IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

IA No. 485 of 2023 IN CP(IB)No. 55/ALD/2017

(An application filed under Section 60(5) and Section 53(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016).

<u>IN THE MATTER OF:</u>

M/S POSITRON BIOGENICS PRIVATE LIMITED

CIN: U24290HR2020PTC086287

Registered Office at House No. 1, Block 18, 2nd Floor,

Spring Field Colony, Sector-30/31 Faridabad Faridabad HR 121003 IN

Through Its Director Ms Bhavya Shukla

DIN 0008109363

Email: positronbiogenics@gmail.com

……Applicant

Versus

Uttar Pradesh State Industrial Development Authority (UPSIDA)

Through Shri Vinod Kumar, Regional Manager

UPSIDC Complex A-1/4 Lakhanpur

Kanpur: 208024 Uttar Pradesh, India

Email: rmkanpur@upsidc.com

….. Respondent No. 1

Mr. Arun Gupta, Liquidator, M/s. L.M.L. Limited

IBBI Registration No. IBBI/IPA-002/IP-N00051/2016-2017/10095,

Office at: A-57 Sector 30, Noida 201301 UP India

Email: arungupta2211@gmail.com, Iml.liquidator@gmail.com

…… Respondent No 2

AND IN THE MATTER OF:

M/s. L.M.L. Limited (IN LIQUIDATION)

….. Corporate Debtor

Order Pronounced on: 02.09.2026

Coram:

Sh. Praveen Gupta	:	Member (Judicial)
Sh. Ashish Verma	:	Member (Technical)

Appearances:

Ms. Babita Jain, Adv.	:	For the Applicant
Sh. Shubham Agarwal with Sh. Rahul Kr. Jadaun, Advs.	:	For Res./ Liquidator

ORDER

1. The instant application has been filed on 08.10.2023, by M/s Positron Biogenics Private Limited (hereinafter referred as "Applicant/ Auction Purchaser") under section 60(5) and Section 53(1) of the Insolvency and Bankruptcy Code, 2016 ("IBC/Code") read with Rule 11 of National Company Law Tribunal Rules, 2016 against Uttar Pradesh State Industrial Development Authority (hereinafter referred to as "Respondent No.1/UPSIDA") and the Liquidator (hereinafter referred to as "Respondent No.2") of M/s L.M.L. Limited i.e., Corporate Debtor. The Applicant inter alia seeks the following prayers:

a) *Allow the present application;*

b) *Kindly pass an order to the Respondent No.1 Uttar Pradesh State Industrial Development Authority (UPSIDA) to Transfer the Part* *of Parcel A,B & C, Site-03, Panki Industrial Area, Kanpur and Refund an Amount of Rs 82, 53,013.37 (INR Eighty Two Lakhs Fifty Three Thousand Thirteen and Paise Thirty Seven Only) to Applicant which paid UNDER PROTEST towards the dues of Respondent No 2 i.e. LML Limited to avoid the delay in implementation of the Project;*

c) *Pass an order declaring that Respondent No.1 Uttar Pradesh State Industrial Development Authority (UPSIDA) is not entitled to claim any dues of Respondent no 2 over the property of the Applicant;*

d) *Pass such other or further order(s) as may be deemed fit and proper the facts and circumstances of the instant case."*

2. The brief facts as submitted by the Applicant are as follows:

a. The Corporate Debtor i.e., M/s L.M.L Limited was admitted into Liquidation on 23.03.2018, on an application filed by the Resolution Professional.

b. Pursuant to the issuance of Public Announcement in Form-A, the Respondent No.1 has filed a claim to the tune of Rs. 2,77,12,397/- , which has been admitted in toto by the Resolution Professional under the category of 'Operational Creditor'.

c. Subsequently, the Liquidator issued an auction notice dated 07.09.2022 for sale of assets of the Corporate Debtor and thereafter, E-auction was held on 04.10.2022. The Applicant herein was declared as the successful bidder for Property No. Parcel A, B and C, Site-III, Panki Industrial Area, Kanpur. A sale certificate was executed 'as is where is basis', 'no recourse basis' on 28.12.2022, and possession of the aforesaid property was handed over to the Applicant on 30.12.2022.

