

NATIONAL COMPANY LAW TRIBUNAL
COURT-I, MUMBAI
SPECIAL BENCH

Item 7

IA 212/2022 IA 549/2022 IA 603/2022 in CP.(IB)490/MB/2018

CORAM:

SH. SHYAM BABU GAUTAM

JUSTICE P. N. DESHMUKH (Retd.)

HON'BLE MEMBER (T)

HON'BLE MEMBER (J)

ORDER SHEET OF THE HEARING ON **28.03.2022**

NAME OF THE PARTIES: - **212: India Gelatine & Chemicals Limited**

V/s

Mamta Binani Liquidator

**549: TessengerloChemie International
Nv/Sa**

V/s

Sterling Biotech Limited

603: Perfect Day Inc

V/s

India Gelatine and Chemicals Ltd

In the Matter of

Andhra Bank

V/s

Sterling Biotech Ltd

Appearance (via video-conference):

For the Applicant (in IA 212)	:	Mr. Chanakya Keswani, Advocate
(in IA 603)	:	Mr. Shreyash U. Lalit, Advocate
(in IA 549)	:	Mr. Abhishek Anand, Advocate
For the Liquidator	:	Mr. Ramji Srinivasan, Ld. Sr. Advocate with Mr. Sandeep Bajaj, Advocate

Sections 60(5)& 7 of the Insolvency & Bankruptcy Code, 2016

ORDER

IA 212/2022

Ld Advocate for the Applicant is present and makes a statement across the bar that the information which the Applicant wanted to obtain from the

Liquidator has already been received. Hence the Applicant herein is not pressing the above IA.

In view of above submissions the Application bearing **IA 212 of 2022 is disposed of as not pressed**. Order passed on **31.01.2022 by this Bench stands vacated**. **Liquidator is directed** to complete the process as expeditiously as possible as per the provisions of the Code, and rules made thereunder.

IA 549/2022

This is an Application filed by the Applicant, Tessengerlo Chemie International NV/SA under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (the Code) seeking appropriate directions against the Liquidator of the Corporate Debtor (in Liqn).

The Liquidator is in the process of conducting e-auction of the assets of the Corporate Debtor as a whole, on going concern basis. In the said Application, the Applicant has sought various prayers.

The Ld Sr. Advocate appearing for the Liquidator of the Corporate Debtor informed this Bench that the assets in question which are part of e-auction being conducted by the Liquidator is "As is where is, whatever there is" basis. Further, the prospective bidder may carry out search at their own end upto their satisfaction and then only they can bid for the assets. It is seen that the Liquidator has already intimated to the Applicant (herein) point wise responses to the Application vide its letter dt 04.03.2022. The details of the relief sought by the Applicant (herein) and the Reply given by the Liquidator are narrated hereunder in the tabular form:

Sl No.	Reliefs/Directions	Responses
a.	<p><i>Direct the Liquidator of the Corporate Debtor to disclose and produce the subsisting and renewed sanctions/permissions and all other relevant communications issued by the Sardar Sarovar Narmada Nigam Limited with respect to water supply to the Gelation Plant of Corporate Debtor from the branch of Narada Canal; and</i></p>	<p><i>A. The available particulars and available details were duly uploaded and shared with all the bidders through the Virtual Data Room during the currency the due diligence process (commencing 17.12.2021 from till 28.01.2022). B. The matter raised in the Application pertains to policy issues of the Government and is under consideration, to the best of the information and belief of the Respondent. C. The latest updates have duly been deliberated in detail and explained, during the due diligence process and the physical inspections at the Plant. D. It is impossible</i></p>

		<p><i>to commit on the specifics of the possible decision of the Government by the Respondent. E. The auction is for the sale of the Corporate Debtor as a whole on going concern basis and thus, it is for the bidder to decide whether to participate and bid in the auction on the specified terms and conditions.</i></p>
<p><i>b.</i></p>	<p><i>Direct the Liquidator of the Corporate Debtor to disclose the ownership status of the land on which the four Gametha borewells are situation; and</i></p>	<p><i>A. It is a matter of record (duly known to the Applicant and the best of the information of the Respondent) that (i) these parcels of land are not owned by the Corporate Debtor (and owned by the promoters who have been declared as fugitive refugees) and (ii) the Gametha land is presently</i></p>

		<p><i>under attachment orders by the Enforcement Directorate, and (iii) borewells have throughout been utilised for the providing of water to the Corporate Debtor uninterruptedly much before the initiation of the corporate insolvency resolution process of the Corporate Debtor. B. No adverse claim has been received by the liquidator, in respect of use of the said resources. C. Hence, the asset and interests are only being sold on ‘as is where is basis’ as a part of the present auction process.</i></p>
<p><i>c.</i></p>	<p><i>Direct the Liquidator of the Corporate Debtor to disclose the written and binding arrangement with owners of the lands on which the four Gametha borewells outside the periphery of Karakhadi Plant are situated, if the land does not belong to the</i></p>	<p><i>A. It is a matter of record (duly known to the Applicant) that no written arrangement with the said owners of four borewells is available in the records of</i></p>

	<p><i>Corporate Debtor; and</i></p>	<p><i>the Corporate Debtor (as notably it was informed may be in the possession of the promoters of the Corporate Debtor). B. The promoters declared as fugitives have also retained possession of the numerous other records of the Corporate Debtor, as a result of which the Liquidator was provided with bare documents and information. C. The predicament of the Corporate Debtor was duly explained to the bidders; since, none of the promoters have been accessible to enable further inquiry into definitive agreements of the Corporate Debtor. D. During the physical visits to the plant, the bidders were also taken to visit the said borewells and access the</i></p>
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		same.
d.	<i>Direct the Liquidator to secure the rights over the land of the four Gametha borewells and secure continuous operations of these borewells: and</i>	<i>A. No adverse claim has been received by the liquidator, in respect of use of the said resources. B. Hence, the relief is premature and in anticipation of contingent events, in light of the facts and circumstances mentioned above (including but not limited to the order of attachment issued by the Enforcement Directorate and lack of availability of records).</i>
e.	<i>Stay the E-Auction process of the Corporate Debtor till addressing the concerns pointed out by the Applicant in the captioned Application and till the Liquidator obtains the required permissions from SSNNL and written arrangement for four borewells in terms of Prayer Clause No. a, b and c above;</i>	<i>A. The Liquidator has throughout been running the Corporate Debtor as a going concern on 'as is where is' basis, as intended by the provisions of the Code. B. Postponing the auction for obtaining these approvals is</i>

		<i>indirectly seeking cancellation of the auction of the Corporate Debtor as whole on a going concern basis.</i>
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On perusal of the contents of the Liquidator's letter dated 04.03.2022, displayed on screen by the Ld Sr. Advocate appearing for the Liquidator, this Bench is satisfied and records that the present Interlocutory Application is nothing but simply a ploy to stall the process of e-auction, being undertaken by the Liquidator. In view of above the Present Application deserves no merits hence the same is dismissed.

IA 603/2022

Ld. Advocate for the Applicant makes a statement across the Bar that he is no more interested in prosecuting the above Interlocutory Application. Statement is accepted. Accordingly, the Application bearing **IA 603 of 2022 is disposed of as not pressed.**

List Company Petition bearing C.P.(IB) 490/MB/2018 on **11.05.2022.**

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

Vedant

Sd/-

JUSTICE P. N. DESHMUKH
Member (Judicial)