



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **27.09.2024** THROUGH VIDEO CONFERENCING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF : State Bank of India
Vs
Ganga Foundation Pvt Ltd

MAIN PETITION NUMBER : IBA/870/2020

(IA/MA) APPLICATION NUMBERS

IA(IBC)/415(CHE)2024; IA(IBC)/1701(CHE)/2023; IA(IBC)/1757(CHE)2023

ORDER

Present: Ld. Counsel Shri. A. G. Sathyanarayana for the Liquidator.

Vide common order pronounced in Open Court, all the three applications
are **disposed of** with directions.

Sd/-

(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

MG

Sd/-

(SANJIV JAIN)
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – I, CHENNAI**

IA(IBC)/415(CHE)/2024inIBA/870/2020

*(filed under Section 32(e) & (f) of the Insolvency and Bankruptcy Board of India
(Liquidation Process) Regulations, 2016 r/w Rule 11 of the NCLT Rules, 2016)*

**CA Mahalingam Suresh Kumar,
Liquidator of M/s. Ganga Foundations Private Limited,
M/s. SPP Insolvency Professionals LLP,
No.27/9, Nivedh Vikas, Pankaja Mill Road,
Puliyakulam,
Coimbatore-641 045**

.... Applicant

Present:

*For Applicant : T.K. Bhaskar, Advocate for
A.G. Sathyanarayana, Advocate*

Along with

IA(IBC)/1701(CHE)/2023 in IBA/870/2020

*(Filed under Section 19(2) read with Section 35 of the Insolvency and Bankruptcy Code,
2016 and Rule 11 of the NCLT Rules, 2016)*

**CA Mahalingam Suresh Kumar,
Liquidator of M/s. Ganga Foundations Private Limited,
M/s. SPP Insolvency Professionals LLP,
No.27/9, Nivedh Vikas, Pankaja Mill Road,
Puliyakulam,
Coimbatore-641045**

*....
Applicant*

-Vs-

1. **Mr. V. Jaisankar,**
No. P1, Avvai Shanmugam Salai,
Lloyds Colony, Royapettah,
Chennai-600 014



2. **Mr. Senthil Kumar**
Suspended Director of the CD,
No. 2, Ganga Ishana Apartment,
4th Floor, Jayam Gardens,
Jawaharlal Nehru 200 ft. Inner Ring Road,
Kolathur, Chennai-600 099

3. **Mr. Chittibabu,**
Suspended Director of th CD,
No. 10/2, 1st Street,
Padma Nagar, Kolathur,
Chennai-600 099

...Respondents

Present:

For Applicant : T.K. Bhaskar, Advocate for
A.G. Sathyanarayana, Advocate
For Respondent : Jayaprakash Narayanan, Advocate for R1
Kasthuri Rangan, Advocate for R2 and R3

Along with

IA(IBC)/1757(CHE)/2023 in IBA/870/2020

(Filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with
Rule 11 of the NCLT Rules, 2016)

Mr. V. Jaisankar,
S/o. Viswanathan,
No. P1, Lloyds Colony,
Royapettah,
Chennai-600 014

... Applicant

-Vs-

1. **M/s. Ganga Foundations Private Limited,**
Represented by its Liquidator,
No. 2, Jayam Garden,
4th Floor, Jawaharlal Nehru Road,
Kolathur, Chennai-600 099



....1st Respondent/Corporate Debtor

2. **Mahalingam Suresh Kumar,**
Liquidator - Ganga Foundations Private Limited,
SPP Insolvency Professionals LLP,
No.27/9, Nivedh Vikas, Pankaja Mill Road,
Puliyakulam, Coimbatore-641045

.... 2nd Respondent/Liquidator

Present:

For Applicant : Jayaprakash Narayanan, Advocate
For Respondent : T.K. Bhaskar, Advocate for
A.G. Satyanarayanan, Advocate for R1 and R2.

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Order Pronounced on 27th September 2024

COMMON ORDER

(Heard through Video Conferencing)

IA(IBC)/415(CHE)/2024 has been filed by the Liquidator under Section 32(e) & (f) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 r/w Rule 11 of the NCLT Rules, 2016 seeking the following reliefs:

- a) *To pass an order confirming the Corporate Debtor sale as a going concern as required under the law.*
- b) *To pass an order declaring that the Successful Bidder is entitled to avail immunity as prescribed under section 32A and 238 of the Code (i.e. waiving of all the existing liabilities, penalties, removing attachments, encumbrances, etc., if any made by the statutory*



authorities i.e. ESI, EPF, RoC, MCA, IT, GST, Electricity dues, Panchayats, revenue, Pollution Control Board, etc.,) including pending PMLA attachment in accordance with the law; and

- c) To pass an order directing the statutory authorities involved in management of the Corporate Debtor to modify their records by entering the successful bidder's name as proposed by them; and*
- d) To pass such order or further orders which may deem to be fit and proper in the interest of justice.*

2. IA(IBC)/1701(CHE)/2023 has been filed by the Liquidator under Section 19(2) read with Section 35 of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of the NCLT Rules, 2016 seeking the following reliefs:

- a) That this Hon'ble Tribunal may be pleased to direct the 1st Respondent to hand over the original title deeds of the property mentioned in schedule hereunder to the Applicant; and*
- b) To pass such other orders or further orders which may be deemed to be fit and proper in the interest of justice.*

3. IA(IBC)/1757(CHE)/2023 has been filed by Shri. V. Jaisankar under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 seeking the following reliefs:

- 1. Allow the present application.*
- 2. Direct the second Respondent, Liquidator, to execute the Sale Deed in respect of the property at Plot No. 4, Beulah Nagar, comprised in Survey No.718/4, Old Survey No. 718, Patta No. 17917, situate in*



Pallikaranai Village, Sholinganallur Taluk, Chennai measuring an extent of 11,400 sq.ft. in favour of the Applicant herein in furtherance of the agreement of sale dated 30/11/2020, registered as Doc. No.9107 of 2020 on the file of the Sub Registrar Office, Saidapet, Chennai

- 3. Restrain the second Respondent, Liquidator, from interfering with the peaceful possession, enjoyment, occupation and use of the property described in the Schedule hereunder at Plot No. 4, Beulah Nagar, comprised in Survey No. 718/4, Old Survey No. 718, Patta No. 71917, situate in Pallikaranai Village, Sholinganallur Taluk, Chennai or bring the property for sale as threatened in the communication dated 23/08/2023 detrimental to the interest of the Applicant.*
- 4. Direct the second Respondent, Liquidator, to accept the claim of the Applicant for Rs.38,40,000/- (Rupees Thirty-Eight Lakhs and Forty Thousand only) which is due from the Corporate Debtor to the Applicant in furtherance of the transaction of loan dated 30th December 2020.*
- 5. Direct payment of costs to the Applicant in respect of these applications; and*
- 6. Pass such further or other reliefs as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the case and thus render justice.*

FACTS OF THE CASE

4. On a petition filed by State Bank of India under Section 7 of IBC, the Corporate Debtor i.e. Ganga Foundations Pvt Ltd was admitted into Corporate Insolvency Resolution Process vide an order dated 10.01.2022. Since no resolution plan came, on an application filed by the Resolution Professional, an order was passed for the liquidation of



the Corporate Debtor vide dated 15.03.2023. Shri. Mahalingam Suresh Kumar was appointed as the Liquidator. The Liquidator issued the public announcement of the liquidation process in two newspapers on 19.03.2023 inviting claims from the stakeholders and fixed 14.04.2023 as the last date for receipt of claims. He received the claims and constituted a Stakeholders Consultation Committee. The Committee suggested the Liquidator for sale of the Corporate Debtor as a going concern. The Liquidator also appointed the Valuers to conduct the valuation of the Corporate Debtor. After getting the valuation reports, he prepared the asset memorandum. A decision was taken to sell the Corporate Debtor as a going concern through e-auction in the manner provided in Schedule 1 of the Liquidation Process Regulations. The Liquidator issued e-auction sale notices on various dates. The details of the same are as under.

Date of Publication	E-Auction Sale Notice	Reserve Price	Relevant SCC details
31.05.2023	1 st E-auction dt. 29.06.2023	Rs.54,00,00,000/-	Approved in 1 st SCC Meeting
23.07.2023	2 nd E-auction dt. 23.08.2023	Rs.48,60,00,000/-	Approved in 2 nd SCC Meeting
09.09.2023	3 rd E-auction dt. 11.10.2023	Rs.48,60,00,000/-	Approved in 3 rd SCC Meeting



27.10.2023	4 th E-auction dt. 27.11.2023	Rs.48,60,00,000/-	Approved in 4 th SCC Meeting
11.12.2023	5 th E-auction dt. 11.01.2024	Rs.43,74,00,000/-	Approved in 5 th SCC Meeting

5. The Liquidator convened 5th SCC meeting and published the 5th e-auction sale notice on 12.12.2023 for sale of the Corporate Debtor as a going concern for Rs. 43.74 Crores after reduction of 10% on the last e-auction price. One Shri. A.M. Ganesh, paid 10% EMD on 04.01.2024 in the liquidation account of the Corporate Debtor and submitted the bid documents. The Liquidator verified the eligibility criteria of the prospective bidder and provided confirmation to the bidder to participate in the e-auction process on 10.01.2024. On the e-auction sale date i.e. 11.01.2024, the prospective bidder sent a mail seeking time upto 02.02.2024 to pay the remaining 15% bid amount as a condition to participate in the bid. The Liquidator placed the request before the SCC on 11.01.2024 and the SCC acceded to its request. The said bidder also participated in the e-auction process. He was declared as the Successful Bidder on 11.01.2024. He paid the balance 15% as an initial bid amount in the e-auction sale process based on the payment terms and conditions in the letter of intent.



6. There was PMLA attachment order on the Corporate Debtor vide dated 29.12.2022. Against that order, the erstwhile RP preferred an appeal which is pending before the PMLA Tribunal.

