

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, (COURT II)
KOLKATA**

I.A. (IB) NO. 1305/KB/2022

And

I.A. (IB) NO. 1295/KB/2022

In

C.P. (IB) NO. 1284/KB/2019

*An Application under Section 35(1)(n) and Section 60(5) of the Insolvency and
Bankruptcy Code, 2016 read with Regulation 32A and 32(e) of the Insolvency and
Bankruptcy Board of India (Liquidation Process Regulations), 2016*

**In the matter of:
State Bank of India**

...Financial Creditor

Versus

Ess Dee Aluminium Limited

...Corporate Debtor

And

I.A. (IB) NO. 1305/KB/2022

In the matter of:

Deepika Bhugra Prasad

Liquidator in the matter of Ess Dee Aluminium Limited

...Applicant

Versus

Shakambhari Ispat & Power Limited

...Respondent

And

I.A. (IB) NO. 1295/KB/2022

In the matter of

Shakambhari Ispat & Power Limited

....Applicant

Versus

Deepika Bhugra Prasad,

Liquidator of Ess Dee Aluminium Limited

...Respondent

Date of Hearing: 16 December, 2022

Date of Pronouncement of the Order: 24 February, 2023

CORAM:

Smt. Bidisha Banerjee, Member (Judicial)

Shri. Balraj Joshi, Member (Technical)

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*I.A. (I.B.C.) NO. 1295/KB/2022 and I.A. (IB) No. 1305/KB/2022
InC.P. (IB) No. 1284/KB/2019*

Counsel appeared through Video Conference/Physical Hearing:

For Liquidator:

(Applicant in IA/1305/2022)

Mr. Rishav Banerjee, Adv.

Mr. Aditya Gauri, Adv.

Ms. Prerna Saha, Adv.

Mr. Dhananjaya Sud, Adv.

Mr. Amar Vivek, Adv,

Mr. Shalya Agarwal, Adv.

Mr. Chaitanya Bansal, Adv.

Mr. Abhinav Tyagi, Adv.

Mr. Damani Srestha, Adv.

For Shakambari Ispat & Power Ltd.:

Mr. Jishnu Saha, Sr. Adv.

Mr. Rahul Auddy, Adv.

COMMON ORDER

Per Balraj Joshi, Member (Technical)

1. This Court is convened through hybrid mode.
2. Two applications have been filed in this matter .
 - i. **I.A. (IB) NO. 1305/KB/2022 InC.P. (IB) NO. 1284/KB/2019** has been filed by Deepika Bhugra Prasad, the Liquidator in the matter of Ess Dee Aluminium Limited ('Corporate Debtor') under Section 35(1)(n) and Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Regulation 32A and 32(e) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ('Liquidation Regulations') seeking appropriate directions, inter-alia, for implementing and seeking reliefs/waivers in furtherance of Sale under the Liquidation of the Corporate Debtor as a Going Concern to the Shakambhari Ispat & Power Limited ('Respondent').
 - ii. **I.A. (I.B.C.) NO. 1295/KB/2022 in CP(IB)no, 1284/KB/2019** : The is an Applicant filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('*the Code*') read with Regulation 32 (e) read with Regulation 32 A of Insolvency and Bankruptcy Board of India

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(Liquidation Process Regulations), 2016 (***Liquidation Regulations***) by Shakambhari Ispat & Power Limited, (***Applicant***), the successful auction purchaser of Ess Dee Aluminium Limited, as a going concern (***Corporate Debtor***) seeking appropriate directions inter-alia for implementing the sale and reliefs, concessions, waivers for implementing the sale of the Corporate Debtor as a going concern.

3. In both the above mentioned IAs, the reliefs sought are similar, and therefore both these are being disposed of through this common order. The difference, if at all, is primarily in the Waivers and Concessions and therefore those reliefs which are not common have been given separately. This has been done to keep the integrity of the process intact, still simultaneously bringing all the reliefs, whether granted or not, under one roof. This common order is expected to be helpful in avoiding repetition of the waivers and concessions sought by two different IAs.
4. The Corporate Debtor was admitted into Corporate Insolvency Resolution Process (***CIRP***) vide Order dated 14 February, 2020 passed by this Adjudicating Authority, and Ms. Deepika Bhugra Prasad (***Applicant***) was appointed as the Interim Resolution Professional (***IRP***) for the Corporate Debtor.
5. It is stated that the Applicant convened the 1st Meeting of the Committee of Creditors (***CoC***) on 18 March, 2020, wherein an agenda for the appointment of the Applicant as the Resolution Professional was tabled. Accordingly, a Resolution was passed by the members of the CoC by way of an E-voting and the Applicant was appointed as the Resolution Professional (***RP***) for the Corporate Debtor.
6. It is further stated that the Applicant published Form – G on various occasions inviting Expression of Interest (***EOI***) from the Prospective Resolution Applicants (***PRAs***) for the submission of the Resolution Plans for the revival of the Corporate Debtor.

