



भारत सरकार/Government of India

फलता विशेष आर्थिक क्षेत्र/FALTA SPECIAL ECONOMIC ZONE

वाणिज्य विभाग/Department of Commerce

वाणिज्य और उद्योग मंत्रालय/Ministry of Commerce & Industry

निज़ाम पैलेस, दूसरा एमएसओ भवन, चौथी मंजिल/Nizam Palace, 2<sup>nd</sup> MSO Building, 4<sup>th</sup> Floor

234/4 एजेसी बोस रोड, कोलकाता-700 020/ 234/4 AJC Bose Road, Kolkata-700 020;

टेलीफोन /Phone:2287-2263,2287-7923,2281-3117; फैक्स /Fax : (033)2287-3362;

ईमेल /Email: fsez@nic.in; वेबसाइट /Website: <http://fsez.gov.in>



No. C-35011/01/2021-FSEZ (EOU)/

Date: 20.06.2023

To

1. The Additional Director General of Foreign Trade,  
Government of India,  
Ministry of Commerce & Industry,  
4, Esplanade East, Kolkata-700069.
2. The Dy. Commissioner of Customs,  
Barasat Customs Division,  
15/1, Strand Road, M. S. Building, 4<sup>th</sup> Floor,  
Kolkata-700001.

Subject: Agenda for 5<sup>th</sup> Unit Approval Committee (UAC) meeting for 100% EOUs in respect of M/s Modern India Con-cast Pvt. Ltd., scheduled to be held on **27-06-2023 at 1.00 P.M.**-regarding

Sir,

The 5<sup>th</sup> Unit Approval Committee (UAC) Meeting for 100% EOUs is scheduled to be held on 27-06-2023 at 1.00 P.M. at 2<sup>nd</sup> MSO Building, 4<sup>th</sup> Floor, Nizam Palace, Kolkata through Hybrid Mode under the Chairmanship of Zonal Development Commissioner, Falta Special Economic Zone.

2. The Agenda for the meeting & Link for VC will be sent shortly.
3. Therefore, it is requested kindly to make it convenient to attend the meeting on the aforesaid date & time.

Yours faithfully,

*Abhishek Sanyal* 20/06/23  
(Abhishek Sanyal)

Deputy Development Commissioner  
&  
Head of Office



## AGENDA FOR 5<sup>TH</sup> EOU UAC MEETING TO BE HELD ON 27.06.2023

### Agenda no. 1: Request of new management of M/s Modern India Con-Cast Limited for 100% EOU status.

The 100% EOU Letter of Permission (LOP) No. 2(1)/M-23/2008/466 dated 05.05.2008 of M/s Modern Indian Con-Cast Limited (hereinafter referred as unit), for manufacture and export of Ferro Manganese and Silico Manganese from its factory at Bhuniaraichak, J.L - 122, Haldia, Purba Midnapur, West Bengal, expired on 24.02.2020.

Prior to expiry of the LOP, on 22.10.2019 the unit went into Corporate Insolvency Resolution Process (CIRP) by the order of Hon'ble National Company Law Tribunal, Kolkata Bench (hereinafter referred as NCLT) vide order reference No. CP(IB) No. 723/KB/2019 dated 22.10.2019 (copy attached as Annexure I).

On 04.01.2022 NCLT ordered liquidation of the unit as 'Going Concern' vide order reference No. IA(IB) No. 756/KB/2021 (copy attached as Annexure II). Orders amongst others relevant to the agenda are briefed below:

- i. All subsisting consents, licenses, approvals, rights, entitlements, benefits and privileges granted in favor of the unit shall be deemed to continue without disruption for the benefit of the unit and shall be renewed/regularized on payment of renewal fees (if any) to the licensing authority [ref: **Sl. No. 12.5.3(a,b) of the order**].
- ii. From the date of acquisition the Board of Directors of the unit shall be reconstituted as per the Company Act 2013 by removing the erstwhile directors of the unit and appointing new directors [ **ref: Sl.No. 12.5.1(d) of the order**].
- iii. Since it is a 'Going Concern' sale, the buyer of the unit (new management) should not be saddled with the liabilities prior to the issue of sale certificate [ref: **Sl. No. 12.6.4 (e,f,g,h,i) of the order**].

Accordingly, the new management of the unit vide letter No. NIL dated 22.06.2022 requested for the 100 % EOU license (copy attached as Annexure III).

#### **Relevant provisions of Foreign Trade Policy & Hand Book of Procedures, 2023:**

- a. Para 6.1 (h) : "On completion of validity of LOP/LOI as provided for in paragraph 6.05 of FTP, it shall be open to unit to continue under scheme or opt out of scheme. Where unit opts to continue, DC/Designated Officer will extend validity of the LOP/LOI .....".
- b. Para 6.1 (c) : ".....Once unit commences production, LOP/LOI issued shall be valid for a period of 5 years for its activities. This period may be extended further by DC for a period of upto 5 years at a time.....".
- c. Para 6.34 (f) : " DC/Designated Officer shall have power to authorize change in name of company or implementing agency and change from a company to another provided new implementing agency/company undertakes to take over assets and liabilities of existing unit".

**In view of above, and to comply the orders of Hon'ble NCLT, following are placed before UAC for approval:**

1. Renewal of unit's EOU LOP no. 2(1)/M-23/2008/466 dated 05.05.2008 for 5 years w.e.f. 23.02.2020.
2. Reorganization of the unit (i.e. change in name of Directors).

