

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-I**

IA No. 1585/MB/2022

**In
CP (IB) No. 490/MB/2018**

An application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016
Filed by

Perfect Day Inc.

...Applicant

Versus

**Ms. Mamta Binani,
Liquidator for Sterling Biotech Limited**

...Respondent

In the matter of

Andhra Bank

...Financial Creditor

Versus

Sterling Biotech Limited

... Corporate Debtor

Order Pronounced on: 11.11.2022

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Applicant : Mr. Ravi Kadam Sr. Adv a/w Doctor
Mustafa Sr. Adv a/w Zal T.
Adhyarujina, Sr Adv a/w Shreeyash

Uday Lalit, Mr. Vishesh Srivastav,
Mr. Nikhil Waje, Mr. Prem Gada,
Mr. Hardeep Sachdeva, Mr. Kamal
Shankar, Mr. Ravi Bhasin, Mr. Parag
Maini, Mr. Raghav Chadha, Ms.
Gursimran Kohli, Ms. Kanika
Singhal, Advocates.

For the Liquidator : Sr. Adv. Atmaram N S Nadkarni,
Sandeep Bajaj, Aakanksha Nehra and
Ajay Sharma, Advocates.

ORDER

Per Coram:

1. The present Application is being filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking permission of this Tribunal to execute and conclude the purchase/acquisition of the Corporate Debtor as a whole on a going concern basis under liquidation by way of implementation of the acquisition plan submitted by the Applicant and seek certain reliefs, concessions, directions, dispensations and exemptions from this Tribunal which are necessary to acquire Sterling Biotech Limited (the Corporate Debtor) as a going concern.
2. The Corporate Debtor i.e. **Sterling Biotech Limited** was ordered to be Liquidated vide Order dated 11.06.2018 by Adjudicating Authority. During CIRP, no resolution plan was approved by the Committee of

Creditors of the Corporate Debtor, hence this Tribunal vide Order dated 08.05.2019 effective from 11.05.2019, ordered liquidation of the Corporate Debtor and Ms. Mamta Binani was appointed as the Liquidator.

3. The Respondent, in accordance with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and the Process Document issued a public notice and Process Document on 21.10.2021 calling the stakeholders to submit their claims with proof for acquisition 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” and in accordance with the Insolvency and Bankruptcy Code, 2016.
4. Pursuant to the Public Notice dated 21.10.2021 issued by the Respondent and with a view and objective to expand its operations in India submitted a binding bid of INR 638,00,00,005/- (India Rupees Six Hundred and Thirty-Eight Crores and Five only) for acquiring the Corporate Debtor Sterling Biotech Limited.
5. Pursuant to the review of the expression of interest (“**EOI**”), supporting documents submitted with the Respondent and submission of the earnest money deposit (“**EMD**”) in terms of the Process Document dated 21.10.2021 issued by the Respondent and as amended from time to time, the Applicant was identified as a “qualified bidder”. Thereafter, the bid

was undertaken by way of an e-auction process on 04.04.2022, whereby the Applicant was declared as the Successful Bidder.

6. **Brief Facts**

6.1 The Corporate Insolvency Resolution Process (CIRP) was initiated vide Order dated 11.06.2018 by this Tribunal. During the CIRP Shri Sundaresh Bhat had been appointed as the Interim Resolution Professional (IRP) and subsequently was confirmed as the Resolution Professional (“Resolution Professional”) by the Committee of Creditors of the Corporate Debtor. As No Resolution Plan was approved by the Committee of Creditors during the CIRP of the Corporate Debtor, this Tribunal vide order dated 08.05.2019, effective from 05.11.2019, ordered liquidation of the Corporate Debtor and appointed the Respondent as the Liquidator of the Corporate Debtor. A Copy of the Admission Order dated 11.06.2018 is annexed to Application as **Annexure – 1**. Copy of the liquidation order dated 08.05.2019 passed by the Tribunal is annexed to Application as **Annexure – 2**.

