Debtor under a resolution plan may also be made available to the Applicant also on sale of the Corporate Debtor as a going concern in the course of the liquidation process. Hence this application.

6. **Reply by the Respondent-Liquidator**:

i. Since no resolution plan was approved by the CoC, the CoC decided to initiate liquidation of the Corporate Debtor and accordingly, it directed the then RP to move an application before the Tribunal u/s 33 of the Code. The Liquidation Order was passed by the Tribunal on 10th July, 2023 and the Respondent came to be appointed as the Liquidator.

ii. As directed by the Stakeholders Consultation Committee ('SCC'), the Respondent Liquidator on 31 August, 2023 made a first publication inviting the bids for an e-auction to be held on 28th September, 2023 for the sale of Corporate Debtor in liquidation as a going concern basis along with all assets as per Regulation 32(e) of the IBBI (Liquidation Process) Regulations, 2016. Thereafter, 9 EMDs were received from different bidders to participate in the auction. An auction was conducted on 28 September 2023 with the reserve price of Rs. 17,06,00,000/-. The Applicant, M/s Bholaram Steels Pvt. Ltd., was declared as the successful bidder with the highest bid of Rs. 25,56,00,000/-. Accordingly, the Letter of Intent ('LoI') was issued to the Applicant on 30 September 2023. The Applicant made the entire payment of Rs. 25,56,00,000/- and interest of Rs. 2,07,584/- and after receiving the full sale consideration amount, the Respondent issued the sale certificate on 20th November 2023 and handed over the company.

iii. In the first auction itself, the Liquidator was successfully able to sell the Corporate Debtor as a going concern and there are no more assets remaining to be sold. The liquidator further submits that the entire sale consideration received from the Successful Bidder has also been distributed to the stakeholders.

iv. The present application is filed by the Applicant, the Successful Bidder for seeking certain general reliefs and concessions to carry out the operation of the Corporate Debtor smoothly and effectively. The Applicant has paid the full sale consideration and the Respondent has also handed over the company to the Applicant and, therefore, the reliefs and concessions sought in the present application are required to run the business of the Corporate Debtor effectively. The Liquidator has no objections to the prayer sought in the application and requests the Adjudicating Authority to pass an appropriate order as deemed fit.

FINDINGS

7. We have heard the Counsel for the parties and have gone through their pleadings and documents.

8. This is an application filed by the Applicant invoking the residuary jurisdiction of this Tribunal under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 11 of the N.C.L.T. Rules, 2016 by the Successful Bidder seeking certain reliefs and concessions as stated in the application in order to facilitate the smooth takeover of the

Corporate Debtor, to ensure value maximization of the Corporate Debtor so that the Corporate Debtor remains a 'going concern'.

9. Ld. Counsel for the Successful Bidder submits that mere purchase of the Corporate Debtor as a 'going concern' as per the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ['Liquidation Process Regulations'] will not suffice. In order to ensure the smooth running of the business of the Corporate Debtor, it is imperative that certain additional reliefs/concessions /relaxations and permissions are allowed, which would be essential and necessary to run the business of the Corporate Debtor as a 'going concern'. Unless these reliefs/concessions/permissions are provided, the purpose of the revival of the Corporate Debtor as a 'going concern' under Liquidation Process Regulations will not be achieved. In fact, these permissions/relaxation/ concessions/reliefs are crucial to kickstart the business of the Corporate Debtor and achieve value maximization of the Corporate Debtor. Ld. Counsel for the Applicant further submits that this Tribunal is empowered to grant necessary reliefs in relation to the Corporate Debtor, sold as a 'going concern' under the provisions of the Liquidation Process Regulations, under Section 60(5)(c) of the Code. Therefore, the instant case is a fit case to grant the reliefs, as prayed for by the Applicant.

10. Before delving into the submissions of the Counsel and prayers in the Application, it will be useful to notice the legal position of a 'going concern sale' under the Code and allied Regulations.

11. The Code read with the Liquidation Process Regulations framed thereunder envisages three modes of revival of corporate debtor:

(a) Resolution through CIRP under Chapter II of the Code;

(b) Sale of the Corporate Debtor as a going concern under Liquidation Regulations 32(e) and (f);

(c) A scheme of compromise or arrangement under Section 230 of the Companies Act, 2013, following an order for liquidation passed under Chapter III of the Code.

The reason for incorporating modes (b) and (c) referred herein above is obvious that liquidation is a matter of last resort and sale as a going concern is likely to fetch better value for all stakeholders. If the assets of the corporate debtor are sold separately or enforced by the secured creditors, many intangibles forming part of a business such as contracts, leases, licenses, concessions, operational assets, manpower, technology, etc. would be lost in the process as these assets either may not be transferable at all or may require third-party concurrence/approval for each such transfer.

12. The present case is of the liquidation so we focus our examination on the sale of the corporate debtor as a going concern in the liquidation process. Regulation 32 of the Liquidation Process Regulations provides for the realisation of assets and the same is extracted below:

"[Sale of Assets, etc.

The Liquidator may sell-

a) an asset on a standalone basis;

b) the assets in a slump sale;

c) a set of assets collectively;

d) the assets in parcels;

e) ***the corporate debtor as a going concern****; or* *f) the business(s) of the corporate debtor as a going concern:*

Provided that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security interest therein has been relinquished to the liquidation estate.]"

Thus, in Regulation 32 of the Liquidation Process Regulations, two modes have been contemplated for the sale of the corporate debtor as a going concern. The distinguishing factor between the sale of the corporate debtor as a going concern as per sub-clause (e) and the sale of the business of the corporate debtor as a going concern as per sub-clause (f) appears to be that in the former situation, the corporate entity will continue without any dissolution, while in the latter, the corporate entity may face dissolution.

13. While the Liquidation Process Regulations recognizes going concern sale as one of the methods of sale, however, there is no definition as such for 'going concern' either in the Code or in the Regulations laid thereunder. It is beneficial to refer to the report of the Insolvency Law Committee dated 26/03/2018 (Para 8.1 of the Report), wherein the committee examined the term "going concern" as below:

"The phrase 'as a going concern' implies that the Corporate Debtor would be functional as it would have been prior to the initiation of CIRP, other than the restrictions put by the Code."

In other words, the ownership of the corporate debtor is transferred to the acquirer for operationalization of the corporate debtor on certain terms and conditions, as contained in the process document.