d. However, on application for transfer of the aforesaid plot to the Applicant being the auction purchaser, the Respondent No.1 rejected the transfer and raised a demand of Rs. 82,53,013.53 being the rental dues for the year 2000-2008 in order to execute the transfer of the aforesaid plot. Detailed distribution of outstanding demand over the period of 2000 to 2008 as stated in the Application has been reproduced below:

"

FROM DATE	**TO DATE**		**M/C**		**DAYS**	**INT. ON M/C**
7/1/2000	7/1/2001	365	98040.00	12/31/2020	7485	361888.47
7/1/2001	6/30/2002	364	195008.52	12/31/2020	7120	684720.33
7/1/2002	6/30/2003	364	195542.79	12/31/2020	6755	651398.57
7/1/2003	6/30/2004	365	196080.00	12/31/2020	6390	617893.74
7/1/2004	7/1/2005	365	196080.00	12/31/2020	6025	582599.34
7/1/2005	6/30/2006	365	196080.00	12/31/2020	5660	547304.94
7/1/2006	6/30/2007	365	294120.00	12/31/2020	5295	768015.81
7/1/2007	6/30/2008	365	294925.81	12/31/2020	4930	717033.33
7/1/2008	3/31/2009	273	219983.64	12/31/2020	4565	495234.40
		Total	**1885860.76**	**Interest 973 day (31st August 2023)**		**904903.16**
			Total Interest			**6330997.37**

"

e. The Applicant submits that the demand of Rs. 82,53,013.53 was paid under protest by the Applicant to the Respondent No.1 to register the transfer of land on the understanding that the same shall be repaid by the Respondent No.1 pending the outcome of this application.

3. The Applicant submits that it is a bona fide purchaser of the said property conducted through the legally established procedure under the Code, and has already deposited the entire sale proceeds in the liquidation account of the Corporate Debtor. The Applicant also submits that the sale proceeds received by the Liquidator were also duly distributed in accordance with Section 53(1) of the IBC.

4. It is further submitted that the creditors of the Corporate Debtor would receive their dues in terms of the waterfall mechanism provided under Section 53(1) of the IBC. In this regard reliance has been placed on the Judgement of Hon'ble NCLAT in *Bhatpara Municipality Th. Chairperson v. Nicco Eastern Pvt. Ltd., (Company Appeal (AT) (Ins) No. 714 of 2021).*

5. The Applicant finally submits that the demand of Respondent No.1 is not maintainable in terms of provisions of the Code and the Applicant cannot be asked to pay the alleged dues for pre-CIRP period.

REPLY OF RESPONDENT NO.1

6. The Respondent No.1 /UPSIDA in its reply filed vide diary no. 656 dated 13.03.2024 disputes and denies the relief made in the present application and submits as follows:

   a. The Respondent No.1/ UPSIDA submits that the aforesaid property was leased to the Corporate Debtor for a period of 66 years vide lease deed dated 23.12.1994 and the Corporate Debtor being the original lessee should have informed Respondent No.1/lessor that the company is undergoing insolvency proceedings.

b. The Respondent No.1 contends that a Transfer memorandum was issued by UPSIDA on 05.09.2023 only on execution of an affidavit and indemnity bond by the Applicant on 05.09.2023 in favour of Respondent No.1 stating that the Applicant shall immediately pay all demands raised by UPSIDA.

c. Furthermore, as submitted, Clause 2 of the said Transfer Memorandum stipulates as follows:

> "*2. Deposits made by ex-allottee against the plot will be adjusted first towards interest and Lease Rent upto payment and balance if any, towards premium. In case a balance playability is found after adjustment as above, the same shall be payable by you.*"

d. It is further submitted that the Applicant is bound by covenants of lease deed and thus cannot evade payment of arrears of lease rentals as well as rentals thereon.

e. The Respondent No.1 further submits that sale was made in "as is where is basis", "As is what is basis", "Whatever there is basis" and "No recourse basis" as per certificate of sale deed dated 28.12.2022, which in itself creates contractual obligations to discharge the payment of past lease rentals and interest thereon.

