

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI**

IA-3162/2021, IA-3837/2021

In

CP (IB)-31(PB)/2018

IN THE MATTER OF:

PUNJAB NATIONAL BANK

(Erstwhile Oriental Bank of Commerce)

... Financial Creditor

Versus

LOTUS AUTO ENGINEERING LIMITED

...Corporate Debtor

In the matter of IA-3162/2021:

*Under Section 60(5) of the IBC r/w Regulation. 32(e), 32(A),
44 and 45(3)(a) of the IBBI(Liquidation Process)Regulations, 2016*

Ashok Kumar Gulla

Liquidator for Lotus Auto Engineering Limited
RBSA Restructuring Advisors LLP, 2nd Floor,
IAPL House, 23 South Patel Nagar
New Delhi-110008

...Liquidator/Applicant

Versus

DEEPAK INDUSTRIES LIMITED

Successful Bidder

...Proforma Respondent

In the matter of IA-3837/2021

*Under Section 60(5) of the IBC, R/w
Regulation 32A of the IBBI (Liquidation Process), Regulations, 2016*

DEEPAK INDUSTRIES LIMITED

Successful Bidder

16 Hare Street
Kolkata-700001

.....Applicant

Versus

Ashok Kumar Gulla

Liquidator for Lotus Auto Engineering Limited

.... Liquidator/Respondent

Order delivered on: 07.09.2022

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JUSTICE RAMALINGAM SUDHAKAR, HON'BLE PRESIDENT

SH. AVINASH K. SRIVASTAVA, HON'BLE MEMBER (T)

PRESENT

For Liquidator: Mr. Guarav Mitra, Ms. Shweta Dubey,
Ms. Ichchha Kalash, Advocates

For Successful Bidder: Mr. Sujoy Dutta, Mr. Surekhkant, Advocates

ORDER

PER- SHRI AVINASH K SRIVASTAVA, MEMBER (T)

1. The Liquidator Mr. Ashok Gulla has filed IA-3162/2021, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (IBC) r/w Regulation 32(e), 32A, 44 and 45(3)(a) of the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations), seeking following reliefs:

- (i) To confirm the sale of the Corporate Debtor as a going concern, without dissolution of the Corporate Debtor.
- (ii) To approve an exclusion of time for a period of 30 days from 19.04.2021 to 18.05.2021 due to lockdown imposed by government.
- (iii) A direction be issued that there shall be waiver on the interest payable for the delay beyond 30 days in payment of the sale consideration under Clause 4A of Schedule I (1) of IBBI(Liquidation Process) Regulations, 2016 i.e., for period from 07.05.2021 to 27.05.2021.
- (iv) A direction be issued that on and from the date of order confirming that Sale of the Corporate Debtor as Going Concern in the present application. The status of the Corporate Debtor in the records of the Registrar of Companies should be reflected as 'active' from the status of 'liquidation'.
- (v) To approve other reliefs as sought by the Successful bidder vide letter dated 30.06.2021 (pages 44-48 of the application IA-3162/2021)
- (vi) A direction be issued that the Corporate Debtor and/or the Successful Bidder shall be at liberty to seek remedy if any available before the Hon'ble Tribunal to address any difficulties faced with respect to implementation of the acquisition of the Corporate Debtor as a going concern;

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(vii) Any other or further order or orders be passed and/or direction or directions be given as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the present case and in interest of justice.

2. The IA-3837/2021 is filed by the Successful Bidder namely M/s. Deepak Industries Limited seeking similar reliefs and is the successful bidder of the E-Auction hence, both the applications i.e., IA-3162/2021 and IA-3837/2021, are connected. For the sake of brevity, the submissions of the Successful Bidder are not reproduced. We proceed to pass a common Order in both the above stated applications,

3. The CIRP was initiated vide Order dated 07.08.2018 against the Corporate Debtor viz., M/s. Lotus Auto Engineering Limited. This Adjudicating Authority vide Order dated 09.05.2019 allowed exclusion of a period of 21 days from 26.04.2019 to 17.05.2019 from the statutory period of 270 days of CIRP process period of the Corporate Debtor. The CIRP period of the Corporate Debtor came to an end on 15.11.2019.

4. In the 24th Meeting of the Committee of Creditors (CoC) held on 15.11.2019, it was decided that Liquidator would first attempt to invite Scheme of compromise or arrangement under Section 230 of the Companies Act, 2013 and in case it is not successful then the Liquidator shall attempt to first sell the Corporate Debtor as a 'going Concern' within 90 days of liquidation process under Regulation 32A of Liquidation Regulations.

5. The Liquidation of the Corporate Debtor was ordered on 01.06.2020 and the applicant in IA-3162/2021 i.e., Mr. Ashok Kumar Gulia was appointed as the Liquidator vide Order dated 12.06.2020. The public announcement was made on 15.06.2020 in Form B in Delhi, Rajasthan and Haryana editions of Financial Express (English) and Jansatta (Hindi) and the last date for submission of claims was 12.07.2020.

