

Sl. No. 2

NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH

(Virtual Hearing)

PRESENT: SHRI RAJEEV BHARDWAJ – MEMBER (JUDICIAL)

: SHRI SANJAY PURI – MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 12.07.2024 AT 03:00 P.M.

TC/CP. Nos.	CA/IA No.	Section / Rule	Name of Parties
CP(IB)/44/7/AMR/ 2020	Admitted	7 of IBC	State Bank Of India Vs Sree Naidu Beverages Pvt Ltd
	IA(IBC)/176/ 2024	U/Sec 60(5) of IBC,2016 R/w Reg 33(2) (D) and 32(e) of IBBI Liquidation Process Reg,2016 and R/w Rule 11 of NCLT Rules, 2016	Flywheel Logistics Solution Pvt Ltd (Successful Bidder) Vs Krishna Mohan Gollamudi, Liquidator of M/s Sree Naidu Beverages Pvt Ltd

ORDER

IA(IBC)/176/2024:

Present: Mr.Amir Bavani, Ld. Counsel for the Respondent.

Orders pronounced. IA(IBC)/176/2024 is allowed and recorded vide separate sheets.

Sd/-

SANJAY PURI
MEMBER (TECHNICAL)

Sd/-

RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI**

* * *

**IA (IBC)/176/2024
In
CP (IB)/44/7/AMR/2020**

[An Application filed under Section 60(5) of the IBC, 2016 Read with Regulations 33 (2) (D) and 32(e) of IBBI (Liquidation Process) Regulations, 2016 and read with Rule 11 of NCLT Rules, 2016]

In the matter of
M/s. Sree Naidu Beverages Private Limited

BETWEEN:

Flywheel Logistics Solutions Private Limited,
Through Authorised Representative
Mr. Sanket Kumar Agarwal,
Registered office at F-213/E-1,
Old MB Road, Lado Sarai, Saket,
New Delhi – 110030

... Applicant

AND

Krishna Mohan Gollamudi,
Liquidator of M/s.Sree Naidu Beverages Pvt Ltd.,
F26, Raghava Ratna Towers,
Chirag Ali Lane, Abids,
Hyderabad – 500001

... Respondent

Date of Order: 12.07.2024

Coram:

**SHRI RAJEEV BHARDWAJ, MEMBER (JUDICIAL)
SHRI SANJAY PURI, MEMBER (TECHNICAL)**

Parties/Counsels present:

For the Applicant: Mr. Bhanu Gupta, Mr.Akshat Singh, Mr.Dacchita
Shahi & Mr.Utkarsh Kandpal, Advocates

For the Respondent: Mr. Amir Bhavani, Advocate

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ORDER
(Per: Bench)

1. The present I.A. is filed by the Successful Bidder of the Corporate Debtor under Section 60(5) of the IBC, 2016 Read with Regulations 33 (2) (D) and 32(e) of IBBI (Liquidation Process) Regulations, 2016 and read with Rule 11 of NCLT Rules, 2016 seeking following reliefs:

(i) *To pass an order or directions related to waivers and concessions as mentioned in Para 16 of the Application pursuant to Successful Sale of Corporate Debtor as a Going Concern by the Liquidator, are as under:*

“Para 16:

- (a) Considering the similarities between resolution of a Corporate Debtor (under CIRP) on a going concern basis sale of a Corporate Debtor (under Liquidation) on a going concern basis, all benefits, privileges, rights, exemptions, and other entitlements as are usually available to a Resolution Applicant, whether under the Applicable Laws shall be equally applicable to the Bidder under this Acquisition Plan. Similar to a Resolution Applicant who intends to acquire a Corporate Debtor undergoing Corporate Insolvency Resolution Process on a “**Clean State**” basis, the Bidder shall, pursuant to approval of this Acquisition Plan, acquire the Corporate Debtor as a going concern on a “**Clean State**” basis.
- (b) On the date of approval by the Adjudicating Authority, all such claims which are not a part of statement of claims, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not part of the statement of claims.
- (c) Creditors of the Corporate Debtor which include Creditors in any form or category including Government/Statutory dues shall stand extinguished qua the Corporate Debtor /Bidder.

