

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**

I.A. (I.B.C.) 1055/KB/2023

In

CP(IB) No. 511/KB/2019

*An Application under section 60(5)(C) along with section 32A of the
Insolvency and Bankruptcy Code, 2016 read with Regulation 32(E) of IBBI
(Liquidation Process) Regulations 2016 read with Rule 11 of the NCLT Rules,
2016.*

In the matter of:

Sauria Construction

....Financial Creditor

Versus

Kohinoor Pulp & Paper Private Limited

.....Corporate Debtor

And

In the matter of:

Universaltech Paper LLP

....Applicant/ Successful Bidder

Versus

Mr. Krishnaswami CVR,

Liquidator of

Kohinoor Pulp & Paper Private Limited

....Respondent

Date of pronouncing the order: 10.01.2024

Coram:

Rohit Kapoor

: Member (Judicial)

Balraj Joshi

: Member (Technical)

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Appearances (via video conferencing/ physical):

For the Liquidator:

Ms. Shaunak Mitra, Adv.
Mr. Avik Chaudhuri, Adv. .

For the Successful Liquidation Purchaser:

Mr. Abhrajit Mitra, Adv.
Mr. Vikram Wadhera, Adv.
Ms. Asiya Hasan, Adv.
Mr. Mayukh Roy, Adv.

ORDER

Balraj Joshi, Member (Technical)

1. This Court convened through hybrid mode.
2. The interlocutory application being I.A. No. 1055/KB/2023 has been filed by the Applicant herein being the successful bidder of the Corporate Debtor under section 60(5)(C) of the Insolvency and Bankruptcy Code, 2016 ("IBC") with the following prayers:
 - a. *To allow the present application;*
 - b. *To grant the reliefs/ concessions mentioned in Para 10 of the present application, to applicant as the corporate debtor is sold as going concern in liquidation; and*
 - c. *Any other order that the Hon'ble Tribunal may find fit in the facts and circumstances of the present case.*
3. **Submissions of the Applicant in I.A. no. 1055/KB/2023:**
 - 3.1 The case of the Applicants herein is that the Adjudicating Authority, upon the filing of a petition being CP (IB) 511/KB/2018 under section 9 of the Code by Sauria Construction, the Operational Creditor, admitted the Corporate Debtor into Corporate insolvency Resolution Process (CIRP) on 21.08.2018. Thereafter, the Adjudicating Authority

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ordered the Corporate Debtor to be liquidated *vide* order dated 01.07.2019¹.

3.2 In compliance with the Code and in accordance with the Insolvency and Bankruptcy Board of India (Liquidation Process Regulation) 2016 (hereinafter referred to as the "Liquidation Process Regulation"), public announcement for E- Auction of the Corporate debtor as a going concern was published on 22.08.2022. The E-auction was decided to be conducted on 31.08.2022. The reserve price was set as Rs. 48,00,00,000/-. The Earnest Money Deposit (EMD) was set as Rs. 4,80,00,000/-.

3.3 The Applicant participated in e-auction and made bid of an amount of Rs. 60,20,00,000/- for the purchase of the Corporate Debtor as a going concern. On 03.09.2022, the liquidator sent Letter of Intent and informed the Applicant that the E-Auction was completed on 31.08.2022 and as per the result of the process, the Applicant was the successful bidder.

3.4 As on date the Applicant has paid the entire amount of consideration to the Liquidator along with interest and a sale certificate dated 14.12.2022 was also issued in favour of the Applicant.

3.5 The Applicant is a successful bidder for the sale of the Corporate Debtor as a going concern excluding the imported cooking plant and fibre line lying at CFS, Balmer Lawrie Kolkata and cash and cash equivalents.

