

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

*(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)*

**I.A No. 336 of 2022 in
C.P. (IB) No.357/BB/2019
U/s. 33(3) of the IBC, 2016
R/w Rule 11 of the NCLT Rules, 2016**

In the matter of I.A. No.336/2022:

Monitoring Committee for Southern Batteries Pvt Ltd

Plot No.30, KIADB Industrial Area,
Bommasandra, Bengaluru 560099

Represented herein by its Chairman,

Mr.Kanekal Chandrasekhar, Former RP of

Southern Batteries Pvt Ltd... Applicant/Resolution Professional

Versus

M/s.Southern Energy Investments Pvt Ltd

No.561, 2nd Floor, Srinidhi, Water Tank Road

Kathriguppe, Banashankari-3rd Stage

Bangalore 560085 ... Respondent/Resolution Applicant

In the matter of:

M/s.Allahabad Bank

- Petitioner / Financial Creditor

Versus

M/s.Southern Energy Investments Pvt Ltd

- Respondent / Corporate

Debtor

Order delivered on: 2nd March, 2023

Coram:

1. Hon'ble Justice (Retd).T.Krishnavalli, Member (Judicial)

2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties / Counsels Present:

For the Resolution Professional : Ms.Anupama Hebbar

ORDER**Per:Manoj Kumar Dubey, Member (Technical)****I.A. No.336 of 2022:**

1. This application has been filed by the Monitoring Committee of Southern Batteries Pvt Ltd (hereinafter as 'applicant') represented by its Chairman, the Resolution Professional Shri Kanekal Chandrasekhar of M/s. Southern Batteries Pvt Ltd (hereinafter as 'Corporate Debtor') under Section 33(3) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the NCLT Rules, 2016 *inter alia* seeking an order of Liquidation in the matter of Corporate Debtor and to appoint a suitable Insolvency Professional to act as a Liquidator of the Corporate Debtor.
2. The main Petition bearing C.P. (IB) No.357/BB/2019 was filed u/s 7 of the I&B Code, 2016, r/w Rule 4 of the I&B (AAA) Rules, 2016 by Allahabad Bank (now Indian Bank) (hereinafter as 'Financial Creditor') to initiate the Corporate Insolvency Resolution Process ('CIRP') against M/s.Southern Batteries Pvt Ltd . and the same was admitted by this Adjudicating Authority on 19.02.2020 by appointing Mr. Ramanahalli Shivanna Dodda Byregowda the Interim Resolution Professional(IRP) to carry out the resolution process of the Corporate Debtor. Subsequently vide order 09.04.2021 in IA.NO.110/2021 IRP was replaced and Mr. Kanekal Chandrasekhar was appointed as RP.
3. It is stated that, a resolution plan along with the addendum dated 15 July 2021 (hereinafter 'the Resolution Plan') submitted by Aharnisha Consultings Private Limited in consortium with the erstwhile promoters of the Company, Sri.R. Sreenivasan, Sri .R. Sudarshan and Sri.B. Radhakrishnan constituting a Special Purpose Vehicle being Southern Energy Investments Pvt Ltd ('SEIPL') ('the Resolution Applicant') was approved by the Committee of Creditors ('CoC') in the 15th meeting dated 15.07.2021.Subsequently vide order dated 24.06.2022 in IA No.258 of 2021 this Adjudicating Authority approved the resolution plan.

4. It is further stated that, as per Part III of the Resolution Plan, 'Mandatory Provisions of the Plan', made in furtherance of section 30 (2)(c) of the Code, a Monitoring Committee was constituted comprising of one representative each from Indian Bank, Union Bank of India, Dhanalaxmi Bank and 2 representatives of the Resolution Applicant. The Resolution Professional was appointed as the Chairperson of the Monitoring Committee. The Monitoring Committee took charge of the Company in June 2022 when the Order was made available. As per clause 2.3 of Part II of the Resolution Plan, the Monitoring Committee will have all the powers equivalent to the Board of the company and will therefore take all decisions in relation to keeping it running as a going concern.
5. It is stated that the resolution amount was to be INR 127 Crore with additional CIRP costs at actual which was to be paid to the stakeholders of the Company as settlement of their claims. The terms of the Resolution Plan as provided in Schedule 2, the Resolution Applicant has incorporated a special purpose vehicle named as SEIPL for carrying out the infusion of funds under the Plan. Under the Plan, the share capital of the Company was to have altered as follows;
 - a) The authorized share capital of the Company shall stand increased to accommodate the issuance of new equity shares to SEIPL for an aggregate consideration of the initial subscription amount of INR 15 Crores. SEIPL and its nominees shall subscribe to the new equity shares for the initial subscription amount.
 - b) Cancellation of the existing issued, subscribed and paid up equity share capital of the Company save and except the new Equity Shares issued under (a) above. Subsequent to this, SEIPL and its nominee shall be the sole shareholders of the Company.
 - c) SEIPL shall subscribe to new equity shares of the Company for an aggregate consideration equal to the subsequent subscription amount.

