STERLING BIOTECH LIMITED

CIN No. L51900MH1985PLC035738

Regd. Office. : 43 Atlanta Building, Nariman Point, Mumbai-400 021.

Tel. : +91(22) 6630 6732, 6630 6733 * Fax : +91 (22) 2204 1954

Date: 27.02.2021

To,
BSE Limited

Listing Department
Phiroze Jeejeebhoy Tower,
Dalal Street, Fort,
Mumbai – 400001

Scrip Code – 512299
ISIN - INE324C01038

To,
National Stock Exchange of India Limited
Exchange Plaza, 5th Floor,
Plot No. C-1, Block G,
Bandra Kurla Complex, Bandra East,
Mumbai - 400051

Symbol - STERLINBIO
ISIN - INE324C01038

Dear Sir/Madam,

Subject: Intimation of Liquidation Process as per the requirement of Regulation 30 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015

Ref: Sterling Biotech Limited (BSE ID: 512299)

This is to inform you that, Liquidation Process has commenced in respect of Sterling Biotech Limited (Corporate Debtor) under the provisions of Insolvency & Bankruptcy Code, 2016 (IBC, 2016) read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 by an order of the Hon'ble National Company Law Tribunal, Mumbai Bench, Mumbai (Adjudicating Authority) dated 08.05.2019, effective from 11.05.2019.

(Copy of the order dated 08.05.2019 is attached)

Also, the Hon'ble NCLT had appointed the undersigned as liquidator of the Corporate Debtor. The said appointment is dated 13.05.2019.

(Copy of the communication of the Hon'ble NCLT office in this regard is attached)

Subsequently, vide Order dated 28.08.2019, the Hon'ble NCLAT set aside the Liquidation Order dated 08.05.2019 passed by the Adjudicating Authority and has also set aside the Corporate Insolvency Resolution Process, subject to the payment of the amounts as payable by the Promoters/Stakeholders in terms of the Application filed under section 12A of the Code and such other conditions as mentioned in the said order.

(Copy of the order dated 28.08.2019 is attached)

Thereafter, the said Liquidation Order dated 08.05.2019, passed by the Hon'ble NCLT, which was hitherto in stay and has been restored in terms of the order dated 22.02.2021 passed by the

Mamta Binani

Corp. Office : Sandesara Estate, Atladra, Padra Road, Vadodara - 390 012.
Tel. : +91-265-2680720, 2680730 * Fax : +91-265-2680257, 2680732 * Email : sterling_gelatin@stergel.com

Works : ECP Road, Village Karakhadi - 391 450. Ta : Padra, Dist : Vadodara, Gujarat, India. Tel. : (02662) 273292/94, 273364/65/67 * Fax : (02662) 273293

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Hon'ble Supreme Court of India in the case titled as Richmond Investments Private Limited v. Andhra Bank, read with Order dated 18.11.2019 passed by the Hon'ble NCLAT in the case titled as Andhra Bank v. Sterling Biotech Limited.

(Copy of the order dated 18.11.2019 and 22.02.2021 is attached)

Summary: This matter is therefore now under Liquidation as per the provisions of Insolvency and Bankruptcy Code, 2016 and Liquidation Commencement Date still stands at 11.05. 2019.

Kindly acknowledge the receipt of this document.
Thanking You
Yours faithfully

Mamta Binani

Dr. (h.c.) Adv Mamta Binani (B.Com, FCS)
Liquidator
In the matter of Sterling Biotech Limited (under Liquidation)
Registration No.: IBBI/IPA-002/IP-N00086/2017-18/10227
liquidatorsterlingbiotech@gmail.com (process specific)
mamtabinani@gmail.com (registered with IBBI)
Address of the Liquidator registered with IBBI:
2A, Ganesh Chandra Avenue, Commerce House
Fourth Floor, Room no.6, Kolkata 700013

Encl:

a) Copy of the order dated 08.05.2019
b) Copy of the appointment letter dated 13.05.2019
c) Copy of the order dated 28.08.2019
d) Copy of the order dated 18.11.2019 and 22.02.2021

IN THE NATIONAL COMPANY LAW TRIBUNAL
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MA No. 951/2019, MA 1519/2019in CP (IB) 490 (MB) 2018

Under Section 12A r/w 60(5) and 31 of Insolvency and Bankruptcy Code, 2016
M/s Andhra Bank

...Petitioner

V/s

M/s Sterling Biotech Ltd and Ors.

...Respondent

Order delivered on 08.05.2019

Coram: Hon'ble Member (Judicial) Mr V. P. Singh
Hon'ble Member (Technical) Mr. Ravikumar Duraisamy

For Andhra Bank: Sr. Counsel Mr Gaurav Joshi, Adv. MrNishit Dhruva, Adv.Mr Prakash Shinde, Adv. MrDasshit Dave,

For Resolution Professional: RP MrSundaresh Bhat, Advocate MrZalAndhyarujina, Advocate Nirav Shah

For Resolution Applicant: Sr. Counsel Mr Janak Dwarkadas, Ms Pooja

For the Promoters: Sr. Counsel MrVikramChaudhri

For Others: Counsel MrAkshayPatil for SEBI, MrLimosin A, SVPP along with Inspector M.K. Singh for CBI, Adv. Aditi Phatak for RBI, Mr Sanjay Shorey, Director (L&P) for MCA.

Per V. P. Singh, Member (Judicial)

ORDER

1. This MA 951/2019 has been filed under Section 12A of Insolvency and Bankruptcy Code, 2016 (**I&BCode**) read with section 60(5) of I&BCode, seeking permission to withdraw the Corporate Insolvency Resolution Process (**CIRP**) initiated against the Corporate Debtor under the admission order dated 11.6.2018 under the Provisions of Section12A of the Code.

2. Section 12A of the Code provides that "*The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety percent voting share of the committee of creditors, in such manner as may be prescribed*".



3. On perusal of the above provision, it is clear that petition under Section 7, 9 or 10 may be withdrawn given the provision of Section 12A provided **in the manner specified**.

4. CIRP Regulation 30A provides how the withdrawal application can be filed. Regulation 30A is given below for ready reference:

> *" (1) An application for withdrawal under section 12A shall be submitted to the interim resolution professional or the resolution professional, as the case may be, in Form FA of the Schedule before the issue of invitation for expression of interest under regulation 36A.*
>
> *(2) The application in sub-regulation (1) shall be accompanied by a bank guarantee towards the estimated cost incurred for purposes of clauses (c) and (d) of regulation 31 till the date of application.*
>
> *(3) The committee shall consider the application made under sub-regulation (1) within seven days of its constitution or seven days of receipt of the application, whichever is later.*
>
> *(4) Where the application is approved by the committee with ninety percent voting share, the resolution professional shall apply sub-regulation (1) to the Adjudicating Authority on behalf of the applicant, within three days of such approval.*
>
> *(5) The Adjudicating Authority may, by order, approve the application submitted under sub-regulation (4)".*

5. Given the provision of Regulation 30A which specifically deals with the procedure for filing withdrawal application. It is clear that the application under Section 12A shall be submitted to IRP or the RP as the case may be.

6. This MA 951/2019 has been filed by Andhra Bank, i.e. the original petitioner and the Financial Creditor of the Corporate Debtor, Sterling Biotech Ltd.

7. Regulation provides that after receiving the application under Section 12A of the Code, IRP or the RP, as the case may be, in Form FA of the Schedule, **before issue of Expression of Interest under Regulation 36A** shall ensure **that the application is accompanied by the Bank Guarantee towards estimated cost incurred for**

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Clause (c) and (d) of the Regulation 31 till the date of application.

8. It is pertinent to mention that CP 490/2017, i.e. Andhra Bank vs Sterling Biotech Ltd was admitted by order of this Tribunal dated 11.6.2018. The RP has filed the status report dated 8.3.2019 wherein it is stated that "the CoC received a revised offer from the promoter of the Corporate Debtor for a one-time settlement (**OTS**) of the Financial Debt by a letter dated 8.8.2018. The members of the CoC informed the Resolution Professional that they received the OTS offer dated 8.8.2018 letter from the promoters of the Corporate Debtor and the members of the CoC instructed the Resolution Professional to defer the publication of advertisement seeking expression of interests from prospective resolution applicants".

9. Regarding OTS, it is mentioned in the progress report that "under 14th CoC meeting, the CoC members accepted with a requisite majority, the withdrawal of CIRP with a vote of 90.32% cast in favour of withdrawal of the CIRP. The members of CoC received the OTS from the promoters of Corporate Debtor vide their letter dated 8.8.2018. The discussion for OTS between the erstwhile promoters of the Corporate Debtor and the lenders were happening outside the purview of CIRP. The Resolution Professional is given to understand that the representatives of the various members of the CoC were in the process of seeking approvals from their higher management about accepting the OTS since the date of receipt of the OTS offer letter."

10. It is further stated in the progress report that "on 27.2.2019, the Petitioner in the captioned Company Petition viz. Andhra Bank submitted an Application under Form FA as prescribed under Regulation 30A (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 ("CIRP Regulations") for the withdrawal of the CIRP of the Corporate Debtor. At the 13th meeting of the CoC held on 27.2.2019, the Resolution Professional informed the CoC about the receipt of a Form FA for withdrawal of CIRP of the Corporate Debtor from Andhra Bank and the same was discussed by the members of the CoC. Under discussion, the members of the CoC authorised the Resolution Professional to put the resolution for withdrawal of CIRP of the Corporate Debtor to vote in accordance with section 12A of the Code.

