

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 650 of 2020

[Arising out of orders dated 18.05.2020 in CA No. 1189/2019 & IA No. 132/2020 in CP(IB) No. 136/Chd/Hry/2018 passed by the Ld. Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh.]

IN THE MATTER OF:

M/s Shiv Shakti Inter Globe Exports Pvt. Ltd.

Through its Authorised Representative,

Registered Office at:

578/11, Link Road, Taraori,

Karnal, Haryana-132116.

..... Appellant.

Versus

1. M/s KTC Foods Private Limited

Through Liquidator, Mr. Anup Kumar Singh

Having Registered Office at 5 Milestone,

Karnal Road, Nissing, Haryana-132024.

..... Respondent No. 1.
(Corporate Debtor)

2. Anup Kumar Singh, (Liquidator)

Having office at: Ideal Plaza, S-405,

4th Floor, South Block, 11/1,

Sarat Bose Road, Kolkata-700020

..... Respondent No. 2.

Present:

For Appellant: Mr. Vijay K. Singh, Advocate.

For Respondents: Mr. Krishnendu Datta, Sr. Advocate with Mr. Anup Kumar Singh, Mr. Debarshi Dutta, Mr. Aayush Kevlani, Ms. Mehak Khurana, Advocates for R-2.

J U D G M E N T
(25th February, 2022)

Justice Anant Bijay Singh;

This Appeal has been preferred by the Appellant – ‘M/s Shiv Shakti Inter Globe Exports (P) Ltd.’ limited being aggrieved by the order dated 18.05.2020 passed by the Ld. Adjudicating Authority in CA No. 1189/2019 in C.P. No. IB-136/Chd/Hry/2018 whereby and where under the Ld. Adjudicating was pleased to partially allow CA No. 1189/2019 filed by the Liquidator. The Ld. Adjudicating Authority, while partially allowing the said CA 1189/2019 had *inter alia* directed closure of liquidation process of the Corporate Debtor K.T.C. Foods Private Limited without dissolution of K.T.C. Foods Private Limited. The Appellant is aggrieved by the impugned order as much as the Ld. Adjudicating Authority has denied the sale of the Corporate Debtor as a going concern to the Appellant without any liabilities including contingent liabilities and with immunity from existing litigations, if any, against the Corporate Debtor. The Ld. Adjudicating Authority has also denied the extinguishment of the remaining unpaid liabilities of the Corporate Debtor after distribution of the proceeds of the sale of Corporate debtor as a going concern as per the order of priority provided in Section 53 of the Insolvency and Bankruptcy Code, 2016 (**for short IBC**) as well as waiver from all the past non-compliances of the Corporate Debtor under applicable laws for the period prior to the e-auction.

2. The facts giving rise to this Appeal are as follows:

- i) The Appellant – ‘M/s Shiv Shakti Inter Globe Exports (P) Ltd.’ is a company registered under the provisions of the Companies Act, 1956 and was incorporated on 10.10.2012. The Operational Creditor namely M/s Ashok Kumar & Brother filed an Application under Section 9 of the IBC for initiating Corporate Insolvency Resolution Process **(for short CIRP)** against the Corporate Debtor before the Ld. Adjudicating Authority.
- ii) The Ld. Adjudicating Authority vide order dated 29.08.2018 was pleased to admit the aforesaid application and commenced the CIRP against the Corporate Debtor namely K.T.C. Foods Pvt. Ltd. and Mr. Mastram Chechi was appointed Interim Resolution Professional on 07.09.2018 However, in the second meeting, the Committee of Creditors approved the appointment of Mr. Anup Kumar Singh as the Resolution Professional.
- iii) Since, no Resolution Plan was received during the CIRP, the Committee of Creditors in the meeting held on 25.04.2019 passed resolution with 100% voting rights approving liquidation of the Corporate debtor and the Ld. Adjudicating Authority after considering the entire facts passed the liquidation order against the Corporate Debtor and appointed the Resolution Professional as the Liquidator.
- iv) After direction of liquidation, the Liquidator has made Public Announcement in the newspapers for inviting proof of claims from the Stakeholders of the Corporate Debtor in the specified Forms on or before 30.06.2019 and the same was also informed to the Insolvency and Bankruptcy Board of India.

v) That on or before the last date for submission of claim, the Liquidator had received one claim in Form D from Oriental Bank of Commerce, NCB Branch, Haryana and from eight Operational Creditors and no other claims were received in response to the said public Announcement made by the Liquidator.