14. Against the above background, the main contention of the Applicant is that the sale of the corporate debtor as a going concern has similar attributes and characteristics of a resolution plan sanctioned under Section 31 of the Code. Consequently, whatever benefits and rigors apply to the resolution plan under Section 31 of the Code must equally apply to sale as a going concern in the liquidation process. In this context, it becomes necessary to notice that approval of the resolution plan involves multi-stakeholder consultations and application of mind in planning the future viability of the corporate debtor and takes place within the institutional framework of the Code. Further, a resolution plan, once approved by the Adjudicating Authority, is binding on all stakeholders as per the explicit provisions of the Code, and as a result, the stakeholders are bound to take the exercise of restructuring carefully and pragmatically. On the contrary, sale as a going concern is a mere sale instead of restructuring. Most of the stringent provisions that apply to the resolution plan are conspicuously absent in the case of sale as a going concern. The viability and feasibility of keeping the corporate debtor as a going concern are never considered at the time of sale during liquidation and the decision is left to the liquidator requiring no approval from the Adjudicating Authority. Thus, although both modes aim to revive the corporate debtor, in our opinion, both are different, not comparable, and belong to distinctly different categories under the Code.

15. The Ld. Counsel for the Applicants has stated that there are few precedents where the concept of 'clean slate' was extended in the case of 'going concern sale' under liquidation. It is submitted that eliminating legacy liabilities would encourage potential buyers to acquire businesses in liquidation, which can lead to better recovery for creditors. Further, allowing the business to operate

without the baggage of past liabilities aids in preserving jobs and achieving the objective of revival of the corporate debtor. The Ld. Counsel appearing for the Applicant further states that in the instant case, the sale consideration deposited by the Applicant has already been distributed in accordance with Section 53 of the Code and the Corporate Debtor ought to be released from all past claims. The Counsel for the Applicant further submits that it is just, fair and in the interest of justice that the clean slate theory is applied in order to enable the Successful Bidder to run, operate, and manage the Corporate Debtor as a going concern.

16. We have carefully considered, weighed, and examined the aforesaid submissions.

17. It is noticed that 'the clean state theory of resolution plan' as recognized and propounded by the Hon'ble Supreme Court of India in ***Ghanashyam Mishra & Sons Pvt. Ltd v. Edelweiss Asset Reconstruction Company Ltd*** **[Citation: 2021 INSC 250]** has been extended in a few cases of sale of the corporate debtor as a going concern during the liquidation process even though statutory provisions supporting the clean slate theory are limited to resolution plans. Additionally, we should examine what reliefs and concessions, such as waivers and exemptions from statutory and other liabilities, the Adjudicating Authority can grant to facilitate the operation of the corporate debtor's business.

18. On perusal of records, it is evident that since no resolution plan was approved by the CoC, the CoC decided to initiate liquidation of the Corporate Debtor and accordingly, it directed the then RP to move an application before the Tribunal u/s 33 of the Code. The Liquidation Order was passed by this

Tribunal on 10th July, 2023 as a result of which the Respondent came to be appointed as the Liquidator. As directed by the Stakeholders Consultation Committee ('SCC'), the Respondent-Liquidator on 31 August, 2023 made a first publication inviting the bids for an e-auction to be held on 28th September, 2023 for the sale of Corporate Debtor in liquidation as a going concern basis along with all assets as per Regulation 32(e) of the Liquidation Process Regulations. Thereafter, 9 bids along with earnest money deposits were received from different bidders to participate in the auction. An auction was conducted on 28th September, 2023 with the reserve price of Rs. 17,06,00,000/-. In the first auction itself, the Liquidator was successfully able to sell the Corporate Debtor as a going concern and there are no more assets remaining to be sold. The Applicant, M/s. Bholaram Steels Pvt. Ltd., was declared as the successful bidder with the highest bid of Rs. 25,56,00,000/-. Accordingly, the Letter of Intent ('LoI') was issued to the Applicant on 30th September, 2023. The Applicant made the entire payment of Rs. 25,56,00,000/- and interest of Rs. 2,07,584/- and after receiving the full sale consideration amount, the Respondent issued the Sale Certificate on 20th November, 2023 and handed over the Company. We further take note of the fact pleaded by the Liquidator that the entire sale consideration received from the Successful Bidder has also been distributed to the stakeholders.

19. The present application is filed by the Applicant-Successful Bidder seeking certain general reliefs and concessions to facilitate the sale of the Corporate Debtor as a going concern. The Applicant has paid full sale consideration and the Respondent has also handed over the company to the Applicant and therefore, the Counsel for the Applicant submits that the reliefs and concessions sought by the Applicant in the present application are required to run the business of the Corporate Debtor effectively. The Liquidator has no objections

to the prayer sought in the application and requests the Adjudicating Authority to pass an appropriate order as deemed fit.

20. Bearing in mind the elaborate and general reliefs that are claimed in the Application, it would be apposite to now deal with the prayers. The Applicant has prayed at Prayer Clause (A.) that the date of issue of the sale certificate shall be deemed to be the date of acquisition of the Corporate Debtor by the Applicant/ Successful Bidder on a going concern basis. In an auction sale conducted during liquidation, the sale certificate serves as the critical document evidencing the transfer of title to the purchaser. There is no further requirement under the Code or Liquidation Process Regulations to obtain the confirmation of this Tribunal for such sale. After the issuance of Sale Certificate and handing over possession of assets to the Successful Bidder, the sale transaction is complete in all respects and there is no further requirement for obtaining the confirmation of the Tribunal or any other action as per the Code and Liquidation Process Regulation. In view of the above, we allow the aforesaid prayer to treat the date of issuance of the Sale Certificate as the date of acquisition of the Corporate Debtor by the Applicant on a going concern basis.

21. 1. The Applicant has prayed at Prayer Clause (B.) for waiver of all the procedural requirements in terms of Sections 66, 42 and 62(1)(c) of the Companies Act, 2013 read with the Company (Procedure for Reduction of Share Capital) Rules, 2016. The Applicant has further prayed at Prayer Clause (C.) that the requirement of adding “and reduced” in the name of the Corporate Debtor be dispensed with in the event of capital reduction. The Applicant has prayed at Prayer Clause (D.) that all the existing shares (including the share application money received, if any) of the Corporate Debtor be extinguished

without any consideration. The Applicant has further prayed that the Respondent shall make necessary entries of such extinguishment in the register of members of the Corporate Debtor. The Applicant has prayed at Prayer Clause (E.) as follows: *"No approval or consent shall be necessary from any person or persons under any agreement, the constitution documents of the Corporate Debtor, or any applicable law in relation to any of the above acts and for all actions and purposes including (a) cancellation of the existing share capital of the Corporate Debtor in terms of Section 66 and other provisions of the Companies Act, 2013 and other applicable laws and (b) for issuance of new equity shares in terms of the Companies Act, 2013 and other applicable laws."*

21.2. The primary goal of selling a corporate debtor as a going concern under the liquidation process is to preserve the corporate entity by transferring the ownership to the acquirer/successful bidder. This transfer should facilitate the operationalization of the corporate debtor based on the terms outlined in the process document. Thus, it is crucial to state that, in pursuit of the going concern sale of the corporate debtor, the successful bidder must be allowed to acquire the entire existing share capital. This will require a suitable rearrangement of the corporate debtor's capital, which may involve reducing or cancelling the existing share capital and issuing new shares to the successful bidder.