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7. It is contended that in the absence of any Resolution Plan approved by the members of the CoC, the natural outcome of the Corporate Debtor is the Liquidation of the Corporate Debtor and the members of the CoC passed a Resolution for liquidating the Corporate Debtor by a voting share of 84.78%.
8. That *vide* Order dated 08 October, 2021, this Adjudicating Authority, initiated the Liquidation of the Corporate Debtor and thereby, appointed the Applicant as the Liquidator of the Corporate Debtor.
9. That the Applicant, after due deliberations and discussions with the members of the Stakeholders' Consultants Committee ('SCC') during the 1st, 2nd and 3rd Meeting of the SCC on 03 January, 2022, 27 January, 2022 and 23 January, 2022 respectively, decided to sell the assets of the Corporate Debtor on a Piece-Meal basis. That in pursuance of the same, considering the Fair Value and the Liquidation Value of the Corporate Debtor, the Reserve Price for the sale of the assets of the Corporate Debtor was fixed at Rs.89 Crores.
10. That in the meantime, the Applicant during the month of February, 2022, received an Email dated 25 February, 2022 from a prospective buyer to purchase the Corporate Debtor as a Going Concern in accordance with Regulation 32A of the Liquidation Regulations. That in view of the same, due to the timelines to sell the Corporate Debtor as a Going Concern, the Applicant issued a Reply Email to the prospective buyer to deposit a security amount of Rs.2 Crores, in order to check the seriousness of the buyer latest by 13 March, 2022. That in the absence of any deposit made by the prospective buyer till 13 March, 2022, the Applicant published the Sale Notice dated 13 March, 2022 on 16 March, 2022, to sell the assets of the Corporate Debtor on Piece-Meal basis as discussed with the members of the SCC during the aforesaid Meetings.
11. The applicant contends that the prospective buyer vide Email dated 17 March, 2022 confirmed the deposit of Rs.2 Crores made by the prospective buyer into the Liquidation Account of the Corporate Debtor. That in view of the same, the Applicant *vide* Email dated 17 March, 2022, replied to the prospective buyer acknowledging the aforesaid deposit and thereby, informed the prospective buyer that the Applicant shall schedule a meeting with the members of the SCC

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to discuss the further course of action to sell the Corporate Debtor as a Going Concern. Moreover, *vide* the said Email, the Applicant requested the prospective buyer to provide the KYC documents as well as EOI for purchasing the Corporate Debtor as a Going Concern.

- 12.** That subsequently, the Applicant convened the 4th Meeting of the SCC on 22 March, 2022, whereby, the Applicant informed the members of the SCC about the receipt of the security amount from the prospective buyer and thereby, deliberated upon the further course of action to sell the Corporate Debtor as a Going Concern. That in view of the same, after due deliberations and discussions with the members of the SCC, it was concluded to cancel the Sale Notice dated 16 March, 2022 and publish a fresh Sale Notice to sell the Corporate Debtor as a Going Concern.
- 13.** Further, in the said Meeting, post discussions with the members of the SCC, the Reserve Price to sell the Corporate Debtor as a Going Concern was fixed at Rs.90 Crores. That the Applicant, post discussions with the members of the SCC, issued a Notice dated 02 April, 2022 for Cancellation of the Sale Notice dated 16 March, 2022 and thereby, published a fresh Sale Notice dated 05 April, 2022 on 07 April, 2022, to sell the Corporate Debtor as a Going Concern.
- 14.** That in pursuance of the same, the Applicant conducted the E-Auction Process for the sale of the Corporate Debtor as a Going Concern on 16 April, 2022 and 18 April, 2022. That upon conclusion of the aforesaid E-Auction Process for the sale of the Corporate Debtor as a Going Concern, the Applicant convened the 5th Meeting of the SCC on 20 April, 2022 whereby Lucky Holdings was declared as the H1 Bidder. That the Applicant, *vide* Email dated 26 April, 2022, requested Lucky Holdings to deposit 25% of the bid amount excluding the EMD amount, within 15 days from the date of announcement, basis which the Applicant shall issue a Letter of Intent in favour of Lucky Holdings.
- 15.** Meanwhile, on 09 May, 2022, the Ld. Counsel appearing for the Liquidator undertakes not to proceed with the sale, in regard to an IA(IBC)/397(KB)2022 filed by Trailblazer Edusol Private Limited. The said IA was withdrawn on 15

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June, 2022 and M/s Lucky Holdings was intimated about it on 23 June, 2022 to deposit 2 Crore by 28 June, 2022 .

16. It is further stated that Lucky Holdings, the successful bidder failed to deposit the amount as per the terms mentioned in the E-Auction Document and accordingly, the Applicant *vide* Letter dated 04 July, 2022 informed Lucky Holdings regarding cancellation of the sale and forfeiture of the EMD Amount deposited by Lucky Holdings to the tune of Rs. 2 Crore. (Subject matter of challenge in **I.A. (I.B.C)/800(KB)2022**).
17. That subsequently, the Applicant convened the 6th Meeting of the SCC on 06 July, 2022 to discuss about the future course of action in the Liquidation Process of the Corporate Debtor. That in the said Meeting, the members decided to sell the Corporate Debtor as a Going Concern by fixing the Reserve Price to the tune of Rs.100 Crore.
18. Thereafter to decide the future course of action, the Applicant herein conducted the 7th SCC Meeting on 01 August, 2022 at 4:00 PM pursuant to the 6th SCC Meeting, wherein as discussed, it was decided to sell the assets of the Corporate Debtor on a Going Concern (Block A) and on a Piece-Meal Basis (Block B-H). That accordingly, the Liquidator published Sale Notice in widely circulated newspapers on 04 August, 2022 wherein the last date for submission of EMD was 24 August, 2022 at 5.00 PM and the E-Auction was scheduled to be conducted on 26 August, 2022.
19. That subsequently, the Liquidator conducted the E-Auction Process on 26 August, 2022 wherein, Shakambhari Ispat & Power Limited offered a highest bid of Rs.103.40 Crore to buy the Corporate Debtor as a Going Concern.
20. That the Applicant convened the 9th Meeting of the SCC on 30 August, 2022 to discuss the Progress in the Liquidation Process of the Corporate Debtor and thereby, discuss the outcome of the E-Auction Process conducted by the Liquidator on 26 August, 2022 to sell the Corporate Debtor as a Going Concern (Block A) and on Piece Meal Basis (Block B to H). That during the Meeting, the Applicant shared a Summary Sheet with all the Stakeholders which specifically bifurcated the amount in each Block and the increment value with

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reference to reserve price so fixed and also discussed on the charge statement and way of disbursement. That accordingly, the members of the SCC consented to declare Shakambhari Ispat & Power Limited as the Highest Bidder for buying the Corporate Debtor as a Going Concern.