(Annexure-I)

**Jayshree Bhandari**

Insolvency Professional  
Regn. No IBBI/PA-001/IP-P01174/2018-19/11838  
E: ip.bhandarijayshree@gmail.com  
M: 9831270975

Sunrise Towers, Flat 5L  
134B Beliaghata Road, Kol 700015

To,

29/10/2019

**Mr. Ratan Nandan**

**ADC**

**Falta Special economic Zone**

Ministry of Commerce and Industry, Government of India  
4th Floor, 2nd Floor MSO Building, Nizam Palace  
234/4 AJC Bose Road, Kolkata 700020  
Ph:033 22872263/7923/22813117/9674309054  
Email : fsez@nic.in



**Subject: Intimation for the initiation of the Corporate Insolvency Resolution Process (CIRP) and appointment of the Interim Resolution Professional (IRP) in the matter of Modern India Con Cast Limited(CIN: U27106WB1987PLC042166).**

**Ref:LOP No.2(1)/M-23/2008/466 dt.05.05.2008 renewal vide no.2(1)/M-23/2008/3715 dt.14.1.2015, Green Card no. 504 valid till 23.02.2020**

Dear Sir/Madam,

This is to inform you that, CIRP of Modern India Con Cast Limited commenced by the order of National Company Law Tribunal, Kolkata Bench, Kolkata (NCLT) on 22nd October 2019. The copy of the NCLT order reference no. CP(IB) No.723/KB//2019 is enclosed for your kind perusal.

The NCLT vide its above-mentioned order has been pleased to appoint me i.e. Mr. Jigar Shah, Insolvency Professional having Registration No. IBBI/PA-001/IP-P01174/2018-19/11838, as the Interim Resolution Professional (IRP), in accordance with Section 16 of The Insolvency Bankruptcy Code, 2016 (Code).

The Interim Resolution Professional has made a public announcement on 26/10/2019 in Form-A which is circulated in the newspapers Financial Express (English) and Aajkaal (Bengali). A copy of the public announcement is enclosed for your kind perusal.

As per section 17 of the Code, the powers of the Board of Directors of Modern India Con Cast Limited stand suspended and such powers shall be vested with me, i.e. the Interim Resolution Professional appointed by the order of the NCLT. Moreover, as per the provisions of Section 17(1) (d) of the Code, the financial institutions maintaining the bank accounts of The Corporate Debtor shall act on the instructions of the Interim Resolution Professional in relation to such accounts.

*Jayshree Bhandari*  
**JAYSHREE BHANDARI**  
Insolvency Professional  
Regn. No. IBBI/PA-001/IP-P01174/2018-19/11838

It may further be noted that in consonance with the stipulations contained in section 14 of the code,

- (1) Subject to provisions of sub section (2) and (3), on the insolvency commencement date a moratorium has been declared vide the aforesaid order passed by NCLT ,whereby , inter alia, the following shall be prohibited :
  - a) The institution of suits or continuation of pending suits or proceedings against the Corporate debtor including execution of any judgment , decree or order in any court of law , tribunal, arbitration panel or other authority ;
  - b) Transferring , encumbering , alienating or disposing of by the Corporate debtor any of its assets or any legal right or beneficial interest therein;
  - c) Any action to foreclose ,recover or enforce any security interest created by the Corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and enforcement of Security Interest Act ,2002 ;
  - d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- (2) The supply of the essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- (3) The provision of subsection (1) shall not apply to such transactions as may be notified by the central government in consultation with any financial regulator.
- (4) The order of moratorium shall have effect from the date of such order till the completion of the CIRP. Provided that where at any time during the CIRP, if Adjudicating Authority approves the resolution plan under sub - section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33 ,the moratorium shall cease to effect from the date of such approval or liquidation order, as the case may be.

This instant intimation w.r.t initiation of CIRP and appointment of Interim Resolution Professional is for your information and record.

Kindly acknowledge the receipt of this document.

Thanking you,

Yours faithfully, *Jayshree Bhandari*  
**JAYSHREE BHANDARI**

*Insolvency Professional*

Regn. No. IBBI/1PA-001/IP-P01174/2018-19/11838

In the Capacity of the Interim Resolution Professional

For Modern India Con Cast Limited

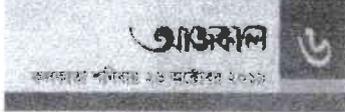
IBBI/1PA-001/IP-P01174/2018-19/11838

Enclosed:

- (a) A copy of the NCLT order dated [date of the order]
- (b) A copy of the Public Announcement made under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

# আজকাল

● কলকাতা  
● শিলিগুড়ি  
● আগরতলা



**ফর্ম এ**  
**প্রকাশ্য ঘোষণা**  
হিনসলভেন্সি আন্ড ব্যান্ডরাপ্টিসি বোর্ড অফ ইন্ডিয়া (হিনসলভেন্সি রিজেলিউশন প্রসেস কর্পোরেট পার্টনারস) রেগুলেশনস, ২০১৬-এর জন্য রেগুলেশন ৬ অধীনে।  
মর্ডান ইন্ডিয়া কনক্রিট প্রাইভেট লিমিটেড-এর স্বন্দাভাগ্যের অবগতির জন্য