- 6.** It is submitted that, under Part II of the Resolution Plan, an infusion totalling to INR 73 Crore was to be made by the Resolution Applicant within T+28 days of the effective date (as defined in Schedule I of the Resolution Plan as the date the NCLT Order is received or uploaded on the NCLT website) ,i.e on or before 22 July 2022. The INR 73 Crore was to be infused by way equity and debt of 28 Crores and by sale of Released Assets for Rs.45 Crores (non –core assets of the Company identified in Clause 2.6 of the Plan). From the said INR 73 Crore, disbursements were to be made to the stakeholders within 30 days from the Effective Date i.e., on or before 24 July 2022
- 7.** Following the first tranche of infusion and disbursements as stated above, a further INR 55.21 Crores was to be infused into the Company by SEIL within 175 days from the Effective Date i.e., on or before 16 December 2022. A sum of INR 48.99 Crores was to be disbursed to the Non- Related Secured Financial Creditors within 180 days from the Effective Date i.e., on or before 21 December 2022.
- 8.** Clause 2.3 of Part II read with Clause 5.1.a of Part III of the Resolution Plan provides that the Monitoring Committee shall have the powers equivalent to the Board of the Company for the implementation of the Resolution Plan till the Payment Date (defined as the date on which all payments due to all stakeholders have been made in accordance with the terms of the Plan) with the Board of Directors remaining suspended till the said date. After the Payment Date, the persons as provided in Clause 5.1.h (being Mr.Srinivasan, R.Sudarshan, B.Radhakrishnan who were also the promoters of the Company before its admission into CIRP) shall be appointed to the Board of Directors with the Resolution Applicant and its nominees being the sole shareholders in the Company. With effect from the Payment Date, the Monitoring Committee was to cease to exist.
- 9.** The Resolution Applicant has also furnished a performance guarantee of INR 5 Crore which was to be released by the Applicant in favour of the Company after the full payment of the Resolution amount. As per the provisions of the Resolution Plan provided in Part III, in case of any default or breach in the

implementation of the Resolution Plan by the Resolution Applicant, the beneficiary of the guarantee (i.e.,) the Lead Bank and the Resolution Professional will have the right to invoke the relevant guarantee and take any other necessary action under law

- 10.** As per clause 1.5 of Part A of the Resolution Plan, the Resolution Plan is unconditional, irrevocable and binding on the Resolution Applicant, with regards to the timeline provided in the Resolution Plan. The Resolution Applicant has however breached the terms of the Plan, since it has failed to infuse the INR 73 Crore of the Resolution Debt within 22 July 2022 (T+28 days from the Effective Date). Therefore, disbursements to the stakeholders have not been made by 24 July 2022 as contemplated.
- 11.** The 1st Monitoring Committee Meeting held on 6 July 2022 and in the 2nd Monitoring Committee Meeting held on 18 July 2022, the Resolution Applicants assured the financial creditors, who are part of Monitoring Committee, that they will meet the timelines for payment as provided in the Resolution Plan.
- 12.** In the 3rd Monitoring Committee Meeting held on July 2022 (after the first tranche of payment became due on 22 July 2022), the Resolution Applicant sought additional time of 7 to 8 days for submitting the plan for the first tranche of the payment.
- 13.** On 1st August 2022, the Resolution Applicant, vide an email to the Monitoring Committee, requested the Monitoring Committee for an extension of the deadline for the first tranche of the payment of the Resolution Debt, being INR 73 Crore, to 18th August 2022 citing various extraneous circumstances as reasons for non-payment . However, the Resolution Applicant had not mentioned the amount of infusion which they would make or the final date of payment in the letter.
- 14.** As the initial subscription amount of INR 15 Crore (which also forms a part of the INR 73 Crore of payment to be made by T+ 28 days from the Effective Date) had not been made as per the timelines stipulated under the Plan, no share capital had been issued to SEIPL as provided in Para 7 of the petition .It has

