



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT V, MUMBAI BENCH**

IA NO. 929 OF 2024

IN

C P (IB) NO. 1088/MB/2020

Application u/s 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 38 of the IBBI (Liquidation Process) Regulations, 2016 and under Rule 11 of the N.C.L.T. Rules, 2016.

In the matter of

Mr. Ravikant Modi,

Successful Actioned Asset purchaser of the
Topsgroup Services and Solutions Limited

.....

Applicant/ Successful Bidder

v/s

Mr. Anshul Gupta

Liquidator of Topsgroup Services and Solutions
Limited

....

Respondent/ Liquidator

In the matter of

Punjab National Bank(International) Limited

.... Financial Creditor

v/s.

Topsgroup Services and Solutions Limited

...Corporate Debtor

Order dated 21.11.2024.

Coram:

Hon'ble Reeta Kohli (Member Judicial).

Hon'ble Madhu Sinha(Member Technical).



Appearances:

For the Applicant: Adv. Abhishek Anand, Adv. Rushikesh Dusani i/b Adv. Ajinkya Kurdukar (PH)

For the Respondent: Adv. Niyati Merchant i/b MDP & Partners (PH)

ORDER

Per: Reeta Kohli Member (Judicial)

1. The above application I.A. No. 929 of 2024 is filed by **Mr. Ravikant Modi** (A Successful Bidder of the Corporate Debtor (hereinafter referred to as the “**Applicant**”) seeking direction against **Mr. Anshul Gupta** (Liquidator of the Corporate Debtor) (hereinafter referred to as the “**Respondent**”) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 And Rule 11 of NCLT Rules, 2016 (hereinafter called as “**the Code**”), praying for following reliefs:

- a. That this Hon'ble Tribunal confirms that Applicant as ‘Successful bidder’ for the assets of the Corporate Debtor sold-as ‘going concern’ in accordance with the regulations emanated under the liquidation regulation.*
- b. That this Hon'ble Tribunal be pleased to grant several reliefs and concessions as enumerated in ‘Annexure G’ attached in the present application.*
- c. That this Hon'ble Tribunal be pleased to direct the appropriate statutory authorities to act, entertain and allow appropriate application based on the orders of this Tribunal for the purpose of availing the reliefs, rights and benefits accruable from the security and financial assets as purchased by the Applicant under the e-auction sale process.*
- d. Any reliefs or direction in terms of prayer clause (a) to (c) as set above, in the interest of the liquidation proceedings of the Corporate Debtor.*



- e. Any other prayer as deemed fit by the Tribunal in the interest of justice.*
2. The Present Application is preferred by the Applicant for seeking various concessions and reliefs in relation to the assets sold as going concern Corporate Debtor.

FACTS OF THE CASE (IN BRIEF):

3. The Company Petition No. 1088 of 2020 was filed to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor i.e. **Topsgrup Services and Solutions Limited** under Section 7 of the Insolvency and Bankruptcy Code, 2016. The Corporate Debtor was admitted to CIRP vide an order dated 19.02.2021 wherein Mr. Rajendra Karanmal Bhuta was appointed as IRP. The IRP made a public announcement in Form-A which was published on February 23, 2021, through two newspapers, namely the "*Free Press Journal*" and "*Navakal*." This announcement invited creditors to submit their claims by March 10, 2021.
4. During the first Committee of Creditors (CoC) meeting held on 05.04.2021, the Insolvency Resolution Professional (IRP) informed the CoC that his authorization had expired due to reaching the age limit. The CoC decided to nominate a new Resolution Professional (RP) while the IRP continued his duties until the appointment of the new RP.
5. During the third CoC meeting held on 15.05.2021, the CoC approved the Respondent as the new RP, Mr. Anshul Gupta. This appointment was later confirmed by the tribunal vide order dated 27.07.2021.
6. In the absence of approved Resolution Plan the Respondent filed an Application under section 33 of the of the IB Code 2016 and the same was allowed by the Hon'ble Tribunal vide order dated 21.09.2022 and appointed Mr. Anshul Gupta as the Liquidator.
7. The Liquidator published an e-auction sale notice on September 25, 2023, announcing the sale process of the Corporate Debtor. Certain assets were excluded from the sale. The notice specified that the sale was conducted on an 'As Is, Where Is', basis. The auction date was set for October 27, 2023, with a



deadline for bid submissions and Expression of Interest (EOI) on October 10, 2023. The interested bidders were required to submit an Expression of Interest memorandum along with bid documents.