দরকারী তথ্যাবলি	
১. কর্পোরেট রেজিস্টার নাম	মর্ডান ইন্ডিয়া কনক্রিট লিমিটেড
২. কর্পোরেট কনস্ট্রাক্টর স্থাপনের তারিখ	১ অক্টোবর, ২০১৯
৩. যে কর্তৃপক্ষের অধীনে এই কর্পোরেট কনস্ট্রাক্টর স্থাপিত/নির্মাণ করছেন	রেজিস্টার অফ কোম্পানি, কলকাতা
৪. কর্পোরেট কনস্ট্রাক্টর কর্পোরেট অটোরেকর্ডিং নম্বর /সিআইডিএস লায়সেন্সিং আইরেকর্ডিং সিস্টেম নম্বর	CIN: U27106WB1987PLC042168
৫. কর্পোরেট কনস্ট্রাক্টর রেজিস্টার কর্তৃক এবং মুদ্রা অফিস (যদি থাকে) ত্রিকার	৯মি, 'এডভান্স' এনসি, গুডহুডল স্ট্রিক মোড়, কলকাতা-৭০০০১১
৬. কর্পোরেট অফিসঘরের পোন-সংখ্যার প্রকৃত তারিখ	২২.১০.২০১৯
৭. পোন [redacted] রেজোলিউশন গ্রহণের তারিখ	১৯.০৯.২০১৯
৮. ইন্টেরিম রিজোলিউশন প্রসেসনাল হিসেবে ক্রিস্টাল ইনসলভেন্সি প্রসেসনালের নাম এবং রেজিস্ট্রেশন নম্বর	জুজুী ভাওয়ারী, রেজি নং IBBI/PA-001/IP-P01174/2018-19/11838
৯. কেবল নথিভুক্ত ইন্টেরিম রিজোলিউশন প্রসেসনালের ত্রিকার এবং ই-মেইল আইডি	সদরইজ সিআইডি প্রাইভেট লিমিটেড, ১০৬মি, সেলফোনি মোড়, কলকাতা-৭০০০১২ ইমেইল: ip.bhandarijayshree@gmail.com
১০. ইন্টেরিম রিজোলিউশন প্রসেসনাল-এর সঙ্গে যোগাযোগের জন্য ব্যবহার্য ত্রিকার এবং ই-মেইল আইডি	আরমণ্ডা রেজি, ক্রম নং ১১৬ ২য় তল, ৪১এ, এডভান্স মোড়, কলকাতা-৭০০০১১ ইমেইল: arpmc@gmail.com
১১. যদি সেল করার শেষ তারিখ	০৪.১১.২০১৯
১২. ইন্টেরিম রিজোলিউশন প্রসেসনাল দ্বারা স্বন্দাভাগ্যের নং ২১-এর উপযোগ-এর প্রকৃতি অধীনে স্বন্দাভাগ্যের (যদিহয়) রেজি	প্রসেসনাল নং
১৩. একটি রেজিডে স্বন্দাভাগ্যের অনুমোদিত প্রতিমিমা হিসেবে ক্রিস্টাল ও ডিক্লার ইন্টেরিম রেজোলিউশন প্রসেসনালের নাম (যদি রেজি জন্ম ক্রিস্টাল নাম)	প্রসেসনাল নং
১৪. (ক) সম্পর্কিত কর্মসূচির এবং (খ) অনুমোদিত প্রতিমিমির তথ্যাবলি কেবলমাত্র উপস্থাপন রয়েছে	ওয়েবসাইট: <a href="https://ibbi.gov.in/home/downloads">https://ibbi.gov.in/home/downloads</a> ব্যবহার্য ত্রিকার প্রসেসনাল নং

এতদ্বারা এই বিজ্ঞপ্তি জারি করা হচ্ছে যে, কলকাতা কোম্পানি অফ ইন্ডিয়া- ২২.১০.২০১৯ তারিখ মর্ডান ইন্ডিয়া কনক্রিট লিমিটেডের ক্ষেত্রে একটি কর্পোরেট রিজোলিউশন প্রসেস করণের আবেদন বিহীন মর্ডান ইন্ডিয়া কনক্রিট লিমিটেড-এর স্বন্দাভাগ্যের একতরফা স্বন্দাভাগ্যের আবেদন করা হয়েছে যাতে জগা মধ্যম প্রমণের তারিখ তারিখটি ০৪.১১.২০১৯ তারিখের মধ্যে ওপরে ক্রম নং ১০-তে উল্লিখিত ত্রিকার ইন্টেরিম রেজোলিউশন প্রসেসনালের ক্ষেত্রে পেশ করেন।  
আর্থিক উন্নয়ন, সনি-সহ প্রমাণ পেশ করবেন কেবল রেজিডে নামে। যদি সব উক্তনথ্য স্বাক্ষরিতভাবে, ডাকযোগে বা বৈদ্যুতিক মাধ্যমে তারিখের প্রমাণ দিতে পারেন। মিথ্যা এবং বিতর্কিতকর শব্দিক প্রমাণ পরিমাণযোগ্য।  
তারিখ: ২৪.১০.২০১৯  
স্থান: কলকাতা  
জুজুী ভাওয়ারী  
রেজিস্ট্রেশন নং: IBBI/PA-001/IP-P01174/2018-19/11838

**In the National Company Law Tribunal  
Kolkata Bench  
Kolkata**

**C.P. (IB) No. 723/KB/2019**

**In the matter of:**

An application for initiation of corporate insolvency resolution process by an Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

**And**

**In the matter of:**

**M/S. RISHAV COKE PRODUCT PRIVATE LIMITED, CIN: U51909WB2011PTC164224, Office at Mukherjee Medical Hall, Kada Road, Durgapur – 713203;**

**... Operational Creditor**

**Versus**

**In the matter of :**

**M/S. MODERN INDIA CON-CAST LIMITED, CIN: U27106WB1987PLC042166, having its registered office at 18 D, Everest, 46C, J.L. Nehru Road, Kolkata 700071, West Bengal, India**

