

S.No.8

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
15-02-2024 AT 10:30 AM**

IA(IBC) 1813/2023 in CP (IB) No. 275/7/HDB/2022
u/s. 7 of IBC, 2016

IN THE MATTER OF:

M/s. SunEdison Energy India Private Limited

...Financial Creditor

VS

M/s. KSK Energy Company Private Limited

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

IA(IBC) 1813/2023

Orders pronounced. In the result, this application is **partly allowed** barring the concession relating to the taxation under claim 5, rest of the reliefs and concessions are granted.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – I**

**IA (IB) 1813 OF 2023
IN
CP (IB) No. 275/7/HDB/2022**

*Under Section 60(5)(c) of the Insolvency and Bankruptcy Rules, 2016 read with Rule 11 of
NCLT Rules*

Between:

Innopark (India) Private Limited
CIN: U72200TG2004PTC044383

Registered Office: -

5th Floor, Unit 2A/1 (Octave Block) at Parcel 4,
Salarpuria Sattva Knowledge City, Madhapur,
Hyderabad, Telangana, India – 500 081.

... Applicant/Successful Bidder.

Versus

M/s. KSK Energy Company Private Limited,
(in Liquidation as a going concern),
Represented by Krishna Komaravolu, Liquidator

Address:

7-1-214, Flat No. 409, Vamsikrishna Apartments,
Dharam Karan Road, Ameerpet,
Hyderabad – 500 016.

... Respondent/Liquidator

DATE OF ORDER: 15.02.2024

CORAM:-

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)
Shri. Charan Singh, Hon'ble Member (Technical)

PARTIES/COUNSELS APPEARANCE: -

For the Applicant : Shri Ravi Teja. B, Counsel
For the Respondent : Shri Krishna Komaravolu, Liquidator

PER: BENCH

ORDER

1. This Application is filed by the Applicant Under Section 60(5) (c) of the Insolvency and Bankruptcy Rules, 2016 read with Rule 11 of NCLT Rules, 2016 praying to pass appropriate orders(s) and /or directions in granting the Exemptions, Reliefs and the Directions sought for in this Application.
2. **The averments put forth by the Applicant/ Successful bidder of M/s.KSK Energy Company Private Limited are:**
 - 2.1 It is stated that this Tribunal admitted the application filed by M/s. Sun Edison Energy India Private Limited under Section 7 of the IBC against the Corporate Debtor. On 23th December, 2022 order was passed by this Tribunal against the Corporate Debtor was undergoing the Corporate Insolvency Resolution Process (CIRP).
 - 2.2 It is stated the Resolution Professional of the Corporate Debtor had moved an application under Section 33 of the IBC read with Rules 11, 13 and 32 of the NCLT Rules before this Hon'ble Tribunal seeking orders to liquidate the Corporate Debtor. The Tribunal had passed an order of liquidation of the Corporate Debtor vide its order dated 23.05.2023 wherein it appointed Mr. Krishna Komaravolu as the Liquidator (“Liquidation Order”). A Copy of the Liquidation Order is herewith annexed as **Annexure – 1**.

- 2.3 It is stated that the Liquidator had issued a sale notice dated 07.07.2023 and corrigendum dated 24.07.2023 inviting Expressions of Interest ("EoIs") for participating in the E-auction process of M/s. KSK Energy Company Private Limited which was proposed to be sold on a going concern basis ("E- Auction Process"/ "Auction Process"). It is further stated that per the sale notice which, inter-alia, consisted the terms and conditions for participating in the E-Auction Process, the Liquidator proposed to sell the Corporate Debtor on a going concern basis as contemplated under Regulation 32(e) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. Copy of the E-Auction Sale Notice and corrigendum are annexed as **Annexure-2 & 3**.
- 2.4 It is stated that Innopark (India) Private Limited ("Applicant"/ "Bidder") had submitted the letter of submission of Expression of Interest ("Applicant's EoI") on 28.07.2023, pursuant to the Revised Invitation. Along with the Applicant's EoI, the Applicant also annexed several necessary documents including deposit of EMD Amount in the name of M/s.KSK Energy Company Private Limited amounting to INR.12,14,400/- and application money of Rs.1,00,000/-. Copy of the Applicant's EoI is herewith annexed as **Annexure - 4**.
- 2.5 It is stated that the Applicant was shortlisted as a qualified bidder by the Liquidator vide an Email dated 31.07.2023. The said Email indicated that the Liquidator was in receipt of the Applicant's EoI and that the documents submitted by the Applicant are prima facie in order and further stated that the Applicant was eligible to participate in the E-Auction Process of the

Corporate Debtor. Copy of the Email sent by the Liquidator to the Applicant is herewith annexed as **Annexure-5**.

2.6 It is stated that pursuant to the Applicant Shortlisting Email, the Liquidator provided the copies of all the relevant and necessary information and documents in relation to the E-Auction process of the Corporate Debtor and also shared the documents of the Corporate Debtor through a Data Room with the Applicant. It is stated that the Liquidator had conducted the E-Auction on 11.08.2023. The Applicant participated in the E-Auction Process.

2.7 It is stated that the Liquidator had confirmed that the Applicant is the Successful Bidder vide letter dated 14.08.2023 (“Successful Bidder Letter of Intent”) by virtue of which the Applicant was considered as the Successful Bidder in the Liquidation as going concern sale process of the Corporate Debtor. It is stated that the entire consideration for purchasing the Corporate Debtor on a going concern basis is Rs.1,46,44,000/- (“Consideration”). It is further stated that the Liquidator issued Certificate of Sale of Company (“Sale Certificate”) dated 02.10.2023 in favour of the Successful Bidder, confirming the sale of the Corporate Debtor to the Successful Bidder and acknowledging the payment of entire sale consideration. As such, the Applicant has paid the entire Consideration for the purchase of the Corporate Debtor as a going concern. Copy of the Letter of Intent sent by the Liquidator to the Applicant dated 14.08.2023 is annexed as **Annexure - 7**. Copy of the Sale Certificate dated 02.10.2023 issued by the Liquidator is annexed as **Annexure-8**.