6.2 Subsequently, the Respondent issued the Public Notice in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (Liquidation Regulations) and the Process Document for calling the stakeholders to submit

their claims with proof for acquisition of the Corporate Debtor as a whole on a going concern basis. A copy of the Public Notice dated 21.10.2021 issued by the Respondent is annexed to Application as **Annexure – 3.**

- 6.3 The Respondent then undertook the process of selling the Corporate Debtor as a whole, on a going concern in terms of Regulation 32(3) of the Liquidation Regulations to maximize the value of the Corporate Debtor.
- 6.4 Pursuant to the said Public Notice and Process Document, the Applicant submitted a binding bid of INR 638,00,00,005/- (Indian Rupees Six Hundred and Thirty Eight Crores and Five only) “Final Consideration”, and pursuant to the review of the expression of interest (EOI), supporting documents submitted with the Respondent and submission of the earnest money deposit (EMD) in terms of the Process Document, the Applicant was declared as a ‘qualified bidder’. Thereafter, the bid was undertaken by way of an e-auction process on 04.04.2022, whereby the Applicant was declared as the Successful Bidder.
- 6.5 Subsequently, the Respondent issued a Letter of Intent dated 05.04.2022 (LOI) to Applicant, subject to the fulfilment of the conditions specified therein, including inter alia, the payment of

INR 127,60,00,001/- (Indian Rupees One hundred twenty seven crores sixty lakhs and One only), being equivalent to 20% (Twenty percent) of the Final Consideration (Upfront Payment) and the Balance Consideration i.e. an amount of INR 510,40,00,004/- (Indian Rupees Five hundred and Ten crores Forty Lakhs and Four only), being equivalent to 80% (Eighty percent) of the Final Consideration (Balance Consideration) in the manner and within the timelines prescribed therein.

- 6.6 The Applicant, pursuant to issuance of LOI, and in compliance of the terms and conditions of the LOI, has duly paid the Upfront Payment on 20.04.2022 into the Liquidation Account which has been duly acknowledged and accepted by the Respondent. A copy of the email/ letter dated 21.04.2022 sent by the Respondent acknowledging the receipt of the Upfront Payment by Applicant is annexed to the Application as **Annexure – 4**.
- 6.7 The Applicant respectfully submits before us that while it is in the process of taking steps for the payment of the Balance Consideration within the timelines as setout in the LOI, the Applicant submitted detailed Acquisition Plan to the Respondent for acquiring the Corporate Debtor as a going concern (Acquisition Plan). Copy of the Acquisition Plan submitted by the Applicant to the Respondent

is annexed to this Application as **Annexure – 5**.

6.8 It is submitted that in accordance with the regulatory requirements for foreign investment by a non-resident in an entity engaged in pharmaceutical sector herein and undertaking a brownfield project i.e. the Corporate Debtor, the Applicant will directly acquire 73.9% (Seventy Three point Nine percent) of the share capital of the Corporate Debtor and the balance will be acquired by Perrya, LLC, having its registered office at 1209 Orange Street, City of Wilmington, Delaware – 19801, which has been incorporated by some of the founders of the Appellant who are non-resident Indians/ overseas citizens of India (Perrya). Perrya will acquire the shares of the Corporate Debtor on a non-repatriation basis. The Applicant and Perrya shall be collectively referred to as the “Acquirers”.

6.9 The Applicant further submits that the Process Document also enable the Applicant to acquire the Corporate Debtor either in its name or through ‘special purpose vehicle’ (SPV) as defined in the Process Document. Further, it is submitted that the construct of SPV under the Process Document only requires the Applicant to acquire majority of the voting rights and management in the SPV. Therefore, it is open for a third-party to indirectly acquire voting and

management rights upto 49% (forty nine percent) in the Corporate Debtor. It is submitted here that the Acquisition Structure, as set out in the Acquisition Plan, is in compliance with the provisions and spirit of the Process Document, given that the Applicant will itself be acquiring 73.9% (seventy-three-point nine percent) of the share capital of the Corporate Debtor and Perrya will not have investments from any third-party but from the founders of the Applicant.

6.10 That the Applicant has submitted the letters issued by the Acquirers confirming the acquisition of shares of the Corporate Debtor in the manner envisaged in the Acquisition Plan (and as set out in Paragraph 6.09 above). Copies of the consent letters are annexed to Application as **Annexure – 6**.

6.11 That the Applicant has also submitted a declaration to the Respondent stating that Perrya is not barred from acquiring the Corporate Debtor under section 29A of the Code.

