

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
COURT III, MUMBAI BENCH**

**I.A 794 of 2023**

**In**

**CP (IB) 1667 of 2018**

Filed Under Section 60(5) of the Insolvency and Bankruptcy Code

*Filed by*

**Plutus Investments and Holding Private Limited  
..... Applicant**

*Versus*

**Mr. Amit Gupta,  
Liquidator of Provogue (India) Limited  
.....Respondent**

*In the matter of*

**Andhra Bank**

**.....Financial Creditor**

*Versus*

**Provogue (India) Limited  
.....Respondent**

Order Reserved On: 06.03.2023

Order Pronounced On: 25.04.2023

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Madhu Sinha, Member (Technical)

*Appearances (via video conferencing)*

**For the Applicant :** Mr. Abhijeet Sinha, Mr. Rohan Rajadhakshaya, Mr. Hardeep Sachdeva, Mr. Kamal Shankar, Mr. Ravi Bhasin, Priyamvada Shenoy, Ms. Swati Sharma, Mr. Mukund Rawat, Advocates.

**For the Respondent:** Ms. Pooja Mahajan, Ms. Mahima Singh, Mr. Savar Mahajan, Ms. Mehak Nayak, Mr. Jinesh Gandhi, Advocates.

**Per: Smt. Madhu Sinha, Member (Technical)**

**ORDER**

The present Application is being filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 by Plutus Investments and Holding Private Limited (hereinafter referred to as “**Applicant / Successful Bidder**”) seeking permission of this Tribunal to execute and conclude the Purchase/Acquisition of Provogue (India) Limited (hereinafter referred to as “**Corporate Debtor**”) as a whole on a going concern basis under Liquidation by way of an implementation of the Acquisition Plan submitted along with certain reliefs, concessions, directions, dispensations and exemptions from this Tribunal which are necessary to acquire the Corporate Debtor as a going concern.

A. Brief Submission on behalf of the Applicant:

- i. The Corporate Debtor i.e. Provogue (India) Limited was ordered to be placed under CIRP vide an Order dated 25.07.2018 by the Adjudicating Authority. During CIRP, no Resolution Plan was approved by the Committee of Creditors (**COC**) of the Corporate Debtor. Hence, this Tribunal vide an Order dated 14.10.2019, directed the Liquidation of the Corporate Debtor and Mr. Amit Gupta was appointed as the Liquidator.
- ii. Subsequently, Mr. Amit Gupta (hereinafter referred to as the Respondent/Liquidator), in accordance with the Insolvency

and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 issued a Public notice and Process Document on 25.11.2022 calling the stakeholders to submit their claims along with the proof for acquisition of the Corporate Debtor as a whole on a going concern basis on an “*as is where is*”, “*as is what is*”, “*as is how is*” and “*without recourse basis*” and in accordance with the Insolvency and Bankruptcy Code, 2016.

- iii. Pursuant to the Public Notice dated 25.11.2022 issued by the Respondent, the Applicant i.e., Plutus Investments and Holding Private Limited with a view and objective to expand its operations in India submitted a binding bid of Rs. 90,01,00,000/- (Rupees Ninety Crores and One Lakh Only) for acquiring the Corporate Debtor Provogue (India) Limited.
- iv. With regards to the review of the expression of interest (“EOI”) along with the supporting documents and submission of the earnest money deposit (“EMD”) amounting to Rs. 10,40,00,000/- (Rupees 10 Crores 40 Lakhs Only) in terms of the Process Document dated 25.11.2022 issued by the Respondent, the Applicant was identified as a “Qualified Bidder”. Thereafter, the bid was undertaken by way of an e-auction process on 23.12.2022, whereby the Applicant was declared as the Successful Bidder.

