



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

ATTENDANCE CUM ORDER SHEET OF THE HEARING  
HELD ON **19.07.2024** THROUGH VIDEO CONFERENCING

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

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**IN THE MATTER OF** : State Bank of India  
Vs  
Kamachi Industries Ltd

**MAIN PETITION NUMBER** : IBA/883/2019

**(IA/MA) APPLICATION NUMBERS**

IA(IBC)/503(CHE)2024; IA(IBC)/420(CHE)2024; IA(IBC)/416(CHE)2024;  
IA/348/CHE/2024; IA/1387/CHE/2024

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**COMMON ORDER**

**IA(IBC)/503(CHE)2024**

Present: Ld. Counsel Shri. Sri Ganesh for the Applicant.

None for the Respondent.

Vide common order pronounced in the Open Court, IA/503/2024 is dismissed.

**IA(IBC)/420(CHE)2024**

Present: None for the Applicant.

Vide common order pronounced in the Open Court, IA/420/2024 is disposed of with directions.

**IA(IBC)/416(CHE)2024**

Present: Ld. Counsel Shri. Kaushik Narayanan for the Applicant

None for the Respondent

Vide common order pronounced in the Open Court, IA/416/2024 is dismissed.



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**IA/348/CHE/2024**

Present: Ld. Counsel Shri. Sri Ganesh for the Applicant.

None for the Respondent.

Vide common order pronounced in the Open Court, IA/348/2024 is dismissed.

**IA/1387/CHE/2024**

Present: Ld. Counsel Shri. Sri Ganesh for the Applicant.

None for the Respondent.

Vide common order pronounced in the Open Court, IA/1387/2024 is dismissed.

**Sd/-**

**(VENKATARAMAN SUBRAMANIAM)**  
MEMBER (TECHNICAL)

MG

**Sd/-**

**(SANJIV JAIN)**  
MEMBER (JUDICIAL)



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

**IA(IBC)420(CHE)2024 in IBA/883/2019**

*(Filed under Section 32(e) & (f) of the Insolvency and Bankruptcy Board of India  
(Liquidation Process) Regulations, 2-16 r/w Rule 11 of NCLT Rules, 2016)*

*In the matter of **Kamachi Industries Ltd.***

**SPP Insolvency Professionals LLP, IPE,  
CA Mahalingam Suresh Kumar,  
Liquidator of M/s. Kamachi Industries Limited,  
No.27/9, NivedhVikas, Pankaja Mill Road,  
Puliyakulam, Coimbatore-641 045**

.. Applicant

Present:

*For Applicant*

*: T K Bhaskar, Advocate*

*A G Sathyanarayana, Advocate*

*Along with*

**IA/416/CHE/ 2024 in IBA/883/2019**

*(Filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of  
NCLT Rules, 2016)*

*In the matter of **Kamachi Industries Ltd.***

**Narottamka Trade & Vyapaar Pvt Ltd  
U51109WB1996PTC079534,  
Represented by Mr. Rahul Sharma,  
Having Corporate office at  
Old No. 22, New No. 34,  
Balaji Nagar 1<sup>st</sup> Street,  
Royapettah, Chennai – 600 014.**

.. Applicant

-Vs-

**1. CA Mahalingam Suresh Kumar,  
Liquidator of Kamachi Industries Limited,  
SPP Insolvency Professionals LLP, IPE,  
No.27/9, NivedhVikas, Pankaja Mill Road,**



Puliyakulam, Coimbatore-641 045

**2. Mr. Virendra Jain and Mr. Ankit Jain**

Individual Consortium,  
Mittal Tower, B-Wing, First Floor,  
Nariman Point, Mumbai – 400 021.

... Respondents.

Present:

For Applicant	:	Arvindh Pandian, Senior Advocate Kaushik Narayanan, Advocate
For Respondent	:	T K Bhaskar, Advocate for R1 A G Sathyanarayana, Advocate Jayesh B Dolia, Senior Advocate for R2

*Along with*

**IA/348/CHE/2024 in IBA/883/2019**

(Filed under Section 35(e) and (f) of the Insolvency and Bankruptcy Code, 2016 r/w Rule, 32, 2A, 33, 35 of the Liquidation Process Regulations 2016 r/w Rule 11 of NCLT Rules, 2016)

*In the matter of Kamachi Industries Ltd.*

**Sardarmal Kothari,**

Residing at:  
No.10, Sylvan Lodge Colony 1<sup>st</sup> Street,  
Kilpauk, Chennai-600 010

.. Applicant

-Vs-

**CA Mahalingam Suresh Kumar,**

Liquidator of Kamachi Industries Limited,  
SPP Insolvency Professionals LLP, IPE,  
No.27/9, NivedhVikas, Pankaja Mill Road,  
Puliyakulam, Coimbatore-641 045

.. Respondent

Present:

For Applicant	:	S R Rajagopal, Senior Advocate
For Respondent	:	T K Bhaskar, Advocate A G Sathyanarayana, Advocate



*Along with*

**IA/(IBC)503(CHE)2024 in IA(IBC)420(CHE)2024 in IBA/883/2019**

*(Filed under Rule 11 & 32 of NCLT Rules, 2016)*

*In the matter of **Kamachi Industries Ltd.***

**Sardarmal Kothari,**

Residing at:

No.10, Sylvan Lodge Colony 1<sup>st</sup> Street,  
Kilpauk, Chennai-600 010

.. *Applicant*

**-Vs-**

**SPP Insolvency Professionals LLP, IPE,**

CA Mahalingam Suresh Kumar,

Liquidator of Kamachi Industries Limited,

No.27/9, NivedhVikas, Pankaja Mill Road,

Puliyakulam, Coimbatore-641 045

.. *Respondent*

**Present:**

*For Applicant : S R Rajagopal, Senior Advocate*

*For Respondent : T K Bhaskar, Advocate  
A G Sathyanarayana, Advocate*

*Along with*

**IA/(IBC)1387(CHE)2024 in IBA/883/2019**

*(Filed under Section 60(5) of Insolvency & Bankruptcy Code r/w Rule 11 of NCLT Rules, 2016)*

*In the matter of **Kamachi Industries Ltd.***

**Sardarmal Kothari,**

Residing at:

No.10, Sylvan Lodge Colony, 1<sup>st</sup> Cross Road,  
Kilpauk, Chennai-600 010

.. *Applicant*

**-Vs-**



**1. CA Mahalingam Suresh Kumar,**  
**Liquidator of Kamachi Industries Limited,**  
SPP Insolvency Professionals LLP,  
No. 27/9, NivedhVikas, Pankaja Mill Road,  
Puliyakulam, Coimbatore-641 045

**2. Mr. Virendra Jain,**  
B/19, Sterling Apartments,  
36, Peddar Road, Mumbai-400 026

**3. Mr. Ankit Jain,**  
B/19, Sterling Apartments,  
36, Peddar Road, Mumbai-400 0626

.. Respondents

Present:

For Applicant	:	S R Rajagopal, Senior Advocate
For Respondent	:	T K Bhaskar, Advocate for R1
		A G Sathyanarayana, Advocate
		Jayesh B Dolia, Senior Advocate for R2 and R3

CORAM:

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

*Order Pronounced on 19<sup>th</sup> July 2024*

**COMMON ORDER**

*(Heard through Hybrid Mode)*

**IA(IBC)420(CHE)2024** has been filed by the Liquidator 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 consider and pass an order confirming the successful bidder requirements as detailed in S. Nos. 4 to 58 of their Acquisition Plan dt. 29.01.2024.*
- c) *To pass an order directing the statutory authorities involved in management of Corporate Debtor to modify their records by entering the successful bidder's name or as proposed by them.*

### **FACTUAL MATRIX OF THE CASE**

2. M/s. Kamachi Industries Limited, the Corporate Debtor herein, was engaged in the business of manufacturing and sale of TMT bars and power. On an application filed by State Bank of India, Financial Creditor herein, under Section 7 of Insolvency and Bankruptcy Code (IBC), 2016, on account of non-payment of debt, the Corporate Debtor was admitted into Corporate Insolvency Resolution Process (CIRP) vide an order dated 19.02.2020. The moratorium under Section 14 of the Code came into effect. The Interim Resolution Professional (IRP) on the basis of the claims submitted by the stakeholders constituted the Committee of Creditors (CoC). He received three resolution plans from the Prospective Resolution Applicants. The scheme proponent Global Metcorp Limited in IA/416/2024 had submitted a resolution plan for Rs. 370.0 Crores along with Sakthi Ferro Alloys (India) Pvt



Ltd. The plan was rejected by the CoC along with the other two resolution plans since the plan value was lower than the liquidation value assessed during the CIRP. The CoC voted for the liquidation in the meeting held on 14.09.2021. The Tribunal allowed the application for liquidation vide an order dated 19.12.2022 and appointed Shri. V Ganesan as the Liquidator. He invited the claims fixing the last date of receipt of claims as 13.01.2023. He formed the Stakeholders Consultation Committee (SCC). He also got conducted fresh valuation of the Corporate Debtor. Based on the average value, he prepared the asset memorandum. In the meantime, one of the Financial Creditors namely Prudent ARC filed an application for removal of the erstwhile Liquidator. The Tribunal passed an order replacing the erstwhile Liquidator and appointed M/s. SPP Insolvency Professional LLP(IPE) as the Liquidator. The erstwhile Liquidator challenged the order before the Hon'ble High Court and the Hon'ble High Court directed the Liquidator to approach the Hon'ble NCLAT vide an order dated 01.11.2023. The erstwhile Liquidator instead challenged the order of Hon'ble High Court before the Hon'ble Supreme Court which appeal was dismissed vide order dated 09.11.2023. He then challenged his





order of removal before Hon'ble NCLAT, which also dismissed the appeal vide order dated 07.12.2023. In the meantime, the newly appointed Liquidator took control of the Corporate Debtor partially by changing the bank account and taking possession of the documents since Corporate Debtor was being run as a going concern. He also filed an application for cooperation from the erstwhile Liquidator. Finally it got the complete record on 02.01.2024. During the liquidation period, the erstwhile Liquidator though had obtained status quo order on his replacement but had issued a public announcement on 30.09.2023 for revival of Corporate Debtor both, under the scheme under Section 230 of the Companies Act and also the sale as a going concern under Regulation 32 of Liquidation Regulations 2016

3. The Liquidator, after taking charge of the Corporate Debtor, found that CD was incurring losses for the past 5-6 years including during the CIRP and the liquidation period. He then decided to revive the company to mitigate further losses to the interested stakeholders as detailed in Para 15 of IA/420/2024. The SCC in the 5<sup>th</sup> & 6<sup>th</sup> meeting held on 14.12.2023 and 20.12.2023 directed the Liquidator to proceed with the revival of the Corporate Debtor by issuing fresh e-auction sale



notice under Regulation 32 viz sale of the Corporate Debtor as a going concern and also directed the Liquidator to fix the reserve price same as the liquidation value. The Liquidator published e-auction sale notice on 27.12.2023 fixing the reserve price as Rs. 457.0 Crores. He fixed the online e-auction bidding process date as 31.01.2024. Two bidders namely i)Virendra Jain and Ankit Jain and (ii) IMT Steel Pvt Ltd submitted the bid application documents along with the EMD. The Liquidator after verifying the eligibility criteria provided confirmation to the bidders to participate in the process. The bidders participated in the e-auction held on 31.01.2024. Mr. Virendra Jain and Ankit Jain quoted the highest bid of Rs. 487.0 Crores and they were declared H1. The Liquidator issued a letter of intent (LOI) on 31.01.2024 and directed the highest bidder to remit the balance EMD difference of the sale consideration i.e. 15% of the balance sale consideration towards the second stage of payment. The Successful Bidder paid the amount in time in the Liquidation bank account as per the payment terms and conditions in the letter of intent on 01.02.2024. The Successful Bidder also submitted an acquisition plan of the Company on a clean slate basis with certain conditions as detailed in the bid documents seeking



reliefs, waivers, concessions and exceptions for smooth transition of Corporate Debtor into their hands.

4. As per the e-auction notice, e-auction was to be conducted *on as is where is, as is what is and whatever there is and without recourse basis*, without any kind of warranties and indemnities. As per the letter dated 31.01.2024, the auction purchaser was to deposit 25% of the sale consideration less the EMD amount within 24 hours from the date of declaration of the Successful Bidder i.e. by 01.02.2024 and the balance 75% within 30 days from the date of approval of Corporate Debtor as a going concern or within 90 days from the date of the order approving the sale as a going concern by the Tribunal provided that the payment made after 30 days would attract interest at the rate of 12% for such extended period.