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Subsequently. On further deliberation, it was decided by the CoC that in case the resolution for withdrawal of CIRP of the Corporate Debtor fails. The Resolution Professional would put the resolution plan received from ACG Associated Capsules Pvt Ltd (ACG) to vote. The Resolution Professional was directed by the CoC that in case the resolution for withdrawal of the CIRP, as well as the resolution for approval of resolution plan submitted by ACG, fails, then a resolution for liquidation of the Corporate Debtor be put to the vote. Andhra Bank also submitted a **letter of guarantee** dated 27.2.2019 **undertaking to furnish a bank guarantee** of Rupees One Crore towards CIRP costs as provided under Regulation 30A (2) of the CIRP Regulations."

11. It is further stated in the progress report that:

> *"the resolution stood rejected as it received 89.5% of the affirmative votes of the CoC as against the requisite 90% as prescribed under Section 12A of the Code. As per the directions of CoC, since the resolution for withdrawal of CIRP of the Corporate Debtor did not get the requisite percentage of votes, the resolution plan received from ACG was put to the vote. It emerged that 92.81% of the members of the CoC voted against the resolution plan submitted by ACG.*
>
> *Since the resolution for withdrawal of the CIRP of the Corporate Debtor as well as the resolution for approval of resolution plan submitted by ACG had failed, as directed by the CoC, the Resolution Professional put a resolution for liquidation of the Corporate Debtor to vote. The resolution authorising the Resolution Professional to file a liquidation application before this Tribunal was put to the vote. The said resolution for liquidation was rejected by 85.58% of the members of the CoC.*
>
> *Given the rejection of the resolution above for liquidation by the CoC, the Resolution Professional asked the CoC for directions on the way forward about the CIRP of the Corporate Debtor at the 14th CoC meeting.* ***Under the discussions in the CoC, Andhra Bank submitted a fresh Form FA dated 5.3.2019 for withdrawal of the CIRP of the Corporate Debtor under Regulation 30A(1) of the CIRP Regulations.*** *A copy of Form FA dated 5.3.2019 is annexed*

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with the application as Exhibit I. The same was supported by a majority of the CoC members, and therefore the Resolution Professional was directed by the CoC to put a fresh resolution for withdrawal of CIRP to vote.

In relation to the OTS offer, the Resolution Professional asked the CoC members to provide him with details of (i) the OTS offer; (ii) sources of funds; (iii) timeframe for payments to each lender: and (iv) compliance with RBI norms; (v) and whether the interest of all stakeholders / CoC members have been provided for under the OTS offer.

In response, the representative of Andhra Bank stated that regarding the OTS offer, the Resolution Professional has to consider the documents submitted to the NCLT at the hearing held on 26.2.2019, as the OTS offer being currently considered by the CoC and further to which withdrawal of CIRP was being sought. A representative of Andhra Bank further informed the Resolution Professional that if the NCLT seek information pertaining to the OTS offer including sources of funds, timeframe for payments to each lender, compliance with RBI norms and whether the interest of all stakeholders / CoC members have been provided for under the OTS offer, the Applicant Andhra Bank and CoC will address all such queries posed by the NCLT directly and not with the Resolution Professional."

12. **It is also reported by the Resolution Professional that Resolution Professional put a fresh resolution for withdrawal of CIRP under section 12A to vote on 5.3.2019. The said fresh resolution for withdrawal of CIRP had received 90.32% affirmative votes. A copy of the voting results for the fresh resolution for withdrawal of the CIRP of the Corporate Debtor is annexed with the application as Exhibit J.**

13. **It is pertinent to mention that after getting the application under Section12A of the Code, when Resolution professional asked the CoC to provide him with the details of OTS offer, sources of funds, timeframe for payments to each lender, compliance with RBI norms and whether the interest of all stakeholders/CoC members have been provided for under the OTS offer, then Andhra Bank informed the Resolution**

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professional that they will directly address the issue with the Tribunal and did not submit any information to the Resolution professional.

14. **It is also pertinent to mention that in the OTS proposal dated 8.8.2018, it is stated that "*the group is exploring to raise funds for OTS proposal from some private group of financial/strategic investors. The same will be used to repay as OTS amount to nationalised Banks.*"**

15. The OTS proposal is attached with the application along with a Form FA which shows that the OTS Proposal is from Mr FarhadDaruwalla who has signed on behalf of Sandesara Group. It is not mentioned in the OTS proposal whether MrFarhadDaruwallahas been authorised by the promoters of the Corporate Debtor to submit the OTS proposal. It is also important to point out that the Corporate Debtor is Sterling Biotech Ltd and no proceeding under IBC,2016 has been initiated against the SandesaraGroup, thus how can the proposal submitted by the Sandesara Group be accepted by the Financial Creditor, is doubtful.

16. It is pertinent to mention that the promoter/ Director of Sterling Biotech Ltd is an absconder and Enforcement Directorate, as well as CBI, is searching for them.

17. By our order dated 26.03.2019, we have issued notices to the Central Government through Regional Director, Ministry of Corporate Affairs, Enforcement Directorate, Income Tax Authority, CBI, SEBI and RBI so that if they want to make any representations they can make the same before passing any order on the MA for withdrawal filed under Section 12 A of the Code.

18. In response to the notices issued on different departments, we have received representation of the Enforcement Directorate wherein it is stated that *"the CBI, BS & FC, New Delhi Registered an FIR RCBD1/2017/E/007 dated 25.10.2017 u/s 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and 120-B r/w 420,467,468,471 and 469 IPC and various accused persons including the promoters of SBL group on the basis of which the Enforcement Directorate, Headquarters Investigation Unit recorded an ECIR bearing number ECIR/HQ/17/2017 to investigate into the offences under PMLA. As the investigations kept unfolding, the role of different accused*

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persons and determination of various assets which were proceeds of crime/laundered money led to attachment of properties involved in money laundering which is nothing but proceeds of crime to the tune of Rs.4724 crores (approx.) and filing of different prosecution complaints, the last being filed on 23.10.2018 before the Special PMLA court, Patiala House, New Delhi explaining the complicity of the accused persons and the Hon'ble Court after taking cognizance in the matter issued nonBailableWarrants against the accused persons/ promoter of SBL Group on 25.10.2018".

19. It is further stated in the representation that*"an application under Fugitive Economic Offender Act, 2018 has been filed before the Hon'ble Special Court of Additional Session Judge, Patiala House Court, New Delhi seeking the tag of fugitive economic offender on Mr. Nitin JayantilalSandesara, which will further allow the Enforcement Directorate to confiscate the properties owned by him in his name or has any interest as beneficial owner".* It is also pertinent to mention here that the Special Court has taken the cognizance of the said application and issued a notice to Nitin JayantilalSandesara and others.

20. It is submitted that, even though the promoters of SBL Group had sufficient funds and resources to avoid declaration of the Bank loans as Frauds subsequent to the classification as Non-Performing Assets, they, in active connivance with each other and other persons, laundered the funds for their personal advantage and use, through a complex web of shell/ benami companies controlled and managed by them through dummy/paper directors who were/are their employees, and bought certain properties. This gives strength to the fact that funds were available to pay off the bank loans, but the same were diverted and syphoned off, and thereby cheated the banks.

21. It is further stated by the Enforcement Directorate that *"the properties provisionally attached are the proceeds of crime, and as per the Doctrine of Priority of precedence enshrined in the Constitution of India, the State will have first right to confiscate the proceeds of crime over the right of person to recover their debts from an accused. It is also based on the necessity of Public Policy that if the proceeds of the crime are not confiscated by the state, then the criminal will have free play by mortgaging such proceeds with*

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different persons, thereby, threatening the very existence of a civilised society".

22. It is further submitted by the Enforcement Directorate that *"the main object of Insolvency and Bankruptcy Code, 2013 and PMLA are distinct and different from each other. The PMLA has been enacted by the Parliament to address the cause of international convention. Besides that the Insolvency and Bankruptcy Code, 2016 does not deal with the Proceeds of Crime at any stretch of the imagination. Thus, the Civil Law cannot be given precedence over criminal law such as PMLA, 2002 and cannot override the Criminal Law at any stretch of the imagination".*

23. It is further submitted by the Enforcement Directorate that *"there are already specific provisions provided under the PMLA for the restoration of any attached assets to the rightful claimant by the concerned Special PMLA Court".*

24. In response to our notice, Respondent no.3, i.e. Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai has filed a short affidavit stating that Section 12A of the Insolvency and Bankruptcy Code, 2016 read with regulation 30A of the IBBI (CIRP) Regulations, 2016 specifically deals with the withdrawal of CIRP after admission. Section 12A provides that CIRP can be withdrawn after admission if the same is approved by 90% voting share of the Committee of Creditors. Regulation 30A imposes an additional condition for withdrawal of CIRP that such application shall be filed before the issue of invitation for expression of interest under Regulation 36A.

