<u>IN THE NATIONAL COMPANY LAW TRIBUNAL</u>

<u>NEW DELHI, COURT-III</u>

IA-2365/2023

IN

IB-812(ND)/2018

Application under Section 60(5) of the IBC, 2016 R/w Regulation 45(3) of Insolvency Bankruptcy Board of India (Liquidation Process) Regulations, 2016 R/w Rule 11, NCLT Rules,2016.

<u>IN THE MATTER OF:</u>

M/s. SHRI KRISHNA ENTERPRISES

...Applicant

Versus

M/s. RAYAN LABORATORIES PVT. LTD.

.... Respondent

<u>AND IN THE MATTER OF:</u>

Sh. SUSHEEL KUMAR GUPTA

.... Liquidator/Applicant

<u>Order Pronounced on: 22.12.2023</u>

<u>CORUM:</u>

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)
SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

<u>APPEARANCES:</u>

For Applicant:
For Liquidator: Mr. Partho Bhattacharya, Adv.

<u>ORDER</u>

<u>PER- ATUL CHATURVEDI, MEMBER (TECHNICAL)</u>

1. This Present Application (IA-2365/2023) has been filed by the Applicant i.e. the Liquidator under Section 60(5) of IBC, 2016 R/w Regulation 45(3) of Insolvency Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and Rule 11 of NCLT Rules,2016 for the closure of the Liquidation process on account of the successful completion of the Sale of the Corporate Debtor as a going concern in terms of the provisions of the Code read with Liquidation Regulations and consequent distribution of proceeds in terms of Section 53 of the Code.

2. The Applicant has prayed for the following reliefs: -
   (i) Take note of the Sale of the Corporate Debtor as a Going-concern to Ms. Ruhi Anjum pursuant to the E-Auction dated 15.10.2022 and on the terms and conditions mentioned in the E-Auction Process Memorandum dated 15.10.2022, Letter of Intent dated 10.11.2022 and the Certificate of Sale dated 31.01.2023 issued to the Successful Auction Bidder;

(ii) Direct closure of the Liquidation Process of the Corporate Debtor and consequently discharge the Applicant herein as Liquidator of the Corporate Debtor.

(iii) Issue appropriate directions to various government department and authorities to provide reliefs and concessions as envisaged in law;

(iv) Pass such further or other orders as may be deemed fit and proper in the facts and circumstances of the case and thus render justice.

3. To put it briefly, the facts of the case are that the Adjudicating Authority, vide its order dated 03.10.2018 initiated Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor by appointing Shri Susheel Kumar Gupta as the Interim Resolution Professional.

4. The applicant made public announcement on 13.10.2018 and informed the creditors about initiation of corporate insolvency resolution process against the Corporate Debtor and requested to submit all types of claim latest by 24.10.2018.

5. This Tribunal was pleased to extend the CIRP beyond 330 days vide order dated 10.02.2020 with the following directions " In view of the contents of the Application, which is supported with the resolution that came to be passed by the CoC on 23.12.2019, the period of 120 days is hereby excluded from the maximum period of CIRP with extension of time period of 45 days which shall be the last and final opportunity for Resolution Professional and the CoC to complete the process of the approval of the

Resolution Plan, which is already under consideration before CoC, failing which the Resolution Professional shall file appropriate application for seeking an order of liquidation against the Corporate Debtor"

6. Thereafter, an application under section 30(6) of IBC, 2016 read with regulation 39(4) of The Insolvency and Bankruptcy Board of India (Insolvency Process for Corporate Person Regulation, 2016) for seeking approval of the Resolution Plan under section 31(1) of IBC was filed and the same was approved by this Tribunal vide order dated 19.10.2020.

7. The Resolution Applicant failed miserably to fulfil its own terms of the said Resolution Plan and was unable to pay any amount towards the compliance of the said Resolution plan even after a delay of 18 months.

8. Thereafter this Hon'ble Tribunal was pleased to pass an order dated 14.09.2021 for liquidation of the Corporate Debtor and the Applicant was appointed as the Liquidator by this Hon'ble Tribunal in the I.A. No: -3582 of 2021.

9. As per Regulation 31A read with 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016, the sale parameters regarding the Manner of sale, Mode of sale, Pre-bid qualifications, Reserve Price and Earnest Money Deposit, were placed before the stakeholders Consultation Committee for their consideration and all the auctions were held only with the concurrence of the Stakeholders Consultation Committee. Thereafter, several e-auctions were held on different dates and

sale notices were published as accordance to the law to sale the Corporate Debtor as going concern.

10. Subsequent to the failures of 1st, 2nd and 3rd e-auction for sale of the Corporate Debtor on a going concern basis, a further 4th auction sale notice was published on 15.10.2022 at a Reserve Price of Rs. 250 Lakh and date of auction was fixed for 10.11.2022. Sole bid and expression of interest (EOI) was received on 18.10.2022 from Ms. Ruhi Anjum along with EMD amount of Rs. 65 Lakh only, hence she was declared as the successful Auction Bidder with the Highest Bid. No bid was received for individual lots put in auction. To comply with the condition of the auction process, the auction purchaser was required to deposit 25% (Rs. 62.50 Lakh) of the bid amount by 14.11.2022, which was duly complied with by way of deposit of Rs. 65 Lakh.

