IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III

I.A. 775/2022

In

C.P. No. (IB) 65/MB/2018

Under Section 54 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 45 of IBBI (Liquidation Process) Regulations, 2016 and Rule 11 of NCLT Rules, 2016.

In the matter of:

Dilipkumar Natvarlal Jagad,

Liquidator of:
Atlantis Life Sciences Pvt. Ltd.,
Having its office address at:
Shop No.4, The Gorai Indraprastha CHSL,
RSC-37, Gillary Gunj, Plot No. – 90,
Gorai-2, Borivali (W), Mumbai – 400 092.

… Applicant

AND

In the matter of:
Pariman Enterprises Pvt. Ltd.

…. Petitioner

Versus

Atlantis Life Sciences Pvt. Ltd.

…. Corporate Debtor

Order pronounced on: 17.02.2025

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati, Member (Technical)

Appearances:

For the Applicant: Adv. Durgaprasad Halwai a/w Adv. Dilip Natvarlal Jagad

Per: Ms. Lakshmi Gurung, Member (Judicial)

1. The present application has been filed under Section 54 of the Insolvency and Bankruptcy Code, 2016 **('the Code'/ 'IBC')** read with Regulation 45 of IBBI (Liquidation Process) Regulations, 2016 ('Liquidation Regulations') by the Liquidator of Atlantis Life Sciences Private Limited **('Corporate Debtor')** seeking dissolution of the Corporate Debtor and consequential order.

2. Upon an application filed by Pariman Enterprises Limited **('Operational Creditor')** under Section 9 of the Code, this Tribunal vide order dated 07.08.2018 admitted the petition and initiated Corporate Insolvency Resolution Process **('CIRP')** of the corporate debtor. Mr. Dhananjay Kumar Vatsyayan was appointed as an Interim Resolution Professional **('IRP')**. Subsequently, this Tribunal vide order dated 14.12.2018 in M.A. No. 1426 of 2018 appointed Mr. Dilipkumar Natvarlal Jagad as the Resolution Professional **('RP')** of the Corporate Debtor.

3. The CIRP period was to expire on 03.02.2019 which period was extended by 90 days vide order dated 31.01.2019 in M.A. No. 214 of 2019. However, it is submitted that upon thorough consideration of the quantum of claims received and admitted, and noting the absence of assets of the corporate debtor sufficient to facilitate its operation as a going concern, and considering that the promoter's proposed One-Time Settlement through asset purchase by an Asset Reconstruction Company was not acceptable to the Committee of Creditors **('CoC')**, the Committee accordingly determined that revival of the corporate debtor is not possible and in its fourth meeting held on 27.06.2019 unanimously resolved to liquidate the Corporate Debtor.

4. Consequently, the Applicant filed M.A. No. 2702 of 2019 under Section 33 of the Code, which was allowed vide order dated 05.03.2021 **('liquidation order')** and the Applicant was appointed as the Liquidator. While passing the liquidation order, the Tribunal noted that the corporate debtor is non-operational for last two years and the only asset left with it is a shop situated at Borivali which is discussed later in the order.

5. The registered address of the Corporate Debtor is Shop No. 4, The Gorai Indraprastha CHSL, RSC-37, Gillary Gunj, Plot No.-90, Gorai-2, Borivali (W), Mumbai – 400 092. Pursuant to a liquidation order dated 05.03.2021, the Applicant made a public announcement in Form-B on 10.03.2021, inviting claims from creditors of the Corporate Debtor. The announcement was published in Active Times (English Edition) and Mumbai Lakshadeep (Marathi Edition), with a last date for claim submissions of 09.04.2021.

6. Bank of Baroda, the secured financial creditor assigned its debts and rights in relation to the Corporate Debtor to CFM-ARC vide 'Assignment Deed' dated 16.04.2021 upon which CFM-ARC entered the shoes of Bank of Baroda, as secured financial creditor. CFM-ARC filed Form-D on 20.04.2021 stating **NOT** to relinquish security interest of the corporate debtor.

