

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II, HYDERABAD**



I.A. No. 1292/2022 in
C.P. (IB) No. 132/7/HDB/2019
Under Section 60(5) of the IB Code, 2016.

In the matter of
M/S I.C.S.A. (INDIA) LIMITED

Between:

Sri Byndia Srinivas;
Plot No. 144, Survey No. 261,
Sivapuri Colony, Manikonda,
Shivalayam Temple, Puppalagadda,
K.V. Rangareddy, Hyderabad
Telangana - 500089.

...Applicant/ Successful Bidder

A N D

Sri Nethi Mallikarjuna Setty,
Liquidator for I.C.S.A (India) Limited,
Plot No.1091, Khanamet, Madhapur,
Serilingampally Mandal,
Rangareddy, Hyderabad – 500081.

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

...Respondent/ Liquidator

Date of Order: 15.12.2022

Coram:

Justice Telaprolu Rajani, Member, Judicial

Sri Charan Singh, Member, Technical

Counsel present:

For the Applicant:

Mr. M. Maharshi Viswaraj, Advocate

For the Respondent:

Mr. Nethi Mallikarjuna Setty, Liquidator

Per : Bench

ORDER

1. This is an Interlocutory Application filed by the successful bidder (hereinafter referred to as the "Applicant"), in the e-auction for the sale of business of M/S I.C.S.A (India) Limited (hereinafter referred to as the "Corporate Debtor"), under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code, 2016"), seeking for the grant of the reliefs/ waivers/ concessions sought by the Applicant, which are tabulated in this Order.
2. Facts of the case are briefly recorded as under:
 - a) Corporate Insolvency Resolution Process was initiated against the Corporate Debtor vide order dated 21.10.2019 and the Respondent herein was appointed as the Interim Resolution Professional, who was subsequently confirmed as the Resolution Professional by the Committee of Creditors.
 - b) Since there were no resolution plans received, the Respondent had filed I.A. No. 579/2020, seeking for initiation of liquidation of the Corporate Debtor, which was ordered vide order dated 18.08.2020.
 - c) After being appointed as the Liquidator, the Respondent made a public announcement, dated 21.08.2020, in the English newspaper 'Business Line' in the states of Andhra Pradesh and Telangana state, 'Business Line' outside the states of Andhra Pradesh and Telangana state, and in the Telugu newspaper 'Prajashakti', in Form B, as per Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016 (hereinafter referred to as "Liquidation regulations"), for calling claims from the creditors, by 16.09.2020.
 - d) The Liquidator decided to proceed with the sale of the assets of the Corporate Debtor and subsequently issued an 'E-Auction/Sale Notice',



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dated 22.08.2022, for the sale of the assets of the Corporate Debtor, on a standalone basis ("as is where is basis", "as is what is basis", "whatever there is basis" and "no recourse basis") for a reserve price of Rs. 3,00,000/- . The date of the e-auction, as per the said sale notice was 13.09.2022.

- e) The Applicant had participated in the said e-auction and was declared the successful bidder, subsequent to which the Liquidator issued a 'Letter of Intent', dated 14.09.2022, to the Applicant.
- f) Pursuantly, the Applicant had remitted the sale consideration of Rs. 30,90,000/- in the following manner:

- a. Rs. 50,000/- as the Earnest Money Deposit,
b. Rs. 8,00,000/- vide Demand Draft dated 14.09.2022 and
c. Balance of Rs. 22,40,000/- vide Demand Draft dated 16.09.2022.



Submitting thus, the learned counsel appearing for the Applicant prayed that the reliefs in the form of waivers/ concessions as sought for, may be granted so that the operations of the Company may be carried out in a smooth and efficient manner post acquisition of the Company by the Applicant herein.

