

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

I.A No. 2787 of 2019

IN

Company Appeal (AT) (Insolvency) No. 612 of 2019

IN THE MATTER OF:

Andhra Bank

...Appellant

Versus

**Sterling Biotech Limited
(Through Liquidator) & Ors.**

...Respondents

Present:

For Appellant : **Mr. Arun Kathpalia, Senior Advocate with Mr. A.K. Mishra and Mr. Siddharth Sharma, Advocates.**

For Respondents: **Mr. Sandeep Bajaj and Mr. Soayib Qureshi, Advocates for Liquidator.**

Mr. Sunil Fernandes, Mr. Tushar Gujjar, Mr. Manish Sukhani and Mr. Darpan Sachdeva, Advocates for Madison Pacific Trust Ltd.

Mr. Sumant Batra, Ms. Srishti Kapoor and Ms. Niharika Sharma, Advocates.

Mr. R.K. Tiwari, Joint Director and Mr. C. Balouni, A.D. for R-2.

Mr. Nitesh Rana and Mr. Adil Ali Khan, (SPP) Advocates for ED (R-3). Mr. Zoheb Hossain and Mr. Piyush Goyal, Advocates for ED.

Mr. Pranav Vyas and Mr. Satendra K. Rai, Advocate for R2 (RP)

Mr. Abhishek Baid, Mr. Praneet Das and Mr. S. Vishwanathan, Advocates for R-4 (SEBI).

Mr. Rajeev Ranjan, Senior Advocate with Mr. Abhijeet Sinha and Mr. Sankalp Sharma, Advocates.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

The appeal preferred by ‘Andhra Bank’ in Company Appeal (AT) (Insolvency) No. 612 of 2019 was disposed of along with Company Appeal (AT) (Insolvency) Nos. 601 & 527 of 2019 by this Appellate Tribunal’s order dated 28th August, 2019 with the following observations:

“17. For the reason aforesaid, while we hold that the order of ‘Liquidation’ was uncalled for, we set aside the impugned order dated 8th May, 2019 passed by the Adjudicating Authority and allow the Appellant (who filed the application of Section 7 – ‘Andhra Bank’) to withdraw the application.

18. In the result, the ‘Corporate Insolvency Resolution Process’ initiated against the ‘Corporate Debtor’ namely— ‘M/s. Sterling Biotech Ltd.’ stands set aside subject to the payment of the amount as payable by the ‘Promoters’/Shareholders to all the stakeholders/financial creditors and operational creditors in terms of Section 12A as approved with 90% voting share of the ‘Committee of Creditors’. However, setting aside the order of initiation of ‘Corporate Insolvency Resolution Process’ will not amount to interference with any of the order passed by the

'Enforcement Directorate' with regard to the assets of the 'Corporate Debtor' and the proceedings under 'PMLA' will continue against the 'Corporate Debtor' etc. in accordance with law.

19. In view of the fact that the impugned order dated 8th May, 2019 is set aside, all the observations made against Mr. Sundaresh Bhat, 'Resolution Professional' also stand expunged.

20. All these appeals stand disposed of with liberty to the 'Enforcement Directorate', the 'Central Bureau of Investigation', the 'Ministry of Corporate Affairs', 'Securities and Exchange Board of India' and the other Authorities to continue/take any action against the Company, 'Promoter'/ 'Shareholder'/ 'Director' under the existing laws and will continue irrespective of the settlement made by the individual 'Promoter'/ 'Shareholder'/ 'Director' with the creditors under Section 12A of the 'I&B Code'.

21. So far as the fees and resolution cost of the 'Resolution Professional'/ 'Liquidator' are concerned, the 'Committee of Creditors' will determine the same and will be paid by 'Andhra Bank' on behalf of the 'Committee of Creditors' and may adjust the same with other members.

22. Till the 'terms and conditions' under Section 12A is complied, the 'Resolution Professional' will manage the company and ensure that the company remains a going concern and protect its assets.

All the appeals stand disposed of with aforesaid observations and directions.”

2. An Interlocutory Application No. 2787 of 2019 has been filed by the Applicant/ Liquidator Ms. Mamta Binani for clarification of the order dated 28th August, 2019.

3. Having heard learned counsel for the parties, we make it clear that the ‘Promoters’ and or ‘Shareholders’ and or ‘Directors’ have been allowed to pay the dues in their individual capacity from their respective account which should not be ‘proceeds of crime’. We direct them to disclose source of the funds to ‘Enforcement Directorate’ and ‘Resolution Professional’ before such payment.

4. For the purpose of finding out whether the amount paid to the ‘Andhra Bank’ is ‘proceeds of crime’ or not, we allow the ‘Enforcement Directorate’ to find out whether the said amount is being paid in the individual capacity of the ‘Promoters’ or ‘Shareholders’ or ‘Directors’ and not from the ‘proceeds of crime’.

5. It is further clarified that if the order of this Appellate Tribunal dated 28th August, 2019 passed in terms of Section 12A is not given effect within a period of 30 days from the date of this order, in such case the order of this Appellate Tribunal dated 28th August, 2019 shall stand recalled and the order of liquidation dated 8th May, 2019 passed by the Adjudicating Authority shall stand restored.

6. In view of the aforesaid position, we have allowed 'Resolution Professional' to continue till the process is completed under Section 12A for a period of another 30 days. In case the amount is not paid within 30 days as observed above and order of liquidation is restored, the Liquidator appointed by Adjudicating Authority will continue.

I.A. No. 2787 of 2019 stands disposed of with aforesaid clarification and directions.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice A.I.S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

NEW DELHI

18th November, 2019

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