**.....Corporate Debtor**

**Date of pronouncement of order : 22/10/2019**

*Sd/-* 1

*Sd/-*

Coram: Shri Jinan K.R, Hon'ble Member (Judicial) &

Shri Harish Chander Suri, Hon'ble Member (Technical)

Counsel on Record :

- |                                 |                               |
|---------------------------------|-------------------------------|
| 1. MR. PREM NARAYAN KHANDELWAL  | ] For Operational<br>Creditor |
| 2. MR. MAINAK BOSE, Advocate    | ]                             |
| 3. MR. SHOVAN GHOSH, Advocate   | ] For Corporate Debtor        |
| 4. MR. RISHAV KARNANI, Advocate | ]                             |

**ORDER**

Per Shri Harish Chander Suri, Hon'ble Member (T).

1. This application under Section 9 has been filed by the M/s. **Rishav Coke Product Private Limited**, hereinafter referred to as the "Operational Creditor" through one of its Directors namely Ranjit Kumar, who has been duly authorized vide Board Resolution dated 26<sup>th</sup> March, 2019 to file the present petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 against M/s. **Modern India Concast Limited**, a corporate entity, having its Registered Office at Kolkata, hereinafter referred to as the "Corporate Debtor".
2. It is stated in the application that the Operational Creditor had supplied goods to the Corporate Debtor against purchase orders, by tax paid invoices and delivery notes issued by the Corporate Debtor from time to time, the copies of orders have been placed on record along with the application. It is submitted that finally the Corporate

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Debtor failed to make the payment of Rs. 1,09,72,861.90/- (Rupees One Crore Nine Lacs Seventy Two Thousand Eight Hundred Sixty One and Paise Ninety Only) having fallen due, which is reflected in the two ledger accounts duly counter-signed by the Corporate Debtors and the two bank statements.

3. It is further submitted by the Operational Creditor that the Corporate debtor has paid only a sum of Rs. 10,00,000/- by way of RTGS and, thereafter, no payment was made and thus supply of goods was also discontinued by the Operational Creditor. The Operational Creditor issued a notice of demand dated 4<sup>th</sup> April, 2019 in Form 3 which was duly received by the Corporate Debtor and a reply thereto was also sent on 12<sup>th</sup> April, 2019. The Operational Creditor has also filed an affidavit under section 9(3) (b) of the Code deposing therein that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid Operational Debt as specified under Section 9. The Operational Creditor has also filed a confirmation of debt by the Corporate Debtor and a statement of bank account where deposits are made and credits received normally by the Operational Creditor in respect of Debt of the corporate Debtor. Since the outstanding debt is inclusive of the interest, it would be appropriate to mention here that all the invoices of the Operational Creditor had the interest clause thereby entitling to the Operational Creditor to the payment of interest as well on delayed payment. The Operational Creditor has, however, not proposed the name of any resolution professional.

1/2/2019 3

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4. We therefore, have noticed that there is an outstanding debt owed to the Operational Creditor by the Corporate Debtor to the tune of Rs. 1,09,72,869.90/- which fell due on 1<sup>st</sup> April, 2017 and the same having not been paid by the Corporate debtor in spite of demand notice dated 4<sup>th</sup> April, 2019 and there being no mention of any pre-existing dispute in the reply dated 12<sup>th</sup> April, 2019 sent by the Corporate Debtor to the Operational Creditor, and the fact that the application is otherwise complete in all respects, and the claim of Debt is within the period of limitation, we have no other option but to hold that the Operational Creditor has been able to make out a valid case of initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

5. We therefore admit the petition with the following directions/Orders:-

**ORDER**

- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, M/s. Modern India Con-Cast Limited is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.

sd/-  
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sd

- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:-
- a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
  - (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
  - (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(Sd/-)  
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- (d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- v) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) **Ms. Jayshree Bhandari**, of Sunrise Tower, Flat 5L, 134B, Beliaghata Road, Kolkata 700015, registered with Insolvency and Bankruptcy Board of India, having registration number **IBBI/IPA-001/IP-P01174/2018-19/11838**. E-mail ID:

Sd/-

Sd/-

ip.bhandarijayshree@gmailcom, Mobile No. 9831270975, is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.

- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xi) The Corporate Applicant is directed to deposit Rs. 3,00,000/- (Rupees Three Lacs Only ) in the ESCROW Account in SBI to be operated through the Registrar NCLT, Kolkata Bench, for the purpose of meeting the preliminary expenses for initiating the CIR Process by the IRP. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.
- xii) Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through E-mail.

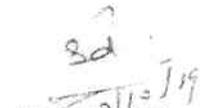
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- xiii). List the matter on **25<sup>th</sup> November, 2019** for filing of the progress report.
- xiv) Certified copy of the order/Free copy may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



**(Harish Chander Suri)**  
**Member (T)**



**(Jinar K.R.)**  
**Member (J)**

Signed on this, the 22<sup>nd</sup> day of October, 2019.