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- (d) Any and all Encumbrances, or any other form of security interest or any restrictive covenant or any right of set-off or lien, including negative lien, springing security, etc, whether over immovable, movable assets, fixed deposits, investments, or cash or any other assets, rights or privileges, in each case whether tangible or intangible that was created/granted/arranged or agreed to be created, granted or arranged in connection with any lease agreement or debt or obligations of or claim against the Corporate Debtor, other than any such encumbrance or security interest created in favour of the Bidder, shall automatically be released, discharged, settled, revoked, cancelled and extinguished.
- (e) Outstanding electricity dues against Service Nos.1172699032000418 & 172699032000419 due to the Anakapalli Rural Electric Cooperative Society Ltd (since taken over by the Eastern Power Distribution Company of Andhra Pradesh Limited) be settled in terms of Section 53 of the Code out of the Sale Consideration paid by the Bidder in full satisfaction of all its dues as on as on approval date. Post NCLT approval order, the Bidder be entitled to request restoration of connection against the above Service Nos or be immediately granted fresh electricity connection on making necessary application without insistence of payment of any arrears pertaining to period prior to approval date in terms of the Judgment of the Hon'ble Supreme Court in *Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Private Limited and Others* as well as *Southern Power Distribution Company of Andhra Pradesh Limited vs. Gavi Siddeswara Steels (India) Pvt Ltd and Another*.
- (f) The non-compliance of provisions of any law, rules, regulations, directors, notifications, circulars, guidelines, policies, licenses, approvals, consents or permissions prior to the approval date shall stand extinguished. Furthermore, no fine/penalty can be levied in relation to any such non-compliance for any period prior to approval date.

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- (g) The RoC to take on record and enable implementation of this Acquisition Plan by the Adjudicating Authority, without any further compliances. Without prejudice to the generality of the above, the RoC shall, pursuant to the NCLT Approval order, update its records to reflect the status of the Corporate Debtor as 'active' from the status of 'under liquidation'.
- (h) Since no books of accounts have been handed over to the IRP/RP/Liquidator by the Erstwhile Promoters, all pending statutory filings for any period prior to Approval Date be allowed to be filed on best available basis with no liability attached to the Bidder. In this regard, the Bidder shall be granted 36 months from the Approval Date to complete all such pending procedural Annual Income Tax and RoC filings of the Corporate Debtor.
- (i) Given that the Bidder will acquire control of the affairs of the Corporate Debtor on the Acquisition Date on a 'clean slate' basis, penalties or any other liabilities, release attachments of Property and withdraw prosecution or Proceedings against Corporate Debtor, that may arise from any defaults or Non-Compliances by the Corporate Debtor prior to the Acquisition Date of Applicable Laws, including but not limiting to the provisions of the CA 2003, Contract Labour (Regulation and Abolition) Act, 1970, all relevant and applicable Tax laws, the relevant stamp acts of the different states of India, relevant environmental laws, anti-money laundering laws and laws for prevention of corruption shall be assumed to have been waived in terms of section 32A of IBC.
- (j) The approval Acquisition Plan be made part of the final order of the Adjudicating Authority
- (ii) *Pass any other such order(s) as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of this case.*

