

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

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **26.04.2024** THROUGH VIDEO CONFERENCE

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

IN THE MATTER OF : ARSEC (India) Ltd
Vs
Kaveri Gas Power Pvt Ltd

MAIN PETITION NUMBER : CP(IB)/82/(CHE)/2021
(IA/MA) APPLICATION NUMBERS
IA/876(CHE)/2023

ORDER

IA/876(CHE)/2023:

Present: Mr. Ravi Rajagopalan, Ld. Counsel for Applicant.

Vide separate order pronounced in the open court, the application for sale of 'Corporate Debtor as a going concern' is allowed. The Liquidator, after distributing the proceeds to the stakeholders as per Section 53 of IBC, 2016 may file an application under Regulation 45(3) of the IBBI (Liquidation Process) Regulations, 2016 for closure of liquidation process.

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**[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)**

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**[SANJIV JAIN]
MEMBER (JUDICIAL)**

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

IA(IBC)/876/CHE/2023 in CP/82/CHE/2021

*(filed under Section 60(5)(b) of the Insolvency & Bankruptcy Code, 2016 read with
Regulation 32 & 33 and Schedule I Part I of the IBBI (Liquidation Process)
Regulations, 2016)*

In the matter of Kaveri Gas Power Limited

S. Elangovan

S/o K. Shanmugam

Having his residence at Flat No.3, 21/44,

Q- Block, 17th Street, Anna Nagar,

Chennai – 600 040

... Applicant

-Vs-

Krishna Komaravolu

Liquidator of M/s. Kaveri Gas Power Limited

(Corporate Debtor)

H. No. 7-1-214,

Flat No.409, Vamsikrishna Apartments,

Dharam Karan Road, Ameerpet,

Hyderabad – 500 016

... Respondent / Liquidator

Order pronounced on 26th April 2024

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant : Ravi Rajagopalan, Advocate

For Respondent : Eshanee, Advocate

ORDER

(Heard through video conferencing)

IA(IBC)/876(CHE)/2023 is an application filed by the Successful Purchaser viz. S. Elangovan, who is also the suspended Director of the Corporate Debtor, under section 60(5) of the IBC, 2016 read with Regulation 32 and 33 and Schedule I Part – I of the IBBI (Liquidation Process) Regulations, 2016 seeking reliefs as follows;

- "a. Allow the present Application (and):*
- b. Confirm the Sale of the Corporate Debtor as a Going Concern, without dissolution, under Regulation 32(e) read with Regulation 33(1) and Part 1 of Schedule 1 of the IBBI Liquidation Process Regulations 2016: and*
- c. Grant the reliefs and concessions for the sale of the CD as a Going Concern as enumerated in Para 12 hereinabove;*
- d. Direct the Liquidator to issue the Sale Certificate in the name of the Applicant;*
- e. Grant the Applicant herein to approach this Hon'ble Adjudicating Authority in giving effect to the sale as may be allowed in this Interlocutory Application;*
- f. Grant such other incidental or consequential reliefs as may be deemed fit and proper by this Hon'ble Adjudicating Authority*

2. This Tribunal vide its order dated 09.12.2022 passed in IA(IBC)/1260(CHE)/2022 had ordered for Liquidation of the Corporate Debtor.

3. Thereafter, the Liquidator issued an Auction Notice on 22.02.2023, for the sale of the assets of the Corporate Debtor. The said Auction Notice pegged the Reserve Price at Rs.3,01,00,000/- (Rupees Three Crores and One Lakh only), and further required a sum of Rs. 1,00,000/- to be deposited as Application Fee. The Auction Notice further required the interested parties to deposit the Earnest Money Deposit amount of Rs. 30,10,000/ (Rupees Thirty Lakhs, Ten Thousand only) on or before 18.03.2023.

4. It is stated that in response to the E-Auction Notice, the Applicant herein communicated his Expression of Interest to the Liquidator vide e-mail dated 09.03.2023. Subsequently, after inspecting the documents and the assets of the Corporate Debtor, the Applicant submitted the Bid Application, to purchase the Corporate Debtor as a Going Concern under Regulation 32(e) read with Regulation 33(2)(c) of the IBBI

Liquidation Process Regulations. It is stated that the Applicant had also paid the refundable application money of Rs1,00,000/- (Rupees One Lakh only) by RTGS on 09.03.2023.

