



IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-II

IA No. 870/MB/C-II/2022

In
C.P (IB) No. 2849/MB/C-II/2018

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

Sherisha Powertech Private Limited

...Applicant

Versus

Sundaresh Bhat

Liquidator of EMCO Limited

...Respondent

In the matter of

Jet Road Lines (India) Private Limited

...Financial Creditor

Versus

EMCO Limited

... Corporate Debtor

Order Pronounced on: 09.09.2022

Coram:

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

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

Appearances:

For the Applicant : Mr. Vikram Nankani, Sr. Counsel

For the Respondent : Mr. Ayush Rajani, Counsel



ORDER

Per Coram:

1. The Corporate Debtor i.e. **EMCO Limited** was ordered to be Liquidated vide Order dated 9 August 2019 by Adjudicating Authority and Mr. Sundaresh Bhat was appointed as the Liquidator.
2. The Liquidator for sale of assets of the Corporate Debtor issued an 'E-auction Process Document' on 10.12.2021. Pursuant to which, STPL parent company of the Applicant submitted its bid for Category A Assets i.e. EMCO Limited on the whole with legal entity and financial assets. However, the Respondent cancelled the process on 02.03.2022.
3. Subsequently, a fresh e-auction process was initiated in terms of the public announcement dated 08.03.2022 and process documents for sale of assets of the Corporate Debtor. The process document was subsequently amended on 17.03.2022.
4. Clause 3.1 defines Auction Asset as EMCO as whole including its legal entity, brand name and its financial assets, the particulars whereof (including the details of the assets included and the exclusions) are described in detail in Schedule D". It further provided that the auction asset is available for sale under Regulation 32(e) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("**Liquidation Process Regulations**"), which provides for sale of the Corporate Debtor as a going concern.



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5. Announcement for E-Auction process as a whole including its Legal Entity, Brand Name and its Financial Assets and issued schedule D of processed documents, lays down list of “Auction Assets”. It is submitted that the reserve price of the said “Auction Assets” was INR 166.60 Crores.
6. Pursuant to the public announcement and the process document dated 08.03.2022, the Applicant submitted its “EOI” along with the documents to the Respondent. Thereafter, the Applicant deposited an “Earnest Money Deposit” (hereinafter referred to as “**EMD**”) to the tune of Rs.16.66 Crore. This amount comprised of Rs.16.50 Crore deposited by STPL (parent company of the Applicant) during the earlier e-auction process which was adjusted towards EMD required to be deposited by the Applicant.
7. Accordingly, the Applicant as a “**Qualified Bidder**” in terms of the Process Document. On 22.03.2022 a Declaration-cum-Demand Letter was declared as the successful bidder for the Auction Asset and was called upon to pay the balance consideration amounting to Rs.1,50,04,00,000/- into the Liquidation Account.
8. The Declaration-cum-Demand Letter had a provision that in case the Applicant fails to make payment of the Balance Sale consideration within 30 days from the date of issuance of the said letter, an interest at



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the rate of 12% will be payable. Further, it also stated the sale will stand cancelled automatically if the Applicant does not make payment within 90 days.

9. The Applicant vide email dated 23.03.2022 acknowledged the declaration as the “Successful Bidder” for the auction asset. Further, the Applicant in the aforesaid email stated that the Applicant is ready and willing to discharge its obligations and pay the balance sale consideration. The Applicant states that as per the process documents no ownership, title or other rights, vested or otherwise shall be created in favour of the successful bidder merely upon payment of full sale consideration. The Applicant is bound to obtain requisite permissions/approvals as may be, from this Tribunal, stock exchanges, Securities Exchange Board of India (“SEBI”) after which the Auction Asset will be transferred to the Applicant.
10. In the above backdrop, the Applicant requested the Respondent to amend the Process Memorandum so as to allow the Applicant, as the successful bidder, jointly with the Respondent in order to seek approvals. The Applicant further requested the Respondent to defer the payment of balance consideration till 90 days and keep in abeyance the provisions relating to cancellation of the sale process if the payment is not made within 90 days.