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2. The facts as stated in the application are as follows:
- i. The Financial Creditor i.e., M/s. State Bank of India (Stressed Asset Recovery Branch, Vishakhapatnam) filed application under Section 7 of the Code for initiation of the Corporate Insolvency Resolution Process (“CIRP”) against the Corporate Debtor i.e., M/s. Sree Naidu Beverages Pvt Ltd., which was admitted vide order dated 10.07.2021 in CP(IBC)/44/7/AMR/2020 and appointed Mr. Krishna Mohan Gollamudi as Interim Resolution Applicant (“IRP”) of the Corporate Debtor and he was appointed as Resolution Professional (“RP”) in the 1st CoC meeting held on 12.08.2021.
 - ii. On 23.09.2021 the Resolution Professional (RP) invited Expression of Interest (EoI) from prospective Resolution Applicants and the last date of submission of Resolution Plan was 22.11.2021, which was extended to 29.11.2021. Even after extending the date also no Resolution Plan was received.
 - iii. In the light of the circumstances, the CoC decided to invite EoIs once again by modified the eligibility criteria and reducing the EMD and Performance Guarantee amounts. Since the CIRP period is not sufficient to complete the process, the RP filed an application for extension of CIRP period by 90 days and the same was approved by this Tribunal vide order dated 03.01.2022.
 - iv. The RP has issued a fresh invitation for submission of EoI, timelines, Form-G, modified RFRP etc., and the last date of

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submission is 01.03.2022, but no Resolution Plan was received. In the 6th CoC meeting held on 29.03.2022, a Resolution was passed recommending for liquidation of the Corporate Debtor, with 100% voting share of all the members. The RP has filed an IA(IBC)/47/2022 seeking for liquidation and the same was allowed by this Tribunal vide order dated 13.04.2022.

- v. That in the said Company Petition the RP, filed an IA(IBC)/47/2022 for seeking liquidation of the Corporate Debtor viz. M/s. Sree Naidu Beverages Pvt Ltd., and vide order dated 13.04.2022 an order of Liquidation of the Corporate Debtor was passed, wherein the Applicant was confirmed to act as “Liquidator”.
- vi. As a consequence, the Applicant was made a public announcement dated 03.06.2022, and the sale notice in compliance of Regulation 35 to 38 was issued including the description of the assets, method of sale, date and location, terms and conditions and any other relevant information at the reserve price of Rs.4,01,47,000/-. But no buyers were interested in the purchase at the said reserve price, the e-auction failed and the liquidator issued further e-auction notices on the following dates by subsequently reducing the reserve price on each subsequent failed auction.

S. No	E-Auction Notice Date	Reserve Price
1.	09.06.2022	4,01,47,000/-
2.	01.08.2022	3,41,25,000/-
3.	24.08.2022	3,07,13,000/-
4.	14.09.2022	2,76,42,000/-
5.	22.10.2022	2,48,78,000/-

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6.	22.12.2022	2,23,90,000/-
7.	22.01.2023	2,01,51,000/-
8.	12.03.2023	1,81,36,000/-
9.	03.06.2023	1,63,22,000/-

- vii. The liquidator made efforts for sale through public auction and also through private sale, but there were no positive results. The Liquidator was left with only one option to distribute the unsold assets among the stakeholders. In the 2nd SCC meeting held on 05.09.2023, there was discussion on distribution of unsold assets amongst the stakeholders. The largest stakeholder i.e. State Bank of India with voting share of 94.57% sought four days' time but did not respond till 03.10.2023. The Liquidator once again revived his negotiations through known persons to find out the pulse of the Private Parties who had shown interest in the past.
- viii. In the process, the applicant herein i.e., Fly Wheel Logistics Solutions (P) Ltd responded positively and expressed its willingness to take the CD if sold under a private sale and as a going concern by improving offer and quoted a price of Rs. 1.10 Crores and to show his bonafides made a remittance of Rs. 10 lacs on 02.10.2023 as refundable EMD and requested for an early decision to proceed further so as to prevent the assets from being rendered completely obsolete. The Liquidator was required to initiate the process and further negotiations in consultation with the SCC and the prospective buyer. In the 3rd SCC meeting held on 05.12.2023, SCC consented with 94.5% votes in favour of Private sale as a going concern as against distribution of unsold assets and requested the liquidator to take necessary steps and

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complete the Liquidation Process. However, the Liquidator has filed IA(IBC)/429/2023 seeking private sale of the Corporate Debtor as a going concern and the same was allowed by this Tribunal vide order dated 22.02.2024.

