

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No.1427 of 2022**

(Arising out of Order dated 11.11.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-I, in IA No.1585/MB/2022 in CP (IB) No.490/MB/2018)

**IN THE MATTER OF:**

Punjab National Bank (International Limited)  
A Lender Incorporated in  
England and Wales  
Having its registered office at:  
1 Moorgate, London, EC2R6JH

... Appellant

Vs

1. Perfect Day INC.  
Orange Street, City of Wilmington  
Country of New Castle, Delaware 19801  
Also At:  
Mr. Rajesh Muralidharan, General Manager  
1<sup>st</sup> Floor Left Wing, Tower-2  
Semicon Park, Electronic City Phase-2,  
Hosur Road, Bangalore-560100.
2. Sterling Biotech Ltd.  
Through Liquidator Ms. Mamta Binani  
Off at: C-25, Laxmi Towers, A-601,  
6<sup>th</sup> Floor Bandra Kurla Complex,  
Bandra East, Mumbai-400051.  
Also At:  
Second Floor, Nicco House  
2 Hare Street, Kolkata  
West Bengal-700001
3. Ms. Mamta Binani,  
Liquidator of Sterling Biotech Ltd.  
Off at: C-25, Laxmi Towers, A-601,  
6<sup>th</sup> Floor Bandra Kurla Complex,  
Bandra East, Mumbai-400051.
4. Union Bank of India (Erstwhile Andhra Bank)  
Off at: 21 Dalal Street,  
Veena Chambers  
Mumbai-400001.

... Respondents

**Present:**

**For Appellant: Mr. Mithilesh Kumar Pandey, Mr. Manav Goyal, Mr. Rahul Pandey, Advocates.**

**For Respondents: Mr. Arun Kathpalia, Sr. Advocate with Mr. Abhijeet Sinha, Mr. Shreeyash Lalit, Mr. Hardeep Sachdeva, Mr. Ravi Bhasin, Ms. Swati Sharma, Mr. Mukund Rawat, Mr. Abhinav Aggarwal, Mr. Himanshu Vats, Advocates for R-1 & 2.**

**Mr. Sandeep Bajaj, Ms. Aakanksha Nehra, Ms. Adya Singh, Advocates for R-3.**

## **J U D G M E N T**

**ASHOK BHUSHAN, J.**

This Appeal has been filed against the order dated 11.11.2022 passed by the National Company Law Tribunal, Mumbai Bench-I in IA No.1585/MB/2022 in CP (IB) No.490/MB/2018. The Adjudicating Authority by the impugned order has allowed the IA No.1585/MB/2022 filed by Successful Auction Purchaser (Respondent No.1 herein) praying for certain reliefs and concession consequent to going concern sale in the liquidation proceeding of Corporate Debtor – Sterling Biotech Limited. The Appellant, who is a stake holder in the Corporate Debtor has come up in this Appeal, challenging order of the Adjudicating Authority, allowing the Application filed by Successful Auction Purchaser.

2. The brief facts of the case necessary to be noticed for deciding this appeal are:

- (i) On an Application filed by Andhra Bank under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**”), the Corporate Insolvency Resolution Process (“**CIRP**”) was initiated against the Corporate Debtor by order dated 11/06/2018.
- (ii) The Resolution Professional (“**RP**”) made publication inviting Expression of Interest (“**EoI**”) from the interested Applicants. No Resolution Plan could be approved in the CIRP of the Corporate Debtor.
- (iii) An Application under Section 12A was filed by the Promoters to withdraw the CIRP. The Adjudicating Authority vide order dated 08.05.2019, dismissed the Section 12A Application and directed for liquidation of the Corporate Debtor under Section 33, sub-section (1) of the IBC. The Adjudicating Authority also observed that as the Corporate Debtor is a going concern, employing more than 800 employees, the Corporate Debtor be liquidated as per the provisions of Section 32(b) & (e) of the IBBI (Liquidation Process) Regulations, 2016. By a subsequent letter dated 13.05.2019, Dr. Mamta Binani, was appointed as a Liquidator. The order of the liquidation remained abeyance, in pursuance of the order passed by the NCLAT and the order passed by the Hon’ble Supreme Court of India. The liquidation order stood revived with effect from

22.02.2021 under orders passed by the Hon'ble Supreme Court. Thereafter, the Liquidator took over the Corporate Debtor. The Liquidator published the public notice dated 27.02.2021 along with Process Documents, which was amended and supplemented from time-to-time, bids were invited from the parties to conduct operation of the Corporate Debtor as a whole on a going concern basis on an "as is where is", "as is what is", "as is how is" and without recourse basis". Four qualified bidders took part in process of the documents. Scheduled date of e-auction was postponed on request from the bidders.