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6. The liquidator verified and admitted/updated the claims received from stakeholders of Corporate Debtor in liquidation. A summary of the stakeholders whose claims were received and admitted in liquidation is as under:

S. No.	Claimants	No. of Claims	Amount claimed by stakeholders (in INR)	Amount admitted (in INR)
1	Financial Creditors (Secured)	3	550,40,22,115/-	550,40,22,115/-
2	Employees /Workmen	7	9,67,669/-	7,41,177/-
3	Statutory Authorities	2	2,68,40,040/-	2,68,40,040/-
4	Other Operational Creditors	128	53,47,45,844/-	39,00,16,873/-

7. The Liquidator formulated the Stakeholder Consultation Committee (SCC) within sixty days of commencement of liquidation comprising of :

- (i) 3 Secured Financial Creditors
- (ii) 2 representatives of Operational Creditors (other than workmen/employees/statutory authorities) and
- (iii) 1 each of Employees and Workmen, Statutory Authorities and shareholders.

8. The Liquidator issued invitation for Scheme of Compromise and Arrangement under Section 230 of the Companies Act, 2013 by way of Public Announcement, in Financial Express (English) and Jansatta (hindi), all India edition, informing about the commencement of Liquidation of the Corporate Debtor and stated that the last date of submission of Scheme was 31.07.2020 which was further extended from 31.07.2020 to 20.08.2020. The Liquidator received four Expression of Interest (Eoi) from (i) IndoFarm Equipment Ltd, (ii) Marigold Capital, (iii) Ramakrishna Forgings Limited and (iv) Dyna K Automotive Stamping Private Limited, in response to the publication. Subsequently bidders were provided with necessary documents along

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with access to Virtual Data Room for carrying out due diligence. Only one bidder namely IndoFarm Equipment Ltd submitted the Scheme of Arrangement with offer price of Rs. 18.10 crores (Rupees Eighteen Crores Ten Lakhs), which was found too low and ineligible under Section 29A of the IBC, 2016, therefore, the Scheme of Arrangement was not considered further by the CoC.

9. The Liquidator appointed two registered valuers namely GAA Advisory LLP and Futurevalue Advisors India Pvt. Ltd. in accordance with Regulation 35 of the Liquidation Process Regulations to determine Realizable Value of assets/business of the Corporate Debtor in terms of the Clause (a) to (f) of Regulation 32 of the Liquidation Regulations. The Valuation Reports were submitted to this Adjudicating Authority on 25.08.2020.

10. The 1st Meeting of the SCC was held on 08.09.2020 wherein it was decided to resume the liquidation process from 10.09.2020 on completion of 90 days of Section 230 process and that Liquidator would attempt to first sell the Corporate Debtor as going Concern under Regulation 32(e) of the Liquidation Regulations. The Liquidator published a pan India advertisement in Financial Express (English daily) and Jansatta (Hindi daily) on 11.09.2020 for e-auction of Corporate Debtor as a going concern (1st Auction). The reserve price was fixed at Rs 51.30 Crores and Earnest Money Deposit of Rs 5.13 Crores (Five Crore Thirteen Lakhs Only).

11. The 2nd Meeting of SCC was held on 20.10.2020 and the Liquidator issued 2nd notice for E-Auction on 23.10.2020, where the Reserve Price was reduced to Rs. 40 Crore and Earnest Money Deposit (EMD) was fixed at Rs. 2 Crores. The Liquidator received Expression of Interest from six parties, the bidders carried out their due diligence however, no entity participated in the bidding process of the Corporate Person and thus the 2nd E-Auction failed. The application filed by Liquidator seeking extension of 90 days for sale of the Corporate Debtor as going concern was allowed vide Order dated 15.12.2020, however, it was stayed simultaneously by this Tribunal for seeking further clarification on the Resolution Plan which was rejected during the CIRP and valuation determined during liquidation. The Stay was vacated vide Order dated 03.03.2021 and the period of 90 days was also excluded from the liquidation period.

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12. The public announcement for 3rd E-Auction for sale of the Corporate Debtor was made on 25.03.2021, where the Reserve Price was fixed at Block-I (sale of CD as going concern) at Rs. 38 Crore and the EMD was fixed at Rs. 5.70 Crore i.e., 15% of Reserve price and Block-II (sale of business of Corporate Debtor as going concern) at reserve price of Rs. 36 Crore and EMD was fixed at Rs. 5.40 Crore. The E-Auction for Block-I was to be held on 07.04.2021 from 9:00AM to 12:00PM and where the auction fails, auction for Block-II would commence from 2:00PM-5:00PM. The Liquidator received documents from four bidders for carrying out due diligence, however, one bidder namely, M/s. Deepak Industries Limited submitted EMD of Rs. 5.70 Crores for Block-I i.e., sale of the Corporate Person as going concern within the prescribed period and participated in the E-Auction conducted on 07.04.2021, after verifying the eligibility under Section 29A of the IBC, 2016. The bidder M/s. Deepak Industries Limited submitted a bid Rs. 38 Crore and therefore, was declared as the Successful Bidder. The Liquidator issued Letter of Intent (LoI) dated 07.04.2021 to the Successful Bidder stating that in case the payment is made after 30 days from the date of LoI then it shall be paid alongwith interest @12% and in case there is further delay beyond 90 days the sale shall stand cancelled.