- 8.** The Applicant states that according to the e-auction sale notice, the reserve price for the Corporate Debtor, excluding certain assets, was set at Rs 367.62 Lakhs (Rupees Three Crores Sixty-Seven Lakhs Sixty-Two Thousand only). Bid incremental value, meaning the minimum amount by which bids must increase, was fixed at Rs 5,00,000 (Rupees Five Lakhs only). Additionally, the Earnest Money Deposit (EMD) was set at 10% of the reserve price.
- 9.** The Applicant submitted that pursuant to the knowledge of the e-auction sale process of the Corporate Debtor and based on the information disclosed in the sale information document, the Applicant had submitted Expression of Interest along with all the relevant undertakings, declarations, and affidavits as required and mentioned in information documents and participated in an e-auction sale process for the Corporate Debtor.
- 10.** The Applicant was declared the successful bidder in an e-auction sale process by the Liquidator. This declaration was confirmed via a Letter of Intent dated October 30, 2023, wherein the terms were unconditionally accepted by the Applicant. Following this, the Applicant fulfilled their financial obligations by paying the aggregate sale consideration along with interest on delayed payment to the Liquidator. Subsequently, the Liquidator issued a Sale Certificate dated February 01, 2024, officially recognizing the Applicant as the successful purchaser.
- 11.** The Applicant seeks critical reliefs from the Tribunal to revive the business operations of the Corporate Debtor. These reliefs, detailed in 'Annexure G,' are deemed essential for transitioning the entity from insolvency to an actively operational state, following the purchase of assets and liabilities under a 'Sale as Going Concern' arrangement. Key requests include provisions for trademark usage, the ability to review and terminate contracts based on viability, and the transfer of assets free from encumbrances. Additionally, the Applicant seeks legal immunity from prior wrongdoings, the formation of a new board of



directors, and ancillary reliefs to rejuvenate business prospects and settle liabilities pre-liquidation.

12. The Applicant has prayed for the following reliefs and Concession:

- 1.** *Reliefs for use of the Intellectual Property Rights and all other rights ancillary to it, including the rights to use, transfer, sell, secure and use as a security as its own. The said rights to include the existing, past and future intellectual property rights including but not limited to the brand name, the trademark and other rights attached thereto of the Corporate Debtor.*
- 2.** *Direction for right to continue the operations of business including right to review, revise, enhance, amend, alter, abandon, amalgamate, windup and terminate any existing contracts without any need for a special power to do so.*
- 3.** *Direction for right, title and interest in whole and every part(assets)of the CD (except the certain assets not offered as part of sale of CD as going concern) to vest in the CD free from all security interest, encumbrances, disputes, attachments, claims and counter claims including right to continue the ongoing litigations for the benefit of the corporate debtor.*
- 4.** *Directions for granting immunity to the Successful bidder from every existing as well as contingent liability that may arise with respect to any of the existing subsidiaries of the Corporate Debtor qua the Corporate Debtor.*
- 5.** *Direction for granting immunity to the CD from inquiries / investigation/prosecutions or any other proceedings whether civil or criminal for any. offences prior to sale of CD as going concern*
- 6.** *Direction to the effect that in case of sale of CD assets by lenders, no Capital Gain Tax or any other tax on the CD.*
- 7.** *Direction to enable the Liquidator to continue using the bank account with Axis Bank, "Topsgrup Services and Solutions Limited under Liquidation" for settlement of claims and demands in terms of section*