3. We have heard the learned counsel for the Applicant and the learned Liquidator. With regard to the reliefs sought for, the learned counsel for the Liquidator submits that the same may be considered on their merits.
4. The learned counsel for the Applicant submits that the sale of business and assets of the Corporate Debtor as a going concern, is consistent to the objectives of the Code, 2016. Therefore, certain reliefs and concessions have to be granted, so that the buyer gets the business/assets on a clean state. He also places reliance on the judgment of the Hon'ble Supreme Court in *Arun Kumar Jagatramka v. Jindal Steel And Power Ltd. & Another* [2021 7 SCC 474], wherein it was held that it is now an established principle of law that

there are three modes in which a revival is contemplated under provisions of the Code, i.e., i) Corporate Insolvency Resolution Process (CIRP); ii) Sale of CD or its business as a going concern; iii) revival under Section 230 of the Companies Act, 2013.

5. Similarly, a judgment of the Hon'ble NCLAT in *Mohan Gems & Jewels Private Limited v. Vijay Verma & Anr* [2021 SCC Online NCLAT 305] also held that sale of the Corporate Debtor as a going concern during liquidation is a mode of revival. The learned counsel submits that similar reliefs and concessions have been granted by many co-ordinate Benches of this Adjudicating Authority. One such order, dated 09.03.2022, is passed in *State Bank of India v. Coastal Projects Limited* in C.P. (IB) No.593/KB/2017 and another order, dated 09.03.2021, is passed in *Bank of Baroda v. Topworth Pipes & Tubes Private Limited* [2021 SCC Online NCLT 489].

6. Having heard the learned counsels for the parties and on a perusal of the record, we are of the considered view that the reliefs as tabulated below, in the form of waivers and concessions, can be granted for the smooth transition of the Corporate Debtor.

7. We, therefore, grant the waivers and concessions sought for, as follows:

Sl. No.	Relief sought	Precedent, if any	Observation
1.	That upon the payment of the entire Sale Consideration, the Board of directors of the Company shall be reconstituted as per provisions of Companies	Para 34(f) in Bank of Baroda v. Topworth Pipes & Tubes Pvt Ltd, dated 09.03.2021 [2021 SCC Online NCLT 489]	Granted, However, the Company shall file all necessary

	Act and permit the Applicant herein to appoint new members on the Board of the Company and direct the Registrar of Companies to do all such acts deeds and things that are necessary to appoint the new directors; 	Para II in M/S Elecon Engineering Company Ltd. v. Enviiro Bulkk Handling Systems Pvt. Ltd., dated 21.06.2021 [C.P. (IB) No.1319/MB/2017] Para 14(K) in State Bank of India v. Coastal Projects Ltd., dated 09.03.2022 [T.P. (IB) No.255/CTB/2019 (earlier CP(IB) No.593/KB/2017)]	forms and applications, along with applicable fee, with the concerned Registrar of Companies, if required.
2.	That post acquisition of the Corporate Debtor by the Applicant, the Applicant shall be entitled to all right, title and interests of the Corporate Debtor including the contracts in the name of the Corporate Debtor, without any security interest, encumbrance, claim, counter claim, or any demur onto the Applicant and the sale proceeds shall be distributed in accordance with the provisions	Para 34 (b) in Bank of Baroda v. Topworth Pipes & Tubes Pvt Ltd, dated 09.03.2021 [2021 SCC Online NCLT 489] Para 15 in SREI Equipment Finance Ltd v. M/S Vishwa Infrastructures & Services Pvt Ltd., dated 30.06.2021	Granted.