5. It is stated that, pursuant to the above, the Applicant herein deposited the EMD of Rs.30,10,000/- by way of RTGS in Account No.10418924673 on 18.03.2023. The E-Auction was conducted on 27.03.2023 and the Applicant submitted his bid for a sum of Rs. 3,21,00,000/- (Rupees Three Crores and Twenty-One Lakhs only) and thereafter the Applicant received an E-Mail from the Liquidator declaring the Applicant herein to be the Highest bidder.

6. It is stated that the Liquidator conducted the 3rd Stakeholders Committee Meeting on 29.03.2023, in which, the Applicant informed the stakeholders that he would make the balance payments by the end of April 2023. Subsequently, the Liquidator issued a Letter of Intent to the Applicant/Successful Bidder on 29.03.2023, and directed the Applicant to complete all pending formalities and remit the remaining amount within 90 days from the date of issuance of LOI, subject to the condition

that any payment made after 30 days from the date of issuance of LOI, shall attract interest at 12% per annum.

7. It is stated that the Applicant remitted the balance amount in two tranches to the Current Account No. 10418924673 and the details pertaining to the same are captured in the table hereinbelow:

S. NO.	DATE OF TRANSFER	AMOUNT
1	26.03.2023	Rs.2,60,00,000/-
2	27.03.2023	Rs.29,90,000/-
TOTAL		Rs.2,89,90,000/-

8. It is stated that the Applicant in his communication to the Liquidator vide letter dated 24.04.2023, had sought for reliefs and concessions for the proposed Sale as a Going Concern. Since the said reliefs and concessions can only be granted by this Tribunal, the Applicant has moved the present Application before this Tribunal.

9. Heard the submissions made by the Learned counsel for the Applicant and Learned Liquidator. It is seen that the Liquidator has already sold the Corporate Debtor as a going concern to the Applicant herein.

10. It is also seen that the Applicant herein is the suspended Director of the Corporate Debtor and has submitted the Affidavit under Section 29A of IBC, 2016 before the Liquidator stating that he is eligible to take over the Corporate Debtor as a going concern.

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

21. Adverting to the contention of the Learned Counsel for the Appellant that the Adjudicating Authority has erred in denying the sale of the 'Corporate Debtor' as a 'going concern' to the Appellant without including any contingent liabilities, we hold that it is a settled law that when the sale proceeds of a 'Corporate Debtor' are duly distributed in the Order of priority and in the manner prescribed under Section 53 of the Code, claims of any other Creditor cannot be entertained contrary to the provisions entailed under Section 53; subsequent to the distribution of sale proceeds under Section 53 no other entity including any Government entity can claim any past unpaid or outstanding dues against the Appellant who has purchased the 'Corporate Debtor Company' as a 'going concern'. It is significant to mention that the second Respondent/Liquidator has specifically submitted that even these claims by the Uttar Haryana Bijili Vitran Nigam were not submitted in the prescribed form either during the CIRP

Process or at the Liquidation stage. We are of the considered view that at this stage subsequent to the sale of the 'Corporate Debtor Company' as a 'going concern', these claims cannot be foisted upon the Appellant. **The scope and objective of the Code is to extinguish all claims specifically the ones which were not even made during the CIRP or in the Liquidation stage, to aid the purchaser of the Company as a 'going concern' to start on a 'clean slate'. The Hon'ble Supreme Court in 'Ghanshyam Mishra & Sons Pvt. Ltd.' Vs. 'Edelweiss Asset Reconstruction Company Ltd. & Ors.', Civil Appeal No. 8129 of 2019 and in 'CoC of Essar Steel India Ltd.' Vs. 'Satish Gupta & Ors.' (2020) 8 SCC 531 has laid down the proposition that the purchaser of the Company even in the Liquidation stage cannot be burdened with past liabilities when it is not mentioned in the 'Sale Notice'.**

(emphasis supplied)

12. Thus, by taking into consideration of the attendant facts and circumstances of the present case, the Application filed for Sale as a Going Concern by the Applicant is allowed.

13. Apart from the above, the Applicant has also sought for certain reliefs and concessions, which are set out in para 11 of the Application.