- 21.** That in furtherance of the same, an Email was sent to the successful auction purchaser on 05 September, 2022 intimating the successful auction purchaser of the same and accordingly, a Letter of Intent dated 07 September, 2022 was sent by the Liquidator inviting the successful auction purchaser to deposit the balance sale consideration amount as per the provisions of the Code. That pursuant to the same, on the receipt of the full consideration amount, the Applicant issued Sale Certificate and Letter of Possession to the successful buyer of the Corporate Debtor.

Analysis and Findings

- 22.** We have heard the Ld. Counsel appearing on behalf of the Applicant and perused the reliefs, waivers and concessions as sought and as given in at Pages 59 to 75 of the Application. While some of the reliefs, waivers and concessions sought by the Successful Bidder come within the purview of the Code and the Companies Act 2013, while many others fall under the power and jurisdiction of different government authorities/departments. This Adjudicating Authority has power to grant reliefs, waivers and concessions only with respect to the reliefs, waivers and concessions that are directly in relation to the Code and the Companies Act (within the powers of the NCLT). The reliefs, waivers and concessions that pertain to other governmental authorities/departments shall be dealt with the respective competent authorities/forums/offices, Government or Semi Government of the State or Central Government with regard to the respective reliefs, waivers and concession. The competent authorities including the Appellate authorities may consider grant such reliefs, waivers and concessions keeping in view the spirit of the code (IBC 2016) .
- 23.** The reliefs, waivers and concessions shall be consistent with extant law. Further since this is a ‘Going concern sale’ , the Successful Bidder shall make necessary applications to the concerned regulatory or statutory authorities for

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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 concerned with resolving of the insolvency of the Corporate Debtor.

24. With respect to the waivers with regard to extinguishment of claims which arose Pre-CIRP and which have not been claimed are granted in terms of *Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd*¹ wherein the Hon'ble Supreme Court has held that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders. 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.
25. With respect to the waivers sought in relation to guarantors, the judgment of *Lalit Kumar Jain v Union of India &ors*,² 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. Now, the only 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. In our opinion, the sale of the

¹2021 SCC OnLine SC 313 decided on 13.04.2021.

² 2021 SCC OnLine SC 396 decided on 21.05.2021.

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Corporate Debtor as a going concern is akin to a de-facto CIRP, and therefore the aforementioned judgments shall be applicable in the present case as well.

26. In view of the thereliefs and waivers sought by the Applicant in both the interlocutory Applications being *I.A. (I.B.C.) NO. 1295/KB/2022 and I.A. (IB) No. 1305/KB/2022* for the smooth running of business of the Corporate Debtor as a going concern, are as follows;

| <i>S.No.</i> | <i>Reliefs and Waivers</i> | <i>Remarks</i> |
|--------------|---|--|
| 1. | A direction be issued that on the date of issuance of Sale Certificate by the Liquidator i.e.28.09.2022 all rights, title and interest in whole and every part of the Corporate Debtor including but not limited to intellectual property rights, free from security interest, encumbrance, claim, counter claim or any demur belonging to Corporate Debtor shall continue to vest in the Corporate Debtor. | <p><i>Granted, the assets shall be delivered in the manner specified in the terms of sale notice and attended conditions .</i></p> <p>In terms of Visisth Services Limitedv.S.V. Ramani and Ors. - A 'going concern sale' on an 'as is where basis' does not dissolve the corporate debtor, rather, it forms a part of the liquidation estate wherein the entire business, including assets and liabilities, including all contracts, licences, concessions, agreements, benefits, privileges, rights, or interests, is transferred to the purchaser. Therefore, it was concluded that the sale of a company as a 'going concern' means sale of both its assets and liabilities if it is stated on 'as is where is basis'.</p> <p>(11.01.2022 – NCLAT</p> |

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| | | MANU/NL/0033/2022) |
| 2. | A direction be issued that upon the Effective Date all rights and entitlements of, claims or demands made by or liabilities or obligations owed or payable to, the Financial Creditors, Operational Creditors, Employees, Workmen including claims related to their social security contributions, Suppliers, Governmental Agencies, tax authorities including GST, income-tax liabilities, VAT liabilities, excise liabilities, service tax liabilities, withholding tax liabilities etc., including any interest, fines, penalties, fees, cess, surcharge or similar assessments payable, etc., whether filed/admitted/verified or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, contract, judicial/ quasi-judicial proceedings, disputed or undisputed, present or future, including any liability arising out of non-compliance of provision of any laws, rules, regulations, directions, notifications, circulars, guidelines, policies, licenses, approvals, consents or permissions as applicable on the Corporate Debtor, or reports as applicable on the Corporate Debtor, for the period upto the Effective Date, shall stand permanently and fully satisfied for the Corporate Debtor acquired by the Successful Auction Purchaser, and shall be | <i>Granted, strictly as per the</i> judgement by the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd,</i> ³ |

³2021 SCC OnLine SC 313 decided on 13.04.2021.

