

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH-I**

**IA No. 3985/MB/C-I/2023**

**In**

**C.P (IB) No.1315/MB/C-I/2017**

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

Filed by

Rankini Power Generation Private Limited

...Applicant

Versus

Abhijeet MADC Nagpur Energy Private Limited.

...Respondent No.1

Maharashtra Airport Development Company Limited

...Respondent No.2

**In the matter of**

Alchemist Assets Reconstruction Company Limited

...Financial Creditor

Versus

Abhijeet MADC Nagpur Energy Private Limited

... Corporate Debtor

**Order Pronounced on: 13.03.2024**

***Coram:***

Hon'ble Member (Judicial) : Justice V.G. Bisht (Retd.)

Hon'ble Member (Technical) : Mr. Prabhat Kumar

***Appearances:***

For the Applicant : Mr. Gaurav Joshi, Senior Advocate

For the Respondent No.2 : Mr. Amir Arsiwala, Advocate

For the Liquidator : Ms. Shaivi Bhamaria, Advocate

**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. The present Application is filed by the Successful Bidder to place on record the date of issuance of the sale certificate by the Mr. Vinod Kumar Kothari, the Liquidator of Abhijeet MADC Nagpur Energy Pvt Ltd ("Corporate Debtor") as the date of acquisition ("Acquisition Date") of the Corporate Debtor by the Applicant on a going concern basis under Liquidation along with certain reliefs, concessions, waivers and exemptions.
2. The Corporate Debtor was liquidated vide Order dated 31.08.2018. Mr. Vinod Kumar Kothari was appointed as the Liquidator. Pursuant to the commencement of liquidation, the liquidation estate of the Corporate Debtor was formed in accordance with Section 36 of the Code, comprising of all the assets and properties of the Corporate Debtor. On 04.08.2020, the Liquidator invited an expression of interest for the acquisition of assets on a slump sale basis ("Slump Sale Invitation"). The Slump Sale Invitation was published in the All India Edition of Business Standard (English) and Navshakti (Marathi) on 06.08.2020 and 07.08.2020 respectively.
3. On 05.10.2020, Applicant herein submitted their interest for the Slump Sale Invitation along with the pre-requisite earnest money deposit of Rs.2,00,00,000/- (Rupees Two Crores only). Thereafter, the e-auction was conducted by the Liquidator on 21.10.2020, on the e-auction platform Linkstar Infosys Private Limited, at a reserve price of Rs.98,96,00,000/- (Rupees Ninety Eight Crores Ninety Six Lakhs only). In the said e-auction process, Applicant emerged as the Auction Purchaser/HI Bidder.
4. Thereafter, the Liquidator, in terms of the Slump Sale Invitation, issued the Confirmation and Demand Letter to the Applicant on 27.10.2020 thereby calling for the payment of the sale consideration, in the manner laid down in the payment schedule. Subsequently, the payment towards the first tranche, that is, 25% of the

Sale Consideration, less EMD already was paid and the second and final tranche (75% of the Sale Consideration excluding interest) was paid by the Applicant herein on 16.11.2020 and 11.12.2020, respectively.

5. The Liquidator thereafter invited Invitations for the acquisition of the legal entity of the Corporate Debtor on 04.12.2020 (hereinafter referred to as "Legal Entity Invitation"), at a reserve price of Rs.91,50,000/- (Rupees Ninety-One Lakhs Fifty Thousand only). The e-auction was conducted by the Liquidator on 11.12.2020, wherein the Applicant herein emerged as the successful bidder. Soon thereafter, the Confirmation and Demand Letter pursuant to the Legal Entity sale were issued to the Applicant on 11.12.2020, for payment of sale consideration as per the payment schedule ascribed therein. The sale consideration pursuant to the Legal Entity sale was paid by the Applicant on 15.12.2020.
6. The Liquidator after taking into consideration that the Applicant is the successful bidder for both the sale processes, deemed it appropriate, for the sake of convenience, to execute both the Slump Sale and Legal Entity Sale vide a Single documentation process. The two sale processes were certified vide Sale Certificates dated 19.12.2020 and 21.12.2020.
7. The Liquidator, for the Applicant herein to get clarity on the issue of whether the acquisition of the Legal Entity along with the Slump Sale Undertaking of the Corporate Debtor, allowed the Applicant the benefit of continuity of the legal entity. Thereafter, the Liquidator filed an Interlocutory Application No.2504/2020. This Tribunal, vide Order dated 28.04.2023, disposed of Interim Application No.2504/2020 by taking on record the completion of the sale process of the Corporate Debtor and the Liquidation Process, except pending litigation. However, it was stated therein that it is for the Auction Purchaser i.e. Applicant herein to seek the reliefs and

concessions in terms of Para 5.23 of the Interlocutory Application No.2504/2020.