2.8 It is stated that the Applicant is approaching this Tribunal seeking this Tribunal's orders and directions allowing certain exemptions/grants put forth in this Application in relation to the Auction Process of the Corporate Debtor. The following are the exemptions, reliefs and directions that the Applicant is seeking in relation to the Auction Process of the Corporate Debtor:

2.9 Capital Structure Related/Share Issuance/ ROC Related –

- i. A direction may be issued that on the Transfer Date, the entire existing Equity Shares and Preference Shares issued by the Corporate Debtor (held by the erstwhile Promoters Group as well as Captive Customers) shall stand cancelled without any further act or deed ("Capital Reduction"). The Approval by the Adjudicating Authority shall be deemed to be due compliance of all provisions of Applicable Law in this regard, and there shall be no requirement to add "and reduced" in the name of the Corporate Debtor. Further, the Capital Reduction, would not involve either a diminution of liability in respect of unpaid share capital, if any, or payment to any existing share holder of any unpaid share capital.
- ii. A direction may be issued that on the Transfer Date, the Corporate Debtor may issue new shares worth INR 10,00,000/- (Indian Rupees Ten Lacs only) (100,000 equity shares @ Rs. 10 each (Rupee Ten each) which will be issued and allotted to Innopark (India) Private Limited and its nominees:

Name of Shareholder	Post Takeover Number of shares
Innopark (India) Private Limited	99,999
Nominee of Innopark (India) Private Limited	1
Total	100,000

- iii. Post the infusion of Rs. 10,00,000 (Indian Rupees Ten Lacs only) towards Equity Shares allotment, a direction may be issued that, the Bidder may be permitted to structure the balance amount of INR 1,36,44,000/- (Indian Rupees One Crore Thirty-Six Lacs Forty-Four Thousand only) by way of Optionally Convertible Debentures/Non-Convertibles Debentures/Secured Term Loan or such other instrument as may be decided from time to time, with terms and conditions as mutually agreed between the Bidder and the Corporate Debtor.
- iv. A direction may be issued that from the Transfer Date, all past liabilities, penalties, and any form of payment by way of late fees, damages, etc., which occurred or become due because of any non-compliance related to Companies Act, 1956/2013 rules and regulations framed thereunder till the Transfer Date, shall stand extinguished.

2.10 Financial Creditors Claims Related-

- i. Effects on Financial Debts/Claims due to Creditors, including Financial Creditors (Both Secured/Unsecured), including corporate guarantee holders, and/or all other Stakeholders (whether mentioned above or not); direction(s) may be issued in relation to the following reliefs:
- a. All accrued or unpaid interest, including penal interest, claim, fee, commissions, charges etc. in relation to the financial debt of the

Corporate Debtor, arising for any period until the Transfer Date shall stand permanently extinguished and the Corporate Debtor or the Bidder shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

- b. Other than amount received by the Liquidator from the Bidder which is distributable under Section 53 of IBC, all other dues including claims or demands made by or liabilities or obligations owed or payable to (including any demand for any loss or damages, principal, interest, compound interest, penal interest, liquidated damages, notional or crystalized mark to mark losses on derivatives, including claims under existing outstanding Bank Guarantees or Corporate Guarantees (whether claimed or not) or claims under existing outstanding Letter of Credits and other charges already accrued accruing or in connection with any third party claims), any actual or potential financial creditors of the Corporate Debtor or in connection with any debt of the Corporate Debtor (including those arising out of any contractual liability such as corporate guarantee, pledge, shortfall undertaking or similar instruments issued by Corporate Debtor to secure loans taken by its subsidiaries or associate company or any other person, and any transaction in derivatives), whether admitted or not, due or contingent, asserted or un-asserted, crystalized or un-crystalized, known or unknown, disputed or undisputed, present or future, whether or not set out in the audited financial statements, or the list of stakeholders, in relation to any period prior to the Transfer Date, shall, on and from the Transfer Date, stand permanently extinguished by virtue of the order of the Adjudicating Authority and

the Corporate Debtor or the Bidder shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto. Provided that the liability of any guarantor towards the debt of the Corporate Debtor shall continue and such person shall continue to remain liable for their personal/ corporate guarantees. However, the Corporate Debtor and/or the Bidder shall not be liable against personal guarantees.

- c. On payment of the Consideration by the Bidder, the Creditors shall have the effect to have released their charges over all the assets of Corporate Debtor, including the charges registered with Registrar of Companies, which have been provided as security against the facilities availed from the financial creditors and no amount of any nature shall be payable either by the Bidder or by the Corporate Debtor having new management / directors.
- d. On payment of the Consideration by the Bidder, the Financial Creditors to "UPGRADE" the Account of Corporate Debtor with Banks/Fl under the CIBIL Mechanism to "Standard Category" from NPA on the completion of the Acquisition so as to enable the New Promoters (Bidder) to revive the business of Corporate Debtor afresh and such action would enable the Bidder to quickly turn around the Corporate Debtor.
- ii. A direction be issued that all notifications with regards to defaults filed with Credit Information Bureau (India) Limited or any other information utility. RBI or any other regulatory authority for and on account of Corporate Debtor shall be withdrawn by the respective

Financial Creditors. Further, on and from the Transfer Date, all accounts of the Corporate Debtor shall stand regularized and their asset classification shall be “standard” for the purposes of all Applicable Laws.

- iii. A direction be issued that on and from the Transfer Date, the Bidder shall have a clean title over the Corporate Debtor and its underlying Assets, if any.
- iv. A direction be issued to the creditors to issue No-objection Certificates for the charge satisfaction and to enable the Corporate Debtor to file the charge satisfaction with ROC.