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| | handled/ extinguished by the Liquidator in accordance with section 53 of IBC 2016. Further, the Successful Auction Purchaser and/or the Corporate Debtor shall at no point of time, directly or indirectly, have any other obligation, liability or duty (whether financial, contractual, performance or otherwise) in relation thereto. | |
| 3. | On the Effective Date, any liabilities, claims, demands, capital contributions or any other form of financial commitment, including but not limited to corporate guarantees issued by the Corporate Debtor or pledge of shares or any security interest created or provided, whether guaranteed or contractually agreed in writing or otherwise by the Corporate Debtor on behalf of or for its subsidiary companies, associate companies, Group Companies and/or their respective affiliates, shareholders/ associates, as the case may be, which are in existence prior to the Effective Date and which may be invoked prior to the Effective Date or at any time thereafter, shall stand irrevocably and unconditionally waived and extinguished. | <i>Granted, strictly as per the</i> judgement by the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd,</i> ⁴ |
| 4. | On the Effective Date, the remaining liabilities (including all liabilities with respect to Taxes) would be extinguished upon disbursement of sale proceeds by Liquidator under Section 53 of the Code. | |
| 5. | On and from the Effective Date, all financial and pecuniary liabilities of | |

⁴2021 SCC OnLine SC 313 decided on 13.04.2021.

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| | the Corporate Debtor, (including without limitation, any penalty, whether contingent, assessed, known or unknown, interest fines or fees and any other liabilities and/or obligations which may have a financial impact) in relation to any period prior to the Effective Date shall be deemed to be extinguished, whether accepted by the Successful Auction purchaser or not in full or part and the same shall not be recoverable in any form or manner whatsoever from the Corporate Debtor or the Successful Auction purchaser, their successors or assignees. | |
| 6. | A direction be issued that all the subsisting consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contracts, leases, granted in favour of Corporate Debtor or to which the corporate debtor is entitled to, shall, notwithstanding any provision to the contrary in their terms irrespective of the commencement of insolvency/ liquidation process shall under the Code, in relation to the Corporate Debtor be deemed to continue without disruption, for benefit of the Corporate Debtor and additional licenses, registrations and consent required by the Corporate Debtor, if any, be made available immediately. | Such a Carta Blanche cannot be granted. However, the Corporate Debtor is at liberty to apply to respective Authorities for any additional licenses, registrations, and consent, who would consider the reliefs and concessions as held by Hon'ble Supreme court in the spirit of the Code , which is to facilitate the corporate debtor as a going concern |
| 7. | A direction be issued that any non-compliance or any liability (current or prospective) towards any non-compliance of provisions of any law, | <i>Granted strictly in terms of the decision</i> by the Hon'ble Supreme Court in <i>Ghanashyam Mishra &</i> |

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| | rules, regulations, directions, notifications, circulars, guidelines, policies, licenses, approvals, consent or permissions (including with respect to taxes) for the period up to the Effective Date shall stand satisfied and no claim, liability, pecuniary or otherwise shall be prescribed in relation to any such Non Compliances and they shall deemed to be extinguished. | <i>Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd.</i> ⁵ |
| 8. | A direction be issued that the Corporate Debtor and/or Successful Auction Purchaser shall have a right to review and terminate any contract that was entered into prior to the commencement of corporate insolvency resolution process. | Since this is a 'going concern' sale, as such the buyer is free to take all decisions after the date of acquisition in light of the provisions of the individual contracts |
| 9. | A direction be issued that all inquiries, investigation and Proceedings (including in relation to or on account of Tax), whether civil or criminal, suits, claims, disputes, interests and damages 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 to any period prior to the Effective Date shall stand discharged and terminated. | <i>Granted</i> in terms of Section 32A of the Code. |
| 10. | On and from the Effective Date, all inquiries, investigations, proceedings, actions by the Central Bureau of Investigation (CBI) and Enforcement | <i>Granted</i> in terms of Section 32A of the Code. |

⁵2021 SCC OnLine SC 313 decided on 13.04.2021.

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| | Directorate (ED), FEMA Authorities or any other government investigating authorities, pending or threatened, present or future, in connection with the Corporate Debtor pertaining to any period prior to the Effective Date or arising on account of the acquisition shall be deemed to be withdrawn or dismissed or cancelled. | |
| 11. | On and from the Effective Date, any non-compliance of provisions of any laws, rules, regulations, directions, notifications, circulars, guidelines, policies, licenses, approvals, consents or permissions prior to the NCLT order date shall be deemed to be extinguished. | Granted in terms of extant laws which find the applicability of Section 238 of the IBC 2016. |
| 12. | On and from the Effective Date, all consents, licenses, permissions, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, required by the Corporate Debtor for its operations which have expired and not renewed shall be deemed to be renewed or revived. | Such a Carta Blanche cannot be granted. However, the Corporate Debtor is at liberty to apply to respective Authorities for any consents, licenses, permissions, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, required by the Corporate Debtor for its operations, who would facilitate such authorisations in the spirit of the Code to keep the Corporate Debtor as a "Going Concern." |
| 13. | A direction be issued that the promoter and non-public shareholding and public shareholding | <i>This shall be in accordance with the applicable provisions of</i> |

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| | (to the extent mentioned in the acquisition structure) in the Corporate Debtor shall be extinguished without any consideration, and rights and liabilities arising out of the same shall also be extinguished. | <i>the Companies Act 2013 and SEBI regulations and guidelines.</i> |
| 14. | A direction be issued that on and from the Effective Date, the status of the corporate debtor in the records of the Registrar of Companies be reflected as 'active' from the status of 'liquidation'. | <i>Granted</i> |
| 15. | A direction be issued to permit the Liquidator to issue 2,50,00,000 equity shares of face value of Rs. 10 each of the Corporate Debtor to the Successful Auction Purchaser or any of its Nominee(s). | <i>Granted, subject to the terms of sale.</i> |
| 16. | A direction be issued to permit the Successful Auction Purchaser to merge itself with the Corporate Debtor. | <i>Such direction cannot be Granted.</i> |
| 17. | A direction be issued to Registrar of Companies to adopt the amended Memorandum and Articles of Association of the Corporate Debtor as revised by the Successful Auction Purchaser. | <i>This shall be done in accordance with the laid down procedure in the Companies Act 2013 and necessary filings with the RoC shall be made.</i> |
| 18. | A direction be issued to permit the Successful Auction Purchaser to shift the Registered office of the Corporate Debtor from its present location to Diamond Prestige, 41A, A.J.C Bose Road, 8th Floor, Room No-801, Kolkata -700017 and the Registrar of Companies be directed to approve/accept the same without any approval of shareholders or any further formalities. | <i>Granted subject to necessary filings</i> |