7. A list of stakeholders on the basis of claims received was prepared and filed and was taken on record on receipt of letter dated 23.04.2021 *[Ref.: C.P. No. 65 of 2018 and MA 2702 of 2019 in the matter of Atlantis Lifesciences Private Lmited; Sub: List of Stakeholders as per Regulation 31 of the Insolvency and Bankruptcy Board of India (Liquidation Process)*

Regulations, 2016]. The details of claims received and admitted are as under:

Sr. No.	**Name**	**Claims received (Amount)**	**Claims verified under Regulation 12(2)(b) (Amount)**
		(in Rupees)	
1.	Operational Creditors	77,64,312.39	70,73,864.22
2.	Financial Creditors	11,69,18,772.02	11,54,74,645.02
3.	Workmen and Employees	0	0
4.	Other Stakeholders	0	0

8. Based on the claims received, the Liquidator formed the Stakeholders Consultation Committee (SCC) on 26.04.2021. The List of Stakeholders annexed as Exhibit- 'F' to the application is as follows: -

Sr. No.	**Name of Creditors**	**Amount Claimed by the Creditors (In Rupees)**	**Amount Admitted (In Rupees)**	**Security interest, if any, in respect of such claim**
Annexure 1 – Financial Creditors				
1.	CFM Asset Reconstruction Pvt. Ltd. (Debt has been assigned by Bank of	11,69,18,772.02	11,54,74,645.02	Note 1

	Baroda)			
	Total (A)	**11,69,18,772.02**	**11,54,74,645.02**	
Annexure 2 – Operational Creditors				
2.	Pariman Enterprise Pvt. Ltd.	37,84,017	37,51,660	NIL
3.	Office of the Deputy of Commissioner of Sales Tax (E-711)	39,80,295	33,22,204	NIL
	Total (B)	77,64,312	70,73,846	
Grand Total (A) + (B)		**12,46,83,084**	**12,25,48,509**	

Note 1:

Equitable Mortgage of Shop No. 3 & 4 admeasuring 1167 sq. ft. (583.50 sq.ft. each) built up area and two basements admeasuring 632 sq-ft (316 sq-ft each) built up area, situated in Gorai Indraprastha CHS Ltd., Plot No. 90, RSC 37, Gorai – II, Borivali (West), Mumbai – 400 091, standing in the name of the company,

Hypothecation of Goods, Book Debts

Personal guarantee of Directors:

1) Mr. Nitin K Muchchala (Deceased)
2) Mr. Dilip K. Muchchala

9. It is submitted that no meeting of SCC was convened as the secured creditor did not relinquish its security interest to liquidation estate but went ahead to realise it under Section 52 of the Code in accordance with the provisions of SARFAESI Act. The description of the immovable property as taken over by the secured financial creditor is given in Note 1 above. It is further submitted by the Applicant that as the Liquidation

Estate of the Corporate Debtor as per Section 36 of the Code was **'NIL'**, the Asset Sale Report was not prepared by the Liquidator in accordance with Regulation 36 of the Liquidation Regulations.

10. The Applicant filed the Preliminary Report dated 15.05.2021 and Asset Memorandum 15.05.2021. According to the Asset Memorandum, the valuation of assets of the corporate debtor is as follows:

*"**A. Land and Building***

As per the Valuation Report of Mr. ***Mohit Rasiklal Mehta****, the details of the Land and Building are as under:*

Amount in Rupees

Particulars	***Fair Value***	***Liquidation Value***
Shop No. 3 & 4 on Ground Floor & Basement Level, Bldg. Known as "Gorai Indraprastha Co. Op. Hsg. Soc. Ltd.", Situated at Plot No. 90, RSC-37, Gorai-II of Village Borivali, Near Mumbai Bank, MHADA Layout, Borivali (West),	*4,36,97,171/-*	*3,05,88,022/-*
Total	***4,36,97,171/-***	***3,05,88,022/-***

B. Securities and Financial Assets

Intangible Assets- Product registration and trademarks

The Company also had Intangible assets in the form of product registration in Kenya and Nigeria which expired in the year 2019 and not renewed. The Company also had some trademark registration in India. The Company was a trading company but not in operation for last four Years.