6.12 It is submitted that the Acquisition Plan submitted by the Applicant to the Respondent is akin to a resolution plan under Section 31 of the Code since Regulation 32(e) of the Liquidation Regulations clearly provides that the Liquidator may sell the Corporate Debtor as a going concern. Reference has also been made to the definition of ‘resolution plan’ under Section 5(26) of the Code which provides

that a resolution plan means a plan for insolvency resolution of the Corporate Debtor as a going concern in accordance with Part II of the Code, which also includes Chapter III (Liquidation Process). By the combine reading of these provisions of the Code indicates that the scheme of the Code and the Liquidation Regulations intend to confer benefits and reliefs to an applicant acquiring the Corporate Debtor as a going concern during liquidation proceedings of the same nature as contemplated for a resolution plan approved under Section 31 of the Code. It is also pertinent to mention that the exemptions/ relaxations provided under Applicable Laws shall apply *mutatis mutandis* to the Corporate Debtor as a going concern in liquidation, as applicable to a successful resolution applicant on approval of resolution plan under Section 31 of the IBC. The NCLT, Ahmedabad in the matter of *Nitin Jain, Liquidator of PSL Limited vs. Lucky Holdings Private Limited*, IA 391(AHM)/2021 in CP(IB) 37 of 2017 held the similar view.

6.13 Further, pursuant to the issuance of LOI, and in accordance with the Process Document, the Applicant has submitted the Acquisition Plan for acquiring the Corporate Debtor on a going concern in accordance with the Section 32A of the Code and for setting out the reliefs, concessions, exemptions in respect of the acquisition of the

Corporate Debtor and for providing a clean break from the period prior to the Effective Date, as envisaged under the Acquisition Plan.

In this regard, it is pertinent to mention that the Hon'ble Delhi High Court in the matter of *Nitin Jain, Liquidator of PSL Limited vs. Enforcement Directorate, 287(2022) DLT 625*, held as follows:

“Undisputedly and as has been explained in the decisions of the Supreme Court noticed above, maximization of value would be clearly impacted if a resolution applicant were asked to submit an offer in the face of various imponderables or unspecified liabilities. The amendment to sub-Section (1) of Section 31 and the introduction of Section 32A undoubtedly seek to allay such apprehensions and extend an assurance of the resolution applicant being entitled to take over the Corporate Debtor on a fresh slate. Section 32A assures the resolution applicant that it shall not be held liable for any offense that may have been committed by the Corporate Debtor prior to the initiation of the CIRP. It similarly extends that warranty in respect of the properties of the Corporate Debtor once a resolution plan stands approved or in case of a sale of liquidation assets”.

Further, the Hon'ble Supreme Court of India in the matter of *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta, (2020) 8 SCC 531* has held as under:

“Section 31(1) of the Code makes it clear that once a resolution plan is

approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution applicant starts running the business of the Corporate Debtor on a fresh slate as it were A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the Corporate Debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the Corporate Debtor. This, the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove.”

6.14 The Applicant further submits that this Tribunal has already granted similar reliefs in similar cases wherein the Corporate Debtor is being acquired as a ‘going concern’ by the successful bidder and the Applicant craves leave of this Tribunal to rely on the similar orders/ reliefs being granted by various Tribunals including this Tribunal, at the time of hearing.

6.15 It is also submitted that the reliefs and concessions sought by the

Applicant are necessary and important for the acquisition of the Corporate Debtor on a going concern basis and to enable the Applicant to run the business of the Corporate Debtor with a clean break from the past. In the absence of such reliefs and concessions, the Acquisition Plan may become unviable and unfeasible leading to further depletion of value of the assets of the Corporate Debtor and may create hardship to numerous employees and labours.

6.16 It is submitted that this Tribunal in the matter titled *Bank of Baroda vs. Topworth Pipes & Tubes Private Limited* CP(IB) No. 1239/MB/2018 vide Order dated 09.03.2021 granted reliefs similar to the ones prayed for by the Applicant in the present Application. This Tribunal while allowing the reliefs prayed for by the applicants therein observed as follows:

“28. *In the normal parlance “going concern” sale is transfer of assets along with the liabilities. However, as far as the ‘going concern sale in liquidation is concerned, there is a clear difference that only assets are transferred and the liabilities of the Corporate Debtor has to be settled in accordance with Section 53 of the Code and hence the purchaser of this assets takes over the assets without any encumbrance or charge and free from the action of the Creditors.*

