

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-I**

IA No. 1772/MB/C-I/2022

And

IA No. 167/MB/C-I/2022

And

IA No. 2164/MB/C-I/2021

In

C.P (IB) No. 292/MB/C-I/2017

An application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016

Filed by

Mr. Vijaykumar V. Iyer

...Applicant

Versus

Chowgule SBD Private Limited and Ors.

...Respondent

In the matter of

Edelweiss Asset Reconstruction Company

...Financial Creditor

Versus

Bharati Defence and Infrastructure Limited.

... Corporate Debtor

Order Pronounced on: 24.01.2023

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Liquidator : Ld. Sr. Counsel Mr. Pradeep Sancheti
For the Mangalore Port Trust : PCA Ayush J Rajani a/w. Khushboo
Shah and Mitali Bhat
For the Successful Bidder : Ld. Sr. Counsel Mr. Mustafa Doctor

ORDER

Per Coram:

1. This Court convened through video conferencing.

Backdrop of facts

2. The Corporate Debtor was Liquidated vide Order dated 14.01.2019, pursuant to which the Mr. Vijaykumar Iyer was appointed as the Liquidator. The aforesaid Order was assailed before the Hon'ble NCLAT wherein it was directed that the Liquidator must ensure that the Corporate Debtor remains a going concern and conclude the process under Section 230 of the Companies Act. Since, no compliant scheme was received by the Liquidator, the Liquidator issued a public announcement for submission of Expression of Interest issued in 6 newspapers.
3. Accordingly, the Liquidator filed IA No. 3702 of 2019 for Liquidation of the Corporate Debtor by sale of assets, collectively as a yard, in parcel of assets, or each asset on standalone basis. This Tribunal passed an Order

In

C.P. (IB) No. 292/MB/C-I/2017

dated 18.12.2020 directing the Liquidator to take appropriate steps for liquidation of the Corporate debtor, including sale of assets collectively or in parcels or individually.

4. It is submitted that in view of the Order dated 18.12.2020, the Liquidator undertook all the measures to sell the Corporate Debtor as a going concern basis, however, despite several rounds of e-auctions conducted from time to time, the assets stored at the Leased Premises are yet to be sold.
5. The Order dated 18.12.2020 was challenged before the Hon'ble NCLAT in three appeals being Company Appeal (AT)(Ins) 140 of 2021, Company Appeal (AT)(Ins) 165 of 2021, Company Appeal (AT)(Ins) 243 of 2021 by various aggrieved parties. The said appeals were dismissed by the common Order dated 08.12.2021 with directions to the Liquidator to try and Liquidate the Corporate Debtor within 6 weeks from date of the Judgment.

IA 1772 of 2022

Submissions made by the Applicant

6. **The reliefs sought by the Applicant are as follows:**
 - i. Direction to the secured creditors to provide to the Bidder, upon issuance of Sale Certificate by the Liquidator/Applicant, all the necessary documents for

In

C.P. (IB) No. 292/MB/C-I/2017

release of charges including duly executed charge release forms and to handover the originals of all title documents/deeds that were deposited with them by the Corporate Debtor or its shareholders in connection with the Mangalore Shipyard Assets deleting all encumbrances/charges mentioned in the assets secured to them.

- ii. Direction that, from the date of the Sale Certificate, all encumbrances, attachments, liens, charges, security interests, liabilities, claims and obligations in relation to the Mangalore Shipyard Assets shall stand released irrevocably, without any obligation on the Bidder and from the date of Sale Certificate, the Mangalore Shipyard Assets shall vest with the Bidder free from any security interest, encumbrance, lien, attachment, claim, counter claim, or charge whatsoever.
- iii. Direction that, from the date of the sale certificate, any and all the legal proceedings (including any show cause, notice, adjudication proceedings, assessment proceedings, regulatory orders etc.), arbitration or other legal, judicial, regulatory or administrative proceedings, in relation to the

In

C.P. (IB) No. 292/MB/C-I/2017

Mangalore Shipyard Assets, initiated before any court, tribunal or authority by or on behalf of any creditor or governmental authorities, to enforce any rights or claims against the company shall be withdrawn, abated, settled and/ or extinguished with effect from the date of the Sale Certificate and the Bidder shall no longer be required to make any payments in relation to such litigations/proceedings. Further direction to all the stakeholders of the company (including creditors and governmental authorities), for not pursuing such litigations/ proceedings after the issuance of Sale Certificate and withdrawing all existing litigations/proceedings, wherever pending.