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11. The Respondent vide email dated 25.03.2022 informed the Applicant that interest at the rate of 12% p.a. which would be leviable on the balance sale consideration which would remain unpaid after 30 days. Moreover, the Respondent refused to make joint application for reliefs and concessions sought by the Applicant.
12. The Applicant submits that the reliefs sought by the Applicant are essential for acquiring the Auction Asset on a clean slate basis. The bid amount submitted by the Applicant which is Rs.166.70 is greater than the reserve price of the Auction Asset and secures the objective of maximization of value for all stakeholders.
13. The Applicant submits that in the present case the Corporate Debtor is under Liquidation only the legal entity is transferred and the liabilities of the Corporate Debtor have to be settled in accordance with section 53 of the Code form the Sale Proceeds.
14. The Applicant has invited our attention to clause 7.7.6 of the Process Document as per which there are three pre-requisites for transfer of legal ownership of the Auction Asset in favour of the Applicant.
 - i. Payment of entire sale consideration
 - ii. Issuance of sale certificate by the Respondent
 - iii. Obtaining requisite permissions from this Tribunal.
15. The aforesaid clause also states that no ownership, title, or other rights,



vested or otherwise shall be created in favour of the Applicant merely upon payment of balance sale consideration. The Declaration-cum-Demand letter issued by the Respondent contains similar stipulations. In light of the above facts, the Applicant has filed the instant application for grant of permissions/approvals.

16. The Applicant states that upon transfer of legal ownership of the auction asset in favour of the Applicant, the Applicant is willing to pay the entire balance sale consideration.

Submissions made by the Respondent/Liquidator are as follows:

17. At the outset, the Respondent has detailed the facts in brief leading up to the filing of the present Application. It is the case of the Respondent that prayer clause (c) sought by the Applicant can't be approved owing to fact that sale of auction assets is under Regulation 32(e) of the Liquidation Regulations, the payment shall be made in Liquidation Account and the amount so received shall be distributed in terms of Section 53 of the Code.
18. The Respondent states that prayer clause (E)(a) and (E)(b) of the Application is contrary to the provisions of Section 53 of the Code and clause 7.7.11 of the Process Memorandum. The Applicant in the aforesaid prayer clauses proposes to pay the balance sale consideration of Rs.150,04,00,000/- into the account of the Corporate Debtor, the



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Applicant shall infuse Rs.5 Crore by way of application money by subscribing to the equity shares of the Corporate Debtor. The balance sale consideration is required to be deposited in the Liquidation Account for distribution to the stakeholders in terms of Section 53 of the Code.

19. The Applicant in prayer clause (E)(g) of the Application has prayed that Liquidator shall be authorized to act on behalf of the Corporate Debtor for any secretarial filing, corporate actions and compliances and/or any other actions, filings, intimations, etc. The Respondent submits that sale of the auction asset is on “as is where is basis” and the Applicant has conducted its own due diligence prior to submission of the bid. Moreover, it is the Applicant’s responsibility for obtaining approvals and ensuring compliances in connection with transfer asset. The Respondent however, shall extend necessary co-operation and assistance to the Applicant.
20. With respect to prayer clause (Q), the Respondent states that accounting entries/treatment etc. would be carried out only upon payment of full sale consideration and may be carried out by the Applicant after the transfer date subject to approval.
21. The Respondent submits that he shall extent necessary co-operation and assistance to the Applicant in connection of sale and available documents and information shall be handed to the Applicant on an as is where is



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basis.

22. The Applicant in prayer clause (S) has prayed that the Applicant will be entitled to all the future cash flows and receivables of the Corporate Debtor pursuant to any pending applications under Section 43,45,49,50 or 66 of the Code. The Respondent states that the amounts recovered shall be distributed in accordance with Section 53 of the Code.
23. The liquidator has clarified that the costs to be incurred in relation to the application filed under section 43,45,49,50 or 66 of the code by the liquidator shall not be borne by applicant. Learned senior counsel appearing for the applicant submitted that while there is no mechanism in the code that mandates continuation of such proceedings by the liquidator, if the company is being sold as a going concern. In the interest of early closure of the adjudication of this Application, the Applicant is agreeable that liquidator pursue the same subject against the liability to be drawn on the liquidator. When this bench called upon the liquidator to point out provisions of law which would enable Liquidator to pursue these applications. The counsel for the Liquidator submitted that Liquidator can be appointed as an authorised person by the stake holders to pursue these applications. After hearing both sides and considering the provisions of the code. We are of the considered view that once the sale of the Corporate Debtor as a going concern takes place the liquidation



process needs to close and the liquidator will become functus officio.