29. *This Bench feels that following are the advantages of selling the*

Corporate Debtor “as a going concern”: (a) *The entity i.e. the Corporate Debtor itself gets transferred;* (b) *The equity shareholding gets transferred or extinguished and new shares are issued.* (c) *The purchaser is expected to carry on the business of the Corporate Debtor after the sale of assets is confirmed;* (d) *The existing employees will have a chance to continue in their employment.*

30. *The decision to sell the Corporate Debtor as a going concern is taken by the Liquidator himself or in consultation with the Creditors/ Stakeholders and the proceeds from the sale of assets are going to be utilized for distribution to the Creditors in the manner specified under Section 53 of the Code. Hence all the Creditors of the Corporate Debtor get discharged and the assets are transferred free of any encumbrances. The legal entity of the Corporate Debtor however survives.”*

Submissions made by the Respondent/Liquidator are as follows:

7. At the outset, the Respondent has detailed the facts in brief leading up to the filing of the present Application. Furthermore, it is confirmed that in compliance of the Order of this Tribunal dated 28.06.2022, the Respondent has not distributed the amounts received as the EMD and the upfront payment.
8. The Liquidation Order remained in abeyance because of Orders dated

30.05.2019 and 28.08.2019 passed by the Hon'ble National Company Law Appellate Tribunal, New Delhi read with orders dated 17.12.2019, 10.06.2020 and 22.02.2021 passed by the Hon'ble Supreme Court of India. Thus, the Liquidation Order stood revived with effect from 22.02.2021. Subsequently, the Liquidator took over the Corporate Debtor.

9. The Liquidator published the Public Notice on 21.10.2021 (annexed to the Application at page 84-86) along with the Process Document as amended and supplemented from time to time for inviting bids to conduct e-auction for acquisition 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" and in accordance with the Insolvency and Bankruptcy Code, 2016.
10. During the process of sale and prior to the scheduled date of auction, the Qualified Bidders conducted extensive due diligence. The Corporate Debtor and Liquidator had collated the documents and virtual access to the same was granted to the four Qualified Bidders until 28.01.2022. Further, to enable a holistic review, requests for extension of time to conclude the due diligence was received. Thus, the scheduled date of e-auction of the Corporate Debtor as a going concern had to be postponed from time to time.

11. Eventually, the e-auction was scheduled to happen on 01.02.2022; however, some of the other bidders had filed certain applications. This Tribunal while adjudicating one such application, directed status quo to be maintained qua the auction, vide its order dated 31.01.2022. This Order was finally vacated by this Tribunal vide its Order dated 28.03.2022 [*upheld by the NCLAT vide its Final Order dated 04.04.2022 in Company Appeal (AT) (Ins.) No.364 of 2022 i.e. Tessenderlo Chemie International NV/SA v. Sterling Biotech Limited*]. Copy of Orders passed by this Tribunal and the Hon'ble NCLAT, New Delhi are annexed as **Exhibit – A (Colly)** to Reply.
12. Pursuant to the said proceedings, the amended Process Document (Ver. 2.5) was issued on 31.3.2022, whereby the date of e-auction was scheduled for 04.04.2022. Copy of the Process Document dated 31.3.2022 issued by the Liquidator is annexed to Reply as **Exhibit – B.**
13. As a result, the e-auction of the Corporate Debtor as a whole, on-going concern basis on an “as is where is”, “as is what is” “as is how is” and “*without recourse basis*” was held on 04.04.2022.
 - (i) Only two qualified bidders participated in the active bidding i.e. the Applicant and ACG Associated Capsules Private Limited (hereinafter referred to as “**ACG**”).
 - (ii) In the said e-auction process of Corporate Debtor, it was Perfect

Day Inc. that was declared as the successful bidder by the Liquidator, in light of its highest bid amount of Rs.6,38,00,00,005.00 (Rupees Six hundred Thirty Eight Crores and Five only) and ACG submitted next highest bid amount of Rs.6,30,00,00,000/- (Rupees Six hundred Thirty Crores). Copy of the result published on the portal of the e-auction organizer is annexed as **Exhibit – C**.