come to the attention of the Monitoring Committee that the Resolution Applicants, represented by Sri R.Sudarshan, sent a letter dated 25 June 2022 ('the letter') to the Registrar of Companies ('ROC') stating that the Resolution Applicant had held a Board Meeting on 25 June 2022 (being the very next day of the passing of the Order by this Hon'ble Tribunal) resolving to appoint 1) Sri Raghavan Srinivas, 2) Sri Bhaskaran Pillai Radhakrishnan and 3) Sri Raghavan Sudarshan , as Directors of the Company with effect from the same date. The Letter further misrepresents that the Order directs the Resolution Professional to vacate office after handing over the Company to the Board of Directors upon approval of the Resolution Plan (on 24 June 2022). The Board of Directors said to have been constituted by the Resolution Applicant , has also resolved that the existing Share Capital will be treated as Nil and the new Paid-up Share Capital will be reckoned as which is subscribed and fully paid up in favour of SEIL. The Letter also reference that the Board of Directors has filed Form DIR 12 under the Companies Act,2013 with the ROC to reflect the apparent change in composition of the Board of Directors of the Corporate Debtor.

- 15.** It is stated that the applicant further learnt that the former promoter Sri Raghavan Srinivasan, acting as a Director of the Company, had filed a Form INC 28 with the ROC on 21 July 2022 to bring to its notice the Order.
- 16.** It is pertinent to note that the Resolution Applicant has also wilfully failed to disclose any of its actions to the Monitoring Committee and has not disclosed the same even in its email dated 1 August 2022 requesting an extension in the timeline of the Resolution Plan.
- 17.** On 30 July 2022, the Resolution Professional, on behalf of the Monitoring Committee had issued a letter to the RoC highlighting the contraventions of the Resolution Plan committed by the Resolution Applicant and requesting that the RoC set aside the Form INC 28 filed by the former Promoters of the Company on 21 July 2021 and further INC 28 filed by the former Promoters of the Company on 21 July 2021 and further to not give effect to any forms filed by them without any authority regarding the alteration of share capital or reduction in share capital.

- 18.** The Monitoring Committee has taken serious objection to the flagrant violation of the terms of the Resolution Plan under which no funds have been infused in the Company as approved in the Plan and under which the Resolution Applicant has illegally assumed control of the Company and misrepresented the same to the ROC. The Monitoring Committee, in its 4th meeting dated 3 August 2022, discussed the said actions of the Resolution Applicants and approved the liquidation of the Corporate Debtor by a majority of the members present. It was resolved accordingly that the Monitoring Committee shall file an application under section 33(3) of the Code for the liquidation of the Corporate Debtor. It further authorised the Resolution Professional to file the said application and represent the Monitoring Committee to take all necessary steps in furtherance of the said application.
- 19.** The Monitoring Committee, in its fifth meeting held on 20 August 2022 further discussed the default of the Resolution Applicant in the implementation of the Resolution Plan and resolved to invoke the performance guarantee provided by the Resolution Plan and resolved to invoke the performance guarantee provided by the Resolution Applicant as detailed in Paragraph 11 of the petition. The Monitoring Committee also resolved to file the present application inter alia seeking liquidation of the Company and to prefer a complaint to the IBBI under section 74(3) of the Code for contravention of the Resolution plan.
- 20.** In furtherance of the resolution passed in the 5th meeting of the Monitoring Committee, the Lead Banker-Indian Bank issued a letter dated 22 August 2022 to Indian Bank, Bangalore City Branch which had issued the Bank Guarantee, invoking the said Bank Guarantee amounting to INR 5 Crores being the performance guarantee of the Resolution Applicant. By way of the letter, a request was made to credit the proceeds received pursuant to the above in the Escrow bank account No.7255110637 opened in the name of Southern Batteries Pvt Ltd. In furtherance of the said letter, the proceeds from the Bank Guarantee of INR 5 Crores have been credited to Escrow bank account No.7255110637.