5. One Narottamka Trade and Vyapaar Pvt Ltd, Applicant in IA/416/2024, being a shareholder of the Corporate Debtor holding 3665 equity shares, during the liquidation process, sent a request letter / mail on 13.03.2023 to the erstwhile Liquidator expressing its interest to submit a scheme of arrangement under Section 230 of the Companies



Act, 2013. It also requested a copy of information memorandum for submitting the scheme. The erstwhile Liquidator did not respond to the mail. Later the Applicant (IA/416/2024) came to know that a new Liquidator has been appointed and the erstwhile Liquidator has challenged his replacement. The Applicant (IA/416/2024) sent a mail on 29.09.2023 to the new Liquidator making the same request expressing its intention to submit a scheme and sought for the copy of information memorandum. The new Liquidator also did not provide the same. Since the erstwhile Liquidator had issued a public announcement on 16.10.2023 for sale of the Corporate Debtor as a going concern both under IBBI (Liquidation Process) Regulations 32 and 32A and Section 230 of the Companies Act, 2013, the Applicant (IA/416/2024) on 18.10.2023 submitted the EOI expressing its interest to submit the scheme. It received a mail from the new Liquidator on 12.12.2023 attaching the provisional list of Prospective Applicants (Scheme Proponents). The Applicant (IA/416/2024) sent the updated copy of the scheme under Section 230 along with supporting documents on 16.12.2023. The new Liquidator then sent the final list of prospective Applicants (Scheme Proponents) via mail on 18.12.2023. In



the list, the Applicant (IA/416/2024) was shown as the qualified scheme proponent. The new Liquidator sought for the annexures of the scheme which the Applicant (IA/416/2024) shared with the new Liquidator on 19.12.2023. The SCC in the meeting held on 20.12.2023 decided to cancel the EoI dated 16.10.2023 and directed the Liquidator to issue fresh e-auction notice for sale of the CD as a going concern only without inviting the scheme. The Applicant (IA/416/2024) received a mail dated 25.12.2023 from the new Liquidator informing that SCC has decided to cancel the EoI dated 16.10.2023 issued by the erstwhile Liquidator during the period of stay granted by the Hon'ble High Court. Fresh e-auction notice for sale of CD as a going concern was issued on 27.12.2023. Even after the cancellation of EoI dated 16.10.2023, the new Liquidator communicated with the Applicant (IA/416/2024) regarding the scheme and placed the scheme before the SCC. The SCC deliberated on the scheme in the meeting held on 30.01.2024 and rejected the scheme. The Liquidator was asked to proceed with the e-auction on 31.01.2024 on the basis of the fresh e-auction notice dated 27.12.2023. Following reasons were cited by the SCC for rejection of the scheme which were communicated to the



Applicant (IA/416/2024) by the new Liquidator vide mail dated 30.01.2024.

a) The value offered in the scheme is much lower than the liquidation value considered for the e-auction process and the proposal calls for full assignment of debt and all the rights, which is not the case with the ongoing e-auction, whereas all other collaterals and personal guarantees continue with the secured lenders.

b) There is no clarity regarding the source of funds in the scheme.

c) The scheme has been submitted by the shareholders at the fag end of the auction timeline, despite knowing the said timelines and the reserve price published for the e-auction. Although some of the members wanted to evaluate the scheme proposal in detail with a cost-benefit analysis, the members finally concluded with the majority that they don't want to derail the e-auction process at this juncture, for the reasons stated above.

6. The Applicant Narottamka Trade and Vyapaar Pvt Ltd challenged the rejection of the scheme vide **IA(IBC)416(CHE)2024** seeking the following reliefs.

*a) To declare that the e-auction conducted on 31.01.2024 as null and void and to pass necessary direction / directions to the 1<sup>st</sup> Respondent to consider the Scheme submitted by the Applicant after following due process of law;*

*b) To pass such Order or Orders as this Hon'ble Tribunal may deem fit and proper and thus render Justice.*



7. It is pertinent to mention that the Applicant (IA/416/2024) with the Co-Applicant Global Metcorp Limited had submitted the scheme under Section 230 of the Companies Act, 2013, which Co-Applicant Global Metcorp Limited had also submitted a resolution plan for Rs. 370.0 Crores along with Sakthi Ferro Alloys (India) Pvt Ltd and the same was rejected by the CoC since the plan value was lower than the liquidation value assessed during the CIRP period.

8. The Promoter Director i.e. Sardarmal Kothari also filed an application **IA(IBC)348(CHE)2024** seeking the following reliefs:

- d) That this Hon'ble Tribunal be pleased to set aside the e-auction sale notice dated 27.12.2023 proposing the sale of Kamachi Industires Limited as a going concern;*
- e) That this Hon'ble Tribunal be pleased to set aside all consequential action pursuant to the e-auction sale notice dated 27.12.2023 proposing the sale of Kamachi Industries Limited as a going concern;*
- f) To pass an Order of Injunction restraining the Respondent from proceeding with the sale of Kamachi Industries Limited as a going concern in terms of the e-auction sale notice dated 27.12.2023.*



9. The Promoter Director Sardarmal Kothari, filed another application **IA(IBC)503(CHE)2024** seeking the following relief.

*a) That this Hon'ble Tribunal be pleased to implead the Applicant – Sardarmal Kothari as a Party Respondent in I.A. No. 420 of 2024.*

**Arguments and Contentions.**

10. Ld. Sr Counsel Shri. S R Rajagopal, appearing for the Promoter Director Sardarmal Kothari submitted that the Company / Corporate Debtor has five different units which are spread across 99 acres of land located in Pathapalayam and Bodi Reddy Kandigai villages, Gummipoondi Block and Taluk, Tiruvallur District. The entire units are in working condition. The Company employs over 2000 workmen and is a leading steel manufacturer. Ld. Counsel submitted that the e-auction notice dated 27.12.2023 is liable to be set aside, since the Corporate Debtor is proposed to be sold for a reserve price of Rs. 457.0 Crores while the real value of the landed property along with the land and factory buildings, goodwill would not be less than Rs. 850.0 Crores. The value of the land and factory buildings, Plant and machinery is Rs. 670.0 Crores while the value of the current assets and securities is Rs. 80.0 Crores. Ld. Counsel submitted that last valuation





was undertaken by the empanelled valuer of the Bank on 05.09.2019 who had valued the machineries at Rs. 22.57 Crores and land and industrial buildings at Rs. 150.0 Crores with realizable value at Rs. 120.14 Crores. He had filed a consolidated report of all the five units on 28.08.2019 and valued for Rs. 521.37 Crores as detailed in Para (d) of IA/348/2024. Ld. Counsel submitted that valuation report undertaken during liquidation would show a value of Rs. 457.0 Crores which is under value, although the price of machineries and land increased manifold post Covid-19. Ld. Counsel submitted that the Promoter Director estimates the value of the Company at not less than Rs. 850.0 Crores which can also be ascertained from the market by comparing the rates from the similarly located lands as SIPCOT has issued fresh allotment letters for the plots during October 2023 at Rs. 1.10 Crore per acre. He submitted that the present case involves the land about 100 acres, so the value of the land alone is more than Rs. 100.0 Crores.

11. Ld. Counsel further argued that the Liquidator in the auction notice published on 27.12.2023 did not disclose that the Company has to be run as a going concern as directed by Hon'ble NCLAT in the order dated 25.02.2020 and thus the whole sale vitiates. Ld. Counsel



submitted that the Promoter Director had also sent a mail on 26.01.2024 objecting the under valuation but he did not get any response from the Liquidator. Ld. Counsel submitted that the Applicant (IA/348/2024) is also a Personal Guarantor to the credit facilities availed by the Corporate Debtor and thus has a direct interest in the valuation fixed by the Liquidator. Ld. Counsel contended that the auction notice is in violation of Clauses (a) to (d) of Regulation 32 of IBBI Liquidation Regulations. Ld. Counsel stated that Schedule 1 of Regulations clearly prescribes that the reserve price shall be the value of the asset in accordance with Regulation 35 which provides that registered valuers shall determine the realizable value of the assets or business and submit it to the Liquidator in accordance with the Companies (Registered Valuers and Valuation) Rules, 2017. Ld. Counsel stated that the Rules do not state that Liquidation value would be the reserve price. As per the Regulations, the realizable value shall be fixed as a reserve price which is not less than Rs. 631.0 Crores. Ld. Counsel contended that because of the cooperation extended by the Promoter Director, the Company remains as a going concern, in such a good quality, upkeep and maintenance of the plant



attracting several builders, otherwise the Company would have lost its value.

12. **Ld. Sr Counsel in IA/503/2024** contended that in IA/348/2024 this Tribunal vide an order dated 31.01.2024 though did not stay the auction sale but directed that the sale of the Corporate Debtor as a going concern is subject to the outcome of the decision in the IA/348/2024. Ld. Counsel stated that now the Liquidator has filed an application under Regulation 32(e)(f) inter alia seeking for confirmation of sale of the Corporate Debtor as a going concern in favour of the highest bidder vide IA/420/2024 which is *per se* illegal since IA/348/2024 is pending before the Tribunal and that Hon'ble NCLAT in its order dated 25.02.2020 has specifically directed that the Corporate Debtor is to be run as a going concern with the assistance and cooperation of the Applicant (IA/348/2024) and other Directors which appeal has not been finally disposed of. Ld. Counsel submitted that the Applicant (IA/348/2024) is a necessary party in IA/420/2024 as the Applicant (IA/348/2024) would be directly affected by any order to be passed in IA/420/2024. Ld. Counsel submitted that bar under



Section 29A IBC would not apply to the case of Applicant (IA/348/2024) since the Applicant (IA/348/2024) is only seeking an enhancement of the value in case the assets being sold rather than attempting to purchase the same.

13. Ld. Counsel Shri. T K Bhaskar appearing for the Liquidator *per contra* argued that the erstwhile Liquidator of the Corporate Debtor had appointed the IBBI Registered Valuers for Valuation of the Corporate Debtor as seen from the minutes of 1<sup>st</sup> SCC Meeting held on 09.01.2023. The Valuation report was prepared by the Registered Valuers in March – April 2023 and was placed before the SCC as tabulated below.



Valuation of Land & Building			
S. No	Valuers	Fair Value	Liquidation Value
1	Arulnambi Engineering Consultants	1,75,71,81,000	1,23,00,26,700
2	Shanmugam. M	1,68,80,41,000	1,18,16,28,700
Average of L & B		1,72,26,11,000	1,20,58,27,700
Valuation of Plant & Machinery			
1	P. Natarajan	5,03,22,95,481	2,86,21,70,506
2	Arasu Associates	5,46,28,12,713	2,64,22,26,818
Average of P & M		5,24,75,54,097	2,75,21,98,662
Valuation of Securities & Financial Assets			
1	Laxminarayana Joisa H	1,06,27,45,000	61,64,95,000
2	M V Sudarshan	1,12,10,12,000	59,98,73,000
Average of S & FA		1,09,18,78,500	60,81,84,000
Total Value of L&B, P&M and S&FA		8,06,20,43,597	4,56,62,10,362

14. Ld. Counsel submitted that in the 6<sup>th</sup> SCC Meeting held on 20.12.2023, the public announcement made by the erstwhile Liquidator inviting EOI from eligible Applicants under Section 230 of the Companies Act and under Regulation 32 and 32A of IBBI Regulations was cancelled / withdrawn with immediate effect as it was in contravention of the Code and the Regulations. The SCC also discussed about the fixation of reserve price to process the e-auction / sale of the Corporate Debtor as a going concern. Ld.



Counsel submitted that after fixing the reserve price based on the valuation report prepared by the IBBI registered valuers with the approval of the SCC Members, e-auction notice for sale of the Corporate Debtor as a going concern was published on 29.12.2023 and e-auction date was fixed as 31.01.2024. Ld. Counsel submitted that upon discussions with the SCC members, the reserve price was fixed in accordance with the provisions of the Code.

15. Ld. Counsel further argued that the Applicant / Promoter Director has no *locus standi* being a shareholder to challenge the ongoing liquidation process sale notice being disqualified under Section 29A of the Code as held in the case of *JM Financial Asset Construction Company Ltd Vs M/s. Well Do Holdings and Exports Pvt. Ltd. in Comp. AT Ns No. 134 of 2019*. Ld. Counsel contended that the Applicant did not have locus to file resolution plan which principle also applies in the e-auction sale process. However, the Applicant with a malafide intention has filed this application raising frivolous allegations to drag the liquidation process. Ld. Counsel contended that dispute or issue qua the valuation of the Corporate Debtor can



only be raised by the Creditors being the aggrieved persons since their realization against the claim amount arising out of the loan exposure gets affected.

16. Ld. Sr Counsel Shri. P H Arvindh Pandian appearing for the Applicant Narottamka Trade and Vyapaar Pvt Ltd in IA/416/2024 submits that the Applicant is the shareholder in the Corporate Debtor and as such it had submitted a scheme for compromise under Regulation 2B of the Liquidation Process Regulations for revival of the Corporate Debtor in furtherance of an advertisement issued by the erstwhile Liquidator which was affirmed by the new Liquidator vide updated process documents dated 18.12.2023 thus ratifying the action of the erstwhile Liquidator, updating the process documents, calling for a scheme under Regulation 2B or for auction to be undertaken under Regulation 32 and 32A. He thereafter shortlisted the Applicant (IA/416/2024) as a Scheme Proponent. Ld. Counsel contended that the Liquidator unilaterally cancelled the entire process *ex post facto* on 23.12.2023 claiming that the process was initiated by the erstwhile Liquidator during the period of stay, while in reality, the new



Liquidator post taking charge had affirmed and updated the process document. Ld. Counsel stated that the cancellation as on 23.12.2023 was malafide as the EoI dated 16.10.2023 was cancelled on account of the action taken by the erstwhile Liquidator. Ld. Counsel also referred page 115 of the application i.e. the scheme submitted to the erstwhile Liquidator on 18.10.2023, Page 114 i.e. process document prepared by the erstwhile Liquidator which was modified by the new Liquidator, page 185 of tentative timeline of the process, page 190 – final shortlisted participants for the process and page 142- email from the Liquidator dated 18.12.2023 *inter alia* that a document forming the scheme was missing asking to resend the same.