vc

SATURDAY, OCTOBER 26, 2019

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FORM A PUBLIC ANNOUNCEMENT (Under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016) FOR THE ATTENTION OF THE CREDITORS OF MODERN INDIA CONCAST LIMITED	
RELEVANT PARTICULARS	
1. Name of corporate debtor	MODERN INDIA CONCAST LIMITED
2. Date of incorporation of corporate debtor	8th April 1987
3. Authority under which corporate debtor is incorporated/registered	Registrar of Companies- Kolkata
4. Corporate Identity No. / Limited Liability Identification No. of corporate debtor	CIN U27106WB1987PLC042166
5. Address of the registered office and principal office (if any) of corporate debtor	8B, "Everest", 46C, Jawaharlal Nehru Road, Kolkata-700071
6. Insolvency commencement date in respect of corporate debtor	22.10.2019
7. Estimated date of closure of insolvency resolution process	19.04.2020
8. Name and registration number of the insolvency professional acting as interim resolution professional	Jayshree Bhandari Regn. No: IBBI/IPA001/IP-P01174/2018-19/11838
9. Address and e-mail of the interim resolution professional, as registered with the Board	Sunrise Towers, Flat 5L, 134B Bellaghata Road, Kolkata-700015 Email: ip.bhandarijayshree@gmail.com
10. Address and e-mail to be used for correspondence with the interim resolution professional	Diamond Prestige, Room No. 113, 1st Floor 41A, A.J.C Bose Road, Kolkata-700017 Email: cirp.mic@gmail.com
11. Last date for submission of claims	05.11.2019
12. Classes of creditors, if any, under clause (b) of sub-section (6A) of section 21, ascertained by the interim resolution professional	Not applicable
13. Names of Insolvency Professionals identified to act as Authorised Representative of creditors in a class (Three names for each class)	Nor applicable
14. (a) Relevant Forms and (b) Details of authorized representatives are available at:	Web link: <a href="https://ibbi.gov.in/home/downloads">https://ibbi.gov.in/home/downloads</a> Physical Address: Not applicable
<p>Notice is hereby given that the National Company Law Tribunal has ordered the commencement of a corporate insolvency resolution process of the <b>MODERN INDIA CONCAST LIMITED</b> on <b>22.10.2019</b>. The creditors of <b>MODERN INDIA CONCAST LIMITED</b>, are hereby called upon to submit their claims with proof on or before <b>05.11.2019</b> to the interim resolution professional at the address mentioned against entry No. 10.</p> <p>The financial creditors shall submit their claims with proof by electronic means only. All other creditors may submit the claims with proof in person, by post or by electronic means. Submission of false or misleading proofs of claim shall attract penalties.</p> <p style="text-align: right;"><b>Name and Signature of Interim Resolution Professional:</b> Jayshree Bhandari Interim Resolution Professional IBBI/IPA001/IP-P01174/2018-19/11838</p> <p>Date : 25.10.2019 Place : Kolkata</p>	

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

IA (IB) No.756/KB/2021  
in  
CP (IB) No 723/KB/2019

*In the matter of*  
An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016  
read with rule 11 of the National Company Law Tribunal Rules, 2016.

*In the matter of:*  
Rishav Coke Product Private Limited ... *Operational Creditor*  
Versus  
Modern India Con Cast Limited ... *Corporate Debtor*  
And

*In the matter of:*  
Kashvi Power & Steel Private Limited ... *Applicant*  
Versus  
Sanjay Kumar Gupta, Liquidator of  
Modern India Con Cast Private Limited ... *Respondent*

*Coram:*  
Mr. Rajasekhar V.K. : Member (Judicial)  
Mr. Balraj Joshi : Member (Technical)

*Appearances (via videoconference):*  
For the Applicant : Mr. Joy Saha, Senior Advocate  
Mr. Supriyo Gole, Advocate  
For the respondent/Liquidator : Mr. Vikash Singh, Advocate  
Mr. Kavach Kashyap, Advocate

Date of Hearing: 01 November 2021  
Date of pronouncement: 04 January 2022

**ORDER**

*Per: Rajasekhar V.K., Member (Judicial)*

- 1. The Court convened through video conferencing



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IN THE NATIONAL COMPANY LAW TRIBUNAL  
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IA (IB) No.756/KB/2021  
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2. IA No.756/KB/2021 is an application filed by Kashvi Power & Steel Private Limited, seeking a declaration that the date of issue of the sale certificate by the Liquidator shall be deemed to be the date of acquisition of the Corporate Debtor by the applicant herein on a going concern basis and to grant certain reliefs and concessions as described at Annexure 'A' of the application at pages 23 to 27.
3. The brief facts leading up to the present application are as follows:-
  - a. An order of liquidation dated 05 January 2021 passed by this Adjudicating Authority, liquidation process commenced in respect of Modern India Con Cast Limited. In terms of the order, Mr. Sanjai Kumar Gupta, the Respondent herein, was appointed as the Liquidator. This Adjudicating Authority directed the Liquidator to sell the assets of the Corporate Debtor as a going concern.
  - b. The Respondent invited offers for sale of the assets of the Corporate Debtor as going concern by fixing the reserve price of ₹82.00 crore by an e-auction notice dated 26 May 2021 published in newspapers.
  - c. The applicant participated in the e-auction process by depositing Earnest Money Deposit (EMD) to the tune of ₹5 crore and offering a bid of a sum of ₹166 crore. The Applicant was declared the highest bidder on 01 July 2021, and it was called upon to pay a further sum of about ₹36.50 crore in order to complete 25% of the total sale price of the total bid amount of ₹166 crore, which the Applicant did. The Applicant, thus, in aggregate has deposited a sum of ₹41.50 crore with the Liquidator which represents 25% of the bid amount.
4. In this factual conspectus, Mr. Joy Saha, learned Senior Counsel appearing for the Applicant, submitted the Liquidator has not issued any Sale Certificate in favour of the Applicant. It is further submitted that the process of restarting the Corporate Debtor and recommencing the production process involves the infusion of large amounts of funds towards working capital and further investment would be required. Therefore, the Applicant must stand absolved of any liability of the Corporate Debtor which has arisen prior to the date of acquisition of the Corporate Debtor.