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| 19. | A direction be issued that the Corporate Debtor may be renamed as “Shakambhari Elegant Limited” and the Registrar of Companies be directed to approve/accept the same without any approval of shareholders or any further formalities and all the rights entitlements privileges granted to the Corporate Debtor under the law and also as per this order shall continue to exist after the change of name of the Corporate Debtor. | <i>Not Granted and the same shall be subject to fulfilling necessary codal formalities</i> |
| 20. | A direction be issued that any liability in respect of any property tax or lease rent is waived off. | <i>Granted strictly as per the decision by the Hon’ble Supreme Court in Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd.⁶, wherein the pre-CIRP dues of the corporate debtor shall stand extinguished, if not claimed by the relevant authorities at the appropriate time.</i> |
| 21. | A direction be issued that On and from the Effective Date, the existing officials of the Corporate Debtor, past bankers, consultants, advisors, experts, auditors under various laws to cooperate under various laws and standards, advocates, as engaged by Corporate Debtor and its subsidiary(ies), to unconditionally cooperate and support in providing such information and explanations which he/they is/are reasonably | <i>Not Granted.</i> |

⁶2021 SCC OnLine SC 313 decided on 13.04.2021.

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InC.P. (IB) No. 1284/KB/2019*

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| | expected to possess or know with respect to the Corporate Debtor and its subsidiary(ies) and such right shall be available notwithstanding anything contained in any law for the time being in force providing for protection of privileged communication made by and with them. | |
| 22. | A direction be issued that on and from the Effective date, the name of the Corporate Debtor shall be removed from defaulter lists with Credit Information Companies both in India and abroad, RBI, Information Utilities under the IBC Code, wilful defaulter list if any etc. and to treat the account of the Corporate Debtor as standard and banks and other financial institutions to take necessary steps in this regard, if required. | <i>Granted</i> |
| 23. | A direction be to be issued to National Stock Exchange to recall the order dated 27th August 2021 for delisting of shares of the Corporate Debtor from National Stock Exchange which was passed in total and absolute violation of section 14 of the Code and such recalling of the order should be done within 45 days from the Effective Date or within 45 days of intimation of such violation by the Respondent herein and the Liquidator be directed to render the necessary assistance in this regard. | <i>The Successful Bidderhas to take up the matter with the concerned stock exchange</i> |
| 24. | A direction to be issued to National Stock Exchange and/or Bombay Stock Exchange and/or any other recognized stock exchange to ensure | <i>The Successful Bidderhas to take up the matter with the concerned stock</i> |

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| | listing of the shares of the Corporate Debtor and to restore the same status as it was prior to the de-listing without any further act or compliance or payment by the Corporate Debtor. | <i>exchange</i> |
| 25. | A direction to be issued to National Stock Exchange to waive any penalty or dues accrued on account of Corporate Debtor for the purpose of listing of the shares of the Corporate Debtor and the Corporate Debtor shall continue to be treated as a listed entity post the Effective Date. | <i>The Successful Bidder has to take up the matter with the concerned stock exchange</i> |
| 26. | Direction be issued that the Corporate Debtor shall not be responsible for any acts or deeds of the Flex Art Foil Limited and Ess Dee Pte Limited or no liabilities or disqualification should not be made attributable to the Corporate Debtor due to any acts or deeds or omissions by or pertaining to the said 2 companies, being Flex Art Foil Limited and Ess Dee Pte Limited. | <i>Granted to the extent of provisions of Section 32A of the Code and also strictly as per the decision of Hon'ble supreme court of India in the matter of Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd.⁷,</i> |
| 27. | Direction that any bond, surety, guarantee, power of attorney, contract, agreements, obligations, undertakings issued or entered into by the Corporate Debtor whether partly executed or not executed, either in India or outside India before the Effective date shall stand automatically cancelled and permanently revoked if the Corporate Debtor so desires. | <i>All business decisions are to be made by the Successful Bidder, duly observing the extant law.</i> |
| 28. | Direction that the Corporate Debtor shall not be responsible for payment obligations under any orders of court | <i>The decision by the Hon'ble Supreme Court in Ghanashyam Mishra &</i> |

⁷2021 SCC OnLine SC 313 decided on 13.04.2021.

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| | or tribunals that have been passed against the Corporate Debtor prior to the Effective Date and for which no claim has been lodged with the Liquidator. | <i>Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd,⁸ shall apply. Further reference may be drawn to the Judgment of Hon'ble High court of Rajasthan in the matter of EMC vs. State of Rajasthan in D.B. Civil Writ Petition No. 6048/2020 Connected With D.B. Civil Writ Petition No. 6204/2020</i> |
| 29. | A direction to be issued that the Sale of Corporate Debtor as going concern shall be binding on all utility providers and all the utility providers shall continue to supply the utilities/resume to supply the utilities to the Corporate Debtor, as may be required for operations of the Corporate Debtor. | <i>Granted, subject to payment of the resumption/reconnection's charges if any.</i> |
| 30. | Compliances under the applicable law for all the statutory appointments of the Corporate Debtor including but not limited to the appointment of statutory auditors, company secretary, KMP, others, etc. will be complied within a period of 12 (Twelve Months) from the Effective date and the non-compliance for no appointment for 12 months shall be deemed to be waived off/condoned. | <i>This shall be as per the extant law</i> |
| 31. | On and from the Effective Date, any non-compliance of provisions of any laws, rules, regulations, directions, notifications, circulars, guidelines, | <i>This shall be as per the extant law</i> |

⁸2021 SCC OnLine SC 313 decided on 13.04.2021.