17. Ld. Counsel contended that after cancellation on 23.12.2023, on 27.12.2023 a fresh e-auction notice was issued where the entire process of the scheme under Regulation 2B was given a go-by and the right of the Applicant (IA/416/2024) was whittled away. Ld. Counsel submitted that the Applicant had a legitimate expectation that the process would be re-run, but it was cancelled. Ld. Counsel contended that the entire process of consideration of the scheme as contemplated





under Section 230 of the Companies Act was not followed. Ld. Counsel referred the case of *Ramesh Kumar Chaudhary & Ors. Vs. Anju Agarwal & Ors*, (2022) 171 SCC Online 655 to contend that SCC is not the body to consider the scheme and every scheme submitted should be considered and decided by the Creditors in a meeting convened under Section 230(1) of the Companies Act, 2013. Thus the entire process of consideration of scheme is misconceived and its cancellation is without jurisdiction. Ld. Counsel submitted that SCC cannot exercise commercial wisdom in contravention of law.

18. Ld. Counsel submitted that the contention of the Respondent that there is no necessity to give an advertisement under Regulation 2B which is also subject to 90 days period, beyond which it cannot be considered, does not hold good as in this case, the Liquidator had updated the process document and shortlisted the Applicant (IA/416/2024) to submit the scheme, thus had given benefit. Ld. Counsel further argued that 90 days period is directory and not mandatory. He referred the NCLT Delhi case in *Small Industrial Development Bank of India vs Delicious CoCo Water Private Limited*



(IA.2308/ND/2022 in CP(IB)-575(ND)/2017). Ld. Counsel further argued that even the Tribunals in many cases have permitted and warranted paper publications to be given for the schemes and the schemes given by the third parties through the Liquidator have been approved by the Tribunals. Ld. Counsel submitted that the scheme submitted by the Applicant (IA/416/2024) was placed before the SCC by the new Liquidator on 30.01.2024 which was rejected without any valid reason. Ld. Counsel contended that sale of assets of the Corporate Debtor under Regulation 32 and 32A should be resorted to by the Liquidator after the completion of exercise as set out under Section 230 of the Act which is a condition precedent to be satisfied before delving into the process of the sale of the Corporate Debtor.

19. Ld. Counsel further argued that as per Clause 12 Schedule 1 of the Liquidation Process Regulations, the payment of the entire sale consideration should have been made within 90 days. The said Regulation is mandatory, but in this case, till date 75% balance payment has not been made and as such sale has to be nullified and



earnest money needs be forfeited. In support of his contentions, he relied on the following cases.

(i) *Ramesh Kumar Chaudhary & Ors. vs. Anju Agarwal & Ors* - Page 237, Volume 2, Para nos. 11, 12, 12, 13, 14, 17, 18, 19, 20, 21, 28, 29, 34, 36.

(ii) *Y Shivram Prasad vs Dhanapal* Page 274, Volume 2, Reference to Para 12

(iii) *Re Ramakrishnan Sadasivan, Liquidator of Thiru Arooran Sugars Ltd, NCLT CHENNAI* - Page 296, Volume 2

(iv) *Harish Sharma Vs. C&C Constructions Limited and Ors* Page 330, Volume 2, Reference to Para 21.

(v) *Small Industrial Development Bank of India Vs. Delicious Coco Water Private Limited* Page 338, Volume 2, Reference to Para 14, Para 17

(vi) *Sanjeev Mitla vs. Mr. Madhusudhan Rao Gonugunta & Anr* Page 351, Volume 2. Relevant Extracts of the judgment in Application Para 25 @ Page 14

(vii) Hon'ble NCLT, New Delhi Bench in *Akash Shinghal, Liquidator vs Consortium of Mr. Narahari Vijay Sagar Reddy*, IA No. 4427/2023 Filed along with this written submission.

(viii) *Mr. Surinder Manchanda vs Nolsar International Ltd*, IA No. 6280/ND/2022 Filed along with this written submission.

(ix) *Potens Transmissions & Power Private Limited v. Gian Chand Narang*, (CA (AT) (Ins) No. 532 of 2022, Reference to Para 8 and 9- Filed along with this written submission.



20. Ld. Counsel Shri. T K Bhaskar for the Liquidator per contra argued that the Applicant (IA/416/2024) holding 3655 shares had sought information memorandum vide mail dated 13.03.2023 i.e. on 94<sup>th</sup> day of the Liquidation order dated 09.12.2022 for submission of the scheme with the erstwhile Liquidator. The Applicant (IA/416/2024) submitted the scheme along with the co-Applicant / unsuccessful Resolution Applicant namely Global Metcorp Limited vide mail dated 26.01.2024 and then filed this application on 09.02.2024 challenging the rejection of scheme by the SCC alleging that the Liquidator did not provide them an opportunity of being heard or to increase their offer which is nothing but to derail the revival of the Corporate Debtor during the liquidation process. Ld. Counsel contended that the Scheme Proponent / Co-Applicant is nothing but an unsuccessful Resolution Applicant.

21. Ld. Counsel contended that public announcement dated 16.10.2023 was cancelled / withdrawn since the erstwhile Liquidator, with a malafide intent after his removal, made the public



announcement and it was also in contravention of the Code and the Regulations.

22. Ld. Counsel contended that Section 230-232 of the Companies Act, 2013, requires approval of 75% of the creditors to avoid delay in the liquidation process and that the same SCC members are to vote for the scheme. Ld. Counsel contended that the Liquidator presented the scheme before the SCC members whose admitted claims are more than 1200 Crores where they had noted that the scheme was filed belatedly without the approval of the Tribunal much less than the liquidation value without proof of funds on the eve of e-auction sale. The SCC declined to vote for deferment of e-auction sale and rejected the scheme on 30.01.2024. Ld. Counsel contended that the Applicant (IA/416/2024) mentioning of incremental offer of Rs. 532.81 Crores is without any concrete proof of funding. The Applicant (IA/416/2024) should have approached the Tribunal to consider the scheme much earlier not at the time when the Liquidator sold the Corporate Debtor as a going concern to the Successful Bidder through e-auction. In fact, the Applicant (IA/416/2024) scheme is of zero value, though it



projected for Rs.331 Crores which figure it increased during rejoinder to Rs.532.81 Crores stating that payment will be made to the Financial Creditors within 90 days of the approval but in fact the scheme proposes to assign it to the ARC viz. SPV and then the payment shall be made to the Financial Creditor without any support. Ld. Counsel contended that the Applicant (IA/416/2024) has made a declaration of net worth in the scheme as Rs. 0.58 Crores and of the co-Applicant as Rs. 185.94 Crores, though the liquidation value is Rs. 457 Crores and the bid is for Rs. 487 Crores. Ld. Counsel submitted that the scheme did not contain any concrete source / proof of funds, so the Liquidator proceeded with the scheduled e-auction.

23. Ld. Counsel contended that the Applicant cannot be allowed to argue beyond the pleading which is limited to rejection of scheme and challenging the e-auction sale. Ld. Counsel stated that the approval of sale as a going concern of the Corporate Debtor from the Tribunal is necessary to sell the Company on a clean slate manner which is also one of the marketing strategies. By presenting the Company as a viable entity, it attracts the potential buyers and encourages



competition. The value maximization is the object of IBC. Ld. Counsel submits that the Liquidator has to sell the assets of the Corporate Debtor in a manner specified under Schedule 1 of the Liquidation Regulations by fixing the reserve price and terms and conditions as required under law. The Liquidator with the approval of the SCC fixed the reserve price as Rs. 457 Crores with a payment terms of 10% (EMD) + 15% (Upon Sale confirmation) + 75% (Upon Tribunal approval) which is not illegal but in line with Regulation 12 of Schedule 1 which provides that on the close of the auction, the highest bidder shall be invited to provide balance sale consideration within 90 days, or such period as mentioned in the auction notice under Clause 3, of the date of such demand. Regulation 1 of Schedule also stipulates that if no scheme is received within 45 days, then the Liquidator shall have liberty to proceed with the e-auction sale. In the present case, the scheme was received only after the issue of e-auction sale notice. Ld. Counsel referred the case of *M.S. Viswanathan, Liquidator of Gemini Communication Limited Vs. PixtonicGlobal Technologies Pvt Ltd, IA/1215/2021 in CP/699/2017* where it was held that sale of a Company



as a going concern means sale of both assets and liabilities. In that case, the Tribunal while granting the relief held as under:

*“All liabilities and guarantees extended by the Corporate Debtor whether monetary or non-monetary, statutory, crystallized or not crystallized, claimed or not claimed, admitted or not admitted, disputed or undisputed, confirmed or contingent or due or overdue or future due, decrees obtained for satisfaction of debt and all such obligations of the CD shall stand extinguished and discharged in full without any recourse to the CD.” Shall stand extinguished and discharged in full without any recourse to the CD.” This relief is granted by the Hon’ble NCLT subject to the Provision of the IBC, 2016.*

24. Ld. Counsel also referred the case of *Harish Sharma Vs C & C Constructions Limited, Company Appeal (AT)(INS) 368 of 2023*. In that case, the liquidation order was passed on 07.10.2022. 90 days period for proposing the scheme as per Regulation 2B expired on 04.01.2023. Publication of notice inviting the scheme was issued on 26.10.2022. It was held that this was only to apprise the general public about such an opportunity but it was not intended to serve as the start date of initiation of the process for submission of the scheme under Regulation 2B. The Appellant misconstrued the notice to mean that 90 days period for submission of scheme started from 26.10.2022. It was held





that no scheme was submitted by the Appellant till 23.05.2023 either before the Secured Creditors or the Stakeholders Consultation Committee or the Liquidator, although had sought extension of timeline for the submission of the scheme. It was held:

*“We are of the view that in the present matter, the Applicant has not shown any proof of a scheme of compromise and arrangement that is formulated and ready, and proposed for consideration nor has the Appellant obtained the consent of 75% of the secured creditors of the corporate debtor in support of such a scheme. Merely seeking an extension of the timeline without showing any evidence of sincere and serious efforts in preparation and formulation of such a scheme clearly shows that the request for extension of timeline is not supported by concrete action. In view of the fact that the 90 days’ timeline prescribed under the Regulation 2-B of the Liquidation Process Regulations, 2016 had expired on 4.1.2023 and no evidence about readiness of the scheme was shown, we are of the clear opinion that the Adjudicating Authority has not committed any error in passing the Impugned Order. “*

25. Ld. Counsel submitted that in the present case, the Applicant (IA/416/2024) filed the scheme after 13 ½ months of passing of liquidation order after it came to know that the Corporate Debtor is about to be sold, hence the application deserves to be dismissed. Ld. Counsel submitted that the object of the Code is the timely revival and



that is why the liquidation timeline is fixed for one year under Regulation 44. The intention of the Applicant (IA/416/2024) in the present case is only to derail the revival during the liquidation process and to further deteriorate the value of the Corporate Debtor.

26. Shri. Sardarmal Kothari, the Promoter Director also filed an application **IA(IBC)/1387/(CHE)/2024** seeking the following reliefs.

- a) Direct the 1<sup>st</sup> Respondent not to include the property covered by the Lease Deeds dated 04.12.2008 and 17.03.2010, and/or transfer the leasehold rights in respect of the said property in the Sale of the Corporate Debtor in favour of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents;*
- b) Direct the 1<sup>st</sup> Respondent to handover the vacant possession of the property/lies covered by the Lease Deeds dated 04.12.2008 and 17.03.2010 to the owners of land;*
- c) Direct the 1<sup>st</sup> Respondent to make payment of the lease rentals for the period between 19.12.2020 (date of commencement of CIRP) and 19.02.2021 (being the date of termination), to the Applicants in respect of the lands covered by the Lease Deeds dated 04.12.2008 and 17.03.2010;*

27. Ld. Sr Counsel Shri S R Rajagopal submits that the Applicant (IA/1387/2024), being one of the shareholders and promoter of the Corporate Debtor along with other promoters of the Corporate Debtor



had leased out the premises to the Corporate Debtor vide lease deed dated 04.12.2008 for a period of 10 years which was extended for another period of 19 years vide lease deed dated 17.03.2010. The Corporate Debtor thereafter mortgaged the leasehold rights to Punjab National Bank for securing the credit facilities by signing MODT. The lease rentals were paid till January 2020. Thereafter the Corporate Debtor went into CIRP w.e.f. 19.02.2020. Owing to non-payment of lease dues, the Applicant (IA/1387/2024) terminated the lease vide letter dated 19.02.2021, however, the RP refused to hand over the premises in the light of ongoing moratorium. Thereafter the liquidation was ordered on 09.12.2022.