25. It is also stated by the Central Government that the OTS Proposal is from Mr FarhadDaruwalla who has signed on behalf of Sandesara Group, wherein the promoters of the Sandesara Group is reportedly absconding and facing several criminal charges before various law forums. The issue raised in the captioned order on which response of answering respondent has been sought inter-alia raises an important question of law;

26. **Whether there can be a valid agreement/ contract between parties where a party is "absconder", i.e. Promoters of Sandesara Group and represented through MrFarhadDaruwalla**?

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27. In this regard, it is stated that the pre-requisite conditions for a valid contract are lawful offer and acceptance thereof which is enforceable by law. In the instant case, the offer is from a representative of "absconder" whose whereabouts cannot be verified and the person so called authorised to represent absconder MrFarhadDaruwala is acting as an agent of the absconder who has not submitted any details of the absconder. Thus there cannot be binding contract enforceable by law in the present case within the meaning of the Contract Act, 1872.

28. It is further stated by the Central Government that provisions of Section 10 of the Contract Act,1872 is that ***"all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void."*** Further Section 23 of the Contract Act, 1872 stipulates *"What consideration and objects are lawful, and what not—The consideration or object of an agreement is lawful, unless—it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."*

29. It is further stated that the Resolution Professional submitted that a new resolution for withdrawal of CIRP under Section 12A was put to the vote on 05.03.2019. The said fresh resolution for withdrawal of CIRP had received 90.32% affirmative votes. Thereafter, when the Resolution Professional asked the CoC to provide him with the details of One time Settlement (OTS) offer, sources of funds, the timeframe for payments to each lender, compliance with RBI norms and whether the interest of all stakeholders/ CoC members have been provided for under the OTS offer, then Andhra Bank, Financial Creditor informed that they will directly address the issue with the Tribunal and did not submit any information to the Resolution Professional.

30. We have also received MA 1519/2019 on 22.04.2019, seeking the intervention in the matter between the Petitioner and Respondent and further direction has been sought to the CoC to reconsider the Resolution Plan submitted by the Applicant if this tribunal does not accept the Resolution plan moved by the Petitioner.

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31. It is stated in the application that if the withdrawal application of the Petitioner is rejected by this Tribunal then the Corporate Debtor under provisions of section 33 (1) of the Code, shall be placed in the liquidation. The Applicant states that the Liquidation of the Corporate Debtor would not be beneficial to either the Corporate Debtor or its Financial and Operational Creditor.

32. It is further stated in the intervening application that if the withdrawal application is not accepted by this tribunal, the applicant's plan ought to be voted upon by the CoC once again and the Corporate Debtor ought not to be allowed to go into liquidation.

33. It is stated in the application that Liquidation will result in unemployment of the employees of the Corporate Debtor. It is further submitted that upon liquidation of the Corporate Debtor, 800 employees would stand to be discharged.

34. It is further stated that the objective of the Code is resolution and therefore if there is a viable and interested investor, liquidation should not be the route the Corporate Debtor is forced to go down.

35. In this circumstance, by Intervening application MA 1519/2019 ACG Associated Capsules Private Limited, the applicant has sought direction against the CoC for reconsidering once again the plan submitted by the applicant in case the withdrawal application is not accepted.

36. About the MA 1519/2019, it must be noted that the CIRP period is already over on 08.03.2019. The Application is filed on 22.04.2019 that is belated. Further, in light of the judgment of Hon'ble Supreme Court in K. Sashidhar vs Indian Overseas Bank &Ors. (Civil Appeal No.10673 Of 2018 dated 05.02.2019)where it was held that

> *"Concededly, if the objection to the resolution plan is on account of infraction of ground(s) specified in Sections 30(2) and 61(3), that must be specifically and expressly raised at the relevant time. For, the approval of the resolution plan by the CoC can be challenged on those grounds. However, if the opposition to the proposed resolution plan is purely a commercial or business decision, the same, being nonjusticiable, is not open to challenge before the Adjudicating Authority (NCLT) or for that matter the Appellate Authority (NCLAT). If so, nonrecording of any*

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reason for taking such commercial decision will be of no avail."

Therefore, in light of the above judgment, there can be no direction to the CoC to reconsider the Resolution Plan.This MA 1519/2019 is rejected at the outset.

37. Andhra Bank has filed an additional affidavit on 12.03.2019 to place on record the additional documents and information in support of the due diligence and cautious approach adopted by the Applicant and the other secured lenders of the Corporate Debtor while approving the OTS proposals given by the erstwhile management of the Corporate Debtor in the additional affidavit. It is stated that the OTS proposal submitted by the erstwhile management of the Corporate Debtor, payments to the tune of USD 24,454,966.61 (towards upfront amounts) have been made to the lenders of the Corporate Debtor towards initial payment against the OTS proposal. A Chart of the payments made to the lenders of the Corporate Debtor against the OTS proposal as prepared by the applicant is annexed as "Annexure-1" with the additional affidavit. A chart of the payments made to the lenders as prepared by the representatives of the Corporate Debtor is annexed with the additional affidavit as "Annexure B". Copies of the SWIFT messages and a Circular dated 8th June 2016 bearing No. SPL-09/2016 issued by the Foreign Exchange Dealers' Association of India are annexed with the additional Affidavit as Annexure 2A&2B respectively.

38. It is further stated in the additional affidavit that vide letter dated 26.12.2018(Annexed at Page 73 of the MA) signed by Mr Nitin Sandesara, the Applicant has been informed that the promoter group is proposing to invest about 20% of the settlement amount which is about USD 700 Million, from its cash flow sources from its business in Nigeria and further, has identified investors who have shown their interest in investing.

39. It is further stated in the additional affidavit that Applicant with the secured lenders have approved the OTS proposal given by the erstwhile management of the Corporate Debtor which offers to pay substantial amounts. It is further stated that vide a majority vote share of 90.32% of the Committee of Creditors of the Corporate Debtor, Form FA submitted by the Applicant for withdrawal of the

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CIRP initiated against the Corporate Debtor (as per regulation 30A of the CIRP Regulations), has been approved.

40. It is further stated that in terms of the Minutes of meeting dated 05.03.2019 as requested by the Resolution Professional, the answers to the queries raised therein are as under:

(a) Query1: Details of the OTS Offer-

I say that the OTS proposal and the letters addressed by the erstwhile management of the Corporate Debtor are annexed as Exhibit – C (At page 50 onwards of the Miscellaneous Application).

(b) Query 2: Sources of Funds-

I say that at the cost of repetition, vide a letter dated 23th December 2018 (annexed at page 73 of the Miscellaneous Application), signed by Mr Nitin Sandesara, the Applicant has been informed that ***the promoter group is proposing to invest about 20% of the settlement amount which is about USD 700 Million, from its cash flow sources from its business in Nigeria and further have identified investors who have shown their interest in investing which shall be the sources of funds to make payments to the financial creditors under the OTS Proposal:***

(c) Query 3: Timeframe for payments to each lender and compliance with RBI norms:-

I say that the promoters initially requested to make payment under the OTS proposal by March 2019, however, by oral requests, the promoters have requested to make the payments under the OTS proposal by 30th June 2019. I say that the approval of the OTS proposal conforms with the Circular No.

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LEGAL/CIR/655 dated 8th June 2009 issued by the Indian Bank's Association which permits banks to enter into a settlement without in any way affecting the criminal action taken against borrowers, which shall continue. This has also been followed by the Applicant Bank in its internal policy dated 4th August 2016 (Circular No. 185 bearing Ref. No. 45/8) Further, whilst approving the OTS proposal vide its sanction letter dated 5th November 2018, the Applicant has clearly made a condition that the approval/ sanction of the OTS shall not in any way affect the ongoing criminal proceedings against the Corporate Debtor/ its erstwhile management. Copies of the said Circular dated 8th June 2009 issued by the India Bank's Association, the Applicant's internal policy dated 4th August 2016 and the OTS sanction letter dated 5th November 2018 are annexed hereto and marked as ***"Annexures-5A to 5C",*** *respectively.*

(d) *Query 4. Whether the interest of all the stakeholders/ CoC members has been provided under the OTS offer.*

I say that the present Miscellaneous Application has been filed under the provisions of Section 12A of the code read with Regulation 30A of the CIRP Regulations 2016 for withdrawal of the CIRP process initiated against the Corporate Debtor under the approval of 90.32% of the CoC. I say that such withdrawal shall not, prejudicially or otherwise, in any manner affect the rights of the stakeholders of the Corporate Debtor. I repeat and reiterate that the sanction of the OTS proposal shall also not affect/ Come in between the ongoing criminal proceedings initiated against the Corporate Debtor.

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41. It is further stated by the Applicant that the Applicant and the other secured lenders have conducted all due diligence in the matter, being conscious of the fact that there are ongoing criminal proceedings pending against the promoter/ ex-directors of the Corporate Debtor. Hence the applicant while sanctioning the OTS proposal (vide its letter dated 05.11.2018 annexed at Exhibit-J at Page 140 of the Miscellaneous Application) has stipulated that **"the settlement agreed between the parties shall not in any way affect or be construed as settlement of the ongoing/ impeding criminal cases"** the settlement compromise entered into with the Corporate Debtor will not affect/ prejudice the ongoing criminal proceedings initiated by the various authorities against the Corporate Debtor/ its Promoters and suspended Directors.