- v. Thereafter, the Respondent issued a Letter of Intent (LOI) dated 23.12.2022 to the Applicant, subject to the fulfilment of the conditions specified therein, including inter alia, the balance payment of Rs. 79,61,00,000/- (Rupees Seventy-Nine Crores and One Lakh Only), plus applicable taxes ("Balance Consideration"), after the adjustment of EMD to the Liquidation Account by 23.03.2023. Provided, however, an interest at the rate of 12% per annum will be applicable on payment made by the Applicant after 22.01.2023 (i.e., after 30 days from the date of LOI).
- vi. The Applicant has submitted the detailed Acquisition Plan to the Respondent for the purpose of acquiring the Corporate Debtor as a going concern ("Acquisition Plan"). A copy of Letter dated 18.01.2023 and the Acquisition Plan submitted by the Applicant to the Respondent is annexed to the Application. The Applicant submits that in terms of the Acquisition Plan, the Applicant is to directly acquire 100% of the share capital of the Corporate Debtor. However, 1 share of the Corporate Debtor will be allotted to Mr. Ramesh Keshubai Siyani, as a nominee of the Applicant, to comply with the provisions of the Companies Act, 2013. Further, the Applicant states that the Corporate Debtor is a "Listed" company and as per the Acquisition Plan, if the Company is not converted into a

private company pursuant to the NCLT order within a period of 6 months from the Effective Date, certain shares of the Company allotted to the Successful Bidder on the Effective date will be transferred by the Successful Bidder to six different nominees of the Successful Bidder in order to comply with the provision of the Companies Act.

- vii. The Applicant submits that the Total Consideration payable for the acquisition of the Corporate Debtor as a whole, on a going concern basis, is Rs. 90,01,00,000/- (Rupees Ninety Crores and One Lakh Only) out of which the Earnest Money Deposit (EMD) of Rs. 10, 40,00,000/- (Rupees Ten Crores Forty Lakhs Only) has been remitted to the Liquidation Account. the Balance Consideration of Rs. 79,61,00,000/- plus applicable taxes after the adjustment of the EMD, was to be paid to the Liquidation Account by 23.03.2023. The payment of the Total Consideration shall be towards full and final settlement of all the liabilities of the Company to all the stakeholders and acquisition of the Company as a whole, on a clean slate as a going concern. The Applicant has also submitted a declaration to the Respondent stating that Applicant is not barred from acquiring the Corporate Debtor.
- viii. The Applicant submits that the Acquisition Plan submitted by to the Respondent is akin to a Resolution Plan under Section

31 of the IBC, since Regulation 32(e) of the Liquidation Regulations clearly provides that a liquidator may sell a corporate debtor as a going concern. The Applicant has made a reference to the definition of 'resolution plan' under Section 5(26) of the IBC which provides that a resolution plan means a plan for insolvency resolution of the corporate debtor as a going concern in accordance with Part II of the IBC, which also includes Chapter III (Liquidation Process) of the IBC. Therefore, a combined reading of these provisions of the IBC indicates that the scheme of the IBC and the Liquidation Regulations intend to confer benefits and reliefs to an applicant acquiring a corporate debtor as a going concern during liquidation proceedings of the same nature as contemplated for a resolution plan approved under Section 31 of the IBC. It is also pertinent to mention that the exemptions/relaxations provided under applicable laws shall apply mutatis mutandis to a corporate debtor as a going concern in liquidation, was applicable to a successful resolution applicant on approval of Resolution plan under Section 31 of the IBC.

- ix. The Applicant submits that the contents of the Acquisition Plan submitted by it to the Respondent shall be read as part

and parcel of the present Application and the contents thereof are not repeated herein for the sake of brevity.