- 53 and making provisions for future claims and maintaining it till the closure of the Liquidation Process.*
- 8.** *Directions to the effect that the due & outstanding claims of the CD against third parties shall be recoverable in accordance with their respective terms*
 - 9.** *Successful Bidder be exempted from ineligibility under section 29A from submitting bids in future for acquisition of any other Corporate Debtor. This exemption is sought as any of the subsidiaries may be Non-Performing Asset (NPA) which may in turn render the Successful bidder ineligible under section 29A.*
 - 10.** *A direction be issued for permitting infusion by way of securities or instrument of the Corporate Debtor and/or borrow in lieu of the 'Liquidation Sale Amount' from the Successful Bidder or any of its nominee which shall be subject to the compliance with Section 29A of IBC and accordingly the term "Successful Bidder" shall include all such nominees. Further, a direction be issued that the Acquisition Structure and contours mentioned be approved by the Adjudicating Authority. A direction may also be issued that the Successful Bidder / Corporate Debtor shall not be required to make 'any separate application before the Adjudicating Authority under the provisions of applicable Laws and that the approval of Application by the Adjudicating Authority shall be treated as if the necessary approvals have been obtained under the Companies Act, 2013.*
 - 11.** *The existing pre-liquidation shareholding (including equity shares and preference share capital of the CD) shall stand cancelled, extinguished and permanently discharged in entirety. A direction be issued to RoC, NSDL and, CDSL or any other authorities to recognize such extinguishment of pre-liquidation shareholding.*
 - 12.** *A direction be issued to the Registrar of Companies, Mumbai to change the status of the company to "Active" on the MCA website..*
 - 13.** *A direction be issued, that from the Effective Date, the Board of Directors of the Corporate Debtor be re-constituted and the individuals*



proposed by the Successful Bidder be permitted to act as the 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 said individuals as directors of the Corporate Debtor and the existing board of directors of the Corporate Debtor shall be removed. It is undertaken that the individuals proposed to act as Directors of the Corporate Debtor shall not be disqualified in terms of Section 29A of the Code.

- 14. All the non-compliances under the Companies Act including but not limiting to violation of section 185, 186 of the Companies Act and all such other non-compliance's under any other law shall be deemed to be regularized and all penalties payable in relation to the non-compliances stand waived off pursuant to this approval by Hon'ble NCLT.*
- 15. All accounts of the Corporate Debtor shall stand regularized and their asset classification shall be "standard" for the purposes of all RBI Applicable Laws upon payment of last and final instalment and upon issuance of the certificate of Sale by the Liquidator. The records/score of Banks/CIBIL should accordingly be upgraded to reflect such reclassification of account of the Corporate Debtor from NPA to N Standard.*
- 16. A direction be issued that the Successful Bidder / Corporate Debtor shall have a right to review and terminate any contract, which in the opinion of the successful bidder, is prejudicial to the interest of the Company, that was entered into by the Corporate Debtor prior to the Effective Date.*
- 17. That necessary exemption be provided to the Corporate Debtor from adding the words "and reduced" in its name, as required under the provisions of Companies Act, 2013.*
- 18. A direction be issued to the Ministry of Corporate Affairs, Registrar of Companies, Mumbai and other statutory and regulatory authorities that, immediately, upon payment of the full Liquidation Sale Amount, the charges registered with them in respect the encumbrances over the*



assets of the Corporate Debtor(to the extent asset sold to the Applicant/ Successful Bidder) shall be deemed to be satisfied upon the Effective Date and that the order passed by Adjudicating Authority shall be sufficient proof for satisfaction of all charges and encumbrances already existing unsecured assets of the Corporate Debtor in the records of MCA, 'ROC and other statutory and regulatory authorities upon completion of sale and the creditors shall be directed to provide requisite support in relation thereto.