8. Accordingly, the Applicant has sought 51 reliefs and concessions for running the Corporate Debtor as a going concern. Before we delve into a detailed discussion about reliefs and concessions sought by the Applicant it is important to deal with the objections raised by Respondent No.2. Respondent No. 2 is the (a) Special Planning Authority for the notified area u/s. 40 (1B) of the Maharashtra Regional and Town Planning Act, 1966 (Mah XXXVII of 1966) & the “Planning Authority” u/s. 2(19)(a) of the Maharashtra Regional and Town Planning Act, 1966, (b) SEZ Developer entrusted with the duty of development of MIHAN SEZ at Nagpur, (c) Deemed Distribution Licensee entrusted with duties under the proviso to Section 14(b) of the Electricity Act, 2003 and the (d) Project Owner of the land on which the Power Project has been built by the Corporate Debtor/Project Company.
9. The Respondent No.2 submits that a joint venture company i.e. Corporate Debtor was incorporated between M/s Abhijeet Infrastructure Limited (**Project Sponsor**) and the Respondent No.2 (**Project Owner**). The Respondent No.2 submits that it was required to hold 26% equity in the project company as per the concession agreement dated 07.11.2007. The primary grievance of Respondent No.2 is that the Liquidator has entered into an Agreement of Sale with the Applicant without any consent/approval from Respondent No. 2. The Respondent No.2 further submits that the sale agreement could not have been executed as the ownership rights are not vested with the Corporate Debtor.
10. As per Clause 6.2(a) of the Concession Agreement dated 07.11.2007, Clauses 2.2(iii), 3.3(c) and 5.3(a), (g)&(h) along with Schedule-5 of the Shareholders’ Agreement dated 02.04.2009, the Respondent No. 2 is required to hold minimum 26% of the issued equity capital of the Project Company. As per Clause 5.3(h) of the

Shareholders' Agreement dated 02.04.2009, all the shares of Respondent No. 2 i.e., 26% of the shareholding, were required to be transferred to M/s. Abhijeet Infra Limited/Project Sponsor for considerations of the transfer of all the assets of the Corporate Debtor/Project Company to the Respondent No. 2 at the end of the concession period, as set out in the Concession Agreement dated 07.11.2007. Thus, in the event all the shares of Respondent No. 2 i.e., 26% shareholding are extinguished, then the Respondent No. 2 would be unable to receive all the assets of the Project Company at the end of the Concession Period, which are required to be transferred back to Respondent No. 2 on a Build, Operate & Transfer (BOT) basis. Hence, extinguishment of the shares of the Respondent No. 2 would hinder the transfer of the entire Project on a BOT Basis, gravely affecting the public interest, thus, depriving the Respondent No. 2 of its property.

11. The Respondent No.2 submits that assets of the land of the project did not go to the Corporate Debtor and the entire project was to revert back to the Respondent No.2 after the expiry of 33 years from the grant of concession.
12. The Respondent No.2 has raised multifarious objections to the reliefs and concessions sought by the Applicant herein, we have gone through the reliefs sought by the Applicant and the said objections raised by the Respondent No.2. For the sake of brevity, we deem it fit to summarize the objections raised in a nutshell. The Respondent No.2 has opposed all reliefs seeking dilution of its 26% shareholding held in the Corporate Debtor by virtue of Indenture of Lease dated 26.11.2008 and Lease Deed dated 16.06.2010, the shares held by the Respondent No. 2, which were allotted by the Corporate Debtor to the Respondent No. 2 as "Lease Premium", as per the Indenture of Lease dated 26.11.2008 and Lease Deed dated 16.06.2010. The Respondent No.2 has opposed any relief which bestows on the Applicant ownership

rights thereby debaring the Respondent No.2 from exercising its rights pursuant to the agreements entered into between them. Moreover, it is argued that the project company has to shift back to the Respondent No.2 after the expiry of the term, therefore, it is the Respondents case that the reliefs sought jeopardize this understanding and hence are met with resistance from Respondent No.2.