2.11 Operational Creditors-

- i. Effects on operational debt dues or claims of Operational Creditors/Statutory Authorities/Creditors of the Corporate Debtor-direction(s) may be issued in relation to the following reliefs:
 - a. Upon the distribution of the proceeds in terms of Section 53 of the IBC, the liabilities of the Corporate Debtor towards the dues owed to Operational Creditors/Statutory Dues shall stand settled in full, including any claims whether filed or not, whether admitted or not, whether asserted or not and whether or not set out in the audited balance sheet or the list of stakeholders.
 - b. All demands/interest and penalty charges for the period up-to the Transfer Date including but not limited to dues with respect to the pending income tax, customs, DGFT, GST, Professional Tax, PF,

Labour Laws (As applicable), ESI, RBI Guidelines/regulations, Foreign Exchange Management Act, Prevention of Money Laundering Act, etc., shall be extinguished in entirety from the Transfer Date. Further, any pecuniary liability arising out of non-issuance/non-submission of forms inter alia including Form C. F. El, and E2 required to be issued/submitted in terms of the Central Sales Tax Act, 1956 read with Central Sales Tax Rules, 1957 in relation to any transaction which may have taken place prior to the Transfer Date shall be extinguished in entirety from the Transfer Date.

- c. That, on and from the Transfer Date, waiver of any past, present or future claims in respect of any liabilities that have accrued prior to the Transfer Date with respect to operational creditors, intercorporate loans, non-convertible debentures or any form of liabilities.

2.12 Legal/ Litigations –

- i. That, on and from the Transfer Date, the liability of the Corporate Debtor for an offence committed prior to the issuance of Sale certificate under the liquidation process shall cease, and the Corporate Debtor shall not be prosecuted for such an offence. Further no action shall be taken against any property of the Corporate Debtor in relation to an offence committed prior to the issuance of Sale certificate under the liquidation process and upon change in control of the Corporate Debtor pursuant to the Acquisition.
- ii. Litigations/Legal Proceedings: direction(s) may be issued in relation to the following reliefs:

- a. As mentioned hereinabove, the Bidder hereby reiterate that from the Transfer Date, all the liabilities, litigations, proceedings of whatever nature in relation to liabilities or obligations owed or payable to any creditor of the Corporate Debtor, including those relating to direct or indirect taxation, or of any other nature, in respect of the issues, claims, etc., pertaining to the period prior to the Transfer Date shall cease and the Corporate Debtor and Bidder, shall not be prosecuted or liable for any civil or any other consequence including penalty arising from any such offence. Further no action shall be taken against any property of the Corporate Debtor and/or the Bidder in relation to an offence committed prior to the Transfer Date, upon change in control of the Corporate Debtor in favour of the Bidder.

2.13 Taxation –

- i. A direction be issued that the Corporate Debtor and the Bidder shall not be liable for any Taxes and shall be granted an exemption from all Taxes, levies, fees, transfer charges, transfer premiums, surcharges, interests, penal charges and any such other levies, that arise from or relate to the Acquisition, since payment of these amounts may make the Acquisition unviable. Any reference to Taxes shall include any transfer premiums or charges, change of ownership/ Control charges payable in connection with the Acquisition and the consequent change in ownership and Control of the Corporate Debtor. Further:
- a. All the assessments, proceedings, demand notices, penalty proceedings, show- cause notice and appeals, whether completed or uncompleted, initiated or not initiated with respect to Income Tax,

Central Sales Tax, GST, VAT, CENVAT, MODVAT, Customs and any other applicable Taxes under any applicable Laws, shall be deemed to have been completed and closed and the Bidder and/or the Corporate Debtor shall not be liable to pay any Taxes or interest or penalty or any prosecution arising out of such assessments or adjust its taxable income or brought forward losses under Income-tax Act, 1961 pertaining to any period prior to the Transfer Date including but not limited to claim arising out of any notice or order received by Corporate Debtor pertaining to any period prior to Transfer Date having an impact on the taxable income, brought forward losses and/or Tax payable by the Corporate Debtor on account of following reasons or other reason not listed below:

- Any non-compliance in relation to filing of Income-tax Return under Section 139 of Income-tax Act, 1961 including any other forms as required to be filed by Corporate Debtor under provisions of Income-tax Act, 1961.
- Any transaction entered by Corporate Debtor having an impact on taxable income, brought forward losses and/or Tax payable/ Tax refund of such entity for any period prior to Transfer Date and any underreporting or misreporting in relation to the same.

b. All Claims (whether contingent or crystallized, known or unknown, filed or not filed) of Governmental Authorities in relation to all Taxes/interest/ penalty which the Corporate Debtor was or may be liable to pay (including with respect to financial years under assessment), all deductions and all withholding Taxes on any

payment, as required under Applicable Law and pertaining to the period prior to the Transfer Date shall stand extinguished on the Transfer Date. Furthermore, and without prejudice to the generality of the foregoing, any assessment, re- assessment, revision or other proceedings under the provisions of the applicable Laws relating to Taxes would be deemed to be barred in relation to any period prior to the Transfer Date, by virtue of the order of the Adjudicating Authority; and

- ii. A direction be issued that the requirement of obtaining a no objection certificate under section 281 of the Income-tax Act, 1961 and provisions of taking over its predecessor's Tax liability under section 170 of the Income-tax Act shall not be applicable. Further, the transaction shall not be treated as void under section 281 of the Income Tax Act, 1961 for any claims in respect of Tax or any other sum payable by the Corporate Debtor or any shareholder of the Corporate Debtor.
- iii. Similarly, any requirements to obtain waivers from any Tax Authorities including in terms of Section 79 and Section 115JB and any other provision of the Income Tax Act, 1961 is deemed to have been granted on the Transfer Date.
- iv. The Adjudicating Authority be pleased to give or issue necessary directions, instructions to the CBDT, Central Board of Indirect Taxes and Customs and State GST authorities to exempt 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 or the Bidder under the provisions of Value Added Tax, Customs. Octroi,

Excise Duty, Service Tax, Goods & Services Tax, Income-tax Act including but not limited to any income tax and Minimum Alternate Tax (MAT) liability arising on capital reduction in Corporate Debtor, consolidation of share capital of Corporate Debtor, write off write down of current amounts due to employees, vendors, Operational Creditors, Financial Creditors, value of assets, value of inventories, etc. without any impact on brought forward tax and book loss / depreciation; and waive all liabilities whether crystallized or not in respect of Taxes (including interest and penalty) arising in respect of periods up to the Transfer Date.