- ix. In pursuant to the order dated 22.02.2024, the applicant vide email dated 26.03.2024, 01.04.2024, 10.04.2024 revised the offer from 1.10 Cr to 1.15 Cr which was accepted by the SCC vide email dated 16.04.2024 and the Letter of Intent was issued vide email dated 17.04.2024 and the applicant has accepted the same vide email dated 17.04.2024 and remitted the balance amount of Rs.1.05 Cr. That the liquidator vide email dated 25.04.2024 issued the sale certificate. That the sale certificate of the Corporate Debtor enumerated the following clause.

“Whereas on receipt of Rs.1.15 Crores as sale consideration of sale the Corporate Debtor under liquidation as a going concern, Sree Naidu Beverages Pvt. Ltd, (in Liquidation) is sold on “AS IS WHERE IS”, “AS IS WHAT IS”, “WHATEVER THERE IS BASIS” AND “WITHOUT RECOURSE BASIS” in favour of M/s. Flywheel Logistics Solutions Pvt. Ltd.

That “AS IS WHERE IS”, “AS IS WHAT IS”, “WHATEVER THERE IS BASIS” AND “WITHOUT RECOURSE BASIS”, as per the E-auction process document dated 03.06.2023 concurs to clause 8 of the said document which is as under:

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Lot No	Particulars of Asset
Lot No 1 (Lot No 2 & 3 together)	All the below mentioned assets together as a single lot
Lot No 2	Plant && Machinery; Electrical fittings, equipment, lab equipment, Office furniture and equipment, and Inventory etc.
Lot No 3	Main shed, office building, Generator room, Security, workers rest & canteen, Toilet block admeasuring 22820 sft on leasehold land at Sy.No. 206/26, 25 29 & 30, Kodooru Village, Anakapalli Mandal, Visakhapatnam dist.

- a. *Sheds and Buildings are constructed on Leasehold land admeasuring 1.43 acres on lease for 20 years commencing from 14.07.2014 at a lease rent of Rs. 40000/- per month as per lease deed dt. 09.07.2014, Regd Doc. No. 2334/14.*
- b. *Leasehold land admeasuring 0.35 Acres on lease for 20 years commencing from 28.11.2014 at a lease rent of Rs. 6000/- per year, for the purpose of forming a road, as per Lease Deed dt. 28.07.2014 Regd Doc. No. 4273/2014.*
- c. *If Lot 1 is successful, Lot 2 and 3 are not considered for auction.*

3. The Respondent/Liquidator filed counter reiterating the materials facts and has no objection for allowing this application.

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ORDER

4. We have heard the submissions made by the Ld. Counsels for both the parties and perused the facts pleaded in this Application. It is seen that the Liquidator/Respondent has already sold the Corporate Debtor under private sale as a going concern to the Applicant herein and has filed this application seeking approval of the same with above pleaded waivers and concessions.
5. In so far as Sale as a going concern is concerned, the term "going concern means all such assets and the liabilities, which constitute an integral business or the Corporate Debtor, that must be transferred together, and the consideration must be for the business or the Corporate Debtor. The buyer of the assets and liabilities should be able to run business without any disruption.
6. There are two going concern sales defined under Regulation 32 of IBBI (Liquidation Process) Regulations, 2016. The first one pertains to Sale of "Corporate Debtor as a going concern" under Regulation 32(e) and sale of "Business of Corporate Debtor as a going concern under Regulation 32(f).
7. In the sale of "Corporate Debtor as a going concern" under Regulation 32(e) of IBBI (Liquidation Process) Regulations, 2016 the Corporate Debtor will not be dissolved. In this part of sale, the entire business, assets and liabilities; including all contracts, licenses, concessions, agreements, benefits, privileges, rights or interests of the Corporate Debtor will be transferred to the acquirer. The existing shares of the Corporate Debtor will not be transferred and shall be extinguished.