- iv. Direction that, from the date of the sale certificate, all claims by any government authority or department (including but not limited to the customs department, Department of Ports and Inland Water Transport, Government of Karnataka) pertaining to Mangalore Shipyard assets or any liabilities or obligations owed or payable by the Company to any government authority or department (including but not limited to taxes, liabilities, interest, penalties, duties, etc.),

In

C.P. (IB) No. 292/MB/C-I/2017

whether direct or indirect, whether admitted or not, due or contingent, asserted or un-asserted, crystallized or un-crystallized, known or unknown, secured or unsecured, disputed or undisputed, in relation to any period prior to the date of Sale Certificate, shall stand permanently extinguished and no such claim, liability etc. shall be recoverable in any form or manner whatsoever from the Bidder and the payment of Sale consideration by the Bidder into the liquidation account is a full and final settlement by the bidder towards such claims, liabilities etc.

- v. Direction that, from the date of the sale certificate, all the governmental and regulatory departments providing essential services to the Mangalore Shipyard Assets, such as electricity, water, port authorities, etc. and all the critical suppliers and vendors shall continue to give full support to the Bidder without arm twisting the Bidder for any liabilities of the Company Pertaining to the period prior to the date of the sale certificate.
- vi. Direction to the relevant governmental and regulatory departments that the environmental clearances and the electricity connection/permissions obtained for the

In

C.P. (IB) No. 292/MB/C-I/2017

Mangalore shipyard assets shall be transferred in the name of the bidder without any demand for the liabilities of the Company pertaining to the period prior to the date of the sale certificate.

- vii. Direction that, from the date of the Sale Certificate, the Bidder shall be entitled to the benefit of Section 32A of the Code and all the actions taken against the Mangalore Shipyard Assets for an offence committed prior to the commencement of its corporate insolvency resolution process of the Company, shall cease and the Bidder shall not be prosecuted for such an offence. Further, no action shall be taken or continued against the Mangalore Shipyard Assets in relation to any offence committed prior to the commencement of the corporate insolvency resolution process of the Company.
- viii. Direction to the Karnataka Maritime Board / Department of Ports and Inland Water Transport, Government of Karnataka, (i) that with effect from the Transfer Date, the lease deed(s) for the Mangalore shipyard Land shall not be terminated or cancelled on account of any non-compliance or breach of the terms of the lease deed by the Company,

In

C.P. (IB) No. 292/MB/C-I/2017

pertaining to the period prior to the Transfer Date, and (ii)

that the leasehold rights in the Mangalore Shipyard land shall be transferred to the Bidder with the lease rentals in accordance with the Guidelines / Notifications framed by the Government of Karnataka.

- ix. Direction to the Customs Department, Mangalore that the Mangalore Shipyard be de-bonded and custody / attachment of the Confiscated Assets on account of liabilities of Company pertaining to the period prior to the Transfer Date, be released and the Bidder be allowed peaceful possession of the Confiscated Assets.