vi) That during the process, the valuation reports were obtained from two valuers and since it came to the notice of the then Resolution Professional, that the estimates of the values provided are significantly different, the then Resolution Professional /Liquidator in compliance with Regulation 35(1)(b) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 appointed a third valuer being Crest Capital Group Private Limited as approved by the Members of the CoC in the third meeting of CoC on 12.03.2019. In compliance with Regulation 35(1) of the CIRP Regulations 2016, the average of estimates of the values provided were considered. As per the summary of the valuation the fair value is fixed at 24.63 Crores and liquidation value at 18.45 Crores.

vii) The liquidation estate of the Corporate Debtor was formed by the Liquidator after relinquishment of the Security Interest on the Assets by the only secured stakeholder who submitted their claim under the process being Oriental bank of Commerce.

viii) On 05.11.2019, the Liquidator issued sale notice for invitation of expression of interest for e-auction of the K.T.C. Foods Private Limited as per Regulation 32(e) Liquidation Process Regulation 2016 wherein the last date for submission of Requisite Forms, Affidavits, Declaration etc., by prospective

Bidders was scheduled on 11.11.2019, however, on receipt of several enquiries from other prospective bidders, the last date was extended till 18.11.2019 which was also last date for submission of earnest money deposits.

ix) That during the period 11.11.2019 to 18.11.2019 four Expressions of Interest were stated to be received and all prospective bidders were found to be in compliance under Section 29A of the Code. The Appellant herein, being the one of the bidders, also submitted the earnest money deposit of Rs. 1 Crore along with its bid on 18.11.2019.

x) The e-auction was conducted on 19.11.2019 from 3:00 PM till 5:00 PM. The Appellant also participated in the e-auction and successfully bid an amount of Rs. 18,45,86,646/- being 100% of the reserve price. The Letter of Intent was issued to the Appellant on 21.11.2019 declaring the prospective bidder as successful bidder and the Appellant deposited Rs. 17,42,86,646/- after netting off the process participation deposit of Rs. 3,00,000/- and earnest money deposit of Rs. 1,00,00,000/- accordingly.

xi) The sale certificate was issued on 26.11.2019 to the Appellant by the Liquidator where it was explicitly mentioned that the proceeds from sale of the Corporate debtor as a going concern shall be allocated for payment to respective creditors in terms of Section 53 of the Code. The post distribution of funds in compliance with Section 53 of the Code, the Liquidator handed over the possession of all assets of Corporate Debtor to the Appellant.

xii) The Liquidator filed an Application before the Ld. Adjudicating Authority under Regulation 45(3)(a) of Liquidation Process Regulations, for closure of liquidation process of the Corporate Debtor as per approval of Sale of the Corporate Debtor as a going concern to the Successful Bidder namely, M/s Shiv Shakti Inter Globe Exports Private Limited (Appellant herein). The following reliefs have been sought by the Liquidator in the aforesaid Application which is hereunder;

“ a. That the Hon’ble Tribunal may graciously be pleased to approve the closure of Liquidation Process of the Corporate Debtor under Regulation 53 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and sale of Corporate Debtor as a going concern to M/s Shiv Shakti Inter Globe Exports Private Limited, the highest bidder without any liabilities including contingent liabilities and with immunity from existing litigations, if any, against the Corporate Debtor by way of E-Auction at a total consideration of INR 18,45,86,646/- (Rupees Eighteen Crores Forty Five Lacs Eighty Six Thousand Six Hundred and Forty Six only);

b. That the Hon’ble Tribunal may graciously be pleased to approve the aforesaid sale of Corporate Debtor without its dissolution;

c. That the order be passed that after distribution of the proceeds of the Sale of Corporate Debtor as a Going Concern as per order of priority provided in Section 53 of the Insolvency and Bankruptcy Code, 2016, the remaining unpaid outstanding liabilities of the Corporate Debtor shall be extinguished;

d. Extinguishment of ownership of the equity shares of the existing equity shareholders and allotment of fresh shares of the Corporate Debtor in favour of M/s Shiv Shakti Inter Globe Exports Private Limited, the Successful Bidder;

e. All consequences of past non-compliances of the Corporate Debtor under applicable laws for the period prior to this E-Auction shall be waived;

f. Any other directions which the Hon'ble National Company Law Tribunal, Kolkata Bench may deem fit in the facts and circumstances of the matter.”

xiii) Vide order dated 18.05.2020, the Ld. Adjudicating Authority has held which is hereunder;

“Therefore, reading Section 54 of the Code with Regulation 32(e) of the Liquidation Process Regulations 2016, we consider it fit to direct closure of the liquidation process of K.T.C. Foods where it is being sold a going concern without directing dissolution of K.T.C. Foods.”