- v. A direction be issued to the effect of waiving any withholding tax, income-tax and MAT liability or consequences (including interest, fine, penalty, etc.) on Corporate Debtor, including without limitation on:
 - a. Waiver of MAT and income tax implication arising due to write back/write off of liabilities in the books of accounts of Corporate Debtor without any impact on brought forward tax and book loss/depreciation, pursuant to the Acquisition.
- vi. A direction be issued that all Encumbrances created or suffered to exist over the assets of the Corporate Debtor or over the Securities of the Corporate Debtor, if any, whether by contract or by Applicable Law, whether created for the benefit of the Corporate Debtor or any third party, shall stand unconditionally and irrevocably settled and released with effect from the Transfer Date and all enforcement of security by any Persons commenced over any of the assets of the Corporate Debtor or over any Securities of the Corporate Debtor shall stand released and

reversed, without the requirement of any further deed or action on the part of the Bidder or the Corporate Debtor including any priority of claims that could have otherwise been claimed by the Tax Authorities under Section 281 of the Income Tax Act, 1961.

- vii. Waiver/Exemption from requirement of No Objection Certificate under Sec 281 of the Income Tax Act, 1961 by the selling shareholders, provision of taking over predecessor's tax liability under Sec 170 of the Income Tax Act, 1961 and specific order for treating such transactions as void under Section 281 of the Income Tax Act, 1961 for any claims in respect of tax or any other sum payable by selling shareholders.
- viii. Grant relief under Section 28, Section 41, Section 56, Section 115 JB, and Section 170 against any Income Tax liability arising due to Capital Reduction in the Corporate Debtor, write off/ write down/ write back of various liabilities, including liabilities pertaining to all the Financial Creditors, Workmen and Employees, Operational Creditors, Other Creditors, writeback of impairment of assets, investments, inventories, trade & other receivables, loans & advances, and other current & non-current assets etc. without any impact on carried forward loss and further waive all liabilities whether crystallized or not in respect of Taxes (including interest and penalty thereon) pertaining to the period prior to the date on which the Acquirer takes control of the Corporate Debtor.
- ix. The exemption shall be available under Section 79 of the Income Tax Act, 1961 to this resolution plan approved under the Insolvency and Bankruptcy Code, 2016 (31 of 2016) shall be available to the Corporate Debtor upon approval of this application/plan by the Adjudicating

Authority, and this bid to be considered to be resolution plan under Section 79 of Income Tax Act, 1961. As the change in the shareholding of the Corporate Debtor pursuant to this application/plan approved and letter requesting inputs of the Principal Commissioner or Commissioner shall be filed by the Bidder/ Corporate Debtor, existing losses of the Corporate Debtor shall be allowed to be carried forward without triggering the provisions of section 79 of the Act.

- a. Income tax authorities to allow representation of the case/appeal for the different financial years, without any additional burden on the Corporate Debtor and/or Bidder, for the income tax notices/demands/penalties/assessments/ adjustments of the accumulated losses (including but not limited to additions/ adjustments under Transfer Pricing under the Income Tax Act, 1961) up to the Transfer Date, where the Corporate Debtor failed to represent the case effectively. Such representation/ appeal should not be treated as time barred.
- b. On and from the Transfer Date, any debit or credit, being the balancing figure, shall be adjusted by the Corporate Debtor in the capital/other reserve at its sole discretion and the same shall be deemed to be in compliance with the applicable accounting standards without any tax implications on the Corporate Debtor upon such adjustment.

2.14 General Reliefs

- i. A direction may be issued that on and from the Transfer Date, no consents, licenses, approvals, rights, entitlements, benefits and

privileges whether under Applicable Law, contracts, leases, granted in favour of Corporate Debtor, shall be terminated on the grounds of initiation of insolvency/liquidation of the Corporate Debtor under the IBC, change of control over the Corporate Debtor pursuant to the acquisition by the Bidder or on account of unpaid dues which have been settled pursuant to this acquisition.

- ii. A direction be issued that all subsisting consents, licenses, approvals, rights, entitlements, benefits and privileges 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 contract in their terms and irrespective of the commencement of the insolvency/liquidation proceedings under the IB Code, in relation to the Corporate Debtor be deemed to continue without disruption, for the benefit of the Corporate Debtor and all additional licenses, registrations and consents required by the Corporate Debtor to be made available immediately from the Transfer Date, to facilitate running of the business as going concern.
- iii. A direction be issued that nothing under this Acquisition shall affect the rights of the Corporate Debtor to recover any amounts due to the Corporate Debtor from any other Creditor (including but not limited to Promoter Group, Captive Customers) and there shall be no set off against any such amounts recoverable by the Corporate Debtor or any liability extinguished pursuant to the Acquisition.
- iv. It is submitted that Applicant is proposing to acquire the Corporate Debtor as a going concern which is similar to resolution/revival of the

Corporate Debtor. In light of the same, Applicant requests and prays for the customary reliefs and concessions set out in aforesaid mentioned paragraphs for the successful implementation of this Acquisition done by the Applicant.