7. The Applicant submits he conducted multiple rounds of e auction pertaining to sale of the Corporate Debtor as a going concern basis and set of assets of the Corporate Debtor. The details of sale of parcel of assets of the Corporate Debtor are as follows:

Date of Public announcement	Date of e-auction	Description of Parcel Sold
10.08.2021	06.09.2021	Kolkata Shipyard
21.09.2021	26.10.2021	Assets located at Bhandarli and

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-I
IA NO. 1772/MB/C-I/2022, IA No. 167/MB/C-I/2022
And IA No. 2164/MB/C-I/2021
In
C.P. (IB) No. 292/MB/C-I/2017

		Ghodbunder yard
01.11.2021	24.11.2021	Assets located in Goa

8. The Applicant submits that the Order dated 18.12.2020 passed by this Tribunal in IA No. 3702 of 2019 was challenged before the Hon'ble NCLAT in Company Appeal (AT)(Ins) No. 140 of 2021, Company Appeal (AT)(Ins) No. 165 of 2021, Company Appeal (AT)(Ins) No. 243 of 2021. The said Appeals were disposed off by the Appellate Tribunal vide its Judgement dated 08.12.2021 while granting a total of 6 weeks to the Applicant for sale of the Corporate Debtor as a going concern.
9. The Applicant submits that no proposal was received for the acquisition of the Corporate Debtor after expiration of 6 weeks. Hence, the Applicant proceeded to conduct the liquidation process by way of private sale of assets of the Corporate Debtor.
10. Pursuant thereto, the Applicant proceeded with issuance of a public announcement for conduct of private sale process on 09.02.2022. However, on account of failure of the said round of private sale process, the Applicant issued public announcement on 21.03.2022 for inviting bids for the Corporate Debtor as a whole on going concern basis (excluding parcels of assets of already sold) and for remaining shipyards individually, including all the Corporate Debtor's assets, rights and

privileges and duties etc. associated with such shipyard in parcels i.e., the Parcel 2 (Dabhol yard), Parcel 3 (Ratnagiri Yard) and Parcel 4 (Mangalore Yard).

11. As per the EOI the interested bidders were required to submit the EOI on or before 08.04.2022 and submit a binding and unconditional EMD on or before 20.05.2022. The sale was to be governed in term of the process document dated 21.03.2022.
12. The Respondent No.1 herein submitted its EOI on 04.04.2022 along with necessary documents as stipulated in the process document. The Respondent No.1 was granted access to virtual data room.
13. The Respondent submitted its bid on 20.05.2022 for the Parcel 4 assets of the Corporate Debtor i.e. Mangalore Shipyard including leasehold interest pertaining to leasehold land, sheds, warehouse and hull shops, plant and machinery, inventory and other movable items on an 'as is where is basis' ("**Mangalore Shipyard Assets**"). The said bid was accompanied by the EMD by way of Bank Guarantee.
14. The Applicant and the Private Sale Committee invited the Respondent to present the details of its proposal before it on 23.05.2022, pursuant to said presentation made before the private sale committee several rounds of negotiations were undertaken with the Respondent whereby the Respondent offered to submit its revised bid. It is noted that final bid was

submitted by the Respondent on 08.06.2022

15. The Liquidator, in consultation with and after seeking inputs from the stakeholders, considered the bid dated 20.05.2022 and subsequently amended and submitted on 08.06.2022, for an amount of Rs.75,00,06,000/- (Rupees Seventy Five Crore and Six Thousand Only) towards purchase of Parcel 4 (the **“Final Bid”**).
16. The Respondent was declared as the successful bidder as per the process documents for Parcel 4 i.e. Mangalore Shipyard. Subsequently, the Letter of Intent (**“LOI”**) was issued to the Respondent on 11.06.2022 for successful acceptance of the bid for Parcel 4 of the assets of the Corporate Debtor. The said LOI was accepted and counter signed by the Respondent.
17. In terms of the proposed payment schedule, the Respondent is now required to infuse partial sale consideration of Rs.7,50,00,000/- (Rupees Seven Crore Fifty Lakh Only) within a period of 30 days from the date of issuance of LOI, into the escrow account. After, the Respondent has taken all the necessary steps outlined in the Final Bid, the said sum of Rs.7,50,00,000/- shall be transferred into the Liquidation Account and the balance consideration of Rs.67,50,06,000/- into the Liquidation Account.
18. The Applicant submits that the Respondent has deposited Rs.