Findings:

24. We have perused the records and heard the Ld. Counsels for the parties.
25. The Applicant herein vide its prayers sought multiple reliefs to facilitate the scheme of going concern sale of the Corporate Debtor. Considering the matter being for approval of going concern sale of the Corporate Debtor this bench approves the going concern sale of the Corporate Debtor.
26. In terms of the Judgment of Hon'ble Supreme Court in the matter of Ghanshyam Mishra and Sons Private Limited v/s Edelweiss Asset Reconstruction Company Limited, on the date of approval by the Adjudicating Authority, all such claims which are not a part of statement of claims, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the statement of claims.
27. We allow the interim reliefs sought by the Applicant in prayer clause (A) and (B) and direct that the EMD deposited by the Applicant shall not be forfeited by the Liquidator. Further, the sale of the Corporate Debtor shall not be cancelled. We direct the Applicant to deposit the balance sale consideration with 30 (Thirty) days from date of this order. Failure, if any on part of the Applicant to deposit the balance sale consideration



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within 30 days shall result in forfeiture of the EMD and cancellation of sale of the Corporate Debtor. Further, the Applicant shall be liable to deposit the balance sale consideration along with 12% p.a. interest from 22.04.2022 (after 30 days of date of issuance of demand letter dated 22.03.2022) in accordance with Schedule 1 Regulation 12 of the Liquidation Regulations.

28. We direct the Applicant to deposit the balance sale consideration into the Liquidation Account in accordance with Regulation 41 of the Liquidation Process Regulations. The said sale consideration shall be along with 12% p.a. interest 22.04.2022 since then distributed by the Liquidator in terms of Section 53 of the Code. For the aforesaid reasons prayer clause (E)(a) is rejected. We authorize the Liquidator to issue 2.50 Crore equity shares having face value of Rs. 2 each against share application money of Rs. 5 Crore to the Applicant.
29. We allow the cancellation and extinguishment of equity and preference shares and convertible instruments (whether pledged or not), held by the shareholders of the Corporate Debtor.
30. We have also perused the process of granting similar relief, concession in other cases such as IA No. 2264 of 2020 in CP No. 1239 of 2018 - Gaurav Jain V/s Sanjay Gupta liquidator of the Topworth Pipes and Tubes Ltd. in the matter of Bank of Baroda V/s Topworth Pipes and



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Tubes Ltd., IA No. 391 of 2021 In CP 37 of 2017 - Nitin Jain liquidator of P S L Holdings Ltd. V/s Lucky Holdings Pvt. Ltd. in the matter of P S L Holdings Ltd. V/s Edelweiss ARC and Others, IA 5208 of 2021 In IB 1440 of 2018 - M/s. KKR Financial Services Pvt. Ltd. V/s M/s. Kquality Ltd. process of similar order.

31. We are of the view that the prayer sought by the applicant are essential to transfer the of EMCO Ltd. as a going concern in view of the applicant being a successful bidder and which entitled the applicant to take over and run the corporate debtor on a clean slate basis and therefore the application deserved to be allowed. The relief and concessions sought by the applicant are granted hereunder in the remark column:

Prayer Clause No.	Prayer	Remark
A)	Direct that as an interim measure, pending final adjudication of the present Application, the EMD deposited by the Applicant shall not be forfeited by the Respondent/Liquidator and the sale shall not be cancelled for non-payment of the Balance Sale Consideration within 90 days of the issuance of the Declaration-cum-Demand Letter.	Granted. Since the sale of corporate debtor can only take place after the approval of this Tribunal.
B)	Direct the Liquidator, as an interim measure, to defer the period for payment of the Balance Sale Consideration with no interest (required to be paid after 30 days of the issuance of the Declaration-cum-Demand Letter) to a date that is 15 days of the passing of the final order allowing this present Application.	Granted. Since the sale of corporate debtor can only take place after the approval of this Tribunal.
C)	Direct that the sale of the Corporate Debtor to	The sale of