42. From the perusal of the documents submitted, it is noted that the OTS proposal was originally addressed vide a letter dated 08.08.2018 and the payments should have been received by 31.03.2019. However, the banks have so far received not even 6% of the total OTS amount proposed. Further, the amount to be invested by the identified investors, their names, sanction granted by those investors, their financial credibility/strength is also not submitted which again casts doubt on the OTS proposal submitted by the promoters. It is also noted that the promoters could not fulfil their commitments before 31st March 2019 and orally sought for extension up to 30.06.2019 which was agreed by the CoC. Thus, the entire events cast doubts on the fulfilment of the OTS proposal.

43. In response to our notice, Reserve Bank of India has filed representation wherein it is stated that Reserve Bank of India has issued circular dated 28th July 2015 on "**Compromise or Negotiated Settlement of Non-Performing Assets (NPAs).**". This circular contains broad guideline to be followed by Banks while entering into compromise settlement of NPAs with the consent of the borrowers. Paragraph 3 (b) of the circular state that at the time of entering into compromise settlements, a proper distinction needs to be made between willful defaulters and the borrowers defaulting in payment due to circumstance beyond their control. Further, it is sated by the RBI that any transaction by a Bank including receipt of money for a compromise settlement, shall be subject to and in full compliance with due diligence requirement under Know Your Customer anti-money laundering guidelines, provisions of the Prevention of Money

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Laundering Act, 2002. However, RBI has not submitted its stand but only apprised us regarding its Circular in this respect. Copy of the circular is also attached with the reply of RBI. Response received from RBI is of no significance.

44. The Ld. Senior Counsel Mr Gaurav Joshi vehemently argued in support of the withdrawal application filed by the Andhra Bank and submitted that the applicant/other banks are responsible/answerable only to the RBI who is the regulator of banking sector and the submissions/arguments of the other enforcement agencies such as ED/CBI is of not much relevance to the current MA 951/2019. In response to our notice, RBI has submitted only a circular, and no comments were offered about the withdrawal application submitted by Andhra Bank. Therefore, during the hearing, the Bench has directed the Counsel of RBI to obtain the specific comments/stand of RBI considering the submission of the Ld. Senior Counsel for the Andhra Bank and also the sensitivity, the importance attached to the issue and the concern being raised by this Bench. However, the counsel for the RBI during the next date of hearing simply reiterated its previous submissions. Therefore, the Bench did not receive any specific input/regulatory assistance from RBI.

45. During the hearings, the bench had also sought for a copy of Foreign Inward Remittance Certificate (FIRC) from Andhra Bank for having received the funds from the promoter who are currently abroad, and the bank submitted that they would submit the copy of the FIRC shortly /within an hour. However, during the next hearing, the bank has taken a complete U-turn and stated that as per the circular, FIRC is not applicable for investments of OTS proposal and the same is applicable only for investments made through FPI/FII.

46. The Bench has also noted that the other arms of Government/Enforcement Agencies opposed the withdrawal application of Andhra Bank. However, the Public Sector Banks who is also part of the government insisted on accepting the OTS proposal.

47. In response to our notice, SEBI has filed its representation stating that on 08.03.2019 the Committee of Creditors (COC) voted to withdraw the present Petition against the Respondent Company after accepting the OTSoffer. SEBI has also noted that the said offer was made by Shri. FarhadDaruwalla signed on behalf of the "Sandesara Group" and not by Sterling Biotech Ltd wherein there were no

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proceedings under the IBC Code, 2016 initiated against Sandesara Group.

48. In the light of aforesaid, SEBI has represented the case relating to the GDR issue of the Respondent Company which is pending with SEBI. Brief details about the said case and its current status are in the report.Since Sterling Bio-Tech Ltd is a listed company, the comments of SEBI was also sought. SEBI has also not assisted the Tribunal with its specific inputs/comments on the issue.

49. It is further stated that proceedings under Section 11B of the SEBI Act have been initiated against the Respondent Company, its Directors, viz. Shri Nitin Sandesara, Shri ChetanSandesara, Shri Rajbhushan Dixit, Shri Narendra Patel, Shri Vilas Joshi, Shri PB Mehta and Fresia. A Show-Cause Notice dated 05.03.2018 under Section 11B of the SEBI Act, was issued to the entities above, and SCNA to the Company and its directors Shri ChetanSandesara, Shri Nitin Sandesara were served by way of affixture at the last known address. Adjudication proceedings under Section 15 HA of the SEBI Act have been initiated against the Company and its directors, subsequent three notices, i.e. Shri Vilas Joshi, Shri P B Mehta and Shri Rajabhushan Dixit, have applied for settlement and the same is under process with the Settlement Division of SEBI. The prosecution under Section 24(10) of the SEBI Act has also been initiated against two directors, i.e. ChentanSandesara and Shri Rajbhushan Dixit for violation of section 11C (5) of the SEBI Act.

50. Shri Rajbhushan Dixit is in the process of filing of a compounding application in respect of SEBI Special Case No. 100011/2018, pending before the SEBI Special Court apart from the proceedings above, SEBI has initiated investigation against one of the subsidiaries of the Respondent Company and therefore Directors who are also directors of the Respondent Company.

51. SEBI has brought to the notice of this Tribunal details of the proceedings initiated by SEBI against the Respondent Company. However, the action of the SEBI against the Respondent Company is not of any significance because we are not concerned with the action taken by the SEBI against the Respondent Company.

52. Another Intervention Application being MA 1642/2019 is filed on 26.04.2019 by Madison Pacific Trust Limited (**Madison**), who is a

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constituted trustee of the Bond holders of FCCB issued by the Corporate Debtor and that this application is made in the interest of the entire class of Bond holders. The Madison is admittedly a Financial Creditor of the Corporate Debtor. The prayer clause of the said application seeks permission to Madison to intervene in the proceeding for approval of the resolution plan, directions for rejection of the withdrawal application filed under section 12A, direct Resolution Professional to revise the claim of Madison from USD 261,484,308/- equivalent to ₹18,039,880,854/- at the reference exchange rate of 68.9903 on 25.03.2019 and not to appoint the present Resolution Professional as liquidator in case liquidation is ordered.

53. The Madison has alleged that the Resolution Professional did not revise and notify the revised claim, causing it wrongful harm and prejudice. It is submitted that the Madison submitted its claim in Form C for the principal amount of ₹13,545,149,286/- at an exchange rate of 67.3353 on 11.06.2018. On 27.03.2019 the Madison submitted a revised Form C for claim submission in respect of the Bonds which have matured on 25.03.2019 and yet to be redeemed for an amount of ₹18,039,880,854/-.

54. The Madison has submitted that it had submitted its claim in July 2018 under the impression that it could only claim for the principal amount and not the redemption value. This, it has admitted, was a mistake on its part. When it was informed that it was entitled to claim the entire redemption value and not only the principal value, it filed the revised Form C on 27.03.2019. The Resolution Professional has rejected the revised claim application of the Madison.

55. The Resolution Professional has filed its affidavit in reply to the application of the Madison opposing the reliefs sought, inter alia, on the grounds that contrary to the submission of the Madison that it represents all the Bond Holders as one unit, 5 of the Bond Holders have in fact voted in favour of the withdrawal of the CIRP whereas some have opposed the withdrawal application and some have abstained from voting. Thus, the locus of Madison to apply on behalf of all the bond holders as one single unit is itself not established.

56. About the intervention application filed by Madison, it is pertinent to note that the last date for CIRP period was 08.03.2019 and the revised From C for revision of its claim amount was submitted to the

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Resolution Professional only on 27.03.2019. Further, the said revision is filed on account of the admitted mistake of the Madison. Clearly, the claim filed by the Madison is belated and given the current stage of the CIRP when the 270 days' statutory period is over, and a withdrawal application under section 12A is under consideration, the present application being MA 1642/2019 cannot be allowed and hereby rejected at the outset.

57. We have heard the argument of the Ld. Senior Counsel Mr. Gaurav Joshi representing the Applicant, Andhra Bank, Ld. Sr. Counsel Mr. Janak Dwarkadas representing the Resolution Applicant, Ld. Sr. Counsel Mr. VikramChaudhri for the promoters, Ld. Counsel Mr. ZalAndhyarujna for Resolution professional, Counsel representing the SEBI, Enforcement Directorate, Reserve Bank of India, CBI Director (Prosecution& Legal) representing Union of India, MCA.

58. The MA 951/2019 has been filed by the Andhra Bank under Section 12A read with Section 60(5) of the I&B Code, *seeking* permission to withdraw CIRP initiated against the Corporate Debtor. Section 12A of the Code provides that *"the Adjudicating Authority may allow the withdrawal of application admitted under Section 7 or section 9 or section 10 on an application made by the applicant with the approval of 90% voting share of the Committee of Creditors, in such manner as may be prescribed."*

59. Regulation 30 (A) provides that *"an application for withdrawal under Section 12A shall be submitted to the interim resolution professional or the resolution professional, as the case may be, in Form FA of the Schedule before the issue of invitation for expression of interest under regulation 36A".*The regulation further provides that if the application is approved by the CoC with 90% vote share, the Resolution Professional shall submit the application under sub-regulation (1) to the Adjudicating Authority on behalf of the applicant, within three days of such approval. Further Regulation provides that adjudicating authority **may**, by order, approve the application submitted under sub-regulation (4). The **use of the word "may" in Sec 12A of the Code indicates that, if an application is filed under Section 12 A, and CoC approves it with 90 per cent voting share, then the Adjudicating Authority may allow the withdrawal application, in such manner as specified.**

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60. Thus it is clear that section 12A of the Code stipulates that the **Adjudicating Authority has the discretion to accept or reject the application**, filed under Section 12A, provided that application is made by the applicant with the approval of 90% vote share of the CoC.