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8. Sale of a Company as a 'Going Concern means sale of both assets and liabilities, it is stated on 'as is where is basis. The Hon'ble NCLAT in the matter of *M/s. Visisth Services Ltd. Vs. Mr. S. V. Ramani, Liquidator of United Chloro-Paraffins Pvt. Ltd. Company Appeal (AT)(Ins) No. 896 of 2020* held that as per Regulation 32A of the IBBI (Liquidation process) Regulations, 2016 the Sale as a 'Going Concern' means sale of assets as well as liabilities and not assets and liabilities. We conclude that Sale of a Company as a 'Going Concern' means sale of both assets and liabilities if it is stated on 'as is where is basis'.
9. We have perused the judgments rendered by the NCLT, Cuttack Bench vide order dated 11.10.2023 in IA No. 196/CB/2023 in CP (IB) No.249/2020 and NCLT Mumbai Bench vide order dated 11.11.2022 in IA No.1585/MB/2022 in CP(IB) No.490/MB/2018 and NCLT, Chennai Bench vide order dated 31.08.2023 in IA(IBC)/633/CHE/2023 in CP/472/IB/2017.
10. The present Application has been filed under Regulation 32(e) of IBBI (Liquidation Process) Regulations, 2016 seeking approval for sale of the "Corporate Debtor as a going concern". Apart from the above, the Liquidator has also sought for certain waivers and concessions, which are set out in para 16 of the Application. These *Reliefs and Concessions sought for, and orders thereon, are tabulated below:*

S. No	Reliefs/Concessions sought for by the Applicant	Orders thereon
I	Considering the similarities between resolution of a Corporate Debtor (under Corporate Insolvency Resolution Process under the Code) on a going concern basis and sale of a corporate	Granted

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	debtor (under Liquidation under the Code) on a going concern basis, all benefits, privileges, rights, exemptions, and other entitlements as are usually available to a Resolution applicant, whether under the Applicable Laws shall be equally applicable to the Bidder under this Acquisition Plan. Similar to a Resolution Applicant who intends to acquire a Corporate Debtor undergoing Corporate Insolvency Resolution Process on a “ Clean Slate ” basis, the Bidder shall, pursuant to approval of this Acquisition Plan, acquire the Corporate Debtor as a going concern on a “ Clean Slate ” basis.	
II	On the date of approval by the Adjudicating Authority, all such claims which are not a part of statement of claims, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not part of the statement of claims.	Granted
III	Creditors of the Corporate Debtor which include Creditors in any form or category including Government/ Statutory dues shall stand extinguished qua the Corporate Debtor/ Bidder	Granted
IV	Any and all Encumbrance, or any other form of security interest or any restrictive covenant or any right of set-off or lien, including negative lien, springing security etc., whether over immovable, movable assets, fixed	Granted subject to the provisions of IBC, 2016 and other applicable laws.

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	deposits, investments, or cash or any other assets, rights or privileges, in each case whether tangible or intangible that was created/granted/arranged or agreed to be created, granted or arranged in connection with any lease agreement or Debt or obligation of or claim against the Corporate Debtor, other than any such Encumbrance or security Interest created in favour of the Bidder, shall automatically be released, discharged, settled, revoked, cancelled and extinguished.	
V	Outstanding Electricity dues against service Nos 1172699032000418 & 172699032000419 due to The Anakapalli Rural Electric Cooperative Society Ltd (since taken over by Easter Power Distribution Company of Andhra Pradesh Limited) be settled in terms of section 53 of the Code out of the sale consideration paid by the Bidder in full satisfaction of all its dues as on approval date.	Granted in terms of Section 32A of IBC, 2016
VI	The non-compliance of provisions of any law, rules, regulations, directions, notifications, circulars, guidelines, policies, licenses, approvals, consents or permissions prior to the approval date shall stand extinguished. Furthermore, no fine/penalty can be levied in relation to any such non-compliance for any period prior to approval date.	