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Prayer Clause No.	Prayer	Remark
	<p>the Applicant in liquidation be treated in the same manner as a resolution plan approved under Section 31 of the Code (including but not limited to in respect of operation of Section 31 (1) and Section 32A of the Code) and all attendant benefits, privileges and exemptions under various laws including but not limited to benefit of any tax holiday, benefit under Section 79(2)(c) of the Income Tax Act, 1961, exemption, deduction, carry forward of losses of any prior years and set-off against the income arising in the future years in accordance with the taxation laws, as they are available to a resolution plan shall be available to this sale of Corporate Debtor to the Applicant under the liquidation process;</p>	<p>Corporate Debtor under liquidation is similar to resolution plan and to that extent the benefit available under resolution plan can be extended to the applicant. The applicant will be entitled to take benefit of Section 32 (A) as per the provisions of the IBC. That relief under Income Tax Act 1961 the applicant may approach the authority concerned to what consideration of such request under the Income Tax Act 1961 of the Code in view of the Spread of IBC legislation.</p>
D)	<p>Direct that an order of the Adjudicating Authority allowing this Application pursuant to the Code shall be deemed to be adequate</p>	<p>Granted. Since the sale of corporate</p>



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	compliance with any applicable law that would otherwise have become applicable in relation to the compliances/steps that comprise any part of the Application.	debtor can only take place after the approval of this Tribunal.
E)	<p>Direct that the transfer of the Corporate Debtor to the Applicant shall be implemented in accordance with the sequence of steps set out below:</p> <p>a) The EMD of INR 16,66,00,000 already being deposited with the Liquidator, the Applicant shall pay the entire balance sale consideration of INR 150,04,00,000 into the account of the Corporate Debtor in the manner set out herein, within 15 days after this Application is allowed by the Adjudicating Authority as follows:</p> <p>i. The Applicant shall infuse an amount of INR 5 crores by way of share application money for subscribing to the equity shares of the Corporate Debtor.</p> <p>ii. The Applicant shall deposit the remainder INR 145,04,00,000 in the account of the Corporate Debtor towards loan or subscription to such securities as may be decided by the Applicant.</p> <p>The date of such deposit, being the "Transfer Date".</p> <p>b) On the Transfer Date, the Corporate Debtor shall issue 2.50 Crore of equity shares, having face value of INR 2 each, to the Applicant against the share application money of INR 5 Crore.</p>	<p>Granted.</p> <p>Subject to our observations of transfer of money to Liquidator's account as it relates to sale of Corporate Debtor by issuance of share and retention of capital. The applicant should not be liable for dues penalties etc prior to the issue of sale certificate.</p>



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	<p>c) With effect from the date of approval of the Application by the Adjudicating Authority, except for the shares issued to the Applicant by the Corporate Debtor, the entire issued share capital of the Corporate Debtor, including equity and preference shares and convertible instruments (whether pledged or not), held by shareholders of the Corporate Debtor (including by promoters and public shareholders), shall be entirely cancelled and extinguished for a consideration equivalent to the amount, if any, to be received by the shareholders under Section 53 of the IBC without any further approval from any creditor, shareholder, regulatory authority(ies) including but not limited to the National Stock Exchange, Bombay Stock Exchange Securities and Exchange Board of India ("SEBI") Registrar of Companies etc. There shall be no requirement to add "and reduced" in the name of the Corporate Debtor.</p> <p>d) The shares of the Corporate Debtor shall stand delisted from the National Stock Exchange and Bombay Stock Exchange, with effect from the date of order of approval of this Application by the Hon'ble Adjudicating Authority, without any further approvals or demands against past liabilities or fees from the relevant stock exchanges, SEBI or any other regulatory authority and without being required to follow any steps for delisting under any regulations of the SEBI. Upon application/ filings by the Applicant, the SEBI, National Stock Exchange and</p>	