61. Regulation 30A of CIRP Regulations, 2016 **provides the procedure by which application under Section 12A can be filed. Regulation 30A provides that application under Section 12A should be filed in Form FA before issuance of an invitation for expression of interest**.

62. **Hon'ble Supreme Courtin case of Swiss Ribbons Pvt. Ltd. and Ors. Vs. Union of India (UOI) and Ors. (Writ Petition (Civil) No. 99 of 2018 order dated 25.01.2019)has upheld the constitutional validity of Sec 12A of the Code and held that:**

"29.1 Under Rule 8 of the CIRP Rules, the NCLT may permit withdrawal of the application on a request by the applicant before its admission. However, there is no provision in the Code or the CIRP Rules in relation to the permissibility of withdrawal post admission of a CIRP application. It was observed by the Committee that there have been instances where on account of settlement between the applicant creditor and the corporate debtor, judicial permission for withdrawal of CIRP was granted [LokhandwalaKataria Construction Pvt. Ltd. v. Ninus Finance & Investment Manager LLP, Civil Appeal No. 9279 of 2017; Mothers Pride Dairy India Private Limited v. Portrait Advertising and Marketing Private Limited, Civil Appeal No. 9286/2017; Uttara Foods and Feeds Private Limited v. Mona Pharmacem, Civil Appeal No. 18520/2017]. This practice was deliberated in light of the objective of the Code as encapsulated in the BLRC Report, that the design of the Code is based on ensuring that "all key stakeholders will participate to collectively assess viability. The law must ensure that all creditors who have the capability and the willingness to restructure their liabilities must be part of the negotiation process. The liabilities of all creditors who are not part of the negotiation process must also be met in any negotiated solution." Thus, it was agreed that once the CIRP is initiated, it is no longer a proceeding only between the applicant creditor and the corporate debtor but is envisaged to

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be a proceeding involving all creditors of the debtor. The intent of the Code is to discourage individual actions for enforcement and settlement to the exclusion of the general benefit of all creditors.

29.2 On a review of the multiple NCLT and NCLAT judgments in this regard, the consistent pattern that emerged was that a settlement may be reached amongst all creditors and the debtor, for the purpose of a withdrawal to be granted, and not only the applicant creditor and the debtor. On this basis read with the intent of the Code, the Committee unanimously agreed that the relevant Rules may be amended to provide for withdrawal post admission if the CoC approves of such action by a voting share of ninety per cent. It was specifically discussed that Rule 11 of the National Company Law Tribunal Rules, 2016 may not be adopted for this aspect of CIRP at this stage (as observed by the Hon'ble Supreme Court in the case of Uttara Foods and Feeds Private Limited v. Mona Pharmacem, Civil Appeal No. 18520/2017) and even otherwise, as the issue can be specifically addressed by amending Rule 8 of the CIRP Rules.

This Court, by its order dated 14.12.2018 in Brilliant Alloys Pvt. Ltd. v. Mr. S. Rajagopal and Ors., SLP (Civil) No. 31557/2018, has stated that Regulation 30A(1) is not mandatory but is directory for the simple reason that on the facts of a given case, an application for withdrawal may be allowed in exceptional cases even after issue of invitation for expression of interest Under Regulation 36A.

52. It is clear that once the Code gets triggered by admission of a creditor's petition Under Sections 7 to 9, the proceeding that is before the Adjudicating Authority, being a collective proceeding, is a proceeding in rem. Being a proceeding in rem, it is necessary that the body which is to oversee the resolution process must be consulted before any individual corporate debtor is allowed to settle its claim. A question arises as to what is to happen before a committee of creditors is constituted (as per the timelines that are specified, a committee of creditors can be appointed at any time within 30 days from the

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date of appointment of the interim resolution professional). We make it clear that at any stage where the committee of creditors is not yet constituted, a party can approach the NCLT directly, which ***tribunal may, in the exercise of its inherent powers Under Rule 11 of the NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the concerned parties and considering all relevant factors on the facts of each case.***

53. The main thrust against the provision of Section 12A is the fact that ninety per cent of the committee of creditors has to allow withdrawal. This high threshold has been explained in the ILC Report as all financial creditors have to put their heads together to allow such withdrawal as, ordinarily, an omnibus settlement involving all creditors ought, ideally, to be entered into. This explains why ninety per cent, which is substantially all the financial creditors, have to grant their approval to an individual withdrawal or settlement. ***In any case, the figure of ninety per cent, in the absence of anything further to show that it is arbitrary, must pertain to the domain of legislative policy, which has been explained by the Report (supra).*** *Also, it is clear, that Under Section 60 of the Code,* ***the committee of creditors do not have the last word on the subject.If the committee of creditors arbitrarily rejects a just settlement and/or withdrawal claim, the NCLT, and thereafter, the NCLAT can always set aside such decision Under Section 60 of the Code.*** *For all these reasons, we are of the view that Section 12A also passes constitutional muster."*

63. On the basis law laid down by Hon'ble Supreme Court, it is clear that jurisdiction of NCLT regarding Sec 12A of the Code is discretionary and the Tribunal may also disagree with the CoC's arbitrary decision. The use of the word **"may allow the withdrawal application"** in Section 12A of the Code, itself indicates the discretionary power of the Tribunal.

64. In Swiss Ribbons (supra) Hon'ble Supreme Court has further tested the constitutional validity of Sec 29A of the Code and has observed that:

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"...Similarly in Chitra Sharma v. Union of India, Writ Petition (Civil) No. 744 of 2017 [decided on 09.08.2018], Hon'ble Supreme Court observed as follows:

"31..... Parliament has introduced Section 29A into the IBC with a specific purpose. The provisions of Section 29A are intended to ensure that among others, persons responsible for insolvency of the corporate debtor do not participate in the resolution process.....

32..... The Court must bear in mind that Section 29A has been enacted in the larger public interest and to facilitate effective corporate governance. Parliament rectified a loophole in the Act which allowed a backdoor entry to erstwhile managements in the CIRP. Section 30 of the IBC, as amended, also clarifies that a resolution plan of a person who is ineligible Under Section 29A will not be considered by the CoC....."

65. In the above-mentioned case, the Hon'ble Supreme case observed that:

"given the categories of persons who are ineligible Under Section 29A, which includes persons who are malfeasant, or persons who have fallen foul of the law in some way, and persons who are unable to pay their debts in the grace period allowed, are further, by this proviso, interdicted from purchasing assets of the corporate debtor whose debts they have either wilfully not paid or have been unable to pay. The legislative purpose which permeates Section 29A continues to permeate the Section when it applies not merely to resolution applicants, but to liquidation also. Consequently, this plea is also rejected.

It is clear that Section 29A goes to eligibility to submit a resolution plan. A willful defaulter, in accordance with the guidelines of the RBI, would be a person who though able to pay, does not pay. An NPA, on the other hand, refers to the account belonging to a person that is declared as such under guidelines issued by the RBI."

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66. Hon'ble Supreme court further observed that ***"the legislative policy, therefore, is that a person who is unable to service its debt beyond the grace period referred to above, is unfit to be eligible to become a resolution applicant."***

67. Since section 29 A of the Code specifically prohibits a willful defaulter to submit a Resolution Plan. **In this case, admittedly promoters of the Corporate Debtor are a willful defaulter, and therefore, they are not eligible to submit a Resolution Plan as per section 29 A.**

68. The question which is hammering to our conscious is regarding the consequences of accepting application u/s 12A of the Code in the instant case. After permitting withdrawal of the CIRP process the promoters of the corporate debtor, i.e.SBL will again get control over the corporate debtor company at a discount. The Union of India through the Ministry of Corporate Affairs has opposed the application on the pretext that the promoters of the corporate debtor SBL are a willful defaulter and absconders. Undoubtedly promoters of the corporate debtor SBL are ineligible U/S 29A of the Code. The Hon'ble Supreme Court has also held in Swiss Ribbons (*supra.*) case that "**the legislative policy, therefore, is that a person who is unable to service its debt beyond the grace period, is unfit to be eligible to become a resolution applicant.**..... ***The Court must bear in mind that Section 29A has been enacted in the larger public interest and to facilitate effective corporate governance. Parliament rectified a loophole in the Act which allowed a backdoor entry to erstwhile managements in the CIRP.*** "

69. It is pertinent to mention that if we allow the application U/S 12 A of the Code the promoters of the corporate debtor will get management and control of the company under the guise of Sec 12A of the Code whereas statutory provision of Sec 29A prohibits them.