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	as given in Section 53 of the Code, 2016; 	[C.P. (IB) No.329/7/HDB/2018] Para 14(D) in State Bank of India v. Coastal Projects Ltd., dated 09.03.2022 [T.P. (IB) No.255/CTB/2019 (earlier CP(IB) No.593/KB/2017)]	
3.	That all the dues and liabilities payable to the creditors of the Corporate Debtor, including financial creditors, operational creditors, and all liabilities including governmental, statutory dues such as income-tax dues, GST, provident fund, ESI, workmen related dues and all other third-party liabilities against the Corporate Debtor whether direct or indirect, whether admitted or not, due or contingent, asserted or unasserted, crystalized or uncrystalized, known or unknown, secured or unsecured, disputed or undisputed, confirmed or	Para 34(c) in Bank of Baroda v. Topworth Pipes & Tubes Pvt Ltd, dated 09.03.2021 [2021 SCC Online NCLT 489] Para 12 in SREI Equipment Finance Ltd v. M/S Vishwa Infrastructures & Services Pvt Ltd., dated 30.06.2021 [C.P. (IB) No.329/7/HDB/2018] Para 14(E) in State Bank of India v. Coastal Projects Ltd., dated 09.03.2022 [T.P. (IB) No.255/CTB/2019]	Granted, since it is sale as a going concern, the Applicant is not to be saddled with the liabilities existing prior to the Effective Date.

	unconfirmed, present or future, in relation to any period prior to the sale or arising on account of the acquisition of control by the Applicant over the Corporate Debtor pursuant to the e-auction, shall be written off in full and shall stand permanently extinguished;	(earlier CP(IB) No.593/KB/2017)]	
4.	That all the cases pending/decreed against the Corporate Debtor by any Court and/or Tribunal and/or any quasi-judicial authority shall not be enforceable against the Applicants or the Corporate Debtor. That any proceedings against the Corporate Debtor pending or threatened, present or future, as on date of the judgment, with respect to its liabilities, enquiries, investigations, assessments, claims, disputes, litigations etc. would not have any bearing against the Corporate Debtor or the Applicant;	Para II (d) in M/S Elecon Engineering Company Ltd. v. Enviiro Bulkk Handling Systems Pvt. Ltd., dated 21.06.2021 [C.P. (IB) No.1319/MB/2017]	Granted.



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5.	That upon transfer of the entire bid amount/Sale consideration, the status of the Corporate Debtor in the ROC records shall be restored to 'active' from the status of liquidation;	Para II (f) in M/S Elecon Engineering Company Ltd. v. Enviiro Bulkk Handling Systems Pvt. Ltd., dated 21.06.2021 [C.P. (IB) No.1319/MB/2017] Para 14(J) in State Bank of India v. Coastal Projects Ltd., dated 09.03.2022 [T.P. (IB) No.255/CTB/2019 (earlier CP(IB) No.593/KB/2017)]	Granted. The concerned Registrar of Companies shall take steps in this regard, immediately after the copy of this Order is filed in the forms, as prescribed.
6.	That the Corporate Debtor shall be exempted from payment of registration fees/stamp duty and other local levies, taxes, duties with respect to transfer of bid amount/Sale Consideration. 	A similar clause with regard to a Resolution Plan was not granted by the NCLT, Kolkata Bench and it was stated that the Resolution Plan cannot be in violation of any law for the time being in force. Therefore, if there are any documents on which stamp duty is required to be paid, or in respect of which non-registration will	Not granted.

		have adverse consequences, they shall apply with full force and no waiver can be granted in this regard.	
7.	That as the Applicant is acquiring the Corporate Debtor on "as is where is" basis, under Liquidation, all the subsisting consents, licences, approvals, rights, entitlements, intellectual property rights such as trademarks, copyrights, designs etc, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor including benefits of brought-forward losses or benefits to which the Corporate Debtor is entitled or accustomed to, shall, notwithstanding any provision to the contrary in their terms, be deemed to continue without disruption for the benefit of the Corporate Debtor, and all additional licenses, registrations and consents to	Para 14(L) in State Bank of India v. Coastal Projects Ltd., dated 09.03.2022 [T.P. (IB) No.255/CTB/2019 (earlier CP(IB) No.593/KB/2017)] 	Granted, subject to the payment of renewal fee etc., if any, on such licenses, registrations, benefits etc.

	operate required by the Corporate Debtor shall be made available immediately upon payment of the entire bid amount/Sale Consideration.		
8.	That the Corporate Debtor under the new management shall be entitled to pursue all present and pending arbitration proceedings, recovery suits filed before any Court, Tribunal or forum under the law.		Granted.
9.	That the Corporate Debtor shall have a right to review and terminate any contract that was entered into prior to the Liquidation Order date. 	Para 34(h) in Bank of Baroda v. Topworth Pipes & Tubes Pvt Ltd, dated 09.03.2021 [2021 SCC Online NCLT 489] Para 14 in SREI Equipment Finance Ltd v. M/S Vishwa Infrastructures & Services Pvt Ltd., dated 30.06.2021 [C.P. (IB) No.329/7/HDB/2018] Para II (j) in	Granted.