- (iv) The Appellant filed its claim to the Liquidator on 19.03.2021 of USD 6,203,185.70, which was acknowledged by the Liquidator on 22.03.2022. The Appellant vide email dated 24.03.2022 relinquished its security under Section 52 of the Code. The Liquidator published list of stake holders on 07.06.2021 and 16.12.2021 in which the name of Appellant was included as stake holder. The amended Process Document was issued on 31.03.2022, while date of e-auction was scheduled on 04.04.2022. Two qualified bidders participated in the active bidding, i.e. Respondent No.1 – Perfect Day INC and ACG Associated Capsules Private Limited (“**ACG**”). In the e-auction process of Corporate Debtor, Perfect Day INC, who had given the highest bid amount of Rs.638/-

crores, was declared as a Successful Bidder. Another bidder ACG had submitted next highest bid of Rs.630/- crores. Letter of Intent was issued on 05.04.2022 (“**LOI**”) by the Liquidator to the Successful Auction Purchaser, who accepted the Letter of Intent. The Successful Bidder shared the Acquisition Plan with the Liquidator to acquire the Corporate Debtor as a going concern. The Liquidator responded vide letter dated 27.05.2022 requesting the Applicant to approach the NCLT. The Successful Auction Purchaser filed an IA No.1585 of 2022, praying for reliefs and concessions.

- (v) The Appellant with reference to auction held on 04.04.2022 wrote letter dated 26.05.2022 to the Liquidator, asking for certain information which was replied by the Liquidator vide letter dated 01.06.2022.
- (vi) The Successful Auction Purchaser as well the Liquidator were heard by the Adjudicating Authority in IA No.1585 of 2022 and orders were reserved on 02.08.2022/
- (vii) After the Respondent namely – Perfect Day INC was declared as a Successful Auction Purchaser and the orders were reserved in IA No.1585 of 2022, the Appellant filed an IA No.3138/MB/2022 before the Adjudicating Authority dated 21.10.2022, where the Appellant prayed for following reliefs:

1. *Stay the e-Auction process/ sale process of the Sterling Biotech Ltd. (corporate debtor) till fresh bids are invited for re-auction;*
2. *Direct liquidator to maintain status quo till the liquidator clarifies the issue of re-auction for better price;*
3. *Direct Respondent No.2 to not interfere with the assets of the corporate debtor;*
4. *Direct the Liquidator to secure the rights over the land of four Gametha bore wells and secure continuous operation on these bore wells to increase the price;*
5. *Direct Respondent No.1 to invite fresh bids through e-Auction by fresh publication of public notice of e-Auction; and*
6. *Pass such other and further order(s) as this Hon'ble Tribunal may deem fit and proper in the circumstances shall be just and appropriate in favour of the Applicant.”*

(viii) The impugned order was passed on 11.11.2022 allowing the IA No.1585 of 2022. Paragraphs 22 and 23 of the impugned order, which contains the directions issued by the Adjudicating Authority, are as follows:

*“22. We have gone through the prayer in the application and heard submissions made by the party. We have also perused the process of granting similar relief, concession in other costs such Gaurav Jain V/s Sanjay Gupta liquidator of the Topworth Pipes and Tubes*

*Ltd. in the matter of Bank of Baroda V/s  
Topworth Pipes and Tubes Ltd.*

23. *We are of the view that the prayer sought by the applicant are essential for transfer of Sterling Biotech Limited as a going concern in favour of the applicant as a successful bidder and consequently entitle the application to take over and run the corporate debtor on a clean slate basis. Therefore, the application deserves to be allowed in view of reliefs sought.”*

(ix) Aggrieved by the order dated 11.11.2022, this Appeal has been filed by the Appellant on 23.11.2022. Subsequently, IA No.3138 of 2022 filed by the Appellant has also been dismissed by the Adjudicating Authority by order dated 17.02.2023.

3. We have heard Shri Mithilesh Kumar Pandey, learned Counsel appearing for the Appellant; Shri Arun Kathpalia, learned Senior Counsel and Shri Abhijeet Sinha, learned Counsel appearing for Respondent Nos. 1 and 2; and Shri Sandeep Bajaj, learned Counsel appearing for Respondent No.3.

4. Shri Mithilesh Kumar Pandey, learned Counsel for the Appellant in support of the Appeal submits that the Appellant has filed an IA No.3138 of 2022 on 22.10.2022, which remained pending when the IA No.1585 of 2022 filed by the Successful Auction Purchaser was allowed by passing the order dated 11.11.2022 and the Application filed by the Appellant had been

made infructuous. It is submitted that the value of the Corporate Debtor was much higher than the one mentioned in the e-Auction notice. It is submitted that the reserved value of e-Auction dated 04.04.2022 as held was only Rs.548.46 crores, whereas, as per the Valuation Report, which was obtained by Andhra Bank from Gajjar Techno-Economic Consultant Pvt. Ltd., the value was more than three times. The learned Counsel for the Appellant has referred to the Valuation Report obtained by Andhra Bank, which has been brought on record along with the Rejoinder affidavit and submits that Corporate Debtor has been sold on inadequate value, which is not in accord with the object of the IBC, i.e. maximization of the value of the Corporate Debtor. The Liquidator neglected to fetch the maximum price and auctioned the Corporate Debtor at a throwaway price. The Valuation Report prepared by the Registered Valuers appointed by the Liquidator was never supplied to the Appellant. The Appellant vide email dated 26.05.2022 has called for various information from the Liquidator, which letter was also replied, but requisite information was not supplied. The Appellant was not informed about the IA No.1585 of 2022 filed by the Successful Auction Purchaser. The reliefs and concessions granted to the Successful Auction Purchaser are in deviation of the Process Document. The eligibility criteria of the bidder has been flagrantly violated by Perfect Day and the Liquidator. The Perfect Day did not form a consortium with Perrya nor incorporated an SPV in which Perfect Day as well as Perrya could have held suitable shareholding pattern. Perfect day bid on its own name and never brought Perrya on record. The Qualified Bidder List does not