Hence this Appeal.

Submissions on behalf of the Appellant

3. The Learned Counsel for the Appellant during the course of argument and in his memo of Appeal along with Written Submissions submitted that the Appellant being aggrieved by the order dated 18.05.2020 passed by the Ld. Adjudicating Authority, Chandigarh Bench in C.A. No. 1189/2020 in C.P. (IB) No. 136/CHD/HRY/2018 wherein the Ld. Adjudicating Authority while partly allowing the Application (I.A. No. 1189/2020) has inter alia directed closure of the Liquidation process of the Corporate Debtor i.e. KTC Foods

Private Limited. However, prayer (c) and (e) of the IA No. 1189/2020 was rejected.

4. It is further submitted that the emergent cause of action to approach this Appellate Tribunal is the letter dated 18.06.2021 (at page 143-144 of the Appeal) issued by Uttar Haryana Bijli Vitran Nigam wherein the Appellant has been informed that an amount of Rs. 81,34,157/- is overdue against KTC Foods Private Limited (Respondent No. 1).

5. It is further submitted that the Appellant was never informed during the liquidation process about any liability of Uttar Haryana Bijli Vitran Nigam or any other liability on the Respondent No. 1 / Corporate Debtor. The e-auction process was conducted on 19.11.2019 and the Appellant successfully bid an amount of Rs. 18,45,86,646/-. The letter of intent was issued to the Appellant on 21.11.2019 (at page 84 to 122 of the Appeal) and further sale certificate was issued on 26.11.2019 (at page 123 to 124 of the Appeal). The post distribution of funds in compliance with Section 53 of the Code, the Liquidator handed over the possession of all assets to the Appellant being the successful bidder.

6. It is further submitted that while passing the impugned order the Adjudicating Authority completely ignored the principle that any liabilities including contingent liabilities with immunity from existing litigation if any against the Corporate Debtor stands extinguished. The impugned order erred by not giving any finding about extinguishment of prior liability and also by not giving any finding about the extinguishment of remaining unpaid liabilities of Corporate debtor after distribution of proceeds of the sale of

Corporate Debtor as a going concern as per the Order of priority provided in Section 53 of the Code.

7. It is further submitted that the Ld. Adjudicating Authority has failed to appreciate that a going concern sale in liquidation has to be distinguished from a going concern sale in general. In a going concern sale in liquidation, there cannot be a question of liabilities being a part of the undertaking, as that will be a case of business transfer and not a case of liquidation.

8. It is further submitted that it has never been the intention of the Code that the purchaser of the Corporate Debtor as a going concern would be liable to the past or contingent liabilities of the Corporate Debtor. Without prejudice, if the contention is accepted, then it would mean that the Corporate debtor after completing the cycle, from CIRP to liquidation, would still be at the same position.

9. The Ld. Counsel for the Appellant relied on a judgment in the case of **“State of Gujrat Vs. OL of kengold (India) Ltd.** reported in **MANU/GJ/0353/2008”** which is held as under:

“ 37 In view of this discussion and applying the law to the questions posed before the Court, the Court in its humble opinion takes the view that the applicants – auction purchasers and the Official Liquidator are right in their perception that the auction purchasers are not liable to discharge any of the liabilities pertaining to the pre-liquidation period of the Company in liquidation and all these attachments which are made on the assets of the Company in liquidation are required to be removed and the auction purchasers are entitled to get absolutely clear and

marketable title, free from all encumbrances of the pre-liquidation period of the Company in liquidation.”

10. It is further submitted that based on these submissions the impugned based is fit to be set aside and the Appeal be allowed.

Submissions on behalf of the Respondent No. 2

11. The Learned Sr. Counsel for the Respondent No. 2 during the course of argument and in his Reply Affidavit along with Written Submissions submitted that on 05.11.2019, the Respondent No. 2 issued a sale notice for invitation of expression of interest for e-auction of Respondent No. 1 company to be sold as a going concern *per* Regulation 32(e) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016. The e-auction was conducted on 19.11.2019 in which Shiv Shakti Inter Globe Exports Private Limited was the highest bidder of INR 18,45,86,646 (being 100% of the reserve price) and thus was declared successful in the e-auction process for Respondent No. 1 company's sale as a going concern.