Value of Securities and Financial Assets (Tangible) as per financial records:

Particulars	***Amount***
*Balance with Bank of Baroda in FD Account**	*15,21,972/-*
Bank Balances	*24,759/-*
Cash Balances	*53,159/-*
Total	***15,99,890/-***

**An amount of Rs. 14,44,127/- was recovered by Bank of Baroda under Regulation 29 (Mutual Credit and Set Off) of the liquidation Regulations.*

Realisation of Security Interest by Secured Financial Creditor

11. CFM-ARC addressed a letter dated 07.10.2021 to the corporate debtor and the guarantors of the corporate debtor requesting for handing over possession of secured assets under the provisions of the SARFAESI Act.

12. In furtherance to the aforementioned letter, the CFM-ARC issued a letter dated 12.10.2021 to the corporate debtor and the guarantors of the corporate debtor, intimating possession of the Secured Assets under Rule 4 and 8(1) of the Security Interest (Enforcement) Rules, 2002 of Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 and also the Secured Financial Creditor, CFM-ARC did not relinquish its security interest to liquidation estate and moved under the SARFAESI Act to realize its security as per Section 52 of the Code.

Additional Affidavit for Clarification on realisation of Security Interest by Secured Financial Creditor – Regulation 21A of Liquidation Regulations

13. It is pertinent to mention that as no details about realisation of security interest was mentioned in the application, a query was raised by this Tribunal vide order dated 03.01.2025, which is clarified vide an additional affidavit dated 16.01.2025 stating that the encumbered assets of the corporate debtor were sold by CFM-ARC through e-auction held on 31.05.2022 for Rs. 3,60,00,000 (Rupees Three Crores Sixty Lakhs Only/-).

14. The Applicant further states that till the time of expiry of liquidation period on 04.03.2022, the status on the monetisation of the assets taken over by the Secured Financial Creditor under Section 52 of the Code was not known, hence the applicant was unable to incorporate the details under Regulation 21A-Presumption of security interest in the dissolution application filed under Section 54 of the Code.

15. An extract from para 16 of the additional affidavit is reproduced as under:

Reg. 21A	***Sub. Reg***	***Description***	***Clarification***
(1)		*xxxx*	*xxxx*
(2)		*Where a secured creditor proceeds to realize its security interest, it shall pay -*	
	(a)	*xxx*	*xxxx*

	(b)	*the excess of the realised value of the asset, which is subject to security interest, over the amount of his claims admitted, to the liquidator within one hundred and eighty days from the liquidation commencement date:* *Provided that where the amount payable under this sub-regulation is not certain by the date the amount is payable under this sub-regulation, the secured creditor shall pay the amount, as estimated by the liquidator:*	*No, As per Form D, the Claim amount was Rs. 11,69,18,772. However, the claim amount Admitted was Rs. 11,54,74,645 (…)* *…* *Successful EAuction conducted on 31st May, 2022, the amount realised was Rs. 3,60,00,000. (…)* *And as the amount realised i.e. Rs. 3,60,00,000 was far less than the amount of claim by the secured financial creditor, and who was the sole secured financial creditor, the secured financial creditor, exercising option under section 52, did not pay any amount to the liquidator.*
(3)		*…*	*…*

16. **Submission of Quarterly Reports**

The Applicant, till date, has submitted five quarterly progress reports for the quarters ending 31.03.2021 to 04.03.2022 as per Regulation 15 of Liquidation Regulations, as per details below:

i. The first quarterly progress report for the quarter ended 31.03.2021 was submitted by the Applicant on 05.04.2021.
ii. The second quarterly progress report for the quarter ended 30.06.2021 was submitted by the Applicant on 07.07.2021.
iii. The third quarterly progress report for the quarter ended 30.09.2021 was submitted by the Applicant on 07.10.2021.
iv. The fourth quarterly progress report for the quarter ended 31.12.2021 was submitted by the Applicant on 11.01.2021.
v. The fifth quarterly progress report for the quarter ended 04.03.2022 was submitted by the Applicant on 07.03.2022.

17. The Applicant submitted that the timeline for completion of liquidation within one year from the liquidation commencement date as per Regulation 44(1) of the Liquidation Regulations was to expire on 04.03.2022.

18. The Applicant states that the available funds in the liquidation estate were insufficient to cover all the liquidation expenses and also the Applicant/Liquidator is stated to have not received any fees as defined under Regulation 4 of the Liquidation Regulations. The amount distributed to stakeholders is NIL as per Section 52 or 53 of the Code.