- 19.** *A direction be issued that as the sale of Corporate Debtor as Going Concern is akin to implementation of resolution plan under the corporate insolvency resolution process all attendant benefits, privileges and exemptions under various laws, including under the taxation law, shall be applicable to the Corporate Debtor upon sale to the Successful Bidder, including but not limited to benefit of any tax holiday, exemption, deduction, carry forward of losses of any prior years and set-off against the income of any financial year as available to the Corporate Debtor, even in an eventuality where the Corporate Debtor does not remain listed in future, more so in view of compliance of the provisions of Section 78(2)(c) of the Income Tax Act, 1961, which apply mutatis mutandis to sale of the corporate debtor under going concern under liquidation.*
- 20.** *The requirement of obtaining a no objection certificate, if any, under section 281 of 'the Income-tax Act, 1961 and provisions of taking over its predecessor's tax liability under section 170 of the Income Tax Act, 1961 shall not be applicable.*
- 21.** *A direction be issued that upon recasting of the financial statements (Profit and Loss Account and the Balance Sheet) of the Corporate Debtor pursuant to, (i), write back all the liabilities of the Corporate Debtor, including creditors, term loans, working capital loans, tax liabilities, other statutory liabilities such as Provident Fund, ESIC, Profession Tax, GST, Service Tax, Income Tax, TDS, etc. which are not payable and reflecting 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; and (ii) write down of the assets which are not recoverable (debtors, inventories and loans. And advances, etc.) to their realization value; the Successful Bidder or the Corporate Debtor shall not be liable for any claim, liability or penalties that may arise pursuant to such recasting of the financial statements.

22. *A direction be issued and the Applicant / Liquidator be empowered to issue directions to the banks to change the operating signatories bank accounts of the Corporate Debtor on or after Effective Date, other than the Liquidation Bank Account held by ~the Liquidator, also direction for remove lien (if any) for smooth transition of the corporate debtor to the successful bidder.*

23. *All Creditors of the Corporate Debtor to withdraw all legal proceedings commenced against the Corporate Debtor in relation to Claims including but not limited to under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Recovery of Debts Due to Banks and Financial Institutions Act, ~ 1993 or any other legal proceedings with any authority upon discharge of their debt.*

24. *Direction be issued that on the effective date, any and all Claims (including but not limited to employee related liability such as salary, wages, PF, ESIC, gratuity claims) or demands made by or liabilities or obligations owed or payable to (including any demand for any losses or damages, principal, interest, compound interest, penal : interest, liquidated damages and other charges already accrued/ accruing or in connection with any Claim) any actual or potential claimants of the Corporate Debtor or in connection with any debt of the Corporate Debtor, whether admitted or not, due or contingent, asserted or unassisted, crystallized or uncrystallized, known or unknown, disputed or undisputed, present or future, whether or not set out in the balance sheet of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor, in relation to any period prior to*



the Effective Date or arising on account of the acquisition of control or shares.by the Successful Bidder over the Corporate Debtor pursuant to this auction, will be written off in full and shall be deemed to be permanently extinguished by virtue of section 53 of the Insolvency and Bankruptcy Code and the Corporate Debtor or the Successful Bidder shall at no point – of time be, directly or indirectly, held responsible or liable in relation thereto.

25. *A direction be issued that on the effective date and pursuant to section 53 of the Insolvency and Bankruptcy Code, 2016, the successful bidder and/or the corporate debtor shall not be responsible for claim, damage, penalty, attachment, etc. if any imposed under Assessment proceedings and/or appeal proceedings and/or any proceedings before any-court of law including but not restricted to execution of any judgment or decree of any court arising out of any events / defaults / noncompliance/ nonpayment of any liability and any failure of such nature or any action / inaction of the erstwhile management carried out or due before the effective date including the right of the guarantors towards subrogation. The commitment of the Successful Bidder, for all the liabilities standing on the effective date, is restricted to bid amount of Rs. 367.62 lakhs. Any liability ‘as on the effective date whether provided for or not provided for, shall stand irrevocably settled and extinguished in perpetuity. All Claims (whether contingent or crystallized, known or unknown) of Governmental Authorities in relation to all Taxes, all deductions and all withholding Taxes on any payment, as required under Applicable Law and pertaining to the period prior to the Effective Date * shall stand extinguished on the Effective Date.*