12. It is further submitted that the sale proceeds were released on 25.11.2019 and sale certificate dated 26.11.2019 was issued to Shiv Shakti Inter Globe Exports Private Limited. The sale proceeds were then distributed in accordance with section 53 of the IBC. Accordingly, the entire amount of INR 18,45,86,646 was paid towards 13.17% of the admitted debt of Respondent No. 1 sole Financial Creditor, Oriental Bank of Commerce after its relinquishment of security interest over Respondent No. 1 fixed, current and non-current assets, through its email dated 05.10.2019 sent to Respondent No. 2.

13. It is further submitted that it is settled law that when the sale proceeds of a Corporate Debtor are duly distributed in the order of priority and in the manner prescribed by Section 53 of the IBC, no creditor of the Corporate Debtor can claim any share in such proceeds contrary to its rank in the order of priority under Section 53 of the IBC. Therefore, after distribution of sale proceeds in accordance with Section 53 of the IZBC, no other person or entity, including any Government entity, can claim any past unpaid or outstanding dues against the Corporate Debtor's purchaser as a going concern inasmuch as all such past unpaid or outstanding liabilities stand extinguished.

14. It is further submitted that in order to achieve effective revival of the Corporate Debtor after its sale as a going concern, the details of all its assets and liabilities are required to be included in the information memorandum so that its prospective purchasers are aware of the liabilities that they may have to face and provide for. In the present case, the Appellant is aggrieved by belated claims made against the Appellant after purchasing Respondent No. 1 company as a going concern, pertaining to Respondent No. 1 purported liabilities prior to its sale, when these claims were not even submitted with Respondent No. 2 in the prescribed form either during Respondent No. 1's CIRP or at the liquidation stage. The Respondent No. 2 respectfully submits that these claims cannot be foisted upon the Appellant. This is in view of the legislative intent to freeze/extinguish all claims so that the liquidation purchaser starts on a "*clean slate*" and is "*not flung with any surprise claims*", as held by the Hon'ble Supreme Court in the case of **"Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Assets Reconstruction Company**

Limited in Civil Appeal No. 8129 of 2019” at paragraphs 60, 61 and 86. As such, the doctrine of fresh/clean slate propounded by the Hon’ble Supreme Court in Committee of **“Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors., (2020) 8 SCC 531”** is equally applicable not only to the CIRP stage but also to sale as a going concern at the liquidation stage.

15. It is further submitted that while approving Respondent No. 1’s sale as a going concern, *inter alia*, the impugned order erred in disallowing Respondent No. 2’s prayer for extinguishment of Respondent No. 1’s remaining unpaid outstanding (past) liabilities (including contingent liabilities) after distribution of the sale proceeds in accordance with section 53 of the IBC.

16. It is further submitted that if the remaining past liabilities of a Corporate Debtor are not allowed to be extinguished even after its sale as a going concern and distribution of the sale proceeds in accordance with Section 53 of the IBC, its revival as a running establishment and a going concern cannot be achieved. It is no longer *res integra* that while approving a Corporate Debtor’s sale as a going concern in liquidation proceedings without its dissolution in terms of Regulation 32(e) of the Liquidation Process Regulations, it is essential to grant the necessary consequential reliefs, especially including:

a) extinguishment of the Corporate Debtor’s past/any remaining unpaid outstanding liabilities, prior to the corporate debtor’s sale as a going concern, after payment of sale proceeds distributed in accordance with Section 53 of the IBC; and

b) waiver of all past non-compliances of the corporate debtor under applicable laws, for the period prior to the corporate debtor's sale as a going concern;

So as to prevent the corporate debtor's purchaser from being saddled with unlimited and unforeseeable liabilities after purchasing the corporate debtor as a going concern and payment of the sale proceeds.

17. It is further submitted that the settled position of law on extinguishment of a corporate debtor's past liabilities after its sale as a going concern is also noted in the impugned order itself, which has relied on the decision of the Hon'ble NCLT, Hyderabad in Bank of India vs. Southern Online Biotechnologies Limited in IA No. 1038/2019 in CP (IB) No. 343/7/HDB/2018 (at page 71 of the Appeal), albeit without granting the necessary consequential reliefs as prayed for by Respondent No. 2. This position of law is echoed in various other decisions including the Hon'ble NCLT, Mumbai's orders in Gaurav Jain Vs. Sanjay Gupta in IA No. 2264 of 2020 in CP (IB) 1239/MB/2018 and in M/s. Elecon Engineering Company Limited Vs. M/s. Enviuro Bulk Handling Systems Private Limited in IA No. 741 of 2021 in CP (IB) No. 1319/MB/2017. Even so, the impugned order has erroneously disallowed Respondent No. 2's prayer for extinguishment of Respondent No. 1's past liabilities and other consequential reliefs in the present case, which is essential to ensure its effective revival as a going concern.