REPLY OF RESPONDENT NO.2

7. The Respondent No.2 / Liquidator has filed his reply dated 24.01.2024, in which he submits as follows:

a. The Applicant was declared as successful bidder for aforementioned property and it was sold on "as is where is basis", "As is what is basis", "Whatever there is basis" and "No recourse basis" as mentioned in clause Q of e-auction process document dated 07.09.2022 as well as certificate of sale dated 19.10.2022.

b. The Respondent No.2 further submits that the claim of Respondent No.1 has been admitted and it will be distributed to stakeholders by the liquidators as per Section 53 of the Code and payment to operational creditors are covered under Section 53(1)(f) of the Code.

c. It is also submitted that he does not have any role in the present matter and all allegations are bought up against Respondent No.1.

WRITTEN SUBMISSIONS

8. The Applicant also filed written submissions on 14.03.2024, wherein the submissions already dealt with in the preceding paragraphs have been reiterated.

FINDINGS AND ORDER

9. We have heard the learned counsels for the Applicant and Respondents and perused the material on record.

10. The instant application has been filed by the Applicant/Auction Purchaser under section 60(5) of the Code against U.P. State Industrial Development Authority (UPSIDA) claiming refund of the amount which has been deposited under protest as per the demand raised by UPSIDA on the property sold through e-auction by the liquidator during liquidation of the Corporate Debtor. The principle issue for consideration is whether the amount paid by the Applicant under protest to the Respondent No.1/UPSIDA is liable to be refunded.

11. It is not in dispute that the Applicant was declared the successful auction purchaser of the said properties pursuant to the e-auction held on 04.10.2022. The Certificate of Sale dated 28.12.2022 and the Possession/Delivery Letter dated 30.12.2022 have been placed on record as Annexure-5 and Annexure-6, respectively. Accordingly, the Applicant acquired the leasehold interest in the said properties pursuant to the sale conducted in the liquidation proceedings on 28.12.2022.

12. In the facts of the present case, it is also relevant to consider the circumstances in which the Applicant deposited the amount of Rs.82,53,014/- with Respondent No.1. Upon perusal of the letters dated 17.08.2023 and 25.08.2023 addressed by the Applicant to UPSIDA attached as Annexure 10, it is evident that the Applicant had, at the outset, disputed its liability to discharge the pre-liquidation dues of the Corporate Debtor and specifically requested Respondent No.1 to lodge its claim with the Liquidator in accordance with the provisions of the Code.

13. In the aforesaid letters, the Applicant further stated that its pharmaceutical project was being stalled on account of the pending transfer of the subject property and, therefore, while reserving its rights and proposing to approach this Adjudicating Authority under Section 60(5) of the Code, deposited the demanded amount of Rs.82,53,014/- vide Demand Draft No.496798 dated 25.08.2023 under protest. The Applicant also expressly recorded its understanding that the said amount would be refunded to it, with interest, in the event of the application being decided in its favour. Also, the affidavit and indemnity executed by the Applicant formed part of the documents furnished in connection with the transfer of the assets, and was given in the context of the payment made under protest. Therefore, the documents furnished for seeking transfer of the assets were consequential to the protest payment and cannot be treated as an independent undertaking or deposit by the Applicant towards the pre-CIRP dues of the Corporate Debtor.

14. Further, during the course of hearing held on 03.08.2026, the learned Counsel appearing for the Applicant submitted that, as UPSIDA was not executing the transfer documents, the Applicant was compelled to deposit the pre-CIRP dues under protest. Thus, the payment cannot be construed as a voluntary acceptance of the underlying liability or as an admission that the pre-CIRP dues of the Corporate Debtor were payable by the Applicant.

15. Further, on perusal of the E-Auction Process Document it is noted that the asset was sold on *"AS IS WHERE IS, AS IS WHAT IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS"* and required the bidder to make their own independent inquiries regarding "claims/rights/dues" affecting the asset. Thus, while the Applicant was put on notice regarding the dues affecting the asset, the said document does not specifically provide that the Applicant would assume the pre-CIRP debt of the Corporate Debtor towards UPSIDA as its own liability over and above the sale consideration of Rs. 26.73 crore.

