

IN THE NATIONAL COMPANY LAW TRIBUNAL: CHANDIGARH BENCH

COURT No.1

(through hybrid mode)

ITEM No. 119

IA(I.B.C)/267 (CH)2021, IA(I.B.C)/199 (CH)2022, IA(I.B.C)/1045 (CH)2022,
IA(I.B.C)/1046(CH)2022, IA(I.B.C)/1602 (CH)2023, IA(I.B.C)/1601 (CH)2023
C.P. (IB)/153(CH)2019
(Admitted)

IN THE MATTER OF:-

Parmod Sharma

...Petitioner

Versus

Emsons Organics Ltd.

...Respondent

Under Section: 9, IBC 2016 and 54(1)

Order delivered on 18.04.2024

CORAM:

**SH. UMESH KUMAR SHUKLA
MEMBER (TECHNICAL)**

**SH. HARNAM SINGH THAKUR
MEMBER (JUDICIAL)**

PRESENT:

For the applicant : Mr. Pulkit Goyal, Advocate
/liquidator in IA
Nos.267/2021 and
199/2022

For the applicant in : Mr. Viren Sharma, Advocate with Mr. Pradeep Singh,
IA Nos.1045/22 and Advocate
1046/2022

For the respondent : Mr. Vishav Bharti Gupta, Advocate
No.1 and 2 in IA
Nos.267/2021 and
199/2022

For the applicant in : Ms. Sunish Bindlish, Advocate
IA Nos.1602/2023 and
1601/2023

ORDER

IA(I.B.C)/1602 (CH)2023, IA(I.B.C)/1601 (CH)2023

It is stated by Id. counsel for the liquidator the he has not received the copy of the applications. Let the same be supplied to him by the Id. counsel for the applicant during the course of the day. Ld. counsel for the liquidator is directed to file the reply

within one week with a copy in advance to the counsel opposite. List the matter on 14.05.2024.

IA(I.B.C)/1045 (CH)2022 and IA(I.B.C)/1046(CH)2022

Ld. counsel for the applicant is directed to inform the next date of hearing to ld. counsel for the respondent through e-mail as the file was not taken up on last few dates of hearing. Ld. counsel for the applicant is directed to place the said e-mail on record by way of an affidavit so that effective proceedings can be taken up on the next date of hearing. List the matter on 14.05.2024.

IA(I.B.C)/267 (CH)2021, IA(I.B.C)/199(CH)2022

Pleadings are stated to be complete. Ld. counsel for the liquidator is directed to file an affidavit stating whether Respondent Nos.4 and 5 are covered under the judgment of ***Hon'ble Supreme Court in the case of Gluckrich Capital Private Limited***, which has upheld the decision of the ***Hon'ble Tripura High Court in the case of Smt. Sudipa Nath vs. Union of India***, wherein the following observation was made:

"No power has been conferred on NCLT to pass such orders against other organizations/legal entities (other than corporate debtors) with whom such business was carried out against any person responsible in such other organizations/legal entities for carrying on business with corporate debtor. For the said purpose, the ratio of the judgment of the Hon'ble Supreme Court in Usha Ananthasubramanian (supra) in the context of section 339 (1) one of the companies Act, 2013 as extracted above would clearly apply even in the context 66(1) of IBC. Accordingly, an application under Section 66(1) by the resolution professional would not bar any civil action in accordance with law, either at the instance of resolution professional or liquidator or by the corporate debtor in its new avatar on a successful CIRP for recovery of any dues payable to the corporate debtor by such organization / legal entities. such legal action is independent of Section 66(1)."

2. The Hon'ble Apex Court has further observed:

"We are of the considered opinion that in such circumstances, it is for the Resolution Professional or the successful resolution applicant, as the case may be, to take such civil remedies against third party, for recovery of dues payable to corporate debtor, which may be available in law. The remedy against third party, however, is not available under Section 66 of IBC, and

the civil remedies which may be available in law, are independent of the said Section.”

Ld. counsel for the liquidator is directed to inform the next date of hearing to respondent Nos.3-5 through e-mail and place the said e-mail on record by way of an affidavit so that effective proceedings can be taken on the next date of hearing. Let the matter be listed on 14.05.2024.

Sd/-

(UMESH KUMAR SHUKLA)
MEMBER (TECHNICAL)

Tarvi

Sd/-

(HARNAM SINGH THAKUR)
MEMBER (JUDICIAL)