7,50,00,000/- out of the total sale consideration into the escrow account as proposed in the Final Bid.

Submissions made by the Respondent No.1:

19. At the outset, it is submitted that the Respondent supports the present Application. The Respondent further submits that all the reliefs/concessions/waivers sought in the Application are necessary for effective sale and transfer of Mangalore Shipyard.
20. The reliefs are sought by the Respondent for acquisition of the Parcel 4 of the Corporate Debtor on a clean slate basis.

Submissions made by the Respondent No.2:

21. It is submitted that Parcel 4 was sold to the Respondent No.1 on 04.04.2022 which is 15 months after the Order Terminating the lease was issued by the Respondent No.3. The said Termination Order was communicated on 15.01.2021.
22. Further, it is contended that the present sale of Parcel 4 is a lot wise sale and not sale as a going concern or business of the Corporate debtor being sold as going concern. Hence, the Applicant's averment of clean slate basis is misplaced as the sale is on "as is where is basis".
23. Moreover, it is submitted that reliefs sought are merely to evade the contractual liabilities, liabilities towards payment of insolvency resolution costs and liquidation process costs and obligations towards

Respondent No.2 and 4.

24. Regulation 32 and Regulation 33 read with Schedule I (Mode of Sale), clause 12 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 lays down that a successful bidder to pay the sale consideration within 90 days from being declared as the highest bidder while any payment made after 30 days from such declaration up to the period of 90 days shall attract 12% interest.
25. We have considered the para-wise reply of Respondent No.2 to the reliefs sought by the Respondent No.1 qua the sale of Parcel 4 i.e. Mangalore Shipyard.

IA 167 of 2022

26. The Government of Karnataka vide Order No. PWD 16 PSP 2008, dated 10 May 2010 has sanctioned 20.94 acres of Port land for 30 years for the construction of ship building yard at Mangalore Port Limits as per Sl. No.7 of schedule F" at INR 15/- per 10 square meters per month, as per the Rules ("Land B") (Land A and Land B are collectively referred to as "**Leased Premises**"). While allotment of Land B was done, no lease deed was entered into for Land B. It is pertinent to note that while the lease agreement was not executed for Land B, the lease rent was paid for both the land parcels A and B upto 2013 and for part of the CIRP period.
27. After commencement of Liquidation, the Liquidator had issued public

In

C.P. (IB) No. 292/MB/C-I/2017

announcement on 19.01.2019 inviting creditors to file their claim within 30 days from liquidation commencement date.

28. Accordingly, the Respondent No.2 herein filed its claim form dated 04.02.2019 with the Liquidator on 05.02.2019 to an extent of Rs.21,03,55,543/- (Rupees Twenty-One Crore Three Lakh Fifty Five Lakh and Five Hundred and Forty Three Only) towards lease rentals under License No. 166 and 167. The Applicant vide its email dated 09.03.2019 had communicated to the Respondent No.2 inadequacies in claim form and the proofs submitted.
29. The Respondent has not provided the necessary proof to substantiate its claim and hence the Liquidator is unable to verify the claim in full.
30. The Liquidator vide email dated 26.03.2019 addressed to the Respondent No.2 stated that since the documents were not sufficient, claim to the extent of Rs.11,05,95,499/- is admitted and the balance amount of Rs.9,97,60,044/- has not been verified as the working calculation of rent and penalty for both license number 166 and 167 was not provided to the Liquidator with necessary documents.
31. Further, the Respondent No.2 vide notice dated 14.10.2020 requested the Applicant to admit the additional claim of Rs.9,97,60,044/-. The Applicant on 13.01.2021 *inter alia* apprised the Respondent No.2 that dues admitted prior to the Liquidation commencement date will be

addressed in terms of Section 53 of the Code and the amount that become due during the Liquidation period will be treated as CIRP costs and paid in priority.

