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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA(IBC)/335/CHE/2023 in IBA/911/2019

(filed under Section 35(n) of the Insolvency & Bankruptcy Code, 2016)

Along with

IA(IBC)/397/CHE/2023 in IBA/911/2019

*(filed under Section 32(e) read with 60(5) of the Insolvency & Bankruptcy Code,
2016)*

In the matter of Shriram SEPL Composites Private Limited

Ajay S Jain

Liquidator of

M/s. Shriram SEPL Composites Pvt. Ltd.

Flat – 10G, 10th Floor, Bhavya Block,

Sri Mahalakshmi Utsav Apartment,

339, KH Road, Ayanavaram,

Chennai – 600 023

... Applicant / Liquidator

Order pronounced on 12th October 2023

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant : Jayanthi K Shah, Advocate

ORDER

Per: VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IA(IBC)/397(CHE)/2023 is an application filed by the Liquidator of the Corporate Debtor viz. Shriram SEPL Composites Private Limited, under section 32(e) and 60(5) of the IBC, 2016 seeking relief as follows;





- a. *To approve the auction sale dated 26.08.2022 of Corporate Debtor as going concern under Section 32e of IBC.*
- b. *To grant the Applicant such further relief which this Hon'ble Tribunal may deem fit and proper in the circumstance of this case and in the interest of the Applicant and thus render justice.*

2. IA(IBC)/335(CHE)/2023 is an application filed by the Liquidator of the Corporate Debtor viz. Shriram SEPL Composites Private Limited, under Regulation 35(n) of IBC, 2016 seeking to grant relief and concessions to the successful auction purchaser.

3. This Tribunal vide its order dated 28.04.2022 passed in IA(IBC)/287(CHE)/2022 has ordered for Liquidation of the Corporate Debtor.

4. Thereafter, in the 2nd Stakeholders Consultation Committee meeting held on 05.08.2022, it was decided to sell the Corporate Debtor as a going concern as per Regulation 32(e) of the IBBI (Liquidation Process) Regulations, 2016. In pursuance of the same, the Liquidator published the sale notice for Sale of the Corporate Debtor as a going

concern on 10.08.2022 and issued the E-auction process information document.

5. It is stated the one bidder participated and paid the EMD of Rs.5,00,000/- (Rupees Five Lakhs Only). Thereafter, the letter of intent was issued by the Liquidator and the successful bidder provided the proposed acquisition structure as well as shareholding patterns which would come into force after completion of the sale. The Affidavit and undertaking as required under Section 29A of IBC, 2016 was also submitted by the successful bidder to the Liquidator.

6. It is stated that the said bidder paid the balance sale consideration of Rs.49,00,000/- (Rupees Forty Nine Lakhs only) to the Liquidator.

7. It is stated that the successful auction purchaser vide his letter dated 16.09.2022, had sought for reliefs and concessions for the proposed Sale as a Going Concern. Since the said reliefs and concessions can only be granted by this Tribunal, the Liquidator has moved the present Application before this Tribunal.

8. Heard the submissions made by the Learned counsel for the Liquidator. It is seen that the Liquidator has already sold the Corporate Debtor as a going concern to the successful bidder.

9. It is also seen that the successful bidder has submitted the Affidavit under Section 29A of IBC, 2016 before the Liquidator stating that he is eligible to take over the Corporate Debtor as a going concern.

10. The Hon'ble NCLAT in the matter of **M/s Shiv Shakti Inter Globe Exports Pvt. Ltd. Vs. KTC Foods Pvt. Ltd. Through Liquidator, Mr. Anup Kumar Singh & Anr.** in *Company Appeal (AT) (Insolvency) No. 650 of 2020* has extended the 'clean slate' principle to going concern sale under liquidation. It has held in para 21 as follows;

21. Adverting to the contention of the Learned Counsel for the Appellant that the Adjudicating Authority has erred in denying the sale of the 'Corporate Debtor' as a 'going concern' to the Appellant without including any contingent liabilities, we hold that it is a settled law that when the sale proceeds of a 'Corporate Debtor' are duly distributed in the Order of priority and in the manner prescribed under Section 53 of the Code, claims of any other Creditor cannot be entertained contrary to the provisions entailed under Section 53; subsequent to the distribution of sale proceeds under Section 53 no other entity including any Government entity can claim any past unpaid or outstanding dues against the Appellant who has purchased the 'Corporate Debtor