21.3. In the ordinary course of business, following the procedures mandated by the Companies Act, 2013 is necessary for reducing and cancelling existing share capital. This may include obtaining consent or approval from existing shareholders. However, if the successful bidder must adhere to these procedures, it could hinder the sale process. Existing shareholders may not cooperate or grant their consent for the reduction or extinguishment of existing share capital. Furthermore, they may raise obstacles under company law, contract, or the constitutional documents of the corporate debtor regarding the issuance of new or additional share capital to the Applicant which would impede the sale process.

21.4. Therefore, it is necessary to grant waivers and exemptions as requested by the Applicant in Prayer Clauses (B.), (C.), (D.) and (E.). Accordingly, we allow the aforementioned prayers and hold that all procedural requirements in terms of Sections 42, 66 and 62(1)(c) of the Companies Act, 2013 read with NCLT (Procedure for reduction of share capital of Company) Rules, 2016 is hereby waived. We further hold that no approval or consent shall be necessary from any person(s) under any agreement, constitution documents such as memorandum and articles of association of the Corporate Debtor or under the laws in force for (a) cancellation of the existing share capital of the Corporate Debtor in terms of Section 66 and other applicable provisions of the Companies Act, 2013 and (b) for issuance of new equity shares in relation to the auction sale of the Corporate Debtor to the Applicant as a going concern. However, the Applicant shall make necessary filings with the Registrar of Companies consequent upon such changes made by the Applicant.

22. The Applicant has prayed at Prayer Clause (F.) that the Respondent shall cause reconstitution of the Board of Directors of the Corporate Debtor by removing the erstwhile directors and by appointing the directors nominated by the Applicant. In our considered view, the Applicant, being the Successful Bidder, who takes over the Corporate Debtor as a going concern under an auction sale, is well within its rights to replace the existing board with the directors nominated by it. Even otherwise, as per the provisions of Section 34(2) of the Code, on appointment of a liquidator u/s 34, all powers of the board of directors and key managerial personnel of the Corporate Debtor shall cease to

have effect and shall be vested in the Liquidator. Hence, the erstwhile management has no right to carry on the business of the Corporate Debtor once the CIRP or the Liquidation Process commences.

23. In the present case, we have noted the transfer of the Corporate Debtor to the Applicant from the date of issuance of the Sale Certificate though the procedure of closure of the liquidation process is yet to take place. In the circumstances, the Liquidator is directed to take such steps as are necessary to reconstitute the board by removing the erstwhile directors and replacing them with the directors nominated by the Applicant. Accordingly, the Prayer in terms of Clause (F.) is hereby allowed.

24. As regards the Prayer at Clause (G.) for directing the Respondent to issue fresh equity shares in favour of the Applicant or its nominees, we have already allowed reconstitution of the Board, rearrangement of share capital, and dispensed compliance of various procedures for the cancellation/ extinguishment of the existing share capital as also for the issuance of fresh equity shares in favour of the Applicant as per the agreed terms. Hence, we do not find any need to issue directions to the Liquidator for the issue of fresh shares in favour of the Applicant as all these actions can be effectively undertaken by the Applicant itself.

25. 1. Before dealing with other reliefs and concessions, it shall be necessary for us to refer to the Letter of Intent dated 29.09.2023, which was issued by the Liquidator to the Applicant. Para 2 of the aforesaid letter clearly states *inter-alia* that the sale under e-auction is taking place on "as is where is", "as is what is", "whatever there is" and "no recourse basis", **without any representations and**

warranties on the part of the Liquidator for any encumbrances/statutory liabilities etc. in relation to the Asset Lot.

25.2. We shall now refer to some of the key clauses of 'The E-Auction Process Information Document' ('the Process Document'), which was issued by the Liquidator pursuant to the approval of SCC.

25.3. Condition No.02 of the Terms and Conditions of the E-Auction, as annexed to the Process Document, is reproduced hereunder:

"2. The Prospective Bidders should make their own independent inquiries regarding the encumbrances, title of assets put on auction and claims/rights/dues affecting the assets, and should conduct their own due diligence prior to submitting their bid. The E-Auction advertisement does not constitute and will not be deemed to constitute any commitment or any representation of the Liquidator. ***The property is being sold with all the existing and future encumbrances/claims/dues/demands whether known or unknown to the Liquidator.*** *Liquidator shall not be responsible in any of way for any third-party claims/rights/dues."*

25.4. Clause 10 of The Disclaimer to the Process Document, states as follows:

*'The Property and Assets of "the Company are proposed to be sold on"-****"As is where is basis",-"As is What is basis",-"Whatever there is basis and-No recourse"*** *basis and the proposed sale of assets of the Company does not entail transfer of any other title, except the title which the Company had on its assets as on date of transfer. The Liquidator does not take or assume any responsibility for any shortfall or defect or shortcoming in the moveable/immoveable assets of the Company."*

25.5. Clause H of the Process Document pertaining to Due Diligence states, *inter-alia,* that the property of the Company is proposed to be sold **as a going concern** on "As is where is basis", "As is What is basis", "Whatever there is basis and Without recourse basis" and the proposed sale of assets of the Company does not entail the transfer of any other title, except the title which the Company had on its assets as on date of transfer. Clause H (supra) further states that *all local taxes/maintenance fee/electricity/water charges etc., outstanding as on date or yet to fall due in respect of the relevant asset should be ascertained by the E-Auction Process Applicant and would be borne by the successful bidder*.

25.6. Clause I of the Process Document lists the assets to be auctioned and their reserve prices, the details of which have been given in the table hereinbelow:

Asset	**Reserve Price**	**EMD**
Sale of Corporate Debtor as a **Going Concern** along with all assets including Securities & Financial Assets. Assets of the Corporate Debtor: (i) Factory Premises (Land and Building, Plant and Machineries) at Gut No. 154 to 161 & Gut No. 163 to 165, Village Abitghar (Abanpada), Wada-Shahapur Road, Tal. Wada, Dist. Palghar (land area 90,500 sq. mtrs.) (ii) Plant & Machinery at the above location as detailed in Schedule 1 (iii) Office Premises, admeasuring 1506 sq.ft., situated at Coral Classic Co-op Soc. Commercial Complex, 04th Floor, Office Nos. 401, 402 & 403 (Total 03 offices), Road No. 20, Near Ambedkar Garden, Chembur (East), Mumbai.	Rs. 17.06 Crores.	Rs. 1.70 Crores.

25.7. At Clause Q of the Process Document, it was agreed that all taxes applicable (including stamp duty implications and registration charges) on the sale of assets would be borne by the Successful Bidder. It was expressly stated that the Liquidator does not take or assume any responsibility for any dues, statutory or otherwise, of the Company, including such dues, if any, which may affect the transfer of liquidation assets in the name of the Successful Bidder and such dues, if any, will have to be borne/paid by the Successful Bidder. The Successful Bidder shall be responsible for obtaining requisite regulatory or statutory or third-party approvals, no-objections, permissions, or consents, if any, that are or may be required under Applicable Law for purchasing the relevant assets.