28. Ld. Counsel contended that throughout the period, no lease rentals were paid to the Applicant (IA/1387/2024) by the Corporate Debtor. He submits that the Liquidator published the e-auction notice on 27.12.2023 along with the bid document whereby he proposed to sell the leasehold rights along with the Corporate Debtor as a going concern. In the e-auction, Respondents No. 2 and 3 emerged as the Successful Bidders.



29. Ld. Counsel Shri. T K Bhaskar appearing for Respondent No. 1 submits that the registered lease deed as referred above was executed by the Promoter Directors, being the absolute owners of the immovable property on 04.12.2008 and 17.10.2010 respectively in favour of the Corporate Debtor for a period till 31.07.2037 w.e.f. 01.08.2008 giving right to the lessee / Corporate Debtor to make the constructions thereon on a lease rental of Rs. 1.0 Lakh / Rs. 10,000 per month. The area comprised in the lease deed is 32.52 acres. The Corporate Debtor signed a memorandum relating to deposit of title deeds on 27.04.2017 in favour of Punjab National Bank which also has reference of leasehold rights / interest which it created with the Bank as a collateral security. Ld. Counsel contended that the construction on the land was raised by the Corporate Debtor from the funds of the Corporate Debtor. The Applicant (IA/1387/2024) had also stood guarantor to the loan. Since the Corporate Debtor and the Directors failed to repay the loan, the Bank initiated an action under the SARFAESI Act and took the symbolic possession of the premises / leasehold rights. Ld. Counsel referred Section 14 of IBC, 2016, to contend that during the period of moratorium, no action can be taken



towards recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor. Ld. Counsel submitted that the alleged lease termination notice was given by the Promoter Directors / land owners on 19.02.2021 which is invalid due to the existing moratorium in view of the CIRP order on 19.02.2020 and liquidation order on 09.12.2022.

30. Ld. Counsel submits that as to the rentals, the RP / Liquidator has to proceed as per the provisions of IBC and the Regulations. The lease deed is a registered lease deed which is till 31.07.2037. The Corporate Debtor had mortgaged the leasehold rights in favour of Punjab National Bank which is also one of the Financial Creditors / Members of the CoC / SCC in the present case. The auction of the Corporate Debtor has been made "*as is where as basis*" since the Corporate Debtor is to be run as a going concern. Ld. Counsel submits that the provisions of the Code have been strictly followed while issuing the e-auction sale notice.

31. We have given thoughtful consideration to the rival contentions, in all the applications and perused the record and the case laws supra .



## **Legal Provisions**

32. **Section 33** of IBC, 2016 provides for initiation of liquidation. It reads as: where the Adjudicating Authority, before the expiry of the Insolvency Resolution Process period or the maximum period permitted for completion of the Corporate Insolvency Resolution Process under Section 12....., does not receive a resolution plan under Section 30(6) or rejects the resolution plan under Section 31 for the non-compliance of the requirements specified therein, it shall pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in the chapter. **Section 35** provides power and duties of the Liquidator. **Section 35(1)(f)** provides that subject to the directions of the Adjudicating Authority, the Liquidator shall have the powers and duties, i.e. subject to Section 52, to sell the immovable and movable property and actionable claim of the Corporate Debtor in liquidation by public auction or private contract with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified provided that the Liquidator shall not sell the immovable and movable property or actionable claims of the Corporate Debtor in liquidation to any person



who is not eligible to be a Resolution Applicant. Section 35(2) provides that the Liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under Section 53 provided that any such consultation shall not be binding on the Liquidator, provided further that the records of any such consultation shall be made available to all other stakeholders not so consulted, in a manner specified by the Board. Section 36 provides the Liquidation estate which reads as:

*(1) For the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3), which will be called the liquidation estate in relation to the corporate debtor.*

*(2) The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.*

*(3) Subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include the following:-*

*(a) any assets over which the corporate debtor has ownership rights, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the Board, including shares held in any subsidiary of the corporate debtor,*

*(b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets;*

*(c) tangible assets, whether movable or immovable;*

*(d) intangible assets including but not limited to intellectual property, securities (including shares held in a subsidiary of the*



*corporate debtor) and financial instruments, insurance policies, contractual rights;*

*(e) assets subject to the determination of ownership by the court or authority;*

*(f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;*

*(g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest;*

*(h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and*

*(i) all proceeds of liquidation as and when they are realised.*

*(4) The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation:-*

*(a) assets owned by a third party which are in possession of the corporate debtor, including-*

*(i) assets held in trust for any third party;*

*(ii) bailment contracts;*

*(iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;*

*(iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and*

*(v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator;*

*(b) assets in security collateral held by financial services providers and are subject to netting and set-off in multilateral trading or clearing transactions;*

*(c) personal assets of any shareholder or partner of a corporate debtor' as the case may be, provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter,*

*(d) assets of any Indian or foreign subsidiary of the corporate debtor; or*

*(e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.*





33. **Regulation 2(ba) of IBBI, (Liquidation Process) Regulations**

**2016**, defines Consultation Committee. It means Stakeholders

Consultation Committee constituted under Regulation 31A(1).

**Regulation 2B** provides for compromise or arrangement. It reads:

*1) Where a compromise or arrangement is proposed under section 230 of the Companies Act, 2013 (18 of 2013), it shall be completed within ninety days of the order of liquidation under section 33:*

*PROVIDED that a person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor, shall not be a party in any manner to such compromise or arrangement.*

*(2) The time taken on compromise or arrangement, not exceeding ninety days, shall not be included in the liquidation period.*

*(3) Any cost incurred by the liquidator in relation to compromise or arrangement shall be borne by the corporate debtor, where such compromise or arrangement is sanctioned by the Tribunal under sub-section (6) of section 230:*

*PROVIDED that such cost shall be borne by the parties who proposed compromise or arrangement, where such compromise or arrangement is not sanctioned by the Tribunal under sub-section (6) of section 230.].*

34. **Regulation 31** provides the list of stakeholders which reads as

under:-

*(1) The liquidator shall prepare a list of stakeholders, category-wise, on the basis of proofs of claims submitted and accepted under these Regulations with -*

*(a) the amounts of claim admitted, if applicable;*

*(b) the extent to which the debts or dues are secured or unsecured, if applicable;*



(c) the details of the stakeholders; and

(d) the proofs admitted or rejected in part, and the proofs wholly rejected.

(2) The liquidator shall file the list of stakeholders with the Adjudicating Authority within forty-five days from the last date for receipt of the claims.

35. **Regulation 31A** provides for Stakeholders Consultation

Committee which reads as under:-

(1) The Liquidator shall constitute a consultation committee within sixty days from the liquidation commencement date, based on the list of stakeholders prepared under Regulation 31, to advise him on matters relating to-

(a) appointment of professionals and their remuneration under regulation 7;

(b) sale under regulation 32, including manner of sale, pre-bid qualifications, reserve price, amount of earnest money deposit and marketing strategy. Provided that the decision(s) taken by the liquidator prior to the constitution of consultation committee shall be placed before the consultation committee for information in its first meeting.]

(2) The composition of the consultation committee under sub-regulation(1) shall be as shown in the Table below:

<i>Class of Stakeholders</i>	<i>Description</i>	<i>Number of Representatives</i>
(1)	(2)	(3)
Secured financial creditors, who have relinquished their security interests under section 52	Where claims of such creditors admitted during the liquidation process is at least 50% of liquidation value	Number of creditors in the category, subject to a maximum of 2



	Where claims of such creditors admitted during the liquidation process is at least 50% of liquidation value	Number of creditors in the category, subject to a maximum of 4
Unsecured financial creditors	Where claims of such creditors admitted during the liquidation process is less than 25% of liquidation value	Number of creditors in the category, subject to a maximum of 1
	Where claims of such creditors admitted during the liquidation process is at least 25% of liquidation value	Number of creditors in the category, subject to a maximum of 2
Workmen and employees	1	1
Governments	1	1
Operational creditors other than Workmen, employees and Governments	Where claims of such creditors admitted during the liquidation process is less than 25% of liquidation value	Number of creditors in the category, subject to a maximum of 1
	Where claims of such creditors admitted during the liquidation process is at least 25% of liquidation value	Number of creditors in the category, subject to a maximum of 2
Shareholders or partners, if any		1



(3) *The liquidator may facilitate the stakeholders of each class to nominate their representatives for inclusion in the consultation committee.*

(4) *If the stakeholders of any class fail to nominate their representatives, under sub-regulation (3), such representatives shall be selected by a majority of voting share of the class, present and voting.*

(5) *Subject to the provisions of the Code and these regulations, representatives in the consultation committee shall have access to all relevant records and information as may be required to provide advice to the liquidator under sub-regulation (1).*

(6) *The liquidator shall convene a meeting of the consultation committee when he considers it necessary and shall convene a meeting of the consultation committee when a request is received from at least fifty-one percent of representatives in the consultation committee.*

(7) *The liquidator shall chair the meetings of consultation committee and record deliberations of the meeting.*

(8) *The liquidator shall place the recommendation of committee of creditors made under sub-regulation (1) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, before the consultation committee for its information.*

(9) *The consultation committee shall advise the liquidator, by a vote of not less than sixty-six percent of the representatives of the consultation committee, present and voting.*

(10) *The advice of the consultation committee shall not be binding on the liquidator:*

*PROVIDED that where the liquidator takes a decision different from the advice given by the consultation committee, he shall record the reasons for the same in writing [and mention it in the next progress report].*



36. **Regulation 32** provides Sale of Assets which is read as under:-

*The liquidator may sell-*

*(a) an asset on a standalone basis;*

*(b) the assets in a slump sale;*

*(c) a set of assets collectively;*

*(d) the assets in parcels;*

*(e) the corporate debtor as a going concern; or*

*(f) the business(es) of the corporate debtor as a going concern:*

*PROVIDED that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security interest therein has been relinquished to the liquidation estate.*

37. **Regulation 32A** provides the sale as a going concern which is read as under:-

*(1) Where the committee of creditors has recommended sale under clause (e) or (f) of regulation 32 or where the liquidator is of the opinion that sale under clause (e) or (f) of regulation 32 shall maximise the value of the corporate debtor, he shall endeavour to first sell under the said clauses.*

*(2) For the purpose of sale under sub-regulation (1), the group of assets and liabilities of the corporate debtor, as identified by the committee of creditors under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall be sold as a going concern.*

*(3) Where the committee of creditors has not identified the assets and liabilities under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall identify and group the assets and liabilities to be sold as a going concern, in consultation with the consultation committee.*



*(4) If the liquidator is unable to sell the corporate debtor or its business under clause (e) or (f) of regulation 32 within ninety days from the liquidation commencement date, he shall proceed to sell the assets of the corporate debtor under clauses (a) to (d) of regulation 32.*

38. **Regulation 34** provides the Asset memorandum which reads as under:-

*(1) On forming the liquidation estate under Section 36, the liquidator shall prepare an asset memorandum in accordance with this Regulation within seventy-five days from the liquidation commencement date.*

*(2) The asset memorandum shall provide the following details in respect of the assets which are intended to be realized by way of sale-*

- (a) value of the asset, valued in accordance with Regulation 35;*
- (b) value of the assets or business(es) under clauses (b) to (f) of regulation 32, valued in accordance with regulation 35, if intended to be sold under those clauses;*
- (c) intended manner of sale in accordance with Regulation 32, and reasons for the same;*
- (d) the intended mode of sale and reasons for the same in accordance with Regulation 33;*
- (e) expected amount of realization from sale; and*
- (f) any other information that may be relevant for the sale of the asset.*

*(3) The asset memorandum shall provide the following details in respect of each of the assets other than those referred to in sub-regulation (2)-*

- (a) value of the asset;*
- (b) intended manner and mode of realization, and reasons for the same;*
- (c) expected amount of realization; and*
- (d) any other information that may be relevant for the realization of the asset.*



(4) *The liquidator shall file the asset memorandum along with the preliminary report to the Adjudicating Authority.*

(5) *The asset memorandum shall not be accessible to any person during the course of liquidation, unless permitted by the Adjudicating Authority.*

39. **Regulation 35** provides the Valuation of assets or business intended to be sold which reads as under.

(1) *Where the valuation has been conducted under regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 or regulation 34 of the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, as the case may be, the liquidator shall consider the average of the estimates of the values arrived under those provisions for the purposes of valuations under these regulations.*

(2) *In cases not covered under sub-regulation (1) or where the liquidator is of the opinion that fresh valuation is required under the circumstances, he shall within seven days of the liquidation commencement date, appoint two registered valuers to determine the realisable value of the assets or businesses under clauses (a) to (f) of regulation 32 of the corporate debtor:*

*PROVIDED that the following persons shall not be appointed as registered valuers, namely:-*

- (a) a relative of the liquidator;*
- (b) a related party of the corporate debtor;*
- (c) an auditor of the corporate debtor at any time during the five years preceding the insolvency commencement date; or*
- (d) a partner or director of the insolvency professional entity of which the liquidator is a partner or director.*

(3) *The Registered Valuers appointed under sub-regulation (2) shall independently submit to the liquidator the estimates of realisable value of the assets or businesses, as the case may be, computed in accordance*



*with the Companies (Registered Valuers and Valuation) Rules, 2017, after physical verification of the assets of the corporate debtor.*

*(4) The average of two estimates received under sub-regulation (3) shall be taken as the value of the assets or businesses.*

40. **Schedule 1 (Mode of Sale) (Under Regulation 33 of IBC, 2016),**

provides the procedure to be followed during auction. **1(12)** provides that on the close of the auction, the highest bidder shall be invited to provide balance sale consideration within 90 days of the date of such demand provided that the payments made after 30 days shall attract interest at the rate of 12%, provided further that the sale shall be cancelled if the payment is not received within 90 days.

