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Sl. No. 1

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH**

(Virtual Hearing)

**PRESENT: SHRI RAJEEV BHARDWAJ – MEMBER (JUDICIAL)
: SHRI SANJAY PURI – MEMBER (TECHNICAL)**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 26.06.2024 AT 01:00 P.M.

TC/CP. Nos.	CA/IA No.	Section / Rule	Name of Parties
TCP(IB)/54/7/AMR/2019	Under Liquidation	7 of IBC	Reliance Commercial Finance Limited Vs Smile care Multi Speciality Hospitals
	IA(IBC)/179/2024	U/Sec 35(1)(n) and Sec 60(5)(c) of IBC R/w Reg 45(3)(a) of IBBI(Liquidation Process)Reg. 2016	Rachamallu Ramachandra Reddy, Liquidator of M/s Smile Care Multispecialty Hospital India Pvt Ltd

ORDER

TCP(IB)/54/7/AMR/2019:

Present: Ms. J.V.L.Bharati, Ld. Counsel for the Liquidator.

In view of the orders passed in IA(IBC)/179/2024, the liquidation process of the CD is completed. Hence, TCP(IB)/54/7/AMR/2019 is disposed of.

IA(IBC)/179/2024:

Present: Ms. J.V.L.Bharati, Ld. Counsel for the Applicant.

Orders pronounced. IA(IBC)/179/2024 is allowed and recorded vide separate sheets.

Sd/-

**SANJAY PURI
MEMBER (TECHNICAL)**

Sd/-

**RAJEEV BHARDWAJ
MEMBER (JUDICIAL)**

NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI

* * *

IA (IBC)/179/2024
In
TCP (IB)/54/7/AMR/2019

[An Application filed under Section 35(1)(n) and Section 60(5) (c) of Insolvency and
Bankruptcy Code, 2016 r/w Regulation 45(3) (a) of IBBI (Liquidation Process)
Regulations, 2016]

In the matter of
M/s. Smilecare Multi Speciality Hospitals India Private Limited

BETWEEN:

Mr. Rachamallu Ramachandra Reddy,
Liquidator of M/s. Smilecare Multi Speciality Hospitals India Pvt. Ltd.
Flat No. 403, Block B2, TVS lakeview Apartments,
Road No. 10, Panchavati Colony,
Manikonda,
Hyderabad – 500089.

... Applicant

Date of Order: 26.06.2024

Coram:

SHRI RAJEEV BHARDWAJ, MEMBER (JUDICIAL)
SHRI SANJAY PURI, MEMBER (TECHNICAL)

Parties/Counsels present:

For the Applicant: Ms. JVL Bharati, Advocate along with Mr.
Rachamallu Ramachandra Reddy, Liquidator

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ORDER
(Per: Bench)

1. The present I.A. is filed by the Liquidator of the Corporate Debtor under Section 35(1)(n) and Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (I&B Code) read with Regulation 45(3) (a) of IBBI (Liquidation Process) Regulations, 2016 seeking following reliefs:

- (i) To pass an order that the Liquidation Process of the Corporate Debtor M/s Smilecare Multi Speciality Hospitals India Private Limited has been closed as the Corporate Debtor is sold as a going concern to Dr. Malladhi Varahagiri Reddy in Liquidation as per Regulation 45 (3) (a) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and the Liquidator be relieved from the liquidation process.
- (ii) To pass an order or direction that the board of directors of the Corporate Debtor should be reconstituted as per Companies Act, 2013 by inducting individuals recommended by the Successful Bidder/ Purchaser as Directors of the Corporate Debtor and direct the Registrar of Companies to do all such acts deeds and things that are necessary to appoint the individuals recommended by the Successful Bidder/ Purchaser, in order to enable the Company to file relevant returns required by applicable law.
- (iii) To pass an order or direction that the status of the Corporate Debtor in the RoC records as active from the status of Liquidation.
- (iv) To pass an order/s that all the existing shares (held by the erstwhile Promoter Group as well as other shareholders) of the Corporate Debtor shall be extinguished without any consideration, and the rights and liabilities arising out of the same shall also be extinguished.
- (v) To pass an order or direction that on and from the Date of Acquisition/ Sale Certificate Date, all the claims or demands made by, or liabilities or obligations owned or payable to any actual or potential creditors, Financial Creditors, Operational creditors,