- 21.** As per section 33(3) of the Code, in cases of any contravention of the approved Resolution Plan by the Corporate Debtor , any person aggrieved by the said contravention (other than the Corporate Debtor) can file an application for liquidation of the Corporate Debtor before this Hon'ble Tribunal.
- 22.** The CoC while approving the Resolution plan in its 15th Meeting held on 15 July 2021, had passed the resolutions in consideration of an eventuality where an order for liquidation may be passed by this Tribunal under section 33 of the Code.
- 23.** The Respondent has filed the reply for the application vide Diary No.4640 dated 31.10.2022 *inter-alia* contenting as follows:
- i.)** It is submitted that the Respondent and Resolution Applicants are still in a position to finance the entire sum contemplated in the Resolution Plan if additional time is provided. Hence the respondent has also filed a separate IA seeking direction of this Tribunal to direct the Respondent and its investors to inspect the factory, plant and equipment of the Corporate Debtor and to extend the time –line prescribed in the Resolution Plan for an additional period of 60 days.
 - ii.)** The Respondent/ Resolution Applicants are also willing to show its bona-fide and are willing to pay an interest of 9% per annum till the date of actual payments of the instalments as contemplated in the Resolution Plan.
 - iii.)** The object of the IBC, 2016 as well as the CIRP is to ensure the revival of the Corporate Debtor in order to avoid liquidation of the Corporate Debtor. The Respondent herein is still willing to revive the Corporate Debtor as per the terms agreed in the Resolution Plan if additional time is provided to do so.
 - iv.)** It is stated that, the reasons for delay in payment are genuine, bona-fide and due to circumstances beyond the control of the Resolution

Applicants/ Respondents who would suffer irreparable hardship and immense prejudice if the Corporate Debtor is admitted in to liquidation.

- v.)** The proposed sale of non-core assets as contemplated in the approved Resolution Plan has also not been carried out and as on date the entire block of assets is still available and no prejudice has been caused in this regard.
- vi.)** It is submitted that, Liquidation of the Corporate Debtor would not be in the interest of the members of the monitoring committee nor would it be in the interest of any of the stakeholders.
- vii.)** The approved resolution plan contemplates a payment of Rs.122 Crores to all the Corporate Debtor's Creditors which is well over the minimum qualifications as per the expression of interest issued by the Resolution Professional.The amount agreed to be paid in the approved Resolution Plan is well over the estimated liquidation value of the Corporate Debtor.
- viii.)** Further, the resolution applicants/ respondent have also agreed to provide an additional interest of 9% per annum until the actual payment, which will be further beneficial to all the stakeholders of the Corporate Debtor including the members of the monitoring Committee.
- ix.)** The applicant has also admittedly invoked the performance guarantee of Rs. 5 Crores vide letter dated 22.08.2022. Hence, the sum of Rs. 5 Crores ought to be appropriated towards the dues contemplated by Resolution Professional. This is further evidence that the Respondent is willing to ensure the payment terms is adhered to subject to additional time being granted.
- x.)** This Tribunal as well as the Hon'ble NCLAT have categorically held that liquidation of any company may not benefit the creditors or any stakeholders and that the ultimate object of the IBC, 2016 is to revive the company.

- xi.)** This Tribunal as well as the Hon'ble NCLAT has on several occasions has directed Committee of Creditors to reconsider the time-line in several Resolution Plans in the interest to revive the company.
- 24.** The applicant has filed the rejoinder for the statement of Objection vide diary no 4790 dated 9.11.2022 *inter-alia* contending as follows:
- i.)** As per clause 1.5 of Part A of the resolution plan, the plan is unconditional irrevocable and binding on the resolution applicant, with regards to the timeline provided therein. There is no scope for a determination as to the reasons or consequences for any breach, including any prejudice that may be caused as a result. Therefore, the claim of there being no prejudice caused due to the continued availability of non-core assets for realization through sale or any compensation through interest payable at 9% is wholly irrelevant.
- ii.)** Time is the essence in a Resolution Plan. The secured financial creditors of the Corporate Debtor were to receive the first disbursement under the Plan within 30 days from the Effective Date. The timelines had been approved under the Plan keeping in mind the time value of money. A delay of more than 3 months entirely distorts the value of the disbursement to be received by the creditors.
- iii.)** Of the INR 73 Crore to be infused in the first tranche of payment, INR 45 crores was to be infused by sale of Release Assets (non-core assets of the company identified in Clause 2.6 of the Plan). The Resolution Applicant has till date failed to identify or secure any buyers for the same in contravention of the Resolution Plan and is now seeking to place reliance on its own failure to claim that no prejudice is being caused due to its failure. The applicant is gravely concerned that the delay in selling the non-core assets is leading to the depreciation of their value and is detrimental to the interest of the financial creditor and other stakeholders. Therefore, the claim that no prejudice is being caused as a result of the respondents breach is entirely untrue.