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| | policies, licenses, approvals, consents or permissions prior to the NCLT order date shall be deemed to be extinguished. | |
| 32. | On and from the Effective Date, all consents, licenses, permissions, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, required by the Corporate Debtor for its operations which have expired and not renewed shall be deemed to be renewed or revived. | <i>This shall be as per the extant law</i> |
| 33. | On and from the Effective Date, the existing officials of the Corporate Debtor, past bankers, consultants, advisors, experts, auditors under various laws to cooperate under various laws and standards, advocates, as engaged by Corporate Debtor and its subsidiary(ies), to unconditionally cooperate and support in providing such information and explanations which he/they is/are reasonably expected to possess or know with respect to the Corporate Debtor and its subsidiary(ies) and such right shall be available notwithstanding anything contained in any law for the time being in force providing for protection of privileged communication made by and with them. | <i>Such direction cannot be Granted</i> |
| 34. | A direction be issued that on and from the Effective Date, the board of directors of the Corporate Debtor be reconstituted by removing the board of directors and appointing the new board nominated by the Successful | <i>Granted</i> |

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| | Auction Purchaser subject to affidavit and undertaking that the new board of directors are not disqualified under section 29A. | |
| 35. | <p>A direction be issued that the erstwhile Directors of the Corporate Debtor namely:</p> <p>a. Sudip Bijoy Dutta – DIN 00017052</p> <p>b. Madan Mohan Jain – DIN 00003580</p> <p>c. Gautam Mukherjee – DIN 00212505</p> <p>d. DebdeepSamaresh Bhattacharya – DIN 00464686</p> <p>e. DilipSobhagPhatarphekar – DIN 00002600</p> <p>Are removed from the board of directors of the Corporate Debtor on the Effective Date and appropriate instructions are issued to ROC, Kolkata.</p> | <i>Granted</i> |
| 36. | <p>A direction be issued that the new directors of the Corporate Debtor from the Effective Date, as proposed by Successful Auction Purchaser would be:</p> <p>a. Deepak Kumar Agarwal – Din 00646153</p> <p>b. Ashok Kumar Sharma – Din 09273096</p> <p>c. Swati Agarwala – Din 02401879</p> | <i>Granted</i> |
| 37. | <p>A direction be issued that the liquidator be empowered and permitted to issue equity shares to the extent decided by the Successful Auction Purchaser of the Corporate Debtor and the same shall be subscribed by the Successful Auction Purchaser or any of its nominee</p> | <i>Not granted.</i> |

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| | subject to compliance with Section 29A of the Code, in lieu of the “Liquidation Sale Amount” received by the Liquidator in the Liquidation account of the Corporate Debtor. | |
| 38. | A direction be issued that as the sale of Corporate Debtor as Going Concern is akin to implementation of resolution plan under the corporate insolvency resolution process all attendant benefits, privileges and exemptions under various laws, including under the taxation law, shall be applicable to the Corporate Debtor upon sale to the Successful Auction Purchaser, including but not limited to benefit of any tax holiday, exemption, deduction, carry forward of losses of any prior years and set-off against the income of any financial year as available to the Corporate Debtor, even in an eventuality where the Corporate Debtor does not remain listed in future, more so in view of compliance of the provisions of Section 79(2)(c) of the Income Tax Act, 1961, which apply mutatis mutandis to sale of the corporate debtor under going concern under liquidation. | <i>This shall be subject to the provisions of the extant law.</i> |
| 39. | A direction be issued that the Corporate Debtor and/or the Successful Auction Purchaser shall be granted an exemption from all Taxes, levies, surcharges, cess, fees, transfer charges, stamp duty, registration charges, transfer premiums, and surcharges that arise from or relate to implementation of Sale of Corporate | Such a Carta Blanche cannot be granted. The Successful Bidder would need to approach the Appropriate Authorities. |

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| | Debtor as a going concern under Liquidation. | |
| 40. | A direction may be issued allowing the filing of return of Income Tax and/or Revised Return of Income for the assessment year prior to the effective date without any penalty or costs. | Cannot be granted. The Successful Bidder would need to approach the Appropriate Authorities. |
| 41. | A direction may be issued directing the relevant tax authorities to allow 'setting off' of Losses and unabsorbed Depreciation for the purpose of Computation of Book Profit as permitted Under Sec 115JB of the Income Tax Act, 1961. | Cannot be granted. The Successful Bidder would need to approach the Appropriate Authorities. |
| 42. | A direction may be issued directing the relevant tax authorities to provide an exemption from any Tax Liabilities in terms of sec 115JB of Income Tax Act 1961. | Cannot be granted. The Successful Bidder would need to approach the Appropriate Authorities. |
| 43. | A direction may be issued directing the relevant tax authorities that any Write Back/written down of liabilities of the Corporate Debtor shall not be treated as taxable income of the Corporate Debtor/Respondent under the Income Tax Act, 1961 and any such write-offs shall be allowed as a tax deduction in the year of such write off. | |
| 44. | A direction be issued that the Respondent shall be at liberty to take all the steps required to make accounting entries for the smooth transmission and clearing the balance sheet. | Being a 'going concern' sale, the buyer is free to take all decisions after the date of acquisition in terms of the extant law. |
| 45. | No disability in terms of Section 29 A of the Corporate Debtor for any defaults made by the corporate debtor's subsidiaries. | <i>Not Granted</i> |

