

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH(COURT-II), KOLKATA**

I.A. (IB) No. 1277/KB/2023

In

CP (IB) No. 1542/KB/2018

***An application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of the National
Company Law Tribunal Rules, 2016;***

IN THE MATTER OF:

M/s. Howen International Fund SPC

..... Applicant

Versus

Raj Singhania, Liquidator of the Corporate Debtor

...Respondent

And

AND IN THE MATTER OF:

Vipul V. Agarwal

...Operational Creditor

Gontermann Peipers (India) Limited

...Applicant

Date of Pronouncement of order: 10.05.2024

CORAM:

Smt Bidisha Banerjee : Member (Judicial)

Shri D. Arvind : Member (Technical)

Counsel appeared physically / through video Conferencing.

Mr. Jay Saha, Sr. Adv] Applicant
Ms. Tanvi Luhaniwala , Adv.]

Mr. Kumarijit Banerjee, Adv.] Respondent
Ms. Sanchari Chakraborty, Adv.]
Mr. Aadil Naushad, Adv.]

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Mr. Raj Singhania] Liq-in-person

ORDER

Per Bidisha Banerjee, Member (Judicial):

1. The Court is convened through hybrid mode.
2. Heard the Ld. Counsel for the Liquidator at length.
3. That the Applicant communicated a letter dated 06.05.2023, to the Respondent requesting issuance of a sale certificate in its favour. The Applicant was intimated along with issuance of sale certificate as an application would be required and the same to be preferred before this Tribunal to seek allotment of shares of the Corporate Debtor and claim certain reliefs and concessions to run the Corporate Debtor as a going concern as the mere purchase on a going concern basis in liquidation will not ensure revival of the Corporate Debtor due to its dire financial status and the quantum of past claims. In view of such, the present application has been preferred seeking reliefs and concessions as per the law.

4. Brief facts leading to the application:

- a. CIRP in respect to the Corporate Debtor Gontermann Peipers (India) Limited was initiated by this Tribunal on 11.12.2019.
- b. On 30.04.2021, the Liquidation order was passed appointing Mr. Raj Singhania as the Liquidator of the Corporate Debtor. The Liquidator on 14.10.2022 published the e-Auction Notice for the sale of assets of the Corporate Debtor and initiated process for

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Memorandum of Invitation of bids in e-auction from the prospective bidders. As per the e-Auction Notice, the Liquidator proposed sale of the Corporate Debtor as a going concern on “as is where is basis, “as is what is basis”, “whatever there is basis” and “no recourse basis”.

- c.** The Applicant M/s. Howen International fund SPC submitted its application form to participate in the bid along with the EMD of Rs. 34.35 Crores ("EMD Amount"). The Applicant qualified as an Eligible Bidder' in the e-auction conducted on 13th September 2021. Snaefell became the successful bidder on the e-auction was cancelled by this Tribunal on the ground of irregularities in the conduct of the auction. Thereafter, an Appeal was filed against the order passed by this Tribunal and on 30.09.2022, Hon'ble National Company Law Appellate Tribunal, New Delhi Bench upheld the order of this Tribunal.
- d.** Civil Appeal Nos. 7794-7795 of 2022 were preferred before the Hon'ble Apex Court and the applicant disposed of permitting fresh auction process take place but confirmation of the auction process was stayed. Accordingly, a fresh e-auction process for sale of the Corporate Debtor as a going concern was conducted on 11.11.2022. The said auction fetched the highest bid of Rs.127.75 crores from the Applicant herein. The sale was not confirmed as per the aforesaid Order of the Hon'ble Apex Court. Further, vide Order dated 14.02.2023, the Hon'ble Apex Court directed the Liquidator to publish the result of the fresh auction to be declared and confirmed. The Respondent liquidator

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declared the Applicant as the 'Successful Bidder' on the e-auction conducted on 11.11.2022, issued the Letter of Intent dated 16.02.2023 to the Applicant inter alia calling upon the Applicant to accept the Lol unconditionally and to pay the aggregate sale consideration of Rs. 127.75 crores