- x. The Applicant submits that in order to acquire the Corporate Debtor as a going concern, and to maximize the value of the Corporate Debtor, the Applicant would require certain reliefs, concessions, directions, dispensations and exemptions from this Hon'ble Tribunal which have been mentioned in detail in the Acquisition Plan and also prayed for in the present Application.
- xi. Further, pursuant to the issuance of the LOI by the Respondent and in accordance with the Process Document, the Applicant has submitted the Acquisition Plan for acquiring the Corporate Debtor on a clean slate basis and as a going concern, in accordance with Section 32A of the IBC and for setting out the reliefs, concessions, exemptions in respect of the acquisition of the date on which the Balance Consideration is paid in accordance with the LOI and the Liquidator simultaneously issues the Sale Certificate (such date being hereinafter referred to as the ("**Effective Date**"), as envisaged under the Acquisition Plan. In this regard, the Applicant has placed its reliance in the matter of ***Nitin Jain Liquidator PSL Limited vs. Enforcement Directorate, 287(2022)DLT 625***, wherein it was held that:

*“Undisputedly and as has been explained in the decisions of the Supreme Court noticed above, maximization of value would be clearly impacted if a resolution applicant were asked to submit an offer in the face of various imponderables or unspecified liabilities. The amendment to sub-Section (1) of Section 31 and the introduction of Section 32A undoubtedly seek to allay such apprehensions and extend an assurance of the resolution applicant being entitled to take over the corporate debtor on a fresh slate. Section 32A assures the resolution applicant that it shall not be held liable for any offense that may have been committed by the corporate debtor prior to the initiation of the CIRP. It similarly extends that warranty in respect of the properties of the Corporate Debtor once a resolution plan stands approved or in case of a sale of liquidation assets”*

- xii. The Applicant further has relied upon various case laws of various National Company Law Tribunals to support his claim, the relevant one is extracted as below:

*The Hon'ble Tribunal in the matter of **Bank of Baroda v. Topworth Pipes & Tubes Private Limited. Southern Online Bio-Technologies Ltd.** vide an order dated March 9, 2021*

*granted reliefs similar to the ones prayed for by the Applicant  
in the present Application.*

*"28. In the normal parlance "going concern" sale is transfer of assets along with the liabilities. However, as far as the going concern sale in liquidation is concerned, there is a clear difference that only assets are transferred and the liabilities of the Corporate Debtor has to be settled in accordance with Section 53 of the IBC and hence the purchaser of this assets takes over the assets without any encumbrance or charge and free from the action of the Creditors"*

*This Bench feels that following are the advantages of selling the Corporate Debtor "as a going concern"*

- a. The entity ie, the Corporate Debtor itself gets transferred;*
- b. The equity shareholding gets transferred or extinguished and new shares are issued;*
- c. The purchaser is expected to carry on the business of the Corporate Debtor after the sale of assets is confirmed;*
- d. The existing employees will have a chance to Continue in their employment.*

*The decision to sell the Corporate Debtor as a going concern is taken by the Liquidator himself or in*

*consultation with the Creditors / stakeholders and the proceeds from the sale of assets are going to be utilised for distribution to the Creditors in the manner specified under Section 53 of the IBC. Hence all the Creditors of the Corporate Debtor get discharged and the assets are transferred free of any encumbrances. The legal entity of the Corporate Debtor however survives."*

**The reliefs sought by the Applicant are as follows:**

**INTERIM RELIEFS**

- a. Direct that no penalty shall be levied on/payable by the Applicant for the time period taken by this Tribunal to approve the Acquisition Plan and the reliefs, waivers, exemptions and dispensations set out thereunder;
- b. Direct the Respondent to not utilize any part or whole of the EMD and, or the Balance Consideration till the issuance of the Sale Certificate and further direct that the Respondent shall keep all such amounts received in trust for the Applicant and or the Corporate Debtor until the issuance of the sale certificate;
- c. Direct the Respondent to consult the Applicant prior to implementing or undertaking any of the following key actions as set out in Section 2.4 of the Acquisition Plan including the following

actions as set out hereinbelow given that the EMD has been remitted to the Liquidation Account and the Applicant is substantially invested in the business operations of the Corporate Debtor and given that the actions implemented by the respondent prior to the effective date will, directly or indirectly, impact the Corporate Debtor and the Applicant after the Effective Date:

- any change in the scope, nature and, or, activities of the business being undertaken by the Corporate Debtor, the closure of any existing business of the Corporate Debtor, or the commencement of any new line of business by the Corporate Debtor;
  - changing any salary structures/ employee benefits and hiring any new employees;
  - making any payments to any persons or incurring any expenses which in aggregate are above INR 10,00,000/- (Indian Rupees Ten Lakhs Only);
  - entering into, varying, modifying, waiving benefits, or terminating any new contract of the Corporate Debtor;
  - undertaking any action set out under Section 28(1) of the IBC.
- d. Pass appropriate order confirming that, the time period taken by this Hon'ble Tribunal to approve the Acquisition Plan and the reliefs, waivers, exemptions and dispensations set out in the Acquisition

Plan shall be excluded and not taken into consideration, for reckoning the time period for payment of the Balance Consideration from the date of filing the present Application till its disposal and the timeline for making such balance consideration, as mentioned in the LOI and the Liquidation Regulations shall stand extended by such time period and

- e. Pass such orders as this Hon'ble Tribunal may deem fit and necessary under the circumstances in the interest of Equity and Justice.

*FINAL RELIEFS*

- I. Allow the present Applicant and further approve the Acquisition Plan, being Exhibit No. F to the present Applicant as submitted by the Applicant;
- II. Grant the reliefs, concessions, waivers for the successful implementation of the Acquisition Plan as set out in Schedule -A annexed to the Present Application, including but not limited to the following, that:
  - the Applicant shall acquire the Corporate Debtor on a clean slate/fresh slate with a "clean break" from the period prior to the Effective Date i.e., from the period prior on which the Balance Consideration is paid in accordance with the LOI and the Liquidator issuing the Sale Certificate;

- any and all Liabilities of the Corporate Debtor relating to any period prior to the Effective Date shall immediately, irrevocably and unconditionally stand extinguished, cancelled, settled and annulled in accordance with Section 53 of the Code.
- direct the Respondent to cooperate with the Applicant in the successful and smooth implementation of the Acquisition Plan;
- direct the requisite governmental/ non-governmental authorities, agencies, forums, to grant reliefs, concessions, waivers, etc as claimed for in in the Acquisition Plan and as defined in Schedule - A to the present Application.

III. Pass any other/further order(s) as this Hon'ble Tribunal may deem fit and appropriate in the facts of the present case.

The Applicant submits that the reliefs and concessions sought by the Applicant are necessary and important for the Acquisition of the Corporate Debtor on a going concern basis and to enable the Applicant to run the business of the Corporate Debtor with a clean break from the past. In the absence of such reliefs and concessions, the Acquisition Plan may become unviable and unfeasible leading to further depletion of value of the assets of the Corporate Debtor and may create hardship to numerous employees and labours.

**B. Submissions made by the Respondent/Liquidator are as follows:**

- a. The Respondent has filed the Written Statement on 09.03.2023 stating that the Respondent per se has no objections to the reliefs and concessions being granted to the Applicant in accordance with applicable laws. However, the Respondent submits that no relaxation/ dispensation can be granted to the Applicant with respect to the following obligations:
- Payment of the entire balance sale consideration of Rs. 79.61 Crores ("Balance Sale Consideration) by 23 March 2023, being the date of expiry of 90 days from the date of demand (i.e., 23 December 2022).
  - Payment of interest at the rate of 12% p.a. on payment made after 30 days from the date of demand (i.e., after 22 January 2023).
- b. The Respondent submits that the above requirements need to be met by the Applicant as per the applicable provisions of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("Liquidation Regulations") and the E-Auction Process Memorandum ("Process Document) dated 25 November 2022 issued by the Respondent. In this regard, the Respondent has relied on

Clause 12 of Part I of Schedule I of the Liquidation Regulations,  
which provides as follows:

*"On the close of the auction, the highest bidder shall be invited to provide balance sale consideration within ninety days of the date of such demand: Provided that payments made after thirty days shall attract interest at the rate of 12%: Provided further that the sale shall be cancelled if the payment is not received within ninety days."* (Emphasis Supplied)

- c. Further, the Respondent has relied on the following terms of the Process Document:

**Clause 1.18:** Sale of CD as a going concern is on "As is where is basis", "As is what is basis", "Whatever there is basis" and "No recourse basis"

**Clause 10.2:** *On being declared as Successful Bidder, the said Successful Bidder shall be required to complete the sale of the CD as a going concern in accordance with the provisions of the Code and the Liquidation Regulations*

**Clause 10.3:** *After identification of Successful Bidder and payment of entire Consideration within the timelines as specified in Clause 16, the Liquidator and/or Successful Bidder shall have the right to*

*approach the Hon'ble NCLT for obtaining reliefs/  
suitable directions for the effective implementation  
of such sale.*

**Clause 10.4:** *The Successful Bidder agrees that it shall be bound to pay the balance sale consideration for consummation of sale of CD as a going concern within the time frame stipulated in the Liquidation Regulations. It is clarified that any necessary approvals, consents, reliefs that may be required to be obtained by Successful Bidder with respect to sale of CD as a going concern as contemplated in the Process Document have to be obtained by the Successful Bidder without any deviation from the time frame for payment of balance sale consideration as stipulated under the Liquidation Regulations.*

**Clause 10.5:** *Any failure to obtain such necessary approvals, consents, reliefs that may be required by the Successful Bidder in respect of sale of CD as a going concern shall not affect the e- auction process and sale of CD as a going concern. On payment of the full amount, the sale of CD as a going concern shall stand completed and the Liquidator shall*

*execute a certificate of sale/ sale deed/ Invoice/  
Transfer Documents to consummate the sale  
transaction.*

**Clauses 12.5 and 12.6:** *The Liquidator shall issue to the Successful Bidder, a Letter of Intent after closure of the e-Auction, inviting the Successful Bidder to pay the balance sale consideration within the timeframe set out in Clause 16 of the Process Document. The Successful Bidder shall deposit the balance sale consideration within 90 days from the date of such demand; provided that payments made after 30 days shall attract interest at the rate of 12% per annum and further that the sale shall be cancelled if full payment is not received within 90 days.*

**Clause 16:** *This clause specifies the process timelines. Point 10 of the table clearly stipulates the requirement to pay entire balance sale consideration within 90 days of the date of demand as also interest at the rate of 12 % p.a. on payment made after 30 days.*

In light of the above, it is re-iterated that in order for the sale to be concluded, the Applicant is required to pay the entire balance sale

consideration of INR 79.61 Crores by 23 March 2022 along with interest at the rate of 12% p.a. on payment made after 22 January 2023 as per the LOI terms. As far as the various directions sought by the Applicant against the Respondent are concerned, it is submitted that once the required payments, as mentioned above, are made by the Applicant in accordance with the requirements of the Liquidation Regulations and the Process Document, the Respondent will take necessary steps to conclude the sale and cooperate with the Applicant on a best-efforts basis towards smooth handover of the CD as a going concern to the Applicant.

### **FINDINGS**

1. Heard the Counsels appearing for the Applicant and the Respondent and perused the documents, written submissions placed on record. The Applicant in the present case is seeking certain reliefs and concessions for the effective implementation of the Acquisition plan of the Corporate Debtor as a going concern.
2. The Bench notes that the Letter of Intent (LOI) dated 23.12.2022 was issued to the Applicant/Successful Bidder i.e. **Plutus Investments and Holding Private Limited** for “sale of Provogue (India) Limited (In

*Liquidation) as a going concern at a bid price of Rs. 90,01,00,000/- (Rupees Ninety Crores and One lakh Only) .”* Further, the Successful Bidder out of the total Bid Amount of Rs. 90,01,00,000/- had deposited an amount towards the Earnest Money Deposit (EMD) in tranches amounting to Rs. 10,40,00,000/- on 19.12.2022 and 21.12.2023 respectively, leaving the Balance Consideration of Rs. 79,61,00,000/- plus applicable taxes at the time of filing this Application. Subsequently, the Applicant submitted an Additional Document dated 06.03.2023, showing evidence of a payment amounting to Rs. 20 crores vide RTGS on 03.03.2023 in the Liquidation Account of Corporate Debtor.