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Workmen & Employees of the Corporate Debtor including the Government dues both Central, State and local authorities (including but not limited to liabilities, interest and penalties, duties, etc. on account of income-tax, tax deduction at source, tax collection at source, goods and services tax, custom duty, value added tax, services tax, wealth-tax, cess, DGFT dues, Property taxes, FEMA, RBI regulations/ guidelines etc.) whether direct or indirect, whether admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallized, known or unknown, secured or unsecured, disputed or undisputed in relation to any period prior to the Date of Acquisition will be written off in full and shall stand permanently extinguished.



- (vi) To pass an order or direction that all the cases pending/decreed against the Corporate Debtor by any court and/or Tribunal and/or any quasi-judicial authority will not be enforceable against the Successful Bidder/Purchaser or the Corporate Debtor.
- (vii) To pass an order or direction that the successful Bidder/Purchaser gets all rights, title and interest in the whole and every part of the Corporate Debtor with all the assets of the Corporate Debtor without any security interest, encumbrance, claim, counter claim, or any demur, into the Purchase.
- (viii) To pass an order or direction that all subsisting consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate debtor or to which the Corporate Debtor is entitled or accustomed to, shall, notwithstanding any provision to the contrary in their terms, be deemed to continue without disruption for the benefit of the Corporate Debtor, and all additional licenses, registrations and consents to operate required by the Corporate Debtor should be made available immediately.
- (ix) To pass an order or direction that the Corporate Debtor shall have a right to review and terminate any contract that was entered into prior to the Liquidation Order date.

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(x) To pass an order or direction that the Successful Bidder/ Purchaser is having right over the receivables of the Corporate Debtor and right to recover any amount due to the Corporate Debtor from any third party including past buyers, any related parties of the Corporate Debtor as mentioned in the audited financial statements and there shall be no set off of any such amounts recoverable by the Corporate Debtor against any amount paid by the Corporate Debtor or any liability discharged, satisfied or extinguished pursuant to this sale.

(xi) To pass an order or direction that the Corporate Debtor is entitled to brought forward losses, if any subject to the permission of the appropriate authority under the provisions of Income Tax Act, 1961.



2. The facts as stated in the application are as follows:

- i. The Financial Creditor i.e., M/s. Reliance Commercial Finance Limited filed application under Section 7 of the Code for initiation of the Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor, which was admitted vide order dated 17.12.2019 in TCP (IB)/54/7/AMR/2019 and appointed Mr. Rachamallu Ramachandra Reddy as Interim Resolution Applicant ("IRP") of the Corporate Debtor and he was appointed as Resolution Professional ("RP") in the 1st CoC meeting held on 20.01.2020.
- ii. That in the said Company Petition the RP, Mr. Rachamallu Ramachandra Reddy filed an IA No.18/2021 under Section 33 of the Insolvency and Bankruptcy Code, 2016 for seeking liquidation of the Corporate Debtor viz. M/s. Smilecare Multi Speciality Hospitals India Pvt Ltd., and vide order dated 10.05.2021 an order

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of Liquidation of the Corporate Debtor was passed, wherein the Applicant was confirmed to act as "Liquidator".

- iii. As a consequence, the Applicant was made a public announcement, calling the stakeholders to submit their claims as on the liquidation commencement date, whereby claims were received and the same has been verified by the Applicant. Further, the Applicant has prepared and submitted the list of Stakeholders as per Regulation 31 of the IBBI (Liquidation Process) Regulations and Stakeholders' Consultation Committee (SCC) was constituted as per Regulation 31A of the Liquidation Process Regulations, 2016.
- iv. That the Applicant in compliance with the Regulation 13, 34 and 15 of Liquidation Process Regulations, prepared the Preliminary Report and Asset Memorandum and Progress Reports at the end of every quarter as per the timelines stipulated therein has submitted to this Tribunal.
- v. That the secured financial creditor (Reliance Commercial Finance Limited) and Canara Bank has relinquished its security interest in favour of the Applicant.
- vi. That the Applicant filed an application i.e., IA(IBC)/94/2023 in the captioned CP, U/s 35 (n) of the IBC r/w Regulation 44 (2) & 47A of IBBI (Liquidation Process) Regulations, 2016 for exclusion of lockdown period in computing the Liquidation period



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U/r 47A and for extension of Liquidation period u/r 44 (2) of IBBI Liquidation Process Regulations, 2016 and the same has allowed by this Tribunal vide order dated 27.03.2023.