7. It is stated that after due verification and issuance of sale notice, when he enquired with the Bank and the Promoters, he came to know that the original title deeds of the property bearing Plot No. 4, Maranathan Street, Beulah Nagar comprised in Survey Number. 718/4, Old S. No. 718, Patta No. 17917, situated at Pallikaranai Village, Sholinganallur Taluk, Chennai District was lying with Mr. V. Jaisankar. He sent a letter dated 23.08.2023 to Mr. V. Jaisankar asking him to hand over the original title deeds. He in response thereto vide mail dated 28.08.2023 stated that in respect of the above property, he had entered into a sale agreement for a total consideration of Rs. 45,60,000/- with the Corporate Debtor on 30.11.2020 and paid Rs. 34,00,000/-. He had also given a loan of Rs. 50,00,000/- to the Corporate Debtor against deposit of original title deeds pertaining to the above property on 30.12.2020.



8. It is stated that upon verification, he found that the books of accounts of the Corporate Debtor reflects a loan outstanding balance of Rs. 34,00,000/- received vide two bank transfers.

Date	Details of Bank Transfer	Amount In Rs.
23.11.2020	RTGS – Indian Overseas Bank (RTGS Ref: IDIBH20328376092)	14,60,000
23.11.2020	RTGS – Indian Overseas Bank (RTGS Ref: IDIBH20328378194)	19,40,000
	TOTAL	34,00,000

He did not find any record of receipt of Rs. 50,00,000/- by the Corporate Debtor as a loan from Mr. V. Jaisankar. The Liquidator sent a mail on 01.09.2023 to Mr. V. Jaisankar informing him that the sale agreement does not amount to sale. The said loan amount and the consideration given for the sale agreement can be treated as claim provided Mr. V. Jaisankar files claim with the approval of the Tribunal. He requested Mr. V. Jaisankar to hand over the original documents and file the claim in accordance with law.

9. According to Mr. V. Jaisankar, the property bearing Plot No. 4, Beulah Nagar comprised in Survey Number. 718/4, Old S. No. 718,



Patta No. 17917, situated at Pallikaranai Village, Sholinganallur Taluk, Chennai District was originally owned by Ganga Foundations Pvt Ltd, the Corporate Debtor herein. It had advertised a project with plots for sale. He had approached the Corporate Debtor and entered into a sale agreement in respect of the plot for a total consideration of Rs. 45,60,000/- on 30.11.2020 which he got registered before the Sub-Registrar, Saidapet, Chennai. He paid a total sum of Rs. 34,00,000/-. He stated that the Corporate Debtor citing loss in the business approached him for a loan of Rs. 50,00,000/- and agreed to deposit the original title deeds of the property which fact was recorded in a memorandum relating to deposit of title deeds dated 30.12.2020. He stated that he paid a total sum of Rs. 84,00,000/- to the Corporate Debtor. After adjustment of balance sale consideration, he is entitled to Rs. 38,40,000/-. He alleged that whenever he approached the Corporate Debtor to return the loan amount of Rs. 38,40,000/- and execute the sale deed in his favour, it hesitated and told him that it is not in a position to pay any amount because of huge loss in the business. At best, he can take physical possession of the above property along with the original title deeds, which he took from the Corporate Debtor. He thereafter received a letter from the Liquidator



on 23.08.2023 that the property in question is one of the properties forming part of the e-auction of the assets owned by the Corporate Debtor. He stated that he is the absolute owner of the property. Even the encumbrance certificate shows the registered agreement. He did not have any knowledge about the CIRP against the Corporate Debtor till 24.08.2023. So as a secured Creditor, he did not file any claim for the loan amount of Rs. 38,40,000/-. He stated that the Corporate Debtor willfully did not execute the sale deed in his favour and the Liquidator in collusion with the Corporate Debtor did not exclude that property from the list of the assets causing hardship to him, though he had paid the entire sale consideration and taken the physical possession of the property. He stated that the above property is not an asset of the Corporate Debtor. It was the duty of the Liquidator to verify the encumbrance in respect of the property before making any transaction / issuing e-auction sale notice.

Arguments and Contentions

10. We have heard Ld. Counsel for the Liquidator and the Applicants V. Jaisankar & Ors.



11. Ld. Counsel for the Liquidator has submitted that the Suspended Directors of the Corporate Debtor fraudulently registered a memorandum of deposit of title deed (MoDT) prior to initiation of the CIRP without taking any money into its account. The Applicant accordingly filed an application under Section 19(2) of IBC for obtaining the original title deeds for Plot No. 4, Beulah Nagar comprised in Survey Number. 718/4, Old S. No. 718, Patta No. 17917, situated at Pallikaranai Village, Sholinganallur Taluk, Chennai District, which are in possession of Shri. V. Jaisankar, to safeguards the assets of the Corporate Debtor and protecting the interest of the Stakeholders. Ld. Counsel submitted that Mr. V. Jaisankar is not a Creditor since he has not filed any claim with the Liquidator. In the Insolvency proceedings, the Creditors are categorized secured / unsecured based on the registered charge against the assets of the Corporate Debtor with the Registrar of Companies under Section 77 of the Companies Act, 2013. In the present case, Mr. V. Jaisankar did not register such a charge under Section 77, therefore his claim does not hold the status of a secured charge rendering him as an unsecured creditor. Reference is made of the case *Volkswagen Finance Private Limited Vs. Shree Balaji*

Printopact Pvt. Ltd & Anr (Company Appeal (AT)(Insolvency) No. 02



of 2020, NCLAT). Ld. Counsel further submitted that Mr. V. Jaisankar has not filed a claim within the stipulated period during the liquidation proceedings and has filed an application straight away seeking admission of claim which is not maintainable.