3. The Respondent filed a Written Statement dated 09.03.2023 and stated that he has no objections per se to the reliefs and concessions prayed by the Applicant prayed in the present Petition, however has stated that no relaxation/dispensation can be granted in applicability of the interest at the rate of 12% on the payment of Balance Consideration made after 30 days from the date of the demand (i.e., 22.01.2023), and payment of the Balance Consideration of Rs. 79.61 crores is bound to be made by 23<sup>rd</sup> March 2023, being the expiry date of 90 days from the date of Demand (i.e., 23 December 2022). The Respondent to substantiate the contention raised has drawn the attention of this Bench to the terms and conditions of the Letter of Intent dated 23.12.2022 and apart this contention also stated that these payment obligations under the stipulated timelines prescribed under the LOI is required to be met as per the applicable provisions of Insolvency and Bankruptcy Board of India (Liquidation

Process) Regulations, 2016 and the E-Auction Process Memorandum dated 25.11.2022.

4. The record reveals that the LOI was issued by the Liquidator on 23.12.2022 and the and terms of Schedule 1 Clause 12 of the Liquidation Regulations states that, “*the highest bidder shall be invited to provide balance sale consideration within 90 days from such demand and payments made after 30 days shall attract interest at the rate of 12%.*”
5. Having gone through the above submissions made by the both sides. It would be material to see if the prayed reliefs and concessions by the Successful Bidder for implementation of the Acquisition Plan for the Corporate Debtor concerned, falls outside the purview of IBC, or within. We find that it would be a matter of applying facts to the law. From the counter submission and relevant clauses of the documents placed on record by the Respondent, it is amply clear that the Applicant/Successful Bidder as per the Clause 12.5 and Clause 12.6 of the Process Document dated 25.11.2022 and Schedule 1 Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016 is bound to pay the interest an interest @ 12% p.a. in case if there is any delay in payment of Balance Consideration after 30 days (i.e., 22.01.2023 in this case)
6. Considering the above facts and circumstances, we direct the Successful Bidder/ Applicant to deposit the Balance Consideration with applicable interest and taxes as per the terms of the LOI and above cited regulations. In case if it is not paid till date, we direct the Applicant to deposit the Balance Consideration within 30 days of this order else it

shall result in forfeiture of the EMD and cancellation of sale of the Corporate Debtor. Further, the Successful Bidder shall be liable to deposit the balance sale consideration along with 12% p.a. interest onwards 22.01.2023 onwards (after 30 days of date of demand ) in accordance with Schedule 1 Regulation 12 of the Liquidation Regulations. However, the Counsel for the Applicant made submissions in open court during the last hearing of the case that the entire Balance consideration has been paid along with the interest of 12% p.a. and applicable charges which was admitted by the Counsel of the Respondent/Liquidator. Thus, the prayer clause (i) and (iv) of the present Petition becomes infructuous on the account of payment of the Balance Consideration made by the Applicant to the satisfaction of Liquidator/Respondent.