- vii. Further, the Applicant has conducted Stakeholders Consultation Committee meetings i.e., 1st SCC meeting on 17.08.2021, 2nd SCC meeting on 30.10.2021, 3rd SCC meeting on 13.12.2021, 4th SCC meeting on 06.01.2022 & 5th SCC meeting on 22.03.2022. As advised by the SCC, the Applicant has issued the following Sale Notices:



Date of Sale Notice	Date of Auction	Asset put for sale	Reserve Price Rs. In Lakhs	Result
06.11.2021	06.12.2021	Company as a going concern	222.16	Failed auction
14.12.2021	30.12.2021	Company as a going concern	166.62	Failed auction
13.01.2022	27.01.2022	Company as a going concern	150.00	Successful

- viii. That in the 4th SCC meeting dated 06.01.2022, it was resolved to issue third sale notice with Revision in Reserve Price for sale of assets of Corporate Debtor as a going concern and the same was published on 13.01.2022 in "Prajashakti" Telugu Newspaper Visakhapatnam Edition and "Financial Express" English News Paper Hyderabad edition with a Reserve Price of for an amount of Rs.1,50,00,000/- (Rupees One crore fifty lakhs only) with an EMD

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amount of Rs.15,00,000/- (Rupees Fifteen Lakhs) for inviting Expression of Interest from the Prospective Bidders and the last date for submission of Bids and EMD was 22.01.2022 and E-Auction Dated 27.01.2022 and E-Auction Process information document uploaded with IBBI website and in "bankauctions.in" website. In response to the said sale notices issued, the Applicant has received one bid from Dr. Malldi Varahagiri Reddy. He has participated in e-auction dated 27.01.2022 at 11.30 PM to 12 Noon and made bid of an amount of Rs.1,50,22,718/- for the Corporate Debtor to purchase Corporate Debtor as a going concern and he has declared as Successful Bidder and issued Letter of Intent (LOI) dated 27.01.2022 and the Successful Bidder has paid the following amounts:



Particulars	Amount in Rs,	Date of Receipt
EMD amount	Rs. 15,00,000/-	22.01.2022
25% of total bid amount	Rs. 22,50,000/-	28.01.2022
Balance amount	Rs. 96,00,000/-	09.03.2022
Balance amount along with interest for 7 days	Rs. 16,50,000/- Rs. 22,718/	10.03.2022
Total	Rs. 1,50,22,718	

Further, on 10.03.2022, the Liquidator has issued Sale certificate and handed over the management of Corporate Debtor to the successful bidder.

- ix. That the Applicant distributed the total realized amount to the Stakeholders in the order of priority as per Section 53 of the Code,

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the distribution is mentioned herein below for reference and convenience;

Total amount available for distribution is Rs.1,52,98,000/-		
Sl.No.	Particulars	Amount in Rs.
1	Section 53 (1) (a) The Insolvency resolution cost and the liquidation cost	18,83,499
2	Regulation -4 – Liquidator's Fee	
	Amount of realization excluding of Liquidation Cost	
	On First 1 Crore at 3.75% is	3,75,000
	On next 9 Crore at 2.80% is	97,110
	Amount Distributed to Stakeholders	
	On first 1 crore at 1.88% is	1,88,000
	On next 9 crore at 1.40% is	38,770
3	Section 53 (1) (b) (i) Workmen dues for 24 months preceding LCD (ii) Debts owed to secured creditors in the event such creditors have relinquished Security interest.	
	Canara bank 21%	26,86,870
	Reliance Commercial Finance LTD 79%	1,00,28,751
Total Distributed amount is Rs.		1,52,98,000