12. Ld. Counsel further submitted that investigation of the Liquidator revealed that no funds were transferred from the account of Mr. V. Jaisankar to the account of the Corporate Debtor. This shows that Mr. V. Jaisankar did not extend any financial assistance to the Corporate Debtor, thus he does not have valid claim. As regards request of Mr. V. Jaisankar to register the property in his favour, Ld. Counsel referred the case of *K. Jayant Prabhu & Anr Vs. Mr. Pankaj Srivastava Liquidator of M/s/ Samruddhi Realty Ltd. (Company Appeal (AT) (Insolvency) No. 254 of 2023)*, NCLAT to contend that no security interest is created when no registered sale deed is executed. Ld. Counsel submitted that Mr. V. Jaisankar is liable to return the title deeds. He submitted that money was directly paid to the Directors in cash and no funds were transferred to the Corporate Debtor. Though there exist memorandum and other documents, but in the absence of any financial transaction into the account of the Company, the



Company holds no liability towards him and consequently the Liquidator is not obligated to admit his claim.

13. Ld. Counsel submitted that the Liquidator has filed the application seeking an order confirming the sale of the Corporate Debtor as a going concern and to declare that the Successful Bidder is entitled to immunity as provided under Section 32A and 238 of the Code, (i.e. waiving of all the existing liabilities, penalties, removing attachments, encumbrances, etc., if any made by the statutory authorities i.e. ESI, EPF, RoC, MCA, IT, GST, Electricity dues, Panchayats, revenue, Pollution Control Board, etc.,) including pending PMLA attachment in accordance with the law.

14. Ld. Counsel submitted that primary objective of the IBC is to revive the Corporate Debtor aligning with Section 35 benefitting the Stakeholders. Section 32A protects the third party bidders from past liabilities, penalties, offences etc.,. Reference is made of the case *Directorate of Enforcement Vs. Shri. Manoj Kumar Agarwal (2021) ibclaw.in 182 NCLAT* where it was held that Enforcement Director cannot hold or encumber the property of the Corporate Debtor upon commencement of the CIRP. He also referred the case of *Essar Steel*



India Ltd Vs. Satish Kumar Gupta (2019) ibclaw.in 07 where Hon'ble Supreme Court has held that “hydra head popping up” should be prevented and emphasized that the prospective resolution applicant who successfully takes over the business of the Corporate Debtor should be protected from any past claim from resurging. He submitted that NCLT Mumbai in *STCI Vs. DSK Southern Projects Pvt. Ltd in IA/383/2022 in CP(IB)178/MB-IV/2021* has held that Enforcement Directorate shall release the attachment on such assets which have been acquired prior to commencement of CIRP. He also referred the case of *Vasan Healthcare Pvt Ltd Vs. The Deputy Director of Income Tax(Investigation), 2024 ibclaw.in 80 HC* where Hon'ble High Court of Madras has held that when a new management takes over the Corporate Debtor as a clean slate, the criminal liability can no longer be mulcted as against the Corporate Debtor. He also referred the case of *Shiv Charan Vs. Adjudicating Authority under the Prevention of Money Laundering (2024) ibclaw.in 154 HC* where it was held that Section 32A(2) protects the property of the Corporate Debtor from any attachment and restraint in the proceedings connected to the offense committed prior to the commencement of the CIRP. It also includes attachment, seizure, retention or confiscation of such property



under such law. It was also held that NCLT has the power to direct the ED to raise its attachment during the approval of the resolution plan. Ld. Counsel has given important dates and events which are as under.



IMPORTANT DATES AND EVENTS		
Sl. No.s	Particulars	Description
1	Name of the CD	M/s. Ganga Foundations Private Limited
2	Date of Commencement of CIRP	10.01.2022
3	Date of initiation of Liquidation	15.03.2023
4	Date of Publication of Public Announcement under Form B	19.03.2023
5	Date of Intimation to Registry and Information Utility, if any, about commencement of Liquidation	17.03.2023
6	Date of appointment of registered valuers, if any	25.03.2023 (During Liquidation)
7	Date of opening of liquidation account with Bank A/c details	Account maintained during CIRP process continued for Liquidation. Union Bank of India Branch: Mowbrays Branch, Account No: 025511010000025 IFSC: UBIN0802557 A/C Name: M/s. Ganga Foundations Private Limited
8	Date of intimation to statutory authority as applicable. a) PF b) ESI c) Income Tax Dept. d) Inspector of Factory e) GST/VAT others	21.03.2023
9	Date of constitution of Consultation Committee and filing list with Ld.AA	27.05.2023