18. It is further submitted that in the above Appeal of the Appellant deserves and ought to be allowed by this Hon'ble Tribunal and Respondent No. 1's sale as a going concern ought to be upheld with the necessary

consequential directions (sought as prayers (c) and (e) in C.A. No. 1189 of 2019 in the Company Petition) for extinguishment of Respondent No. 1's past/remaining unpaid outstanding liabilities (including contingent liabilities) prior to its sale as a going concern, after payment of sale proceeds distributed in accordance with Section 53 of the IBC and waiver of all its past non-compliances under applicable laws, for the period prior to its sale as a going concern.

19. The Respondent No. 1 through Respondent No. 2 filed Written Submissions and supported the case and submissions of the Respondent No. 2.

FINDINGS

20. After hearing the parties and having gone through the pleadings made on behalf of the parties, we are of the considered view that the following facts are admitted in the instant Appeal.

- The Operational Creditor namely M/s Ashok Kumar & Brother filed an Application under Section 9 of the IBC for initiating CIRP against the Corporate Debtor before the Ld. Adjudicating Authority.
- The Ld. Adjudicating Authority vide order dated 29.08.2018 admitted the Application filed by the Operational Creditor and commenced the CIRP against the Corporate Debtor namely K.T.C. Foods Pvt. Ltd. and Mr. Mastram Chechi was appointed Interim Resolution Professional on 07.09.2018 However, in the second meeting, the Committee of Creditors

approved the appointment of Mr. Anup Kumar Singh as the Resolution Professional.

- Since, no Resolution Plan was received during the CIRP, the Committee of Creditors in the meeting held on 25.04.2019 passed resolution with 100% voting rights approving liquidation of the Corporate debtor and the Ld. Adjudicating Authority after considering entire facts passed the liquidation order against the Corporate Debtor and appointed the Resolution Professional as the Liquidator (Annexure P-3 at page 74 to 80 of the Appeal).
- The Liquidator has made Public Announcement in the newspapers for inviting proof of claims from the Stakeholders of the Corporate Debtor in the specified Forms on or before 30.06.2019 and the same was also informed to the Insolvency and Bankruptcy Board of India and that time no claim for Rs. 81,34,157/- or for any other amount was raised by the Uttar Haryana Bijli Vitran Nigam due against the Corporate Debtor, only one claim received from Oriental Bank of Commerce, NCB Branch, Haryana and from eight Operational Creditors.
- During the process, the valuation reports were obtained from two valuers and since it came to the notice of then Resolution Professional that the estimates of the values provided are significantly different, the then Resolution Professional /Liquidator in compliance with Regulation 35(1)(b) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 appointed a third valuer as approved by the Members of the CoC in the third meeting of CoC on 12.03.2019 being Crest Capital Group Private

Limited and in compliance with Regulation 35(1) of the CIRP Regulations 2016, considered the average of estimates of the values. As per the summary of the valuation the fair value is fixed at 24.63 Crores and liquidation value at 18.45 Crores (Annexure P-4 at page 81 of the Appeal).

- On 05.11.2019, the Liquidator issued sale notice for invitation of expression of interest for e-auction of the K.T.C. Foods Private Limited as per Regulation 32(e) Liquidation Process Regulation 2016 wherein the last date for submission of Requisite Forms, Affidavits, Declaration etc., by prospective Bidders was scheduled on 11.11.2019, however, on receipt of several enquiries from other prospective bidders, the last date was extended till 18.11.2019 which was also last date for submission of earnest money deposits.
- During the period 11.11.2019 to 18.11.2019 four Expressions of Interest were stated to be received during the period and all prospective bidders were found to be in compliance under Section 29A of the Code. The Appellant herein, being the one of the bidders, also submitted the earnest money deposit of Rs. 1 Crore along with its bid on 18.11.2019.
- The e-auction was conducted on 19.11.2019, the Appellant also participated in the e-auction and successfully bid an amount of Rs. 18,45,86,646/- being 100% of the reserve price. The Letter of Intent was issued to the Appellant on 21.11.2019 declaring the prospective bidder as successful bidder and the Appellant deposited Rs. 17,42,86,646/- after netting off the process participation deposit of Rs.