3. Reply filed by the Respondent/Liquidator, inter-alia stating that:

- 3.1 It is stated that all the averments put forth by the Applicant in the instant Application are either facts as asserted by the Applicant or the legal rights of the Applicant being enumerated or the Applicant's prayers.
- 3.2 It is stated that this Tribunal had passed an order of liquidation of the Corporate Debtor vide its order dated 25.05.2023 (Order copy received on 26.05.2023) wherein it appointed Mr. Krishna Komaravolu/Respondent as the Liquidator (Copy of the "Liquidation Order" is attached as **Annexure-A1**).
- 3.3 It is stated that E-Auction Process Information Document issued by the Liquidator which consisted the terms and conditions for participating in the E-Auction Process for sale of KSK Energy Company Private Limited indicated that the qualified bidders will have to bid for an amount not less than an aggregate price of Rs.1,21,44,000/- (Rupees One Crore twenty one lakh forty four thousand only) ("Reserve Price").
- 3.4 It is stated that the in response to the sale notice and corrigendum published in Newspapers, 8 (Eight) parties have expressed their interest in participating in the E-Auction Process by furnishing the particulars along with Application money. After going through the process documents, assessing the assets of the Company, the following parties only submitted

their Bid application along with refundable application money of Rs. 1,00,000/-:

- a) Kalinga Metallics Limited, Orissa
- b) Anirudh Agro Farms Private Limited, Hyderabad
- c) Innopark (India) Private Limited, Hyderabad

3.5 It is stated that the above mentioned three parties have submitted the bid application along with the requisite Earnest Money Deposit of Rs.12,14,400/- (Rupees Twelve Lakhs Fourteen Thousand Four Hundred Only). Accordingly, the liquidator had shortlisted the above three applicants as the Eligible/Qualified Bidders for participating in the E-Auction Process. It is stated that the E-Auction was held on 11.08.2023 from 03.00 PM to 05.00 PM and Kalinga Metallics Limited did not participate in the E-Auction. The auction went for six (6) rounds wherein the Applicant M/s. Innopark India Private Limited made the highest bid for an amount of Rs.1,46,44,000/- against the Reserve Price of Rs.1,21,44,000/- (i.e., higher by 20.59% of Reserve Price) to acquire the Corporate Debtor on a going concern basis. Copy of the E-Auction Report is annexed as **Annexure-A6**.

3.6 It is stated that the applicant being the H1 bidder, the liquidator confirmed the applicant's bid and conveyed the same by way of an e-mail to the applicant on 11.08.2023. It is stated that the Liquidator issued a letter of Intent on 14.08.2023 to M/s. Innopark India Private Limited (Successful Bidder) and intimated that within 90 days from the date of issuance of Letter of Intent, the balance sale consideration amount is to be paid. It was further intimated that any payment made after 30 days from the date of issuance of LoI, shall attract interest 12% per annum. Copy of the Letter

of Intent acknowledged by the Successful bidder is attached as **Annexure - A7**.

3.7 It is stated that the Successful Bidder made payment of Rs.1,33,95,335/- on 28.09.2023. As the LoI was issued on 14.08.2023 and payment was made only on 28.09.2023, i.e., after 45 days from the date of issue of Lol. The Successful Bidder paid the balance sale consideration of Rs.1,33,29,600/- along with Interest of Rs. 65,735/- (for 15 days beyond prescribed 30 days @ 12% p.a.).

3.8 It is stated that the Sale Certificate was issued to the Successful bidder - M/s. Innopark (India) Private Limited with regard to the sale of KSK Energy Company Private Limited as a Going concern on 02.10.2023. Copy of the Sale Certificate acknowledged by the Successful bidder is attached as **Annexure-A8**.

3.9 It is stated that the Corporate Debtor is being sold / transferred during liquidation on a going concern basis to the Successful Bidder and the IBBI Liquidation Regulations would apply to the liquidation process of the Corporate Debtor. It is stated that Regulation 32A of the IBBI Liquidation Regulations provides for sale of assets of the Corporate Debtor on a going concern basis. It is stated that in the instant case, the Corporate Debtor is being sold on a going concern basis which is more or less in the nature of resolution of the Corporate Debtor. It is further stated that the prayers made by the applicant/ Successful Bidder are in letter and spirit of E-Auction Process Document and Respondent/Liquidator has no objection to the said prayers of the Applicant.

3.10 It is stated that the Applicant is acquiring the Corporate Debtor on a going concern basis and not granting necessary reliefs to the Applicant does not serve the purpose of acquiring the Corporate Debtor on a going concern basis. It is stated that most of the reliefs sought for in the instant application are in the nature of certain compliances required to be done under various laws. Further, Section 60(5)(c) empowers the Adjudicating Authority to grant necessary reliefs even during liquidation.

3.11 It is stated that the Respondent/ Liquidator acknowledges that the present Corporate Debtor is being sold on a going concern basis and hence, the Applicant / Successful Bidder ought to have certain consequential reliefs to achieve the object of running the Corporate Debtor as a going concern and in light of the same, does not have any objections to the grant of exemptions/reliefs sought by the Applicant / Successful Bidder in the instant Application.

3.12 It is therefore prayed by the Respondent/Liquidator for the Corporate Debtor that there is no objection to the grant of exemptions/reliefs sought by the Applicant/ Successful Bidder in the instant Application.