- (iii) Subsequently, a Letter of Intent dated 05.04.2022 issued by the Liquidator was accepted and signed by the authorized representative of Successful Bidder. Copy of the Letter of Intent dated 05.04.2022 is annexed as **Exhibit – D** to Reply.
- (iv) It is submitted that along with the Earnest Money Deposit of Rs.27,42,00,000/- deposited by the Successful Bidder at the time of submission of Expression of Interest, a further amount of Rs.127,60,00,001/- (Indian Rupees One Hundred Twenty-Seven Crores Sixty lakhs and one only) was submitted as the upfront payment on 20.04.2022. It was requested by the Applicant vide letter dated 21.04.2022 not to distribute the said funds and informed that the Applicant is in the process of getting the captioned application filed. The Liquidator had informed that at that point of time, she was not proposing to

forthwith distribute the same and that she would abide by the directions passed by this Tribunal, vide email dated 21.04.2022 (*available at page 87 of the Application*). Copy of the said letter dated 21.4.2022 issued by the Applicant to Respondent is annexed to the Reply as **Exhibit – E**.

14. Eventually, the Successful Bidder shared the Acquisition Plan dated 26.05.2022 (*available at page 88-119 of the Application*) to acquire Corporate Debtor as a going concern on an “as is where is”, “as is what is”, “as is how is” and “without recourse basis” with the Liquidator on 26.05.2022. The Liquidator responded vide letter dated 27.05.2022 acknowledging the receipt of the Acquisition Plan and requesting the Applicant to proceed to approach this Tribunal. Copy of the Liquidator’s letter dated 27.05.2022 issued to the Applicant is annexed to Reply as **Exhibit – F**.
15. It appears that the Successful Bidder has sought for certain reliefs and concessions to enable the Successful Bidder to acquire the Corporate Debtor as a whole on a going concern basis “as is where is”, “as is what is”, “as is how is” and “without recourse basis” and without any representation, warranties or indemnities” in an efficacious manner. The Liquidator understands that in light of the Successful Bidder being a company incorporated under the laws of United States of America, certain regulatory requirements for undertaking

foreign investment by a non-resident in an entity engaged in pharmaceutical sector, in a brownfield project and other compliances envisaged under Foreign Exchange Management Act,1999 or any other law for time being in force relating to the acquisition of the Corporate Debtor will have to be complied with by the Applicant. The relevant stipulations appear to have been made in the Acquisition Plan, are slightly in a deviation to the technical/procedural terms provided in the Process Document. Some of the clauses of Acquisition Plan, which are in deviation, have been explained and compared with the terms of Process Document:

Sl. No.	Clauses under Acquisition Plan, which are in deviation to the terms	Terms of Process Document
1.	ACQUISITION STRUCTURE	
	Clause 3.1.2: Acquisition Plan envisages that the Successful Bidder will directly acquire 73.9% of the share capital of the Corporate Debtor and balance will be acquired by Perrya, LLC which entity has affirmed that it is compliant under Section 29A of the Code.	The Process Document prescribes four methods for bidders to participate in the e-auction process of the Corporate Debtor (i) Private/Public Limited Company, Limited etc.; (ii) Financial Institutions; (iii) Individual Investor and (iv) Consortium. The option for the special purpose vehicle (SPV) (incorporated by the Successful Bidder) acquiring the Corporate Debtor is also envisaged, which allows acquisition by a special vehicle company where the Successful Bidder has the control over the affairs of the special purpose vehicle through ownership by way of majority of the voting rights and management.
	Clause 3.1.6: Manner and method of transfer of equity shares of the Corporate Debtor to the Successful Bidder and Perrya LLC	
2.	RECEIPIENT OF SDALE CERTIFICATE	
	Clause 3.2.1: Acquisition Plan envisages that upon the receipt of the Balance Consideration, certificate shall be issued by the Liquidator confirming that Successful	As per Clause 4.3(XI)(ii) of the Process Document, upon payment of Final Consideration, the Certificate of Sale or Sale deed will be issued in the name of