10	Date of filing of Preliminary Report & Assets Memorandum to Ld.AA	Asset Memorandum - 27.05.2023 Preliminary Report - 27.05.2023
11	No. of Meetings of consultation committee held	8 SCC Meetings
12	Fair Value	Rs.96,76,28,472/-
13	Liquidation Value	Rs.53,52,45,471/-
14	Date of Public notice for auction	5 th E-Auction - 12.12.2023
15	List of Participants in 1 st round of bid	A.M. Ganesh – Rs 43,74,00,000/-
16	List of Participants in 2 nd round of bid	NA
17	Details of 2 nd round of bid reserve price	NA
18	Date of First Realisation	09.01.2024 (Receipt of 10% Amount)
19	Date of Second Realisation	31.01.2024- Rs. 1,50,00,000/- 01.02.2024- Rs. 1,00,00,000 /- 02.02.2024- Rs. 56,10,000 /- 06.02.2024- Rs. 1,00,00,000 /- 08.02.2024- Rs. 50,00,000 /- 09.02.2024- Rs. 50,00,000 /- 12.02.2024- Rs. 50,00,000 /- 13.02.2024- Rs. 50,00,000 /- 14.02.2024- Rs. 50,00,000 /- (Receipt of 15% of Sale Consideration)
21	Name of Successful Bidder	A.M. Ganesh
22	Date of Declaration of Successful Bidder	11.01.2024
23	Date of cut off date for receipt of last payment	30 days from Ld. AA approval date Pg. 244 & 245 of Sale as a going Concern Application – IA/415/2024
24	Details of Stakeholders	Pg. 50 - Sale as a going Concern Application – IA/415/2024
25	Details of Auction Report	Pg. 246 - Sale as a going Concern Application – IA/415/2024
26	Details of Successful Bidder Proposal	Pg. 212 - Sale as a going Concern Application – IA/415/2024, A.M. Ganesh

15. Ld. Counsel submitted that the application filed by Mr. V. Jaisankar is not maintainable and Mr. V. Jaisankar may be directed to hand over the original title deeds of the property to the Liquidator.

16. Ld. Counsel for Shri. V. Jaisankar per contra argued that the Corporate Debtor had advertised a project for sale on which he took interest. Subsequently, an agreement was arrived at whereby he



agreed to purchase the property bearing Plot No. 4, Maranathan Street, Beulah Nagar comprised in Survey Number. 718/4, Old S. No. 718, Patta No. 17917, situated at Pallikaranai Village, Sholinganallur Taluk, Chennai District on a total sale consideration of Rs. 45,60,000/-. He entered into an agreement for sale on 30.11.2020 and got registered the same before the Sub-Registrar, Saidapet, Chennai. He paid a total of sum of Rs. 34,00,000/- towards the sale consideration and a balance sale consideration of Rs. 11,60,000/- was pending payment. In the meantime, the Corporate Debtor approached him for a loan of Rs. 50,00,000/- citing loss in business and agreed to deposit the original title deeds of the said property. He out of goodwill agreed to the same and paid Rs. 50,00,000/- in 26 installments between 30.12.2020 and 18.02.2021. The Corporate Debtor as per the understanding mortgaged the property by executing memorandum of deposit of title deeds (MoDT) dated 30.12.2020 and also executed a promisory note dated 18.02.2021 in his favour. He also handed over two undated unfilled cheques bearing No. 000091 and 000092 drawn on Indian Overseas Bank, Kolathur Branch, Chennai as security for repayment of loan. Ld. Counsel submitted that it was agreed upon that he would adjust the balance sale consideration of Rs. 11,60,000/- from the loan account of



Rs. 50,00,000/- and the Corporate Debtor shall pay the balance of Rs. 38,40,000/- with interest at the rate of 24% per annum. Ld. Counsel stated that Mr. V. Jaisankar got the possession of the property and thus became the absolute owner of the property. Even the encumbrance certificate shows the registered agreement to sale.

17. Ld. Counsel submitted that Shri. V. Jaisankar received a letter from the Liquidator dated 22.08.2023 that the said property was part of the e-auction of the assets owned by the Corporate Debtor. Ld. Counsel submitted that Mr. V. Jaisankar did not know about the CIRP until he received the letter from the Liquidator. Immediately, he filed an application IA(IBC)/1757(CHE)/2023 seeking acceptance of his claim for Rs. 38,40,000/- and to register the sale deed in respect of the property. Ld. Counsel submitted that Shri. V. Jaisankar is a secured creditor by virtue of the provisions under Section 3(30) and 3(31) of IBC and as such the said property does not form part of the liquidation estate of the Corporate Debtor in terms of Section 36(4)(b) of IBC. Ld. Counsel submitted that Shri. V. Jaisankar has elected to retain his security interest and has not relinquished the same. Therefore, the Liquidator cannot force him to relinquish his security interest. He



referred the case of *Paschimanchal Vidyut Vitran Nigam Ltd Vs. Raman Ispat Pvt Ltd. (2023) 10 SCC 60*. Ld. Counsel contended that since the possession of the property is with Mr. V. Jaisankar and he has paid the entire sale consideration, he has acquired a vested right under the provisions of the Transfer of Property Act and his right cannot be taken away by the Liquidator. It was the duty of the Liquidator to verify the encumbrance in respect of the property. Ld. Counsel submitted that Shri. V. Jaisankar has bought the property for a valuable consideration and the transaction is bonafide. Ld. Counsel submitted that as per Section 60(5) of IBC, this Tribunal is empowered to entertain the claim made by Shri. V. Jaisankar vide application IA(IBC)/1757(CHE)/2023 and to issue directions to execute the sale deed without insisting upon any further payment.