32. The Respondent No.2 vide its letter dated 20.01.2021 (hereinafter referred to as Impugned Notice) along with the Order passed by Government of Karnataka cancelled the lease sanctioned with respect to leased Premises, to the extent of 49.31 acres with immediate effect for non-payment of lease rent and the leased premises for not being utilized.
33. Moreover, the Applicant also explained the provisions of Section 33(5) of the Code stating that the section bars any suit or legal proceeding to be instituted by or against the Corporate Debtor on account of commencement of liquidation process.
34. It is submitted that the institution of proceedings against the Corporate Debtor by the Respondent No.1 during the pendency of Liquidation period itself is not permissible as per Section 33(5) of the Code given the moratorium.
35. Accordingly, the present Application is filed by the Liquidator seeking the following reliefs:
 - i. Set aside the Impugned Order dated i.e. order of Government of Karnataka dated 14.12.2020.
 - ii. Set aside the impugned notice dated 20.01.2021 issued by the

Respondent No.2 i.e. the Port Officer Mangalore Port.

36. The Respondent No.2 submits that out of the entire claim of Rs.18,88,22,584/- pertains to the CIRP and Liquidation period. The Applicant has only released an amount of Rs.51,34,122/-. The Respondent No.2 states that these due are outstanding since 01.05.2013.
37. The Applicant has erred in rejecting the partial claim to the extent of Rs.9,97,60,044/- on the ground of “without adequate details as prescribed under the Liquidation Regulations”. The Respondent vide emails dated 14.10.2020 and 01.06.2021 has provided the working calculation of rent and penalty for both license numbers 166 and 167.
38. The Respondent submits that it is well within its powers to terminate the lease and evict the Applicant on clear failure to pay the dues in terms of Section 53 of the Code

IA. No. 2164 of 2021

39. This Application filed by the Port Authority, Mangalore as a counter to IA No. 167 of 2022 seeking directions against Liquidator and admission of claim filed by the Port Authorities in its entirety and vacation of port land in view of the Order dated 14.12.2020. In alternative, if the occupation of port land is permitted then the Liquidator ought to release the CIRP Costs and Liquidation Costs in terms of Section 53 of Code.

Findings and Directions:

40. We have perused records and heard the submissions made by the parties.
41. Considering the facts and submissions made in IA No. 1772 of 2022, IA No. 167 of 2022 and IA No. 2164 of 2021, we note that land on which Mangalore Shipyard is built was leased premises and owing to non - payment of lease rentals vide Order dated 14.12.2020 the said lease was terminated.
42. The Successful Bidder i.e. Chowgule SBD Private Limited submits that the reliefs enumerated in clauses viii and ix in paragraph 6 hereinabove, are central for the purpose of reviving and restarting its operations for shipbuilding work of the Port. Further, it is submitted that the implementation of the bid is conditional upon the grant of above stated reliefs under clause viii and ix.
43. The Relief sought at clause viii pertains to transfer leasehold rights of the Corporate Debtor to the Successful Bidder in Mangalore Shipyard Land. The Liquidator has filed an Application bearing IA No. 167 of 2022 wherein he has challenged the Termination Order of Government of Karnataka dated 14.12.2020 and Notice dated 20.01.2021. As a counter to the aforesaid Application, the Port Officer, Mangalore Port has filed an Application bearing IA. No. 2164 of 2022.
44. The relief at clause ix relates to release of assets of the Corporate Debtor

in the custody/attachment of the customs department, Mangalore by way of confiscation.