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	Bidder and Perrya LLC have acquired the Corporate Debtor.	the Successful Bidder or Special Purpose Vehicle intimated by the Successful Bidder only.
3.	DATE OF COMING INTO EFFECT OF THE ACQUISITION PLAN AND LIABILITY ARISING PRIOR TO SUCH DATE	
	Clause 1: Seeks enforcement of the Acquisition Plan with effect from the date of approval being granted by this Tribunal (referred to as the Effective Date).	Not applicable
	Clause 3.2.2: Acquisition Plan envisages that Successful Bidder shall have no financial obligation or liability to any person or stakeholder apart from the payment.	It can be easily adduced from the Clause 4.3(VII)(iii), Clause 4.3(XI)(i), Clause 4.3(XI)(v), Clause 6(1) and Clause 13.4, that additional charges like taxes, duties etc. are liability of Successful Bidder.
	Clause 3.8.4: Successful Bidder would not be liable and free from all liabilities arising out of contracts entered between the Corporate Debtor and Third Party(ies) relating to the period prior to the Effective Date.	The Process Document does not envisage that the Successful Bidder would be free from liabilities arising out of contracts entered between the Corporate Debtor and Third Party(ies)
4.	EXTINGUISHMENT OF ALL SECURITY INTEREST OF THE CORPORATE DEBTOR	
	Clause 3.5.1(iii): Acquisition Plan envisages that all Liabilities of the Company against the secured creditors who have not relinquished their security interest shall stand fully extinguished and cancelled in accordance with Section 52 of the IBC and the company shall not have any Liability against such non-relinquished secured creditors.	The security interest in respect of which rights have not been relinquished do not form part of the assets as described forming a part of the Corporate Debtor, proposed to be auctioned as a going concern.
	Clause 3.5.1 (iv), (v) and (vi): Acquisition Plan envisages that any Security Interest created in connection with any liability of Corporate Debtor at any time prior to the Effective Date would fall away and all claims made under any Security Interest by the Corporate Debtor on behalf of any third party(ies) would stand extinguished by virtue of the order passed by this Tribunal.	
5.	CONTINUING OF THE LIQUIDATOR TO ACT AS LIQUIDATOR FOR A PERIOD OF 6 MONTHS FROM THE DATE OF ORDER OF APPROVAL BEING PASSED BY THIS TRIBUNAL.	
	Clause 2.5(xvi): The Acquisition Plan envisages that the Liquidator shall cooperate with and provide all necessary support and assistance to the Successful Bidder and Perrya LLC for a period of 180 days from the Effective Date.	No such provision in the Process Document.

16. It is pertinent to note that the Corporate Debtor has an extensive variety

of operations and in terms of scale as well, there have been challenges faced by the Liquidator from time to time to maintain the running of the Corporate Debtor as a going concern. The terms of the Acquisition Plan could not have been envisaged by the Liquidator at the time of issuance of the Process Document considering the peculiarities of the issues involved qua the place of incorporation of the Successful Bidder.

17. In view of the above submissions, the Respondent states that though there are slight deviations in the Acquisition Plan submitted by the Applicant as compared to the Process Document, the same may be considered by this Tribunal keeping in view the best interest of the Corporate Debtor and all stakeholders and for maximization of the value of the Corporate Debtor.

Findings:

18. We have perused the records and heard the Ld. Counsels for the parties.
19. The Applicant herein vide its prayers sought multiple reliefs to facilitate the scheme of going concern sale of the Corporate Debtor. Considering the matter being for approval of going concern sale of the Corporate Debtor this bench approves the going concern sale of the Corporate Debtor.
20. We direct the Applicant to deposit the balance sale consideration into the Liquidation Account in accordance with Regulation 41 of the

Liquidation Process Regulations. Upon payment of the Final Consideration, the Acquirers shall be deemed to have been granted all the rights, title and interest in the whole and every part of the Corporate Debtor, including but not limited to the assets, properties, contracts and Approvals, free and clear of all security Interest. The said sale consideration shall be distributed by the Liquidator in terms of Section 53 of the Code. Further, the Acquirers shall have no financial obligation or liability to any Person or Stakeholder apart from payment of Final Consideration. On the date of approval by the Adjudicating Authority, all such claims which are not a part of statement of claims, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the statement of claims.

21. We allow the cancellation and extinguishment of existing share capital of the Corporate Debtor, issuance and allotment of shares to the Acquirers and filing intimation to the Stock Exchange and other Government Authorities.
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 as 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 applicant 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.
24. With the aforesaid observation present **IA No. 1585 of 2022 In C.P (IB) No. 490/MB/2018** stands disposed of as allowed in above terms.

Sd/-

SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

11.11.2022
SAM/Jenny

Sd/-

JUSTICE P. N. DESHMUKH
MEMBER (JUDICIAL)