mention the name of Perrya LLC. Perrya LLC, was not a successful bidder or a qualified bidder, but Sale Certificate has been issued to both Perfect Day and Perrya. Process Document never indicated that reliefs and concessions can be granted to Successful Auction Purchaser. Had such fact was mentioned in the Process Document, large number of bidders would have come to participate in the e-Auction. It is submitted that Liquidator failed to value the asset of the Corporate Debtor properly. No information was supplied to the Secured Creditors regarding the Valuation obtained by the Liquidator. The Liquidator failed to mention in Process Document that certain reliefs and concessions can be sought by the prospective purchasers, which may be in deviation of the Process Document. Such disclosure would have enabled more parties to participate in auction purchase. There was collusion between the Liquidator and the Perfect day. The claim of the Perfect day in his application for reliefs and concessions was not even objected by the Liquidator. The Liquidator committed fraud, irregularities and corrupt practices and has not followed the relevant regulations in conducting the auction. The Liquidator has failed to re-auction of the Corporate Debtor as a going concern in order to fetch the maximum price of the Corporate Debtor. The transfer of ownership, which is on fraudulent basis has to be set aside. The Appellant preferred the Appeal with the purpose to maximize the value of the Corporate Debtor. Such opportunity/ concessions ought to have been given to all bidders to meet the principal applicability in spirit of Article 14

of the Constitution. This Tribunal may set aside the impugned order dated 11.11.2022.

5. The learned Counsel for the Liquidator refuting the submission of learned Counsel for the Appellant contends that since Appeal was filed on the premises that IA No.3138 of 2022 filed by the Appellant was kept pending and impugned order was passed in IA No.1585 of 2022 filed by the Successful Auction Purchaser, whereas IA No.3138 of 2022 filed by the Appellant came to be dismissed on 17.02.2023 by the Adjudicating Authority, which rejection having become final, cannot be questioned any further. Thus, the very purpose of filing of Appeal by the Appellant is knocked out. It is further submitted that in pursuance of auction held on 04.04.2022, the Sale Certificate has already been issued by the Liquidator on 17.11.2022 and the entire amount under the auction has been received and distributed to the Financial Creditors including the Appellant. There being no challenge to the auction sale and Sale Certificate issued, the Appeal deserves to be dismissed. The challenge of the Appellant on the basis of valuation of the Corporate Debtor while fixing reserve price is also misconceived. The Appellant has relied on the Valuation Report obtained in 2018 when Corporate Debtor was not undergoing CIRP. The Valuation Reports were obtained by the Resolution Professional as per CIRP Regulations, 2016. The Liquidator had obtained Valuation Reports and the reserve price was fixed as per the Valuation Reports obtained under the Liquidation Regulations. The public announcement was made inviting claims on 27.02.2021, which also mentioned the reserve price. On

21.07.2021, notice inviting bids was issued where the reserve price was mentioned as Rs.548.46. No stakeholder, including the Appellant raised any objection to the reserve price. Notice inviting bids was published in seven newspapers. List of qualified bidders was also uploaded on website on 16.12.2021. The Appellant is a stakeholder of the Corporate Debtor and it has filed its claim on 19.03.2021, which was duly acknowledged. The Appellant name was also reflected in the list of stake holders published by the Liquidator. The Appellant had also participated in Stakeholders' Consultation Committee. The Appellant was well aware of the auction fixed for 04.04.2022 and never raised any objection. For the first time on 26.05.2022, the Appellant wrote a letter to the Liquidator asking for certain information. We may notice the letter dated 26.05.2022, which is the basis of IA No.3138 of 2022 filed by the Appellant before the Adjudicating Authority. The letter dated 26.05.2022, which is written in reference to the auction held on 04.04.2022, it is useful to extract paragraphs 1, 4, 7 and 15, which are to the following effect:

*“1. As you are aware that Punjab National Bank International Limited (“PNBIL”) is one of the secured creditors of Sterling on the basis of the ECB lending sanctioned on 04 March 2010. We successfully registered our claim against Sterling in the liquidation process on 23 March 2021 vide email enclosed. We also provided a detailed calculation of the amounts owed by Sterling to PNBIL which amounted to USD 6,203,185.70 as on*

*11 May 2019 (“Claim”). You duly acknowledged our Claim on 24 March 2021 vide email enclosed.*