45. Considering the inter related facts and circumstances and in the interest of maximization of the value of the stakeholders of the Corporate Debtor, this bench vide Order 14.11.2022 had directed the Successful Bidder and Ld. Counsel appearing for the Mangalore Port Trust to try and arrive at an amicable solution.
46. In view of the aforesaid direction, the Successful Bidder i.e. Chowgule SBD Private Limited vide affidavit dated 28.11.2022 submits that it is ready and willing to enter into a fresh lease deed with the Government of Karnataka as per applicable rates under the “The Karnataka Ports(Landing and Shipping Fees)(Amendment) Rules, 2022” and the Mangalore Port Trust has vide affidavit dated 28.11.2022 stated that it would extend necessary support and the fresh lease shall be in terms of Karnataka Minor Port Land Allotment Guidelines-2020 and The Karnataka Ports(Landing and Shipping Fees)(Amendment) Rules, 2022.
47. The above stated affidavits are taken on record and the parties have amongst themselves carved out a solution with respect to the aforesaid issue of transfer of lease in favour of the Successful Bidder. Accordingly, the relief claimed in Clause (viii) in paragraph 6 hereinabove is rendered infructuous.

48. As far as reliefs enumerated in clause (ix) is concerned the Hon'ble Supreme Court in the matter of ***Sundaresh Bhatt, Liquidator of ABG Shipyard vs Central Board of Indirect taxes and Customs*** has held as under:

“45. From the above discussion, we hold that the respondent could only initiate assessment or re-assessment of the duties and other levies. They cannot transgress such boundary and proceed to initiate recovery in violation of Sections 14 or 33(5) of the IBC. The interim resolution professional, resolution professional or the liquidator, as the case may be, has an obligation to ensure that assessment is legal and he has been provided with sufficient power to question any assessment, if he finds the same to be excessive.

54. On the basis of the above discussions, following are our conclusions:

- i. Once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.*
- ii. After such assessment, the respondent authority has to submit its claims (concerning customs dues/operational debt) in terms of the*

In

C.P. (IB) No. 292/MB/C-I/2017

procedure laid down, in strict compliance of the time periods prescribed under the IBC, before the adjudicating authority.

iii. In any case, the IRP/RP/liquidator can immediately secure goods from the respondent authority to be dealt with appropriately, in terms of the IBC.”

49. In view of the law laid down in the aforesaid Judgement we hereby direct the customs department to release the confiscated assets of the Corporate Debtor at Mangalore Shipyard.
50. The LOI dated 11.06.2022 was issued to the Successful Bidder i.e. Chowgule SBD Private Limited for “*Category B-Parcel 4: Set of assets pertaining to Mangalore Shipyard on ‘as is where is basis’, ‘as is what is’, ‘as is how is’ and ‘without any recourse basis’, with financial proposal submitted for INR 75,00,06,000/-.*” It is evident that the said sale was in terms of Regulation 32(d) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 which deals with sale of assets in parcels.
51. We note that the Successful Bidder i.e. Chowgule SBD Private Limited has deposited an amount of Rs.7,50,00,000/- out of the total bid amount of Rs. 75,00,06,000/- (Rupees Seventy-Five Crore and Six Thousand Only). The LOI was issued by the Liquidator on 11.06.2022. In terms of Schedule 1 Clause 12 of the Liquidation Regulations, the highest bidder

In

C.P. (IB) No. 292/MB/C-I/2017

shall be invited to provide balance sale consideration within 90 days from such demand and payments made after 30 days shall attract interest at the rate of 12%.

52. We direct the Successful Bidder to deposit the balance sale consideration within 30 (Thirty) days from date of this order. Failure, if any on part of the Successful Bidder to deposit the balance sale consideration within 30 days shall result in forfeiture of the EMD and cancellation of sale of the Corporate Debtor. Further, the Successful Bidder shall be liable to deposit the balance sale consideration along with 12% p.a. interest onwards 11.07.2022 (after 30 days of date of issuance of demand letter dated 11.06.2022) in accordance with Schedule 1 Regulation 12 of the Liquidation Regulations.
53. The said sale consideration shall be distributed by the Liquidator in terms of Section 53 of the Code. Further, as 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 a part of the statement of claims.
54. For the sake of convenience, the reliefs sought are tabulated hereinbelow:

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-I
IA NO. 1772/MB/C-I/2022, IA No. 167/MB/C-I/2022
And IA No. 2164/MB/C-I/2021
In
C.P. (IB) No. 292/MB/C-I/2017