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| 46. | A direction may be issued that the exemption / relaxation provided under Regulation 158(2) and 170 of SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2018 and under Regulation 3(2) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2018, under Rule 19A(5) of the Securities Contracts (Regulation) Rules 1995 and under Regulation 31A of the SEBI (Listing and Disclosure Obligations) Regulations 2015 for reclassification of promoters and public shareholders available to a successful resolution applicant for a resolution plan under corporate insolvency resolution process approved by this Adjudicating Authority, shall apply mutatis mutandis to sale of the corporate debtor as a going concern under liquidation. | Cannot be granted. The Successful Bidder would need to approach the Appropriate Authorities. |
| 47. | That necessary exemption be provided to the Corporate Debtor from adding the words and reduce in its name, as required under the provisions of Companies Act, 2013. | This shall be in accordance with the Companies Act, 2013. |
| 48. | That all claims of the Corporate Debtor against third parties and its related parties shall remain outstanding, due and recoverable in accordance with their respective terms. Further, the Corporate Debtor shall be the sole beneficiary of any amount recovered by the Corporate Debtor post acquisition, previously written off by the Corporate Debtor and the Corporate Debtor/ Successful Auction Purchaser shall have full | <i>Since it is a going concern sale, these are to be taken care of in the regular course of business</i> |

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| | right to recover/ proceed against the party, whose account is recoverable in the books of Corporate Debtor as on the Effective Date and it shall be the sole beneficiary of the amount so recovered. | |
| 49. | The Corporate debtor shall be at liberty to rationalise the employee strength of the Corporate Debtor in order to keep it as a going concern; | Being a 'going concern' sale, and as such the buyer is free to take all decisions after the date of acquisition. |
| 50. | The charges registered with the ROC with respect to encumbrances over the assets of the Corporate Debtor shall be satisfied upon the completion of the sale of the Corporate Debtor as a going concern, and that the order passed by this Adjudicating Authority shall be sufficient proof for the Successful Bidder to satisfy the charge on secured assets with records of MCA, ROC and other statutory and regulatory authorities; | <i>Granted subject to fulfilment of the codal formalities</i> |
| 51. | A direction be issued that the assets not included in the sale process, as defined in the E-Auction Information Memorandum document, being proceeds if any out of the Application filed under Sections 43, 45, 49, 66 under IBC 2016 (preferential transaction, avoidance of undervalued transaction, transactions defrauding creditors, fraudulent transactions) shall not form of the E-Auction sale and proceeds if any shall be deposited in the Liquidation Account. Any cost legal or other as the case may be in regards to such application shall be payable out of Liquidation Account. | <i>Granted</i> |

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| 52. | The Liquidator shall continue to hold the bank account with HDFC BANK named 'Ess Dee Limited in Liquidation' till the entire proceeds received from the Successful Bidder are distributed to the Creditors in accordance with section 53 of IBC 2016. Further, a direction be given that Liquidator is empowered to issue directions to the banks to change the operating signatories of other bank accounts of the Corporate Debtor, wherever required. | <i>Granted</i> , till the entire proceeds is received from the Successful Bidder, and is being distributed to the Creditors in accordance with section 53 of the Code |
| 53. | The Corporate Debtor and/or the Successful Auction Purchaser shall be at liberty to seek remedy if any available before the Adjudicating Authority to address any difficulties faced with respect to implementation of the acquisition of the Corporate Debtor as a going concern; | <i>Granted, in respect of only those proceedings under any law for the time being in force, that would not have an overriding effect on provisions of The Code, 2016 and further provided that these are not against Public Policy of the India.</i> |

27. However, it is also noticed that there are some reliefs and waivers sought by the Applicant in *I.A. (I.B.C.) NO. 1295/KB/2022* which are not common, details of which are as follows;

| <i>S.No.</i> | <i>Reliefs and Waivers</i> | <i>Remarks</i> |
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| 1. | Relaxation under Regulation 170 of SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2018 to allot shares beyond 15 days of the EffectiveDate; | <i>Not granted. The matter should be taken up with SEBI</i> |
| 2. | Exemption under Regulation 3(2) of SEBI (Substantial Acquisition of Sharesand Takeovers) Regulations, 2011 from making a public announcement of an open offer | |

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| | pursuant to the sale as a going concern, the extended period prescribed under Rule 19A(5) of the Securities Contracts (Regulation) Rules 1995 to raise public shareholding to stipulated threshold, following a fall in public shareholding upon implementation of the sale as a going concern. | |
| 3. | Exemption under Regulation 31A of the SEBI (Listing and Disclosure Obligations) Regulations 2015 for reclassification of promoters and public shareholders, shall apply mutatis mutandis. | |
| 4. | Direction that the status of the Corporate Debtor shall continue to remain as a listed company in terms of the provisions of the Securities Contract (Regulation) Act, 1956, as amended, notwithstanding the fact that admission to dealing in the shares of the public shareholders, as reconstituted post reduction in the value of their shares as well as the new shares to be issued to the Successful Auction Purchaser, on the stock exchanges may take place only after following the extant guidelines provided by the Securities and Exchange Board of India. | <i>Not granted. The matter should be taken up with SEBI</i> |
| 5. | No disability in terms of Section 29A of the Insolvency and Bankruptcy Code 2016 of the Corporate Debtor for any defaults made by the corporate debtor's subsidiaries even after the Effective Date. | |
| 6. | Directions upon the relevant tax authorities from shifting of the tax files of the Corporate Debtor which was previously subject to Mumbai jurisdiction to Kolkata jurisdiction. | <i>Tax authorities to consider favourably in the spirit of the code.</i> |
| 7. | Direction that after the Effective Date, the Successful Auction Purchaser and/or the Corporate Debtor and its affiliates shall | <i>Granted only in respect of liabilities for the Pre-CIRP</i> |