41. **Section 230 of the Companies Act, 2013** provides power to compromise or make arrangements with Creditors and Members.

**Section 230(1)** reads as under.

*(1) Where a compromise or arrangement is proposed-*

*a) between a company and its creditors or any class of them; or  
b) between a company and its members or any class of them,  
the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be, order a meeting of the creditors or class of creditors, or of the members or class*





*of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.*

*Explanation.- For the purposes of this sub-section, arrangement includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods*

*(3) Where a meeting is proposed to be called in pursuance of an shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company, individually at the address registered with the company which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed:*

*Provided further that where the notice for the meeting is also issued by way of an advertisement, it shall indicate the time within which copies of the compromise or arrangement shall be made available to the concerned persons free of charge from the registered office of the company.*

*(4) A notice under sub-section (3) shall provide that the persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot to the adoption of the compromise or arrangement within one month from the date of receipt of such notice:*

*Provided that any objection to the compromise or arrangement shall be made only by persons holding not less than ten per cent. of the shareholding or having outstanding debt amounting to not less than five per cent. of the total outstanding debt as per the latest audited financial statement.*

*(5) A notice under sub-section (3) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India established*



*under sub-section (1) of section 7 of the Competition Act, 2002 (12 of 2003), if necessary, and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.*

*(6) Where, at a meeting held in pursuance of sub-section (1), majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company being wound up, on the liquidator [appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be,] and the contributories of the company.*

*(9) The Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety per cent. Value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement.*

### **Analysis and Conclusion**

42. A perusal of the record reveals that during the period of CIRP, resolution plans from three Resolution Applicants were tabled for consideration before the CoC in the meeting held on 14.09.2021. Out of three, only two plans were approved to be placed for voting, however the CoC by 100% voting rejected both the resolution plans. In the same meeting, it considered the possibility of selling the Corporate Debtor as



a going concern in liquidation. The resolution was put to vote and the CoC by a majority of 100% voting, voted in favour of the liquidation as a going concern.

43. The erstwhile Promoter, shareholder and Suspended Director Shri. Vinod Kothari had filed an IA/1/2022 seeking permission to intervene alleging that if the liquidation of the Corporate Debtor is ordered, severe hardship and prejudice would be caused to the Applicant and the other members of the Suspended Board of Directors claiming that as per Section 230(12) of the Companies Act, 2013, the Applicant is an aggrieved party. In the instant case, an appeal was preferred by the Applicant in *Vinod Kothari vs State Bank of India & Anr Company Appeal (AT)(INS)/328/2020*, where the Tribunal after hearing the submissions vide order dated 09.12.2022 held that the CoC in its commercial wisdom after examining the viability and feasibility of two resolution plans rejected the plans unanimously and decided to liquidate the Corporate Debtor. The decision of the CoC cannot be called into question by the Tribunal.



44. The erstwhile Liquidator, made the paper publication and invited the claims from the stakeholders. He formed a Stakeholders Consultation Committee (SCC). In the first meeting held on 09.01.2023, he made a briefing about the Corporate Debtor and its current state of operations, profitability statement analysis and also pointed out the reasons for the losses in the factory. The committee held a discussion on the liquidation of the Corporate Debtor as a going concern in accordance with the Tribunal order dated 14.12.2022 and fixed the eligibility criteria for inviting EOI commenting that it is essential to keep the process running to avoid any deterioration of the value of the Corporate Debtor. The committee also discussed on the appointment of valuer in accordance with Regulation 35(2) of the Regulations and considered the quotations received from the valuers. The Liquidator also conducted the meeting of various categories of stakeholders on 01.03.2023 and formed a list as detailed at Page 88 and 89 of IA/420/2024. He prepared the list of stakeholders as on 12.02.2023 as detailed at page 101 to 122. The second SCC meeting was held on 20.03.2023 which was attended by 5 Secured Financial Creditors, Representative of Operational Creditors, Representative of



Government Dues Operational Creditors, Representative of workmen and employees and Representative of shareholders and partners (Total – 9). They discussed the tentative timelines for the liquidation process and the eligibility criteria. The Tribunal in the order dated 20.09.2023 also extracted the class of creditors in the list of stakeholders and their voting percentage as reproduced below:-

Class of creditor	Nos.	Name of Creditor/ Representative	Voting %
Secured Financial Creditors	1	Prudent ARC Limited (E-State Bank of India)	33.35%
	2	Punjab National Bank	27.73%
	3	Union Bank of India (E-Andhra Bank)	16.44%
	4	Bank of India	12.62%
	5	Canara Bank	9.00%
Unsecured Financial Creditors	1	--	0.00%
Operational Creditors (Other than Workmen, Employees & Governments)	1	Mr. V. Kumaraguru (Bright Tech Industrials India Private Limited)	0.17%
Operational Creditors (Government Dues)	1	Ms. Nappinnai K (Assistant Commissioner (ST), Tondiarpet)	0.37%
Workmen & Employees	1	Mr. Ramamoorthy T	0.32%
Shareholders & Partners (if any)	1	Mr. Varadaraj S	0.00%

45. The third SCC meeting was held on 11.10.2023 which was attended by Mr. Varadaraj S, Representative of the shareholders and partners. Updates were given by the Liquidator. Eligibility criteria was finally approved. The draft of EOI was also approved inviting the prospective bidders to submit their expression of interest for purchase of the Corporate Debtor as a going concern under Regulation 32(e) or



32A or for scheme for arrangement and compromise under Section 230 of the Companies Act, 2013 r/w Regulations 2B on or before 13.10.2023.

46. Fourth meeting of SCC was held on 30.11.2023. It was attended by the following members.

<b>Class of Stakeholders</b>	<b>Name of Stakeholders</b>	<b>Attendees [Physical/Virtual]</b>
Secured financial creditors	Prudent ARC Limited [33.35%]	Shri. Amarjeet Kochar
	Punjab National Bank [27.73%]	Shri. Anantha Krishna Chaitanya Shri. Mahadevan Shri. C.G. Ranjith
	Union Bank of India [16.44%]	Shri. MLR Sreekanth Smt. Deepa Devi Shri. Balakrishna
	Bank of India [12.62%]	Shri. Varun
	Canara Bank [9.00%]	Shri. Sudarshan Joshi Smt. Subha B S Shri. Dushmanta Nayak Shri. D Ravi Sankar
Operational Creditors [Other than workmen, employees & Government]	Bright Tech Industrials India Private Limited [0.17%]	Absent
Operational Creditors [Government Dues]	Assistant Commissioner (ST), Tondiarpet [0.37%]	Absent
Workmen & Employees	Mr. Ramamoorthy T [0.32%]	Present

Shareholders or partners, if any	Mr. Varadaraj S [0.0%] <i>[On behalf of Shobha Investment Private Limited – Largest Shareholder of KIL]</i>	Present
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47. The Liquidator presented the valuation summary giving the fair value and the liquidation value as reproduced below:-

<b>Valuation of Land &amp; Building</b>			
<b>S.No</b>	<b>Valuers</b>	<b>Fair Value</b>	<b>Liquidation Value</b>
1	Arulnambi Engineering Consultants	1,75,71,81,000	1,23,00,26,700
2	Shanmugam.M	1,68,80,41,000	1,18,16,28,700
<b>Average of L&amp;B</b>		<b>1,72,26,11,000</b>	<b>1,20,58,27,700</b>
<b>Valuation of Plant &amp; Machinery</b>			
1	P. Natarajan	5,03,22,95,481	2,86,21,70,506
2	Arasu Associates	5,46,28,12,713	2,64,22,26,818
<b>Average of P&amp;M</b>		<b>5,24,75,54,097</b>	<b>2,75,21,98,662</b>
<b>Valuation of Securities &amp; Financial Assets</b>			
1	Laxminarayana Joisa H	1,06,27,45,000	61,64,95,000
2	M V Sudarshan	1,12,10,12,000	59,98,73,000
<b>Average of S&amp;FA</b>		<b>1,09,18,78,500</b>	<b>60,81,84,000</b>
<b>Total Value of L&amp;B and P&amp;M and S&amp;FA</b>		<b>8,06,20,43,597</b>	<b>4,56,62,10,362</b>

48. Fifth SCC meeting was held on 14.12.2023, where it was resolved that the reserve price can be fixed at liquidation value of the assets of the Corporate Debtor i.e. INR 457 Crores for the auction purposes for sale of Corporate Debtor as a going concern or Compromise or Arrangements under Section 230 of the Companies Act, 2013 as decided by the SCC from time to time. It was also decided to withdraw the EOI dated 16.10.2023 and to pursue only the option of





sale of Corporate Debtor as a going concern through a fresh EOI and drop the auction of inviting EOI for scheme of arrangement under Section 230 of the Companies Act, 2013. This decision was taken in the subsequent meeting held on 20.12.2023 where representatives of the stakeholders were present. Accordingly fresh e-auction notice was issued on 27.12.2023 which is extracted as under:-

<b>SALE NOTICE UNDER IBC, 2016</b>			
<b>M/s. KAMACHI INDUSTRIES LIMITED (In Liquidation)</b>			
Reg.off : ABC Trade Centre Old No.50, (New No. 39), 3rd Floor, Anna Salai, Chennai-600002			
Liquidator : SPP Insolvency Professionals LLP			
Liquidator Address : No. 27/9, Nivedh Vikas, Pankaja Mill Road, Puliyakulam, Coimbatore – 641 045. Contact No. +91 73730 52341			
E-mail : msureshkumar@icai.org / liquidator.kamachi@gmail.com			
<b>E- AUCTION Sale of Assets under Insolvency and Bankruptcy Code, 2016</b>			
<b>Date and Time of Auction: Wednesday, 31st January, 2024 at 3.00 pm to 4.00 pm</b>			
<b>(With unlimited extension of 5 minutes each)</b>			
Sale of assets and properties owned by M/s. Kamachi Industries Limited (In Liquidation) forming part of Liquidation Estate by the Liquidator, appointed by the Hon'ble National Company Law Tribunal, Chennai bench vide order no: IA/628/CHE/2023 & IA/705/CHE/2023 in IBA/883/2019 dated 20th September, 2023. The sale will be done by the undersigned through the e-auction platform <a href="https://nbid.nesl.co.in/">https://nbid.nesl.co.in/</a> .			
Asset	Reserve Price (in Rs.)	Earnest Money	Bid Increment Amount (in Rs.)
LOT 1 : Sale of Corporate Debtor as a Going concern [E-Auction time for Lot 1 – 3:00 PM to 4:00 PM]	Rs.457,00,00,000/ (INR Four Hundred & Fifty Seven Crores Only)	Rs. 46,00,00,000/- (INR Forty Six Crores Only) on or before 29th January 2024 before 5.00 PM	Rs. 1,00,00,000/- (INR One Crore Only)
Date of Inspection : Every Tuesday(from 10 AM to 4PM) with prior intimation [02 / 09 / 16 & 23 Jan]			
Bid Document Submission & EMD Payment Last date : 29th January, 2024			
Terms and Condition of the E-Auction are as under :			
1. E-Auction will be conducted on "AS IS WHERE IS", "AS IS WHAT IS", "WHATEVER THERE IS" and "WITHOUT RECOURSE" BASIS as such sale is without any kind of warranties and indemnities through approved service provider M/s National E-Governance Services Limited (NESL) ( <a href="https://nbid.nesl.co.in/">https://nbid.nesl.co.in/</a> ).			
2. Bids shall be submitted through online mode [with RTGS transfer] or hard copy in the format prescribed. The bid form along with detailed terms & conditions of complete E-Auction process can be downloaded from the website of <a href="https://nbid.nesl.co.in/">https://nbid.nesl.co.in/</a> .			
Date : 27 <sup>th</sup> December, 2023 Place : Coimbatore		CA. Mahalingam Suresh Kumar Authorised Signatory SPP Insolvency Professionals LLP [Liquidator]	





49. The application IA/348/2024 has been filed by Shri. Sardarmal Kothari, in the capacity as one of the erstwhile Directors / Promoters of the Company in liquidation alleging that the Corporate Debtor was proposed to be sold at a reserve price of Rs. 457 Crores, however the real value of the land and factory building, plant and machinery, current assets and securities is about Rs. 750 Crores. The last valuation was done by the empanelled valuer of the State Bank of India, who valued the machineries at Rs. 22.57 Crores, land and industrial buildings admeasuring 99 acres as Rs. 150 Crores and realizable value as Rs. 120.14 Crores. He submitted a consolidated report dated 28.08.2019 assessing the market value as Rs. 521.37 Crores. He also alleged that as per the fresh allotment letters issued by SIPCOT, one acre is being sold at Rs. 1.10 Crore.