26. 1. It would be here pertinent to refer to the case of ***Jasamrit Designers Private Limited v. Gian Chand Narang, Liquidator of Apex Buildings Limited & Another (Company Appeal (AT) (Ins.) No. 258 of 2023)***, wherein the Hon'ble NCLAT observed as under: -

"11. *We may also observe that prayers which were included in IA No. 3207 of 2022 were too elaborate and general prayers which cannot be made as Successful Bidder. Successful Bidder in e-auction of the Corporate Debtor as a going concern can make only such prayers for reliefs/concessions which are commensurate and* ***in accordance with the terms and conditions of the process document.*** *Prayers in general in a very wide term as contained in I.A. No. 3207 of 2022 may not require any consideration by the Adjudicating Authority."*

26.2. The Hon'ble NCLAT, in the case of *Shantech International Pvt Ltd. v. Devendra Singh, Liquidator of Venus Rolling Mills Pvt. Ltd*. [Company Appeal (AT)(Insolvency) No. 1520 of 2024] followed a principle that the waiver of liabilities with regard to dues of the corporate debtor should be dealt with according to the terms of the e-auction.

27. There are provisions in the Code and in the Liquidation Process Regulations enabling sale of the corporate debtor as a going concern. However, there is no comprehensive framework regarding revival of the corporate debtor when it is sold as a going concern in liquidation process and, therefore, the Process Document's terms are paramount. This approach is particularly relevant under Regulation 32A of the Liquidation Regulations, which permits the liquidator to sell assets subject to existing liabilities. Thus, we are of the view that the terms of sale outlined in the Process Document during a liquidation sale are required to be adhered to and that any reliefs or concessions sought by the Acquirer-such as a release from prior encumbrances-must align with the Process Document's conditions.

28. Based on the discussions, we conclude that no claim filed with the Liquidator shall survive after consideration of the same in accordance with Section 53 of the Code, and those claimants cannot subsequently make additional claims or initiate actions for any deficiency. In relation to other claims, if any, existed on the date of sale by the Liquidator, but no claim had been filed, a general direction in terms of Prayer Clause (H.) cannot be issued that contradicts the terms of the Process Document. As a result, the relief in general is not granted.

29. After having extensively discussed the clean slate theory and its application to the instant case, it shall now be appropriate for us to deal with other prayers of the Applicant.

30. The Applicant at Prayer Clause (I.) has prayed that the sale of the assets of the Corporate Debtor shall be binding on all stakeholders including the utility

providers and all the utility providers shall continue to supply the utilities as may be required for survival of the Corporate Debtor. We have already held that reviving the Corporate Debtor under the Resolution Plan is distinct from selling it as a going concern in an auction during liquidation. It is pertinent to notice that as per Section 31 of the Code, a resolution plan approved by the CoC becomes binding on the corporate debtor and its employees, members, creditors including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory authorities are owned, guarantors and other stakeholders, once approved by the Adjudicating Authority. However, we observe that the Code and the regulations laid thereunder do not contain a similar provision regarding the sale as a going concern during liquidation. On the contrary, the Process Document stipulates certain encumbrances as per the terms contained therein. Therefore, we reject the Prayer Clause (I.) based on the observations mentioned above.

31. As regards the Prayer Clauses (J.) and (K.) wherein the Applicant has prayed for the termination of contracts and arrangements with the promoters, directors and related parties of the Corporate Debtor, we believe it is best to leave the decision to the contracting parties to review and take a decision on the contracts which were entered by the Corporate Debtor prior to the acquisition date. However, should the Applicant choose to review or terminate these contracts, they will face the consequences as outlined in the contractual terms and conditions and cannot be varied by the Tribunal. Further, time and again, the Adjudicating Authority has been cautioned by the higher forums including by the Hon'ble Supreme Court of India in *Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta (Civil Appeal No. 9241 of 2019)* against entertaining the contractual disputes

between the parties especially when such disputes do not arise from or relate to the insolvency resolution or liquidation of the Corporate Debtor. Additionally, we cannot cause unfair prejudice to the parties to the contract by reviewing or terminating their contracts without providing them with an opportunity to be heard.

32. Therefore, the relief prayed by the Applicant in Prayer Clauses (J) and (K.) stand rejected.

33. The Applicant has prayed at Prayer Clause (L.) that all subsisting consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor be deemed to continue within a period of twelve months from the Acquisition Date or until renewed by the relevant authorities, whichever is later. The Applicant has prayed at Prayer Clause (M.) that the Corporate Debtor shall be deemed to be eligible to receive all consents, licenses, exemptions, approvals, rights, entitlements, extensions, waivers, benefits, and privileges whether under law, contract, lease or license, which includes without limitation, permission for change of land use by the concerned government or regulatory authorities as may be required by the Corporate Debtor.

34. Before considering the abovementioned relief(s), it would be appropriate to notice the scheme of the Code as regards obtaining licenses, approvals, clearances etc. Section 31(4) of the Code provides as under:

(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the

Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.

34.2. A plain reading of the above provision in the Code emphasizes the need to obtain approvals required under the applicable laws even after a resolution plan is sanctioned under Section 31 of the Code. Thus, the scheme of the Code does not provide for dispensing with the approvals and licenses required under the various laws but insists the same to be obtained within a timeframe. That being so, even for a Resolution Plan, we do not see any reason to dispense the license, approvals, etc. in the present case for the mere reason that the object of acquisition is the revival of the Corporate Debtor.

34.3. Further, the explanation to Section 14(1) of the Code reads thus:

"14. Moratorium, -

…….

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;"

34.4. As per the above explanation, the licenses, permits, registrations, quotas, concessions, clearances, or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator, or any other authority constituted under any other law for the time being in force and contracts where the counterparty supplies essential/critical goods and services to the Corporate Debtor are to be kept unaffected during moratorium imposed under Section 14. However, there is no provision in the Code for its continuation after the CIRP. Therefore, we do not see any justification to extend unilaterally the benefit of contract, license etc. to the Successful Bidder when the parties are bound by its terms. The terms of a contract, in our considered view, cannot be unilaterally changed, except through legislative intervention, to strike the appropriate balance between contractual freedom on the one hand and corporate rescue on the other. We, therefore, are not inclined to grant the aforesaid reliefs.

35. Clause Q of the Process Document states that the Successful Bidder shall be responsible for obtaining requisite regulatory or statutory or third-party approvals, no-objections, permissions or consents, if any, that are or may be required under Applicable Law for purchasing the relevant assets. Therefore, no reliefs, as prayed for by the Applicant at Prayer Clauses (L.) and (M.), can be granted. Even otherwise, the reliefs which are too generic and vague in nature cannot be granted. Further, this Tribunal has no jurisdiction to grant permission for change of land use and it is for the Applicant to approach the concerned land/revenue authorities for change of land use in accordance with law. Accordingly, the reliefs as prayed for by the Applicant at Prayer Clauses (L.) and (M.) are hereby declined.