7. The said sale consideration shall be distributed by the Liquidator in terms of Section 53 of the Code. Further, as on the date of approval by the Adjudicating Authority, all such claims which are not a part of statement of claims, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the statement of claims.
8. For the sake of clarity and convenience, the reliefs sought by the Applicant and Bench's decisions on the same are tabulated hereinbelow:

| <b>Sr. No.</b> | <b>Particulars of the reliefs and concessions</b> | <b>Remarks</b> |
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| i.   | Direct that no penalty shall be levied on/payable by the Applicant for the time period taken by this Tribunal to approve the Acquisition Plan and the reliefs, waivers, exemptions and dispensations set out thereunder;   | Infructuous. Does not arise since the Applicant has already paid the Balance Consideration plus applicable interest and charges as orally admitted by the counsels of both sides in open court.      |
| ii.  | Direct the Respondent to not utilize any part or whole of the EMD and, or the Balance Consideration till the issuance of the Sale Certificate and further direct that the Respondent shall keep all such amounts received in trust for the Applicant and or the Corporate Debtor until the issuance of the sale certificate; | Granted. It is hereby directed that the Respondent/Liquidator to keep the Balance Consideration in trust for the Applicant and/or the Corporate Debtor until the issuance of the Sale Certificate.   |
| iii. | Direct the Respondent to consult the Applicant prior to implementing or undertaking any of the following key actions as set out in Section 2.4 of the Acquisition Plan including the following actions as set out hereinbelow given that the EMD has been remitted to the  | Granted. Since the Applicant will Acquire the Corporate Debtor as a going concern vide the Acquisition Plan which transfers the ownership, in case of any substantial alterations carried out by the |

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| <p>Liquidation Account and the Applicant is substantially invested in the business operations of the Corporate Debtor and given that the actions implemented by the respondent prior to the effective date will, directly or indirectly, impact the Corporate Debtor and the Applicant after the Effective Date:</p> <ul style="list-style-type: none"><li>• any change in the scope, nature and, or, activities of the business being undertaken by the Corporate Debtor, the closure of any existing business of the Corporate Debtor, or the commencement of any new line of business by the Corporate Debtor;</li><li>• changing any salary structures/ employee benefits and hiring any new employees;</li></ul> | <p>Liquidator/Respondent as set out in Section 2.4 of the Acquisition Plan can cause operational or financial impact. Owing to the abovementioned circumstances, the Respondent/ Liquidator is hereby directed to consult or seek prior permission from the Applicant in case implementation of any action stated under Section 2.4 of the Acquisition Plan.</p> |
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|     | <ul style="list-style-type: none"><li>• making any payments to any persons or incurring any expenses which in aggregate are above INR 10,00,000/- (Indian Rupees Ten Lakhs Only);</li><li>• entering into, varying, modifying, waiving benefits, or terminating any new contract of the Corporate Debtor;</li><li>• undertaking any action set out under Section 28(1) of the IBC.</li></ul>                   |   |
| iv. | Pass appropriate order confirming that, the time period taken by this Hon'ble Tribunal to approve the Acquisition Plan and the reliefs, waivers, exemptions and dispensations set out in the Application Plan shall be excluded and not taken into consideration, for reckoning the time period for payment of the Balance Consideration, from the date of filing of the present Application till its disposal | Infructuous. Does not arise since the Applicant has already paid the Balance Consideration plus applicable interest and charges by 23.03.2023 as orally admitted by the counsels of both the sides in open court. |

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|     | and the timeline for making such balance consideration, as mentioned in the LOI and the Liquidation Regulations, shall stand extended by such time period;  |   |
| v.  | Allow the present Application and further approve the Acquisition Plan, being Exhibit No. F to the present Applicant as submitted by the Applicant;   | The Acquisition Plan hereby stands approved subject to the directions of the present order.   |
| vi. | <p>Grant the reliefs, concessions, waivers for the successful implementation of the Acquisition Plan as set out in Schedule -A annexed to the Present Application, including but not limited to the following, that:</p> <ul style="list-style-type: none"><li>the Applicant shall acquire the Corporate Debtor on a clean slate/fresh slate with a “clean break” from the period prior to the Effective Date i.e., from the period</li></ul> | <p>The Bench directs for Schedule A as Follows:</p> <p><u>Section 1. Acquisition Structure:</u></p> <p>Granted. Since the Corporate Debtor is acquired as a going concern ; the entity itself gets transferred, the equity shareholding gets transferred and new shares are issued and the Acquires/Purchaser is expected to carry the business</p> |