13. The Liquidator on request of the Successful Bidder intimated the Income Tax Department vide letter dated 28.04.2021 regarding the sale of the Corporate Person as going concern and carry forward of losses. The Successful Bidder requested for extending the time period of interest free payment from 30 days to 60 days on 06.05.2021, to which the Liquidator replied on 09.05.2021 stating that the payment should be made latest by 25.05.2021. The Successful Bidder remitted the entire sale consideration of Rs. 38,00,00,000 (Rupees Thirty Eight Crore) on 28.05.2021, to the Liquidation Account maintained with Central Bank of India and the Sale Certificate was issued on 09.06.2021.

14. The Liquidator distributed the proceeds of Rs. 38 Crore in accordance with Section 53(1) of the IBC, 2016. The extract of the statement of distribution of proceed is produced overleaf:

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Particulars	Amount Distributed (INR in Lakhs)
Opening Balance in Liquidation Account as on 07.04.2021 (accruals from operations)	21
Add: Sale Realization from the Successful Bidder on 28.05.2021	3800
Total available for Distribution	3821
Less: Distribution to Stakeholders under section 53 (1) of IBC, 2016 (as under)	3806
Section 53(1)(a) CIRP Cost for supplies of materials during the CIRP Period	161
Section 53(1)(a) Liquidation Cost	
Employee Dues	16
Statutory Dues	8
Other Costs including Liquidator's Fees	131
Section 53(1)(b)(i) Workmen dues	-
Section 53(1)(b)(ii) Secured Creditors	3490
Section 53(1) (c)Employee Dues	-
Section 53(1) (d)Financial Debt to unsecured creditors	-
Section 53(1) (e)(i) Government Dues	-
Section 53(1) (e) (ii) unpaid amount of secured creditors for security interest	-
Section 53(1) (f) remaining debts and dues	-
Related	-
Not Related	-
Section 53(1) (g)Preference shareholders	-
Section 53(1) (h)Equity Shareholders	-
Balance available in Liquidation Account as on 30.06.2021 to meet out any Liquidation Costs pending till closure of the application	15

It is submitted that an amount of Rs. 15 lakhs has been left in the Liquidation Account which will be used for payment to the foreign supplier amounting to Rs.0.86 lakhs and also for future costs for closure of liquidation process.

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15. Pursuant to the distribution of the proceeds the Secured Creditors issued the 'No Due Cum Security Release Certificates' to the Liquidator, placed on file at page 205 to 210, marked as Annexure A-19 (Colly), discharging their security/charge on the assets of the Corporate Debtor sold in E-Auction and settling in full the pending claims and liabilities against the Corporate Debtor. It is further stated that the sale consideration is less than the total claim amount of the Secured financial Creditors; therefore, no further distribution was made to other class of stakeholders as referred in the Section 53(1) of the IBC, 2016.

16. The Liquidator pursuant to receipt of the entire sale consideration of Rs. 38,00,00,000 (Rupees Thirty Eight Crore), issued the Certificate of Sale dated 09.06.2021, in favour of the Successful Bidder confirming/acknowledging that the sale of the Corporate Debtor as a going concern stood completed and consequently, the title and ownership of the Corporate Debtor is vested with Successful Bidder in terms of the Certificate of Sale and in accordance with the E-Auction Process Information Document. The extract of the relevant paras stated in the application is as under:

- (i) The interest payable for the delay beyond 30 days in payment of the sale consideration under Clause 4A of Schedule I (1) of IBBI (Liquidation Process) Regulations i.e. for period from 07.05.2021-27.05.2021, as already agreed in the Stakeholders Consultation Committee meeting held on 31.05.2021, stands waived, subject to the confirmation of this Hon'ble Tribunal;

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- (ii) all the assets of the Corporate Debtor as indicated in the Annexure A of Certificate of Sale, including but not limited to any rights on the receivables, refunds due from the statutory authorities, any loans and advances appearing in the books of the Corporate Debtor or otherwise belonging to the Corporate Debtor shall continue to be the assets of the Corporate Debtor;
- (iii) Upon the issuance of the Certificate of Sale, the Existing Suspended Board of Directors of the Corporate Debtor have already ceased to be the directors of the Corporate Debtor and the persons nominated by the Successful Bidder, have been appointed as directors of the Corporate Debtor with effect from date of execution of Certificate of Sale and therefore all the operations of the Corporate Debtor are now being carried out by the new board of directors / person(s) nominated by the Successful Bidder. The Successful Bidder proposed the below persons as new Board of Directors which as included in the Certificate of Sale:

Name of the Proposed Directors	DIN
Mr. Khyali Ram	08286490
Mr. Rakesh Kumar	08958137
Mr. Rajan Dhiman	08948603

- (iv) On and from the Effective Date, all the bank accounts of the Corporate Debtor, except the Liquidation Account, shall be

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operated by the persons nominated by the Successful Bidder and the Applicant shall cease to be the authorised signatory of such bank accounts, except for the Liquidation Bank Account.