13. The Applicant submits that in paragraph nos. 3.1 to 3.51 of the Application, the Applicant has claimed 51 reliefs & concessions. The Applicant submits that it is not pressing the following reliefs & concessions viz. the reliefs & concessions in paragraph nos. 3.5, 3.6, 3.19, 3.20, 3.21, 3.25, 3.28, 3.39, 3.40 and 3.51.
14. Further, the Applicant has made a statement that it is not seeking to acquire any rights which are better or higher than that of the Corporate Debtor. The Concession Agreement, in Article 2 thereof, provides that the Corporate Debtor was under an obligation to transfer the project to MADC at the end of the term of the Concession Agreement. The Corporate Debtor as well as the Applicant shall be bound by this clause and the Applicant does not seek to retain any benefit which is in violation of the Concession Agreement. Article 2 read as follows:

*“ARTICLE 2*

*...*

*For this purpose, Project Company shall*

*... Transfer the Project to MADC at the end of Term of this Agreement.”*

15. The Applicant, being the successful purchaser in the auction under the Liquidation Process Regulations, has paid more than Rs. 100 crores (as set out hereinafter) to the Liquidator of the Corporate Debtor and aims to continue the Corporate Debtor as a going concern and to enable the power generation business of the Corporate Debtor to continue. The Applicant is pressing only those reliefs & concessions which are absolutely necessary for continuing the Corporate Debtor as a going concern and to

enable the Corporate Debtor to carry out and continue its business of power generation. The continuation of the business of the Corporate Debtor which the Applicant has acquired will aid economic activity, employment generation and substantial generation of revenue for the statutory authorities in the form of taxes, duties, fees and charges.

16. Furthermore, MADC chose not to exercise its rights and terminate the Concession Agreement dated 07.11.2007 at the time of commencement of CIRP and even thereafter, the Concession Agreement was subsisting.
17. The Applicant submits that MADC has advisedly not terminated the Concession Agreement since termination would have, in terms of clause 5.5 of the Concession Agreement, resulted in MADC paying to the Corporate Debtor 90% of the debts, which amounted to more than Rs. 1,800 crores. The relevant clause 5.5 of the Concession Agreement is as follows:

*“5.5 Compensation Upon Termination*

...

*(ii) In the event MADC terminates this Agreement pursuant to Article 5.2 as a result of any other Project Company Event of Default, MADC or its designee shall have the right, but shall not be required, to acquire all of the Project Company’s right, title and interests in and to the Facility:*

*Provided that MADC or its designee, upon such acquisition, shall pay the Project Company the compensation amount equal to 90% of the Total Debt Due. If MADC does not elect to purchase the Facility upon the effective date of the termination as provided in this sub-clause (ii), MADC shall have no further rights or interest in the Facility or obligations to the Project Company under this sub-clause (ii).*

...

*(e) Termination Following Non Political Force Majeure Event.*

*If following a Non Political Force Majeure Event affecting the Facility, MADC*

*pursuant to Article 17 elects to terminate this Agreement, MADC shall pay the Project Company the compensation amount equal to 90% of the Total Debt Due less insurance proceeds if any. Upon payment of such compensation amount, the Project Company shall transfer the Facility to MADC.”*

18. The Applicant submits that since MADC has chosen not to exercise any of its purported rights, MADC cannot now claim that the Liquidator could not have sold the Corporate Debtor's rights, assets and property under the liquidation process under the provisions of the IBC. It is a matter of fact that the Corporate Debtor's transmission lines are continued to be utilized by MADC.
19. We have heard the rival submissions of both sides and perused the record. It is observed that the Applicant does not seek to acquire better rights than those vested with the Corporate Debtor. Moreover, the Applicant is aware that the project company will be remitted back to MADC after completion of the term and does not seek to evade the stipulations contained in the agreements. Further, as far as the contention of the Respondent No.2 qua dilution of shareholding of 26% in Corporate Debtor is concerned it is the admitted position that the shares were allotted by the Corporate Debtor to the Respondent No. 2 in lieu of payment for "Lease Premium", as per the Indenture of Lease dated 26.11.2008 and Lease Deed dated 16.06.2010. The relevant clause is reproduced hereinbelow for reference:

*“AND WHEREAS at the request of the LESSEE, the LESSOR has now agreed to execute this Land Lease Deed in favour of the LESSEE and whereas by mutual agreement the LESSOR has consented to receive from the LESSEE a premium of Rs. 4,07,25,100/- (Rupees Four Crore Seven Lacs Twenty Five Thousand One Hundred Only) in form of equity shares to be allotted by the LESSEE company at their face value towards the said Land as per SHA to be executed within a period of 3 months from the date of execution of this Land Lease Deed and the LESSEE shall*

*develop the said Land strictly in accordance with Concession Agreement to establish, operate and maintain 25 MW DG Set and transmission and distribution system subject to Special Conditions for use, enjoyment and Leasehold Ownership of the said Land agreed between the LESSOR and the LESSEE as set out in Annexure 'B' hereto (hereinafter referred to as 'the said Special Conditions') as hereinafter appearing;*

*NOW THIS INDENTURE WITNESSETH THAT in pursuance of the said Concession Agreement dated 7<sup>th</sup> November, 2007 and in consideration of the premium Rs. 4,07,25,100/- (Rupees Four Crore Seven Lacs Twenty Five Thousand One Hundred Only) to be paid by the LESSEE to the LESSOR in the form of equity shares as aforesaid after the execution of these presents as per the SHA the LESSOR do hereby admit and acknowledge and acquit, release and discharge the LESSEE from the payment and receipt thereof and every part thereof of the total consideration of Rs. 4,07,25,100/- (Rupees Four Crore Seven Lacs Twenty Five Thousand One Hundred Only) the LESSOR do hereby demise unto and to the use of the LESSEE and the LESSEE do hereby accept, confirm and take on lease all that piece or parcel of the said Land on ground situated lying and being in the processing area of the SEZ at Project MIHAN, all that piece or parcel Land on ground situated, lying in Village 'Dahegaon' in the 'Hingna PS' jurisdiction and the Post office is 'Khapri' within the taluka, District of Nagpur (Rural) admeasuring 6.2654 Hectarés equivalent to 62654 Sq. Mtrs. and more particularly described in the First Schedule hereunder written and as shown on the Plan in Annexure 'A' hereto and delineated thereon in red colour boundary line (hereinafter referred to as the Demised Land');...*

20. From a plain reading of the aforesaid clause it is discernible that the arrangement between the parties was such that consideration payable for lease premium was in the form of equity shares of the Corporate Debtor. The contention of the

Respondent No.2 that shareholding of MADC ought not to be extinguished cannot be sustained as the Corporate Debtor is undergoing Liquidation and the proceeds from sale will be distributed in terms of Section 53 of the Code.

21. Further, it is relevant to consider the following clauses of the Concession Agreement dated 07.11.2007 :

*“5.2. Project Company Events of Default-Termination by MADC*

*MADC may give a notice of default under this Agreement (a “MADC Notice of Default”) upon the occurrence of any of the following events (“Project Company Event of Default”), unless such event (i) results from a breach by MADC of this Agreement, or (ii) occurs as a result of or during a force Majeure pursuant to Article 17:*

*... (i) except for the purpose of amalgamation or reconstruction (provided, that such amalgamation or reconstruction does not affect the ability of the amalgamated or reconstructed entity, as the case may be, to perform its obligations under this Agreement), the occurrence of any of the following events:*

*....(iii) the appointment of a liquidator in a proceeding for the winding up of project company after notice to project company and the hearing, which appointment has not been set aside or stayed within ninety (90) of such appointment..*

*5.4 Rights and Remedies upon an event of default*

*(a) Notice of Intent to Terminate*

- i. Upon the occurrence of a MADC Event of Default or a Project Company Event of Default, as the case may be, that is not cured within the applicable period (if any) for cure, the non-defaulting party may, at its option, initiate termination of this Agreement by delivering a notice (a “notice of intent to terminate”) of its intent to terminate this Agreement to the defaulting party.*
- ii. This Notice of intent to terminate shall specify in reasonable detail project*

*company event of default or the MADC event of default, as the case may be, giving rise to such Notice.*

5.5 *Compensation upon termination*

(a) *Project Company event of Default*

- i. In the event MADC terminates this Agreement pursuant to Article 5.2 as a result of project company event of default for failure to timely reach Financial Closure, MADC shall be entitled to encash in full the proposal security.*
- ii. In the event MADC terminates this Agreement pursuant to Article 5.2 as a result of any other Project Company Event of Default, MADC or its designee shall have the right, but shall not be required, to acquire all of the Project Company's rights, title and interests in and to the Facility.*