- 5.** The Hon'ble Apex Court vide its order dated 13.03.2023 confirmed the auction sale in favour of the Applicant and granted the Applicant a further time up to 30.04.2023 to pay the balance amount of Rs. 34.35 crores since Rs.93.40 crores were already deposited previously.
- 6.** The Applicant deposited the balance amount of Rs. 34.35 Crores with interest i.e. an amount of Rs. 36,30,283.46/- (Rupees Thirty-Six Lakhs Thirty Thousand Two Hundred and Eighty-Three and Paise Forty Six only) as per the terms and conditions of the auction. According to the Applicant, the entire consideration stands paid for and the Applicant is entitled to the sale certificate ("Sale Certificate") from the Liquidator.
- 7.** It is submitted that in terms of the sale Certificate and upon issuance of the Sale Certificate and Transfer of entire control to all the rights, title and interests of the Corporate Debtor to be transferred to the Applicant.
- 8.** Ld. Counsel for the Applicant in support their prayers, relied upon the following judgements:

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- a. **Hon'ble NCLAT, Principal Bench, New Delhi in Company Appeal (AT)(Insolvency) No. 650 of 2020, in the matter of M/s. Shiv Shakti Inter Globe Exports Pvt. Ltd. Vs. M/s. KTC Foods Private limited and Anr.**, has held 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

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'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'.

22. It is no longer Res Integra that while approving a 'Corporate Debtor sale as a 'going concern' in Liquidation Proceedings without its dissolution in terms of Regulation 32(e) of the Liquidation Process Regulations, 2016, it is essential to see that the 'Corporate Debtor' is not burdened by any past or remaining unpaid outstanding liabilities prior to the sale of the Company as a 'going concern' and after payment of the sale proceeds distributed in accordance with Section 53 of the Code. The Impugned Order in I.A. 889 of 2020 is modified to the extent that the sale of the first Respondent as a 'going concern' is upheld and the direction sought for in prayer (c) & (e) in CA No. 1189 of 2019 seeking extinguishment of past/remaining unpaid outstanding liabilities including contingent liabilities, prior to the sale as a 'going concern', after payment of sale proceeds distributed in accordance with Section 53 of the Code, is allowed.”

- b. **Hon'ble High Court at Calcutta in W.P.A. No. 6327 of 2022 in the matter of Kashvi Power & Steel Private Limited and Ors. Vs. West Bengal State Electricity Distribution Company Limited and Ors.,** has held as under:

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“60. Regulation 32-A of the Liquidation Process Regulations of 2016 clearly specifies that “liabilities” for the purpose of going concern sales in liquidation are only those liabilities which have been identified and earmarked for the going concern sale by the committee of creditors, if not, by the liquidator.

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64. In any event, the Regulations framed under the authority conferred by the IBC cannot be construed to override the provisions of the Code itself. Hence, no interpretation contrary to Section 53 of the IBC which, again, is preceded by a non obstante clause, can be attributed to the expression “going concern sale”, as contemplated in Rule 32 of the Liquidation Process Regulations, 2016.”

- c. That apart we have noted that **in IA 2264 of 2020 in CP (IB)No. 1239/MB/2018, the NCLT, Mumbai Bench** has permitted the following:

“As a consequence to the above discussions and on perusal of the pleadings and submissions made by the learned senior counsel for the Applicant the following order is passed:

(a) Prayer (a) is allowed. The Applicant is permitted to bring in Rs. 40 crores as share capital and Rs. 150.90 NCLT, MUMBAI BENCH, COURT No. - I IA No. 2264 of 2020 In C.P. (IB) No. 1239/MB/2018 Page 21 of 24 crores as unsecured debt towards payment of sale consideration.

(b) The Applicant shall get all the rights, title and interest over 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. The sale consideration, when

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received, shall be distributed by the Liquidator in terms of the Section 53 of the Code. Prayer (b) is accordingly allowed.

(c) The Applicant shall not be responsible for any other claims / liabilities / obligations etc. payable by the Corporate Debtor as on this date to the Creditors or any other stakeholders including Government dues. All the liabilities of the Corporate Debtor as on date stand extinguished, as far as the Applicant is concerned.