These relief are ordered as follows;

S. No	RELIEF/CONCESSION AS SOUGHT	ORDERS THEREON
1.	To confirm the sale of the Corporate Debtor as a going concern, without dissolution of the Corporate Debtor, and to hold that the date of the Order confirming the	Granted

S. No	RELIEF/CONCESSION AS SOUGHT	ORDERS THEREON
	same as passed by this Hon'ble Adjudicating Authority (AA) in the present IA, would be the "Effective Date".	
2.	Direct that from the Effective Date, the names of the erstwhile directors of the Corporate Debtor shall be replaced with the names suggested by the Successful Bidder, in the records of Ministry of Corporate Affairs without any further act or deed by the Corporate Debtor or the Successful Bidder or the Liquidator and the same shall be considered to be in due compliance of the provisions of Companies Act, 2013 and the rules and regulations made thereunder;	Granted
3.	Direct that all charges, liens, mortgages and encumbrances whether registered or unregistered or legal or equitable that existed before the Effective Date on the assets of the CD which are subject to the present sale as a going concern stands released, vacated discharged and extinguished and the Applicant shall hold the same free from all such prior charges, liens, mortgages and encumbrances.	Granted, subject to Section 32A of IBC, 2016
4.	Direct that on and from the Effective Date, the existing paid up Share capital of the Corporate Debtor (including any equity shares, preference shares, convertible instruments) shall stand cancelled/extinguished /reduced and in place of the said extinguished/reduced/cancelled share capital, fresh shares shall stand allotted to the successful bidder and the requirements of compliance with the relevant provisions of the Companies Act, 2013 and the relevant rules and regulations therein regarding reduction of share capital shall stand dispensed with and there shall be no further act/compliance required with the Sale amount of Rs. 3,21,00,000 being apportioned as under:	Granted

S. No	RELIEF/CONCESSION AS SOUGHT	ORDERS THEREON
	<ul style="list-style-type: none"> • Rs. 10,00,000/- towards the new/fresh Paid-Up Equity Share Capital of face value of Rs. 10 each aggregating to Rs. 10,00,000/-. • Balance Rs. 3,11,00,000/- to be treated as Debt of the Corporate Debtor advanced to it by the Applicant herein. 	
5.	<p>Direct that from the Effective Date, all the claims or demands made by or liabilities or obligations owed or payable to or under the orders/ instructions of the Financial Creditors, Operational Creditors, Secured and Unsecured Creditors, Employees, Workmen or any other stakeholders, regulator, statutory body, administrative body, electricity department, judicial or quasi-judicial body as well as claims relating to social security contributions, claims relating to consumption or sale of power tax/ power generation tax, governmental agencies including Income tax liabilities, liability towards Excise Duty, Customs Duty, VAT Service Tax, non-filing of any returns in relation them to every one of them, liability/ non-compliance arising under any law for the time being in force, liability in relation to unidentified fixtures lying in the premises of the corporate debtor, stamp duty charges, liability/ interest arising out of any non-compliance, non-payment by the Corporate Debtor or any legal proceeding against the Corporate Debtor for any other ground whatsoever in relation to any contract/ license/ lease/ undertaking etc. by the Corporate Debtor with any third party stakeholder prior to effective date, whether or not such claims/ obligations were filed or unfiled, admitted or not admitted, disputed or undisputed shall stand fully satisfied, permanently and fully discharged, extinguished, withdrawn or dismissed or abated as applicable.</p>	<p style="text-align: center;">Granted, subject to Section 32A of IBC, 2016</p>

S. No	RELIEF/CONCESSION AS SOUGHT	ORDERS THEREON
6.	Direct that all inquiries, investigations and proceedings including but not limited to arbitral, civil, criminal, GST, VAT, Income Tax, Excise Duty, Customs Duty, Service Tax, Income Tax, Wealth Tax and any other applicable tax, if any, against the Corporate Debtor, pending, present or future in relation to any period prior to Effective Date as against the Corporate Debtor or its assets shall stand discharged, extinguished, abated and lapsed in terms of Section 32 A of the Code, 2016;	Granted, in terms of Section 32A of IBC, 2016
7.	Direct that the equity shareholding (including any equity shares, preference shares, convertible instruments) of the Corporate Debtor (as existing on the Effective Date) stands cancelled and extinguished and the acquirer will take over the Corporate Debtor along with all the assets, present or contingent, rights, benefits, licenses, entitlements, properties etc., but excluding all liabilities/claims/obligations of whatever nature whether filed/admitted/verified or not, due or contingent, asserted or unasserted, crystallized or uncrystallized, known or unknown, disputed or undisputed, present or future, existing as on the effective date or any such claims, liabilities and obligations arising in future but pertaining to the period prior to the Effective Date, shall stand extinguished permanently and fully and shall be considered as discharged, satisfied, withdrawn, dismissed or lapsed;	Granted, subject to Section 32A of IBC, 2016.
8.	Direct the Registrar of Companies to forthwith allow the status of the Corporate Debtor to be changed from "Under Liquidation" to "Active" on the records/portal of Ministry of Corporate Affairs;	Granted
9.	Direct that the successful bidder/applicant herein shall be deemed to have been granted waiver from all actions, proceedings under any applicable law for non-compliance or non-payment for the period until the Effective Date, or for any period prior to the Effective	Granted, subject to