- iv.)** The claim of the Resolution Applicant that the Code favours resolution over liquidation is inapplicable and irrelevant. The Code prescribed specific grounds under S.30 and 31 and S.33 of the Code under which a Resolution Plan may be approved by this Tribunal or alternatively for ordering liquidation of the Corporate Debtor. Particularly in the event of contravention of the plan by the resolution applicant, S.33(3) provides expressly that liquidation must follow. When the Code contains express provisions in the event of breach of the Plan, resort cannot be taken to vague and inapplicable principles in order to defeat the provisions of the Code.
- v.)** Further, the Resolution Plan provides for only two situations in which an application for modification of the Plan may be made. Neither of these situations are presently attracted:
- a) Clause 1.11(c) (i): where the provisions of the resolution plan is unenforceable or invalid for reasons other than breach, the resolution applicant may apply to the adjudicating authority for a modification of the plan after receiving approval for the same from the Monitoring Committee
 - b) Clause 1.11 (c) (11): where a modification is requested to *“comply with any laws currently in force or to apply for certain approvals as required under the Resolution Plan or any other requirement, not jeopardizing the rights of the creditors under the current plan,”* the Resolution Applicant may obtain necessary approvals from the adjudicating authority for modification of the plan.
- vi.)** Neither of these situations are attracted in the instant case as it is a clear case of contravention of the Resolution Plan by the Resolution Applicant.
- vii.)** The code itself does not provide for modifications being made to an approved Resolution Plan for its implementation, including through extension of timelines for payments. The Monitoring Committee nor this

Tribunal therefore have the power to grant such an extension. Therefore, the only consequence for the contravention by the Resolution Applicant is liquidation of the Corporate Debtor under S.33 (3) of the Code.

- 25.** We have carefully considered the submissions made in the application by the Learned Counsel for Resolution Professional and have also perused the records.
- 26.** The submission made from the perusal documents, it is necessary to ascertain whether the approval of Resolution Plan was contravened by the Successful Resolution Plan. It is apparent from the submissions and the previous orders passed by this Adjudicating Authority that, the resolution applicant was bound to make an infusion of INR 73 Crores on or before T+28 days of the Effective Date (22 July 2022) However, no payment has been made by the Successful Resolution Applicant.
- 27.** The 5th meeting of the Monitoring Committee held on 20.08.2022 invoked the Performance Bank Guarantee by Lead Bank amounting to Rs.5 Crores which was provided by the resolution applicants. It is apparent from the submissions and the previous orders passed by this Adjudicating Authority that, after the approval of resolution plan by this Adjudicating Authority vide order dated 24.06.2022 in IA No.258 of 2021, repeated opportunities had been granted to the resolution applicant to make payment of 73 Crores. IA No.481 of 2022 was filed by Southern Energy Investments Pvt Ltd, the Special Purpose Vehicle (SPV) on 31.10.2022, for extension of time by 60 days for making the requisite payment under the Resolution Plan. On 10.11.2022, this Adjudicating Authority directed the Successful Resolution Applicant to deposit a sum of Rs.30 Crores within three weeks to show its bonafides. However, no deposit was made by the said Successful Resolution Applicant. On 8.12.2022, one week more was allowed by this Adjudicating Authority for the same purpose. However, vide order dated 11.1.2023; noting that still no payments was made, the IA No.481/2022 was dismissed. Therefore, this Tribunal has effectively allowed more than sufficient time as asked by the Successful Resolution Applicant. As per Resolution Plan, an initial infusion of Rs.73 crores was to be made by 22nd July 2022; but the Tribunal had allowed more time vide the aforesaid orders up

to December 2022. Therefore, after the plan was approved by this Adjudicating Authority, the Successful Resolution Applicant has not been able to ensure the implementation of the Plan in an expeditious and time-bound manner.

- 28.** Hence, it is clear that the successful Resolution Applicant has failed to implement the Resolution Plan and furthermore has no means to fund the project. Hence this Adjudicating Authority is left with no option than to order for Liquidation of the Corporate Debtor.
- 29.** The Learned Counsel for the applicant filed citations vide diary no 4789 dated 09.11.2022. It is noticed that a similar view has been taken by NCLT Special Bench-II Chennai in *D.Ebenazar Inbaraj v Thirugnana Sambandam* in IA/308/IB/2020 in CP/536/IB/2017; vide order dated 8.06.2022.
- 30.** The relevant provisions of Sections 33(3) and 33(4) of the Code are as follows:-

'(3) Where the resolution Plan approved by the Adjudicating Authority (under section 31 or under sub-section (1) of section 54L,) is contravened by the concerned corporate debtor, any person other than the corporate debtor whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub- clauses (i),(ii) and (iii) of clause (b) of sub-section (1).