Finding / Conclusion

18. We have given thoughtful consideration to the rival contentions and perused the record and gone through the case laws relied upon by the parties.



19. It is not in dispute that Shri. V. Jaisankar had entered into an agreement of sale on 30.11.2020 with the Corporate Debtor, being the sole and absolute owner of the property bearing Plot No. 4, Maranathan Street, Beulah Nagar comprised in Survey Number. 718/4, Old S. No. 718, Patta No. 17917, situated at Pallikaranai Village, Sholinganallur Taluk, Chennai District for a sale consideration of Rs. 45,60,000/-. It is also not in dispute that he made the payment of Rs. 34,00,000/- in two tranches by way of NEFT / RTGS on 23.11.2020 as part of the sale consideration and he had to pay Rs. 11,60,000/- as balance of the sale consideration at the time of the registration of the sale deed.

20. The agreement finds mention that the vendor / Corporate Debtor on that day delivered all the original title deeds and its parent documents and patta in respect of the property and its encumbrance certificates to Mr. V. Jaisankar. The said agreement was registered in the Sub-Registrar office vide document No. 9107 on 30.11.2020. As per the agreement, the sale was to be completed within two years from the date of agreement of sale. There is no document showing that the Corporate Debtor had advertised a project with plots for sale as



alleged by Mr. V. Jaisankar. That being the position, Shri. V. Jaisankar does not come in the category of flat buyer.

21. The memorandum relating to deposit of title deeds dated 30.12.2020 by the Corporate Debtor in favour of Shri. V. Jaisankar for the loan / cash credit facility of Rs. 50,00,000/- relates to the same property though the agreement of sale clearly finds mention that the Corporate Debtor at the time of agreement of sale has delivered all the original title deeds and its parent documents including patta to Mr. V. Jaisankar. Had it been so, the question of executing the memorandum and deposit of title deeds in respect of the sale property would not have arisen. It assumes significance since the Corporate Debtor had already entered into an agreement of sale in respect of the same property by receiving substantial part payment from Mr. V. Jaisankar.

22. As regards giving loan of Rs. 50,00,000/- by Shri. V. Jaisankar to the Corporate Debtor, though he has claimed that the amount was paid in 26 installments between 30.12.2020 to 18.02.2021, but no such entry is reflected in the books of the Corporate Debtor as to taking of loan or the said money from Mr. V. Jaisankar. Though Shri. V. Jaisankar has filed the copy of the promisory note dated 18.02.2021 and



two blank cheques but on perusal, we find that the promisory note was signed on 18.02.2021 and the memorandum was signed on 30.12.2020. The promisory note does not find mention of the loan allegedly given by Shri. V. Jaisankar to the Corporate Debtor. It is also pertinent to mention that the Suspended Directors of the Corporate Debtor despite notice did not file any Reply in any of the above applications and only filed a Memo vide Sr. No. 4866 dated 23.11.2023 in IA(IBC)/1701/CHE/2023.

23. It is not in dispute that the Corporate Debtor had entered into an agreement of sale with Mr. V. Jaisankar on 30.11.2020, received part consideration and also handed over the possession of the property in question to Mr. V. Jaisankar, but the Corporate Debtor did not register the sale deed in favour of Shri. V. Jaisankar. Even the balance consideration was not paid. Though Shri. V. Jaisankar has claimed that the balance consideration was adjusted from the loan amount but there is no document or acknowledgment from the Corporate Debtor in this regard. Hon'ble NCLAT in the case of *K. Jayant Prabhu & another vs. Pankaj Srivastava supra*, referred Section 3(31) of IBC observed that in the instant case, no security interest is created to and



in favour of the Appellants / Petitioners considering the fact that admittedly no registered sale deed was executed by the Appellants / Petitioners and the Corporate Debtor. The Appellants / Petitioners are in possession of the property in a permissive manner, because of latent and patent fact that the Corporate Debtor gave the key of the Villa to the Appellants / Petitioners so as to enable them to start the interior work and that the Appellants / Petitioners had incurred an expenditure of Rs. 4,63,000/- in this regard. It was held that only the assets that are charged as security interest will fall outside the ambit of 'Liquidation Proceedings'. Further, the ownership of subject property rests with the Corporate Debtor. It was held that agreement to sell or being in possession in respect of an immovable property in law will not confer any ownership right upon a person. In respect of a sale of an immovable property which is in value of more than Rs. 100/-, it is to be compulsorily registered as per Section 17(1)(b) of the Registration Act, 1908. The term Conveys in Section 5 of the Transfer of Property Act, 1882 only meant for conveying Ownership which visualizes a completion, only in respect of an execution and registration of the valid Deed of Conveyance. It was held that no security interest is created specially the admitted fact being no registered sale deed was



executed and as such no reliefs can be granted to the Appellants / Petitioners as prayed for.

24. In the present case also though the agreement of sale was registered and the possession is with Shri. V. Jaisankar, but no sale deed was executed / registered. In view of the above position of law, an agreement to sell or Shri. V. Jaisankar being in possession in respect of the property in question will not confer any ownership right upon him. The ownership has not been conveyed upon him in the absence of execution and registration of a valid deed of conveyance.