- 4. Section 52 of IBC confers each secured creditor with a choice to either relinquish its right to the liquidation estate or realize its security interest independently, subject to provisions of IBC. As one of the Secured Financial Creditors, PNBIL relinquished its security interests under section 52 of the IBC, and the same was duly informed to you vide email dated 24.03.2021 enclosed.*
- 7. On 21 June 2021, following the relinquishment of security interests, PNBIL attended the meeting of the Secured Financial Creditors. In the meeting, PNBIL requested to review the valuation of securities and latest financials of Sterling. PNBIL was not provided with requisite information and even the minutes of the said meeting were not shared.*
- 15. Therefore, it is only reasonable that you provide us with the following details:*
  - a. the valuation of the assets and liabilities of Sterling, including whether fresh valuation was required, the appointment of registered valuers, subsequent assessment of realizable value, whether an average of two sale assessments was considered and the final asset sale report;*
  - b. the basis for concluding the auction as a going concern and the group of assets and liabilities so identified;*

- c. *the basis for selection of successful/ final from the list of bidders, ref your email dated 30 March 2022, including any marketing strategy, information memorandums, advertisements and pre-bid qualifications;*
- d. *the basis of setting the reserve price for the auction and related terms and condition of the auction/ sale; and*
- e. *insolvency resolution process costs and the liquidation costs.”*

6. From the statement made in the letter it is clear that the Appellant has filed its claim in the liquidation of the Corporate Debtor which claim was accepted. The Appellant is entitled to receive the proceeds of the liquidation as per Section 53 of the IBC, which has already been distributed. By letter dated 26.05.2022, certain information was asked from the Liquidator as noticed in paragraph 15 as above. The Liquidator immediately sent the reply on 01.06.2022 to the Appellant, giving response to all information sought by it. It is useful to extract the entire letter of 01.06.2022 of the Liquidator, which is to the following effect:

*“To*

*Punjab National Bank (International) Limited (PNBIL)  
1, Moorgate, London,  
EC2R 6JH.*

*Subject: Reply to your letter dated 26.05.2022*

*Dear Sir,*

*The undersigned is in receipt of your letter dated 26.05.2022 whereby you have sought certain information qua e-auction*

*process of the Sterling Biotech Limited (hereinafter referred to as “Corporate Debtor”) which was held on 04.04.2022. In response thereto, the undersigned submits her reply hereunder:*

*a) At the very outset, the undersigned takes this opportunity to highlight that the notice under reply appears to have been issued under a misunderstanding and misimpression of the actual facts pertaining to the liquidation process of the Corporate Debtor. Hence, for ease of reference the facts in completeness are narrated hereinbelow to put the matter in context.*

*b) The undersigned has been conducting the liquidation process of Corporate Debtor (including the public e-auction in respect of Corporate Debtor which was held on 04.04.2022) as per the provision of Insolvency and Bankruptcy Code, 2016 (Hereinafter referred to as “Code”) and applicable regulations framed under the Code, guided by the principles of transparency as prescribed by the applicable regulations promulgated by the Insolvency and Bankruptcy Board of India (hereinafter referred to as “IBBI”). In fact, for your reference, the sale of Corporate Debtor as going concern was organized as per the directions passed by the Hon’ble National Company Law Tribunal (NCLT), Mumbai in its Order dated 08.05.2019. The relevant excerpts of the said order is reproduced hereinbelow:*

*“As the Corporate Debtor is a going concern employing more than 800 employees, it is hereby directed the Corporate Debtor be liquidated as per the provisions of Regulation 32(b) & (e) of the IBBI (Liquidation Process) Regulations, 2016 which*

*provides for sale of assets in a slump sale and sale of the Corporate Debtor as a going concern, in the manner as laid down in Chapter III under Part II of the I & B Code, 2016.*

*The maximum period applicable for trying the sale on a going concern basis of the Corporate Debtor will be only six months from the date of the order. In case the efforts to sell the company as a going concern fails during the stipulated period of six months, then the process of the sale of assets of the Company will be undertaken by the liquidator as prescribed under Chapter-III of IBC, 2016 and the relevant regulations of IBBI.”*

*c) It is stated that the undersigned had called a meeting of the secured financial creditor(s) who have relinquished their security interests under section 52 of the Code on 21.06.2021 to nominate their representatives in the proposed Stakeholder Consultation Committee of Corporate Debtor (hereinafter referred to as “SCC”) which was being constituted voluntarily on the basis of list of stakeholders updated version 1 dated 07.06.2021. It is relevant to state here that in the said meeting secured financial creditors, who have relinquished their security interest had nominated (1) Indian Overseas Bank (ii) Life Insurance Corporation of India (iii) UCO Bank and (iv) Union Bank of India in the SCC. Moreover, the outcome of the said meeting was duly informed to all the participants of the meeting vide our email dated 21.06.2021.*

*d) Accordingly, the undersigned constituted SCC and uploaded the list of SCC dated 21.06.2021 on the official*

*website of Corporate Debtor. Moreover, the sale of Corporate Debtor as a going concern was also discussed in the first SCC meeting held on 25.06.2021 and the SCC had duly approved the sale of Corporate Debtor as a going concern.*

*e) It is stated your good office seems to have overlooked that fact that on 06.07.2021 through email, the undersigned has updated the Plan of Actions in relation to liquidation Process of Corporate Debtor to all the financial creditors wherein it was duly mentioned that after marketing, public announcement and based on the receipt of EOI/ Bids, an online auction will be conducted for the acquisition of Corporate Debtor, as a whole, on a going concern. Since then, there have been several instances wherein the undersigned has mentioned that the Corporate Debtor is being sold as a going concern basis on as is where is basis.*

*f) For completeness, the undersigned with the object to conduct a transparent liquidation process of Corporate Debtor and to seek advice in conducting the liquidation process of Corporate had voluntarily constituted the SCC. The latest meeting of stakeholders' consultation committee was accordingly, held on 29.01.2022, minutes of which were duly shared with all the participants.*

*g) Hence, as you are aware, you have relinquished your security interest to the liquidation estate as per Section 52 of the Code and hence, your claim shall be settled from the proceeds received from the sale liquidation assets in the manner provided under Section 53 of the Code. So far as the distribution of sale of proceeds is concerned, it is stated that the distribution of*



*proceeds from sale of liquidation assets shall take place as per the provision of Code and applicable regulations framed under the Code.*

*h) It is stated that Indian Bank had issued an email dated 30.03.2022 and raised certain concerns qua distribution of cash balance available with the Corporate Debtor and the Indian Bank's concerns were duly answered by the undersigned vide her email dated 30.03.2022, which was also issued to the other financial creditors as well. Thereafter, no email has been issued/sent by the Indian Bank. For clarity, our email dated 30.03.2022 addressed to Indian Bank and other lenders is reproduced hereinbelow for ease of reference:*

*"Kindly note that the Corporate Debtor is being sold as a whole on a going concern basis, on as is where is basis and what is basis and the present reserve price does include the cash component and the same is in the complete knowledge of the Stakeholders Consultation Committee (SCC). Very humbly, at this point in time, when the e-auction is up and the qualified bidders have been declared, it cannot be distributed now please.*

*However, the distribution and revision of the reserve price can be relooked by the SCC, depending on the fate of the present e-auction which is on the cards."*

*This has always been expressly mentioned in all the public notices/ process documents/ relevant communications issued in this regard. It is relevant to state here that all the information qua liquidation process of Corporate Debtor has been duly uploaded on the official website of Corporate Debtor (including*

*the successful e-auction which was held on 04.04.2022). Details of all such documents available on the website of the Corporate Debtor is enclosed herewith and marked as Appendix-A.*

*The undersigned would like to bring to your attention that each and every step of e-auction of Corporate Debtor was duly informed to the all-financial creditors including your bank by email. Details of Emails issued by the undersigned to financial creditors including you are summarized in Appendix -B. In addition to emails sent to the Financial Creditors, details of emails sent to the SCC are summarized in Appendix-C.*

*Hence, it is stated that your averment that you were not informed regarding the e-auction of Corporate Debtor is based on a misapprehension.*

*The undersigned's response to the information sought by you in the paragraph 15 of the letter under reply is as follows:*

*a) After the commencement of Liquidation, two registered valuers were appointed to determine the realizable value of the assets/ businesses of the Corporate Debtor.*

*b) AS your good office is aware that the reserve price of INR 548.46 Crore is the average of two estimated value of the assets/ business as received by the liquidator as per Regulation 35 read with Clause 4 of Schedule I of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. This was based on the estimates of realizable value of the assets/ businesses, as computed by the registered valuers in accordance with the companies (Registered Valuers and Valuation) Rules, 2017 (hereinafter referred to as "Valuer Rules"),*

*after physical verification of the assets of the corporate debtor.*

*c) As informed above, the Hon'ble NCLT directed the Liquidator to sell the Corporate Debtor as a going concern and moreover, the SCC also opted the sale of Corporate Debtor as going concern.*

*d) As already informed, that all the information qua e-auction of Corporate Debtor as a going concern has always been in public domain as all the documents are available on the official website of Corporate Debtor. Step-by-step e-auction process has been described in Appendix-D for ease of reference.*

*e) As explained earlier the reserve price has been fixed on the basis of the estimates of realizable value of the assets/ businesses, as computed by the registered valuers in accordance with the Valuers Rules, after physical verification of the assets of the Corporate Debtor.*

*f) So far as the insolvency resolution process cost and liquidation cost is concerned, you may refer to the List of Stakeholders (Version 2 dated 14.02.2022, pursuant to claims received up to 14.02.2022). The List of Stakeholders (Version 2 dated 14.02.2022, pursuant to claims received up to 14.02.2022 is available on the website of the Corporate Debtor (<http://www.sterlingbiotech.in/liquidation.html>).*

*The undersigned hopes that this reply will clarify all your doubts and seeks your cooperation to complete the liquidation process of the Corporate Debtor. The undersigned shall provide all information as may be required and as permissible under the applicable provisions of the Code.*

*Thanking you*

*Warm Regards*

*Dr. (h.c.) CS Adv Mamta*

*Liquidator*

*In the matter of Sterling Biotech Limited*

*....”*

7. The Application which was filed by Successful Auction Purchaser before the Adjudicating Authority for reliefs and concessions was filed on 28.05.2022. The Application was heard by the Adjudicating Authority and orders were reserved on the said Application on 02.08.2022. The IA No.3138 was filed by the Appellant only on 22.10.2022, which Application came to be dismissed by subsequent order on 17.02.2023. It is useful to extract order dated 17.02.2023 passed on IA No.3138 of 2022, which is to the following effect:

*“IA 3138/2022*

*Ld. Counsel for the Applicant, Punjab National Bank International Limited, is present. This is an Interlocutory Application filed by the Applicant, seeking various directions, elaborately mentioned in Prayer Clause, against Respondents. It is seen from the records that the matter was heard and Reserved for Orders and the Order was pronounced in the Month of November.*

*In this case, Neither the Counsel for the Applicant has mentioned the matter nor has prayed for issuance of Notice against the Respondents.*

*In fact, we are of the considered view that the present Interlocutory Application bearing IA No.3138 of 2022, at this belated stage is wholly misconceived and completely devoid of merits. Hence, Interlocutory Application*

*bearing IA No.3138 of 2022, is disposed of as dismissed as rejected.”*

8. We have already noticed the prayers in the IA No.3138 of 2022, which was filed by the Appellant. Prayers in the Application were to stay the e-Auction process/ sale process of the Corporate Debtor till fresh bids are invited for re-auction and the liquidator be directed to maintain status quo. The auction was already completed on 04.04.2022 and the Letter of Intent was issued by the Liquidator to the Successful Auction Purchaser on 05.04.2022. When we look into the Application filed by Appellant, there is no direct challenge to the auction held on 04.04.2022. The Appellant being stakeholder of the Corporate Debtor was well aware of the entire process including the date of auction fixed for 04.04.2022 and the reserve price, which was mentioned in the auction notice. At no point of time reserve price was sought to be challenged by the Appellant and after conclusion of the auction, challenge on behalf of the Appellant to the reserve price was not to be entertained. The Liquidator in its reply, which has been filed in this Appeal, regarding the valuation, has given detailed response, in the reply and it has been submitted that valuation was undertaken in accordance with the IBBI (Liquidation Process) Regulation, 2016 (hereinafter referred to as the “**Liquidation Regulation**”) and the valuation, which was undertaken has been mentioned in Annexure-A to the reply, which is as follows:

*“Valuations undertaken during the currency of the different processes under the Code*

---

<b>Sl. No.</b>	<b>Particulars</b>	<b>Fair Value (In INR)</b>	<b>Liquidation Value (In INR)</b>
I.	<i>Corporate Insolvency Resolution Process</i>		
A.	<i>Crest Capital Group Pvt. Ltd.</i>	610,05,63,251/-	435,88,09,501/-
B.	<i>Adroit Technical Services Pvt. Ltd.</i>	397,58,68,616/-	311,00,89,131/-
<b>Sl. No.</b>	<b>Particulars</b>	<b>Realisable Value (in INR)</b>	
II	<i>Liquidation process: Valuation for mode of sale under Regulation 32(e)</i>		
A.	<i>Crest Valuations</i>	579,33,00,000/-	
B.	<i>Adroit Appraisers and Research Pvt. Ltd.</i>	517,60,00,000/-	
<b>Average Realisable Value as per Regulation 35 of the Liquidation Regulations as reported in the Asset Memorandum dated 15.07.2021</b>			<b>548,46,00,000/-"</b>

9. The reserve price of the auction has been fixed as per the Valuation Report received by Liquidator in the liquidation process. There being no challenge to the said reserve price, inspite of several auction notices, which were issued as early in July 2021, the challenge to the Valuation raised by the Appellant in this Appeal as well as in the IA No.3138 of 2022 filed before the Adjudicating Authority is unsustainable. The Corporate Debtor has been directed to be liquidated by the order of the Adjudicating Authority, which order attained finality upto the Hon'ble Supreme Court. In the liquidation process, Liquidator has proceeded to obtain Valuation and the reserve price was fixed on the basis of Valuation obtained by the Liquidator. Hence, the process cannot be said to be violative of any of the provisions by the Liquidator. The Liquidator in reply has also stated that the Appellant holds merely 0.734% share in the pool of Secured Financial Creditors on the interest of their security. We have also noticed that

Appellant has also relinquished his security, vide email dated 24.03.2021 and after relinquishment of security by the Appellant, assets were required to be sold as per the Liquidation Regulation. It is relevant to notice that there are large public sector bank of the country are financial creditors of the Corporate Debtor, including State Bank of India, Union Bank of India, Bank of Baroda, Punjab National Bank, Bank of India, Canara Bank etc. and financial institutions like Life Insurance Corporation of India, none of the Financial Creditors including the public sector Banks have raised any objection regarding the reserve price, nor any of the Banks or other stakeholder has filed any application before the Adjudicating Authority, objecting to liquidation process, auction process or application seeking reliefs and concessions. It is useful to notice relevant part of paragraph 15 of the reply of Respondent No.3, which is to the following effect :

*“15. .... In the humble submission of the Liquidator, serious concerns arise of every independent party that participates in a competitive bidding set up is questioned about its integrity, by raising of such baseless allegations premised on conjectures. This equally applies to insolvency professionals that are conducting the insolvency and liquidation processes as per the provisions of the Code and under the aegis and guidance of the Insolvency and Bankruptcy Board of India and the creditors and the Hon’ble NCLT in an independent manner by establishing and following transparent processes, as has been done in the present case. It is unfortunate that remarks of the nature as objected to in the present reply, have been made as ground of appeal without any basis or evidence to substantiate the same, for*

*reasons best known to them. It is of extreme relevance to state that the Appellant holds merely 0.73% share in the pool of secured financial creditors who have relinquished their security interest and the other 23 banks including the largest public sector bank of the country like State Bank of India, Union Bank of India, Bank of Baroda, Punjab National Bank, Bank of India, Canara Bank etc. and financial institutions like Life Insurance Corporation of India, have never raised any objections whatsoever whether in respect of the reserve price or the manner in which the liquidation process has been conducted. On the other hand, they have from time to time appreciated the efforts and endeavours made by the Liquidator to conduct the liquidation process of the Corporate Debtor including the steps taken towards marketing of the liquidation estate which was a subject of the auction process.”*

10. A stakeholder, who only holds 0.734% share in the pool of Secured Financial Creditors is complaining about the entire liquidation process, when public sector Banks and other Financial Creditors have not raised any objection, which itself is sufficient to repel the objections raised by the Appellant. We, thus, are satisfied that there is no substance in the submission of the Appellant regarding reserve price, which was fixed for the auction of the Corporate Debtor.

11. The learned Counsel for the Appellant during his submission has made allegations against the Liquidator that Liquidator has connived with Respondent No.1 and has not conducted the liquidation in accordance with Liquidation Regulations and has unduly helped Respondent No.1. The Liquidator in his reply has already brought details of the liquidation



process, which indicates that in response to the liquidation process, notice was issued by the Liquidator to five bidders, who have given their Expression of Interest and their names were also published as stakeholders. In reply to allegations of Appellant that Liquidator has failed to invite maximum bidders due to non-compliance of Process Document dated 31.03.2022, reply been given by the Liquidator in paragraph 15, where answering to the above allegations, following has been stated:

<p>“f)</p>	<p><i>Liquidator failed to invite maximum bidders due to non-compliance of process documents dated 31.03.2022 in its true letter and spirit and due to ineffective market strategies</i></p>	<p>a) <i>It is unfortunate that such allegations have been raised without considering the actual facts pertaining to the liquidation process. In furtherance of the first notice published on 21.07.2021, the following were named as the qualified bidders on 21.08.2021:</i></p> <p><i>(i) ACG Associated Capsules Private Limited (ii) Aurboindo Pharma Limited (iii) Cadila Healthcare Limited (iv) Gland Celsus Bio Chemicals Private Limited (v) UPL Limited</i></p> <p><i>However, many of the bidders withdrew from the process and the auction could not be conducted. Copy of the List of Qualified Bidders dated 21.08.2021 as published by the Liquidator is annexed herewith and marked as Annexure “A-15”.</i></p> <p>b) <i>Accordingly, revised notice was published by the Liquidator on 22.10.2021. In pursuance of this notice, in addition to ACG Associated Private Limited that had submitted its EOI earlier, four new bidders also participated who were declared as qualified bidders:</i></p>
------------	--	--

		<p>(i) ACG Associated Capsules Private Limited (ii) Perfect Day Inc. (iii) Progressive Star Finance Private Limited (iv) Shamrock Pharmachemi Private Limited in consortium with India Gelantine and Chemicals Limited (v) Tessenderlo Chemie International NV Aurobindo Pharma Limited</p> <p>c) It is relevant to state that all of the above are market leaders in the pharmaceutical industry. Extensive efforts were made by the Liquidator to propagate, market and publish on numerous digital platforms having national and international reach to invite and bring the ongoing auction process with the knowledge of international leaders in the industry. Discussions were held in detail in the Second and Third Meeting of the SCC held on 06.09.2021 and 11.10.2021, respectively. In furtherance of the same the following appointments were made:</p> <p>i. Digifox Advertising India Private Limited: hired for the task of marketing by the means of programmatic advertising on various applications and websites including <a href="http://www.wsj.com">www.wsj.com</a>, <a href="http://www.economictimes.indiatimes.com">www.economictimes.indiatimes.com</a>, <a href="http://www.money.cnn.com">www.money.cnn.com</a>, <a href="http://www.nytimes.com">www.nytimes.com</a>, <a href="http://www.usatoday.com">www.usatoday.com</a>, <a href="http://www.forbes.com">www.forbes.com</a>, moneycontrol – markets and news, CNBC TV 18, ET Markets, National Stock Exchange India, Bombay Stock Exchange India, <a href="http://www.ft.com">www.ft.com</a> etc.</p> <p>ii) Leo Marcom Private Limited: for marketing through dedicated email marketing in India/ Russia USA and Germany, leaderboard</p>
--	--	--