3,00,000/- and earnest money deposit of Rs. 1,00,00,000/- accordingly.

- It is also an admitted fact the sale certificate was issued on 26.11.2019 to the Appellant by the Liquidator wherein it was explicitly mentioned that the proceeds from sale of the Corporate debtor as a going concern shall be allocated for payment to respective creditors in terms of Section 53 of the Code (Annexure P-7 at page 123 to 124 of the Appeal).
- Post distribution of funds in compliance of Section 53 of the Code, the Liquidator handed over the possession of all assets of Corporate Debtor to the Appellant.
- The Respondent No. 2 (Liquidator) filed an Application on 29.11.2019 (Annexure P-8 at page 125 to 142 of the Appeal) before the Ld. Adjudicating Authority under Regulation 45(3)(a) of Liquidation Process Regulations, for closure of liquidation process of the Corporate Debtor namely K.T.C. Foods Private Limited.
- Vide letter dated 18.06.2020 the fact that Uttar Haryana Bijili Vitran Nigam informed the Appellant that an amount of Rs. 81,34,157/- is overdue against the Corporate Debtor – K.T.C. Foods Private Limited (Annexure P-9 at page 143 to 144 of the Appeal).

ORDER

21. Adverting to the contention of the Learned Counsel for the Appellant that the Adjudicating Authority has erred in denying the sale of the 'Corporate Debtor' as a 'going concern' to the Appellant without including any contingent liabilities, we hold that it is a settled law that when the sale proceeds of a

‘Corporate Debtor’ are duly distributed in the Order of priority and in the manner prescribed under Section 53 of the Code, claims of any other Creditor cannot be entertained contrary to the provisions entailed under Section 53; subsequent to the distribution of sale proceeds under Section 53 no other entity including any Government entity can claim any past unpaid or outstanding dues against the Appellant who has purchased the ‘Corporate Debtor Company’ as a ‘going concern’. It is significant to mention that the second Respondent/Liquidator has specifically submitted that even these claims by the Uttar Haryana Bijili Vitran Nigam were not submitted in the prescribed form either during the CIRP Process or at the Liquidation stage. We are of the considered view that at this stage subsequent to the sale of the ‘Corporate Debtor Company’ as a ‘going concern’, these claims cannot be foisted upon the Appellant. The scope and objective of the Code is to extinguish all claims specifically the ones which were not even made during the CIRP or in the Liquidation stage, to aid the purchaser of the Company as a ‘going concern’ to start on a ‘clean slate’. The Hon’ble Supreme Court in ‘*Ghanshyam Mishra & Sons Pvt. Ltd.*’ Vs. ‘*Edelweiss Asset Reconstruction Company Ltd. & Ors.*’, Civil Appeal No. 8129 of 2019 and in ‘*CoC of Essar Steel India Ltd.*’ Vs. ‘*Satish Gupta & Ors.*’ (2020) 8 SCC 531 has laid down the proposition that the purchaser of the Company even in the Liquidation stage cannot be burdened with past liabilities when it is not mentioned in the ‘Sale Notice’.

22. It is no longer *Res Integra* that while approving a ‘Corporate Debtor’ sale as a ‘going concern’ in Liquidation Proceedings without its dissolution in terms of Regulation 32(e) of the Liquidation Process Regulations, 2016, it is essential

to see that the 'Corporate Debtor' is not burdened by any past or remaining unpaid outstanding liabilities prior to the sale of the Company as a 'going concern' and after payment of the sale proceeds distributed in accordance with Section 53 of the Code. The Impugned Order in I.A. 889 of 2020 is modified to the extent that the sale of the first Respondent as a 'going concern' is upheld and the direction sought for in prayer (c) & (e) in CA No. 1189 of 2019 seeking extinguishment of past/remaining unpaid outstanding liabilities including contingent liabilities, prior to the sale as a 'going concern', after payment of sale proceeds distributed in accordance with Section 53 of the Code, is allowed.

This Appel is allowed to the extent indicated above.

23. Registry to upload the Judgment on the website of this Appellate Tribunal and send the copy of this Judgment to the Ld. Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh, forthwith.

[Justice Anant Bijay Singh]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

New Delhi

25th February, 2022

R. Nath.