4. We have perused the facts pleaded and the reliefs prayed in the petition. In the light of the facts of the case, we are of the view that the following Exemptions, Reliefs and the Directions can be allowed. Accordingly, we pass the following orders:-

S. No.	Reliefs sought by the Applicant/ Successful Bidder	Observations
1.	<p>Capital Structure Related/Share Issuance/ ROC Related</p> <p>i. A direction may be issued that on the Transfer Date, the entire existing Equity Shares and Preference Shares issued by the Corporate Debtor (held by the erstwhile Promoters Group as well as Captive Customers) shall stand cancelled without any further act or deed (“Capital Reduction”). The Approval by the Adjudicating Authority shall be deemed to be due compliance of all provisions of Applicable Law in this regard, and there shall be no requirement to add “and reduced” in the name of the Corporate Debtor. Further, the Capital Reduction, would not involve either a diminution of liability in respect of unpaid share capital, if any, or payment to any existing share holder of any unpaid share capital.</p> <p>ii. A direction may be issued that on the Transfer Date, the Corporate Debtor may issue new shares worth INR 10,00,000/- (Indian Rupees Ten Lacs only) (100,000 equity shares @ Rs. 10 each (Rupee Ten each) which will be</p>	Granted

issued and allotted to Innopark (India) Private Limited and its nominees:

Name of Shareholder	Post Takeover Number of shares
Innopark (India) Private Limited	99,999
Nominee of Innopark (India) Private Limited	1
Total	100,000

- iii. Post the infusion of Rs. 10,00,000 (Indian Rupees Ten Lacs only) towards Equity Shares allotment, a direction may be issued that, the Bidder may be permitted to structure the balance amount of INR 1,36,44,000/- (Indian Rupees One Crore Thirty-Six Lacs Forty-Four Thousand only) by way of Optionally Convertible Debentures/Non-Convertibles Debentures/Secured Term Loan or such other instrument as may be decided from time to time, with terms and conditions as mutually agreed between the Bidder and the Corporate Debtor.
- iv. A direction may be issued that from the Transfer Date, all past liabilities, penalties, and any form of payment by way of late fees, damages, etc., which occurred or become due

	<p>because of any non-compliance related to Companies Act, 1956/2013 rules and regulations framed thereunder till the Transfer Date, shall stand extinguished.</p>	
<p>2.</p>	<p>Financial Creditors' Claims Related-</p> <p>i. Effects on Financial Debts/Claims due to Creditors, including Financial Creditors (Both Secured/Unsecured), including corporate guarantee holders, and/or all other Stakeholders (whether mentioned above or not); direction(s) may be issued in relation to the following reliefs:</p> <p>A. All accrued or unpaid interest, including penal interest, claim, fee, commissions, charges etc. in relation to the financial debt of the Corporate Debtor, arising for any period until the Transfer Date shall stand permanently extinguished and the Corporate Debtor or the Bidder shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.</p> <p>B. Other than amount received by the Liquidator from the Bidder which is distributable under Section 53 of IBC, all other dues including claims or demands made by or liabilities or obligations owed or payable to (including any</p>	<p>Granted</p>

	<p>demand for any loss or damages, principal, interest, compound interest, penal interest, liquidated damages, notional or crystalized mark to mark losses on derivatives, including claims under existing outstanding Bank Guarantees or Corporate Guarantees (whether claimed or not) or claims under existing outstanding Letter of Credits and other charges already accrued accruing or in connection with any third party claims), any actual or potential financial creditors of the Corporate Debtor or in connection with any debt of the Corporate Debtor (including those arising out of any contractual liability such as corporate guarantee, pledge, shortfall undertaking or similar instruments issued by Corporate Debtor to secure loans taken by its subsidiaries or associate company or any other person, and any transaction in derivatives), whether admitted or not, due or contingent, asserted or un-asserted, crystalized or un-crystalized, known or unknown, disputed or undisputed, present or future, whether or not set out in the audited financial statements, or the list of stakeholders, in relation to any period prior to the Transfer Date, shall, on and from the Transfer Date, stand permanently</p>	
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	<p>extinguished by virtue of the order of the Adjudicating Authority and the Corporate Debtor or the Bidder shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto. Provided that the liability of any guarantor towards the debt of the Corporate Debtor shall continue and such person shall continue to remain liable for their personal/ corporate guarantees. However, the Corporate Debtor and/or the Bidder shall not be liable against personal guarantees.</p> <p>C. On payment of the Consideration by the Bidder, the Creditors shall have the effect to have released their charges over all the assets of Corporate Debtor, including the charges registered with Registrar of Companies, which have been provided as security against the facilities availed from the financial creditors and no amount of any nature shall be payable either by the Bidder or by the Corporate Debtor having new management / directors.</p> <p>D. On payment of the Consideration by the Bidder, the Financial Creditors to "UPGRADE" the Account of Corporate Debtor with Banks/Fl under the CIBIL Mechanism to "Standard Category" from</p>	
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	<p>NPA on the completion of the Acquisition so as to enable the New Promoters (Bidder) to revive the business of Corporate Debtor afresh and such action would enable the Bidder to quickly turn around the Corporate Debtor.</p> <p>ii. A direction be issued that all notifications with regards to defaults filed with Credit Information Bureau (India) Limited or any other information utility. RBI or any other regulatory authority for and on account of Corporate Debtor shall be withdrawn by the respective Financial Creditors. Further, on and from the Transfer Date, all accounts of the Corporate Debtor shall stand regularized and their asset classification shall be “standard” for the purposes of all Applicable Laws.</p> <p>iii. A direction be issued that on and from the Transfer Date, the Bidder shall have a clean title over the Corporate Debtor and its underlying Assets, if any.</p> <p>iv. A direction be issued to the creditors to issue No-objection Certificates for the charge satisfaction and to enable the Corporate Debtor to file the charge satisfaction with ROC.</p>	
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3.	<p>Operational Creditors-</p> <p>i. Effects on operational debt dues or claims of Operational Creditors/Statutory Authorities/Creditors of the Corporate Debtor-direction(s) may be issued in relation to the following reliefs:</p> <p>A. Upon the distribution of the proceeds in terms of Section 53 of the IBC, the liabilities of the Corporate Debtor towards the dues owed to Operational Creditors/Statutory Dues shall stand settled in full, including any claims whether filed or not, whether admitted or not, whether asserted or not and whether or not set out in the audited balance sheet or the list of stakeholders.</p> <p>B. All demands/interest and penalty charges for the period up-to the Transfer Date including but not limited to dues with respect to the pending income tax, customs, DGFT, GST, Professional Tax, PF, Labour Laws (As applicable), ESI, RBI Guidelines/regulations, Foreign Exchange Management Act, Prevention of Money Laundering Act, etc., shall be extinguished in entirety from the Transfer Date. Further, any pecuniary liability arising out of non-issuance/non-submission of</p>	Granted
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	<p>forms inter alia including Form C. F. E1, and E2 required to be issued/submitted in terms of the Central Sales Tax Act, 1956 read with Central Sales Tax Rules, 1957 in relation to any transaction which may have taken place prior to the Transfer Date shall be extinguished in entirety from the Transfer Date.</p> <p>C. That, on and from the Transfer Date, waiver of any past, present or future claims in respect of any liabilities that have accrued prior to the Transfer Date with respect to operational creditors, intercorporate loans, non-convertible debentures or any form of liabilities.</p>	
4.	<p>Legal/ Litigations -</p> <p>i. That, on and from the Transfer Date, the liability of the Corporate Debtor for an offence committed prior to the issuance of Sale certificate under the liquidation process shall cease, and the Corporate Debtor shall not be prosecuted for such an offence. Further no action shall be taken against any property of the Corporate Debtor in relation to an offence committed prior to the issuance of Sale certificate under the liquidation process and</p>	Granted