25. In the instant case, Shri. V. Jaisankar had not filed a claim before the Liquidator. It is well settled law that for a creditor to be considered secured under the Companies Act, 2013, he must register his charge with the Registrar of Companies under Section 77 of the Companies Act. Shri. V. Jaisankar, failed to register such a charge under Section 77. Consequently, without registration, his claim does not carry the status of a secured charge rendering him as an unsecured creditor. This was also held in the case of *Volkswagen Finance Limited supra*, *interalia* that the Creditor could not be treated as a secured creditor



under Section 52(3)(b) of the IBC and Regulation 21(b) of the Liquidation Process Regulations, 2016.

26. As regards the prayer that the claim of Shri. V. Jaisankar be admitted in context of the liquidation proceedings, it is pertinent to mention that he had not filed the claim before the Liquidator. This Tribunal can accept the request for admission of claim only on an appeal against the rejection of the claim by the Liquidator. The appropriate course with Shri. V. Jaisankar is to file a claim before the Liquidator. Since in the instant case, the liquidation process has not been completed, and the fact that Shri. V. Jaisankar had paid money to the Corporate Debtor towards purchase of the property and paid the part consideration, we permit him to file the claim before the Liquidator who is directed to consider the claim as per law.

27. Since in the present case as seen from the asset memorandum and an auction notice for sale, the said property forms part of the assets which were put for auction, Shri. V. Jaisankar is liable to deposit the original title deeds with the Liquidator. We therefore direct Shri.



V. Jaisankar to hand over the original title deeds of the property to the Liquidator.

28. Now coming to the prayer made in IA(IBC)/415/CHE/2024, for confirming the sale of the Corporate Debtor as a going concern and to declare that the Successful Bidder is entitled to avail immunity as prescribed under Section 32A and 238 of the Code including removal of PMLA attachments, in the instant case the liquidation of the Corporate Debtor was allowed by this Tribunal vide order dated 15.03.2023. The Liquidator after inviting the claims had convened the meeting of the SCC on 21.03.2023 where it was suggested that the Corporate Debtor be sold as a going concern so that interest of the Corporate Debtor could be achieved as prescribed under the Code. The Liquidator appointed the valuers and prepared the asset memorandum. He thereafter decided to sell the Corporate Debtor as a going concern through e-auction and issued the e-auction sale notices. The initial reserve price fixed for auction was Rs. 54,00,000/-, but since no bidder came, after getting the approval in the 5th SCC meeting, the Liquidator issued the 5th e-auction notice on 11.12.2023 for e-auction on 11.01.2024 for Rs. 43,74,00,000/- in terms of the liquidation regulations.



Shri. A. M. Ganesh paid the EMD and submitted the bid documents. After the approval from the SCC, the Liquidator extended time for payment of 15% bid amount upto 11.01.2024. He participated in the e-auction process and he was declared as the Successful Bidder on 11.01.2024. He paid 25% (10% + 15%) in the liquidation account of the Corporate Debtor based on the payments terms and conditions of the letter of intent.

29. Now this application has been filed by the Liquidator submitting that the Successful Bidder has come forward to revive the Corporate Debtor without continuation of past liabilities, offences, etc., including PMLA attachment order vide Ref. No. R-1918 of 2020 dated 29.12.2022.

30. In the present case, the CIRP was initiated on 10.01.2022. The PMLA attachment is of dated 29.12.2022 i.e. after the initiation of CIRP. It was held in the case of *Directorate of Enforcement Vs. Shri. Manoj Kumar Agarwal supra* that Enforcement Director cannot hold or encumber the property of the Corporate Debtor upon commencement of CIRP. In the case of *Essar Steel India Ltd Vs. Satish Kumar Gupta supra*, it was held by Hon'ble Supreme Court that "hydra head



popping up” should be prevented and emphasized that the prospective resolution applicant who successfully takes over the business of the Corporate Debtor should be protected from any past claim from resurging and thereby throwing the resolution applicant into uncertainty. With this objective, Section 32A was inserted in the code which reads as under.

32A. Liability for prior offences, etc.

(1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not-

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

PROVIDED that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled: PROVIDED FURTHER that every person who was a "designated partner" as defined in clause (j)



of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or an "officer who is in default", as defined in clause (60) of section 2 of the Companies Act, 2013 (18 of 2013), or was in any manner in-charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section.

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not-

- (i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or*
- (ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.*

Explanation: For the purposes of this sub-section, it is hereby clarified that,-

- (i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;*



(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person, who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process.