*Provided that MADC or its designee, upon such acquisition, shall pay the project company the compensation amount equal to 90% of the Total Debt Due. If MADC does not elect to purchase the facility upon the effective date of termination as provided in this sub-clause (ii), MADC shall have no further rights or interest in the facility or obligations to the project company under this sub-clause (ii).*

22. The aforesaid clauses make it clear that MADC i.e. Respondent No.2 had option to terminate the agreement pursuant to project company event of default which includes appointment of Liquidator but the Respondent No.2 has chosen not to terminate the agreement and has not paid the compensation amount equivalent to 90% of the Total Debt Due. Accordingly, now MADC cannot as an after thought contend that it is entitled to benefits as they existed prior to commencement of Liquidation proceedings against the Corporate Debtor as it has not elected to terminate the agreement. Further, it is clear from the indenture of lease that the

equity of the Corporate Debtor was given to the Respondent No.2 in discharge and towards payment of consideration payable as Lease Premium for granting lease of the land. Moreover, since the applicant has submitted that it does not seek to acquire better rights than the Corporate Debtor and has admitted that the project will be remitted back to MADC at the end of term, the objections raised by MADC to sale in favour of the Applicant cannot be considered. However, we make it clear that the rights of MADC under the BOT agreements shall remain protected and the successful bidder shall be bound to transfer the facility in the manner as was obligated for the Corporate Debtor.

23. Coming back to the reliefs and concessions sought by the Applicant, the same will be dealt in accordance with the clean slate principle. At this juncture, we deem it appropriate to refer to the Judgment of the Hon'ble NCLAT in the matter of *M/s Shiv Shakti Inter Globe Exports Pvt. Ltd. vs M/s KTC Foods Private Limited Company Appeal (AT) (Insolvency) No. 650 of 2020*. The relevant paragraphs are reproduced herein:

*“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'.*

*22. It is no longer Res Integra that while approving a 'Corporate Debtor' sale as a 'going concern' in Liquidation Proceedings without its dissolution in terms of Regulation 32(e) of the Liquidation Process Regulations, 2016, it is essential to see that the 'Corporate Debtor' is not burdened by any past or remaining unpaid outstanding liabilities prior to the sale of the Company as a 'going concern' and after payment of the sale proceeds distributed in accordance with Section 53 of the Code."*

24. Further, the Hon'ble NCLAT in the matter of ***Jasamrit Designers Private Limited, vs Mr. Gian Chand Narang Company Appeal (AT) (Insolvency) No. 258 of 2023*** has held as follows:

*"12. We while granting such liberty to the Appellant observe that law is well settled, a successful bidder who is declared as successful bidder of sale as going concern can seek access of the Adjudicating Authority and may pray for necessary directions in accord with*

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*and in consonance with the process document in the liquidation proceedings. In result, we partly allow this Appeal and hold that applicant's prayers i.e. relief/concessions/directions needs consideration by the Adjudicating Authority for which we grant liberty to the Applicant to make a fresh Application containing prayers which may be commensurate and in accord with terms and conditions of the process document of e-auction process document. The Appellant may submit a fresh application praying for reliefs, concessions and directions which may be considered and decided by the Adjudicating Authority in accordance with law. The Appeal is disposed of, accordingly”*

25. The reliefs, concessions and our orders thereon are summarized herein below:

<b>S. No</b>	<b>Concessions / Reliefs / Directions sought</b>	<b>Orders</b>
3.1	Existing shares of Corporate Debtor be extinguished including consideration payable to such shareholders.  Upon NCLT extinguishing the shares, no further approval/ consent be necessary for cancellation of the existing share capital of the Company in terms of Section 66 of the Companies Act, 2013 and no requirement to add the words “and reduced” in the name of the Corporate Debtor.	Granted
3.2	Direction that the Corporate Debtor allots 9,65,000 equity shares and 9,94,60,000 warrants at face value of Rs. 10/- to the Applicant/ its nominees which shall constitute 100% of the paid up share capital of the Corporate Debtor.	Granted in terms of the clean slate principle.
3.3	Direction that from the date of grant of reliefs, the Board of Directors of the Corporate Debtor shall comprise of (i) Ms. Divya Dubey; (ii) Mr. Sanjay Gupta.	Granted.