Sr. No.	Particulars of the reliefs and concessions	Remarks
i.	Direction to the secured creditors to provide to the Bidder, upon issuance of Sale Certificate by the Liquidator/Applicant, all the necessary documents for release of charges including duly executed charge release forms and to handover the originals of all title documents/ deeds that were deposited with them by the Corporate Debtor or its shareholders in connection with the Mangalore Shipyard Assets deleting all encumbrances/charges mentioned in the assets secured to them.	Granted. The dues of the creditors shall be distributed in terms of Section 53 of the Code and hence the liabilities shall stand extinguished qua the Mangalore Shipyard. Consequently, upon issuance of Sale Certificate the documents/deeds shall be provided to the bidder.
ii.	Direction that, from the date of the Sale Certificate, all encumbrances,	Granted. Since the applicant should not

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-I
IA NO. 1772/MB/C-I/2022, IA No. 167/MB/C-I/2022
And IA No. 2164/MB/C-I/2021
In
C.P. (IB) No. 292/MB/C-I/2017

	<p>attachments, liens, charges, security interests, liabilities, claims and obligations in relation to the Mangalore Shipyard Assets shall stand released irrevocably, without any obligation on the Bidder and from the date of Sale Certificate, the Mangalore Shipyard Assets shall vest with the Bidder free from any security interest, encumbrance, lien, attachment, claim, counter claim, or charge whatsoever.</p>	<p>be saddled with the liability prior to the issue of sale certificate.</p>
<p>iii.</p>	<p>Direction that, from the date of the sale certificate, any and all the legal proceedings (including any show cause, notice, adjudication proceedings, assessment proceedings, regulatory orders etc.), arbitration or other legal,</p>	<p>Granted. Since the applicant should not be saddled with the liabilities prior to the issue of sale certificate.</p>

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IA NO. 1772/MB/C-I/2022, IA No. 167/MB/C-I/2022
And IA No. 2164/MB/C-I/2021
In
C.P. (IB) No. 292/MB/C-I/2017

	<p>judicial, regulatory or administrative proceedings, in relation to the Mangalore Shipyard Assets, initiated before any court, tribunal or authority by or on behalf of any creditor or governmental authorities, to enforce any rights or claims against the company shall be withdrawn, abated, settled and/ or extinguished with effect from the date of the Sale Certificate and the Bidder shall no longer be required to make any payments in relation to such litigations/proceedings. Further direction to all the stakeholders of the company (including creditors and governmental authorities), for not pursuing such litigations/</p>	
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And IA No. 2164/MB/C-I/2021
In
C.P. (IB) No. 292/MB/C-I/2017

	proceedings after the issuance of Sale Certificate and withdrawing all existing litigations/proceedings, wherever pending.	
iv.	Direction that, from the date of the sale certificate, all claims by any government authority or department (including but not limited to the customs department, Department of Ports and Inland Water Transport, Government of Karnataka pertaining to Mangalore Shipyard assets or any liabilities or obligations owed or payable by the Company to any government authority or department (including but not limited to taxes, liabilities, interest, penalties, duties, etc.), whether	Granted. The claims of the creditors shall be distributed in terms of Section 53 of the Code.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-I
IA NO. 1772/MB/C-I/2022, IA No. 167/MB/C-I/2022
And IA No. 2164/MB/C-I/2021
In
C.P. (IB) No. 292/MB/C-I/2017

	<p>direct or indirect, whether admitted or not, due or contingent, asserted or un-asserted, crystallized or un-crystallized, known or unknown, secured or unsecured, disputed or undisputed, in relation to any period prior to the date of Sale Certificate, shall stand permanently extinguished and no such claim, liability etc. shall be recoverable in any form or manner whatsoever from the Bidder and the payment of Sale consideration by the Bidder into the liquidation account is a full and final settlement by the bidder towards such claims, liabilities etc.</p>	
v.	<p>Direction that, from the date of the sale certificate, all the</p>	<p>The Successful Bidder can apply for grant of</p>