36. The Applicant has, at Prayer Clause (N.), prayed for the directions to the Liquidator to write back all the liabilities of the Corporate Debtor and the assets which are not recoverable (such as debtors, inventories, loans and advances, etc.) should be written down to the realizable value in the financial statements. On perusal of the Process Document, we find that Clause 'H' of the Process Document states that all local taxes/maintenance fee/electricity/water charges etc., outstanding as on date or yet to fall due in respect of the relevant asset should be ascertained by the E-Auction Process Applicant and would be borne by the successful bidder. Further, we find that at Clause Q of the Process Document, it was agreed that all taxes applicable (including stamp duty implications and registration charges) on sale of assets would be borne by the Successful Bidder. It was also expressly stated that the Liquidator does not take or assume any responsibility for any dues, statutory or otherwise, of the Company, including such dues, if any, which may affect the transfer of liquidation assets in the name of the Successful Bidder and such dues, if any, will have to be borne/paid by the Successful Bidder. Therefore, in view of the aforementioned Clauses of the Process Document, we are unable to direct the Liquidator to write back all the liabilities of the Corporate Debtor when such liabilities do not stand waived. Accordingly, we reject the Prayer Clause (N.). For the same reasons, the prayer at Clause O, which craves liberty to the Respondent to make necessary accounting entries for smooth transition and clearing the balance sheet, too, cannot be granted. Therefore, the liberty as prayed for by the Applicant at Prayer Clause (O.) also hereby stands rejected in toto.

37. The Applicant has prayed at Prayer Clause (P.) that any non-compliance of provisions of any laws, rules, regulations, notifications, directions, circulars,

guidelines, policies, licenses, approvals, consents or permissions including any suspension, cancellation, revocation or termination, prior to the Acquisition Date shall be deemed to be extinguished and/or regularized automatically, as the case may be, on the Acquisition Date. The above reliefs prayed for by the Applicant are again too generic and vague in nature, and thus, they cannot be granted. Even otherwise, there is no provision in the Code or in the Liquidation Process Regulations which grants blanket immunity to the Successful Bidder from the consequences of non-compliance referred to above. Further, from the letter and spirit of the Process Document, it is clear that the sale of the Corporate Debtor is taking place on 'As Is, Where Is' basis and it was for the Applicant to conduct his due diligence before acquiring the Corporate Debtor for which the Liquidator assumes no responsibility. Therefore, the Successful Bidder shall be liable for any consequences arising out of such non-compliances. Accordingly, Prayer in terms of Clause (P.) is hereby rejected. As a corollary, we are unable to direct the government authorities to take no action or to refrain from taking actions against the Applicant/Corporate Debtor in respect of such non-compliances. Thus, Prayer in terms of Clause (R.) also stands rejected. For the same reasons given by us hereinbefore for rejection of Prayer Clause (P.), we also hereby decline the similar relief again sought by the Applicant at Prayer Clause (NN.).

38. As regards Prayer Clause (Q.), for the reasons given hereinbefore, the Adjudicating Authority has no jurisdiction to direct the Maharashtra Pollution Control Board ('MPCB') to renew or grant consents, approvals, permits or authorizations to the Corporate Debtor/Successful Bidder. It is for the Applicant to approach the MPCB for renewal or grant of permits, approvals,

consents or licenses under the relevant environmental laws. Thus, we reject the reliefs sought by the Applicant at Prayer Clause (Q.).

39. The Applicant has prayed at Prayer Clause (S.) that any non-compliance of the Corporate Debtor under the Companies Act and/or the rules and regulations laid thereunder, prior to the Acquisition Date, shall stand compounded without imposition of any penalty, fees, etc. Here we observe that there is no provision in law whereby the offences under the Companies Act can be compounded merely by virtue of a going concern sale to the Applicant under the IB Code. Therefore, the prayer in terms of Clause (S.) stands rejected.

40. In so far as the Prayer Clause (T.) is concerned, the liability arising out of the salaries and wages of the employees and workers can be extinguished as they would have received their share as per the waterfall mechanism contemplated u/s 53 of the Code. However, in so far as the statutory dues of employees such as provident funds, gratuity and ESIC are concerned, since the same has been kept outside the purview of liquidation estate by virtue of Section 36(4)(a)(iii), such liabilities cannot be distributed u/s 53 of the Code and therefore, the Applicant, who is acquiring the Corporate Debtor as a going concern, is liable to maintain such funds and continues to be liable in accordance with law. Accordingly, the Prayer Clause (T.) is partly-allowed on above terms.

41. In exercise of our powers u/s 60(5) of the Code, we cannot direct the dismissal or vacation or withdrawal of proceedings, inquiries, investigations, assessments, notices, suits, arbitration or any other judicial or administrative proceedings pertaining to any period prior to the Acquisition, as that would

tantamount to unnecessary interference as also usurpation and encroachment into the lawful powers, authority and jurisdiction of other competent legal forums, which is not permissible in law. Hence, we decline the reliefs prayed by the Applicant at Prayer Clauses (V.) and (W.).

42. The Applicant has prayed at Prayer Clause (U.) that as of the Acquisition Date, any bond, surety, guarantee, power of attorney, undertaking issued by the Corporate Debtor to any person anywhere before the Acquisition Date shall stand cancelled and permanently revoked. We wish to state that in case of sale as a going concern, the corporate entity continues to operate without dissolution and strives to maintain its business activities as much as possible. This process includes certain actions aimed at mitigating the effect of certain past actions such as cancelling the power of attorney granted by the previous management and revoking bonds, guarantees and various negotiable instruments issued prior to the acquisition. These actions are directly related to operationalizing the Corporate Debtor and are, therefore, granted. Prayers in Clause AA being similar in nature are also hereby granted.

43. The Applicant has prayed at Prayer Clause (X.) that each asset (including properties, whether freehold or leasehold) of the Corporate Debtor shall be vested in it free of all encumbrances from the Acquisition Date. Apropos of the above relief sought by the Applicant, it is imperative to refer to the one of the following terms and conditions of the E-Auction as laid down in the Process Document as under:

"2. The Prospective Bidders should make their own independent inquiries regarding the encumbrances, title of assets put on auction and claims/rights/dues affecting the assets, and should conduct their own due diligence prior to submitting their bid. The E-Auction

advertisement does not constitute and will not be deemed to constitute any commitment or any representation of the Liquidator. ***<u>The property is being sold with all the existing and future encumbrances/claims/dues/demands whether known or unknown to the Liquidator.</u>*** *Liquidator shall not be responsible in any of way for any third-party claims/rights/dues."*

43.2. Thus, it is crystal clear that the Applicant acquired the properties of the Corporate Debtor with all the existing and future encumbrances/claims/dues/ demands, whether known or unknown to the Liquidator. Hence, now the Successful Bidder/Applicant cannot be allowed to retract from the terms and conditions of the e-auction. No relief which is contrary to the terms and conditions of the e-auction can be granted by this Tribunal. Accordingly, the relief sought by the Applicant in Prayer Clause (X.) is hereby rejected.