(d) Any proceedings pending against the Corporate Debtor (other than against the Erstwhile Promoters or former members of the management of the Corporate Debtor) as on date with respect to its liabilities, enquiries, investigations, assessments, claims, disputes, litigations etc. will not have any bearing against the assets sold in this process. The said assets are free from any financial implications NCLT, MUMBAI BENCH, COURT No. - I IA No. 2264 of 2020 In C.P. (IB) No. 1239/MB/2018 Page 22 of 24 arising out of any pending proceedings before relevant authorities, if any.

(e) The existing shares / share capital of the Corporate Debtor shall stand cancelled without there being any payment to the Shareholders. The Liquidator in consultation with the Registrar of Companies (RoC) concerned shall take action to change the status of the Corporate Debtor in the records of the RoC from the status of "liquidation" to the status of "active". The concerned RoC shall do the needful.

(f) The Board of the Corporate Debtor can be reconstituted as indicated in prayer (i) and necessary filings may be made to the RoC concerned.

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(g) Prayer (j) is allowed subject to payment of renewal fees, if any, from this date to the licensing authorities.

(h) The Applicant / Corporate Debtor shall have the right to review and terminate any contract that was entered into prior to the date of this order. The assets specified in the E-auction memorandum, on payment of the consideration as above will vest with the Applicant. Accordingly, prayers (m), (n) & (o) are allowed.

(i) The Applicant shall not be held responsible / liable for any of the past liabilities of the Corporate Debtor in inquiries, investigations, assessments, notices, NCLT, MUMBAI BENCH, COURT No. - I IA No. 2264 of 2020 In C.P. (IB) No. 1239/MB/2018 Page 23 of 24 causes of action, suits, claims, disputes, litigations, arbitration or other judicial, regulatory or administrative proceedings against or in relation to, or in connection with the Corporate Debtor prior to this date. They shall not have any effect on the Applicant.

(j) The Applicant is entitled to get all the rights, title and interest whole and every part of the Corporate Debtor.

(k) Creditors of the Corporate Debtor which include Creditors in any form or category including Government Departments shall stand extinguished qua the Applicant.

(l) The 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 stand extinguished qua the Applicant.

(m) All the assets specified in the E-auction memorandum shall continue to be the assets of the Corporate Debtor on making the

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payment of the balance sale consideration to the Liquidator by the Applicant.

(n) 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. NCLT, MUMBAI BENCH, COURT No. - I IA No. 2264 of 2020 In C.P. (IB) No. 1239/MB/2018 Page 24 of 24

(o) The Liquidator and Applicant shall be at liberty to take all the steps required to make accounting entries for the smooth transmission and clearing the balance sheet.

(p) The Liquidator is directed to ensure completion of pending filings with the Registrar of Companies, Income Tax Authorities and any other Government / Statutory Authorities.

(q) The Corporate Debtor is entitled to get the benefits of brought forward losses, if any, subject to permission of the appropriate authority if so entitled under the relevant provisions of the Income Tax Act, 1961.

(r) The Corporate Debtor may apply for incentives under the Package Incentive Scheme, framed by the Government of Maharashtra, subject to eligibility and other norms as provided in the said Scheme.

(s) As far as the prayer for considering the bid submitted by the Applicant as Resolution Plan under Section 79 of Income Tax Act, 1961 is concerned, the Applicant may approach the authority concerned who would consider such request under the Income Tax Act.”

d. IA(IB)537/KB/2022 in C.P. (IB)/891(KB)2018 in the matter of PUNJAB NATIONAL BANK VS DIVINE VIDYUT LIMITED

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rendered by Kolkata Bench, Manu /NC/0718/2023, where this Tribunal has granted similar reliefs.