26. *In case certain business permits and/or licenses (including but not limited to PSARA License) of the Corporate Debtor have lapsed, expired, suspended, cancelled, revoked or terminated or the Corporate Debtor has non-compliances in relation thereto. Accordingly, all Governmental Authorities that have issued or granted or renewed such business*



permits to provide reasonable time period after the NCLT Approval Date in order for the Successful Bidder to assess the status of these business permits and/or licenses and ensure that the Corporate Debtor is compliant with the terms of such business permits and Applicable Law without initiating any investigations, actions or proceedings in relation to such non-compliances and to permit the Successful Bidder to continue to operate the business of the Corporate Debtor as carried out prior to the Insolvency Commencement Date

27. *Upon approval of this application, all investments, statutory rights, licenses, lease agreements, agreements, registrations or any similar approval by whatever name “called and fundamental for running the business ongoing concern shall be in complete force and valid.*

28. *The Governmental Authority shall renew all consents, licenses, permits, and no objections notwithstanding that such consents, licenses, permits and no-objections may have lapsed, or there may be any amounts outstanding or owed to the Governmental Authority whether by way of fees, penalty or otherwise and not withstanding any outstanding non-compliance.*

29. *The Corporate Debtor shall be granted a period of 12 months from the 'NCLT Approval Date to comply with the statutory obligations without suffering any adverse implications including any revocation of licenses or levy of penalties or any other fees or cost.*

30. *The CD/ Successful bidder shall have the liberty to approach the NCLT to address any difficulties faced with respect to implementation of the CD as a going concern.*

13. Hence this Application.

FINDINGS:

14. We have heard both the Counsels for the parties and have gone through their pleadings and documents.



15. Upon careful examination of the submissions and the provisions of the relevant regulations, this Tribunal finds that the Applicant has duly adhered to the procedural requirements laid down in the liquidation regulations. It is observed that the Applicant participated in the bidding process in accordance with the prescribed procedures and emerged as the successful bidder for the assets of the Corporate Debtor.
16. The Applicant has satisfied the requisite conditions by remitting the aggregate sale consideration along with accrued interest to the Liquidator. The Sale Certificate issued by the Liquidator, dated February 01, 2024, corroborates the Applicant's assertion of being recognized as the successful Bidder. The Bench hereby acknowledges and affirms the Applicant's status as the successful Bidder in accordance with the terms and conditions outlined in the bidding process. The Sale Certificate issued by the Liquidator serves as conclusive evidence of the Applicant's successful bid.
17. Regulation 32 of the Liquidation Process Regulations provides for the realization of assets and the same is extracted below:
“[Sale of Assets, etc.
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(s) 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.]”
18. While the Liquidation Process Regulations recognize “going concern sale” as one of the methods of sale, however, there is no definition as such for ‘going concern’ either in the Code or in the Regulations and also there is no provision in the



‘Code’ or any of the regulations with respect to the relief and concessions to be granted to a Successful Bidder in Liquidation.

- 19.** It is thus incumbent upon us to rely upon the law settled by the Hon’ble NCLAT relevant or to refer the report of the “Insolvency Law Committee” dated 26/03/2018 Para 8.1 of the Report, wherein the committee examined the term “going concern” states as under:

“The phrase ‘as a going concern’ imply that the Corporate Debtor would be functional as it would have been prior to the initiation of CIRP, other than the restrictions put by the Code.”

- 20.** The crux of the ‘sale as a going concern’ is that the equity shareholding of the Corporate Debtor is extinguished and the acquirer takes over the undertaking with the assets, licenses, entitlements etc. The undertaking includes the business of the Corporate Debtor, assets, properties and rights etc. excluding the liabilities. The Corporate Debtor survives, only the ownership is transferred by the Liquidator to the purchaser. All the rights, titles and interest in the Corporate Debtor including the legal entity is transferred to the purchaser. After the sale as a ‘going concern’, the purchaser will be carrying on the business of the Corporate Debtor.

- 21.** In the normal parlance “going concern” sale is transfer of assets along with the liabilities. However, as far as the ‘going concern’ sale in liquidation is concerned, there is a clear difference that only assets are transferred and the liabilities of the Corporate Debtor have to be settled in accordance with Section 53 of the Code and hence the purchaser of this asset takes over the assets without any encumbrance or charge and free from the action of the Creditors. In the case of sale as a ‘going concern’ the Corporate Debtor will not be dissolved in terms of Section 54 of the Code. The assets with the attendant, claims, limitations, licenses, permits or business authorizations, remains in the Company. Only the ownership of the Company is acquired by the successful bidder from the Liquidator.