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Prayer Clause No.	Prayer	Remark
	<p>Bombay Stock Exchange shall take necessary actions to delist the shares of the Corporate Debtor without insisting on payment of any past dues with respect to listing fees, penalties etc, which dues shall stand extinguished on the Transfer Date.</p> <p>e) The Corporate Debtor/ Applicant shall be entitled to seek benefits and exemption provided under the SEBI (Issue of Capital and Disclosure Requirement) Regulations 2018, the SEBI (Substantial Acquisition of Shares and Takeover) Regulations 2018; the Securities Contract Regulations Rules 1995, SEBI (Listing and Disclosure Obligations) Regulations 2015, SEBI (Delisting of Equity Shares) Regulations, 2021 in relation to issuance of shares to the Applicant, capital reduction and delisting of shares, as applicable to a successful resolution applicant on approval of resolution plan under Section 31 of the Code;</p> <p>f) The Applicant may consent on behalf of all persons concerned, to any minor or operational modifications or amendments of the provisions of this paragraph E or to any conditions which the Adjudicating Authority and/or any other authorities under law may deem fit to approve of or impose or which may otherwise be considered necessary or desirable for settling any question or doubt or difficulty that may arise in carrying out the provisions of this Paragraph E and do all acts, deeds and things as may be necessary, desirable or</p>	



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	<p>expedient for giving effect to the terms hereof.</p> <p>g) To the extent any secretarial filings, corporate actions and compliances and/or any other actions, filings, intimations, etc. are required to be made in connection with any step set forth in this Paragraph E before the Transfer Date, the Liquidator, shall be deemed to be fully authorized to act on behalf of the Corporate Debtor and to undertake all such actions. Without prejudice to the foregoing, the Applicant may, if required and from time to time, seek necessary directions from the Adjudicating Authority in connection with actions to be undertaken or filings to be made with the ROC and/or any other statutory or regulatory authority in connection with matters contemplated herein.</p>	
F)	Direct that on and from the Transfer Date, the assets of the Corporate Debtor shall continue to vest in the Corporate Debtor free from any security interest, encumbrance, claim, counter claim, or charge of any creditor and free from any liability that may arise under any pending proceedings or litigations, without payment of any additional consideration;	Granted. Since the applicant should not be saddled with the liability prior to the issue of sale certificate.
G)	Direct that on and from the Transfer Date, all claims by any person against the Corporate Debtor or any liabilities or obligations owed or payable by the Corporate Debtor to any actual or potential creditors of the Corporate Debtor, including contractual liabilities, whether direct or indirect, whether admitted or not, due or contingent, asserted or un-asserted, crystallized or un-crystallized, known or unknown, secured or unsecured, disputed or undisputed, in relation	Granted. Since the applicant should not be saddled with the liability prior to the issuance of sale certificate.



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	to any period prior to the Transfer Date, whether admitted by the Liquidator or not in full or part, shall stand permanently extinguished and no such claim, liability etc. shall be recoverable in any form or manner whatsoever from the Corporate Debtor/Applicant or their successors or assignees and payment of sale consideration by the Applicant is a full and final settlement towards such claims, liabilities etc.;	
H)	Direct that on and from the Transfer Date, all claims by any Government authority or department against the Corporate Debtor or any liabilities or obligations owed or payable by the Corporate Debtor to any Government authority or department (including but not limited to Taxes, liabilities, interest and penalties, duties, etc. on account of income-tax, tax deduction at source, tax collection at source, goods and services tax, custom duty, value added tax, service tax, wealth-tax, cess, DGFT dues, property tax etc.), whether direct or indirect, whether admitted or not, due or contingent, asserted or un-asserted, crystallized or un-crystallized, known or unknown, secured or unsecured, disputed or undisputed, in relation to any period prior to the Transfer Date, whether admitted by the Liquidator or not in full or part, shall stand permanently extinguished and no such claim, liability etc. shall be recoverable in any form or manner whatsoever from the Corporate Debtor/Applicant or their successors or assignees and the payment of sale consideration by the Applicant is a full and final settlement towards such claims, liabilities etc.;	Granted. Since the applicant should not be saddled with the liability prior to the issuance of sale certificate.
I)	Direct that on and from the Transfer Date, all claims by any person (including lessors, MIDC, municipal, societies, association of persons and revenue authorities) against any assets, owned by or lease to the Corporate Debtor, including	Granted. Since the applicant should not be saddled with the liability