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5. It is further submitted that the Applicant made the final payment on 07 August 2021 and the Liquidator called upon the Applicant to take possession of the assets and properties of the said properties of the Corporate Debtor *vide* letter dated 09 August 2021.
6. Learned Counsel further submits that the Applicant was approached by several alleged creditors who threatened the Applicant to stop and prevent the Applicant from recommencing production and restarting the Corporate Debtor unless the debts of the alleged creditors are paid.
7. It is further submitted that the purchase and takeover of the Corporate Debtor as a going concern as per the Liquidation Process Regulations by the Applicant will not be sufficient to run the operations of the Corporate Debtor. In order to ensure smooth running of the business of the Corporate Debtor, it is imperative that the Applicant is granted certain additional reliefs, concessions, relaxations and permissions which would be absolutely essential to run the business of the Corporate Debtor as a going concern. Such reliefs are only intended for the purpose of a successful running of the operations of the Corporate Debtor in the future when a new management will strive to bring it back to its feet as these are crucial to kickstart the business of the Corporate Debtor and achieve value maximisation of the Corporate Debtor. Mr. Joy Saha, Ld Sr Counsel, therefore, urged the court to consider granting the reliefs and concessions prayed for *vide* Annexure 'A' of the Application, at pages 23 to 27.
8. Mr Vikash Singh, learned Counsel appearing on behalf of the Liquidator, submitted that he has no objection to the application.
9. We have heard Mr Joy Saha, learned Senior Counsel appearing for the Applicant, and Mr Vikash Singh, learned Counsel appearing on behalf of the liquidator, and perused the available records.
10. Regulation 32(e) of the IBBI (Liquidation Process) Regulations, 2016, after its substitution *vide* Notification No. IBBI/2018-19/GNB/REG037 dated 22



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October 2018, permits the Liquidator to sell the corporate debtor as a going concern. The earlier regulation 32(c) also permitted the Liquidator to sell the corporate debtor as a going concern. Regulation 32A, inserted *vide* Notification No. IBBI/2019-20/GN/REG047 dated 25.07.2019, enjoins the Liquidator first to attempt the sale of corporate debtor as a going concern or the business of the corporate debtor as a going concern if the Committee of Creditors (CoC) has so recommended or where the liquidator is of such opinion by himself.

11. The concept of 'going concern' has already been considered by this Adjudicating Authority in the judgment dated 25 November 2021 in IA (IB) No.709/KB/2021 in CP (IB) No.176/KB/2018. In that judgment, the relevant recommendations of the Insolvency Law Committee dated 26 March 2018, and the definition of the term 'going concern' given in the Accounting Standards (AS)-1 were examined. After doing so, it was concluded that in case of sale of the corporate debtor as a going concern by the Liquidator, it is necessary to pave the way for the smooth transition by grant of appropriate concessions and waivers prior to the completion of the sale by the Liquidator by issue of Certificate of Sale. Consistency in judicial decision-making demands that the same approach is followed in the present case also. It is also noted that the sale as a going concern in the instant case is akin to starting with a clean slate which rids the enterprise of past backlog so as to render it viable.
12. In this view of the matter, the reliefs and concessions sought, and the orders passed thereon, are encapsulated in the following table:

Sl No.	Prayer/ Annexure Clause No.	Particulars of the reliefs and concessions prayed	Remarks
1.	The principal prayer in the Application.	The date of issue of the sale certificate shall be deemed to be the date of acquisition ("Acquisition Date") of the Corporate	Granted, since it is a going concern sale, and the Applicant should not be saddled with the liabilities prior to

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		Debtor by the Applicant on a going concern basis.	the issue of Sale Certificate.
2.	1	Compliance under the Companies Act, 2013 and other applicable laws and the applicable rules thereunder for corporate actions envisaged.	
3.	1(a)	Entire Issued Share Capital of the said Company shall be reduced to Nil: any consideration payable to the Shareholders of the said Company including any due towards any unpaid dividend, share application money, etc. shall stand extinguished.	Granted.
	1(b)	No approval/consent shall be necessary for cancellation of the existing share capital of the said Company in terms of section 66 and other provisions of the Companies Act, 2013 and other applicable laws.	Granted, however, the company shall file all necessary forms and applications along with applicable fee with the Registrar of Companies, if required.
	1(c)	No approval/consent shall be necessary for issuance of New Equity Shares in accordance with section 42 and section 62(1)(c) of the Companies Act, 2013 and other applicable law.	Granted, however, the company shall file all necessary forms and applications along with applicable fee with the Registrar of Companies, if required.
	1(d)	From the Date of Acquisition, the Board of	Granted. However, It shall be the



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		Directors of the said Company be reconstituted as per the Companies Act, 2013 by removing the erstwhile directors and appointing the directors nominated by the Applicant and the Registrar of Companies do all such acts, deeds and things that are necessary in that regard and to enable the said Company to file relevant returns required by law.	Applicant's own responsibility to ensure that the necessary forms are duly filed with the jurisdictional RoC, by paying the requisite fee. There cannot be any automatic recognition by RoC of the new directors without such filing.
	1(e)	The Registrar of Companies to record satisfaction of all charges that have been created and remained unsatisfied prior to the Date of Acquisition and liquidator to submit necessary compliance including filing of prescribed returns in this regard with Registrar of Companies and marking necessary entries thereof in the Statutory Records of said Company.	Granted, since sale of the corporate debtor as a going concern is akin to a resolution of the corporate debtor, and therefore enables the corporate debtor to start on a clean slate. However, the same shall be subject to the applicant filing the necessary charge relinquishment forms along with a copy of this order with the RoC.
4.	2	No action by creditors	
	2(a)	On and from the Acquisition Date, no Financial Creditors or	Granted, since it is a going concern sale, and the Applicant