19. The Applicant relies on the Independent Auditor's Report dated 07.03.2022, who were appointed to audit the Corporate Debtor's

Receipts and Payments accounts for the period 05.03.2021 04.03.2022. The audit Report pertains to the period from 05.03.2021 to 31.03.2021 and from 01.04.2021 to 04.03.2022. It confirms that the details of realization and disbursement for the period upto 04.03.2022, reconciles with the books of account and other records of the corporate debtor.

20. A Current Account - 016481300000980 was opened in the name of *"Atlantis Lifesciences Private Limited – In Liquidation"* with Yes Bank Limited at Abhilasha, Punjabi Lane, Borivali (West), Mumbai – 400092 as per Regulation 41(1) of Liquidation Regulations for the purpose of liquidation activities. The Applicant has submitted the Final Report dated 08.03.2022 stating that the balance in a Current Account - 016481300000980 with Yes Bank is Rs. **NIL**. A copy of the Final Report is attached as Annexure- 'P' to the application.

21. Further, the total admitted claims amounted to Rs. 12,25,48,509/. Only Rs. 77,918 could be distributed towards Liquidation Cost and the Secured Financial Creditor opted to realise its security interest as per section 52 of the Code. The bifurcation of amount distributed to stakeholders as disclosed in Form-H: Compliance Certificated dated 09.03.2022 is reproduced as under: -

Sr. No.	**Stakeholders under Section 53(1)**	**Amount Claimed**	**Amount Admitted**	**Amount Distributed**	**Amount Distributed to the Amount Claimed (%)**
1.	CIRP Cost	14,30,600	14,30,600	0	0.00
2.	Liquidation Cost	2,37,918	2,37,918	77,918	32.75

3.	Workmen	0	0	0	0
4.	Secured Financial Creditors	1169,18,772	11,54,74,645	NIL (Security Interest was realised by the Secured Financial Creditor under the SARFAESI Act)	0
5.	Employee	0	0	0	0
6.	Unsecured Financial Creditor	0	0	0	0
7.	Government and Statutory Dues -Deputy Commissioner Sales Tax	39,80,295	33,22,204	0	0
8.	Operational Creditors	37,84,074	37,51,660	0	0
9.	Preference Shareholders	-	-	-	0
10.	Equity Shareholders	-	-	-	0
	TOTAL	**12,63,51,659**	**12,42,17,027**	**77,918**	**0.06**

<u>Note</u>: *Since the Secured Creditor has decided not to relinquish its security interest (as referred to in paragraph no. 9 above) under Section 53 of the Code, therefore, the proceeds are attributed towards the Liquidation Costs.*

22. Further, in compliance with this Tribunal's order dated 06.12.2022, the Applicant filed an Additional Affidavit dated 17.12.2022 placing on record an e-mail from Yes Bank dated 27.09.2022 certifying that the liquidation bank account of the corporate debtor stands closed on 26.09.2022.

Additional Affidavit for Clarification – Reconciliation of Fixed Deposit Receipt (FDR)

23. Further, vide order dated 15.07.2024 this Tribunal directed the Applicant to provide reconciliation of Fixed Deposit Receipt (FDR) of the Corporate Debtor with Bank of Baroda as given in Progress Report for the Period ended 04.03.2022 and Final Report dated 08.03.2022 in pursuance thereof, the applicant filed an Additional Affidavit dated 10.08.2024 and submitted that the Corporate Debtor availed credit facility from Bank of Baroda vide Sanction Letter dated 01.03.2014. The terms of availing Letter of Credit facility mandated the corporate debtor to deposit margin of 25%, in the form of Fixed Deposits. The corporate debtor accordingly deposited margin money for availing Letter of Credit from time to time against the said Fixed Deposit Receipt (FDR) which was adjusted on discharge of Letter of Credit. At the relevant time, as per the corporate debtor's records FDR stood at Rs. 15,21,972/-. However, the Bank deducted Bank Charges amounting to Rs. 77,845 and as per Bank's record the amount of FDR stood at Rs. 14,44,127/-. This FDR amount has been set-off by Bank of Baroda as reflected in their claim in Form D at serial no. 7 stating that Rs. 14,44,127/- has been set off and the balance claim has been filed.