50. As seen from the record, the land in the name of the Corporate Debtor in liquidation is 66.48 acres not 100 acres as alleged. The land 33.52 acres belongs to the erstwhile Directors of the Corporate Debtor. In this case, during the CIRP, the valuation was conducted, resolution plans were invited but the plan value being lower than the liquidation



value did not pass muster from the CoC and it was rejected. We may note that the highest resolution plan was for Rs. 370.0 Crores. The Liquidator / Respondent in his reply has given the profitability statement analysis stating that the factory has not been operationally profitable on account of multiple reasons as tabulated below.

Particulars	01-Apr-20 to 31-Mar-21 (A)	01-Apr-21 to 31-Mar-22 (A)	01-Apr-22 to 09-Dec-22 (P)
Revenue from operations	732.99	978.21	687.28
Other income	0.03	7.59	0.08
<b>Total Revenue (A)</b>	<b>733.02</b>	<b>985.80</b>	<b>687.37</b>
Cost of material consumed	460.17	658.07	493.49
Changes in inventory	179.83	228.59	143.79
Employee benefit expenses	22.97	26.83	14.93
Other expenses	133.55	114.69	54.12
<b>Total Expenses (B)</b>	<b>796.52</b>	<b>1028.18</b>	<b>706.32</b>
<b>EBITDA (A-B)</b>	<b>(63.50)</b>	<b>(42.38)</b>	<b>(18.96)</b>
<b>EBITDA %</b>	<b>(8.66)%</b>	<b>(4.30)%</b>	<b>(2.76)%</b>

This fact was taken note by the SCC and thereafter the SCC decided for fresh valuation of the Corporate Debtor in liquidation on 09.01.2023. Fresh valuation was undertaken and liquidation value was assessed as Rs.456.62 Crores. The report was placed before the SCC and the SCC after deliberations directed the Liquidator to fix the said liquidation



value as a reserve price for e-auction of the Corporate Debtor in liquidation as a going concern. It was resolved in the SCC meeting held on 30.11.2023 that the Liquidator should not go for fresh valuation because earlier valuation was undertaken about an year prior. After discussions, whether to go for liquidation value or fair market value, the SCC passed a resolution to proceed with the liquidation value as a reserve price in the meeting held on 14.12.2023. Regulation 31A also provides that the SCC advises the Liquidator on the matters relating to sale under Regulation 32, including manner of sale, pre bid qualifications, reserve price, amount of earnest money deposit and marketing strategy. The Liquidator thus acted in line with the decisions of the SCC. It is also manifest from the record that the representative of the shareholder was present in the meeting and he never objected to the same. There is no denial of the fact that the value of the plant and machineries depreciates with time. The last valuation had taken place in 2019 and the fresh valuation was undertaken in 2023. The Regulation 35(2) provides that where the Liquidator is of the opinion that fresh valuation is required, he shall within seven days of the liquidation commencement date appoint two registered valuers to



determine the realizable value of the assets or the business. That being so, based on the said Regulation, the Liquidator went for the fresh valuation.

51. It is seen that in the e-auction conducted on 31.01.2024, the highest bid came for Rs. 487 Crores, which is higher than the reserve price / liquidation value. Even the highest resolution plan value was for Rs. 370.0 crores and during liquidation, the liquidator has received the Scheme from the Applicant for a sum of Rs.331 Crores which is far below the liquidation value. It is not the case that the Company was given at the liquidation value. Rather it was an open auction where the bids were invited.

52. It is true that the Company is being run as a going concern with over 2000 employees but the report of the Liquidator shows that the Company has been incurring losses. As regards to the objection that the valuation has been done after the time period prescribed under the Regulation, we find that the Liquidator first made the publication, then invited the claims and formed the SCC. He placed the matter before the SCC and thereafter a decision for fresh valuation was taken. That



being the position, getting the valuation done after the time period prescribed does not prove fatal to the process.

53. As regards the objection that the impugned e-auction notice was issued after nine months of the expiry of 90 days period, we find that the Hon'ble NCLAT vide order dated 25.02.2020 had directed that the Company has to be run as a going concern. In the instant case, the Liquidator was removed on an application filed by one of the members of SCC which order the Liquidator challenged before different forums and because of this fact, delay occurred in the issuance of the e-auction sale notice for which no one can be blamed. The new Liquidator immediately after taking over the charge, on the directions of the SCC, issued the fresh e-auction notice on 30.12.2023 fixing the date of e-auction as 31.01.2024.

54. We may note that the Applicant (IA/348/2024) is one of the shareholders in the Company. The representative of the shareholder was there in the SCC when the above decisions were taken. He never objected to the said decisions. The Applicant (IA/348/2024) being a shareholder cum Promoter Director has filed this application now



which is nothing but to delay and derail the process. Even otherwise as per the IBBI (Liquidation Process) Regulations, all the Directors and the Shareholders were discharged from the Company and thus there was no requirement to issue notice of the application IA/420/2024 to the Applicant (IA/348/2024) nor the Applicant (IA/348/2024) was entitled to represent in the SCC.

55. In the light of what has been stated above, we are of the view that the reserve price was fixed in accordance with the provisions of the Code and IBBI Regulations and the Corporate Debtor in liquidation is being sold as a going concern, the Applicant (IA/348/2024) namely Sardarmal Kothari being a shareholder / Promoter Director has no locus to challenge the ongoing liquidation process sale notice being disqualified in view of the law laid down in the case of *JM Financial Asset Construction Company Ltd. Vs. M/s Well Do Holdings and Exports Pvt Ltd. & Ors. in Comp. AT Ns No. 134 of 2019* where it was held that the shareholder is not at all an aggrieved person. **Accordingly, IA/348/CHE/2024 stands dismissed.**



56. Now coming to the application **IA/503/CHE/2024** filed by the Applicant / Sardarmal Kothari, we find that it was filed in the capacity of one of the shareholders, Personal Guarantors, erstwhile Directors and Promoters of the Company in liquidation for impleadment as Respondent in IA/420/CHE/2024 filed by the Liquidator whereby the Liquidator has sought for confirmation of the sale of the Corporate Debtor as a going concern in favour of the highest bidder.

57. Since it has already been held in IA/348/2024 *supra* that the Applicant (IA/503/CHE/2024) has no locus to challenge the e-auction sale notice and the reserve price was rightly fixed by the Liquidator and that pursuant to the e-auction notice, e-auction was conducted on 31.01.2024 and the Liquidator issued the letter of intent in favour of the highest bidder, we are of the view that the Applicant (IA/503/CHE/2024) being the shareholder / Promoter Director in the Corporate Debtor in liquidation has no right to challenge the e-auction sale notice or confirmation of sale of the Corporate Debtor as a going concern. **The application IA(IBC)/503/CHE/2024 being devoid of merit is also dismissed.**



58. Now coming to the application **IA/1387/CHE/2024**, it is not in dispute that the Applicant (IA/1387/CHE/2024) namely Sardarmal Kothari being a shareholder and Promoter of the Corporate Debtor had entered into a lease agreement on 31.07.2008 with the Corporate Debtor in respect of a land parcel of 33.25 acres which is contiguous of the Corporate Debtor's own lands. It is also not in dispute that the lease lands are the integral to the operations of the Corporate Debtor's factory highlighting their strategic importance for the factories functioning and productivity and the said lease is for the period upto 31.07.2037. It is also not in dispute that the Corporate Debtor had mortgaged the leasehold rights of the land to Punjab National Bank for availing term loan and working capital facilities for the establishment of the operations of the Company by executing a memorandum of deposit of title deeds (MoDT) vide dated 27.04.2017. It is also not in dispute that the lease rentals were regularly paid to the Promoter without any delay or default till January 2020.

59. The Corporate Debtor in the present case was admitted into CIRP on 19.02.2020 on an application filed by State Bank of India under





Section 7. Immediately after the CIRP, the moratorium under Section 14 of IBC came into effect which included prohibiting recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor. The Applicant (IA/1387/CHE/2024) on 19.02.2021 attempted to terminate the lease agreement which was objected by the RP vide letter dated 22.03.2021 stating that the termination action was unauthorized and in violation of IBC in view of Section 14(1)(d) of IBC.

60. In the instant case, the Suspended Directors / Guarantors including the Applicant had given guarantee making them jointly and severally liable for the debt to the Banks with subsequent interest accruing monthly. When they failed to clear the debt / discharge their liabilities, the Bank issued a notice under Section 13(2) of the SARFAESI Act to the Applicant & Others on 10.08.2018. Since the land is registered in the name of the individual guarantors and the building on the land is in the name of the Corporate Debtor, by virtue of Section 13(13) of the SARFAESI Act, we are of the view that the Applicant is restricted from dealing with the property in question. Further the



Bank took symbolic possession of the land. It is true that the Applicant on payment of the debt could redeem the property but in this case no such recourse was taken by the Applicant.

61. As regards non-payment of rent during CIRP and the liquidation period, it has been submitted by the Respondent / Liquidator that in CIRP and liquidation, the rental will be treated as the CIRP cost and the liquidation expenses which will be paid as per Section 53 of IBC under waterfall mechanism.

62. We may note that in the e-auction notice for sale as a going concern, the Liquidator / Respondent has only mentioned about the leasehold rights of the impugned land to be transferred to the Successful Bidder in terms of the lease agreements for the period provided in the agreements. So the ownership rights of the Applicant will not be transferred in favour of the Successful Bidder. We may note that the Respondent / Liquidator is not selling the land / property in question, but transferring the leasehold rights which are in the name of the Corporate Debtor and will remain in effect. The management will change but the existing contracts including the lease will continue



on the same terms and conditions. As regards the contention that lease rent amount is excessively low, the same does not lie within the ambit of this Tribunal.

63. As regards contention of the Applicant / Promoter Director that the Respondent should have excluded the lease property in the sale of the Company as a going concern, we agree with the contention of the Respondent / Liquidator that the Liquidator has no power to exclude any contractual assets or agreement from such a sale particularly when the underlying agreement is a critical contract upon which the entire company is built. The inclusion of all assets including contractual agreements is essential for preserving the integrity and value of Company being sold.

64. In the instant case, leasehold rights are being sold and not the land owned by the Applicant (IA/1387/CHE/2024) since the Corporate Debtor is sold as a going concern and this has been done to maximize the value of the Corporate Debtor which is the aim and object of IBC. The liquidation estate assets include the contractual arrangement and use of the assets and not the transfer of title as provided under Section



36(4)(a)(iv) of IBC. As regards contention that the land is the personal asset of the Applicant, it is reiterated that the sale in the present case is of the contractual arrangements and not of the title in respect of the personal assets of the Applicant. That being the position, the Liquidator has correctly included the leasehold rights to be sold / transferred to the Successful Bidder and the same do not contravene the provisions of Section 36(4)(a)(iv), 36(4)(c) of IBC or Article 300A of the Constitution of India. In the present case, the leasehold interests will remain intact and there is no transfer of title as provided under Section 107 of the Transfer of Property Act.

65. In the light of above discussions, we do not find any merits in the application. **The application IA/1387/2024 is accordingly dismissed.**

66. Now coming to the application **IA/416/2024** filed by the Scheme Proponent, the liquidation in the present case was ordered on 09.12.2022. The Applicant (IA/416/2024) has placed the screenshot as Annexure 1 of the application stating that the order was uploaded on the website only on 20.12.2022.



67. Regulation 2B of the Liquidation Regulations provides that where a compromise or arrangement is proposed under Section 230 of the Companies Act, 2013, it shall be completed within 90 days of the order of the liquidation under Section 33. In the present case, the Applicant (IA/416/2024) for the first time sent a request letter on 13.03.2023 i.e. after 90 days of the order of the liquidation expressing its interest to submit a scheme under Section 230 and requested a copy of information memorandum for submitting the scheme. For the sake of arguments, even if it is assumed that 90 days period is to be taken from the day when the order was uploaded but the Applicant (IA/416/2024) in the instant case has not given any explanation as to giving expression of interest for submitting the scheme at the fag end of the 90 days period. The Applicant even did not follow up with the Liquidator after the mail dated 13.03.2023 and made the correspondence with the Liquidator for the second time on 29.09.2023. There is no quarrel on the legal proposition as held in the case of *Small Industrial Bank of India Vs. Delicious Coco water Pvt Ltd.* (NCLT Delhi) (IA.2308/ND/2022 in CP(IB)-575(ND)/2017) and *Kridhan Infrastructure Pvt Ltd. Vs. VenkatesanSankaranarayanan* (NCLAT) *Company Appeal (AT)*



(Insolvency) No. 202 of 2020, that 90 days period for submitting the scheme under Section 230 is directory not mandatory and the scheme can be considered after the expiry of 90 days period for value maximization of the assets, but it is equally important that there should be cogent reason for the same.

68. In the instant case, the erstwhile Liquidator had issued the public announcement on 16.10.2023 for sale of the Corporate Debtor as a going concern under Regulation 32(e) and Section 32A of the Liquidation Regulation and Section 230 of the Companies Act, 2013 r/w Regulation 2B of the Liquidation Process Regulations as Annexure 6, which action of the Liquidator was cancelled by the SCC in the meeting held on 20.12.2023 holding that it is in contravention to the Code and Regulations. It was decided to process the sale of the Corporate Debtor as a going concern by e-auction fixing the reserve price.