- x. That 5th SCC meeting was conducted on 22.03.2022 through virtual mode, wherein the Applicant informed the members of SCC that completion of liquidation process and filing this Application for closure of the Liquidation Process of the Corporate Debtor, wherein Corporate Debtor is sold as a going concern. Hence, this Application is filed praying closure of the liquidation process and reliving liquidator to discharge his duties.
- xi. As per Regulation 45 (3)(a) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the Applicant submitted Form -H along with sale report, Bank Statement and Audited Financial Statements of the Corporate Debtor.

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Regulation 45(3)(a) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 which reads as under:

"Regulation 45: Final report prior to dissolution.

(3) The liquidator shall submit an application along with the final report and the compliance certificate in Form H to the Adjudicating Authority for-

- (a) Closure of the liquidation process of the corporate debtor where the corporate debtor is sold as a going concern; or
- (b) for the dissolution of the corporate debtor, in cases not covered under clause (a)".



3. We have heard Ld. Counsel for the Applicant and perused the facts pleaded in this Application.
4. We have perused the judgment of NCLT, Hyderabad vide order dated 30.06.2022 in IA No. 157 of 2021 in *CP IB 329/7/HDB of 2018 (SREI Equipment Finance Ltd. Vs. Vishwa Infrastructures & Services Pvt. Ltd.)* observed the following:

"Since the decision to sell the Corporate Debtor as a going concern is taken by the Liquidator in consultation with the creditors/stakeholders and the proceeds from the sale of assets are going to be utilized for distribution to the creditors in the manner specified under Section 53 of the Code, all the creditors of the Corporate Debtor get discharged and assets are transferred free of any encumbrances. We are of the considered view that it is a fit case to grant certain reliefs in favour of the purchaser."

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5. We also pursued the judgment rendered by NCLAT Delhi in the case of RMY Industries LLP Versus Apple Industries Pvt Ltd., through its official Liquidator (Company Appeal (AT) (Insolvency) No. 1114 of 2022) vide Order dated 12.10.2022 has observed as following:

"4. We are of the view that the Adjudicating Authority is empowered to consider any application filed by the Liquidator or Successful Auction Purchaser, which may arise with regard to terms and conditions of the auction sale or sale as a going concern as per the Liquidation Regulation. We, thus, are of the view that ends of justice be served in giving liberty to the Appellant to file an appropriate application before Adjudicating Authority, which may arisen from the terms and conditions of the auction sale or sale as a going concern, which may be considered by Adjudicating Authority. The Appeal is disposed of liberty aforesaid."



6. We noted that the Liquidator can sell the assets of the Corporate Debtor during Liquidation in any of modes stated in Regulation 32 of IBBI Liquidation Process, 2016 and the Liquidator sold the CD as a going concern in Liquidation. The bidders purchased the Corporate Debtor as a going concern with a view to run business and in order to run the business mere purchase of the Corporate Debtor as a 'going concern' as per the Liquidation Process will not suffice. In order to ensure the smooth running of the business of the Corporate Debtor, it is imperative that certain additional reliefs/ concessions/ permissions are allowed which would be essential and necessary to run business of the Corporate Debtor as a 'going concern' under Liquidation Process Regulations will not be achieved from the view point of Successful bidder. In fact, these permissions/ relaxations/ concessions/ reliefs are crucial to kick start the business of the Corporate Debtor.

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7. The sale as a going concern is more or less in the nature of resolution of the Corporate Debtor and the Liquidation Process Regulations do not provide for granting certain specific type of relief to the purchaser of the CD and this Adjudicating Authority is empowered to grant reliefs. Under Section 60(5) of the code the Adjudicating Authority has jurisdiction to entertain or dispose of any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under section 60(5)(c) of the code. This Bench has authority to grant necessary certain immunities or protection from past liabilities to ensure the Successful bidder to start the business on a 'Clean Slate'.
8. Therefore, in view of the facts and circumstances of the case, case laws, being satisfied with the documents presented, we are of the view that the following reliefs can be allowed. Accordingly, we pass the following orders.