44. The Applicant has sought waiver of property tax and lease rent at Prayer Clause Y. The waiver of property tax and lease rent has nothing to do with operationalizing the business of the Corporate Debtor. Also, such waiver has no direct nexus with insolvency resolution or liquidation of the Corporate Debtor and, therefore, this Tribunal has no jurisdiction to grant such waivers. Even otherwise, as per Clause H of the Process Document, all local taxes outstanding as on the date of the auction were to be borne by the Successful Bidder and therefore, for this reason too, the waiver of property tax, as prayed for by the Applicant, cannot be granted. Accordingly, we reject the relief of waiver of property tax and lease rent sought by the Applicant in terms of Clause Y.

45. In terms of Prayer Clause Z, the Applicant has prayed that the status of the Corporate Debtor in the records of the Registrar of Companies should be

reflected 'active' from the status of 'under liquidation'. This is indeed necessary for operationalizing the business of the Corporate Debtor and the Corporate Debtor has to carry out the procedure for the same before the Registrar of Companies in accordance with law. The procedure for changing the status of the Corporate Debtor cannot be dispensed with and necessary steps for changing the status from 'under liquidation' to 'active' have to be taken by and on behalf of the Corporate Debtor. Accordingly, the above prayer stands rejected. On similar reasoning, necessary steps for changing the status of accounts of the Corporate Debtor shall be taken by the Applicant and accordingly, the Prayer Clause BB also stands rejected.

46. The Applicant has made a prayer at Prayer Clause CC for exemption from the consequences of non-compliances relating to the appointment of statutory auditors, company secretary, etc. for a period of 12 months from the Acquisition Date. However, we are not inclined to grant the above relief as the Applicant cannot be exempted from statutory compliances.

47. The Applicant has requested, under Clause DD, that the Corporate Debtor be permitted to participate in auction sales, tenders, offers, and proposals issued by all departments, authorities, and public sector undertakings for a period of three years from the acquisition date, without the requirement to submit details regarding past revenue, past performance, profitability records, net worth, and similar financial data. In our considered view, this relief, by no stretch of the imagination, be considered as 'arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor'. Further, no preferential treatment with respect to the business of the Corporate Debtor can be granted just because the Corporate Debtor had undergone insolvency and

liquidation as per the provisions of the Code. Consequently, this relief is rejected.

48. The prayer under Clause EE, seeking permission to restructure the business of the Corporate Debtor without obtaining approval or consent from any person under any agreement, constitutional document, or applicable laws, cannot be granted. Statutory compliances and procedures cannot be waived or exempted merely because the Corporate Debtor is being sold as a going concern to the Successful Bidder. Moreover, once the existing share capital is cancelled or extinguished, and new shares are issued to the Applicant pursuant to the going concern sale of the Corporate Debtor, the management and control of the Corporate Debtor will vest with the Successful Bidder/Applicant. It will then be for the Applicant to exercise its commercial wisdom regarding any decisions related to restructuring the business of the Corporate Debtor and for the said purpose, no such liberty, nor waiver of approval or consent from any persons under the law or contractual obligations, is required from this Tribunal. Accordingly, we decline the aforesaid reliefs as prayed for by the Applicant at Prayer Clause EE. As regards the prayer of the Applicant at Clauses FF seeking liberty to rationalize the employee strength of the Corporate Debtor, the same is the commercial decision of the Applicant and thus, it does not require our consideration.

49. The Applicant has sought directions to the Respondent to provide an audited financial statement of the Corporate Debtor for the period from 01.04.2021 till the Acquisition Date within 60 days of the issue of the Sale Certificate. It is observed that the Process Document does not include any requirement for providing an audited balance sheet. Furthermore, since the Applicant has

already acquired the Corporate Debtor as a going concern, we cannot compel the Liquidator to prepare and audit the financial statement at this late stage after the issue of the Sale Certificate. Accordingly, the Prayer in terms of Clause (GG.) stands disallowed.

50. The relief and concession of permitting the Corporate Debtor to carry forward losses of prior years and allowing it to set-off the same against the income of subsequent financial years in which the Corporate Debtor may earn profit, cannot be granted for the reason that Section 79(2)(c) applies only to a resolution plan approved under the IB Code, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner. In the present case, neither the resolution plan has been approved nor any reasonable opportunity of being heard has been afforded to the tax authorities, and therefore, we cannot give any direction to the tax authorities for permitting the Successful Bidder to carry forward the previous year losses of the Corporate Debtor and allow the same to be set-off against the income of any financial year as may be available to the Corporate Debtor. Therefore, we leave this issue open to the income tax authorities to determine it as per the provisions of the Income Tax Act, 1961. Further, in the absence of any specific provision in law and/or any law laid down by the judgment(s) of the Hon'ble Apex Court or the jurisdictional High Court in this regard, it cannot be said that the provision of Section 79(2)(c) mutatis mutandis apply to a sale of a Corporate Debtor as a going concern under liquidation. Hence, the relief as prayed for by the Successful Bidder at Prayer Clause (HH) of the Application in captioned IA, cannot be granted. The same ratio would apply in relation to the reliefs sought by the Applicant in respect of the GST or any other tax.

51. The Applicant has prayed at Prayer Clause (II) that the write back or writing down liabilities of the Corporate Debtor shall not be treated as taxable income of the Corporate Debtor under the Income Tax Act, 1961 and any write-offs shall be allowed as a tax deduction in the year of such write-off. In our considered view, the determination of whether expenses, losses, and assets can be written off or how the write-back of liabilities is treated for tax purposes – whether as taxable, exempt, or non-taxable income- is a matter for income tax assessment. It cannot be gainsaid that the Adjudicating Authority has no jurisdiction to assess the taxable income and income tax due thereon. Hence, we decline the reliefs as prayed for by the Applicant in terms of Prayer Clause (II). Similarly, we reject the prayer Clause (KK) where the Applicant seeks set-off for losses and unabsorbed depreciation for the purpose of computing book profits as well as exemption from any liability u/s 115JB of the Income Tax Act, 1961. Again, since we do not have the jurisdiction to assess tax or grant tax waivers, we cannot approve the Applicant's request in Prayer Clause (MM.) for waiver of income tax and minimum alternate tax. As regards allowing the Applicant to file income tax returns and/or revised returns of income for the Assessment Years prior to the Acquisition Date, the Adjudicating Authority lacks the jurisdiction to extend the timelines to file the income tax returns. Furthermore, there is no need to grant such liberty, as the Applicant can do the same in accordance with the provisions of the Income Tax Act, 1961. Accordingly, the prayer at Clause (LL.) stands rejected.