70. In the instant case, 270 days of CIRPperiod ended on 08.03.2019. MA 951/2019 has been filed for withdrawal on 08.03.2019, i.e. the last date for completion of CIRP. After getting the application under Section12A of the Code, when Resolution professional asked the CoC to provide him with the details of OTS offer, sources of funds, timeframe for payments to each lender, compliance with RBI norms and whether the interest of all stakeholders / CoC members have been provided for under the OTS offer, then Andhra Bank informed

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the Resolution professional that they will directly address the issue with the Tribunal and did not submit any information to the Resolution professional. Thus it is clear that provision of Regulation 30A was not completed at the time of submission of application. Regulation 30A which specifically provides that the application for withdrawal under Section 12A shall be submitted to the IRP or the Resolution Professional as the case be in Form FA of the schedule before issuing of invitation for expression of interest under regulation 36A.There are no exceptional circumstances where we should accept application U/S 12A, after inviting expression of interest, in contravention of Regulation 36A of CIRP Regulations. Allowing the application of willful defaulters/absconders U/S 12 A will be an act in violation of Sec 29A of the Code.

71. It is also pertinent to mention that the so-called OTS as mentioned by the Financial Creditor applicant Andhra Bank is also a type of Resolution Plan. In the alleged plan /OTS it is stated that the promoter group is proposing to invest about 20% of the settlement agreement which is about USD 700 million, from its cash flow sources from its businesses in Nigeria. Further, the promoter group has also identified investors who have shown their interest in investing which shall be the source of funds to make payment to the Financial Creditors under OTS Proposal. As per the one-time settlement, they had given a plan to make the upfront payment by 30.6.2019. Thus, it is also a type of Resolution Plan to get the management and control of the Company by the willful defaulters, which is contrary to the provision of Sec 29A of the Code.

72. Here promoters are absconders and the source of funds are not disclosed to the Resolution Professional. When the Resolution Professional inquired about the source of funds, timeline of payment to each lender or explanation of RBI norms and interest of each stakeholder in the OTS, then CoCinformed that they would address this issue to the Adjudicating Authority.

73. However, it is also clear that from the additional affidavit filed by the Andhra bank on 12.3.2019, i.e. four days after expiry of the 270 days it is submitted that "promoters ***initially requested to make payments under the OTS proposal by March 2019".*** However, by oral requests, the promoters have requested to make the payments under OTS proposal by 30.06.2019. The approval of the OTS proposal

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conforms with the circular dated 8.06.2009 issued by the Indian Bank's Association. Thus it is clear that by OTS proposal promoters are not making any upfront payment. As per the one-time settlement, they had given a plan to make the upfront payment by 30.6.2019. It is stated in the additional affidavit that the applicant has been informed that the promoter group is proposing to invest about 20% of the settlement agreement which is about USD 700 million, from its cash flow sources from its businesses in Nigeria. Further, the promoter group has also identified investors who have shown their interest in investing which shall be the source of funds to make payment to the Financial Creditors under OTS Proposal. The details of the source of funds which is given in the additional Affidavit dated 12.03.2019, shows that a resolution plan in the name of OTS is filed on behalf of willful defaulter who is ineligible to submit a Resolution Plan U/S 29A of the Code.

74. If we allow the application, then it will be a gross misuse of the provision of section 12A, by the person, who is not eligible to file an application U/S 29A and get control over the Company under the guise of Section 12A of the Code. The stand taken by the Union of India is commendable despite that the CoC has arbitrarily approved the Resolution Plan under the guise of an OTS with 90.32% of voting share, without even verifying the source of funds.

75. In the entire scenario, we highly appreciate the stand taken by the Government of India,the Ministry of Corporate Affairs, which states that "the OTS Proposal of Mr Farad Daruwalla who has signed on behalf of the Sandesara Group, wherein the promoter of the Sandesara Group is reportedly absconding and facing several criminal charges before the various forums.

76. Union of India has also pointed out that an important question of law is that, can there be a valid agreement/ contract between the parties, where one party is **absconder**, i.e. promoters of Sandesara Group and represented through Mr Farhad Daruwalla. The prerequisite condition for a valid contract is lawfull offer and acceptance thereof which is enforcible bylaw. In the instant case, the offer is from the representative of **the absconder**, whose whereabouts cannot be verified. The person so called authorised to represent absconders, Mr Farhad Daruwalla, is an agent of the absconders, who has not submitted any detail of the absconders. Thus, there cannot be

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binding contract enforceable by law in the present case within the meaning of the Contract Act. Section 10 of the Contract Act, provides that all Agreement are Contract if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void."Section 23 of the Contract Act stipulates that the consideration or object of an agreement is lawful, unless it is forbidden by Law; or is of such a nature that, if permitted, it would defeat the provision of any law; or fraudulent; or involves or implies, injury to the person or property of another; or the court regards it as immoral or opposed to public policy.

77. We also record our appreciation of Enforcement Directorate and CBI apart from MCA for their inputs/timely assistance in this significant and complicated issue at the same time we also note that the Bench did not receive expected input/assistance from the Banking sector regulator RBI.

78. It also appears that the instant case is an attempt by the promoters to defeat the legislative provisions of section 29A under the guise of OTS with approval of 90.32% vote share of CoC. This also raises doubt about the functionality of the CoC. Such an act of CoC can never be treated as an act of commercial wisdom.

79. The resolution for withdrawal of CIRP did not obtain the required percentage of voting by the members of CoC, i.e. 90% at the first instance. Subsequently, a CoC meeting was conducted, and a resolution was voted upon for reconsideration of the withdrawal. The RP/CoC has not quoted the exact provision that empowers them to again put for the voting of the resolution which was earlier defeated.

80. During the hearings when the Bench inquired about the depositing the OTS amount in an escrow account, the counsel appearing for the Sandesara group did not give any positive affirmation.

81. It is also important to point out that the CoC was interested in getting their money but without verifying the source of funds. If such a plan is approved in the guise of OTS under Section 12A, then this will defeat the statutory provision of Section 29 A and promoter will get the control of the Company at a discount of approximately 64% a sum of Rs 3110 crores as against a total claim of Rs 9053 crores. It is also important to point out that during CIRP under Insolvency Law,

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so many stressed assets are subjected to the bidding process. It is also to be clarified that Section 12A of the I&B Code is not a substitute of section 29A, where a promoter/willful defaulter of the company, who becomes unsuccessful in getting control of the Company on account of the legal bar created by Sec 29A, may again get the management and control of the company under the guise of Sec 12 A of the Code. We are therefore of the considered opinion that the application deserves to be rejected.

ORDER

MA951/2019 filed U/S 12 A of the Code is rejected. The amount which has been deposited by absconder /promoters under OTS shall not be released to the applicant.

In this case, no Resolution Plan has been approved to date despite completion of CIR period. Resolution Professional has not filed an application under Section 33 for liquidation of the Company which is a clear cut violation of the statutory provisions of I&B Code.

This Bench having not received any resolution plan under sub-section (6) of section 30 before the expiry of the Corporate Insolvency Resolution Process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12, there remains no other option but to order for liquidation of this company as envisaged under Section 33(1) of I&B Code and the Regulations thereof. Since no Resolution Plan has been approved within the statutory period of 270 days, therefore, we are passing the order of the Liquidation of the Corporate Debtor on a going concern basis as under:

a. As the Corporate Debtor is a going concern employing more than 800 employees, it is hereby directed that the Corporate Debtor be liquidated as per provisions of Regulation 32(b) & (e) of the IBBI (Liquidation Process) Regulations, 2016 **which provides for sale of assets in a slump sale and sale of the corporate debtor as a going concern**, in the manner as laid down in Chapter III under Part II of I&BCode, 2016.

b. The Corporate Debtor to be liquidated in the manner as laid down in Chapter III of the I&BCode by issuing a Public Notice stating that the Corporate Debtor is in liquidation with a direction to the

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Liquidator to send this order to RoC under which this Company has been registered.

c. This Tribunal will appoint liquidator by a subsequent order for the purpose of liquidation with all powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor shall cease to have an effect and hereby vested in the Liquidator. Let consent be obtained from any competent Insolvency Professional other than the current Resolution Professional to act as a Liquidator. The personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor. The Insolvency Professional appointed as Liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified under Regulation 4 of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016 and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the I&BCode.

d. The maximum period applicable for trying the sale on a going concern basis of the Corporate Debtor will be only six months from the date of the order. In case the efforts to sell the company as a going concern fails during the stipulated period of six months, then the process of the sale of the assets of the company will be undertaken by the liquidator as prescribed under Chapter- III of IBC, 2016 and the relevant regulations of IBBI.

e. Since this liquidation order has been passed, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor without prior approval of this Adjudicating Authority save and except as mentioned in sub-section 6 of Section 33 of the IBC.

f. This liquidation order shall be deemed to be notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.

g. The moratorium declared vide order of this Tribunal shall cease to exist.

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Designated Registrar directed to obtain the consent of the Liquidator immediately and put up the file on Dt. 9.5.2019 for the appointment of liquidator.

Given the order passed by the Hon'ble High Court of Bombay,dated 30.04.2019the above order shall not be given effect till 10th May, 2019. Till the appointment of Liquidator by this Tribunal the Resolution Professional should make an arrangement so that the corporate debtor should remain a going concern.

