



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

**I.A. No. 2183 of 2022
IN
CP (IB) No. 1005/(MB) 2019**

Under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016

Prakash Traders

Having address: 9, Imambada Road,
Ghat Road, Nagpur- 440 018

.....Applicant

Vs.

**Avil Menezes, Liquidator of Varron
Autokast Limited**

Having address: Crystal Paradise Cop.
Soc. Ltd., Dattaji Salvi Marg, Above
Pizza Express, Off Veera Desai Road,
Andheri West, Mumbai- 400 053

.....Respondent

In the matter of

Indian Overseas Bank Limited

... Financial Creditor

Vs.

Varron Aukokast Limited

... Corporate Debtor

Order delivered on: 21.07.2023

Coram:

Hon'ble Member (Technical)

Shri Shyam Babu Gautam

Hon'ble Member (Judicial)

Shri Kuldip Kumar Kareer

Appearances:

For the Applicant : Adv. Shyam Kapadia a/w Adv. Himanshu Vidhani,
Adv. Rajeev Vidhani i/b Khaitan & Co.

For the Respondent : Adv. Anirudh Purushothaman

ORDER

Per: Shyam Babu Gautam, Member Technical

1. This is an Application filed by the Applicant, **Prakash Traders**, seeking certain reliefs and concessions from this Tribunal with respect to the sale of the Corporate Debtor in Liquidation as a going concern in order to carry on the business of the Corporate Debtor expediently and thereby achieve value maximisation.
2. The relevant facts in brief are as follows. The Financial Creditor filed a Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”). This Tribunal admitted the Petition and initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor vide **Order dated 13th December 2019**. The Respondent was appointed as the Resolution Professional (RP) of the Corporate Debtor on 17th January 2020. Thereafter, as no resolution plan was received, the Respondent filed an Application before this Tribunal seeking initiation of liquidation proceedings against the Corporate Debtor. Accordingly, vide **Order dated 23rd December 2021**, liquidation proceedings were initiated and the Respondent was appointed as the Liquidator of the Corporate Debtor. Subsequently, the Respondent conducted an e-auction for sale of the Corporate Debtor as a going concern wherein the Applicant emerged

as the successful bidder with the highest bid of Rs. 121,00,00,000/- on **19th May 2022**. By 18th June 2022, the Respondent declared and confirmed the Applicant, a sole proprietorship firm, as the successful bidder after which the Applicant paid the entire consideration to the Respondent. The Applicant then filed this Application on **11th August 2022** seeking certain reliefs and concessions for the purpose of acquisition of the Corporate Debtor as a going concern.

3. The Applicant submits that mere purchase of the Corporate Debtor as a going concern during liquidation is not sufficient for the revival of the Corporate Debtor and, in fact, the Applicant requires certain reliefs and concessions for effective acquisition of the Corporate Debtor on a “fresh slate” basis. It is stated that the acquisition of the Corporate Debtor as a going concern during Liquidation can be treated like a Resolution Plan. Therefore, the successful acquisition and revival of the Corporate Debtor is possible only if these reliefs/ concessions/ permissions are granted by this Tribunal as is granted while approving a Resolution Plan under Section 31 of the Code. The Applicant submits that this Tribunal is, in fact, empowered to grant such necessary reliefs and cites several Orders of various benches of this Tribunal and the Appellate Tribunal (NCLAT) to support this averment.
4. The Respondent has filed **Reply dated 2nd February 2023** to this Application wherein it is submitted that the Respondent, as the Liquidator of the Corporate Debtor, can neither object to nor consent to such reliefs and concessions as sought by the Applicant and hence leaves such decision to the discretion of this Tribunal. Further, it is also submitted that an Application being I.A. 2844 of 2022 has been filed by

the Respondent seeking closure of the Liquidation process of the Corporate Debtor and the same is pending for adjudication before this Tribunal.