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VII	The RoC to take on record and enable implementation of this Acquisition Plan by the Adjudicating Authority, without any further compliances. Without prejudice to the generality of the above, the RoC shall, pursuant to the NCLT Approval order, update its records to reflect the status of the Corporate Debtor as 'active' from the status of 'under liquidation'.	Granted with respect to the noncompliance by the Corporate Debtor before the date of acquisition. The RoC shall change the status of CD as ("active" from the status of under "liquidation").
VIII	Since no books of accounts have been handed over to the IRP/RP/Liquidator by the Erstwhile Promoters, all pending statutory filings for any period prior to Approval Date be allowed to be filed on best available basis with no liability attached to the Bidder. In this regard, the Bidder shall be granted 36 months from the Approval Date to complete all such pending procedural Annual Income Tax and RoC filings of the Corporate Debtor.	Granted
IX	Given that the Bidder will acquire control of the affairs of the Corporate Debtor on the Acquisition Date on a 'clean slate' basis, penalties or any other liabilities, release attachments of Property and withdraw prosecution or Proceedings against Corporate Debtor, that may arise from any defaults or Non-Compliances by the Corporate Debtor prior to the Acquisition Date of Applicable Laws, including but not limiting to the	Granted in terms of Section 32A of IBC, 2016.

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	provisions of the CA 2003, Contract Labour (Regulation and Abolition) Act, 1970, all relevant and applicable Tax laws, the relevant stamp acts of the different states of India, relevant environmental laws, anti-money laundering laws and laws for prevention of corruption shall be assumed to have been waived in terms of section 32A of IBC.	
X	The approval Acquisition Plan be made part of the final order of the Adjudicating Authority	<i>Granted.</i>

11. Thus, we are satisfied as regards the sale of the Corporate Debtor as a going concern to M/s. Flywheel Logistics Solutions Private Limited (the purchaser) and that we deem it fit to Approve the Sale of the Corporate Debtor as a going concern and considering the same it is hereby ordered that the Corporate Debtor shall not be dissolved and that the existing shares of the Corporate Debtor shall stand extinguished.
12. We do further order that: -
- (i) The status of the Corporate Debtor be changed from “in liquidation” to “Active” in the records of the Registrar of Companies, Vijayawada, AP subject to the purchaser filing the necessary forms along with copy of this order.
 - (ii) That any licensing or other statutory authorities governing the business of the Corporate Debtor is hereby directed to recognize and give effect to the sale of the Corporate Debtor as a going concern in a way not terminating any of its licenses subject to its compliances as envisaged under respective regulations.

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- (iii) That after distribution of the proceeds of the sale as per Section 53 of the code, the remaining unpaid outstanding liabilities of the Corporate Debtor shall stand extinguished against the Present purchaser and that the claims shall be satisfied realizing the excluded assets and shall deal with in accordance with law and this Order.
- (iv) The Liquidator is hereby directed to submit a status report on completion of 90 days from the date of this order as to the status of the assets left in the Company.
- (v) Dehors, the reliefs granted as above the purchaser is at liberty to file necessary application before the appropriate forum/authority in order to avail the necessary relief and concessions if in accordance with the law in view of the decision of the Hon'ble Supreme Court of India in the matter of *Embassy Property Developments Pvt. Ltd. -Vs- State of Karnataka & Ors. (2020) 13 SCC 308*.
- (vi) Thus, the Application filed by the Applicant for the sale of the Corporate Debtor as a going concern stands Allowed. With this approval, the Liquidator is hereby directed to disburse the consideration paid by the purchaser as per Section 53 of IBC, 2016 and further expedite the process of disposal of excluded assets and also pursue necessary applications against various parties for recovery if any.

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(vii) The Regional Director (SER), Hyderabad, Ministry of Corporate Affairs is hereby directed to look into the possibilities of allotting a new CIN number to the Company Purchased during /Liquidation in order to create a fresh start easing all its practical difficulties.

(viii) Certified copy of this Order, if applied for, be issued upon compliance with all requisite formalities. A copy of this Order shall also be forwarded to IBBI for its records and ROC for updating the Master Data. ROC shall send a compliance report to this Adjudicating Authority.

13. With the above-said directions, **IA(IBC)/176/2024** in **CP(IB)/44/7/AMR/2020** stands Allowed and disposed of.



SANJAY PURI
MEMBER (TECHNICAL)



RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

Swamy Naidu