S. No	RELIEF/CONCESSION AS SOUGHT	ORDERS THEREON
	Date. Upon achievement of Effective Date, all inquiries, assessments, reassessments, rectifications, revisions, surveys, summons, investigations, notices, suits, claims, disputes, litigation, arbitrations etc. shall abate without recourse or liability to the CD.	Section 32A of IBC, 2016
10.	Direct that the ownership of the assets of the CD forming part of this sale as a going concern along with all licenses, permits and business authorizations of the Corporate Debtor will be transferred to the Successful Bidder. Further hold that the sale of the Corporate Debtor as going concern would not result in dissolution rather it will only lead to closure of the liquidation process upon completion of the necessary formalities by the Liquidator.	Granted
11	Direct that all securities, including any guarantees, sureties and undertakings provided by the Corporate Debtor for any purpose whatsoever, shall stand extinguished and rescinded without any recourse whatsoever. This shall include any guarantee or security given in favour of or for the benefit of any person whatsoever including any subsidiary or group company of the Corporate Debtor, shall stand rescinded and extinguished.	Granted
12	Direct that the personal guarantees extended by third parties for the facilities granted to the Corporate Debtor and the guarantees if any extended by the Corporate Debtor shall abate and discharge without recourse. Further all pending proceedings by or against the corporate debtor in relation to the insolvency and liquidation process shall terminate without any liabilities whatsoever;	Granted only in respect of the guarantees extended by Corporate Debtor.
13	Direct that as a part of this Sale as a Going Concern the successful bidder purchaser being the Applicant herein becomes entitled to all the properties of the Corporate Debtor.	Granted

S. No	RELIEF/CONCESSION AS SOUGHT	ORDERS THEREON
14	Direct that the all the procedural requirements in terms of Section 66, Section 42 and Section 62(1)(c) of the Companies Act, 2013 and the Company (Procedure for Reduction of Share Capital) Rules, 2016 stand waived for the present Sale of the CD as a going Concern.	Granted, subject to Companies Act, 2013
15	Direct the Liquidator to provide the no dues/no lien /discharge letters and acknowledgments from the Creditors upon distribution of the sums to them in accordance with Section 53 of the Code.	Ordered
16	Direct the Liquidator to (i) provide all support and assistance to the Successful Bidder for the smooth functioning of the Corporate Debtor to complete the acquisition process (ii) take all the steps required to make accounting entries for the smooth transmission and finalizing the accounts of the CD as required under different laws (iii) ensure completion of pending filings with the Registrar of Companies, Income Tax Authorities and any other Government/ Statutory Authorities; (iv) hand over the title deeds and all other original and copy documents in relation to the assets of the CD, being such matter of the sale as a going concern.	The Liquidator is directed to ensure smooth transition of records of the Corporate Debtor to the Applicant.
17	Direct the Income Tax authorities to grant the following reliefs: <ul style="list-style-type: none"> a. to allow the company to carry forward its unabsorbed business losses even in case of a change in the shareholding pursuant to the transfer of ownership to the Successful Bidder. b. Grant waiver of any Income Tax and Minimum Alternate Tax (MAT) liability or consequences (including interest, fine, penalty, etc) on the Corporate Debtor, the Applicant and his nominees upon 	This is for the appropriate authorities to consider, keeping in view of the clean slate principles

S. No	RELIEF/CONCESSION AS SOUGHT	ORDERS THEREON
	<p>approval of the SAGC, including but not limited to liabilities if any under Section 28, Section 43, Section 50 CA, Section 56, Section 79 and Section 115JB of the Income-tax Act, 1961,</p> <p>c. Any income/gain/profits, if any, that arise on account of reversal of liabilities or claims of the Financial Creditors, Operational Creditors, etc. shall be deemed to be written back in the books of the Corporate Debtor upon approval of SAGC by the AA. Any obligation, claim, demand, assessments, liabilities etc. on account of Income Tax Act, 1961 including provision of the Minimum Alternate Tax shall be considered as pertaining to period prior to effective date and accordingly, such reversal and income tax thereon shall be deemed to be pre transfer liabilities of the Corporate Debtor and shall stand extinguished upon approval of the SAGC by the AA. Further, the reversal of liabilities as referred under this clause shall mean and include the difference of all liabilities as appearing in the books of the Corporate Debtor as reduced by actual payments made by the Applicant towards such liabilities and accordingly the resultant credit to the profit and loss account shall not be subjected to the provisions of section 41(1) of the Income Tax Act.</p> <p>d. The transfer/allotment of shares to the Applicant and/or his nominees shall not be subjected to the provisions of section 56 of the Income Tax Act.</p>	