22. As a consequence, to the above discussions and on perusal of the pleadings and submissions made by the Ld. Counsel for the applicants and having been satisfied with the need for smooth transfer of assets of the Corporate Debtor sold as a going concern to applicant as successful auction purchaser, following order is passed keeping in view the provisions of Section 60(5) of the Code r/w Rule 11 of NCLT Rules, 2016:

- i. The reliefs sought in prayer clauses (a) the Hon'ble Tribunal hereby confirms the Applicant as the 'Successful Bidder' for the assets of the Corporate Debtor sold as a 'going concern', in conformity with the regulations promulgated under the liquidation framework.
- ii. As regards to the point of Jurisdiction of Statutory Authorities for Granting Specific Reliefs and Concessions to the Successful Bidder, the Hon'ble Supreme Court in *Anuj Jain Interim Resolution Professional for Jaypee Infratech Ltd. vs. Axis Bank Ltd. & Ors.*, [(2020) 8 SCC 401], clarified that

“while the liquidation process can relieve the successful bidder from certain liabilities, any additional reliefs or specific concessions must be requested from the relevant statutory or regulatory authorities by the bidder. The court underscored that these authorities have the discretion to grant or deny such requests based on their statutory powers”.

- iii. With regard to the important point in liquidation concerning the 'clean slate' principle, this Bench relies on the observations made by the Hon'ble Supreme Court in the matter of **Sunil Kumar Jain v. Sundaresh Bhatt, Liquidator of ABG Shipyard** [(2022) SCC OnLine SC 306] The Hon'ble Supreme Court held that

“during liquidation, all the statutory liabilities do not automatically get extinguished. The Court clarified that when a corporate debtor is in



liquidation, statutory dues like employee claims, taxes, and other dues are paid as per the waterfall mechanism provided in Section 53 of the IBC. This means that liquidation does not imply a clean slate, and all dues and claims are to be settled as per the specific priority laid down in the Code.”

- iv. Also in the matter of **Jai Balaji Industries Limited v. State Bank of India & Ors. (NCLAT Judgment, 2021)**: The National Company Law Appellate Tribunal (NCLAT) stated that,

“unlike in a resolution plan where a "clean slate" is provided to the new management to revive the business, liquidation involves the sale of assets to satisfy creditors as per the statutory priority order. Therefore, the "clean slate" concept is not applicable in liquidation, where statutory dues and creditors' claims need to be settled according to the provisions of the IBC”.

- v. It is further held that Successful Bidder retains the right to approach the relevant statutory authorities for the grant of reliefs and concessions as permissible under the law. This principle is upheld by the Hon'ble National Company Law Appellate Tribunal (NCLAT) in *Worldfa Exports Pvt. Ltd. vs. Vivek Raheja and Anr., (2023) ibclaw.in 01 NCLAT*, held that

“the SRA should file the necessary applications before the appropriate forum or authority to avail the reliefs and concessions.....”

23. As regards Prayer 'b'(i.e. *That this Hon'ble Tribunal be pleased to grant several reliefs and concessions as enumerated in 'Annexure G' attached in the present application*), The Hon'ble NCLAT in the matter of **M/s Shiv Shakti Inter Globe**



Exports Pvt. Ltd. vs. M/s KTC Foods Private Limited, Company Appeal (AT) (Ins.) No. 650 of 2020 had considered an appeal filed against an Order of Adjudicating Authority denying extinguishment of the remaining unpaid liabilities of the Corporate Debtor after distribution of the proceeds of the sale of Corporate Debtor as a going concern as per the order of priority provided in Section 53 of the IBC. The Hon'ble NCLAT has held as under:

“21. ... , 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’..... 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’.”