- e. Reliance has been placed upon **Ghanashyam Mishra and Sons Private Limited VS. Edelweiss Asset Reconstruction Company Limited** 2021 SCC OnLine SC 313, that upon approval of the resolution plan, the claims as recorded in the plan stands frozen and will be binding on its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders.
- g) Jasamrit Designers Pvt.Ltd vs. Mr. Gian Chand Narang & Anr- 2023 SCC Online NCLAT 334** Paragraphs 10 and 11 as the right of a successful bidder to seek reliefs and concessions.
- h) Gaurav Jain vs. Sanjay Gupta, Liquidator of Pipes and tubes Private Limited-** 2021 SCC Online NCLT 489 paragraphs 20,25,26,28,29,30 and 34 on the nature of reliefs and concessions that are permitted.
- i) Nitin Jain, Liquidator of PSL Limited vs. Lucky Holdings Private Limited-**2021 SCC Online NCLT 3108 paragraph 15,29,30 and 36 to 42 as the nature of reliefs and concessions that are permissible.
- j) Ramesh Chaudhary &Anr. Vs. Anju Agarwal, Liquidator Of Shree Bhawani Paper Mills Limited** IA No. 195/2023 in C.P No. 110/ALD/ 2017, by NCLT, Allahabad Bench, vide its order dated 26.05.2023 paragraphs 11, 15, 16, 17, and 25 to 31 as the nature of reliefs and concessions that are permissible.
- k) Kashri Power & Steel Pvt. Ltd & Ors. vs. WBSEDCLS as** WP6327 OF 2020 (12.08.21,) rendered by Hon'ble High Court at

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Calcutta and Regulation 32A of Liquidation Process
Regulations 2016

9. Having noted the above, we pass the following orders:

| Sl. No. | Reliefs and Waivers | Remarks |
|----------------|--|----------------|
| 1. | An order be passed directing the respondent to issue the sale certificate with respect to the sale of the Corporate Debtor as a going concern in favour of the Applicant. | Granted |
| 2. | Consideration paid by the Applicant to the Liquidator in the Corporate Debtor's account (which will be used to make payments in terms of the waterfall mechanism under Section 53 of IBC), be adjusted inter-se between the Applicant and the Corporate Debtor by (i) Issuing fresh 50,00,00,00/- equity shares of Rs 10 each of the Corporate Debtor to the Applicant for an aggregate consideration of Rs. 50 crore (ii) issuing 77,75,000 nos, unsecured debenture of the Corporate Debtor to the Applicant having face value of Rs 100 each. The said debentures shall carry simple interest of 5% (to be paid out cumulatively at the time of maturity of the debenture) and will be repayable after 36 | Granted |

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| | months, from the Issuance Date (iii) The above referred issue of fresh equity shares and debentures shall be made by the corporate debtor to the applicant or any of its nominee which is eligible in terms of Section 29A of IBC. The date of issuance of the Fresh Equity Shares and Fresh Debenture shall be the "Issuance Date". | |
| 3. | The entire existing share capital Comprising of both Equity Shares and Preference Shares of the Corporate Debtor along with all the rights and liabilities thereto, other than the Fresh Equity Shares and Fresh Debenture, shall be deemed to stand cancelled and extinguished after passing of 1 (one) business day following the issuance date (Transfer date) without any consideration or payment to any existing shareholders of the Corporate Debtor and, with no requirement to add "and reduced" in the name of the Corporate Debtor ("Capital Reduction") and the amounts of such cancelled equity share capital pursuant to Reduction of Equity Shares and Preference Shares shall be credited to 'Other Reserve' | Granted |

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| | under 'Reserve & Surplus" and without any further act or deed in the financial statements of the corporate debtor. | |
| 4. | All present and future, claims, dues, liabilities, amounts, arrears, dividends, or obligations owed or payable by the Corporate Debtor to any person who holds equity or preference shares of the Corporate Debtor prior to the Transfer Date shall be reduced to 'Nil' and be permanently extinguished So that the Applicant/ Corporate Debtor shall at no point be, directly or indirectly, held responsible or liable in relation thereto. | Granted |
| 5. | Pursuant to and along with the extinguishment of the entire existing share capital of the corporate debtor, the said shares shall be considered as "Delisted" from the concerned stock exchanges and necessary conditions of compliances under Companies Act 2013 or Securities Contract Regulation Act 1956 or under the Listing Agreement with the Stock Exchange shall be deemed to be as complied with or shall stand waived or exempted. | Granted |