52. The Applicant has prayed in Prayer Clause (JJ) that the requirement and applicability of permission u/s 281 of the Income Tax Act, 1961 and the provisions of taking over its predecessor's tax liability u/s 170 of the Income Tax Act, 1961 shall be deemed to be waived on the acquisition date. As already

held herein before, the Adjudicating Authority cannot grant or waive any permission that may be required under the provisions of the Income Tax Act, 1961. Further, as discussed above, it was expressly stated in the Process Document that the Liquidator does not take or assume any responsibility for any dues, statutory or otherwise, of the Company, including such dues, if any, which may affect the transfer of the liquidation assets in the name of the Successful Bidder and such dues, if any, will have to be borne/paid by the Successful Bidder. Therefore, the predecessor's tax liability, if any, as on the Acquisition Date cannot be waived. Accordingly, the prayer in terms of Clause (JJ) stands rejected.

53. The Applicant has sought directions from the Adjudicating Authority to the Respondent at Prayer Clause (OO.) for communicating and closing all pending cases against the Corporate Debtor. We hereby direct the Liquidator to communicate all known pending cases against the Corporate Debtor to the Applicant/ Successful Bidder. However, this Tribunal does not have the legitimate jurisdiction to order the closure of any pending cases against the Corporate Debtor and therefore, the prayer to close all pending cases against the Corporate Debtor cannot be granted. Accordingly, the Prayer in terms of Clause (OO.) stands partly allowed on above terms.

54. The Applicant has prayed at Prayer Clause (PP.) of the application that the sale and transfer of the Corporate Debtor as a going concern shall be exempt from compliance with applicable laws. In our considered view, the sale and transfer of the Corporate Debtor as a going concern cannot be exempted from compliance with the applicable laws, but it is rather subject to the compliance with the applicable laws of the land. Hence, prayer in terms of Clause (PP.) cannot be granted.

55. In the light of the above elaborate discussion, **we hereby partly allow I.A. No. 5069 of 2023** summarizing our decision in the following manner:

Sr. No.	**Prayer Clause**	**Description of the Reliefs Sought by the Successful Bidder**	**Our Decision**
1.	A.	The date of issue of the sale certificate shall be deemed to be the date of acquisition ("Acquisition Date") of the Corporate Debtor by the Applicant/ Successful Bidder on a going concern basis.	Granted.
2.	B.	Waiver of all the procedural requirements in terms of Section 66, Section 42 and Section 62(1)(c) of the Companies Act, 2013 and the Company (Procedure for Reduction of Share Capital) Rules, 2016.	Granted.
3.	C.	The requirement of adding “and reduced” in the name of the Corporate Debtor be dispensed with in the event of capital reduction.	Granted.
4.	D.	All existing shares of the Corporate Debtor be extinguished including the share application money received, if any, without any consideration and rights and liabilities arising out of the same shall also be extinguished and the Respondent shall make necessary entries of such extinguishment in the register of members of the Corporate Debtor has maintained under the provisions of the Companies Act.	Granted.
5.	E.	No approval or consent shall be necessary from any person or persons under any agreement, the constitution documents of the Corporate Debtor, or any applicable law in relation to any of the above	Granted.

		acts and for all actions and purposes including (a) cancellation of the existing share capital of the Corporate Debtor in terms of Section 66 and other provisions of the Companies Act 2013, and other applicable laws and (b) for issuance of new equity shares in terms of the Companies Act 2013, and other applicable laws.	
6.	F.	The Respondent shall cause reconstitution of the Board of Directors by removing the erstwhile directors and by appointing the directors nominated by the Applicant.	Granted.
7.	G.	The Respondent shall cause the Corporate Debtor to issue fresh equity shares in favour of the Applicant and/ or its nominees.	Declined.
8.	H.	No Financial Creditor or operational creditor can make any claim/ institute any proceedings against the Corporate Debtor. Financing documents are deemed to have terminated and the security created stands released fully. Secured creditors may be directed to return all the title deeds and documents and issue no dues certificate in favor of the Corporate Debtor as may be required by the Applicant.	Partly-Allowed.
9.	I.	Sale of the assets of the Corporate Debtor shall be binding on all stakeholders including the utility providers and all the utility providers shall continue to supply the utilities as may be required for survival of the Corporate Debtor.	Declined.
10.	J.	Existing contracts and arrangements, if any, with the existing promoters, directors and related parties of the	Declined.

		Corporate Debtor shall stand terminated on and from the acquisition date.	
11.	K.	Right to review and terminate any contract that was entered into prior to the Acquisition Date without any penalty, charges, fees, fines, liabilities, damages in relation thereto. Save and accept the contracts and arrangements which shall be terminated by the Corporate Debtor or the Applicant, all other contracts and arrangements shall remain in existence on the same terms and conditions.	Declined.
12.	L.	All subsisting consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract lease or license, granted in favour of the Corporate Debtor be deemed to continue within a period of twelve months from the Acquisition Date or until renewed by the relevant authorities whichever is later.	Declined.
13.	M.	The Corporate Debtor shall be deemed to be eligible to receive all consents, licenses, exemptions, approvals, rights, entitlements, extensions, waivers, benefits, and privileges whether under law, contract, lease or license, which includes without limitation permission for change of land use by the concerned Governmental and/or Regulatory Authorities as may be required by the Corporate Debtor.	Declined.
14.	N.	Direct the liquidator to (i) write back all the liabilities of the Corporate Debtor; (ii) the assets which are not recoverable (debtors, inventories and loans and advances etc.) should be written down to the realizable value in the financial statements. The financial statements should be prepared and filed by the liquidator with the relevant regulators.	Declined.

15.	O.	The Respondent shall have the liberty to make necessary accounting entries for the smooth transmission and clearing the balance sheet and for filing return of income and/or revised return of income for the assessment years prior to the acquisition date.	Declined.
16.	P.	Any non-compliance of provisions of any laws, rules, regulations, notifications, directions, circulars, guidelines, policies, licenses, approvals, consents or permissions including any suspension, cancellation, revocation or termination, prior to the Acquisition Date shall be deemed to be extinguished and/ or regularized automatically, as the case may be, on the Acquisition Date.	Declined.
17.	Q.	All consents, approvals, permits, authorisations issued to the Corporate Debtor by the Maharashtra Pollution Control Board, either under the Water (Prevention & Control of Pollution) Act, 1974 or under the Air (Prevention & Control of Pollution) Act, 1981 and under the Hazardous Wastes (Management, Handling & Transboundary Movement) Rules, 2016 shall be renewed by the Maharashtra Pollution Control Board immediately upon passing of this order by the Hon'ble Tribunal, without any charge, penalty, fine, late-fee that may be due or leviable against the Corporate Debtor or the Applicant.	Declined
18.	R.	No action by the government authorities for non-compliance; neither shall the Applicant nor the Corporate Debtor, nor their respective directors, officers and employee appointed on and as of the Acquisition Date be liable for any violations, liabilities or penalties or fines with respect to or pursuant to the Corporate Debtor not having in place requisite licenses and approvals required to undertake its business as per applicable laws, or any non-compliances of applicable	Declined.