16. This position is further borne out from the Terms and Condition attached as Annexure-1 to the Certificate of Sale. Though Clause 7 thereof records that the Applicant has conducted due diligence and has satisfied itself regarding the "*dues in respect of Asset*", the Certificate of Sale does not contain any express undertaking by the Applicant to discharge the pre-CIRP dues of Corporate Debtor towards UPSIDA. On the contrary, Clause 12 records that the original lease deed dated 04.07.2000 between UPSIDC and Corporate Debtor was handed over as a title document. Thus, what was transferred was the leasehold interest of the Corporate Debtor in the asset pursuant to the liquidation sale and not, in express terms, the pre-CIRP liabilities of the Corporate Debtor.

17. The nature of UPSIDA's claim is also corroborated by the claim record available on the IBBI website, which records a claim of Rs. 2,77,12,397/- lodged by UPSIDA. The said claim was lodged more than one year prior to the auction sale in favour of the Applicant and it has been admitted in full. Although the said amount differs from the subsequent demand of Rs. 82,53,013.37/-, the record establishes that UPSIDA had already asserted its monetary claim against the Corporate Debtor in the insolvency proceedings prior to the Applicant's acquisition of the property.

18. Now, proceeding to examine the nature of the demand, it is evident from the demand letter dated 14.08.2023 that Respondent No.1/UPSIDA demanded an amount of Rs.82,53,013.37/- towards maintenance charges, interest on maintenance charges, lease rent and GST on lease rent. The period-wise computation shows that the maintenance charges relate to the period from 01.07.2000 to 31.03.2009. The Respondent No.1/ UPSIDA has not specifically denied, in its reply, the period to which the aforesaid maintenance charges pertain. Thus, the principal maintenance dues had accrued during the period when the Corporate Debtor was the lessee of the subject properties, much prior to commencement of the CIRP on 30.05.2017 and the subsequent acquisition of the properties by the Applicant pursuant to the liquidation sale in 2022. Accordingly, the liability towards the principal maintenance charges had accrued against the Corporate Debtor, being the lessee during the relevant period, and could not merely by virtue of the subsequent liquidation sale, be treated as a liability originally incurred by the Applicant.

19. Further, the amount of Rs. 63,30,997.37/- towards interest on maintenance charges was thereafter calculated on the aforesaid defaults up to 31.08.2023 and the demand also includes Rs. 30,638/- towards lease rent and Rs. 5,515/- towards GST on lease rent. The fact that interest was computed up to a date subsequent to commencement of CIRP or even subsequent to the auction sale does not alter the character of the underlying principal liability. The interest is consequential upon the failure of Corporate Debtor to discharge the maintenance charges which had already fallen due between 2000 and 2009. All these amounts are therefore arising from a pre-CIRP liability demanded from the Applicant on account of Corporate Debtor.

20. The subsequent Lease Deed dated 06.11.2023 also does not alter the above position. The said Lease Deed creates continuing obligations upon the Applicant as the present lessee, including payment of lease rent and maintenance/service charges during its own tenure. It does not expressly state that the Applicant has assumed the already accrued pre-CIRP debt of the Corporate Debtor. The condition in the Transfer Memorandum dated 05.09.2023 that dues of the “ex-allottee” found payable in future may be recovered from the “current transferee” also cannot, in the facts of the present case, be treated as an unequivocal novation of UPSIDA's already lodged and collated pre-CIRP claim, particularly when the Applicant's payment was expressly made under protest.

21. Further, during the course of hearing on 03.08.2026, on the point of distribution in accordance with Section 53 of the Code, the Ld. Counsels representing the respective parties submitted as follows:

> *"1. Ld. Counsel representing the applicant states that she is the successful Auction Purchaser and has purchased the assets in an open e-auction as a going concern in the auction process conducted by the Liquidator.*
> *2. She states that there was a claim lodged by UPSIDA during the CIRP / liquidation process and the claim has been collated for pre-CIRP outstanding amount. However, UPSIDA was not executing the documents of transfer/ mutation. Ld. Counsel further submits that since the UPSIDA was not executing the documents, therefore it was compelled to deposit the dues of the pre-CIRP under protest.*
> *3. The present applications have therefore been filed for seeking refund of the amount paid by the applicants to the UPSIDA on account of the formalities to be completed for the said purpose.*
> *4. Ld. Counsel representing the Liquidator states that the liquidation assets have already been sold to the extent of about 280 crore, and out of which, approximately Rs. 259 crore has already been distributed. The remaining amount is also in the process of being distributed in accordance with the provisions of section 53 of Code.*
> *5. Ld. Counsel, Mr. Rahul Kr. Jadaun, has put in appearance for UPSIDA and states that he would not have any grievance, if the distribution takes place in accordance with Section 53 of the Code and as per the entitlement of the UPSIDA."*