- (v) On and from the Effective Date, the entire existing share capital of the Corporate Debtor shall stand cancelled, subject to the approval of this Hon'ble Tribunal and consequently all the liabilities of the Corporate Debtor towards its existing shareholders shall stand extinguished;
- (vi) On request from the Successful Bidder, Liquidator against the sale consideration of Rs 38.00 Crores issued certificates for below stated securities on provisional basis (annexed with Certificate of Sale) which are subject to approval from the Hon'ble Tribunal. Details of Securities are hereunder:
- a. 43,60,000 equity shares of Rs. 10/- each at an issue price of Rs. 10 each;
 - b. 3,364 Secured Optionally Fully Convertible Debentures of Rs. 1,00,000/- each at an issue price of Rs. 1,00,000/- each.





- (vii) All the liabilities, deficiencies, assessments, demands, damages, penalties, cause of actions, claims of any nature whatsoever (whether due or contingent) to which the Corporate Debtor is or may be subject to and which pertain to the period on or before the date of this Certificate, including the right of subrogation available to any third party including guarantor, personal guarantor, corporate guarantor, counter corporate guarantor, against the Corporate Debtor in respect of any credit facility availed by the Corporate Debtor, shall stand extinguished, abated and settled in perpetuity upon distribution of the liquidation proceeds by the undersigned in accordance with the provisions of Section 53 of the Code. Further, the liability of the Corporate Debtor towards Castex Technologies Limited, up to the effective date, shall be limited to Rs 77,75,470/- which shall be payable from the accruals and dues payable by Amtek Auto Limited towards the Corporate Debtor.
- (viii) the right/title/benefit of the monies which are to be made good/recovered in the accounts of the Corporate Debtor pursuant to the adjudication of the Application bearing no. CA 505(PB)/2019 with respect to the avoidance/fraudulent transactions, shall continue to be the assets of the Corporate Debtor under the control of the Successful Bidder.

The key highlights of the assets of the sale process as mentioned in the Annexure-A, attached to the Certificate of Sale is extracted below:

Annexure A

Details of Assets of the Corporate Debtor

The Corporate Debtor has the following underlying assets:

- Land & Building
- Plant & Machinery
- Inventories
- Long Term Loan and Advances
- Short Term Loan and Advances
- Trade Receivables
- Other current assets

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A. Land and Building of Lotus Auto Engineering Limited

The Corporate Debtor has one manufacturing facility which is located at Plot No. SP-501(B), Industrial Area, Bhiwadi, Rajasthan. As per the copy of the lease deed, plant of the company is spread over a plot admeasuring 20.003 sqm. The Plot comprises 4 nos. of sheds, along with an office block, transformers area, control panel room, other miscellaneous structures with a total built up area of 11590 sqm. It is almost rectangular in shape. The built up area details are as below:

Name of Building Structures	Built up Area (in Sqm)	Type of Structure
Admin Block	735	RCC Structure with RCC Roofing
Shed L1	3,071	Steel Structure with Shed Roofing
Shed L2	2,936	Steel Structure with Shed Roofing
Shed L3	3,408	Steel Structure with Shed Roofing
Shed L4	1,342	Steel Structure with Shed Roofing
HT Room	89	RCC Structure with RCC Roofing
Guard Room	9	RCC Structure with RCC Roofing
	11,590	

B. Plant & Machinery located at the manufacturing facility of Lotus Auto Engineering Limited

The Plant & Machineries include other movables assets like Furniture & Fixtures, Computers, Office Equipment, etc. The Corporate Debtor is engaged in manufacturing of low to medium weight machined casting and supplied various auto components like Turbine Housing, Slip Yoke, Front Engine Support (FES), Brake Drums, Pulleys, Chamber Brackets, Lateral Link, Bearing Cap, Top Link, Torque Plate, Case Differential, Planetary Hub Carrier to multiple reputed Original Equipment Manufacturers (OEMs) including BorgWarner, Cummins, Meritor, Maruti Suzuki, Brake India, Multinatic, etc. Shed L1 and Shed L3 are the production floors in the factory.