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| 6. | All procedural requirements under Companies Act including Section 66, Section 42 and Section 62(1)(c) of Companies Act, 2013 read with the rules framed thereunder stand waived/exempted. | Granted to the extent it is in accordance with law |
| 7. | All necessary approvals shall be deemed to be obtained for the purpose of IBC, Companies Act, 2013 and other Applicable Laws including consent of shareholders and those of all creditors of Corporate Debtor and/or any Governmental Authority such as SEBI etc. | Granted to the extent it is in accordance with law |
| 8. | The Applicant shall have the right to modify at its sole discretion, the structure contemplated in Prayer Clause (a) for the purpose of Acquisition of the Corporate Debtor on a going concern basis. | Granted |
| 9. | On account of payment of the Consideration and issuance of the Sale Certificate, the Applicant gets all the rights, title and interest in the whole and every part of the Corporate Debtor, including but not limited to contract, free from all security interest, Encumbrances, | Granted |

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|---|---|---|-------------------------|-----------------|--|--|
| | Claims, counter claims or any demur and the Consideration shall be distributed by the Liquidator in terms of Section 53 of the IBC. | | | | | |
| 10. | <p>That on or prior to the Transfer Date, the Board of Directors of the Corporate Debtor shall be re- constituted and the individuals set out hereunder shall be permitted to act as the directors of the Corporate Debtor duly appointed under Companies Act, 2013 and all the existing directors and employees and workmen of the Corporate Debtor shall be deemed to have resigned and vacated their office without any claims For the purpose of clarity, this relief is to be read with the relevant set out in Schedule A of this Application.</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">Name of the Person (to be appointed as the Director)</th> <th style="text-align: center;">Identity details</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Mr. Vishal Rana</td> <td>Aadhaar - 9000 5122 5640 PAN - BQWPR8773G</td> </tr> </tbody> </table> | Name of the Person (to be appointed as the Director) | Identity details | Mr. Vishal Rana | Aadhaar - 9000 5122 5640 PAN - BQWPR8773G | Reconstitution is granted and existing directors and employees deem to have discharge as per sec 33(7) of the code. |
| Name of the Person (to be appointed as the Director) | Identity details | | | | | |
| Mr. Vishal Rana | Aadhaar - 9000 5122 5640 PAN - BQWPR8773G | | | | | |

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|--------------------------|--|--------------------------|--|--|
| | <table border="1" style="width: 100%;"> <tr> <td style="width: 30%;">Mr. Gurupada Chakravorty</td> <td>Aadhaar - 7766 6409 6776 PAN - AFWPC7116A</td> </tr> </table> | Mr. Gurupada Chakravorty | Aadhaar - 7766 6409 6776 PAN - AFWPC7116A | |
| Mr. Gurupada Chakravorty | Aadhaar - 7766 6409 6776 PAN - AFWPC7116A | | | |
| 11. | The Corporate Debtor/ Applicant shall have no liability towards any creditor or financial creditor relating to the period prior to the Transfer Date upon payment to the creditors in accordance with Section 53 of the IBC. | Granted | | |
| 12. | All security interests created or suffered to exist in favour of the financial creditors including third party guarantees, personal guarantees shall stand assigned fully in favour of the Applicant. | Granted | | |
| 13. | Right, if any, to create a security over the assets of the Corporate Debtor shall stand automatically, irrevocably and unconditionally extinguished, released, discharged and terminated upon payment to the creditors in accordance with Section 53 of the IBC. | Granted | | |
| 14. | On and from the Transfer Date and on account of the payment of the Consideration all the Claims (of any nature | Granted | | |

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| | <p>whether or not a claim has been filed in relation thereto, financial or pecuniary, known, unknown, defined or undefined, actual or contingent, present or future, disputed or reduced to judgement, admitted or otherwise) pertaining to the period prior to the Transfer Date, of any/or all Creditors of the Corporate Debtor) (whether any private party or any Governmental Authority) along with any contingent financial liabilities of the Corporate Debtor, shall be deemed to be written off in full and permanently extinguished, without any adjustment/set-off and without any obligation of payment on the Corporate Debtor or the Applicant or the Preference Shareholder. Without prejudice to the generality of the foregoing, all the Litigations and Investigations against the Corporate Debtor pertaining to the period prior to Transfer Date shall cease and deemed to be withdrawn on and from the Transfer Date and claims thereunder shall stand permanently extinguished.</p> | |
| 15. | <p>on and from the Transfer Date, all Assets shall vest with the Corporate Debtor free of</p> | Granted |