24. The Applicant further submits that the proceeds realized from the sale of said assets were substantially less than the admitted claim of the Secured Financial Creditor, CFM-ARC of Rs. 11,54,74,645/-. CFM-

ARC, pursuant to the provisions of Section 52 of the Code, exercised its right to realize its security interest and did not relinquish the same to the liquidation estate. Therefore, the proceeds from such sales were appropriated towards the claim of secured financial creditor as per Section 52 of the Code, and consequently, no distribution under Regulation 42 of the Liquidation Regulations is applicable in the present case.

25. I.A. 2839 of 2019 was filed by the Resolution Professional under Section 66 of the Code which was allowed to be withdrawn on an oral request by the Applicant vide this Tribunal's order dated 06.12.2022 and as per Form-H submitted by the applicant there are no litigation pending preferential, undervalued, and extortionate credit transactions.

26. It was submitted that the Applicant has fulfilled all his duties as per the tenets of the Insolvency and Bankruptcy Code, 2016, and has complied with all the necessary obligations as per the timeline provided under Insolvency and Bankruptcy Board of India (Liquidation process) Regulation. 2016. Therefore, the Applicant is filing this present application seeking dissolution of the Corporate Debtor under section 54 of Insolvency and Bankruptcy Code, 2016.

27. We note that the admitted claim of the secured financial creditor is Rs. 11,54,74,645/- while the estimated Fair Value and Liquidation Value of the corporate debtor was estimated at Rs. 4,66,20,344/- and at 3,29,52,049/- respectively. A copy of the Valuation Report dated 07.05.2021 is annexed as Exhibit-K1 to the application.

28. The Applicant further submits that all the compliances have been done by the Applicant as per the provisions/regulations envisaged in the Code, a copy of the compliance certificate in prescribed Form – H to the Final Report is annexed to this application. We note that the Final

Report dated 08.03.2022 was filed even prior to realisation of security interest by the secured financial creditor.

29. As per Section 54 of the Code, where the assets of the corporate debtor have been completely liquidated, the Liquidator shall make an application to the Adjudicating Authority for dissolution of such corporate debtor and the Adjudicating Authority shall, on such application, order for dissolution of the Corporate Debtor from the date of the order.

30. The Secured Financial Creditor has exercised its right to enforce the security interest under Section 52 of the Code. As per the Statement of Receipts and Payment from 05.03.2021 to 04.03.2022, cash and bank balance with the liquidator was to the tune of Rs. 77,918/- which has been distributed towards liquidation cost. The claims of the financial creditors and operational creditors stand settled in terms of Section 53 of the Code. We are satisfied that in the present case, there are no further assets of the corporate debtor left for liquidation and no useful purpose would be served by keeping the corporate debtor alive. Thus, this is a fit case of a Corporate Debtor to be dissolved as prescribed under Section 54 of The Insolvency and Bankruptcy Code, 2016.

ORDER

31. Accordingly, we hereby order for the dissolution of the Corporate Debtor i.e. **Atlantis Life Sciences Private Limited** with the following directions:

   i) The Corporate Debtor shall stand dissolved from the date of this order.

   ii) The Liquidator, **Mr. Dilipkumar Narvarlal Jagad** [IBBI/IPA-001/IP-P00233/2017-2018/10462], is discharged from his duties and responsibilities as the Liquidator of the Corporate Debtor.

iii) The Registry is directed to forward copy of this Order to the concerned Registrar of Companies and to the IBBI, within 7 (seven) days from the date of uploading of this order. for further necessary action as prescribed under Law.

iv) Liquidator is also directed to forward copy of this Order to the concerned authorities including Income Tax and Sales Tax authorities, the concerned Registrar of Companies and IBBI for further necessary action as prescribed under the law.

35. In the result, IA No. 775 of 2022 is hereby **allowed and stands disposed of** and C.P.(IB)- 65 (MB)/2018 is hereby **closed.**

"Files be consigned to records."

Sd/-
CHARANJEET SINGH GULATI
MEMBER (Technical)

Sd/-
LAKSHMI GURUNG
MEMBER (Judicial)

Akshita, L.R.A.