3.6 In light of the aforementioned circumstances, the Applicant has filed the instant application, praying the Adjudicating Authority to grant the following reliefs:

	<i>Reliefs and Concessions</i>
1.	The date of issue of the Sale Certificate should be deemed to be the date of acquisition ("Acquisition Date") of the Corporate Debtor, by the Applicant on a going concern basis

¹ Annexure A

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2.	That the successful bidder shall be allowed to be given all licenses, consents, approvals, benefits, rights, entitlements and privileges such as but not limited to the manufacturing license, PCB license [Pollution Control Board] and environment clearance, factory license of the Corporate Debtor, whether under the law, lease, contract shall be granted in favour of the corporate debtor to which the company shall be entitled notwithstanding any provision to contrary in their terms, to be deemed to be continued without any disruption for the benefit of the company.
3.	Direction to be issued that the corporate debtor be allowed to review and terminate any contract that was entered prior to the date of liquidation/CIRP.
4.	A direction to be issued by the Hon'ble NCLT stating all claims or demands made or all prior period liabilities and obligations owed or payable by the past management whether financial creditors or operational creditors or any other parties (including government dues, statutory dues such as Income Tax, GST, TDS, Land Rent, electricity dues Custom Duty, PF, ESIC, service tax etc.) whether known or unknown, crystallized or otherwise prior to the auction date of corporate debtor, to be considered settled as per the NCLT order and the balance amounts to be written off in full by the successful bidder and shall stand permanently extinguished and the sale proceeds shall be distributed in accordance to Section 53 of the Code. Also, if any balance of Credit whether GST/Service Tax, Excise, Sales Tax, or any other tax credit of the Corporate Debtor lying with the Revenue authorities shall be allowed to be carried forward to the applicant.
5.	From the NCLT Approval Date, all inquiries, investigations and proceedings, whether civil or criminal, suits, claims, disputes, proceedings in connection with the Company or affairs of the Company, including proceedings before Debt Recovery Tribunal and consumer courts or any other court, pending or threatened, present or

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	future in relation to any period prior to the NCLT order date, or arising on account of implementation of this Plan shall stand withdrawn and dismissed and all liabilities and obligations therefore, whether or not set out in the balance sheets of the Company or the profit and loss account statements of the Company will be deemed to have been written off fully, and permanently extinguished and no adverse orders passed in the said matters should apply to the Company or the successful bidder. Upon approval of this auction sale, all new inquiries, investigations, notices, suits, claims, disputes, litigations, arbitrations or other judicial, regulatory or administrative proceedings will be deemed to be barred and will not be initiated or admitted against the Company in relation to any period prior to the NCLT order date.
6.	The relevant Governmental Authorities shall not initiate any investigations/actions or proceedings in relation to any non-compliance with Applicable Law by the Company during the period prior to the NCLT order date. Neither shall the successful bidder, nor the Company nor their respective directors, officers and employees appointed on and as of NCLT order date be liable for any violation, liabilities, penalties or fines with respect to or pursuant to the Company not having in place the requisite licenses and approvals required to undertake its business as per Applicable Law, or any non-compliances of Applicable Law by the Company. Further, the relevant Governmental Authorities will provide a reasonable period of time after the NCLT order date, for the successful bidder to assess the status of any non-compliances under the Applicable Laws including and to procure that the Company regularizes such compliances under the Applicable Law existing prior to the NCLT order date.
7.	That all the existing shares of the Corporate Debtor shall stand extinguished and the existing shareholders will become claimants from liquidation proceeds u/s 53 of the Code. Also, the Money Received against the share warrants of the Corporate Debtor shall be

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	extinguished.
8.	That the successful bidder shall be allotted 100% shareholding of the corporate debtor pursuant the NCLT order and such shares will be issued on face value and the requirement of Sec 56(2)(vii)(b) of Income Tax Act 1961 shall be excused and such allotment shall be deemed to have been made in accordance with the law. Waiver of all the procedural requirements in terms of Section 66, Section 42 and Section 62(1)(c) of Companies Act, 2013 and the Company (Procedure for Reduction of Share Capital) Rules, 2016.
9.	Direction to be issued that upon payment of the entire bid amount, the corporate debtor, without requirement any further act, deed or thing, be allowed to issue fresh equity shares in accordance with Companies Act, 2013. The Applicant seeks approval for issuance of 2,00,00,000 Equity Shares, having a par value of INR 10 each by the Corporate Debtor to the Applicant and a nominee of the Applicant, who shall hold 1 Equity Share for and on behalf of the Applicant.
10.	That the exiting directors of the corporate debtor shall be required to vacate the office and newly appointed directors: by the successful bidder will be appointed by the company. Direction to be issued that upon payment of the entire bid amount, that a new Board of directors with two directors appointed by the successful bidder to be constituted as per Companies Act and that the following individuals be permitted to act as Directors of the corporate debtor: a) Naveen Kumar Gupta (DIN-00941858) b) Piyush Kanti Dey (DIN-00983136) c) Mr. Amit Agarwal (DIN No. 00268711)
11.	Direction to be reinstate the ROC status as "active" from the status of 'liquidation the company shall be restored. Waiver of late fee, penalty

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	etc. for non-compliance of filing of forms with ROC till the date of appointment of new directors.
12.	A direction be issued to exempt the corporate debtor from any payment of registration fees, stamp duties and other local levies of taxes, duties with respect to transfer of bid amount.
13.	A direction be issued that upon completion of sale of the corporate debtors under liquidation as a going concern, all the assets of the company shall continue to be vest with the successful bidder.
14.	The successful bidder shall be allowed to use all the patents, trademarks and other intangible assets of the Corporate Debtor, post NCLT order. (as mentioned in the information memorandum shared by the Liquidator)
15.	All the company documents/ property papers taken as a charge by the lender shall be returned back to the Corporate Debtor pursuant to the NCLT order. Also pursuant to NCLT order all charges outstanding in Registrar of Companies shall stand cancelled and will deemed to be duly satisfied.
16.	The company's status shall be reinstated and normalized by the financial creditors pursuant to the NCLT order and necessary cooperation be provided by the lenders for the same.
17.	Since the process of of the corporate debtor under liquidation as a "Going Concern" is a significant event, the Corporate Debtor shall be allowed to treat all the unpaid liabilities in the books after settlement u/s 53 of IBC to be as Capital in Nature. Consecutively, the entire write offs to be considered as a Capital Reserve pursuant to the NCLT order.
18.	The relevant Governmental Authority in relation to tax shall waive any tax, interest or penalty and shall not initiate any penal proceedings in case of non-fulfilment of any obligations of the Company in relation to which benefit has been claimed by the Company prior to the NCLT order date, including in relation to non-fulfilment of export obligation

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	in respect of customs incentive including but not limited to imports under specific import licenses or schemes, non-submission of forms for concessional duty rates, non-fulfilment of conditions relating to grant of central and state incentives, etc.
19.	The company will be given the benefit of Section 79 of Income Tax Act 1961 pertaining to carry forward of business losses and unabsorbed depreciation pertaining to previous assessment years. The Applicant/ Corporate Debtor seeks permission to file return of income and/or revised return of income, for the Assessment Years prior to the Acquisition Date.
20.	Upon approval of this application by the Adjudicating Authority, all non-compliances, breaches and defaults of the Company for the period prior to the NCLT order date (including but not limited to those relating to tax), shall be deemed to be waived by the concerned Governmental Authorities: Immunity shall be deemed to have been granted to the Company from all proceedings and penalties under all Applicable Laws for any non-compliance for the period prior to the NCLT Approval Date and no interest/ penal implications shall arise due to such non-compliance/default/ breach prior to the NCLT Approval Date. This includes, without limitation, waiver/ extinguishment of: a) Any liability, fees, penalties of any kind payable to any Governmental Authority by the Company for any non- compliance or default, breach, violation prior to the NCLT Approval Date, under Foreign Exchange Management Act, 1999, Foreign Trade Policy of the Government of India, 100% Export Oriented Unit related regulations, Companies Act, 1956 and Companies Act, 2013. b. Liability under on-going/ pending tax proceedings before Assessing Officer and/ or before Appellate Authorities shall stand extinguished as on NCLT Approval Date.
21.	The credit rating agencies and credit information bureaus like CRISIL, CIBIL etc. must be directed to delete all negative ratings for the

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	Corporate Debtor and not consider them as defaulters.
22.	A direction be issued that any Claim that may arise post the Transfer Date including Claims under Applicable Law, contract, judicial quasi-judicial proceedings, disputed or undisputed, crystallized or otherwise which relate to the period on or prior to the Transfer Date shall pose no additional liability (whether financial, contractual, performance or otherwise) on the Applicant or Corporate Debtor.
23.	Direct the Liquidator to cooperate with, and provide all necessary support and assistance to the Applicant, including but not limited to perfecting/ amending/modifying/creating the land records in relation to all parcels of land, the immovable properties and assets, belonging to the Corporate Debtor in favour of the Corporate Debtor within 15 days from the Appointed Date.
24.	Pass a direction enabling the Liquidator for facilitating the sale by making requisite accounting entries for smooth transmission
25.	Pass a direction that the Applicant shall be permitted to reinstate the books of accounts of the Corporate Debtor upon the issuance of shares to the Successful Bidder
26.	Pass a direction that land Rent of AIDC to be permitted at the original rate at the time of initial allotment of the Land
27.	Pass a direction that all powers of attorney or authorities executed by the Board of the Corporate Debtor on or prior to the Acquisition Date shall stand revoked, cancelled and shall be void.
28.	The Liquidator shall provide audited financial statement of Corporate Debtor for the period from till Acquisition Date.
29.	Direct the Liquidator to inform and close all pending legal cases against the Corporate Debtor and liberty be provided to Successful Bidder to continue all the beneficial litigations in favour of the Corporate Debtor.
30.	The Applicant be protected in terms of Section 32A of the Code, since it has purchased the Corporate Debtor, on a going concerns basis.
31.	A direction to be given to quash all the related party transactions

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	entered by the Corporate Debtor prior to NCLT order date.
32.	Notwithstanding the terms of the relevant agreements with the suppliers/customers of the Company as the case may be, the Adjudicating Authority shall direct that the prior approval of the counter parties shall not be required to be separately obtained for change in control/ constitution of the Company pursuant to the terms of the NCLT order and the counter parties shall not terminate or take any adverse actions against the Company of such change in control/ constitution of the Company. The Adjudicating Authority shall also direct the customers/ suppliers to waive all objections or liabilities of the Company, arising out of non- compliance by the Company for obtaining prior consent for appointment of the Liquidation Professional and in respect of the NCLT order.
33.	The Adjudicating Authority shall direct relevant Governmental Authorities to: (i) refund all duties/ taxes paid under protest by the Company in respect of tax related litigations; and (ii) continue with tax credits and State incentives available to the Company.
34.	The relevant Governmental Authority shall waive the requirement of obtaining an approval for change in ownership/constitution/management of the Company and shall continue to grant state and other incentives.
35.	Waiver from the requirement of obtaining a no objection certificate under Section 281 of the Income-tax Act, 1961 by the Sellers and provisions of taking over predecessor's tax liability under Section 170 of the Income-tax Act, 1961 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 Sellers.
36.	Waiver from the requirement of obtaining Valuation Report on issuance of new equity shares under section 247 of Companies Act 2013
37.	The sale of the Corporate Debtor shall be binding on all utility

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	providers and all the utility providers shall continue to supply the utilities to the Corporate Debtor, as may be required for the operations of the Corporate Debtor;
38.	The Applicant/ Corporate Debtor shall be allowed to participate in auction sale/tenders/offers/proposals of all departments/authorities/public sector undertakings for a period of 3(three) years from the Acquisition Date without having to submit the details on the past revenue, past performance, profitability records, net worth, etc;
39.	The Applicant/ corporate debtor seeks to approve the change of the registered address of the Corporate Debtor to Cube Building, 5th Floor, G.S. Road, Guwahati Assam 781005
40.	That the Applicant/ Corporate Debtor seeks that any security deposit lying with the Liquidator or any person shall be transferred in favour of the Corporate Debtor/ Applicant.

4 Analysis and Findings:

4.1 Heard the Ld. Counsel on behalf of the Applicant and the Ld. Counsel on behalf of the Liquidator and perused the record.

4.2 According to the Applicant, it has already made full payment of the entire promised sales consideration of Rs. 60,20,00,000/- and the liquidator has accordingly issued a sale certificate dated 14.12.2022² in favour of the Applicant.