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	immovable property and any liabilities or obligations owed or payable by the Corporate Debtor in respect of such assets to any actual or potential creditors of the Corporate Debtor, including contractual liabilities, liability to the Government (including but not limited to property taxes) whether direct or indirect, whether admitted or not, due or contingent, asserted or un-asserted, crystallized or un-crystallized, known or unknown, secured or unsecured, disputed or undisputed, in relation to any period prior to the Transfer Date, whether admitted by the Liquidator or not in full or part, shall stand permanently extinguished and no such claim, liability etc. shall be recoverable in any form or manner whatsoever from the Corporate Debtor/Applicant or their successors or assignees and the payment of sale consideration by the Applicant is a full and final settlement towards such claims, abilities etc.;	prior to the issuance of sale certificate.
J)	Direct that all inquiries, investigations, assessments, notices causes of action, suits, claims, disputes, litigations, arbitration, or other judicial regulatory or administrative proceedings against, or in relation to or in connection with the Corporate Debtor or the affairs of the Corporate Debtor (other than against the erstwhile promoters or former members of the management of the Corporate Debtor), pending or threatened, present or future, in relation any period prior to the Transfer Date shall not be continued and/or instituted in future against the Corporate Debtor/Applicant or their successors or assignees;	Granted. Since the applicant should not be saddled with the liability prior to the issuance of sale certificate.
K)	Direct that any non-compliance of provisions of any laws, rules, regulations, directions, notifications, circulars, guidelines, policies,	Granted. Since the applicant should not be



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	licenses, approvals, consents or permissions as applicable to the Corporate Debtor including but not limited to any liability arising out of non-compliance under the provisions of the Companies Act, 1956 and the Companies Act, 2013, Employees Provident Fund and Miscellaneous Provisions Act, 1952, Employees State Insurance Act, 1948, Securities Exchange Board of India Act, 1992, Foreign Exchange Management Act, 1999 and under various labour legislations including liability in respect of employee welfare dues such as gratuity, leave encashment etc., prior to the Transfer Date shall be deemed to be extinguished and no proceedings in respect thereof shall be undertaken in future against the Corporate Debtor/Applicant or their successors or assignees. The Corporate Debtor shall not be liable for any non-compliance under the Income-tax Act, 1961 including but not limited to filing of Income-Tax Returns 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;	saddled with the liability prior to the issuance of sale certificate.
L)	Direct that any claim made under any existing bank guarantee or letter of credit issued by banks to any third party based on the applications made by the Corporate Debtor or any guarantee or indemnity or counter indemnity issued by the Corporate Debtor to any third party including to any bank for issuance of bank guarantees or letter of credit and all liability of the Corporate Debtor under such guarantees/ indemnities/counter indemnities shall stand extinguished on the Transfer Date and that the beneficiaries of such guarantees/ indemnity/ counter indemnity including the banks issuing bank guarantee shall not have any recourse against the Corporate Debtor and/or the	Granted. Since the applicant should not be saddled with the liability prior to the issuance of sale certificate.



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	Applicant in future and the payment of sale consideration by the Applicant is a full and final settlement towards all such claims, liabilities etc.;	
M)	Direct that no right of subrogation shall be available to third parties/ existing promoters/ shareholders/guarantors of the Corporate Debtor under any guarantees/ indemnities/ contractual comforts/collateral provided by such parties to any creditor of the Corporate Debtor and all such subrogation rights shall stand extinguished on the Transfer Date;	Granted. Since the applicant should not be saddled with the liability prior to the issuance of sale certificate.
N)	Direct that on and from the Transfer Date, the status of the Corporate Debtor in the records of the Registrar of Companies and on the website of Corporate Debtor should be reflected as "active" from the status of "liquidation";	Granted. Since the applicant should not be saddled with the liability prior to the issuance of sale certificate.
O)	Direct that the Board of Directors of the Corporate Debtor be re-constituted as per the Companies Act, 2013 with all existing directors vacating the office and Applicant having the right to nominate eligible directors to the Board of Directors and that upon necessary applications by the Applicant/ Corporate Debtor, the Registrar of Companies shall make necessary changes in its records and accept relevant returns as required by applicable law;	Granted. Since the applicant should not be saddled with the liability prior to the issuance of sale certificate.
P)	Direct 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 contrary in their terms and irrespective of the commencement of the insolvency/liquidation proceedings under the	Granted. Subject to payment of renewable fees if any to such licensing authority.