ORDER

- (i) The liquidation process of the Corporate Debtor is closed in terms of Regulation 45(3)(a) of IBC (Liquidation Process) Regulations, 2016 r/w Rule 11 of NCLT Rules, 2016 and the liquidator is discharged of his duties but is directed to complete the residuary issues, if any, in terms of Sec. 35 (1) of the IBC, 2016.
- (ii) Permission is accorded to reconstitute the Board of Directors of the CD by the Successful Bidder of the Corporate Debtor and we

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further direct the Registrar of Companies, Vijayawada to do all such acts deeds and things necessary to appoint the individuals recommended by the Successful Bidder/Purchaser.

- (iii) We direct ROC, Vijayawada to change status of Corporate Debtor in the ROC records as 'active' from the status of Liquidation.
- (iv) We hereby declare that the existing shares of the CD are extinguished without any consideration and rights and liabilities against the shares stands extinguished.
- (v) We direct that all the past liabilities and consequential actions of the Corporate Debtor which are in relation to any period prior to the date of acquisition are written off in full and shall stand permanently extinguished.
- (vi) We hereby declare that all the cases pending/decreed against the Corporate Debtor by any Court and/or Tribunal and/ or any Quasi-Judicial authority will not be enforceable against the Successful Bidder.
- (vii) We hereby declare that the Successful Bidder have all rights, title and interest in the whole and every part of the Corporate Debtor with all the assets of the Corporate Debtor without any security interest, encumbrance, claim, counter claim, or any demur.
- (viii) We direct that all subsisting consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract,



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lease or license, granted in favour of the Corporate debtor or to which the Corporate Debtor is entitled or accustomed to, shall, notwithstanding any provision to the contrary in their terms, be deemed to continue without disruption for the benefit of the Corporate Debtor, and all additional licenses, registrations and consents to operate required by the Corporate Debtor should be made available immediately.

- (ix) We declare that the Successful Bidder will have the right to review and terminate any contract that was entered into prior to the Liquidator Order date.
- (x) We declare that the Successful Bidder/ Purchaser will have the right over the receivables of the Corporate Debtor and right to recover any amount due to the Corporate Debtor from any third party including past buyers, any related parties of the Corporate Debtor as mentioned in the audited financial statements and there shall be no set off of any such amounts recoverable by the Corporate Debtor against any amount paid by the Corporate Debtor or any liability discharged, satisfied or extinguished pursuant to this sale.
- (xi) The Successful Bidder of the entity who was purchased the Corporate Debtor as "going concern" is directed to take over the entity and file necessary documents to the ROC, Vijayawada (AP) and other Regulatory Authorities in compliance with the



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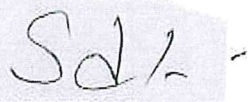
Page 1 Sd/r

Companies Act and file compliance in the main Petition filed in this matter.

- (xii) The Applicant shall preserve physical or electronic copy of the Reports, Registers and Books of Account referred to in Regulation 45A of the IBBI (Liquidation Process) Regulations, 2016.
- (xiii) The Registry of this Tribunal is directed to communicate this order to the Applicant and the Registrar of Companies, Vijayawada, AP.
- (xiv) The Applicant is also directed to forward copies of this order to all the Statutory Authorities connected with the affairs of the Corporate Debtor and also forwarded to the Insolvency & Bankruptcy Board of India.
- (xv) Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

5. Accordingly, IA(IBC)/179/2024 in TCP(IB)/54/7/AMR/2019 is allowed and disposed of. There would however be no order to costs. Ordered Accordingly.




SANJAY PURI
MEMBER (TECHNICAL)


RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

Swamy Naidu

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केस संख्या IA(IBC)/179/2024
CASE NUMBER TCP(IB)/54/7/AMR/2019
नर्णय का तारीख
DATE OF JUDGEMENT 26.06.2024
प्रति तैयार किया गया तारीख
BY MADE READY ON 03.07.2024


03/07/2024
Deputy Registrar / Assistant Registrar /
Court Officer
NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH