

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – I, CHENNAI**

**IA(IBC)/1575/CHE/2023 in IA(IBC)/683/CHE/2021  
In CP(IB)/756/CHE/2021**

*(Filed under Sections 60(5) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the NCLT,  
Rules, 2016)*

*In the matter of Cauvery Power Generation Chennai Private Limited*

**Sherisha Technologies Private Limited,**

(Successful Bidder of Cauvery Power Generation Chennai Private Limited,  
Having its registered office at No.1/171,  
Old Mahabalaipuram Road,  
Thiruporur, Kancheepuram District,  
Chennai, Tamil Nadu – 603 110

*... Applicant*

**Vs**

- 1. Shri. S A Prem Kumar,**  
Flat No.2B, Abhinaya Apartment,  
Plot No.3362 AC, AF Block,  
8<sup>th</sup> Street, Anna Nagar,  
Chennai – 600 040
- 2. M/s.Tulsyan NEC Ltd,**  
Represented by its Authorised Signatory,  
Registered Office : 1<sup>st</sup> Floor, Apex Plaza,  
Old No.3, New No.77, Nungambakkam High Road,  
Chennai – 600 034
- 3. Shri.S.Elangovan**  
**Representing as Suspended Director of Cauvery Power  
Generation Chennai Private Limited,**  
New No.5, Ranganathan Gardens, Anna Nagar,  
Chennai – 600 040.  
Residing at: Flat No.3, 21/44,  
Q-Block, 17<sup>th</sup> Street, Anna Nagar  
Chennai – 600 040

*...Respondents*

Order pronounced on 10<sup>th</sup> January, 2025

**CORAM:**

**SANJIV JAIN, MEMBER (JUDICIAL)**

**VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

*For Applicant* : Lakshana Viravalli, Advocate  
Pooja Mahajan, Advocate  
Arveena Sharma, Advocate

*For Respondents* : Mr. Ravi Rajagopalan for R1 & R3  
: Mr. Arjun Ram, R2  
: Arun C Mohan for SCC  
: Sasank Iyer for Liquidator

**ORDER**

**(Heard Through Hybrid Mode)**

**IA(IBC)/1575/CHE/2023** has been filed seeking the following reliefs:

*(a) to allow the present application*

*(b) to allow M/s. Sherisha Technologies Private Limited to be substituted as the 'Applicant' in IA(IBC)/683/CHE/2021 such that M/s. Sherisha Technologies Private Limited is able to pursue and continue with IA(IBC)/683/CHE/2021*

*(c) to grant leave to amend the memo of parties in IA(IBC)/683/CHE/2021 as per prayer b and take the amended memo of parties on record;*

*(d) to pass any other order(s) which this Hon'ble Adjudicating Authority may deem fit in the facts and circumstances of the present case.*

**FACTS OF THE CASE:**

2. It is stated that the applicant is a Private Limited Company incorporated on 22.01.2010 under the Companies Act, 1956 having its registered office at New No.1/171, Old Mahabalaipuram Road, Thiruporur Village, Kancheepuram, Tamil Nadu – 603 110.

3. The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Tribunal on 18.10.2019 and Mr. R. Venkatakrisnan was appointed as an Interim Resolution Professional of the Corporate Debtor. On 15.11.2019, Mr. R Venkatakrisnan was replaced and Mr. Amier Hamsa Ali Abbas Rawther was appointed as the Resolution Professional ("Resolution Professional") of the Corporate Debtor.

4. It is stated that Liquidation was ordered against the Corporate Debtor on 19.09.2022 and Mr.K.Sivalingam was appointed was appointed as the Liquidator.

5. It is stated that on 04.11.2022, the Liquidator issued a sale notice for sale of the Corporate Debtor as a "going concern" and invited expression of interest

from the prospective bidders under the provisions of Chapter III of the Code and in accordance with Regulations 32 (e), 32A and 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("Liquidation Regulations"). On 14.12.2022, the Liquidator of the Corporate Debtor under the Liquidation Regulations issued a second sale notice for sale of the Corporate Debtor 'as a going concern ("option 1") or assets of the Corporate Debtor on a standalone basis ("option 2") ("Process Document").

6. It is stated that the Applicant submitted its expression of interest ("EOI") on 28.12.2022 along with supporting documents to the Liquidator for the purpose of participating in the e-auction to be conducted on 10.01.2023. Further, as required under the Process Document, an Earnest Money Deposit ("EMD") of INR 5,50,00,000 was also deposited to the satisfaction of the Liquidator. On 10 January 2023, the Applicant participated in the e-auction under Option 1 (Sale as going concern) for purchase of the Corporate Debtor as a going concern and was declared as a successful bidder.

7. It is stated that the Applicant accordingly paid the entire sale consideration of Rs.75.80 Crores to the Liquidator and the Liquidator issued Sale Certificate in favour of the Applicant on 20.01.2023, transferring the Corporate Debtor to the Applicant as a 'going concern'.

8. It is stated that on 17.04.2023, the Liquidator issued a sale notice cum public announcement for assignment/ transfer of 'Not Readily Realisable Asset' ("NRRA") of the Corporate Debtor under Regulation 37A of the Liquidation Regulations, being benefits of certain applications filed for avoidance of certain transactions with this Tribunal by the erstwhile Resolution Professional. Accordingly, on 15.05.2023, the e-auction for sale of Corporate Debtor's NRRA was conducted by the Liquidator and the Applicant emerged as the highest bidder in the said e-auction.

9. It is stated that pursuant to the declaration of successful bidder, the Applicant paid the entire sale consideration of Rs.10 Lacs to the Liquidator for purchase of NRRA of the Corporate Debtor and on 10.06.2023, the Liquidator issued a 'Certificate Of Transfer/ Assignment Of Not Readily Realisable Assets'

("Certificate of Transfer/ Assignment") in favour of the Applicant under Clause 13 of Part I of the schedule to Liquidation Regulation, assigning/ transferring the NRRA to the Applicant. (A copy of the said Certificate of Transfer/Assignment is annexed as *Annexure C* of the Application.)

10. It is stated that on the same date, an assignment deed dated 10<sup>th</sup> June 2023 ("Assignment Deed") was also entered between the Applicant and the Liquidator, by which the Liquidator (on behalf of the Corporate Debtor) sold, assigned, and transferred to the Applicant, all rights, title, and interest in and to the NRRA in favour of the Applicant. The Assignment Deed records:

*"1.2 Assignor irrevocable agrees to grant, and hereby grants, the Assignee an unlimited, exclusive, irrevocable, perpetual right to use, exploit and commercialize in any manner known or in the future discovered and for whatever purpose, any rights to NRRA to the extent permitted by applicable law"*

*"2.3. The Assignee hereby accepts and confirms that he/ she be solely responsible for obtaining and carrying out necessary actions and obtaining necessary regulatory/ statutory/ third party approvals, no objections, permissions, or consents, if any,*

*required under applicable law, in order to effectuate fully the purpose, terms and conditions of this Deed. However, the Assignor shall extend the required support, being provisions of necessary documents to the Assignee, for enabling substitution of Assignee in place of Assignor in the pending cases as listed in Annexure 1. The Assignee shall endeavour to do necessary filings before Adjudicating Authority to effect the substitution within 30 days of execution of this Assignment Deed”.*

11. It is stated that with issuance of the Certificate of Transfer/ Assignment and the execution of the Assignment Deed, the NRRA of the Corporate Debtor irrevocably stands sold/assigned/transferred to the Applicant and Applicant is now entitled to all rights, title and interest in the said NRRA. Pertinently, as per the Certificate of Transfer/ Assignment and the Assignment Deed inter alia, following assets forming part of the NRRA have been sold/ assigned/ transferred in favour of the Applicant:

Section	I.A. No.	Party Involved	Brief Description of Observation	Underlying Amount (in INR Lakhs)
43		S A Premkumar	Amount Receivable of INR 504.54 lakhs on account of	504.54

	683 of 2021 in IBA 756 of 2019		reduction in remuneration of the Director has been transferred to Greensol Design and Engineering instead of recovering from the Director.	
43	(Avoidance Application)	M/S. Tulsyan NEC Limited	Sale of Coal to Operational Creditor by adjusting the Trade Payables. The amount is due from non-related party within the look back period of one year from CIRP date.	174.01

12. It is stated that the Applicant understood that the Avoidance Application (IA 683 of 2021) was filed by the erstwhile Resolution Professional (Mr. Amier Hamsa Ali Abbas Rawther) of the Corporate Debtor, against certain preferential transactions undertaken by Respondent No. 1, 2, 3 in the Corporate Debtor. Pertinently, after the commencement of the liquidation process, the Liquidator filed an IA 1460 (CHE) of 2022 ("Impleadment Application"), seeking impleadment in the Avoidance Application. By order dated 06.02.2023, the Liquidator was allowed to be impleaded in the Avoidance Application. (A copy of the order has been attached herewith as Annexure-E.) It is stated that the Avoidance Application is pending adjudication before this Tribunal. The details of the applicant to the Avoidance Application, as per the 'Memo of Parties' (available on the NCLT website) in the Avoidance Application, are as follows-

*"Amier Hamsa Ali Abbas Rawther  
Resolution Professional  
For M/s Cauvery Power Generation Chennai Private Limited  
IP-PO 1727/2019-2020/12620  
No R094, SBIOA Unit Enclave, Mambakkam PO,  
Near Sivan Temple, Thiruporur Thaluk, Chennai-600127  
9930846070 mail: amierhamsa@gmail.com*

*....Applicant"*

13. It is stated that the Applicant understands that since the Liquidator has sought for the impleadment in the Avoidance Application, the Liquidator will also be a party to the said Application. The details of the Liquidator are:

*"K. Sivalingam Liquidator of Cauvery Powergeneration  
Chennai Private Limited,  
Flat No. 1603, Tulive Horizon Residences,  
Arunachalam Road, Saligramam,  
Chennai, Tamil Nadu 600093*

*.....Applicant"*

14. It is stated that as mentioned above, the Applicant has now taken over the Corporate Debtor as a 'going concern' and has also acquired the NRRAs of the Corporate Debtor including the Avoidance Application and the rights, title and

interest in relation to the same. Thus, as per the Certificate of Transfer/ Assignment and the Assignment Deed, the Applicant is entitled to pursue the Avoidance Application and retain benefits (if any) arising from the Avoidance Application.

15. Pursuant to Clause 2.3 of the Assignment Deed, the Applicant has filed the present Application seeking substitution of its name as the Applicant in IA (IBC) NO. 683/CHE/2021 ("Avoidance Application") to pursue and assist the Tribunal in adjudication of the same. The details of the Applicant for the purpose of its name substitution as an applicant in the Avoidance Application, are as follows-

*Sherisha Technologies Private Limited*  
*(Formerly Sun Edison Energy India Private Limited)*  
*Having its registered office at no. 1/171,*  
*Old Mahabalipuram Road, Thiruporur,*  
*Kancheepuram District, Chennai, Tamil Nadu-603110*

16. It is stated that the Applicant have sought leave to amend the memo of parties in IA(IBC)/683/CHE/2021 and seeks that the amended memo of parties be

taken on record by this Tribunal. The amended memo of parties is annexed as *Annexure F* of the application.

**COMMON REPLY FILED BY R1 & R3**

17. The Respondents (R1 & R3) has filed a counter vide S.R.No.4413 dated 17.10.2023.

18. The main bone of contention of the Respondents (R1 & R3) is that the NCLT is not vested with the jurisdiction to adjudicate avoidance applications pursued by any third parties or assignees, when adjudication is not complete in the said case.

19. It is stated that only an application or proceeding "by or against the corporate debtor" can be entertained under Section 60(5)(a) of the Code by the NCLT. Further as per Section 60(5)(b) of the Code, only a claim by or against the Corporate Debtor and its subsidiary outside India can be adjudicated. Hence, avoidance application filed by the RP or the Liquidator under Section 43, 45, 50 and 66 of the Code can be considered against the Corporate Debtor, and consequently the NCLT will have the requisite jurisdiction to adjudicate.

20. It is stated that if any pending avoidance application is assigned to a third party or an assignee, the said application cannot be pursued by the said third party or assignee, as the said proceeding would cease to be an issue arising out of CIRP or Liquidation of the Corporate Debtor in terms of Section 60(5)(c) of the Code, as the beneficiary of those proceedings would be the third party or assignee, and recovery if any would be realised and added to the asset pool of the third party or assignee. Furthermore, what was earlier a dispute between the "Corporate Debtor, through the RP/Liquidator vs. the Respondents of PUFÉ Applications", will now, become a dispute between "an Assignee and Respondents of PUFÉ Applications", which will be dehors the insolvency proceedings of the Corporate Debtor.

21. It is stated that the above proposition has been considered and held positively by the coordinate bench of the NCLT at New Delhi in the matter of M/s. Inquest Fintech Private Limited Vs. Ms. Maya Gupta Liquidator of M/s. Rain Automotive India Private Limited, numbered as IA Nos. 35, 36, and 57 of 2022 in Company Petition No. (IB)-1095(ND)/2019, dated 11.08.2023.

22. It is stated that the orders passed by a coordinate bench of the NCLT will serve as a binding precedent on other benches of the NCLT, in light of the orders passed by the Hon'ble Appellate Tribunal in the matter of:

*a. Re DLF Developers Ltd in Company Appeal (AT) No. 180 of 2019 dated 19.08.2019, and;*

*b. Re Ambuja Cements Ltd in Company Appeal (AT) No. 19 of 2021 dated 06.04.2021*

23. It is stated that intent behind avoidance/PUFE applications filed under Section 43, 45, 50 and 66 is not the "recovery", but to maximise the value of the assets of the Corporate Debtor. However, if the avoidance/PUFE applications are allowed to be pursued by Third Party or Assignee, the Adjudication of such applications, pursued by a Third Party or an Assignee would effectively end up making the NCLT a "Recovery Forum".

24. It is stated that there is no provision in the Code under which the Applicant herein can pursue the Section 43 Avoidance Application. Further, it is stated that Section 43 of the Code does not contemplate a Assignee/ or a Third party on

behalf of the RP or Liquidator to either initiate avoidance of preferential transaction proceedings or to continue such proceedings pursuant to assignment of right to proceeds from avoidance applications under Regulation 37A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (hereinafter referred to as the "Regulations"), the present Application ought not to be allowed by this Tribunal on this ground alone. The above proposition has been considered and held positively by the coordinate bench of the NCLT at New Delhi in the matter of *M/s. Inquest Fintech Private Limited Vs. Ms. Maya Gupta Liquidator of M/s. Rain Automotive India Private Limited*, numbered as I.A Nos. 35, 36, and 57 of 2022 in Company Petition No. (IB)-1095(ND)/2019, dated 11.08.2023.

25. It is stated that the present application is silent on the material requirements/ingredients prescribed under Regulation 37A of the Regulations for a valid assignment of Not Readily Realisable Assets (NRRA) of the Corporate Debtor. Therefore, the reliefs sought for by the Applicant shall not be entertained.

26. It is stated that the Application and the documents filed in support of the same are silent on whether the decision of the Liquidator to assign the proceeds from the avoidance of preferential transactions filed under Section 43 of the Code was made pursuant to consultation with the stakeholders' consultation committee in accordance with Regulation 31A of the Regulations.

27. It is stated that there is nothing on record to evidence the fact that the Applicant herein is not barred under Section 29A of the Code from submitting a Resolution Plan of the Corporate Debtor. It is an essential requirement under Regulation 37A of the Regulations that the Liquidator may only transfer a not readily realisable asset to a person, if such a person is eligible to submit a Resolution Plan for insolvency of the Corporate Debtor, and the Applicant herein has failed to place any document on record to evidence the fact that the Liquidator had in fact considered the status of the Applicant under Section 29A of the Code before assigning the proceeds from I.A No. 683 of 2021 to the Applicant herein.

28. It is stated that the Applicant has failed to place on record the sale notice cum public announcement for assignment/transfer of NRRRA of the Corporate Debtor that is alleged to have been issued by the Liquidator, on the basis of which the auction is said to have been conducted. The Applicant by not placing on record the sale notice cum public announcement has failed to show that the assignment of not readily realisable assets of the Corporate Debtor was carried out by way of a "Transparent Process". Hence, the present application should be dismissed.

#### **WRITTEN SUBMISSIONS FILED BY R2**

29. It is stated that present IA has been filed by a Third Party/Auction Purchaser. It is stated that the Applicant herein cannot substitute itself in the shoes of the Liquidator for the purposes of prosecuting the Application under Section 43(1) of the IBC, 2016.

30. It is submitted that the burden of proof is on the Liquidator, being the Applicant in I.A. No. 683 of 2021, to establish before this Tribunal that the ingredients of Section 43 of the IBC are satisfied, in so far as the 2<sup>nd</sup> Respondent is concerned. This exercise cannot be sought to be undertaken by a Third

Party/Auction Purchaser, who is said to have entered the picture as late as June 2023. Hence, the present application should be dismissed.

### **COMMON WRITTEN SUBMISSIONS OF R1 & R3**

31. The Respondents R1 & R3 have filed a Common Written Submissions. It is stated that the present IA filed by Sherisha Technologies P Ltd as a purported NRRRA assignee has no *locus standi* under the Code to be impleaded in the place of the Liquidator on the following grounds:

- a) The Liquidation Process of this Corporate Debtor has already been terminated by this Bench vide order dated 26.09.2023 in IA/1618/2023.
- b) The NRRRA's stood assigned to the Financial Creditors at an earlier date and the Liquidator could not have sold the NRRAs to the Applicant herein.
- c) The ratio of the orders of the Co-Ordinate Bench of this Tribunal in *Ritu Tandon vs Rain Automotive India Pvt Ltd* are binding on this Bench.

### **SYNOPSIS OF ARGUMENTS FILED BY THE LIQUIDATOR**

32. The Synopsis of Arguments has been filed by the Liquidator vide S.R.No.4838 dated 30.09.2024 in IA's/1667, 1168, 1170, 1171 & 1172 of 2023.

33. Regulation 44A of IBBI (Liquidation Process) Regulations, 2016 state that:  
*"The liquidator shall, on the advice of the consultation committee, provide in the application along with the final report filed under regulation 45 for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the dissolution or closure of liquidation process and the manner in which the proceeds, if any, from such proceedings shall be distributed."*

34. Further, the Hon'ble NCLAT, in the case of ***Kanwer Sachdev Vs. Su-Kam Power Systems Ltd., MANU/NL/0905/2023*** dated 10.11.2023 that Regulation 44A deals with the treatment of transaction avoidance which itself contemplates that there can be a position regarding the prosecution of avoidance application even after the resolution or closure of liquidation process and the manner in which the proceeds, if any, from such proceedings shall be distributed. The Judgement further refers to an earlier judgement of the Hon'ble NCLAT in ***Kapil Wadhawan Vs. Piramal Capital & Housing Finance Ltd. Ors., MANU/NL/0453/2023 (2023) ibclaw.in 320 NCLAT***, wherein after considering the respective submissions, provisions of the Code, as well as the Regulations and

the Judgment of Hon'ble Delhi High Court in *TATA Steel BSL Ltd. vs. Venus Recruiter Pvt. Ltd. & Ors., MANU/NL/0453/2023*, the Hon'ble NCLAT has held that the Successful Resolution Applicant can be allowed to prosecute the avoidance application. Thus, it can be held that the same analogy as in *Kapil Wadbawan's case (supra)* shall be applicable with regard to the prosecution by the Successful Auction Purchaser in liquidation estate when the asset of the corporate debtor has been sold as a going concern and acquisition plan submitted by Successful Auction Purchaser has been approved by the Adjudicating Authority. Hence, the substitution of the successful bidder of NRRA in the avoidance application should be allowed to give effect to provisions of the Code.

35. Insofar as IA. Nos. 1575, 1576 and 1577 of 2023 ("Substitution Applications") are concerned, the Liquidator is not formally a party to the said applications, the Liquidator endorses the stand of the Applicant Sherisha Technologies Private Limited and has no objection to the same. This is also in line with the timeline for the conduct of the liquidation under Regulation 44 of the Liquidation Process Regulations mandating the completion of liquidation

within a year resultantly, for the Liquidator to be relieved and/or discharged after duly performing his duties in accordance with the Code.

**FINDINGS OF THIS TRIBUNAL:**

36. Heard the submissions of both the applicant and the Respondents and perused the documents placed on record.

37. It is seen from the application that the applicant viz., Sherisha Technologies Private Limited has paid the entire sale consideration of Rs.75.80 Crores to the liquidator and the liquidator issued the Sale Certificate in favour of Applicant on 20.01.2023, transferring the Corporate Debtor to the applicant as a 'going concern'. Further, it is seen that the applicant viz., Sherisha Technologies Private Limited has paid the entire sale consideration of Rs.10 lakhs to the Liquidator for purchase of NRRA of the Corporate Debtor. On 10.06.2023, the liquidator issued a 'Certificate of Transfer/ Assignment of NRRA' in favour of the applicant.

38. Vide order dated 03.06.2024, this Tribunal directed the Stakeholder's Consultation Committee to address on the applications IA 1167, 1168, 1170, 1171

and 1172 of 2023 in IBA/756 /2019 and Applications IA 1575/2023 in IA 683/2021, 1576/2023 and 1577/2023 in IA 684/2021.

39. The learned Counsel for the SCC has filed a note vide S.R.No.4811 dated 27.09.2024. It is stated that vide Minutes of Seventh Meeting of the SCC dated 23.02.2023, in which the suspended directors of the Corporate Debtor were present, the sale of NRRAs was voted upon, and the Liquidator was directed to carry out the same, with an EMD of 10 lakhs, and permitting an incremental bid price of 10 lakhs. Thereafter, the timelines for the same came to be revised in the Minutes of the Eighth SCC dated 23.03.2023, and the bidding process was undertaken. However, the sole bidder could not deposit the EMD, as recorded in the Minutes of Meeting dated 05.04.2023.

40. It is stated that as recorded in the Minutes of Ninth Meeting of the SCC dated 13.04.2023, it was resolved to re-issue the invitation of interest for the NRRAs. Accordingly, on 15.05.2023, the auction for sale of Corporate Debtor's NRRA was conducted by the Liquidator wherein the Applicant, i.e. Sherisha Technologies Private Limited was the sole bidder submitting its bid at Rs. 10,00,000/-. Since the

Applicant met the parameters set out by the Liquidator and the SCC, the Applicant was declared as the successful bidder. The same is captured in the Minutes of Tenth Meeting of the SCC, where in the bid value of Rs. 10,00,000/- (Rupees Ten Lakhs Only) came to be confirmed by the SCC. Thereafter, the Applicant paid the entire sale consideration of Rs. 10,00,000/- (Rupees Ten Lakhs Only) to the Liquidator and on 10.06.2023, the Liquidator issued a Certificate of Assignment Of Not Readily Realisable Assets' in favour of the Applicant under Clause 13 of Part I of the schedule to Liquidation Regulation, assigning the NRRA to the Applicant. It is placed on record in the Minutes of Eleventh Meeting of the SCC that the proceeds of the same have been distributed. The Liquidator has been directed to file the closure report and compliance certificate in Form H. The proceeds have thereafter, been divided in-line with Section 53 of the Code. This was also conveyed to the S. Elangovan, the authorised representative of the employees vide letter dated 09.03.2023. Therefore, the SCC seeks to allow the present application.

41. The case of *Ritu Tandon vs Rain Automotive India P Ltd (Supra)* referred by the Respondents (R1 & R3) is of the Co-ordinate Bench. However, The Hon'ble NCLAT, in the case of *Kanwer Sachdev Vs. Su-Kam Power Systems Ltd., MANU/NL/0905/2023* has held that Regulation 44A deals with the treatment of transaction avoidance which itself contemplates that there can be a position regarding the prosecution of avoidance application even after the resolution or closure of liquidation process and the manner in which the proceeds, if any, from such proceedings shall be distributed. The Judgement further refers to judgement of the Hon'ble NCLAT in *Kapil Wadhawan Vs. Piramal Capital & Housing Finance Ltd. Ors., MANU/NL/0453/2023 (2023) ibclaw.in 320 NCLAT*, where after considering the submissions, provisions of the Code, as well as the Regulations and the Judgment of Hon'ble Delhi High Court in *TATA Steel BSL Ltd. vs. Venus Recruiter Pvt. Ltd. & Ors., MANU/NL/0453/2023*, the Hon'ble NCLAT has held that the Successful Resolution Applicant can be allowed to prosecute the avoidance application. The same analogy as in *Kapil Wadbawan's case (supra)* shall be applicable with regard to the prosecution by the Successful Auction Purchaser in liquidation estate when the asset of the corporate debtor

has been sold as a going concern and acquisition plan submitted by Successful Auction Purchaser has been approved by the Adjudicating Authority. Hence, the substitution of the successful bidder of NRRA in the avoidance application can be allowed to give effect to provisions of the Code.

42. It is seen from Clause 2.3 of the Deed of Assignment that:

*2.3. The Assignee hereby accepts and confirms that he/she shall be solely responsible for obtaining and carrying out necessary actions and obtaining necessary regulatory / statutory / third party approvals, no objections, permissions or consents, if any, required under applicable law, in order to effectuate fully the purposes, terms and conditions of this Deed. **However, the Assignor shall extend the required support, being provision of necessary documents to the Assignee, for enabling substitution of Assignee in place of Assignor in the pending cases as listed in Annexure-1.** The Assignee shall endeavour to do necessary filing before Adjudicating Authority to effect the substitution within 30 days of execution of this Assignment Deed.*

43. It is manifestly clear from the above clause that the Assignor/ Liquidator shall enable the substitute the Assignee/ Sherisha Technologies Private Limited in

place of Assignor/ Liquidator in the pending cases as listed in Annexure-1.

Hence, the Contention of the Respondents will not hold any water.

44. Further, it is seen from the Synopsis of Arguments filed by the Liquidator that the Liquidator has given no objections to the present application.

45. In view of the Assignment Deed, SCC's Consent for Substitution and the Liquidator has granted the no objection, the present application deserves to be allowed.

46. We therefore pass the following order:

(i) The substitution of **Sherisha Technologies Private Limited** in place of applicant in IA(IBC)/683/2021 is **allowed**.

(ii) The Applicant/**Sherisha Technologies Private Limited** is directed to file necessary correction to be carried out in cause title in IA(IBC)/683/2021 and

(iii) The Applicant is directed to file the clean copy of amended memo of parties in IA(IBC)/683/2021 within a period of **three (3) weeks** from the date of this order.

47. IA(IBC)1575/CHE/2023 is accordingly **disposed of**.

**Sd/-**

**VENKATARAMAN SUBRAMANIAM**  
MEMBER (TECHNICAL)

**Sd/-**

**SANJIV JAIN**  
MEMBER (JUDICIAL)