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	Code, in relation to the Corporate Debtor be deemed to continue without disruption for the benefit of the Corporate Debtor;	
Q)	<p>Direct the Liquidator to, immediately,</p> <ul style="list-style-type: none">a) write back all the liabilities of the Corporate Debtor including creditors, term loans, working capital loans, tax liabilities, other statutory liabilities etc. which are not payable and reflect the total liabilities at the amount of the consideration (as reduced by the amount of insolvency resolution process costs and the liquidation costs) determined in the auction;b) The carrying amount of the equity, debts, loans, liabilities, dues to creditors (including related parties) and provisions for liabilities of any nature whatsoever which are extinguished, cancelled, waived or remitted pursuant to this application shall be de-recognised in the books of accounts of the Corporate Debtor by credit to 'Capital Reserve' which shall form part of "Other Equity" in the Balance Sheet of the Corporate Debtor.c) The entire Capital reserve balance (including the amount credited pursuant to clause above) along with the balances existing in securities premium reserve and general reserve in aggregate will be adjusted. against the debit balance of Profit and Loss account.d) make requisite accounting entries for smooth transmission the accounting treatment set out in this application shall be an integral part of the application.;	Granted. Since the applicant should not be saddled with the liability prior to the issuance of sale certificate.



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	<p>e) prepare and file the said financial statements with the relevant regulators such as Registrar of Companies, Income Tax Authorities etc.;</p> <p>f) complete all compliances in respect of the Corporate Debtor for the period up to the Transfer Date including filing of necessary documents and returns with the Registrar of Companies, Income Tax Authorities any other Government Authorities;</p> <p>g) cooperate with, and provide all necessary support and assistance to the Applicant, including but not limited to handing over of original copies of the title deeds and other relevant documents of the land and other assets owned by the Corporate Debtor, 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 Transfer Date;</p>	
R)	Direct that all claims that the Corporate Debtor may have against third parties and related parties and all receivables of the Corporate Debtor including without limitation, in relation to any litigations/proceedings initiated by the Corporate Debtor and/or for the benefit of the Corporate Debtor shall continue to remain recoverable by the Corporate Debtor in accordance with law and in case of any such claim/recovery in future, the benefits of the same shall be solely available to the Corporate Debtor;	Granted. Since the applicant should not be saddled with the liability prior to the issuance of sale certificate.
S)	Direct that the Applicant shall be solely entitled	Granted.



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	to all future cash flows and receivables of the company including recoveries/realisations pursuant to any pending application(s) under Section 43, 45, 49, 50 or 66 of the Code;	Prayer however recoveries from Section 43,45,49,50 or 66 of the Code should be given to the stake holders as per the above observations in terms of section 53 of the Code.
T)	Direct exemption from levy of Taxes, levies, surcharges, cess, fees, transfer charges, stamp duty, registration charges, transfer premiums and other charges arising in relation to sale of the Corporate Debtor 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;	Granted. The applicant may approach to the relevant authorities concerned who may approve such request. Keeping in view spirit of IBC legislation.
U)	Direct the secured creditors to provide necessary documents for discharge of charges including charge satisfaction forms to be filed with the ROC/MCA and to handover the title documents deleting all encumbrances/charges mentioned in the assets secured to them including by way of assignment to any person other than the Corporate Debtor and the secured creditors be directed to relinquish all their security interests or claim on the assets of the Corporate Debtor;	Granted.
V)	Direct that encumbrances over assets of the Corporate Debtor shall stand satisfied and MCA/ROC shall record the satisfaction of all charges against the Corporate Debtor on payment of Sale Consideration as on Transfer	Granted.



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	Date, in accordance with the orders passed by this Hon'ble Adjudicating Authority without waiting for any corresponding satisfaction letters from the respective lender(s) and the final order passed by this Hon'ble Adjudicating Authority shall be a sufficient proof, for satisfaction of charges in the records of MCA;	
W)	Direct that any event of default having occurred on part of the Corporate Debtor under any of the financing documents entered into by the Corporate Debtor on its own behalf or on behalf of subsidiaries (if any), joint ventures or associates to secure or guarantee, any of their liabilities, prior to the Transfer Date, shall be waived in entirety and all rights under the existing finance documents in relation thereto shall stand extinguished;	Granted. Since the applicant should not be saddled with the liability prior to the issuance of sale certificate.
X)	Direct that all notifications with regards to defaults filed with Credit Information Bureau (India) Limited, any information utility, RBI or any other regulatory authority for and on account of Corporate Debtor shall be withdrawn by the respective financial creditors and any invocation or enforcement action already undertaken before Debt Recovery Tribunal against the Corporate Debtor and any of its assets, at any time prior to the Transfer Date, shall stand automatically revoked and cancelled and deemed null and void and financial creditors shall take requisite action to ensure that all such pending matters before the Debt Recovery Tribunal shall stand withdrawn. 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;	Granted. Since the applicant should not be saddled with the liability prior to the issuance of sale certificate.
Y)	Direct that the Corporate Debtor/ Applicant shall be allowed to utilise input credit available in the name of the Corporate Debtor under the	The applicant may approach relevant