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3.4	Direction to RoC to record satisfaction of all charges created and which remained unsatisfied prior to the Date of Acquisition and the Liquidator to submit necessary returns in this regard.	Granted, however the rights of the Respondent No.2 in terms of the agreement shall be protected.
3.5	A direction that on and from the present order by this Hon'ble Court, the status of the Corporate Debtor in the records of the relevant Registrar of Companies should be reflected as 'Active' from the status 'under liquidation'.	The said relief is not pressed by the Applicant.
3.6	The status of Corporate Debtor be treated as registered by the ROC in its records with the re-christened name Padmakshi Energy Private Limited	The said relief is not pressed by the Applicant.
3.7	The takeover Balance sheet of the Corporate Debtor ( <b>Ex J/ 108 of Application</b> ) be accepted by the statutory authorities.	The financial statement shall be drawn up and audited in accordance with the provisions of Companies Act, 2013. The statutory authorities shall be at liberty to examine the take over balance sheet in the light of respective law.
3.8	On the acquisition date and onwards the Corporate Debtor has no pre-existing liabilities	Granted in terms of the clean slate

	and the assets reflected in the balance sheet and taken over under the Sale Agreement is under the ownership of the Corporate Debtor and has no charge of any other Creditor.	principle.
3.9	From the acquisition date, no Financial or Operational Creditors shall be entitled to institute or continue legal proceedings against the Corporate Debtor.	Granted in terms of the clean slate principle.
3.10	The creditors (secured or unsecured) of the Company shall be deemed to have issued no objection on the Acquisition Date.  Security created in favour of the secured creditors shall stand extinguished and security documents to be returned to the Corporate Debtor.	Granted in terms of the clean slate principle.
3.11 to 3.13, 3.15, 3.16	All past claims including those under guarantees to stand extinguished.	Granted in terms of the clean slate principle.
3.14	All inquiries, investigations, assessments, notices, causes of action, suits, claims, disputes, litigations, arbitration, or other judicial, regulatory or administrative proceedings in relation to any period prior to the acquisition date be deemed to be withdrawn or dismissed from the date when this Hon'ble Tribunal passes an order in the present Interlocutory Application.	Granted in terms of the clean slate principle.
3.17	All subsisting consents, licences, permits, approvals, rights entitlements, warranties, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to be deemed to continue without disruption and free	The successful bidder shall apply to the relevant authorities and bear the charges/fees prescribed

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	from security interest, encumbrance, claim, counterclaim or any demur, for the benefit of the Company	thereunder. However, the authorities shall not take any adverse view on ground of insolvency of the Corporate Debtor.
3.18	Relevant State or Central agency including the MIHAN SEZ developer to provide immediately the entire requirement of raw water during the pre-operations and for commencement of operations at the power plant	The successful bidder shall apply to the relevant authority and bear the charges/fees prescribed thereunder. However, the authorities shall not take any adverse view on ground of insolvency of the Corporate Debtor.
3.19	Maharashtra State Electricity Distribution Company Limited to provide immediately the entire requirement of start-up power at 220 kv level during the pre-operations and for commencement of operations at the power plant.	The said relief is not pressed by the Applicant
3.20.	Maharashtra Electricity Regulatory Commission to fix the transmission charges in respect of the dedicated 220 kv transmission system of the Corporate Debtor	The said relief is not pressed by the Applicant
3.21	MSEDCL to permit the operating plant to inject infirm power into the state grid during the period prior to fresh COD and at rates approved by the relevant state electricity regulatory commission	The said relief is not pressed by the Applicant

3.22	Government authority (Development Commissioner of MIHAN SEZ) to issue a fresh Letter of Approval (LOA) / renew the earlier LOA	The Applicant is not pressing that an LOA be issued in the name of the Applicant.
3.23	Relevant Central agency including Western Coalfields Limited (“WCL”) to reinstate the Letter of Assurance issued by it to the Corporate Debtor dated 09.04.2012 and to provide at least 12 months from the date of disposal of this petition by this Hon'ble Adjudicating Authority to enable the Applicant to sign the "Fuel Supply Agreement (“FSA”)" with WCL for facilitating the supply of coal and to fulfil any milestones in connection thereto.	The successful bidder shall apply to the relevant authority and bear the charges/fees prescribed thereunder. However, the authorities shall not take any adverse view on ground of insolvency of the Corporate Debtor.
3.24	Relevant Government bodies or agencies to ensure continuance without disruptions in the name of the Corporate Debtor of critical permits/licences/clearances for the earliest resumption of plant operations.	The Authorities shall consider the request for renewal/issuance of fresh licenses/permissions / approvals in accordance with the relevant law and procedure laid down thereunder shall be followed. However, the renewal or