Company' as a 'going concern'. It is significant to mention that the second Respondent/Liquidator has specifically submitted that even these claims by the Uttar Haryana Bijili Vitran Nigam were not submitted in the prescribed form either during the CIRP Process or at the Liquidation stage. We are of the considered view that at this stage subsequent to the sale of the 'Corporate Debtor Company' as a 'going concern', these claims cannot be foisted upon the Appellant. The scope and objective of the Code is to extinguish all claims specifically the ones which were not even made during the CIRP or in the Liquidation stage, to aid the purchaser of the Company as a 'going concern' to start on a 'clean slate'. The Hon'ble Supreme Court in 'Ghanshyam Mishra & Sons Pvt. Ltd.' Vs. 'Edelweiss Asset Reconstruction Company Ltd. & Ors.', Civil Appeal No. 8129 of 2019 and in 'CoC of Essar Steel India Ltd.' Vs. 'Satish Gupta & Ors.' (2020) 8 SCC 531 has laid down the proposition that the purchaser of the Company even in the Liquidation stage cannot be burdened with past liabilities when it is not mentioned in the 'Sale Notice'.

(emphasis supplied)

11. Thus, taking into consideration the attendant facts and the circumstances of the present case, the Application filed for Sale as a Going Concern by the Applicant deserves to be allowed. We order accordingly.

12. Apart from the above, the Applicant has also sought for certain relief and concessions, which are set out in para 12 of the Application.

These reliefs are ordered as follows;



S. No	RELIEF/CONCESSION AS SOUGHT	ORDERS THEREON
1.	The Successful Bidder shall not be responsible for any other claims, liabilities or obligations, under any guarantees etc. payable by Corporate Debtor as on date of the closure of liquidation process of the Corporate Debtor to the creditors or any stakeholders including the government dues. All the liabilities of Corporate Debtor as on date of the closure of liquidation process of the Corporate Debtor shall be extinguished.	Granted
2.	Any proceedings pending against the Corporate Debtor (other than against the erstwhile promoters or the former members of the Corporate Debtor) as on date of the closure of liquidation process of the Corporate Debtor with respect to its liabilities / inquiries / investigations / assessment / claims / disputes / litigations, etc., shall not have any bearing against the assets sold in the process. The said assets are free from any financial implications arising out of any pending proceedings before relevant authorities, if any, further noncompliance of provisions of any laws, rules, regulations, directions, notifications, circulars, etc. on the Corporate Debtor under various Acts and Regulations shall be extinguished.	Granted in terms of Section 32A of IBC, 2016
3.	The Successful Bidder / Corporate Debtor shall have the right to review and terminate any contract that was entered into prior to the date of the closure of liquidation process of the Corporate Debtor.	Granted
4.	The Assets specified in the e-auction process memorandum, shall vest with the successful bidder, the erstwhile promoters or any member, associate to the existing and Erstwhile promoter groups shall be restrained from doing any business directly or indirectly in connection with the	Granted

	products and services present offered by the Corporate Debtor and transferring any such IPR.	
5.	The Successful Bidder shall not held responsible / liable for any of the past liabilities of the Corporate Debtor. The Liquidator and Successful bidder shall take all the steps required to make accounting entries for the smooth transmission and clearing the balance sheet.	Granted in terms of Section 32A of IBC, 2016
6.	To allow issuance / renewal of all kinds of licenses / permissions / approvals	Granted in terms of Section 32A of IBC, 2016
7.	The Liquidator shall provide all support and assistance to the successful bidder for the smooth functioning of the Corporate Debtor to complete the acquisition.	The Liquidator is directed to ensure smooth transition of records of the Corporate Debtor to the Successful bidder.
8.	To exempt income / gain / profit raised by various statutory authorities, if any, arising pursuant to acquisition of Corporate Debtor and further shall exempt from stamp duty and tax liability.	This is for the appropriate authorities to consider

13. In terms of the above, the Application for sale of "Corporate Debtor as a going concern" stands allowed. The Liquidator, after distributing the proceeds to the stakeholders as per Section 53 of IBC, 2016 may file an Application under Regulation 45(3) of the IBBI

(Liquidation Process) Regulations, 2016 for closure of Liquidation process.

14. With the above said directions, IA(IBC)/335/CHE/2023 and IA(IBC)/397/CHE/2023 stands **disposed of**.

— Sd —

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

— Sd —

SANJIV JAIN
MEMBER (JUDICIAL)

Raymond