24. Upon the acquisition of assets through the liquidation process or the approval of a Resolution Plan, the Successful Bidder or Successful Resolution Applicant (SRA) is not automatically entitled to all desired reliefs and concessions. Instead, such reliefs must be sought from the concerned statutory authorities, which possess the jurisdiction to grant or deny the same.



25. In view of the above stated observations of the Hon'ble Supreme Court and also of Hon'ble NCLAT, we deal with several reliefs and concessions as enumerated in 'Annexure G', attached in the present Application as under:

- a)** The reliefs sought in prayer clauses (1), (2), (5), (7), (9), (23), (25) are allowed and shall be dealt with as per the provisions of *IBC* and applicable laws.
- b)** The reliefs sought in prayer clause (3) Stands already allowed in terms of clause 7 of the sales Certificate dated 01.02.2024.
- c)** The reliefs sought in prayer clause (4) stands uncalled as the petition does not disclose the existence of any subsidiary of the Corporate Debtor.
- d)** The reliefs sought in prayer clauses (6), (19), (20), (21), shall be dealt by the relevant Authorities independently subject to their statutory provisions.
- e)** The reliefs sought in prayer clause (8) stands declined, in terms of Section 33(5) of the *IBC*.
- f)** The reliefs sought in prayer clause (10) stands declined.
- g)** The reliefs sought in prayer clauses (11), (12), (13), (14), (17), (18) shall be dealt by the requisite Authority independently subject to their statutory provisions.
- h)** The reliefs sought in prayer clauses (15), (22) shall be dealt by the requisite Authority independently subject to their requirements.
- i)** The reliefs sought in prayer clauses (16) stands declined in terms of settled law by the Hon'ble Supreme Court in **“Gujrat Urja Vikas Nigam Limited v/s Mr. Amit Gupta & Ors”**

“The Court noted that the primary objective of the IBC is the resolution and revival of the corporate debtor, rather than its liquidation. Therefore, contracts that are essential for the business's survival should not be terminated merely due to the initiation of insolvency proceedings.”



- j) The reliefs sought in prayer clauses (24) (26), (27), (28), shall be dealt by the requisite Authority independently subject to their statutory provisions.
- k) The reliefs sought in prayer clause (29) is granted in view of the fact that the Sale Certificate is dated 01.02.2024, and a period of 3 months from the date of this order is granted to comply with the statutory obligations.
- l) The reliefs sought in prayer clauses (30) is allowed in exceptional circumstances and will be decided on merits.

26. It is further clarified that the Successful Bidder may approach the concerned authorities for specific reliefs, if needed. The concerned authorities will assess the concessions sought in terms of their respective statutory provisions or any other relevant orders/notifications in accordance with Laws and procedures. This is in terms of the mandate of the Hon'ble Supreme Court in **Anuj Jain Interim Resolution Professional For Jaypee Infratech Limited vs. Axis Bank Limited Etc.**

“(Para 26) The argument of lenders, that holding the transactions in question as preferential would result in impacting large number of transactions undertaken by the bankers/financial institutions, of financing in the ordinary course of their business; and the consequences may be devastating and irreversible on the economy, has only been noted to be rejected.”

- 27.** The Liquidator is directed to provide all support and Assistance to the Applicant for the smooth functioning of the Corporate Debtor to complete the acquisition strangely. No relief has been sought against the Liquidator but the Liquidator has been arrayed as Respondent by the Applicant.
- 28.** The Liquidator and also Applicant shall be at liberty to take all the steps required to make accounting entries for the smooth transmission and clearing the balance sheet.

**IN THE NATIONAL COMPANY LAW TRIBUNAL, COURT-V,
MUMBAI BENCH**

I.A. NO. 929 OF 2024
IN
CP(IB) NO. 1088/MB/2020



- 29.** The Liquidator is directed to ensure completion of pending filings with the Registrar of Companies, Income Tax Authorities and any other Government / Statutory Authorities.
- 30.** In terms of the above, IA No.929 of 2024 filed by the Applicants stands disposed of accordingly.

Sd/-

Madhu Sinha

MEMBER (TECHNICAL)

/Priyanka/

Sd/-

Reeta Kohli

MEMBER (JUDICIAL)