FINDINGS

5. We have heard the Counsel appearing for the Applicant and the Counsel appearing for the Respondent. On perusal of the instant Application and other documents on record, it is seen that the Applicant is the bonafide purchaser of the Corporate Debtor as a going concern in Liquidation for a total consideration amount of Rs. 121,00,00,000/- (Rupees One Hundred and Twenty-One Crores only) including the Earnest Money Deposit (EMD) of Rs.7,20,00,000/- (Rupees Seven Crores Twenty Lakhs only). We have noted the confirmation of receipt of the entire Sale consideration issued by the Respondent vide Letter dated 28th July 2022. However, the transfer of the control of the Corporate Debtor in favour of the Applicant is yet to take place. It is submitted that upon issuance of the Sale Certificate and upon occurrence of the Transfer Date, whichever is later, the entire control of the Corporate Debtor along with all the rights, title and interest, will be transferred to the Applicant.

6. In order to buttress the argument with respect to the reliefs sought, the Applicant, *inter alia*, relies on the Hon'ble NCLAT's Order in the case of *M/s Shiv Shakti Inter Globe Exports Pvt. Ltd. Vs. KTC Foods Pvt. Ltd. Through Liquidator Mr. Anup Kumar Singh (Company Appeal (AT) (Insolvency) No. 650 of 2020)* wherein it was observed that:

“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. The Impugned Order in I.A. 889 of 2020 is modified to the extent that the sale of the first Respondent as a ‘going concern’ is upheld and the direction sought for in prayer (c) & (e) in CA No. 1189 of 2019 seeking extinguishment of past/remaining unpaid outstanding liabilities including contingent liabilities, prior to the sale as a ‘going concern’, after payment of sale proceeds distributed in accordance with Section 53 of the Code, is allowed.”

7. Keeping this in view and with regard to the facts and circumstances in the instant Application, it is observed that the request of the Applicant is reasonable and justified. The reliefs and concessions as sought in Paragraph 22 of the Application by the Applicant are indeed necessary and essential to facilitate the full acquisition of the Corporate Debtor and subsequently, revive its business. We are, therefore, inclined to grant those reliefs that pertain to the period **prior to the Transfer Date** in the following manner:

- prayer clauses (a), (b), (c), (d), (e), (f), (g), (h), (i), (k), (l), (m), (o), (q), (r), (s), (t), (u), (v), (w) and (x) of Paragraph 22 of the Application are granted.

- However, those reliefs that relate to directions for exemptions from **liabilities arising out of the Acquisition of the Corporate Debtor** by the Applicant cannot be granted and, therefore, prayer Clauses (n) and (p) stand rejected.
- With regard to prayer (j) read in conjunction with Schedule E, no exemption can be granted for the liabilities arising pursuant to the implementation of the Acquisition and hence the clause “*or arising pursuant to the implementation of the Acquisition*” shall stand rejected. The rest of the prayer, except the abovementioned phrase, is granted.

“A direction be issued that on and from the Transfer Date, all liabilities, dues, claims relating to Tax(including any EPCG obligations) for the period prior to the Transfer Date or arising pursuant to the implementation of the Acquisition, shall stand permanently extinguished without any set-off and all Tax Benefits shall continue to be available to the Corporate Debtor. Further, the sale as a going concern / Acquisition / transactions contemplated here shall not be treated as Void under Section 281 of the Income-tax Act, 1961 for any claims in respect of Tax or any other sum payable by the Corporate Debtor or any shareholder of the Corporate Debtor. For the purpose of clarity, this relief is to be read with the detailed description set out in Paragraphs (I),(II) and (v) of the Schedule E and the relevant definitions set out in Schedule A of this Applications.”

8. In view of the foregoing, we deem it is fit and proper to allow this Application for facilitating the effective revival of the Corporate Debtor



by the Applicant. With the above observations, I.A. No. 2183 of 2022 is partly allowed and disposed of in the above terms.

Sd/-

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)

Anusha
21.07.2023