69. It was contended by Ld. Sr. Counsel for the Applicant (IA/416/2024) that SCC cannot take a decision not to invite the scheme



under Section 230 of the Companies Act and it is completely under the domain of the Liquidator to invite the scheme or not.

70. We are afraid that this contention holds merit. In this case, after the liquidation, SCC was formed and the meetings of SCC were held from time to time to take a decision how to proceed in the matter. No scheme came within a period of 90 days as provided under Regulation 2B. Hon'ble NCLAT vide order dated 25.02.2020 in Company Appeal (AT)(Insolvency) No. 328 of 2020 filed by one of the Promoter Director against State Bank of India & Ors had directed the Promoters of the Corporate Debtor to hand over the assets and records of the Corporate Debtor to the IRP immediately and the IRP will ensure that the company remains as a going concern. He will take assistance of the (Suspended) Board of Directors, Officers, Director / Employees. There was no stay of Hon'ble NCLAT against the CIRP and the liquidation order. The SCC comprised of secured creditors, unsecured creditors, operational creditors and shareholders. Section 230 of the Companies Act provides that the scheme is to be placed before the Creditors and the Shareholders for approval and only after their approval, the



scheme can be considered. That being the position there was nothing wrong on the part of the SCC to take a decision not to go for the scheme and to issue e-auction sale notice of the Corporate Debtor as a going concern.

71. Even then, the Applicant (IA/416/2024) on the basis of the above public announcement submitted its interest to submit a scheme on 18.10.2023 which was responded by the new Liquidator vide mail dated 12.12.2023 attaching the provisional list of the Prospective Applicants as Annexure 7. The Applicant (IA/416/2024) then sent the updated copy of the scheme of arrangement under Section 230 along with the documents on 16.12.2023 on which the Liquidator issued the final list of Prospective Applicants on 18.12.2023 qualifying the Applicant (IA/416/2024) as Scheme Proponent to submit the scheme. He also sought annexures of the scheme from the Applicant (IA/416/2024) which it shared with the Respondent on 18.12.2023.

72. All these correspondences show that though it was decided by the SCC not to invite the scheme and to issue e-auction sale notice, but the Liquidator even entertained the scheme submitted by the





Applicant (IA/416/2024). The Liquidator placed the scheme before the SCC on 30.01.2024, one day before the date fixed for e-auction sale. The SCC deliberated on the scheme and rejected the scheme on merits with 65.32% voting. Admittedly, one of the creditor in the SCC wanted time but since majority of the stakeholders including secured, unsecured and shareholders were not in favour of the scheme which was even below the liquidation value, they rejected the scheme. We agree that no separate meetings of shareholders and creditors were held, but if we see the composition of the SCC, the creditors and the shareholders with 65.32% majority voted against the scheme.

73. Rule 5 of Compromise, Amalgamation and Arrangement Rules also provides that the scheme should be placed before the Creditors in IBC proceedings and the SCC is the decision making body in approving the scheme. The Liquidator is bound by the decision of the SCC in relation to the approval of the scheme, as held in the case of *Y. Shivram Prasad Vs. S. Dhanapal & Ors. — Company Appeal (AT) (Insolvency) No. 224 of 2018*. The scheme should pass the muster of 75%



of the SCC in value as held in the case of *Arun Kumar Jagatramka Vs. Jindal Steel & Power Ltd* AIR 2021 SC 1563.

74. As regards the contention that the Applicant (IA/416/2024) was not given opportunity of hearing by the SCC, we are of the view that the scheme was discussed in detail by the SCC, its merits were considered and thereafter it was rejected. We may also state that this application has been filed by Narotamka Trade &Vyapaar Pvt Ltd, but the scheme was submitted by the Applicant Narotamka Trade &Vyapaar Pvt Ltd (IA/416/2024) with Global Metcorp Limited and Global Metcorp Limited is not the party in the present application. As seen from the reply filed by the Respondent, net worth of the Applicant (IA/416/2024) as stated in the scheme was Rs.0.58 Crores while the net worth of the Co-Applicant was Rs.185.94 Crores. The Applicant (IA/416/2024) had proposed to assign it to the ARC viz. SPV to make the payments to the Financial Creditors without any supporting documents.

75. Having regards to these facts, it cannot be said that the scheme was rejected in haste without considering it on merits. We may



reiterate that even though the scheme was filed belatedly i.e. after about 12 months of the liquidation order but it was considered on merits.

76. Now coming to the application IA/420/2024 filed by the Liquidator seeking an order confirming the Corporate Debtor sale as a going concern confirming the Successful Bidders requirements as stated in S. No. 4 – 58 of their acquisition plan dated 29.01.2024 and to direct the Statutory Authorities involved in the management of the Corporate Debtor to modify their records by entering the name of the Successful Bidders as proposed by them.

77. As seen from the record, e-auction of the Corporate Debtor in liquidation to be sold as a going concern took place on 31.01.2024. Mr. Virendra Jain and Mr. Ankit Jain emerged as the Successful Bidder / H1 as their bid was for the highest amount of Rs. 487 Crores. The reserve price / liquidation value in the present case was Rs. 457 Crores, thus the bid amount was higher than the reserve price. The Successful Bidder before participating in the e-auction process had paid 10% of EMD amount. The Liquidator / Applicant, after the Bidder emerged as



the Successful Bidder, issued the Letter of Intent to the Successful Bidder on 31.01.2024 calling them to pay balance of the 25% of the bid amount after deducting the EMD amount. The copy of the H1 Bidder documents and EMD payment are placed at page 265 – 408 of the application type set. The e-auction was conducted on “*as is where is*”, “*as is what is*”, “*whatever there is*” and “*without recourse basis*” i.e. the sale was without any kind of warranties and indemnities. In Annexure D at page 346 of the application type set, the details of the lease arrangements of the Corporate Debtor with the Promoter Directors have been given. The bidder has given their affidavit as to the compliances under Section 29A of IBC, 2016. They have also given their financial statements duly audited by the Statutory Auditors at page 355 to 401 along with their Identities. The application moved by the unsuccessful Bidder IMR Steel Pvt Ltd challenging the auction was also dismissed by this Tribunal vide order dated 18.04.2024.

78. As per the Letter of Intent dated 31.01.2024 issued by the Liquidator, the Successful Auction Purchasers were requested to deposit 25% of the sale consideration (less the EMD amount) within 24 hours from the declaration of the Successful Bidder i.e. on or before



5.00 pm on 01.02.2024 to the designated Bank account / liquidation account of the Corporate Debtor. The Successful Bidders were requested to pay the balance 75% within 30 days from the date of the approval of the sale of the Corporate Debtor as a going concern / order passed by the Tribunal (or within 90 days from the date of the order approving the sale as a going concern passed by the Tribunal provided that the payment made after 30 days would attract interest at the rate of 12% for such extended date i.e. from 31<sup>st</sup> day to the actual date of payment (which shall not be later than 90<sup>th</sup> day)). It was communicated that non-compliance of the terms of the e-auction / EOI would attract complete forfeiture of the EMD amounts and further payments received. The letter of intent is placed at page 429 – 430 of the application. The document at Page 431 shows that the Successful Bidder paid the 25% amount minus EMD amount i.e. amount of Rs. 75,75,00,000/- on 01.02.2024.

79. In the present case, the Liquidator has filed Form-H i.e. compliance certificate as to the process followed during liquidation including the compliances. It is stated that during the CIRP



proceedings, no PUFEE transaction applications were filed by the RP based on the transaction audit report.

80. It is to note that the Successful Bidder was not on the Board of the Suspended / Promoter Directors nor they were concerned with the management and affairs of the Corporate Debtor in liquidation. That being the position, they were fully qualified to participate in the auction process and could well be declared as the Successful Bidder.

81. It was argued on behalf of the Scheme Proponent in IA/416/2024 that the entire auction is liable to be cancelled and the 25% paid by the Auction purchaser be forfeited in accordance with Clause 12, Schedule 1 of the Liquidation Process Regulations, which mandates the payments of sale consideration to be made within 90 days from the auction date. Ld. Sr Counsel contended that 90 days period prescribed under Clause 12, Schedule 1 of the Liquidation Process Regulations is mandatory and warrants forfeiture of the entire amount on failure to pay the sale consideration within 90 days. He placed reliance on the case of *Potens Transmissions and Power Pvt Ltd. Vs. Gian Chand Narang*, (CA(AT)(INS)No. 532 of 2022). Ld. Counsel stated that 90 days period



has to be computed from the date of auction. Ld. Counsel contended that the said mandate cannot be whittled down by the exercise of powers under clause 3, Schedule 1 of the Liquidation Process Regulations by the SCC / Liquidator in the exercise of their discretion. Ld. Counsel stated that the payment permitted beyond 90 days as contained in the process document in itself is a reason to set aside the entire auction as vitiated being contrary to clause 12, Schedule 1 of the Liquidation Process Regulations.

82. Ld. Counsel for the Applicant / Liquidator objected to the same and stated that no such objection was taken by the Scheme Proponent in the application (IA/416/2024). Ld. Counsel argued that in the present case, the Liquidator is not selling the assets in parcels. Certain reliefs and concessions / exemptions are required to be given, whatever available in accordance with law. It is a marketing strategy to create confidence amongst the interested Bidders who in turn participate in the competition by showing interest. Hence, legal compliances and obtaining necessary reliefs are important to ensure successful sale process.



83. We have considered the submissions.

84. On a reading of Clause 12, Schedule 1 of the Liquidation Process Regulations, we find that on the close of the auction, the highest Bidder is to be invited to provide balance sale consideration within 90 days from the date of such demand, provided that the payments made after 30 days would attract interest at the rate of 12% and provided further that the sale shall be cancelled if the payment is not received within 90 days.

85. As per Clause 10 of the bidding document for sale of the Corporate Debtor as a going concern attached with the e-auction notice dated 27.12.2023 (Page 279 of the application type set), the Liquidator shall as soon as reasonably possible, following the end of the bidding / e-auction, issue to the Successful Bidder a letter of intent inviting the Successful Bidder to provide the balance consideration. Sub Clause (b) provides that balance 75% is payable within 30 days from the date of the approval of the sale as a going concern by the Adjudicating Authority. The above said bid document was never challenged by anyone before issue of LoI by the Liquidator. The bid document was





placed before the SCC which also approved the same before it was released. The Liquidator issued the LoI on the basis of the bid document, on 31.01.2024, to pay the balance 75% within 30 days from the date of the approval of sale by this Tribunal.

86. It is true that the Applicant / Liquidator was required to follow the Regulations and to take appropriate steps, but he is also bound by the terms incorporated in the e-auction bid document which was approved by the SCC. On this very count, nothing adverse can be taken against the Successful Bidder directing cancellation of sale being vitiated because of violation of Clause 12, Schedule 1 of the Liquidation Process Regulations. We rather agree with the contention of Ld. Counsel for the Liquidator that every auction sale requires reliefs and concessions for smooth transition. Without the reliefs and concessions, the sale process does not get completed. In the present case also, the Successful Bidder has sought reliefs and concessions and therefore, the application was filed before the Tribunal for approval of the sale of Corporate Debtor as a going concern and for granting reliefs and concessions.



87. Rules and Regulations are framed to achieve the objectives of the Code which is to have maximization of the value of assets. The procedures are the handmaid of justice and at times required to be liberally interpreted to meet the objectives of the Code and the ends of justice.

88. That being the position, the Clause 12, Schedule 1 cannot be strictly interpreted so as to cancel the sale. Further, the Successful Bidder cannot be made to suffer because of some inadvertence Act / Omissions on the part of the Applicant / Liquidator, taking shelter of its strict interpretation which should be liberal and harmonious to meet the objectives and purpose of the Code. It was held in the case of *Saheb Khan vs. Mohd. Yousufuddin and Others* (2006) 4 SCC 476 that no sale shall be set aside on the ground of irregularity or fraud or in publishing or conducting it unless, upon the facts proved, the court is satisfied that the Applicant has sustained substantial injury by reason of such irregularity or fraud. In the instant case, the Applicant (IA/416/2024) has failed to establish that the Applicant has sustained substantial injury by reason of alleged irregularity. Irregularity is a



breach of procedure of rule or some orderly conduct but not of such nature which could be said to be in the nature of a debilitating defect.

89. In the light of above discussions, we do not find any merit in the contention of the Ld. Counsel of the Scheme Proponent in IA/416/2024 that the whole sale vitiates. **The application IA/416/CHE/2024 is dismissed with no orders as to cost.**

90. For the aforesaid reasons, we approve the sale of the Corporate Debtor in liquidation as a going concern as prayed for in the application (IA/420/2024).