(4) on receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub- clauses (i),(ii) and (iii) of clause (b) of sub-section (1).

- i.)Appointment of Liquidator** -Section 34 (1) of the Code provides that where the Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Section 33, the Resolution Professional appointed for the CIRP shall, subject to submission of written consent, act as the Liquidator for the purpose of Liquidation. **Shri. Kanekal Chandrasekhar** having registration no. **IBBI/IPA-002/IP-N00642/20182019/11964,emailid:kanekal.chandru@gmail.com,mob:789980 2070 has filed the written consent dated 24.08.2022.** The Law Researcher of

this Tribunal has checked the credentials of proposed Liquidator and nothing adverse has been found on record. Therefore, **Shri Kanekal Chandrasekhar** is appointed as the Liquidator.

ii.) Regulation 39B, 39C and 39D in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been inserted by Notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019. Relevant aspects in this respect are examined hereunder

a. Liquidation Cost concern [Regulation 39B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016] – The liquidation cost is as per the resolution passed at Resolution No.6 Item No.13

b. Assessment of Sale as a going concern [Regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016] - The Liquidator shall follow the Regulation 32 of the IBBI (Liquidation Process) Regulations, 2016 while selling the assets of the Corporate Debtor.

c. Fees of the Liquidator [Regulations 39D of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016] Regulation 4 (2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. The fee payable to the Liquidator is as per the resolution passed at Resolution No.8 Item No.15

31. It is well understood by this Tribunal that the Successful Resolution Applicants have contravened the Resolution Plan and the same is brought to our knowledge by the Monitoring Committee under section 33(3) of IBC, 2016. In view of the contravention of the Resolution Plan by the resolution applicants /respondents, the Corporate Debtor, namely **M/s. Southern Batteries Private Limited** is directed to be liquidated in the manner laid down under Chapter III of the Code subject to the following terms of directions.

i.) That as per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor;

Provided that a suit or other legal proceeding may be instituted by the Liquidator on behalf of the Corporate Debtor, with the prior approval of the Adjudicating Authority;

- ii.) That the provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator; and
- iii.) That this order of liquidation under Section 33 of the Code shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator; and
- iv.) That all the powers of the Board of Directors, Key Managerial Personnel and the Partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested in the Liquidator; and
- v.) That the personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor and provision of Section 19 of the Code shall apply in relation to liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional.
- vi.) That the Liquidator shall publish public announcement in accordance with Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stakeholders to submit their claims as on liquidation commencement date and provide the last date for submission of claims, which shall be 30 days from the liquidation commencement date.
- vii.) That the announcement shall be published in accordance with Regulation 12 of the Insolvency and Bankruptcy Board of India

(Liquidation Process) Regulations, 2016.

- viii.) That in accordance with Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the 'Liquidator' shall file his Preliminary Report within seventy-five (75) days and to file regular Progress Reports as per the Regulation 15.
- ix.) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file application before this Adjudicating Authority.
- x.) In terms of section 178 of the Income Tax Act,1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.
- xi.) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section 35 (1) of IBC,2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.
- xii.) The Successful Resolution applicant and its officers responsible if any be proceeded against for contravention of the approved resolution plan as per section 74 (3) read with section 236 of IBC,2016. The Registry is directed to forward a copy of this order to the Insolvency & Bankruptcy Board of India (IBBI) and the Secretary, Ministry of Corporate Affairs , who are the agencies authorized in terms of section 236(2) of the Insolvency and Bankruptcy Code,2016 to initiate appropriate complaint before the Special Court as envisaged under section 236(1) of the Insolvency and Bankruptcy Code,2016.

32. Thus,**I.A No. 336 of 2022** stands disposed of.

33. Copy of this order be supplied to the Counsel for the Liquidator as well as to the Registrar of Companies, Bengaluru forthwith. The Registry is also directed to send a copy of this Order to the Liquidator at his e-mail address.

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MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)

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KRISHNAVALLI
MEMBER (JUDICIAL)