		<p><i>banner advertisement in weekly e-newspapers, etc.</i></p> <p><i>d) All these endeavours were made with the ultimate objective to maximise the value of the assets of the Corporate Debtor. This was duly reported in the Third Quarterly Progress Report filed on behalf of the Liquidator for the quarter commencing from July, 2021 to September, 2021.</i></p> <p><i>e) From the bare perusal of the above, it is clear that it was only due to effective strategies that so many bidders evinced interest and participated in the auction process, not only Indian companies, but foreign entities as well. Furthermore, every letter and spirit of the Process Document dated 31.03.2022 has been followed by the Liquidator.”</i></p>
--	--	---

12. It has been further stated by the Liquidator that between the two qualified bidders, 23 rounds of bidding took place, where the highest bid was given by the Successful Auction Purchaser. The allegation of the Appellant that many qualified bidders did not participate and maximization of the value of the Corporate Debtor was not obtained by the Liquidator, are un-founded and without any basis.

13. The learned Counsel for the Appellant has further contended that Respondent – Perfect Day INC was declared as qualified bidder, whereas in the Sale Certificate apart from Perfect Day INC, Perrya LLC has also been included. It has been submitted that on behalf of the Respondent that Perfect Day INC has to take shareholding upto to 23% as per the Process

Document and the Successful Resolution Applicant has to include Perrya LLC to give him shareholding as per the Process Document, which is in accordance with the Process Document and relevant statutory provisions and cannot be faulted in any manner. The submission of the Appellant that Perrya LLC was not included in the list of Successful Qualified Bidder and hence, Sale Certificate could not be issued in its favour has to be rejected, since Sale Certificate has been issued in favour of the Perfect Day, including the name of the Perrya LLC to whom shares have been given by the Perfect Day INC as per the Process Document, which was also statutory requirement and requirement of Process Document.

14. From all materials brought on record, we are satisfied that Appellant, who was stakeholder of only 0.734% in the total value of stakeholders of the Corporate Debtor, was part of the Committee of Creditors and participated in the liquidation process by filing its claim, which was accepted. The Appellant has been distributed the proceeds of the liquidation as per the entitlement under Section 53 of the IBC. At no point of time, prior to holding of auction, i.e., 04.04.2022, any kind of objection was raised by the Appellant to the reserve price or against valuation obtained in the liquidation process by the Liquidator. It was only after the auction was over and Successful Bidder was declared, for the first-time letter dated 26.05.2022 was written to the Liquidator by the Appellant calling for relevant information. Relevant information was provided by the Liquidator by letter dated 01.06.2022. We have already noted above the I.A. No. 3138 of 2022 filed by the Appellant was on 22.10.2022, i.e., much

after completion of acquisition proceedings and filing of Application by the Successful Auction Purchaser on which orders were reserved on 02.08.2022 and as noted above, the I.A. No.3138 has also been rejected on 17.02.2023 by the Adjudicating Authority, which order has become final and has not been questioned. When we look into the prayers made in I.A. No.3138 of 2022, it is clear that all that Appellant wanted was to stay the process of auction and sale of the Corporate Debtor. Auction having already completed on 04.04.2022, there was no occasion to stay the auction. Further process of Sale was to be undertaken as per the Liquidation Regulations. when the Successful Resolution Applicant has deposited the entire amount, issuance of Sale Certificate was as per the Liquidation Regulations, in which no objection can be raised by the Appellant.

15. We do not find any merit in any of the substance raised by learned Counsel for the Appellant in this Appeal to question the impugned order dated 11.11.2022. It is further relevant to notice that order dated 11.11.2022 is an order granting reliefs and concessions to Successful Auction Purchaser, when the sale of the Corporate Debtor is as going concern, the Successful Auction Purchaser is entitled to receive certain reliefs and concessions to run the Corporate Debtor as going concern. The submission of the Appellant that this fact ought to have been mentioned in the Process Document that reliefs and concessions will be granted to the Successful Auction Purchaser also do not commend us. The question of reliefs and concessions arises only when Successful Resolution Applicant

requires certain reliefs and concessions to run the Corporate Debtor as going concern, which is consequential after acceptance of the highest auction bid by Successful Auction Purchaser. Non-mention in Process Document that reliefs and concessions can also be allowed is inconsequential.

16. We do not find any merit in any of the submission raised by the Appellant in the Appeal. The Appeal is dismissed. No order as to costs.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

**NEW DELHI**

**21<sup>st</sup> November, 2023**

Ashwani