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| <p>prior on which the Balance Consideration is paid in accordance with the LOI and the Liquidator issuing the Sale Certificate;</p> <ul style="list-style-type: none"> <li>• any and all Liabilities of the Corporate Debtor relating to any period prior to the Effective Date shall immediately, irrevocably and unconditionally stand extinguished, cancelled, settled and annulled in accordance with Section 53 of the Code.</li> <li>• direct the Respondent to cooperate with the Applicant for the successful and smooth implementation of the Acquisition Plan;</li> <li>• direct the requisite governmental/ non-governmental authorities, agencies, forums, to grant reliefs, concessions, waivers, etc as</li> </ul> | <p>of the Corporate Debtor after the sale of assets is confirmed.</p> <p><u>Section 2: Acquisition Plan Akin to Resolution Plan:</u></p> <p>Granted. Since the applicant should not be saddled with the liabilities that were relating to a period prior to the issue of sale certificate.</p> <p><u>Section 3: Clean Slate:</u></p> <p>Granted. The Applicant shall not be responsible for any other claims/liabilities/obligations, etc. payable by the Corporate Debtor as on this date to the Creditors or any stakeholders including Government Dues. All the liabilities of the Corporate Debtor as on date stand extinguished as far as the Applicant is concerned.</p> |
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| <p>claimed for in in the Acquisition Plan and as defined in Schedule - A to the present Application.</p> <p>Pass any other/further order(s) as this Hon'ble Tribunal may deem fit and appropriate in the facts of the present case.</p> | <p><u>Section 4: Benefits/Reliefs to the Applicant as going Concern:</u></p> <p>Granted. The Liquidator in consulting with the Registrar of the Companies (ROC) concerned shall take action to change the status of the Corporate Debtor in the records of the ROC from the status of "Liquidation" to the status of "active". The concerned ROC shall do the needful.</p> <p><u>Section 5: Co-operation of the Respondent:</u></p> <p>The Liquidator/Respondent is directed to provide all support and assistance to the Applicant for Smooth Functioning of the Corporate Debtor to complete the Acquisition. The Liquidator and the Applicant shall be at liberty to take all the steps required to make accounting</p> |
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|  |  | <p>entries for the smooth transmission and clearing the balance sheet. The Liquidator is directed to ensure completion of pending filings with the Registrar of Companies, Income Tax Authorities and any other Government/Statutory Authorities.</p> <p>As far as the prayer is related to any relief and applicability from the respective Governmental Authorities other than those mentioned under Section 3 above, the Applicant may approach the Authority concerned who would consider such request as per its powers and jurisdiction.</p> |
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9. The Applicant herein vide its prayers sought multiple reliefs to facilitate the scheme of going concern sale of the Corporate Debtor. Considering the matter being for approval of going concern sale of the Corporate

Debtor this bench approves the going concern sale of the Corporate Debtor as per the directions given in the above tabular format.

10. We are of the view that the prayer sought by the Applicant are partly allowed as per the applicability of Regulation 39 C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for the assessment of sale as a going concern. Further the Applicant has placed its reliance on various orders namely; ***Perfect Day Inc. v. Mamta Binani, Liquidator of Setrling Biotech Limited, Southern Online Bio-Technologies Limited*** , etc., wherein the reliefs and concessions are validated which are also essential in the present case for transfer of **Provogue (India) Limited** as a going concern and are partly allowed in favour of the Applicant as a Successful Bidder. Consequently, the Applicant is entitled to take over and run the Corporate Debtor on a clean slate basis subject to the directions.
11. With the aforesaid observation present **I.A. 794 of 2023** stands partly allowed in above terms.

**SD/-**

**MADHU SINHA**  
**MEMBER (TECHNICAL)**

//RENUKA//LRA//

**SD/-**

**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**