3.1 The *prima facie* claim of the Applicant in the instant application is that certain reliefs and concessions are essential and necessary to run the business of the Corporate Debtor as a going concern, and that without the same, the purchase of the unit as going concern is of no use. The Applicant has also claimed that the revived company should not be made to pay for the past debts and liabilities of the Corporate Debtor accrued before its purchase as a going concern.

² Annexure D

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3.2 In support of its claims, the Applicant has relied on various case-laws including:

- a) ***Shiv Shakti Inter Globe Exports Pvt. Ltd. vs. KTC Foods Private Limited and Ors.***³,
- b) ***Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd***⁴
- c) ***Jasamrit Designers Pvt. Ltd. vs. Mr. Gian Chand Narang &Anr.***⁵

3.3 In the matter of ***Shiv Shakti Inter Globe Exports Pvt. Ltd. (Supra)*** the Hon'ble NCLAT has held that:

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

³MANU/NL/0568/2022 : 25.02.2022

⁴2021 SCC OnLine SC 313 decided on 13.04.2021.

⁵Company Appeal (AT) (Insolvency) No. 258 of 2023, decided on 04.07.2023

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3.4 Further, the Apex Court in **Ghanashyam Mishra (supra)** has laid down the law in regard to the extinguishment of past liabilities of the Corporate Debtor once the resolution plan is approved. According to the Hon'ble Supreme Court, once a resolution plan has been duly approved by the Adjudicating Authority pursuant to section 31(1), the claims specified in the resolution plan shall stand frozen and be binding upon the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government, or any local authority, guarantors, and other stakeholders. All such claims that are not included in the resolution plan must be extinguished as of the day the Adjudicating Authority approves the resolution plan, and no individual shall have the right to begin or continue any proceedings with respect to a claim that is not included in the resolution plan. The Hon'ble Supreme Court has further ruled that, if not covered by the resolution plan, all debts to the Central Government, any State Government, or any local authority shall stand extinguished and that no further legal action may be taken to collect those debts for the time period prior to the date the Adjudicating Authority grants its approval under Section 31.

3.5 The relevant part of the **Ghanashyam Mishra judgment(supra)** in this regard is given below:

"61. All these details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities, that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the Corporate Debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stakeholders after it gets the seal of approval from the Adjudicating Authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in sub-

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section (2) of Section 30 is, that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is, that he should start with fresh slate on the basis of the resolution plan approved.

62. This aspect has been aptly explained by this Court in the case of Committee of Creditors of Essar Steel India Limited through Authorised Signatory (*supra*).

“107. For the same reason, the impugned NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta, 2019 SCC OnLineNCLAT 388] in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count.” “

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3.6 We also place reliance on the recent judgement of Hon'ble High Court of Rajasthan in the matter of **EMC v. State of Rajasthan**⁶ wherein it has been *inter-alia* held that :

“Law is well-settled that with the finalization of insolvency resolution plan and the approval thereof by the NCLT, all dues of creditors, Corporate, Statutory and others stand extinguished and no demand can be raised for the period prior to the specified date.”

On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.

3.7 It is to be noted that the primary goal of a resolution plan as well as the sale of a Corporate Debtor as a going concern remains the same *i.e* revival of the Corporate Debtor's business. The struggles faced by the purchaser during the sale of a Corporate Debtor as a 'going concern' and that of the Successful Resolution Applicant are similar, if not the same. As such, comparable reliefs and concessions ought to be granted in both cases. As such, the law laid down in **Ghanashyam Mishra (Supra)** ought to be made applicable to cases in which the Corporate Debtor has been sold as 'going concern'.

3.8 The question that craves answer is the applicability of the ratio of above two judgements to the present question where the Corporate Debtor has been sold as a going concern. As already held by this

⁶ D.B. Civil Writ Petition No. 6048/2020, decided on

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Tribunal in the matter of ‘Divine Vidyut Ltd.’, the sale of the Corporate Debtor as a going concern is akin to a de-facto CIRP, and therefore the judgments (supra) are applicable in the present case of a going concern sale too, shall therefore be applicable in the present case as well.