		laws by the Corporate Debtor; Reasonable period should be allowed for rectifying the non-compliances; any non-compliance shall be deemed to be extinguished and/or regularized automatically and/or shall stand compounded without imposition of any additional obligation on the Corporate Debtor.	
19.	S.	Any non-compliance of the Corporate Debtor under the Companies Act, 1956 and/or the Companies Act, 2013 and/ or the notifications, circulars, rules and regulations enacted or notified thereunder, prior to the Acquisition Date shall stand compounded without imposition of any penalty, fees, etc.	Declined.
20.	T.	The Respondent shall disburse the sums in terms of the provisions of the Code; therefore, as such all the liabilities in relation to the employees, workers, either in full-time employment or contractual, including, but not limited to, the dues with respect to the Salaries and Wages, Employee State Insurance Provident Fund, Gratuity, etc. shall stand extinguished on the Acquisition Date and the Applicant will not be saddled with the liabilities of the Corporate Debtor.	Partly-allowed.
21.	U.	As of the Acquisition Date, any bond, surety, guarantee, power of attorney, undertaking issued by the Corporate Debtor to any person anywhere before the Acquisition Date shall stand cancelled and permanently revoked.	Granted.
22.	V.	With effect from the Acquisition Date, all inquiries, investigations, assessments, notices, causes of action, suits, claims, disputes, litigations, arbitration or other judicial, regulatory or administrative proceedings pertaining to any period prior to the Acquisition Date or arising on account of the acquisition shall be deemed to be withdrawn or dismissed without any cost and/ or causing injury financially, or otherwise to the Corporate Debtor or the Applicant and interim order(s), if any	Declined.

		passed during such arbitration, judicial, regulatory or administrative proceedings be deemed to be immediately vacated.	
23.	W.	With effect from the Acquisition Date, all liabilities or obligations of the Corporate Debtor, in relation to (i) any investigation, inquiry or show-cause, whether civil or criminal; (ii) any non-compliance; (iii) change of control, transfer charges, compensation, or any other such liability whatsoever; (iv) any leasehold rights or freehold rights to movable or immovable properties in the possession of the Corporate Debtor; (v) any contracts, agreements or commitments made by the Corporate Debtor, shall be written off in full and stand permanently extinguished.	Declined.
24.	X.	Each asset (including properties, Granted. whether freehold, leasehold or license basis) of the Corporate Debtor shall be vested in the Corporate Debtor free and clear of all encumbrances from the Acquisition Date.	Declined.
25.	Y.	Waiver of any property tax, lease rent.	Declined.
26.	Z.	The status of the Corporate Debtor in the records of the Registrar of Companies should be reflected 'active' from the status of 'liquidation'.	Declined.
27.	AA.	All powers of attorney or authorities executed by the Board of the Corporate Debtor on or prior to the Acquisition Date shall stand revoked, cancelled and shall be void.	Granted.
28.	BB	All accounts of the Corporate Debtor shall stand regularized, and their asset classifications shall be "standard".	Declined.
29.	CC.	Compliances under the applicable law for all the statutory appointments of the Corporate Debtor including but not limited to the appointment of statutory auditors, company secretary, etc., will be complied within a period of 12 (Twelve) months from the	Declined.

		Acquisition Date and the non-compliance within the period shall be deemed to be waived off/condoned.	
30.	DD.	The Corporate Debtor shall be allowed to participate in auction/sale/tenders/offers/proposals of all departments/ authorities/public sector undertakings for a period of 3 (Three) years from the Acquisition Date without having to submit the details on the past revenue, past performance, profitability records, net worth, etc.	Declined.
31.	EE.	The Applicant or its associates/ nominees shall have the liberty to restructure / realign/re-locate/ merge/ demerge /amalgamate the business operations/units of the Corporate Debtor or merge the Corporate Debtor with the Applicant or its associates/nominees without any further approval or consent from any person or persons under any agreement, the constitution documents of the Corporate Debtor, or any applicable law in relation to any of the above acts and for all actions and purposes incidental and necessary for giving effect to such merger/ amalgamation, including dispensation of permissions, consents, approvals of the RoC to such merger/ amalgamation as the case may be.	Declined.
32.	FF.	The Corporate Debtor shall be at liberty to rationalize the employee strength of the Corporate Debtor in order to keep it as a going concern.	Declined.
33.	GG.	The Respondent shall provide an audited financial statement of Corporate Debtor for the period from 01.04.2021 till Acquisition Date within 60 days of issue of Sale Certificate.	Declined.
34.	HH.	Exemption available to Corporate Debtor under Section 79 of the Income Tax Act be extended to the Applicant and the Corporate Debtor. Change in shareholding shall not (a) result in in lapse of any carry forward accumulated Tax losses of the Corporate Debtor; and (b) be considered void under Section 81 of the Central	Declined.

		Goods and Service Tax Act,2017 and concerned authority shall not impose any successor liability on the Applicant and the Corporate Debtor.	
35.	II.	Write back/written down liabilities of the Corporate Debtor shall not be treated as taxable income of the Corporate Debtor under the Income Tax Act, 1961 and any write-offs shall be allowed as a tax deduction in the year	Declined.
36.	JJ.	Requirement and applicability permission of under Section 281 of the Income Tax Act, 1961 and provisions of taking over its predecessor's liability u/s 170 of the Income Tax Act, 1961 shall be deemed to have been waived on the Acquisition Date.	Declined.
37.	KK.	Allow setting off of losses and unabsorbed depreciation for the purpose of computation of book profit as permitted under Section 1 1 5JB of Income Tax Act 1961. Exemption from any tax liability in terms of section 115JB of the Income Tax Act 1961.	Declined.
38.	LL.	Allow filing return of income and/or revised return of income, for the Assessment Years prior to the Acquisition Date.	Declined.
39.	MM.	Waiver of any income-tax and Minimum Alternate Tax (MAT) liability or consequences (including interest, fine, penalty, etc.) on Corporate Debtor, and its shareholders, including but not limited to liabilities if any under Section 41(1), Section 56, Section 43, Section 43B, Section 28, Section 115JB and Section 79 of the Income Tax Act, 1961.	Declined.
40.	NN.	Any non-compliance of provisions of any laws rules, regulations, notifications, directions, circulars, guidelines, policies, licenses, approvals, consents or permissions including any suspension, cancellation, revocation or termination, prior to the Date of Acquisition shall be deemed to be extinguished and/or	Declined.

		regularized automatically, as the case may be, on the Acquisition Date.	
41.	OO.	Direct the Respondent to communicate and close all pending cases pending against the Corporate Debtor.	Partly Allowed.
42.	PP.	Sale and transfer of the Corporate Debtor as the going concern shall be exempt from compliance with applicable laws.	Declined.
43.	QQ.	Such other and further reliefs as this Hon'ble Tribunal may deem fit and proper in the nature, facts and circumstances of the present case.	Save as the reliefs granted by us hereinbefore, we are not inclined to grant any further reliefs.

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)