		issuance licenses/ permissions / approvals shall not be denied on the ground of non-payment of dues settled under the Code.
3.25.	Direction that no government authority/ statutory body cancels any arrangement with the Corporate Debtor on account of a change of management or name and all subsisting/ fresh approvals, permits, consents, licences, etc., required for the commencement of operations at the plant should be continued/ issued in the name of the Corporate Debtor without any delay.	Not pressed.
3.26	Bid submitted by the Applicant should be considered to be a resolution plan under Section 79 of the Income Tax Act, 1961 and sale of Corporate Debtor as a going concern should be treated in the same manner as to the implementation of the resolution plan under Corporate insolvency resolution process	The specific reliefs sought under the Income Tax Act shall be put forth before the relevant tax authorities that may consider the same, if permissible under the Act, subject to adherence to the conditions/procedure under the Income Tax Act.
3.27	Brought forward tax losses of the Corporate Debtor to be permitted to be carried forward and set off against future income as a change of shareholding of	The specific reliefs sought under the Income Tax Act

	the Corporate Debtor is pursuant to the bid submitted by the Applicant under the E-Auction Process	shall be put forth before the relevant tax authorities that may consider the same, if permissible under the Act, subject to adherence to the conditions/procedure under the Income Tax Act.
3.28	Any requirements to obtain waivers from any tax authorities including in terms of section 115B of the Income Tax Act, 1961 be deemed to have been granted.	The said relief is not pressed by the Applicant.
3.29	All tax litigations, prosecutions, tax legal proceedings, suits, demands, notices, show-cause notices, demand actions, or arbitration from administrative, judicial, Quasi-judicial, regulatory, government or any enforcement agencies, pending or threatened against the Corporate Debtor be deemed to have been withdrawn or dismissed.	Granted in terms of clean slate principle.
3.30	Corporate Debtor and the Applicant shall not be liable for any taxes, transfer premiums or charges, change of ownership/ control charges for the period prior to the acquisition date.	Granted in terms of clean slate principle. However, any transfer charges payable in terms of land lease agreement shall be payable by the Applicant to the relevant authority.

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3.31	Relevant Governmental Authorities shall not initiate any proceeding in relation to any non-compliance with Applicable Law by the said Company for the period prior to the acquisition date.	Granted in terms of clean slate principle.
3.32	Direction that any non-compliance of provisions of any laws prior to acquisition date be deemed to be extinguished	Granted in terms of clean slate principle.
3.33	Immunity to the Corporate Debtors and/or their directors, employees, shareholders and officers from enquiries from any investigation or any other proceeding, whether civil or criminal including in relation to tax offences and proceedings of any nature of any period prior to acquisition date	The Applicant and/or their directors, employees, shareholders and officers shall be immune from proceedings arising prior to the acquisition date.
3.34	Assets (including properties, whether freehold, lease rent, leasehold or license basis) of the Corporate Debtor shall be vested in totality in the Corporate Debtor free and clear of all charges, lien and encumbrances from the Acquisition Date.	Granted. However, the assets shall be vested in the manner as provided in E-Auction Process Memorandum.
3.35	Any pending property tax, rent, fee or premium be deemed to have been extinguished from the Acquisition Date.	Granted in terms of the clean slate principle.
3.36	Relevant State or Central agency including the MIHAN SEZ developer/ administrator to facilitate the continuance of holding of all plant assets including land, whether leased or pending lease, in name of Corporate Debtor	The relevant agency may consider the request to facilitate the