		M/S Elecon Engineering Company Ltd. v. Enviiro Bulkk Handling Systems Pvt. Ltd., dated 21.06.2021 [C.P. (IB) No.1319/MB/2017] Para 14(N) in State Bank of India v. Coastal Projects Ltd., dated 09.03.2022 [T.P. (IB) No.255/CTB/2019 (earlier CP(IB) No.593/KB/2017)]	
10.	That the Liquidator be directed to ensure completion of pending filings with the concerned RoC, Income Tax Authorities and any other Government/Statutory Authorities as may be required under the law. 	Para 34(p) in Bank of Baroda v. Topworth Pipes & Tubes Pvt Ltd, dated 09.03.2021 [2021 SCC Online NCLT 489] Para 18 in SREI Equipment Finance Ltd v. M/S Vishwa Infrastructures & Services Pvt Ltd., dated 30.06.2021 [C.P. (IB) No.329/7/HDB/2018]	Granted.

		Para 14(K) in State Bank of India v. Coastal Projects Ltd., dated 09.03.2022 [T.P. (IB) No.255/CTB/2019 (earlier CP(IB) No.593/KB/2017)]	
11.	That any and all dues to, taxes, liabilities or obligations payable to, claims, assessments, counter claims, demands, actions or penalties, fines, levies, cesses, additions or any other charges made or imposed by (including but not limited to all interests, damages, losses and expenses and all liabilities in relation to any consent, approval, license, certificate, privilege, granted to the Corporate Debtor or in relation to the Corporate Debtor, whether subsisting or not, any government dues claim or not claimed, disputed in any court, authority or assessing officer, demanded or not, shall stand permanently extinguished and the Corporate Debtor shall		Granted, since it is sale as a going concern, the Applicant is not to be saddled with the liabilities prior to the Effective Date.

	not be liable for the same in any manner. That any liability on all cases related to VAT, Excise, Central Sales Tax, GST, TDS, Income Tax with any Court, Assessing Officer, Tribunal post payment of the bid amount/Sale consideration by the Applicants, shall stand permanently extinguished;		
12.	The Corporate Debtor shall have a right over receivables of the Corporate Debtor and to recover any amount due to the Corporate Debtor from any third party including past buyers, any related parties of the Corporate Debtor as mentioned in the audited financial statements. There shall be no set off of any such amounts recoverable by the Corporate Debtor against any amount paid by the Corporate Debtor or any liability discharged, satisfied, or extinguished pursuant to this sale.		Granted.

13.	Upon completion of taking control of the Corporate Debtor as a whole 'as a going concern', all the assets shall continue to be assets of the Corporate Debtor, towards which the Applicant has made payment.		Granted.
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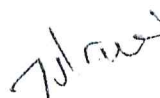
8. A perusal of the aforementioned judgments would show that the reliefs as mentioned in the above table were granted by co-ordinate benches. Hence, this Application is accordingly allowed with the observations as made hereinabove.

9. In the result, the instant Application is disposed of, in terms of the directions made hereinabove.



(Charan Singh)
Member, Technical




(Justice Telaprolu Rajani)
Member, Judicial


20/12/22

Deputy Registrar / Assistant Registrar / Court Officer
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER. CP(132) No. 132/7/HDB/2019
निर्णय का तारीख
DATE OF JUDGEMENT. 15/12/22
प्रति तैयार किया गया तारीख
COPY MADE READY ON. 20/12/22