31. In the case of *STCI Vs. DSK Southern Projects Pvt Ltd. supra*, *NCLT Mumbai Bench* held that these assets are protected by the provisions contained under Section 32A of the Code which provides immunity to such assets and offences after the restoration of the Corporate Debtor provided such assets have been acquired prior to commencement of CIRP. The Enforcement Directorate was directed to release the attachment on such assets and discharge the Corporate Debtor from the offences alleged to have been commissioned prior to commencement of CIRP. In the present case, the assets which were put to auction had been acquired by the Corporate Debtor prior to the commencement of CIRP. Therefore the prospective bidder / buyer is



entitled to immunity to such assets. In the case of *Vasan Healthcare Pvt Ltd Vs. The Deputy Director of Income Tax (Investigation)*, 2024 *ibclaw.in 80 HC* Hon'ble High Court of Madras has held that when a new management takes over the Corporate Debtor as a clean slate, the criminal liability can no longer be mulcted as against the Corporate Debtor. In the case of *Shiv Charan Vs. Adjudicating Authority under the Prevention of Money Laundering (2024) ibclaw.in 154 HC* it was held that Section 32A(2) protects the property of the Corporate Debtor from any attachment and restraint in the proceedings connected to the offense committed prior to the commencement of the CIRP. It also includes attachment, seizure, retention or confiscation of such property under such law. It was held that NCLT has the power to direct the ED to raise its attachment during the approval of the resolution plan.

32. The Hon'ble Supreme Court in the matter of *Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd* 2021 SCC OnLine SC 313 has been vociferously held that once the Resolution Plan is approved, all the claims of the Corporate Debtor, including that of its employees, members, creditors, including the Central Government, any State Government or any local authority,



guarantors and other stakeholders shall stand extinguished. The said extract is captured hereunder;

“58. Bare reading of Section 31 of the I&B Code would also make it abundantly clear, that once the resolution plan is approved by the Adjudicating Authority, after it is satisfied, that the resolution plan as approved by CoC meets the requirements as referred to in subsection (2) of Section 30, it shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders. Such a provision is necessitated since one of the dominant purposes of the I&B Code is, revival of the Corporate Debtor and to make it a running concern.

60. Perusal of Section 29 of the I&B Code read with Regulation 36 of the Regulations would reveal, that it requires RP to prepare an information memorandum containing various details of the Corporate Debtor so that the resolution applicant submitting a plan is aware of the assets and liabilities of the Corporate Debtor, including the details about the creditors and the amounts claimed by them. It is also required to contain the details of guarantees that have been given in relation to the debts of the corporate debtor by other persons. The details with regard to all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities are also required to be contained in the information memorandum. So also the details regarding the number of workers and employees and liabilities of the Corporate Debtor towards them are required to be contained in the information memorandum.

61. All these details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the Corporate Debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stakeholders after it gets the seal of approval from the Adjudicating Authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred



to in subsection (2) of Section 30 is, that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is, that he should start with fresh slate on the basis of the resolution plan approved.

86. As discussed hereinabove, one of the principal objects of I&B Code is, providing for revival of the Corporate Debtor and to make it a going concern. I&B Code is a complete Code in itself. Upon admission of petition under Section 7, there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure, that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the Corporate Debtor is revived and is made an on-going concern. After CoC approves the plan, the Adjudicating Authority is required to arrive at a subjective satisfaction, that the plan conforms to the requirements as are provided in subsection (2) of Section 30 of the I&B Code. Only thereafter, the Adjudicating Authority can grant its approval to the plan. It is at this stage, that the plan becomes binding on Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution Plan. The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.

95. In the result, we answer the questions framed by us as under:

- (i) That once a resolution plan is duly approved by the Adjudicating Authority under sub section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the



Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

- (ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;
- (iii) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued."

(emphasis supplied)

Final Conclusion / Order

33. In the light of authoritative pronouncement in the cases supra and the discussions as above, we confirm the sale of the Corporate Debtor as a going concern. The Successful Bidder is directed to make the balance payment within 30 days from today (or within 90 days from today provided that the payment made after 30 days will attract



interest at the rate of 12% for such extended period i.e. from 31st day to the actual date of payment which shall not be later than 90th day) as provided in the letter of intent dated 11.01.2024 issued by the Liquidator. We also order that the Successful Bidder is entitled to avail immunity as prescribed under section 32A and 238 of the Code (i.e. waiving of all the existing liabilities, penalties, removing attachments, encumbrances, etc., if any made by the statutory authorities i.e. ESI, RoC, MCA, IT, GST, Electricity dues, Panchayats, revenue, Pollution Control Board, etc.,) including pending PMLA attachment in accordance with the law. We also direct the statutory authorities involved in management of the Corporate Debtor to modify their records by entering the successful bidder's name as proposed by them.

34. The application IA(IBC)/415/CHE/2024 filed by the Liquidator in terms of the above directions is **disposed of**. The application IA(IBC)/1701/CHE/2023 is also **disposed of** with the directions to Shri. V. Jaisankar & Ors to hand over the original title deeds of the property bearing Plot No. 4, Beulah Nagar comprised in Survey Number. 718/4, Old S. No. 718, Patta No. 17917, situated at Pallikaranai Village, Sholinganallur Taluk, Chennai District originally held by the



Corporate Debtor. We **dismiss** the application IA(IBC)/1757/CHE/2023 filed by Shri. V. Jaisankar with liberty to Shri. V. Jaisankar to file a claim before the Liquidator in respect of the transactions entered into by him with the Corporate Debtor as regards purchase of the property and the Liquidator is directed to consider the claim as per law.

35. In terms of the above, the applications IA(IBC)/415(CHE)/2024 and IA(IBC)/1701(CHE)/2023 and IA(IBC)/1757(CHE)/2023 are **disposed of**.

Sd/-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Sd/-

SANJIV JAIN
MEMBER (JUDICIAL)