91. The Hon'ble NCLAT in the matter of M/s Shiv Shakti Inter Globe Exports Pvt. Ltd. Vs. KTC Foods Pvt. Ltd. Through Liquidator, Mr. Anup Kumar Singh & Anr. in *Company Appeal (AT) (Insolvency) No. 650 of 2020* has extended the 'clean slate' principle to going concern sale under liquidation. It has held in para 21 as under;

21. *Adverting to the contention of the Learned Counsel for the Appellant that the Adjudicating Authority has erred in denying the sale of the 'Corporate Debtor' as a 'going concern' to the Appellant without including any contingent liabilities, we hold*



*that it is a settled law that when the sale proceeds of a 'Corporate Debtor' are duly distributed in the Order of priority and in the manner prescribed under Section 53 of the Code, claims of any other Creditor cannot be entertained contrary to the provisions entailed under Section 53; subsequent to the distribution of sale proceeds under Section 53 no other entity including any Government entity can claim any past unpaid or outstanding dues against the Appellant who has purchased the 'Corporate Debtor Company' as a 'going concern'. It is significant to mention that the second Respondent/Liquidator has specifically submitted that even these claims by the Uttar Haryana Bijili Vitran Nigam were not submitted in the prescribed form either during the CIRP Process or at the Liquidation stage. We are of the considered view that at this stage subsequent to the sale of the 'Corporate Debtor Company' as a 'going concern', these claims cannot be foisted upon the Appellant. The scope and objective of the Code is to extinguish all claims specifically the ones which were not even made during the CIRP or in the Liquidation stage, to aid the purchaser of the Company as a 'going concern' to start on a 'clean slate'. The Hon'ble Supreme Court in 'Ghanshyam Mishra & Sons Pvt. Ltd.' Vs. 'Edelweiss Asset Reconstruction Company Ltd. & Ors.', Civil Appeal No. 8129 of 2019 and in 'CoC of Essar Steel India Ltd.' Vs. 'Satish Gupta & Ors.' (2020) 8 SCC 531 has laid down the proposition that the purchaser of the Company even in the Liquidation stage cannot be burdened with past liabilities when it is not mentioned in the 'Sale Notice'.*

*(emphasis supplied)*

92. In the instant case, the Successful Bidder has also sought for certain reliefs and concessions, which are set out in the Memo dated 10.07.2024. These reliefs are ordered as follows;



S. No	RELIEF/CONCESSION AS SOUGHT	ORDERS THEREON
1.	The Auction Bidder along with the persons as mentioned in “Proposed Shareholders” in Annexure A above may be permitted to pay / adjust the Sales Consideration in the following manner (i) INR 9,00,00,000/- (INR Nine Crores only) investment/ subscription to the equity shares of the Corporate Debtor; and (ii) the balance amount of Sales Consideration in the form of unsecured debt.	<b>Granted, subject to the provisions of Companies Act, 2013</b>
2.	A direction be issued that all the existing shares of the Corporate Debtor shall be extinguished without any consideration, and rights and liabilities arising out of the same shall also be extinguished;	<b>Granted</b>
3.	A direction be issued that immediately upon payment of the entire Sale Consideration, the Auction Bidder (or the “Proposed Shareholders” as mentioned in Annexure A, as the case may be) get all the rights, title and interest in the whole and every part of the Corporate Debtor, including but not limited to contracts, free from security interest, encumbrance, claim, counter claim or any demur, and the Sale Consideration shall be distributed by the Liquidator in terms of the Section 53 of the Code;	<b>Granted</b>
4.	All Claims or demands made by, or liabilities (including without limitation, any penalty, whether contingent, assessed, known or unknown, interest, fines or fees and any other liabilities and/or obligations which may have a financial impact) or obligations owned or payable to any stakeholders of the Corporate Debtor including but not limited to actual or potential creditors, Financial Creditors, Operational Creditors, Workmen & Employees, Governmental Authority (including but not limited to	<b>Granted, in view of the clean slate principle enshrined under IBC, 2016</b>



S. No	RELIEF/CONCESSION AS SOUGHT	ORDERS THEREON
	liabilities, interest and penalties, duties, etc. on account of income-tax, tax deduction at source, tax collection at source, goods and services tax, custom duty, value added tax, service tax, wealth-tax, cess, DGFT dues, EPCG dues, etc., if any,) including any demand for any losses or damages or in connection with any third party Claims or any investigations by any Governmental Authority such as the Central Bureau of Investigation, Serious Fraud Investigation Office, arising from any contractual arrangement, whether direct or indirect, whether admitted or not, due or contingent, asserted or unasserted, crystalized or uncrystallized, known or unknown, secured or unsecured, disputed or undisputed, whether or not set out in the financials of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor or the list of creditors, in relation to any period prior to the Transfer Date shall stand extinguished subject to however the Bidder paying the Consideration. Other than payments made by Liquidator in compliance with Section 53 of IBC, no payments or settlements (of any kind) shall be made to any other Person in respect of claims filed under the liquidation and all claims (including, for avoidance of doubt, any un-verified portion of their claims, rejected) against the Corporate Debtor along with any related legal proceedings (including criminal proceedings), shall stand irrevocably and unconditionally abated, settled and extinguished in perpetuity on and with effect from the Acquisition Date.	
5.	A direction be issued that the all inquiries, investigations, assessments, notices, causes of action,	<b>Granted in</b>



S. No	RELIEF/CONCESSION AS SOUGHT	ORDERS THEREON
	suits, claims, disputes, litigations, arbitration, or other judicial, regulatory or administrative proceedings against, or in relation to, or in connection with the Corporate Debtor or the affairs of the Corporate Debtor (other than against the Erstwhile Promoters or former members of the management of the Corporate Debtor), pending or threatened, present or future, in relation to any period prior to the Date of Acquisition or arising on account of the Acquisition shall be deemed to be withdrawn or dismissed;	<b>terms of Section 32A of IBC, 2016</b>
6.	A direction be issued that all financial and pecuniary liabilities of the Corporate Debtor, (including without limitation, any penalty, whether contingent, assessed, known or unknown, interest, fines or fees and any other liabilities and/or obligations which may have a financial impact) in relation to any period prior to the Date of Acquisition shall be deemed to be extinguished;	<b>Granted, in view of the clean slate principle enshrined under IBC, 2016</b>
7.	A direction be issued that any non-compliance of provisions of any laws, rules, regulations, directions, notifications, circulars, guidelines, policies, licenses, approvals, consents or permissions prior to the Date of Acquisition shall be deemed to be extinguished;	<b>Granted, in view of the clean slate principle enshrined under IBC, 2016</b>
8.	A direction be issued that on and from the Date of Acquisition, the status of the Corporate Debtor in the records of the Registrar of Companies should be reflected as 'active' from the status of 'liquidation'	<b>Granted</b>
9.	A direction may be issued that from the Date of Acquisition, the Board of Directors of the Corporate Debtor be re-constituted as per the Companies Act,	<b>Granted, subject to the provisions of Companies</b>



S. No	RELIEF/CONCESSION AS SOUGHT	ORDERS THEREON								
	<p>2013 and the following individuals be permitted to act as Directors of the Corporate Debtor duly appointed under the provisions of the Companies Act, 2013, and direct the Registrar of Companies to do all such acts, deeds and things that are necessary to appoint the following individuals as directors of the Corporate Debtor, who are individuals recommended by the Auction Bidder, in order to enable the Corporate Debtor to file relevant returns required by applicable law.</p> <table><tr><th>Name of Proposed Directors</th><th>DIN</th></tr><tr><td>Mr. Virendra Jain</td><td>00077662</td></tr><tr><td>Mr. Ankit Jain</td><td>02705589</td></tr><tr><td>Mr. Rajesh Mundra</td><td>01797146</td></tr></table>	Name of Proposed Directors	DIN	Mr. Virendra Jain	00077662	Mr. Ankit Jain	02705589	Mr. Rajesh Mundra	01797146	Act, 2013
Name of Proposed Directors	DIN									
Mr. Virendra Jain	00077662									
Mr. Ankit Jain	02705589									
Mr. Rajesh Mundra	01797146									
10.	A direction be issued that on and from the Date of Acquisition, all the assets specified in the complete E-Auction Memorandums shall continue to be the assets of the Corporate Debtor, towards which the Auction Bidder has made payment by way of the Sale Consideration and direct the Liquidator to cooperate with, and provide all necessary support and assistance to the Applicant, including but not limited to perfecting / amending / modifying / creating the land records in relation to all parcels of land, the immovable properties and assets, belonging to the Corporate Debtor in favour of the Corporate Debtor within 15 days from Date of Acquisition;	Granted								
11	All the subsisting leases in relation to leasehold land granted in favor of the Corporate Debtor by the erstwhile promoters or other individual or institutions or trusts etc., including but not limited to the lease	This is for the appropriate parties to								





S. No	RELIEF/CONCESSION AS SOUGHT	ORDERS THEREON
	arrangements mentioned in <b>Annexure D</b> , shall be deemed to continue without disruption, for the benefit of the Corporate Debtor. In the event, any leasehold payments are outstanding or unpaid, the said amounts shall be deemed to have been settled under the liquidation proceedings in accordance with the provisions of the applicable law and the land owners / lessors shall not terminate the said lease arrangements for any reason whatsoever (including non-payment of lease amounts). Further, if any lease arrangements have been terminated / rescinded by the landowners / lessors on or after the date of initiation of insolvency proceedings against the Corporate Debtor, the terminated leases shall be reinstated at the same terms as agreed upon in the lease agreement.	<b>consider</b>
12	A direction be issued that the Corporate Debtor shall have a right to review and terminate any contract that was entered into prior to the date of the Liquidation Order;	<b>Granted</b>
13	Further, the Financial Creditors to “Upgrade” the Account of the Corporate Debtor with Banks / FI under the CIBIL Mechanism to “Standard Category” from NPA on the completion of the Acquisition. The Financial Creditors shall release all the charges with Registrar of Companies after the receipt of payment by the Financial Creditors as per the IBC.	<b>Granted</b>
14	On and from the Transfer Date, no consents, licenses, approvals, rights, entitlements, benefits and privileges whether under Applicable Law, contracts, leases, granted in favour of Corporate Debtor, including but not limited to factory licenses, fire licenses, vehicles permits, pollution certificates, environmental licenses,	<b>This is for the appropriate authorities to consider</b>



S. No	RELIEF/CONCESSION AS SOUGHT	ORDERS THEREON
	CTO CTE certificates, BIS permissions, Kamachi Trademark etc., shall be terminated on the grounds of initiation of insolvency / liquidation of the Corporate Debtor under the IBC, change of control over the Corporate Debtor pursuant to the acquisition by the Bidder or on account of unpaid dues which have been settled pursuant to this acquisition.	
15	The Corporate Debtor and the Bidder shall not be liable for any Taxes including stamp duty on the transfer letter or agreement or any other document enforcing transfer of ownership and control of Corporate Debtor to Auction Bidder and shall be granted an exemption from all Taxes, stamp duty, levies, fees, transfer charges, transfer premiums, and surcharges that arise from or relate to the Acquisition, since payment of these amounts may make the Acquisition unviable	<b>This is for the appropriate authorities to consider</b>
16	The Liquidator to, immediately, write back all the liabilities of the Corporate Debtor, including creditors, term loans, working capital loans, tax liabilities, other statutory liabilities, etc. which are not payable and reflect the total liabilities at the amount of the consideration (as reduced by the amount of insolvency resolution process costs and the liquidation costs) determined in the auction in the financial statements (Profit and Loss Account and the Balance Sheet) of the Corporate Debtor as on 31st March 2024. The said financial statements should be prepared and filed by the Liquidator with the relevant regulators such as Registrar of Companies, Income Tax Authorities, etc. Further, the liquidator be directed to file the income-tax returns for financial	<b>Granted</b>



S. No	RELIEF/CONCESSION AS SOUGHT	ORDERS THEREON
	year 2023-24 after opting for the new tax regime u/s 115BAA and filing requisite forms as required under the law.	
17	A direction be issued that the bid submitted by the Applicant to be considered to be a resolution plan under Section 79 of the Income Tax Act, 1961 and that the brought forward tax losses of the Corporate Debtor be permitted to be carried forward and set-off against future income as change of shareholding of the Corporate Debtor is pursuant to the bid submitted by the Applicant under the E-Auction Process.	<b>This is for the appropriate authorities to consider</b>
18.	A direction be issued to the Liquidator that all the compliances for the period up to the Date of Acquisition including filing of necessary documents and returns with the Registrar of Companies, Income Tax Authorities any other Government Authorities should be completed;	<b>Granted</b>

93. The Application **IA(IBC)/420/CHE/2024** confirming the sale of “Corporate Debtor as a going concern” is accordingly **allowed** with consequential reliefs. The Liquidator, after distributing the proceeds to the stakeholders as per Section 53 of IBC, 2016 may file an Application under Regulation 45(3) of the IBBI (Liquidation Process) Regulations, 2016 for closure of Liquidation process.



94. With the above said directions, this Application  
**IA(IBC)/420/CHE/2024** stands **disposed of**.

95. Accordingly, the Applications **IA(IBC)/348/CHE/2024**,  
**IA(IBC)/503/CHE/2024**, **IA(IBC)/1387/CHE/2024** and  
**IA(IBC)/416/CHE/2024** also stand **dismissed**.

*Sd-*  
**VENKATARAMAN SUBRAMANIAM**  
MEMBER (TECHNICAL)

*Sd-*  
**SANJIV JAIN**  
MEMBER (JUDICIAL)