- 3.9 It is noted that Applicant has also relied on the decision of the Hon’ble NCLAT in the matter of **Jasamrit Designers Pvt. Ltd.** (supra) whereby the Appellate Authority has in paragraph 10 allowed the filing of application before the Adjudicating Authority for the purpose of claiming relief/concessions/direction which “may be necessary for operationalization of the Corporate Debtor as per terms and conditions of the process document”.
- 3.10 However, the following paragraph of the said judgment specifies in this regard that the successful bidder can only make such prayers for reliefs and concessions which are in accordance with the terms and conditions of the process document and not such prayers which are “too elaborate and general”. Paragraphs 10 and 11 of **Jasamrit Designers Pvt. Ltd.** (supra) have been reproduced hereinafter:

“10. In view of the subsequent facts and notices brought on record by the Appellant and other terms and conditions of the process document as extracted, we are of the view that ends of justice will be served in granting liberty to file an Application before the Adjudicating Authority claiming reliefs/concessions/directions which may be necessary for operationalisation of the Corporate Debtor as per terms and conditions of the process document.

11. We may also observe that prayers which were included in I.A. No. 3207 of 2022 were too elaborate and general prayers which cannot be made by a Successful Bidder who have been declared as Successful Bidder. Successful Bidder on e-Auction of the Corporate Debtor as a going concern can make only

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such prayers for reliefs/concessions which are commensurate and in accordance with the terms and conditions of the process document. Prayers in general in a very wide term as contained in I.A. No. 3207 of 2022 may not require any consideration by the Adjudicating Authority.”

- 3.11 In light of the aforementioned decision, it becomes clear that while the successful bidder is allowed the liberty to file application before the Adjudicating Authority claiming reliefs and concessions, the said reliefs and concessions cannot be too elaborate and general and must be in consonance with the process document in the liquidation proceedings.
- 3.12 While some of the prayers sought by the Applicant in the instant matter i.e I.A. (IBC) No. 1055/KB/2023 come within the purview of IBC and the Companies Act 2013, it can be seen that scope of the other reliefs are *too wide* and *non- specific* or they fall under the power and jurisdiction of different government authorities/departments. As such, the same shall be dealt with the respective competent authorities/forums/offices, Government or Semi Government of the State or Central Government keeping in view the spirit of the code. Since, this is a ‘Going concern sale’ , the Successful Bidder shall make necessary applications to the concerned regulatory or statutory authorities for renewal of business permits and supply of essential services, if required, and all necessary forms along with filing fees etc. and such authority shall also consider granting the same keeping in mind the objectives of the Code which is intended to resolving the insolvency of the Corporate Debtor.
- 3.13 Further, it is noted that the Applicant has sought that the contracts and arrangements except those with existing promoters/directors of the Corporate Debtor shall remain in existence on the same terms and conditions. In this regard, we are of the considered opinion that without having a clear picture of the various contracts between the Corporate Debtor and third-parties, carte blanche orders ought not be passed. As

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such, the prayers seeking carte blanche orders relating to contractual rights are not granted by this Adjudicating Authority.

3.14 With respect to the waivers sought in relation to guarantors, the judgment of *Lalit Kumar Jain v Union of India &ors*,⁷ wherein the Hon'ble Supreme Court held in para 133 that sanction of a resolution plan and finality imparted to it by section 31 does not *per se* operate as a discharge of the guarantor's liability shall apply. In view of the above position of law, the sale of the assets of the Corporate Debtor 'as a going concern' shall be binding on the Corporate Debtor and other persons, authorities etc.

3.15 With respect to the reliefs and waivers sought for all inquiries, litigations, investigations and proceedings shall be granted strictly as per the section 32 A of the Code.

3.16 With the above observations, the instant application is allowed to the extent mentioned herein above. *IA (IBC) No.1055/KB/2023* shall stand disposed of accordingly.

3.17 The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

3.18 A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

The order is pronounced on the 10th day of January, 2024

SM_(LRA)

⁷ 2021 SCC OnLine SC 396 decided on 21.05.2021.