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	relevant Goods and Service Tax Act and relevant authority shall provide relief as to said effect;	authorities concerned who can consider such request. Keeping in view spirit of IBC legislation.
Z)	Direct that the Corporate Debtor/Applicant shall be allowed to carry forward Income-tax assets (MAT credit, TDS Credit) available as per the provisions of the Income Tax Act, 1961 and utilise the same appropriately.	The applicant may approach relevant authorities concerned who can consider such request. Keeping in view spirit of IBC legislation.
AA)	Direct that the relevant State Pollution Control Boards shall approve renewal of the consents to establish/ operate obtained by the Company under applicable provisions of the Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, in accordance with law.	Granted. Subject to payment of recovery fees if any of such licensing authority.
BB)	Direct that the Corporate Debtor shall be entitled to utilities such as water, gas and electricity from the relevant suppliers/ departments (such as Maharashtra State Electricity Board, Mahanagar Gas Limited, Gujrat Gas Limited), in accordance with law, without such suppliers/ departments insisting on payment of past dues to them.	Granted. Subject to payment of recovery fees if any of such licensing authority.
CC)	Direct that the Corporate Debtor shall have full rights and ownership over the land situated in Village Rakhui, Waghodia District, Vadodara, admeasuring a total of 1,21,407 Sq. Mtr. bearing Survey Nos. 129/2, 129/3 & 129/4, without any pending encumbrance or legal proceedings or litigation or hinderance from the Collector and	Granted. Subject to payment of recovery fees if any of such licensing authority.



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	without any liability or obligation to pay past dues in respect of such land;	
DD)	Direct 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, 1961 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. Similarly, any requirements to obtain waivers from any Tax Authorities including in terms of Section 79 and Section 15JB and any other provision of the Income Tax Act, 1961 is deemed to have been granted on the Transfer Date;	The applicant may approach the concerned authority to what consideration of such request under the Income Tax Act 1961. Keeping in view spirit of IBC legislation.
EE)	Direct that the Corporate Debtor/ Applicant would not be liable for any disability of the Corporate Debtor or Applicant in terms of Section 29A of IBC for default of associates or subsidiaries of Corporate Debtor on or before the Transfer Date;	Granted. Subject to payment of recovery fees if any of such licensing authority.
FF)	Direct change of the Registered office of the Corporate Debtor from N 104, MIDC AREA, JALGAON MH 425003 IN to No. 67, Bazullah Road, Parthasarathi Puram, T. Nagar, Chennai, Tamil Nadu 60001 and approve amendment of the memorandum or association and articles association of the Corporate Debtor to give effect to such change;	Granted. Subject to payment of recovery fees if any of such licensing authority.
GG)	Direct that the Corporate Debtor/Applicant shall be at liberty to approach this Hon'ble Adjudicating Authority to address any difficulties faced with respect to implementation in taking over of the Corporate Debtor in liquidation;	Granted. The application bearing IA No. 870 of 2022 is accordingly allowed and



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Prayer Clause No.	Prayer	Remark
		disposed of in terms of this order.
HH)	Grant liberty to the Applicant to amend, alter, modify, delete, rescind and/or substitute any prayer(s); pass any further orders(s) or directions that this Hon'ble Adjudicating Authority may deem fit and proper.	Not Granted.

32. With the aforesaid observation present **IA No. 870 of 2022 In C.P (IB) No. 2849/MB/C-II/2018** stands disposed of as allowed in above terms.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)
09.09.2022
SAM/Manish

Sd/-

JUSTICE P. N. DESHMUKH
Member (Judicial)