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		Applicant.
3.37	No further deed to be necessary to be complied with by the Corporate Debtor under the applicable taxes laws and it shall be deemed that all such statutory compliances have stood complied with on the Acquisition Date.	The Applicant shall comply with all necessary compliances under all relevant laws.
3.38	Government authority/ statutory body to permit the Applicant to dispose of any assets or asset class that is no longer required under the plant operations revival plan	Subject to the conditions stipulated under concession agreement, the Applicant shall not be denied permission to dispose of any assets or asset class that is no longer required under the plant operations revival plan.
3.39	Statutory Authorities to release deposits, incentives, benefits, subsidies, etc., if any, due to the Company expeditiously to ensure an early revival of the business of the Company	The said relief is not pressed by the Applicant
3.40	Direction that all the intangible assets belonging to the Corporate Debtor shall remain vested with the Corporate Debtor. The erstwhile promoters or their associate shall be restrained from using and/ or transferring any of the IPR owned by the Corporate Debtor	The said relief is not pressed by the Applicant
3.41	Nothing under this Acquisition shall affect the rights	Granted

	of the Corporate Debtor or the Applicant to recover any amounts due to the Corporate Debtor from any third party. In case of recovery of any such amount or amounts, which have been written off, the Corporate Debtor or the Applicant shall be the sole beneficiary of such amount.	
3.42	Provide the Bidder/Applicant 100% exemption on stamp duty and registration fee and local taxes and levies applicable in respect of any transaction required to be undertaken pursuant to this acquisition	The Applicant will be required to comply with the payment of stamp duty and local taxes and shall be eligible for any relief or exemption, if such relief or exemption is available under the extant law.
3.43	All notifications with regards to defaults filed with Credit Information Bureau (India) Limited any information utility, RBI or any other regulatory authority for and on account of Corporate Debtor shall be withdrawn.	Granted in terms of clean slate principle
3.44	All subsisting consents, licenses, permits, approvals, rights, entitlements, to continue without disruption and all additional licenses, registrations, permits, allocations and consents required by the Corporate Debtor be made available by respective relevant agencies immediately from the Date of the Acquisition	The Authorities shall consider the request for renewal/issuance of fresh licenses/permissions / approvals in accordance with the relevant law and procedure laid

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		down thereunder shall be followed. However, the renewal or issuance licenses/ permissions / approvals shall not be denied on the ground of non-payment of dues settled under the Code.
3.45	Delays in filing of the statutory returns by the Company prior to the Acquisition Date are condoned without any liability of whatsoever nature. Any filing done to regularise the records shall be deemed to have been filed in the normal course within the stipulated time.	The statutory returns shall be drawn up in accordance with the provisions of Companies Act, 2013 and taken on record subject to payment of applicable fees, without recourse to any further penal provision.
3.46	ROC to release all charges on the assets of the Corporate Debtor and record that there are no liabilities in the company	Granted in terms of the clean slate principle.
3.47	Liquidator to cooperate and provide all necessary support and assistance to the Applicant including handing over all papers, documents, relevant letters/notices, fixed asset register of the Company, etc. for the period prior to the Acquisition Date and	Granted.

	that he shall provide all support and assistance in this regard	
3.48	Liquidator to, immediately, write back all the liabilities of the Corporate Debtor, including creditors, trade payables, term loans, working capital loans, tax liabilities, other statutory liabilities, etc. The assets which are not recoverable (debtors, inventories and loans and advances, etc.) should be written down to their realizable value in the financial statements (Profit and Loss Account and the Balance Sheet) of the Corporate Debtor. Financial statements should be prepared and filed by the Liquidator with the relevant regulators such as Registrar of Companies, Income Tax Authorities, etc.	The Liquidator shall do the needful as is customarily he is required to do in relation to sale as going concern. No specific relaxation is being granted.
3.49	All the compliances for the period up to the Acquisition date including filing of necessary documents and returns be completed by Liquidator	Granted, subject to payment of fees for such filing borne by the Applicant. However, the authorities shall not levy any penalty for such late filing.
3.50	Local police station, District Magistrate, local authorities and other civil bodies, having jurisdiction at the plant location to extend cooperation and support in facilitating a smooth resumption of operations at the power plant, in the national interest	Needless to say, the local authorities and administration shall extend cooperation and support as is required for smooth handover

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		and take over of control.
3.51	Corporate Debtors/the Applicant shall be at liberty to approach this Hon'ble Tribunal to address any difficulty faced with respect to the acquisition of the Corporate Debtor as a going concern.	If other wise permissible under the Code, the Corporate Debtor can do so.

26. In terms of the above direction, **IA No.3985 of 2023** is disposed of as **partly allowed**.

**Sd/-**

**PRABHAT KUMAR**  
**MEMBER (TECHNICAL)**

13.03.2024

Priyal

**Sd/-**

**JUSTICE V.G. BISHT**  
**MEMBER (JUDICIAL)**