S. No	RELIEF/CONCESSION AS SOUGHT	ORDERS THEREON
	<p>e. The Applicant shall be permitted to restate the book of accounts and adjust the balances arising out of the adjustment as a Capital Adjustment as an appropriation item without affecting the Statement of Profit & Loss Account.</p> <p>f. Any adjustment arising due to the restatement of the books of accounts consequent to the approval of the SAGC shall be allowed to be treated as capital adjustment and not subjected to any income tax.</p> <p>Consequent to the approval by this Hon'ble Adjudicating Authority, the Applicant shall be permitted to withdraw or continue at his discretion, any income tax appeals filed by the CD or RP or liquidator before any adjudicating / appellate authorities or Courts in India.</p>	
18.	Allow and grant liberty to the Successful bidder/purchaser/ applicant herein to seek remedy, if any, available before this Hon'ble Tribunal to address any difficulties with respect to implementation of the acquisition of the Corporate Debtor as a going concern;	Granted
19.	Direct the Government authorities to renew without demur upon suitable application being made, expired statutory licenses or permissions or entitlements which were not renewed in respect of the CD, upon payment of requisite fees or charges but without making any demand for dues pertaining to the period prior to the effective date.	Granted, subject to Section 32A of IBC, 2016
20.	<p>Direct the Liquidator to</p> <p>(a) hand over the vacant possession of the assets sold as a going concern free of all</p>	The Liquidator

S. No	RELIEF/CONCESSION AS SOUGHT	ORDERS THEREON
	<p>encroachments and encumbrances, of all the immovable and movable, tangible and intangible assets of the corporate debtor which are subject matter of the present Sale as a Going Concern, including demarcation of the boundaries of all the immovable properties, as applicable.</p> <p>(b) hand over all stocks (finished goods, semi-finished goods, spares, tools, inventories, and any other items and user name and password for software(s) used for running the business, income tax, E-filing (tax payer and tax deductor), TRACES (Deductor and tax payer) tax deduction account number (TAN), value added tax (VAT), Service Tax (if applicable), Goods and Services Tax, Income Tax, Provident Fund (EPFO), Employee State Insurance (ESI), Professional Tax, any license renewals required for the purpose of carrying on the business.</p> <p>(c) Hand over all documents pertaining to the business of the corporate debtor including without limitation all the title documents pertaining to all the movable and immovable properties, share certificates of the investment in companies, approvals obtained by the corporate debtor including without limitation in relation to the construction, development, management and operation, cheque books in relation to all the bank accounts of the corporate debtor, bank statements, accounting records and vouchers and all records required to be maintained by the corporate debtor in accordance with the provision of the Companies Act, 1956 or Companies Act, 2013, or Income Tax Act, 1961 and any other law for the time being in force including all those laws which are not specifically mentioned herein or any other</p>	<p>is directed to ensure smooth transition of records of the Corporate Debtor to the Applicant.</p>

S. No	RELIEF/CONCESSION AS SOUGHT	ORDERS THEREON
	aspect as provided by a Governmental Authority or any third party and the passwords for all the bank accounts of the corporate debtor, etc. shall be handed over to the applicant.	
21.	To allow the present Application of the Applicant and declare the Applicant as the successful bidder for the sale of the assets of Kaveri Gas Power Private Limited, (Corporate Debtor) on going concern basis, without transfer of any liabilities of Kaveri Gas Power Private Limited., to the Successful Bidder by granting the concessions/ reliefs and waivers as mentioned above.	Granted

14. Thus, the Application for sale of “Corporate Debtor as a going concern” stands allowed. The Liquidator, after distributing the proceeds to the stakeholders as per Section 53 of IBC, 2016 may file an Application under Regulation 45(3) of the IBBI (Liquidation Process) Regulations, 2016 for closure of Liquidation process.

15. With the above said directions, this Application stands **disposed of.**

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

Raymond