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| | any Encumbrances and the Corporate debtor shall continue to be the true, legal and beneficial owner of its Assets) (whether owned, leased or in its possession) and the Corporate Debtor shall have peaceful and quiet enjoyment of the Assets without any adverse effect or requirement of any further act, deed or document and free from any hindrance, including under any Litigation, For the purpose of clarity, this reliefs is to be read with the detailed description set out in Schedule 'C'and the relevant definitions set out in Schedule A of this. | |
| 16. | a. the Applications for PUFÉ transactions as preferred by the Liquidator if any, shall be pursued by Corporate Debtor after the Transfer Date and amounts or benefits, if any, received by the Corporate Debtor shall accrue to the benefit of the Corporate Debtor. | Not Granted |
| 17. | After the Transfer Date, the Applicant/Corporate Debtor may replace the existing auditors of the | Granted |

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| | <p>Corporate Debtor and appoint new auditors without approval from any Governmental Authorities or any compliance under the Applicable Laws save and except the approval of shareholders after the Applicant and its nominees have become sole shareholders. The Applicant shall, to the extent practicable and applicable, prepare the pending audited financial statements file pending annual returns necessary ROC filings of the Corporate Debtor for any period prior to the Transfer Date by relying on limited available information without incurring any risk or liabilities.</p> <p>a. On and from the Transfer Date, (i) all subsisting consents, licenses, approvals, rights, entitlements, benefits and privileges ("Authorizations") whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled to shall, notwithstanding any provision to the contrary in their terms and Irrespective of the commencement of the</p> | Granted |

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| | Insolvency/liquidation proceedings under the IBC or the consequent change of Control, in relation to the Corporate Debtor shall be deemed to continue without disruption, for the benefit of the Corporate Debtor without any requirement for making fresh application; | |
| 18. | On and from the Transfer Date, (i) all subsisting consents, licenses, approvals, rights, entitlements, benefits and privileges ("Authorizations") whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled to shall, notwithstanding any provision to the contrary in their terms and Irrespective of the commencement of the Insolvency/liquidation proceedings under the IBC or the consequent change of Control, in relation to the Corporate Debtor shall be deemed to continue without disruption, for the benefit of the Corporate Debtor without any requirement for making fresh application; | Granted |
| 19. | a. all past non-Compliances shall be deemed to be waived by all the | Granted to the extent it is |

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| | <p>Governmental Authorities, and the Corporate Debtor/ the Applicant/ Existing Shareholders shall not be held liable (financial or otherwise) for such Non- Compliances under any Applicable Laws. The Corporate Debtor be granted a period of 24 months to assess the status of business Authorisations and rectify any non- Compliances in relation thereto, and the Governmental Authorities shall not initiate any action or Proceeding or levy penalty in relation to such Non- Compliances.</p> <p>b. For the purpose of clarity, this relief is to be read with the detailed description set out in Schedule D and the relevant definitions set out in Schedule A of this Application.</p> | <p>permissible in accordance with law</p> <p>Granted to the extent it is permissible in accordance with law</p> |
| 20. | <p>All liabilities, dues, Claims relating to Direct or Indirect Tax (including any EPCG obligations) for the period prior to the Transfer Date or arising pursuant to the implementation of the Acquisition, shall stand permanently extinguished without any set-off and all Tax Benefits shall</p> | Granted |