22. In view of the above, the mere "*as is where is*" condition or the subsequent transfer of the leasehold interest cannot convert the pre-CIRP liability of the Corporate Debtor into an independent personal liability of the Applicant. The pre-CIRP dues of the Corporate Debtor were required to be dealt with through the liquidation process in accordance with Section 53 of the Code, particularly when the Respondent No. 1 had already lodged its claim in the liquidation proceedings of the Corporate Debtor.

23. At this juncture, it would be apposite to refer to the law laid down by the Hon'ble NCLAT in *Bhatpara Municipality Through its Chairperson v. Nicco Eastern Pvt. Ltd.*, (2021) (Company Appeal (AT) (Ins) No. 714 of 2021) wherein it was held as follows:

> *"14. Thus the liquidator had a duty to prepare an asset memorandum containing the value of the assets. Clause (f) of sub regulation 2 of regulation 34 stipulates the inclusion of "any other information that may be relevant for the sale of the asset". Regulation 13 of the said Regulations (supra) enjoins upon the liquidator to submit a preliminary report to the Adjudicating Authority with the Asset Memorandum. Therefore, the liabilities with respect to the assets should have been brought to the notice of the Adjudicating Authority by the liquidator.*
>
> ***15**. Clause (g) of sub section 1 of section 55 of the Transfer of Property Act, 1882 binds the seller as hereunder: -*
>
> *"(1) The seller is bound –*

(g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all encumbrances on such property due on such date, and, except where the property is sold subject to encumbrances, to discharge all encumbrances on the property then existing.

16. The outstanding dues of the property tax relating to period prior to sale confirmation are thus dues that are akin to claim of an unsecured creditor (Bhatpara Municipality in the present case) and should be discharged in terms of the properties regarding distribution of assets given in section 53 of IBC. The auction-purchaser cannot be held liable to pay any such dues relating to period prior confirmation of sale as has been held by the Hon'ble Supreme Court in the matter of AI Champdany Industries Ltd. vs. The Official Liquidator & Anr. (supra)."

24. Thus, in view of the law laid down by the Hon'ble NCLAT in *Bhatpara Municipality Through its Chairperson v. Nicco Eastern Pvt. Ltd.* (supra), the outstanding dues pertaining to the period prior to the issuance of the Sale Certificate/handing over of possession are to be treated as pre-CIRP liabilities of the Corporate Debtor and dealt with in accordance with the waterfall mechanism prescribed under Section 53 of the Code, and cannot simultaneously be recovered from the auction purchaser merely because the purchaser required transfer of the leasehold interest in its favour. Accordingly, the Applicant/Auction Purchaser cannot be held liable to pay the pre-CIRP dues of the Corporate Debtor.

25. In view of the foregoing discussion, the amount of Rs. 82,53,013.37/-, as demanded by UPSIDA vide letter dated 14.08.2023 and paid by the Applicant under protest towards the pre-CIRP dues of the Corporate Debtor, is not liable to be borne by the Applicant merely on account of its purchase of the asset in liquidation. The Applicant is accordingly entitled to refund of the said amount. UPSIDA shall remain entitled to receive its admissible claim against the liquidation estate in accordance with Section 53 of the Code, as also recorded in the order dated 03.08.2026, wherein the Ld. Counsel representing UPSIDA submitted that UPSIDA would have no grievance if the distribution takes place in accordance with Section 53 of the Code and as per its entitlement.

26. The Respondent No.1/ UPSIDA is directed to refund an amount of Rs. 82,53,013.53/- to the Applicant.

27. Accordingly, the present application bearing IA No. 485 of 2023 is allowed in the aforesaid terms.

-Sd-	***-Sd-***
(Ashish Verma)	**(Praveen Gupta)**
Member (Technical)	**Member (Judicial)**

Date: 02.09.2026