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IA NO. 1772/MB/C-I/2022, IA No. 167/MB/C-I/2022
And IA No. 2164/MB/C-I/2021

In
C.P. (IB) No. 292/MB/C-I/2017

	<p>governmental and regulatory departments providing essential services to the Mangalore Shipyard Assets, such as electricity, water, port authorities, etc. and all the critical suppliers and vendors shall continue to give full support to the Bidder without arm twisting the Bidder for any liabilities of the Company Pertaining to the period prior to the date of the sale certificate</p>	<p>essentials services to the relevant regulatory authorities. The regulatory authorities may consider the same.</p>
vi.	<p>Direction to the relevant governmental and regulatory departments that the environmental clearances and the electricity connection/permissions obtained for the Mangalore shipyard assets shall be transferred in the name of the bidder without</p>	<p>The Successful Bidder can apply for grant of essentials services to the relevant regulatory authorities. The regulatory authorities may consider the same.</p>

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IA NO. 1772/MB/C-I/2022, IA No. 167/MB/C-I/2022
And IA No. 2164/MB/C-I/2021
In
C.P. (IB) No. 292/MB/C-I/2017

	any demand for the liabilities of the Company pertaining to the period prior to the date of the sale certificate	
vii.	Direction that, from the date of the Sale Certificate, the Bidder shall be entitled to the benefit of Section 32A of the Code and all the actions taken against the Mangalore Shipyard Assets for an offence committed prior to the commencement of its corporate insolvency resolution process of the Company, shall cease and the Bidder shall not be prosecuted for such an offence. Further, no action shall be taken or continued against the Mangalore Shipyard Assets in relation to any offence committed prior to the commencement of the	Section 32(1)A pertains to waivers under Resolution Plan and not Sale of Assets under Liquidation Proceedings. The present Application is for sale of assets in parcels.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-I
IA NO. 1772/MB/C-I/2022, IA No. 167/MB/C-I/2022
And IA No. 2164/MB/C-I/2021
In
C.P. (IB) No. 292/MB/C-I/2017

	corporate insolvency resolution process of the Company.	
viii.	Direction to the Karnataka Maritime Board / Department of Ports and Inland Water Transport, Government of Karnataka (i) that with effect from the Transfer Date, the lease deed(s) for the Mangalore shipyard Land shall not be terminated or cancelled on account of any non-compliance or breach of the terms of the lease deed by the Company, pertaining to the period prior to the Transfer Date, and (ii) that the leasehold rights in the Mangalore Shipyard land shall be transferred to the Bidder with the lease rentals in accordance with the Guidelines / Notifications framed by the Government of Karnataka /	Rendered Infructuous in view of settlement arrived at by the Successful Bidder and Mangalore Port.
ix.	Direction to the Customs	Granted in view of law

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-I
IA NO. 1772/MB/C-I/2022, IA No. 167/MB/C-I/2022
And IA No. 2164/MB/C-I/2021
In
C.P. (IB) No. 292/MB/C-I/2017

	Department, Mangalore that the Mangalore Shipyard be de-bonded and custody / attachment of the Confiscated Assets on account of liabilities of Company pertaining to the period prior to the Transfer Date, be released and the Bidder be allowed peaceful possession of the Confiscated Assets.	laid down by the Hon'ble Apex Court in <i>Sundaresh Bhatt, Liquidator of ABG Shipyard vs Central Board of Indirect taxes and Customs.</i>
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55. With the aforesaid observation present **IA No. 1772 of 2022 In C.P (IB) No. 292/MB/C-I/2017** stands disposed of as allowed in above terms.

56. In view of the understanding arrived at between the Successful Bidder and the Mangalore Port Trust vide affidavits dated 28.11.2022 **IA No. 167 of 2022 and IA No. 2164 of 2021 stands disposed of.**

Sd/-

SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

24.01.2023

Priyal

Sd/-

JUSTICE P. N. DESHMUKH
MEMBER (JUDICIAL)