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| | continue to be available to the Corporate Debtor | |
| 21. | <p>c. All intimations, notices, assessments, re- assessments, appellate or other Proceedings pending with any authority or agency shall stand withdrawn.</p> <p>d. The Corporate Debtor, Shareholders and the Applicant or the Corporate Debtor shall not be held liable for making good any Non-Compliance for any period prior to the Transfer Date, and no interest, fee, penalties, or other Taxes shall be payable by them in relation thereto.</p> <p>e. That for the purposes of financial recuperation of the Corporate Debtor and its Acquisition on a going concern basis akin to a resolution plan approved under Section 31 of IBC, a direction be issued that the brought forward Tax losses and unabsorbed depreciation of the Corporate Debtor be permitted to be carried forward for the time period as prescribed under the provisions of the Income Tax Act, 1961 and set off against future income and belated filing of any Tax return shall</p> | <p>Granted</p> <p>Granted</p> <p>Granted</p> |

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| | Governmental Authorities to exempt Corporate Debtor / Applicant /debenture holders/ Preference Shareholder from income/gain/profits, if any, arising as a result of giving effect to the Acquisition and from being subjected to income tax in the hands of the Corporate Debtor, the Applicant/ Preference Shareholder under any Tax provisions. For the purpose of clarity, this relief is to be read with the detailed description set out in Schedule E and Schedule A of this Application. | |
| 22. | i. All the liabilities of the Corporate Debtor, including Creditors, term loans, working capital loans, tax liabilities, employees and workmen retirement liabilities or other statutory liabilities, etc. which are not payable shall be written back and the total liabilities at the amount of the Consideration (as reduced by the amount of insolvency resolution. process costs and the liquidation costs) shall be reflected in the financial statements (profit and loss account and the balance sheet) of the Corporate | Granted |

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| | <p>arising as a result of giving effect to the Acquisition and from being subjected to income tax in the hands of the Corporate Debtor, the Applicant/ Preference Shareholder under any Tax provisions. For the purpose of clarity, this relief is to be read with the detailed description set out in Schedule E and the relevant definitions set out in Schedule A of this Application.</p> <p>1. That all the liabilities of the Corporate Debtor, including Creditors, term loans, working capital loans, tax liabilities, employees and workmen retirement liabilities or other statutory liabilities, etc. which are not payable shall be written back and the total liabilities at the amount of the Consideration (as reduced by the amount of insolvency resolution. process costs and the liquidation costs) shall be reflected in the financial</p> | <p style="text-align: center;">Granted</p> |

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| | <p>statements (profit and loss account and the balance sheet) of the Corporate Debtor as on 31 March 2023 and such written back amount shall be credited as 'Other Reserve' under 'Reserve & Surplus' in the financial statements.</p> <p>m. That (the requirement of any prior approval for change in management pursuant to the Acquisition or any other Non-Compliance shall be deemed to be waived and extinguished.</p> <p>n. That on and from the Transfer Dates, all existing agreements/ arrangements/ contracts/ arrangements/ understandings with third parties including without limitation contracts and commercial arrangements and understanding with third parties shall continue to be in full force and effect against the relevant counter-party(ies) (notwithstanding that corporate insolvency resolution</p> | <p style="text-align: center;">Granted</p> <p style="text-align: center;">Granted</p> |

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| | <p>proceedings and liquidation proceedings of the Corporate Debtor and/ or consequent change in control/ shareholding of the Corporate Debtor) except as determined by the Applicant, provided that all Claims, in relation thereto for any period prior to the Transfer Date shall stand permanently extinguished without any set-off from the Transfer Date. For the purpose of clarity, this relief is to be read with the relevant definitions set out in Schedule A of this Application.</p> <p>o. That on and from the Transfer Date, the Financial Creditors shall upgrade the account of Corporate Debtor under the Credit Information Bureau (India) Limited ("CIBIL") mechanism to "Standard Category and all notifications with regards to defaults filed with CIBIL, any information utility, RBI or any other</p> | Granted |

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| | <p>regulatory authority for, and on account of Corporate Debtor shall be withdrawn by the respective Financial Creditors. Further, all accounts of the Corporate Debtor shall stand regularized, and their asset classification shall be considered "standard" for the purposes of Applicable Laws. In the event the Corporate Debtor has been placed by any Financial Creditor in the list or database of defaulters/wilful defaulter, such Financial Creditor will take all necessary steps to remove the name of the Corporate Debtor from such lists or database. The Financial Creditors shall, within 30 days from the Effective Date, intimate the relevant credit information companies and information utilities (if applicable) of this provision of the regarding the accounts of the Corporate Debtor not being NPA Account and the Corporate</p> | |