Copy of the order may also be sent to the Union of India, Ministry of Corporate Affairs and IBBI for information by email.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)
8th May, 2019

Sd/-

V. P. SINGH
Member (Judicial)

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Certified True Copy
Copy Issued "free of cost"
On 13-05-2019
B.A. Patel
Deputy Registrar
National Company Law Tribunal Mumbai Bench
Government of India

NATIONAL COMPANY LAW TRIBUNAL
6th Floor, Fountain Telecom Building No. 1,
Near Central Telegraph Office, M. G. Road,
Fort, Mumbai - 400 001.
Telephone No.: 022 – 22717200/22619636 (Fax)
Email: registrar-mum@nclt.gov.in
Website: www. nclt.gov.in

सत्यमेव जयते

राष्ट्रीय कम्पनी विधि अधिकरण
छटी मंजिल, फाउन्टेन दूरसंचार भवन नं.१,
सेंट्रल दूरसंचार भवन के पास,
एम. जी. मार्ग,फोर्ट, मुंबई - ४००००१.
दूरभाषनं. २२६१७२००/२२६१९६३६ (फॅक्स

F. NO. C P (IB) 490/MB/2018 / 457

Date: 13/05/2019

To,
Dr. Mamta Binani
2A, Ganesh Chandra Avenue,
Commerce House, 4th Floor Room No. 6
Kolkata:- 700 013

Subject: Appointment as a Liquidator in the matter of Andhra Bank (Petitioner) V/s Sterling Biotech Ltd. and ors. (Respondent)) related to CP (IB) 490(MB) /2018.

Ref: Order Delivered on 08.05.2019 by Divisional Bench I (Court No. 1) NCLT, Mumbai in the matter of Andhra Bank (Petitioner) V/s Sterling Biotech Ltd. and ors. (Respondent)) related to CP (IB) 490(MB) /2018 and communicated to you, vide email 10.05.2019.

Madam,

With reference to your written consent to act as a liquidator submitted vide letter dated 11.05.2019, I am directed to inform that you are hereby appointed as a liquidator in the matter of Andhra Bank (Petitioner) V/s Sterling Biotech Ltd. and ors. (Respondent) related to CP (IB) 490(MB) /2018.

Please acknowledge the receipt of this letter.

Yours faithfully,

B. A. Patel

(B A Patel)
Dy. Registrar

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NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 601 of 2019

IN THE MATTER OF:

Shweta Vishwanath Shirke & Ors. .... Appellants

Vs

The Committee of Creditors & Anr. .... Respondents

Present:

For Appellants: **Mr. Rajeev Ranjan, Senior Advocate with Mr. Sanklap Sharma, Mr. Aarif Akhtar, Advocates.**

For Respondents: **Mr. Siddharth Sharma, Advocate for Respondent No.1.**

Mr. Sandeep Bajaj, Mr. Soayib Qureshi, Mr. Deepanjan Dutta and Mr. Naman Tandon, Advocates for Liquidator.

Mr. A.K. Mishra, Advocate for Andhra Bank.

Mr. Pranav Vyas and Mr. Satendra K. Rai, Advocate for Respondent No.2, Resolution Professional.

With

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

IN THE MATTER OF:

Andhra Bank .... Appellant

Vs

Sterling Biotech Ltd.
(Through the Liquidator) & Ors. .... Respondents

Present:

For Appellant: **Mr. Siddharth Sharma and Mr. A.K. Mishra, Advocates**

For Respondents: **Mr. Sandeep Bajaj, Mr. Soayib Qureshi, Mr. Deepanjan Dutta and Mr. Naman Tandon, Advocates for Liquidator**

Mr. Nitesh Rana and Mr. Adil Ali Khan, (SPP) for Enforcement Directorate (R-3)

Mr. Pranav Vyas and Mr. Satendra K. Rai, Advocate for Respondent No.2, Resolution Professional.

With

Company Appeal (AT) (Insolvency) No. 527 of 2019

IN THE MATTER OF:

Sundaresh Bhatt,
Resolution Professional for
Sterling Biotech Ltd. .... Appellant

Vs

Andhra Bank .... Respondent

Present:

For Appellant: **Mr. Pranav Vyas and Mr. Satendra K. Rai, Advocates.**

O R D E R

28.08.2019 The main grievance of the Appellant – 'Shweta Vishwanath Shrike & Ors' (employees of the 'Corporate Debtor') is that though the application under Section 12A of the Insolvency and Bankruptcy Code, 2016 (for short, 'the **I&B Code'**) was filed at the instance of the 'Promoter' approved with more than 90% voting share of the 'Committee of Creditors', but it was rejected by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai on the ground that the 'Promoter' not eligible to file the 'resolution plan' under Section 29A cannot file the application under

Section 12A of the 'I&B Code'. The impugned order dated 8th May, 2019 passed by the Adjudicating Authority has also been challenged by the 'Andhra Bank' in Company Appeal (AT) (Ins.) No. 612 of 2019 and the 'Resolution Professional' in Company Appeal (AT) (Ins.) No. 527 of 2019, but on different grounds.

2. Learned counsel appearing on behalf of the 'Andhra Bank' submits that Section 29A is not applicable to an application filed under Section 12A for withdrawal of application under Section 7 filed by Andhra Bank, if the Committee of Creditors accept the same with more than 90% of the voting share.

3. The 'Resolution Professional' has challenged the order dated 8th May, 2019 insofar it relates to observations made by the Adjudicating Authority against Mr. Sundaresh Bhat ('Resolution Professional').

4. Notices were issued on the Respondents. The 'Andhra Bank', lead Bank of the 'Committee of Creditors', has already filed an appeal and challenged the impugned order.

5. Mr. Nitesh Rana, learned counsel for 'Enforcement Directorate'; Mr. Vishwanath, Advocate for 'SEBI'; Mr. C. Balooni, Assistant Director, Ministry of Company Affairs and Mr. Sukant Vats, Public Prosecutor, Central Bureau of Investigation, appear and submit that they are investigating the matter against the 'Corporate Debtor' and its promoters, Directors and officers and role of other public servants.

6. Learned counsel appearing on behalf of the 'Enforcement Directorate' submit that the assets of the 'Corporate Debtor' are based on the proceeds of the crime and therefore, it cannot be given to any person.

7. The question arises for consideration in these appeals is whether Section 29A of the 'I&B Code' is applicable to the applicant, if he intends to withdraw the petition under Section 7 or 9, if the Committee of Creditor, approves a proposal with 90% voting share, in terms of Section 12A.

8. Section 29A relates to ineligibility of a "resolution applicant", which is as follows:

> *"**29A. Persons not eligible to be resolution applicant.—** A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—*
>
> *(a) is an undischarged insolvent;*
>
> *(b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;*
>
> *(c) has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949*

and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan;

Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

Explanation I.—For the purposes of this proviso, the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

Explanation II.—For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;';

(d) has been convicted for any offence punishable with imprisonment ----

(i) for two years or more under any Act specified under the Twelfth Schedule; or

(ii) for seven years or more under any other law for the time being in force:

Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment:

Provided further that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;"

(e) is disqualified to act as a director under the Companies Act, 2013;

"Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;

(f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;

(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code;

"Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant

has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;

(h) has executed an enforceable guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part;

(i) has been subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or

(j) has a connected person not eligible under clauses (a) to (i)

Explanation.— For the purposes of this clause, the expression "connected person" means—

(i) any person who is the promoter or in the management or control of the resolution applicant; or

(ii) any person who shall be the promoter or in management or control of the business of the

corporate debtor during the implementation of the resolution plan; or

(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

Provided that nothing in clause (iii) of this Explanation I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date;

'Explanation II.—For the purposes of this section, "financial entity" shall mean the

following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely:—

(a) a scheduled bank;

(b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;

(c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India)

Regulations, 2017 made under the Foreign Exchange Management Act, 1999;

(d) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(e) an Alternate Investment Fund registered with the Securities and Exchange Board of India;

(f) such categories of persons as may be notified by the Central Government."

9. If any person, including the 'Promoter'/ 'Director' is ineligible in terms of any one or more clauses of Section 29A, he/she is not entitled to file any 'resolution plan' individually or jointly or in concert with another.

10. In so far Section 12A is concerned, it relates to withdrawal of the application filed by an "applicant" under Section 7 or Section 9 of the I&B Code, if the 'Committee of Creditors' with more than 90% voting share approves the proposal as is apparent from Section 12A and reads as follows:

"12A. Withdrawal of application admitted under section 7, 9 or 10. —

The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified."

11. In ***'Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors.*** - ***'2019 SCC Online SC 73'***, the Hon'ble Supreme Court of India considered the stages in which an application can be withdrawn including Section 12A observed and held :

"75. *Since the financial creditors are in the business of moneylending, banks and financial institutions are best equipped to assess viability and feasibility of the business of the corporate debtor. Even at the time of granting loans, these banks and financial institutions undertake a detailed market study which includes a techno-economic valuation report, evaluation of business, financial projection, etc. Since this detailed study has already been undertaken before sanctioning a loan, and since financial creditors have trained employees to assess*

viability and feasibility, they are in a good position to evaluate the contents of a resolution plan. On the other hand, operational creditors, who provide goods and services, are involved only in recovering amounts that are paid for such goods and services, and are typically unable to assess viability and feasibility of business. The BLRC Report, already quoted above, makes this abundantly clear.