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	<p>Operational Creditors shall be entitled to take, initiate, institute or continue any suits, steps or proceedings against the said Company or its assets (whether by way of demand, legal proceedings, alternative determination process including arbitration or an expert determination process, the levying of distress, execution of judgments, decree or order, or otherwise) in any court of law, tribunal, arbitration panel or other authority in any jurisdiction whatsoever including taking any action to foreclose, recover or enforce any security interest created by the said Company in respect of its property (including any action under SARFAESI) for the purpose of obtaining payment of any liability.</p>	<p>should not be saddled with the liabilities prior to the issue of Sale Certificate.</p>
2(b)	<p>The creditors (secured or unsecured) of the said Company shall be deemed to have issued no-objection on the Acquisition Date and the security created in favour of the secured creditors shall be released, extinguished and all the</p>	<p>Granted.</p>



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		financing and security documents shall terminate without any further act of the said Company; it is further prayed that the secured creditors shall be directed to return all the title deeds and documents deposited with the respective secured creditors be returned to the said Company/Applicant.	
5.	3	Related to Licenses/ Approvals/Contractual Rights and Benefits	
	3(a)	All subsisting consents, licences, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the said Company or to which the said Company is entitled to, including but not limited to slag procurement license, shall, notwithstanding any provision to the contrary in their terms and irrespective of the commencement of the insolvency/liquidation proceedings under the Code, in relation to the said Company be deemed to continue without	Granted subject to payment of renewal fees, if any, to the licensing authorities.



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	disruption, for the benefit of the said Company; and	
3(b)	All subsisting consents, licenses, approvals in respect of the factory of the said Company, shall be renewed/regularized, subject to all compliances in that regard by the said Company/application and from the Acquisition Date;	Granted subject to payment of renewal fees, if any, to such licensing authorities.
3(c)	All the existing contracts and arrangements with the Existing Promoters/ Directors of the said Company shall stand terminated on and from the Acquisition Date. Save and except the contracts and arrangements which shall be terminated by the said Company/ Applicant, all other contracts and arrangements shall remain in existence on the same terms and conditions.	Granted.
3(d)	The Liquidator to complete all compliances for the period up to the Date of Acquisition including filing of necessary documents and returns with the Registrar of Companies, Income Tax Authorities, GST	Granted.



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		Authorities, Provident fund Authorities, any other Government Authorities should be completed and necessary entries in that regard be made in the statutory records of the said Company.	
	3(e)	Delays in filing of the statutory records by the said Company prior to the Acquisition Date be condoned without any liability of whatsoever nature. Any filing done to regularise the records shall be deemed to have been filed in the normal course within the stipulated time.	The Applicant shall make necessary applications to the authorities, who shall consider the same, keeping in view the spirit of the IBC legislation.
	3(f)	The said Company/ Applicant would be entitled to use any valid warranties or guarantees related to any plant and machineries or other assets purchased prior to the Acquisition Date.	Granted.
6.	4	<b>Related to Taxes</b>	
	4(a)	The exception available to a resolution applicant in the case of implementation of a resolution plan under section 79 of the Income Tax Act be extended to	The Applicant may approach the authority concerned who would consider such request under the Income Tax Act, 1961, keeping in



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		the Applicant and the said Company as the instant sale is a 'sale as a going concern'.	view the spirit of the IBC legislation.
	4(b)	The requirement and applicability of certificate under section 281 of the Income Tax Act, 1961 and provisions of taking over its predecessor's tax liability under section 170 of the Income Tax Act, 1961 shall be deemed to be complied with (consider 'waived') on the Acquisition Date.	The Applicant may approach the authority concerned who would consider such request under the Income Tax Act, 1961, keeping in view the spirit of the IBC legislation.
	4(c)	Direct that any requirements to obtain waivers from any tax authorities including in terms of section 115B of the Income Tax Act, 1961 shall be deemed to have been granted on the Acquisition Date and the procedure stated under the aforesaid sections shall be deemed to be complied with on the Acquisition Date.	The Applicant may approach the authority concerned who would consider such request under the Income Tax Act, 1961, keeping in view the spirit of the IBC legislation.
	4(d)	Direct that the transactions contemplated for sale of the assets of the said Company under the e-auction notice shall not be considered as void under section 81 of the Central	Granted, since it is a going concern sale, and the Applicant should not be saddled with the liabilities prior to



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	Goods and Service Tax Act, 2017 and the concerned authority shall not impose any successor liability on the Applicant and the said Company in respect of such sale of the assets of the said Company.	the issue of Sale Certificate.
4(e)	All assessment/ re-assessment/ revision/ penalty/ appellate or other proceedings pending in the case of the said Company as on the Acquisition Date, relating to the period prior to that date, shall stand terminated and all consequential liabilities, if any, shall be waived and shall be considered to be not payable by the said Company.	Granted, since it is a going concern sale, and the Applicant should not be saddled with the liabilities prior to the issue of Sale Certificate.
4(f)	All notices issued under the provisions of the respective Acts to initiate any proceedings viz. assessment/ re-assessment/ revision/ penalty etc. against the said Company in relation to the period prior to the Acquisition Date shall be considered withdrawn and shall not be proceeded against.	Granted, since it is a going concern sale, and the Applicant should not be saddled with the liabilities prior to the issue of Sale Certificate.