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| | Debtor not being a defaulter/wilful defaulter (as the case may be). For the purpose of clarity, this relief is to be read with the relevant definitions set out in Schedule A of this Application. | |
| 24. | <p>p. <u>Legal Exposure</u></p> <p>q. All liabilities arising after the CIRP, liquidation process or not disclosed during the CIRP and/or liquidation which arises, out of any investigation undertaken by any statutory body/ agency due to the act or omission of the erstwhile/previous management/promoter of the Corporate Debtor shall not be fastened on the Applicant and any Liability accruing to the Corporate Debtor or the Applicant as a result of or in relation to any Criminal Proceedings against the officers of the Corporate Debtor shall be</p> | Granted |

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| | <p>deemed to have been permanently extinguished and the assets and business of the Corporate Debtor and Applicant shall not be subject to any proceedings, show cause notices issued by the any Governmental and Statutory Authority, attachment by any Governmental and Statutory Authority, attachments under the provisions of any Applicable Laws including the Prevention of Money Laundering Act, 2002 for any actions undertaken by the erstwhile management, promoters and key managerial personnel of the Corporate Debtor for the period prior to the transfer Date of the Corporate Debtor to the present Applicant.</p> <p>r. the transfer Date of the Corporate Debtor to the present Applicant</p> <p>s. Treatment of rejected Claims, Claims pending verification and Claims that have not been filed</p> | <p style="text-align: center;">Granted</p> <p style="text-align: center;">Granted</p> |

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| | <p>account of the Corporate Debtor.</p> <p>v. The Liquidator shall provide the Applicant with the statement of statutory compliance undertaken during the period starting from the CIRP Commencement and concluding upto the date of transfer certificate or NCLT order on the instant petition.</p> <p>w. Provide a comprehensive list to the Applicant of all documents, correspondences, records, registers, communications with various stakeholders, licenses, approvals, applications, books of accounts, details and copies relating to existing complaints/ investigations/ enquiries/ proceedings of any nature that are pending against any of the employees of the Corporate Debtor, and all other relevant records.</p> <p>x. shall ensure security and preservation of the assets of the corporate debtor till the time of</p> | <p style="text-align: center;">Granted</p> <p style="text-align: center;">Granted</p> <p style="text-align: center;">Granted</p> |

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| | <p>effective handover and ensure that all the assets handover of the company as appearing in its book record of the corporate debtor are handed over.</p> <p style="text-align: center;"><u>Deposit & other cash collaterals</u></p> <p>y. All margin money/ fixed deposit with lien provided by the Corporate Debtor shall be released immediately on the transfer Date.</p> <p>z. The NCLT order approving this Application ("NCLT Approval Order") shall be binding on all stakeholders of the Corporate Debtor and the applicant shall start running the business and operations on a "fresh slate without any risk of payments or liabilities for past acts and omissions of the Corporate Debtor.</p> <p style="text-align: center;"><u>General Approval to remove any hardship</u></p> | <p style="text-align: center;">Granted</p> <p style="text-align: center;">Granted</p> <p style="text-align: center;">Granted</p> |

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| | <p>aa.To the extent legally applicable under the provisions of Applicable laws, The NCLT Approval of this application, shall pursuant to the IBC Code 2016, shall be deemed to be adequate compliance with all relevant provisions of any Applicable law.</p> <p style="text-align: center;"><u>Extinguishment of Right to Recompense</u></p> <p>bb. The Financial Creditors shall have no rights or claims against the Corporate Debtor (including but not limited to, in relation to any past breaches by the Corporate Debtor or any right to recompense that the Financial Creditor may have) in relation to any period prior to the Transfer Date and all such claims shall be deemed to be permanently extinguish.</p> | <p style="text-align: center;">Granted</p> |

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- 10.** With the above directions, **this I.A. (IB) No. 1277/KB/2023 is disposed of.**
- 11.** The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 12.** Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee,
Member (Judicial)**

The Order signed on 10th Day of May 2024.

M. Jana (P.S.)/ V. Tiwari (LRA)