The Corporate Debtor has installed number of machines in both sheds which majorly includes CNC Turning Center, Vertical Machining Center (VMC), Vertical Turning Lathe (VTL), Leak Testing Machine, Bolt Pressing Machine, Bush Pressing, Marking Machine, Robotic Painting Machine, Broaching Machine, Ultrasonic/Jet Washing Machine, Balancing Machine, Powder Coating Machine, etc. Shed L4 contains machines like DG Set, Auto Measuring Machine, Welding Set, Powder Coating Machine, Marking Machine, Drilling Machine, Leak Testing Machine, etc. Many machines related to utilities including Air Dryer, Compressor, DG Sets, LT Panel, Ducts, Fans, Tank, Air Conditioners and also Stores Equipment including Fork Lifter, Hand Pallets, Weighing Scale, Racks, Trolleys, Floor Crane etc are available in the factory. Admin assets like Furniture & Fixtures, Office Equipment, Computers, etc., also included in the Plant & Machinery.

The Corporate Debtor has some tooling and fixtures belonging to third party lying in its premises and the same are not listed out /identified as on date of this Certificate due to non-availability of information/documents with Corporate Debtor. Such assets belong to third party which may be handed over to their respective parties post execution of Certificate on demand by third party subject to submission of appropriate documents to the satisfaction of the Corporate Debtor proving ownership of such assets.

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C. Inventories

Inventories of the Corporate Debtor consists of Raw Materials including Child Parts, Work in Progress Goods, Finished Goods and Consumables & Stores. Raw Materials majorly comprise casting of Turbine Housing, Front Engine Support (FES), Break Drums. The products under work in progress comprises mostly for customer named Meritor USA. Finished Products mostly comprises auto parts such as Turbine Housing, FES, Break Drum etc which were packed in the wooden boxes after finishing process completed. Stores and spares which comprises broaches, drills, tool holders, back side milling, boring bar, finishing boring bar, grooving tools, oil and lubricants etc are kept at store in the premises.

D. Long and Short Term Advances and Trade Receivables

The Corporate Debtor's Long Term Loan & Advances consist of Security Deposits (held with Electricity Department and Sales Tax Department) and Capital Advance as on date of this Certificate. Short Term Loan & Advances consist of Staff Advances, Other Advances, Balance with Revenue

Authorities, SGST/CGST Refunds (sanctioned/applied). Trade Receivables consist of account recoverable majorly from Amtek Auto Limited. The liquidator has filed an application before Hon'ble NCLT, Chandigarh Bench under Section 60(5) of the IBC, 2016 for recoveries of dues from Amtek Auto Limited. The unrealized book receivables, subject to reconciliation and/or any adjustments relating to debit notes raised by Amtek Auto Limited are the assets of the Corporate Debtor. Recovery of such book receivable is subject to any order passed by the Hon'ble NCLT, Chandigarh Bench in Interlocutory Application No. 971 of 2020 which is to be represented by Corporate Debtor.

E. Other Current Assets

Other Current Assets of the Corporate Debtor as on Liquidation Commencement Date amount include Interest Accrued on Deposit and Tax Deducted at Source (TDS) Receivables.

F. Cash and Cash Equivalents

The liquidator is maintaining 2 operational bank accounts with Punjab National Bank and Corporation Bank which includes the part of sale of corporate debtor as going concern in addition to 2 inoperative accounts with Central Bank of India.

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The bank account details are as follows:

S. No.	Bank Account Details	Status
1)	Punjab National Bank (earlier Oriental Bank of Commerce) A/c No.: 01791131002054 Harsha Bhawan, E-Block, Connaught Place, New Delhi - 110001	Operative
2)	Corporation Bank A/c No.: 510341000674459 56/1, Village Dharuhera, District and Tehsil Rewari, Haryana - 123106	Operative
3)	Central Bank of India A/c No.: 3143637252 Jeevan Tara Building Parliament Street, New Delhi - 110001	Inoperative
4)	Central Bank of India A/c No.: 3144316725 Jeevan Tara Building, Parliament Street, New Delhi - 110001	Inoperative

G. Contingent Assets:

The contingent assets of the Corporate Debtor include any recoveries that may be made by the Corporate Debtor upon the Application no. CA-505(PB)/2019. These assets are the underlying assets in the avoidance applications and are assigned by the Liquidator under Regulation 37A of IBBI (Liquidation Process) Regulations, 2016.