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| | have no liabilities towards any third party, including towards the persons currently classified as promoter or promoter group (including the Existing Promoter Group), persons acting in concert with promoters, holding companies, subsidiary companies, associate companies, group companies and / or their respective affiliates / associates)G | <i>period.</i> |
| 8. | All benefits, privileges and exemptions under various laws, including under the taxation law, shall be allowed to the Corporate Debtor upon sale to the Successful Auction Purchaser, including but not limited to benefit of any tax holiday, exemption, deduction, depreciations, carry forward of losses of any prior years and set-off against the income of any financial year as available to the Corporate Debtor, even in an eventuality where the Corporate Debtor does not remain listed in future, more so in view of compliance of the provisions of Section 79(2)(c) of the Income Tax Act, 1961, which apply mutatis mutandis to sale of the corporate debtor under going concern under liquidation. | <i>This is for the relevant authorities to consider as per the extant law for the time being in force.</i> |
| 9. | On and from the Effective date, all regulatory approvals, licenses and contracts are sustained in the manner required by the Successful Auction Purchaser for maintaining the Corporate Debtor as a going concern. | <i>This shall be subject to the condition that the CD/SUCCESSFUL BIDDER would not have violated any of the conditions of the subsisting contract/approvals etc.</i> |
| 10. | Direction upon the Liquidator to file the application for closure of Liquidation under Regulation 45 of the Liquidation Process Regulations within 45 days from the | <i>Granted. The liquidator shall take expeditious steps to effect the</i> |

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| | Effective Date and discharge the Liquidator and total and absolute control of the Corporate debtor should be with the Successful Auction Purchaser. | <i>same.</i> |
| 11. | Direction upon the Liquidator to provide all the original title deeds and documents pertaining to land and factories and other assets of the Corporate debtor within a period of 15 days from the Effective Date. | <i>Granted in respect of the assets sold by the liquidator out of the liquidation estate</i> |
| 12. | The Corporate Debtor shall be allowed to participate in auction sale/ tenders/offers/ proposals of all departments/ authorities/ public sector undertakings from the Effective Date without having to submit the details on the past revenue, past performance, profitability records, net worth, etc; | <i>Granted. The relaxation may be granted by the concerned departments/PSUs for the time of initiation of CIRP and completion of liquidation sale.</i> |
| 13. | Neither should the Successful Auction Purchaser, nor the Corporate Debtor, or their respective directors, officers and employees appointed on and as on the Effective Date be held liable for any violations, liabilities, penalties or fines with respect to or pursuant to the Corporate Debtor not having in place requisite licenses and approvals including but not limited to the licenses issued by the Ministry of Environment, Forest and Climate Change, the Central Pollution Control Board and the State Pollution Control Board, required to undertake its business as per applicable law, or any non-compliances of applicable law by the Corporate Debtor; | <i>Granted to the extent of cover available under section 32A of IBC 2016.</i> |
| 14. | Direction upon the Liquidator to provide all the original and copies (where originals are not available) of licenses, permissions, agreements, contracts, files, documents of the Corporate debtor within a period of 15 days from the Effective Date. | <i>Granted to the extent that they are available with the liquidator.</i> |

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| 15. | Direction upon the Liquidator to complete the ROC filings of the audited accounts and Income Tax filings till the F.Y ending on 31st March 2022 and hand over the audited accounts and income tax filings. | <i>Granted</i> |
| 16. | Direction upon the Liquidator to hand over trial balance and accounts of the Corporate Debtor till the Effective Date within 7 days from the Effective Date. | <i>Granted to the extent that these are available with the liquidator</i> |
| 17. | A direction on the Liquidator to, immediately, 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; in the financial statements (Profit and Loss Account and the Balance Sheet) of the Corporate Debtor till the Effective date and necessary directions upon the Liquidator to file the said financial statements should be prepared and filed by the Liquidator with the relevant regulator such as Registrar of Companies, Income Tax Authorities, GST authorities etc. | <i>Not granted. The SUCCESSFUL BIDDER has to make all compliances as per the extant law.</i> |
| 18. | The Corporate Debtor should have a period of one (1) year from the Effective Date to rectify, modify, reinstate, renew and/or revalidate the licenses, lease, leave and license agreements / arrangements. At the time of renewal of licenses, approvals, consents, permissions attached to the Corporate Debtor, all the fees, cost or penalty pertaining to the period prior to NCLT Approval Date shall be waived off and the Corporate Debtor should not be liable to pay any fees/costs/penalty | <i>This is for the respective authorities to consider in order to keep the CD as a going concern.</i> |

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| | whether due or not. | |
| 19. | A direction upon the Liquidator that all the compliances for the period up to the Effective Date including filing of necessary documents and returns with the Registrar of Companies, Income Tax Authorities and any other Government Authorities should be completed. | <i>The liquidator shall make best endeavours, however the onus of compliances shall be on the SUCCESSFUL BIDDER.</i> |
| 20. | A direction to be issued to SEBI/NSE/BSE/Income Tax Authorities or any other authorities for vacating the orders passed in violation of moratorium under Section 14 and Section 33 of the IB Code, 2016 in respect of the Corporate Debtor. | <i>Granted to the extent that these precepts are covered under section 14 and Section 33 of IBC 2016.</i> |
| 21. | The Successful Auction Purchaser be permitted to merge itself with the Corporate Debtor. | <i>Granted. Necessary filings shall be done with the RoC.</i> |

28. Accordingly, the *I.A. (I.B.C.) NO. 1295/KB/2022* and *I.A. (IB) No. 1305/KB/2022 in CP (IB) No.1284/KB/2019* is disposed of.

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

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order signed on the 24th day of February, 2023

SA, LRA