	<p>upon change in control of the Corporate Debtor pursuant to the Acquisition.</p> <p>ii. Litigations/Legal Proceedings: direction(s) may be issued in relation to the following reliefs:</p> <p>A. As mentioned hereinabove, the Bidder hereby reiterate that from the Transfer Date, all the liabilities, litigations, proceedings of whatever nature in relation to liabilities or obligations owed or payable to any creditor of the Corporate Debtor, including those relating to direct or indirect taxation, or of any other nature, in respect of the issues, claims, etc., pertaining to the period prior to the Transfer Date shall cease and the Corporate Debtor and Bidder, shall not be prosecuted or liable for any civil or any other consequence including penalty arising from any such offence. Further no action shall be taken against any property of the Corporate Debtor and/or the Bidder in relation to an offence committed prior to the Transfer Date, upon change in control of the Corporate Debtor in favour of the Bidder.</p>	
5.	<p>Taxation –</p> <p>i. A direction be issued that the Corporate Debtor and the Bidder shall not be liable for</p>	<p>In so far as the taxation is concerned the Applicant can</p>

<p>any Taxes and shall be granted an exemption from all Taxes, levies, fees, transfer charges, transfer premiums, surcharges, interests, penal charges and any such other levies, that arise from or relate to the Acquisition, since payment of these amounts may make the Acquisition unviable. Any reference to Taxes shall include any transfer premiums or charges, change of ownership/ Control charges payable in connection with the Acquisition and the consequent change in ownership and Control of the Corporate Debtor. Further:</p> <p>A. All the assessments, proceedings, demand notices, penalty proceedings, show- cause notice and appeals, whether completed or uncompleted, initiated or not initiated with respect to Income Tax, Central Sales Tax, GST, VAT, CENVAT, MODVAT, Customs and any other applicable Taxes under any applicable Laws, shall be deemed to have been completed and closed and the Bidder and/or the Corporate Debtor shall not be liable to pay any Taxes or interest or penalty or any prosecution arising out of such assessments or adjust its taxable income or brought forward</p>	<p>approach the authorities concerned in this regard.</p> <p>Concerned Authorities shall take decisions as per prevailing law, rules and regulations.</p>
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	<p>losses under Income-tax Act, 1961 pertaining to any period prior to the Transfer Date including but not limited to claim arising out of any notice or order received by Corporate Debtor pertaining to any period prior to Transfer Date having an impact on the taxable income, brought forward losses and/or Tax payable by the Corporate Debtor on account of following reasons or other reason not listed below:</p> <ul style="list-style-type: none">➤ Any non-compliance in relation to filing of Income-tax Return under Section 139 of Income-tax Act, 1961 including any other forms as required to be filed by Corporate Debtor under provisions of Income-tax Act, 1961.➤ Any transaction entered by Corporate Debtor having an impact on taxable income, brought forward losses and/or Tax payable/ Tax refund of such entity for any period prior to Transfer Date and any underreporting or misreporting in relation to the same. <p>B. All Claims (whether contingent or crystallized, known or unknown, filed or not filed) of Governmental Authorities in relation to all Taxes/interest/ penalty which the</p>	
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	<p>Corporate Debtor was or may be liable to pay (including with respect to financial years under assessment), all deductions and all withholding Taxes on any payment, as required under Applicable Law and pertaining to the period prior to the Transfer Date shall stand extinguished on the Transfer Date. Furthermore, and without prejudice to the generality of the foregoing, any assessment, re- assessment, revision or other proceedings under the provisions of the applicable Laws relating to Taxes would be deemed to be barred in relation to any period prior to the Transfer Date, by virtue of the order of the Adjudicating Authority; and</p> <p>ii. A direction be issued that the requirement of obtaining a no objection certificate under section 281 of the Income-tax Act, 1961 and provisions of taking over its predecessor's Tax liability under section 170 of the Income-tax Act shall not be applicable. Further, the transaction shall not be treated as void under section 281 of the Income Tax Act, 1961 for any claims in respect of Tax or any other sum payable by the Corporate Debtor or any shareholder of the Corporate Debtor.</p>	
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	<p>iii. Similarly, any requirements to obtain waivers from any Tax Authorities including in terms of Section 79 and Section 115JB and any other provision of the Income Tax Act, 1961 is deemed to have been granted on the Transfer Date.</p> <p>iv. The Adjudicating Authority be pleased to give or issue necessary directions, instructions to the CBDT, Central Board of Indirect Taxes and Customs and State GST authorities to exempt 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 or the Bidder under the provisions of Value Added Tax, Customs. Octroi, Excise Duty, Service Tax, Goods & Services Tax, Income-tax Act including but not limited to any income tax and Minimum Alternate Tax (MAT) liability arising on capital reduction in Corporate Debtor, consolidation of share capital of Corporate Debtor, write off write down of current amounts due to employees, vendors, Operational Creditors, Financial Creditors, value of assets, value of inventories, etc. without any impact on brought forward tax and book loss / depreciation; and waive all</p>	