17. It is stated that the Liquidator filed the Preliminary report on 25.08.2020 in terms of the Regulation 13 of the Liquidation Process Regulations and that the Liquidation cost has changed as stated in the Preliminary report, the extract of the particulars is as under:

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S. No.	Particulars	Estimated Costs [A]	Actual Costs [B]	Remarks
1	Liquidator fee-payable to liquidator and his team for IPE (10% to liquidator and 90% to IPE)	105.00	127.82	As per estimation made in Preliminary Report; Realisation & Distribution of Rs 20.00 Crores was considered in first 6 months and Remaining Rs 15.00 Crores in subsequent 6 months and Professional Fees was estimated Rs 105.00 Lakh (Exclusive of GST). As per Reg 4 (2) of the IBBI (Liquidation Process) Regulation, 2016 with 30% discount as approved by CoC. The entire realisation and distribution of Rs 38.00 Crores was completed within first 6 months from liquidation commencement date on which fees was computed at Rs 127.82 Lakhs (Inclusive of GST of Rs 19.50 Lakh). Excluding GST, the fees paid is Rs 108.32 Lakh.
2	Legal fees	12.00	12.34	The actual expenses have marginally increased than estimates due to a higher number of hearings held on the petition filed seeking extension of time for sale as a going concern before this Tribunal. Also, further legal expense will be required till closure of this application.



3	Audit fees	4.50	3.42	As per estimation made in Preliminary Report; Professional Fees was considered for Rs 4.50 Lakh for Statutory Audit, Income Tax Audit, GST Audit and Liquidation Receipts and Payment Audit. Actual expenses include Statutory Audit, Income Tax Audit and Liquidation Receipts and Payment Audit for less than one year spent till date. Further, Liquidation Receipts and Payment Audit from 01.04.2021 till closure of Liquidation Process will be done and payment will be made out of Liquidation Account being additional Liquidation Costs. Rest of the expenses related to other audits will be borne by Corporate Debtor/ Successful Bidder as part of ongoing compliance.
4	Valuers	3.10	3.75	As per estimation made in Preliminary Report; Professional Fees to two Registered Valuer namely GAA Advisors and Future Value Advisors India Pvt Ltd were estimated for Rs 1.95 Lakh and Rs 1.15 Lakh respectively which was exclusive of GST. Actual Expenses also include total Out of Pocket Expenses of Rs 7,950/- and GST @ 18% as applicable.
5	Public Announcement	3.00	0.47	As per estimation made in Preliminary Report, Expenses on various public advertisements for e-auction was considered for Rs 3.00 Lakh considering need for multiple advertisements if sale be on standalone basis.. The actual costs consist expenses for one public advertisement for inviting claims and three public advertisements for e-auctions for sale of the Corporate Debtor.

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6	E- auction process	3.00	0.17	As per estimation made in Preliminary Report, Expenses on various e-auction expenses was considered for Rs 3.00 Lakh assuming sale on standalone basis or each asset, but actually cost for 4 blocks @ Rs 3500/- per block plus GST @ 18% (i.e. One Block in First and Second Auctions and Two Blocks in Third Auction).
7	Travelling and other OPE expenses	2.00	-	No Travelling and other Out of Expenses for court visits by liquidator, his team and legal counsel charged as estimated in the Preliminary Report.
8	Marketing cost	10.00	-	No services of Marketing personnel were availed.
9	Security Agency Expenses	12.00	7.84	As per estimation made in Preliminary Report, Security Agency Expenses was considered for Rs 12.00 Lakh (i.e. Rs 1.00 Lakh/month for one year). Actually, expenses were incurred for Rs 7.84 Lakh in 8 months from September 2020 to May 2021
10	Salaries/Wages Bill	30.00	168.15	As per estimation made in Preliminary Report, Salary/Wages Bill was considered for Rs 30.00 Lakh (i.e. Rs 2.50 Lakh/month for one year). The estimated cost was made when operations of corporate debtor were closed. However, as intimated in 3rd Progress Report, company resumed its operation from

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				December, 2020 due to order received from existing customer for CTT Domestic Parts for which various staff were re-engaged to complete order. All these expenses were recovered from the operations.
11	Electricity Expenses	18.00	42.96	As per estimation made in Preliminary Report, Electricity Expenses was considered for Rs 18.00 Lakh (i.e. Rs 1.50 Lakh/month for one year) based on closure of operations at factory level. Factory Operations were resumed from December 2020 onwards till April 2021 which were resulted into higher electricity expenses of Rs 42.96 Lakh. Accordingly, Increase in Electricity Expenses were due to resumption of factory operations/production and met out of operations in the company
12	Insurance of assets	6.00	5.42	Insurance was renewed in August 2020.
13	Miscellaneous expenditure	3.00	0.10	As estimated in Preliminary Report, Expenses on Stamp Papers, Demand Draft for filing of application were incurred and no expenses incurred on drafting, printing and convening meeting of stakeholders.
	Total	211.60	372.43	

NOTE:

(1) The above expenditure do not comprise any operational costs incurred for procurement of raw materials and consumables and other production related activities while have been met out of cash accruals.

(2) It can be noted that Actual Liquidation Costs exceeds than Estimated Liquidation Costs provided in the Preliminary Report which was submitted assuming closure of factory. Accordingly, it can be further noted that Excess Liquidation Costs are mainly due to higher Electricity Expenses and Salary/Wages Bill which are directly linked to production activities and these were paid out of cash accruals.