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4(g)	Any proceedings which were kept in abeyance in view of insolvency process or otherwise shall not be revived after the Acquisition Date.	Granted, since it is a going concern sale, and the Applicant should not be saddled with the liabilities prior to the issue of Sale Certificate.
4(h)	No further demand for period prior to the Acquisition Date shall be raised by the respective Departments.	Granted, since it is a going concern sale, and the Applicant should not be saddled with the liabilities prior to the issue of Sale Certificate.
4(i)	All tax litigations, prosecutions, tax legal proceedings, suits, demands, notices, show-cause notices, demand notices, actions, arbitration or administrative, judicial, quasi-judicial, regulatory, government or any enforcement agencies, pending or threatened against the said Company or whose outcome adversely effects the said Company arising prior to or after the Acquisition Date. shall be deemed to have been withdrawn or dismissed and will be deemed to have been	Granted, since it is a going concern sale, and the Applicant should not be saddled with the liabilities prior to the issue of Sale Certificate.

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		barred with effect from the Acquisition Date.	
7.	5	Related to liability for past actions or omissions or non-compliance under applicable laws.	
	5(a)	Direct that any non-compliance of provisions of any laws rules, regulations, directions, notifications, circulars, guidelines, policies, licenses, approvals, consents or permissions including any suspension, cancellation, revocation or termination, by the said Company and/or Directors and/ or Key Managerial Persons prior to the Date of Acquisition shall be deemed to be extinguished and/or regularised automatically, as the case may be, on the Acquisition Date;	The Applicant may approach the authority concerned who would consider such request under the Income Tax Act, 1961, keeping in view the spirit of the IBC legislation.
	5(b)	The relevant Governmental Authorities shall not initiate any proceeding in relation to any non-compliances with Applicable Law by the said Company during the period prior to the Acquisition Date. Neither shall the Applicant, nor the said Company, nor the directors, officers and employees thereof	Granted, since it is a going concern sale, and the Applicant should not be saddled with the liabilities prior to the issue of Sale Certificate.



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		appointed on and from the Acquisition Date be liable for any violations, liabilities, penalties or fines with respect to or pursuant to the said Company not having in place requisite licenses and approvals required to undertake its business as per applicable law, or any non-compliances of applicable law by the said Company.	
8.	6	Litigations, liabilities, inquiries, investigations, etc.	
	6(a)	Direct that all inquiries, investigations, assessments, notices, causes of action, suits, claims, disputes, litigations, arbitration, or other judicial, regulatory or administrative proceedings against, or in relation to, or in connection with the said Company or the affairs of the said Company (other than against the Erstwhile Promoters or former members of the management of the said Company), pending or threatened, present or future, in relations to and period prior to the Date of Acquisition or arising on account of the acquisition	Granted, since it is a going concern sale, and the Applicant should not be saddled with the liabilities prior to the issue of Sale Certificate.

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		shall be deemed to be withdrawn or dismissed.	
9.	7	<b>Land and property related reliefs</b>	
	7(a)	Each asset (including properties, whether freehold, leasehold or license basis) of the said Company shall be vested in the said Company free and clear of all encumbrances from the Acquisition Date;	<b>Granted. The Applicant/ Corporate Debtor to approach the concerned statutory and regulatory authority, if required.</b>
	7(b)	Waiver of any property tax, lease rent shall be deemed to have been permanently extinguished with effect from the Acquisition Date;	Granted, since it is a going concern sale, and the Applicant should not be saddled with the liabilities prior to the issue of Sale Certificate.
	7(c)	Further the Adjudicating Authority may be pleased to direct that the change in control of the said Company pursuant to sale and transfer of the said Company as a going concern shall not constitute any transfer of such lands under Applicable Laws and accordingly no further act, deed or thing shall be necessary to be complied with by the said Company under the Applicable Laws and it shall be	<b>Granted.</b>



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		deemed that all such statutory compliances have stood complied with on the Acquisition Date so that the said Company continues to enjoy continuous ownership use possession and occupation of the lands in question without any interruption or objections or obstructions in order to keep the said Company a going concern;	
10.	8	<b>Others</b>	
	8(a)	The said Company/ Applicant shall be allowed to pursue and/or contest any claim made by the said Company, including but without limitation, claims from the insurance and subsidy.	Granted.
	8(b)	Statutory Authorities shall release any deposits, incentives, benefits, subsidies, etc., if any, due to the said Company expeditiously to ensure an early revival of the business of the said Company;	Granted.
	8(c)	The Liquidator to cooperate with and provide all necessary support and assistance to	Granted.



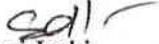
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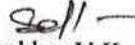
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		the Applicant including handing over of all papers, documents, relevant letters/notices, fixed asset register of the said Company, etc. for the period prior to the Acquisition Date.	
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13. The application bearing IA (IB) No. 756/KB/2021 is disposed of accordingly.
14. The Registry shall e-mail copy of this order to the Counsel on record for the Applicant and for the Liquidator, and the Liquidator, for information and for taking necessary steps.
15. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

  
Balraj Joshi  
Member (Technical)

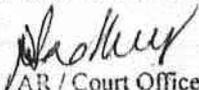
  
Rajasekhar V.K.  
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