11. The Applicant was pleased to issue letter of intent (LOI) to the successful Auction Bidder on 10.11.2022 detailing the complete module of payment and consequences of non-adherence.

12. In pursuance to the e-auction sale, the Successful Auction Bidder had to deposit the remaining consideration of Rs. 185 Lakh by 09.12.2022 without interest. Bidder also had the option to deposit the remaining consideration within 90 days i.e. on or before 07.02.023 along with interest. The remaining amount was deposited by the bidder on various dates and the last payment being made on 12.12.2022. No delayed interest was charged from the bidder considering that banks were closed on 10.12.2022 and 11.12.2022 on account of Saturday and Sunday.

13. As per the Regulation 42(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, proceeds of realization are required to be distributed within 90 days. Further as per Regulation 42(2), insolvency resolution process costs and the liquidation costs are to be deducted before such distribution is made.

14. An amount of Rs. 20,24,886/- was forfeited in accordance with the order passed by Hon'ble NCLT on 14.09.2021 and same was included in the assets of the Corporate Debtors and was used to meet the liquidation and insolvency process cost.

15. The receipt of the entire sale consideration, the Applicant/Liquidator had distributed the sale proceeds to the stakeholders in accordance with Section 53 of the Insolvency and Bankruptcy Code, 2016. The schedule of Distribution is to the stakeholders is as follows:

Amount available for distribution is as below:

Particulars	**Amount (In Rs)**
Interest on Fixed Deposit	21,575
Liquidation Proceeds	2,50,00,000
Amount Forfeited	20,24,886
Total	**2,70,46,461**

Amount Distributed is as below:

Particulars	**Amount (In Rs)**
Liquidation Expenses	35,91,015
Distribution to Stakeholders	2,24,90,840

CIRP Expenses Paid	9,64,605
Total	2,70,46,461

- Including dues of Rs. 13,87,311/- paid to Uttarakhand Power Corporation Limited.
- Workmen - Proportionate 24-month salary prior to the date of commencement of liquidation…. NIL.

16. The receipt of the entire sale consideration from the Successful Auction Bidder, the Applicant/Liquidator had issued the Certificate of Sale to the Successful Auction Bidder - Ms. Ruhi Anjum. That till the date of filing of the instant application 8 Stakeholders Consultation Committee Meetings have been held and in the 8th SCC Meeting held on 23.12.2022, the Stakeholders were also duly intimated about the filing of an application for closure of the Liquidation Proceedings of the Corporate Debtor. No objections were raised by the stakeholders present for the meeting.

17. There are no applications filed before the Hon'ble NCLT pertaining to Avoidance Transactions during the Liquidation Period, however the application filed during CIRP period is yet be heard and decided.

18. The total Liquidation expenses incurred from 14.09.2021 to the instant date of filing of this application is to the tune of Rs. 35,91,015/-. Thus as on the date all the liquidation expenses have been paid and the distribution to all the stakeholders' stands completed.

19. In due adherence to Regulation 15 of IBBI (Liquidation Process) Regulations, 2016 all the progress reports have been filed.

20. In terms of Regulation 45 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, "The liquidator shall submit an application along with the final report and the compliance certificate in form H to the Adjudicating Authority for (a) closure of the liquidation process of the corporate debtor where the corporate debtor is sold as a going concern". Accordingly, the Applicant/Liquidator prefers the present Application seeking directions before this Hon'ble Tribunal for closure of the liquidation process of the Corporate Debtor which has been sold as a Going-concern.

21. Considering the facts on record and provision of law, we **allow** this application filed under Regulation 45(3)(a) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and thereby Order closure of the liquidation process of the Corporate Debtor i.e., M/s. Rayan Laboratories Pvt. Ltd.

22. We direct that all the past liabilities and consequential actions of the Corporate Debtor which are in relation to any period prior to the date of acquisition by the successful bidder be written off in full and shall stand permanently extinguished.

23. We direct that the successful bidder of the Corporate Debtor shall have all the immunity with regard to past actions of the Corporate Debtor and we also pass an order that the successful Bidder gets all rights, tittle and interest in whole and every part of the Corporate Debtor with all the assets of the Corporate Debtor.

24. The liquidator shall seek into the residuary issues, if any, and sort out the same under Section 35(1) of the Code, 2016.

25. Copy of this Order shall be forwarded within 7 (seven) days to the concerned authorities and the Registrar of Companies, NCT of Delhi and Haryana having jurisdiction, for further necessary action as prescribed under Law and for updating the status of Corporate Debtor. We direct the Registrar of Companies, NCT of Delhi and Haryana to change the status of the Corporate Debtor in RoC records as active from the status of liquidation.

26. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and for taking necessary steps.

File be consigned to records.

Sd/-	**Sd/-**
ATUL CHATURVEDI **MEMBER (TECHNICAL)**	**BACHU VENKAT BALARAM DAS** **MEMBER (JUDICIAL)**