18. It is averred that in terms of Regulation 44 of the Liquidation Process Regulations, the Liquidator completed the liquidation process within a period of one year from the Liquidation Commencement Date and the computation is done as under:

Sl. No.	Particulars	Time period
1.	Liquidation Order	12.06.2020
2.	Invite Scheme of Compromise & Arrangement under Section 230 of Companies Act, 2013	90 days

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3.	Exclusion of time period vide Order 11.03.2021	86 days
4.	Expiry of Liquidation period	05.12.2021
5.	Exclusion under Regulation 47A of the Liquidation Process Regulations	17.04.2021 to 07.06.2021 (Sought)

19. It is stated that the realization of sale consideration and distribution (less other Liquidation Costs) among stakeholders i.e., to Secured Creditors were made on 28.05.2021 and 31.05.2021 respectively which are well before timeline of 6 months from liquidation Commencement Date as stipulated in Regulation 4(2) of Liquidation Process Regulations.

20. The Successful Bidder has sought waiver of interest for delayed payment from 07.05.2021 to 31.05.2021, vide its letter dated 06.05.2021, due to lockdown situation in India. This issue was discussed in the 6th Meeting of the SCC held on 31.05.2021 wherein the Central Bank of India and Saraswat Bank considered the request and no other SCC member objected and was communicated to the Successful Bidder by the Liquidator vide letter dated 09.05.2021.

21. It is stated that the Liquidator has prepared the compliance certificate in Form-H which is placed on file and is marked as Annexure A-3. The extract of the relevant sections of the Form-H is reproduced herein below:

3. The details of the assets as per Asset Memorandum and Final Sale Report are as under:

Sl. No.	Assets	Mode of Sale	Estimated Liquidation Value	Realization Amount	Date of Transfer to Liquidation Account
(1)	(2)	(3)	(4)	(5)	(6)
1	Sale of corporate debtor as going concern	E-auction	Rs 51.26 crores	Rs 38 crores	28-05-2021 Payment due to bidder on 07-07-2021

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4. (a) Liquidation value of the liquidation estate: Rs 51.26 crores
(b) Amount realised from sale of liquidation estate: Rs 38.00 crores. Further, Rs 0.21 Lak from accruals was available in liquidation account as on 07-04-2021 i.e. auction date.
(c) The amounts distributed to stakeholders as per section 52 or 53 of Code are as under

(Amount in Rs. lakh)

Sl. No.	Stakeholders under section 53 (1)	Amount Claimed	Amount Admitted	Amount Distributed	Amount Distributed to the Amount Claimed (%)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	(a): CIRP Cost					
	related (for supplies of materials during the CIRP Period)	195	195	-	-	All the CIRP Costs have already been cleared by direct payment from Group Company till the date of Certificate of Sale.
	Not related	143	143	161	100%	In addition to Full payment to claimants of CIRP Costs; Rs 18 Lakh



						were paid to various suppliers for CIRP Costs who have not filed claims during the Liquidation Process
	Liquidation Cost					
	Related (for supplies of materials)	-	-	-	-	An amount of Rs 78 Lakhs pertaining to Group Company for ongoing order will be paid by the CD as and when realized.
	Employee Dues	-	-	16		Payment made for pending salaries since LCD includes unpaid staff salaries.
	Statutory Dues	-	-	8		Payment made for pending Statutory Dues since LCD which includes TDS and GST Dues.
	Other Costs	-	-	131		Payment made for other expenses pertaining to Liquidation Period which includes Professional Fees to Legal Counsel to Liquidator, Liquidator & IPE Fees, News Paper Publication Expenses, E-Auction Service Charges, Professional Fees for Receipt and Payment Audit.
3	(b)(i) Workmen dues	-	-	-	-	No claim received for workmen dues related to 24 months preceding the Liquidation Commencement Date
4	(b)(ii) Secured Creditors	55040	55040	3490	6.34%	Distribution made to Secured Creditors out of the sale consideration on 31.05.2021
5	(c) Employee Dues					No claim received for employee dues related to 12 months preceding the Liquidation Commencement Date.
6	(d) Financial Debt to unsecured creditors					Not Applicable

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7	(e)(i) Government Dues					No claim received for Government dues related to 12 months preceding the Liquidation Commencement Date
8	(e) (ii) unpaid amount of secured creditors for interest security					Not Applicable
9	(f) remaining debts and dues					
	Related	4389	3190			No amount left for distribution in this category
	Unrelated	899	648			No amount left for distribution in this category
10	(g) Preference shareholders					No claims received in this category
11	(h) Equity Shareholders					No claims received in this category
Total		60666	59216	3806	6.27%	

7. The liquidator has sought extension of 90 days for sale of corporate debtor as going concern. The Hon'ble NCLT granted extension on 15th December, 2020, however, the Hon'ble NCLT put stay on its order through order dated 15th February, 2021. The Hon'ble Tribunal vacated the stay directed vide its order dated 15th December, 2020 on 13th March, 2021 and excluded the period of litigation. Accordingly, after considering period of 86 days as excluded, the one year from LCD expires on 05-12-2021. The details of application(s) filed / pending in respect of avoidance of transactions.