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	<p>liabilities whether crystallized or not in respect of Taxes (including interest and penalty) arising in respect of periods up to the Transfer Date.</p> <p>v. A direction be issued to the effect of waiving any withholding tax, income-tax and MAT liability or consequences (including interest, fine, penalty, etc.) on Corporate Debtor, including without limitation on:</p> <p>A. Waiver of MAT and income tax implication arising due to write back/write off of liabilities in the books of accounts of Corporate Debtor without any impact on brought forward tax and book loss/depreciation, pursuant to the Acquisition.</p> <p>vi. A direction be issued that all Encumbrances created or suffered to exist over the assets of the Corporate Debtor or over the Securities of the Corporate Debtor, if any, whether by contract or by Applicable Law, whether created for the benefit of the Corporate Debtor or any third party, shall stand unconditionally and irrevocably settled and released with effect from the Transfer Date and all enforcement of security by any Persons commenced over any of the assets of the</p>	
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	<p>Corporate Debtor or over any Securities of the Corporate Debtor shall stand released and reversed, without the requirement of any further deed or action on the part of the Bidder or the Corporate Debtor including any priority of claims that could have otherwise been claimed by the Tax Authorities under Section 281 of the Income Tax Act, 1961.</p> <p>vii. Waiver/Exemption from requirement of No Objection Certificate under Sec 281 of the Income Tax Act, 1961 by the selling shareholders, provision of taking over predecessor's tax liability under Sec 170 of the Income Tax Act, 1961 and specific order for treating such transactions as void under Section 281 of the Income Tax Act, 1961 for any claims in respect of tax or any other sum payable by selling shareholders.</p> <p>viii. Grant relief under Section 28, Section 41, Section 56, Section 115 JB, and Section 170 against any Income Tax liability arising due to Capital Reduction in the Corporate Debtor, write off/ write down/ write back of various liabilities, including liabilities pertaining to all the Financial Creditors, Workmen and Employees, Operational Creditors, Other Creditors, writeback of impairment of assets,</p>	
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	<p>investments, inventories, trade & other receivables, loans & advances, and other current & non-current assets etc. without any impact on carried forward loss and further waive all liabilities whether crystallized or not in respect of Taxes (including interest and penalty thereon) pertaining to the period prior to the date on which the Acquirer takes control of the Corporate Debtor.</p> <p>ix. The exemption shall be available under Section 79 of the Income Tax Act, 1961 to this resolution plan approved under the Insolvency and Bankruptcy Code, 2016 (31 of 2016) shall be available to the Corporate Debtor upon approval of this application/plan by the Adjudicating Authority, and this bid to be considered to be resolution plan under Section 79 of Income Tax Act, 1961. As the change in the shareholding of the Corporate Debtor pursuant to this application/plan approved and letter requesting inputs of the Principal Commissioner or Commissioner shall be filed by the Bidder/ Corporate Debtor, existing losses of the Corporate Debtor shall be allowed to be carried forward without triggering the provisions of section 79 of the Act.</p>	
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	<p>A. Income tax authorities to allow representation of the case/appeal for the different financial years, without any additional burden on the Corporate Debtor and/or Bidder, for the income tax notices/ demands/ penalties/ assessments/ adjustments of the accumulated losses (including but not limited to additions/ adjustments under Transfer Pricing under the Income Tax Act, 1961) up to the Transfer Date, where the Corporate Debtor failed to represent the case effectively. Such representation/ appeal should not be treated as time barred.</p> <p>B. On and from the Transfer Date, any debit or credit, being the balancing figure, shall be adjusted by the Corporate Debtor in the capital/other reserve at its sole discretion and the same shall be deemed to be in compliance with the applicable accounting standards without any tax implications on the Corporate Debtor upon such adjustment.</p>	
6.	<p>General Reliefs –</p> <p>i. A direction may be issued that on and from the Transfer Date, no consents, licenses, approvals, rights, entitlements, benefits and privileges whether under Applicable Law,</p>	Granted

	<p>contracts, leases, granted in favour of Corporate Debtor, shall be terminated on the grounds of initiation of insolvency/liquidation of the Corporate Debtor under the IBC, change of control over the Corporate Debtor pursuant to the acquisition by the Bidder or on account of unpaid dues which have been settled pursuant to this acquisition.</p> <p>ii. A direction be issued that all subsisting consents, licenses, approvals, rights, entitlements, benefits and privileges 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 contract in their terms and irrespective of the commencement of the insolvency/liquidation proceedings under the IB Code, in relation to the Corporate Debtor be deemed to continue without disruption, for the benefit of the Corporate Debtor and all additional licenses, registrations and consents required by the Corporate Debtor to be made available immediately from the Transfer Date, to facilitate running of the business as going concern.</p>	
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	<p>iii. A direction be issued that nothing under this Acquisition shall affect the rights of the Corporate Debtor to recover any amounts due to the Corporate Debtor from any other Creditor (including but not limited to Promoter Group, Captive Customers) and there shall be no set off against any such amounts recoverable by the Corporate Debtor or any liability extinguished pursuant to the Acquisition.</p> <p>iv. It is submitted that Applicant is proposing to acquire the Corporate Debtor as a going concern which is similar to resolution/revival of the Corporate Debtor. In light of the same, Applicant requests and prays for the customary reliefs and concessions set out in aforesaid mentioned paragraphs for the successful implementation of this Acquisition done by the Applicant.</p>	
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5. Accordingly, **IA.No.1813/2023 in CP (IB) No. 275/7/HDB/2022** is partly allowed and stands disposed of.

SD
Charan Singh
Member Technical

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Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

Sridher/pavani