Sl. No.	Type of Transaction	Date of Filing with Adjudicating Authority	Date of Order of the Adjudicating Authority	Brief of the Order
(1)	(2)	(3)	(4)	(5)
1	Preferential transactions under section 43	18-02-2019	Pending before NCLT	
2	Undervalued transactions under section 45	NA	NA	NA
3	Extortionate credit transactions under section 50	NA	NA	NA
4	Fraudulent transactions under section 66	18-02-2019	Pending before NCLT	

8. All undischarged or matters pending before any Court or Tribunal relating to Corporate Debtor, if any, have been reported to AA. The liquidator on behalf of Corporate Debtor has filed an application under Section 60(5) of IBC, 2016 bearing IA no 971/2021 before NCLT, Chandigarh bench seeking necessary direction for recovery of dues from Amtek Auto Limited. The application is pending for final order.

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22. It is stated that the e-auction of the Corporate Debtor was held on "As is where is basis" "As is what is basis", "Whatever there is basis" and "No recourse" basis as per E-auction Process Information Document dated 25.03.2021 and as a result the all the assets of the Corporate Debtor have been handed over on the same terms.

23. The Successful Bidder vide letter dated 30.06.2021 has sought certain reliefs/concessions on the following grounds:

50. That the crux of the 'Sale of the Corporate Debtor as a going concern' is that the equity shareholding, of the Corporate Debtor (as existing before CIRP) stands extinguished and the acquirer takes over the Corporate Debtor along with all the assets, present or contingent, rights, benefits, licenses, entitlements, properties, etc., belonging to the Corporate Debtor, but excluding all liabilities/claims/obligations of whatsoever nature whether filed/admitted/verified or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, disputed or undisputed, present or future, existing as on the Effective Date or any such claims, liabilities or obligations arising in future but pertaining to the period prior to the Effective Date, shall stand permanently extinguished/ and fully satisfied and withdrawn or dismissed and lapsed in accordance with Section 53 of the Code.



51. It is submitted that the rationale for conducting the sale as a going concern inter alia is to preserve employment while maximising the returns for stakeholders. It is pertinent to mention that the scheme of sale as going concern under the Code encompasses the idea that the corporate debtor will survive after the sale and there will not be any need for dissolution of the corporate debtor under Section 54 of the Code. Further, the assets along with all attendant claims, limitations, licenses, permits or business authorisations will remain with the corporate debtor and only the ownership will be transferred to the buyer. It is submitted that the sale of the corporate debtor as going concern would not result in dissolution rather it will only lead to closure of the liquidation process.

24. We have heard the submissions and perused the documents placed on file. The Liquidator has filed an affidavit dated 16.08.2022 to show that the Successful Bidder is eligible to be a Resolution Applicant under Section 29A of the IBC, 2016. The Liquidator has deposed that in accordance with the proviso to Section 35(f) of the IBC, 2016, he had requested the Successful Bidder to provide an undertaking which is filed alongwith the affidavit and is marked as Annexure- A.

25. As a consequence to the above discussions and on perusal of the pleadings and submissions made by the Ld. Counsel for the Applicant the following order is passed:

ORDER

With respect to IA No.3162/2021,

- A. Prayer (i) is **allowed** by confirming the sale of the Corporate Debtor as a going concern without dissolution.
- B. Payer (ii) is **allowed**, time period from 19.04.2021 to 18.05.2021 i.e., 30 days are excluded from the liquidation period.



- C. Prayer (iii) is **allowed**, the waiver on the interest payable for delay beyond 30 days i.e., for a period from 07.05.2021 to 27.05.2021, in payment of the sale consideration under Clause 4A of Schedule I(1) of Liquidation Process Regulations.
- D. Prayer (iv) is **allowed**, the Applicant to submit the copy of this Order to the Registrar of Companies for changing the status of the company to 'active' in place of 'liquidation'.
- E. As regards prayer (v), the other reliefs sought shall be dealt with as per provisions of law.
- F. The Liquidator is directed to provide all support and assistance to the Successful Bidder for the smooth functioning of the Corporate Debtor to complete the acquisition. The Liquidator and Applicant shall be at liberty to take all the steps required to make accounting entries for the smooth transmission and clearing the balance sheet.
- G. The Liquidator is directed to ensure completion of pending filings with the Registrar of Companies, Income Tax Authorities and any other Government / Statutory Authorities.

26. With the above stated directions, both the applications IA-3162/2021, IA-3837/2021 stand **allowed**.


- SD -
RAMALINGAM SUDHAKAR
PRESIDENT


- SD -
AVINASH K. SRIVASTAVA
MEMBER, TECHNICAL