76. *Quite apart from this, the United Nations Commission on International Trade Law, in its Legislative Guide on Insolvency Law (the UNCITRAL Guidelines) recognises the importance of ensuring equitable treatment to similarly placed creditors and states as follows:*

"Ensuring equitable treatment of similarly situated creditors

7. The objective of equitable treatment is based on the notion that, in collective proceedings, creditors with similar legal rights should be treated fairly, receiving a distribution on their

claim in accordance with their relative ranking and interests. This key objective recognises that all creditors do not need to be treated identically, but in a manner that reflects the different bargains they have struck with the debtor. This is less relevant as a defining factor where there is no specific debt contract with the debtor, such as in the case of damage claimants (e.g. for environmental damage) and tax authorities. Even though the principle of equitable treatment may be modified by social policy on priorities and give way to the prerogatives pertaining to holders of claims or interests that arise, for example, by operation of law, it retains its significance by UNCITRAL Legislative Guide on Insolvency Law ensuring that the priority accorded to the claims of a similar class affects all members of the class in the same manner. The policy of equitable treatment permeates many aspects of an insolvency law, including the application of the stay or suspension, provisions to set aside acts and transactions and recapture value for the insolvency estate, classification

of claims, voting procedures in reorganisation and distribution mechanisms. An insolvency law should address problems of fraud and favouritism that may arise in cases of financial distress by providing, for example, that acts and transactions detrimental to equitable treatment of creditors can be avoided."

77. *NCLAT has, while looking into viability and feasibility of resolution plans that are approved by the Committee of Creditors, always gone into whether operational creditors are given roughly the same treatment as financial creditors, and if they are not, such plans are either rejected or modified so that the operational creditors' rights are safeguarded. It may be seen that a resolution plan cannot pass muster under Section 30(2)(b) read with Section 31 unless a minimum payment is made to operational creditors, being not less than liquidation value. Further, on 5-10-2018, Regulation 38*

has been amended. Prior to the amendment, Regulation 38 read as follows:

*"**38. Mandatory contents of the resolution plan**.—(1) A resolution plan shall identify specific sources of funds that will be used to pay the—*

(a) insolvency resolution process costs and provide that the insolvency resolution process costs, to the extent unpaid, will be paid in priority to any other creditor;

(b) liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the adjudicating authority; and

(c) liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan."

Post amendment, Regulation 38 reads as follows:

*"**38. Mandatory contents of the resolution plan**.—(1) The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.*

(1-A) A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor."

The aforesaid Regulation further strengthens the rights of operational creditors by statutorily incorporating the principle of fair and equitable dealing of operational creditors' rights, together with priority in payment over financial creditors.

Section 12-A is not violative of Article 14

79. *Section 12-A was inserted by the Insolvency and Bankruptcy (Second Amendment) Act, 2018 with retrospective effect from 6-6-2018. It reads as follows:*

*"**12-A. Withdrawal of application admitted under Sections 7, 9 or 10**.—The adjudicating authority may allow the withdrawal of application admitted under Section 7 or Section 9 or Section 10, on an application made by the applicant with the approval*

of ninety per cent voting share of the Committee of Creditors, in such manner as may be specified."

80. *The ILC Report of March 2018, which led to the insertion of Section 12-A, stated as follows:*

"29.1. Under Rule 8 of the CIRP Rules, NCLT may permit withdrawal of the application on a request by the applicant before its admission. However, there is no provision in the Code or the CIRP Rules in relation to permissibility of withdrawal post admission of a CIRP application. It was observed by the Committee that there have been instances where on account of settlement between the applicant creditor and the corporate debtor, judicial permission for withdrawal of CIRP was granted [Lokhandwala Kataria Construction (P) Ltd. v. Nisus Finance and Investment Managers LLP [Lokhandwala Kataria Construction (P) Ltd. v. Nisus Finance and Investment Managers LLP, (2018) 15 SCC 589] ; Mothers Pride Dairy India (P) Ltd. v. Portrait Advertising and Marketing (P) Ltd. [Mothers Pride Dairy India (P) Ltd. v. Portrait Advertising and Marketing (P)

Ltd., 2017 SCC OnLine SC 1789] ; Uttara Foods and Feeds (P) Ltd. v. Mona Pharmachem [Uttara Foods and Feeds (P) Ltd. v. Mona Pharmachem, (2018) 15 SCC 587]]. This practice was deliberated in light of the objective of the Code as encapsulated in the BLRC Report, that the design of the Code is based on ensuring that "all key stakeholders will participate to collectively assess viability. The law must ensure that all creditors who have the capability and the willingness to restructure their liabilities must be part of the negotiation process. The liabilities of all creditors who are not part of the negotiation process must also be met in any negotiated solution." Thus, it was agreed that once CIRP is initiated, it is no longer a proceeding only between the applicant creditor and the corporate debtor but is envisaged to be a proceeding involving all creditors of the debtor. The intent of the Code is to discourage individual actions for enforcement and settlement to the exclusion of the general benefit of all creditors.

29.2. On a review of the multiple NCLT and NCLAT judgments in this regard, the consistent pattern that emerged was that a settlement may be reached amongst all creditors and the debtor, for the purpose of a withdrawal to be granted, and not only the applicant creditor and the debtor. On this basis read with the intent of the Code, the Committee unanimously agreed that the relevant rules may be amended to provide for withdrawal post admission if the CoC approves of such action by a voting share of ninety per cent. It was specifically discussed that Rule 11 of the National Company Law Tribunal Rules, 2016 may not be adopted for this aspect of CIRP at this stage [as observed by the Hon'ble Supreme Court in Uttara Foods and Feeds (P) Ltd. v. Mona Pharmachem [Uttara Foods and Feeds (P) Ltd. v. Mona Pharmachem, (2018) 15 SCC 587]] and even otherwise, as the issue can be specifically addressed by amending Rule 8 of the CIRP Rules."

(emphasis in original)

Before this section was inserted, this Court, under Article 142, was passing orders allowing withdrawal of applications after creditors' applications had been admitted by NCLT or NCLAT."

12. From Section 12A and the decision of the Hon'ble Supreme Court in ***'Swiss Ribbons Pvt. Ltd. & Anr.' (Supra),*** it is clear that the Promoters/Shareholders are entitled to settle the matter in terms of Section 12A and in such case, it is always open to an applicant to withdraw the application under Section 9 of the 'I&B Code' on the basis of which the 'Corporate Insolvency Resolution Process' was initiated.

13. In view of the aforesaid provisions of law, we hold that Section 29A is not applicable for entertaining/considering an application under Section 12A as the Applicants are not entitled to file application under Section 29A as 'resolution applicant'.

14. In the present case, the 'Corporate Insolvency Resolution Process' was initiated pursuant to an application under Section 7 filed by the 'Andhra Bank' (Appellant herein). The application under Section 12A having been approved by the 'Committee of Creditors' more than 90% of the voting share, it was not open to the Adjudicating Authority to reject the same and that too on a ground of ineligibility under Section 29A, which is not applicable.

15. In so far the assets of the 'Corporate Debtor' is concerned, if it is based on the proceeds of crime, it is always open to the 'Enforcement Directorate' to

seize the assets of the 'Corporate Debtor' and act in accordance with the 'Prevention of Money Laundering Act, 2002' (for short, **'the PMLA'**).

16. However, it will not come in the way of the individual such as 'Promoter' or 'Shareholder' or 'Director', if he pays not from the proceeds of crime but in his individual capacity the amount from his account and not from the account/assets of the 'Corporate Debtor' and satisfies all the stakeholders, including the 'Financial Creditors' and the 'Operational Creditors'. There is nothing on the record to suggest that the individual property of the 'Promoter' / 'Shareholder'/ 'Director' who proposed to pay the amount has been subjected to restraint by the 'Enforcement Directorate'. Therefore, even if the asset of the 'Corporate Debtor' is held to be proceeds of crime, the Adjudicating Authority cannot reject the prayer for withdrawal of application under Section 7, if the 'Promoter' / 'Director' or 'Shareholder' in their individual capacity satisfy the creditors.

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.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

/ns/sk

ITEM NOS.26 + 34 COURT NO.4 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL Diary No(s). 44707/2019

(Arising out of impugned final judgment and order dated 18-11-2019 in IA No. 2787/2019 passed by the National Company Law Apellate Tribunal)

M/S RICHMOND INVESTMENTS PVT. LTD. Petitioner(s)

VERSUS

ANDHRA BANK & ORS. Respondent(s)

(IA No.191496/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.191497/2019-STAY APPLICATION and IA No.191495/2019-PERMISSION TO FILE APPEAL)

WITH
C.A. 9430/ 2019

Date : 17-12-2019 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

For Parties:
Mr. Mukul Rohatgi, Sr. Adv.
Mr. Vikram Chaudhri, Sr. Adv.
Mr. Nikhil Rohatgi, Adv.
Mr. Hemant Shah, Adv.
Mr. Harshit Sethi, Adv.
Mr. Rishi Sehgal, Adv.
Mr. Amanjot Ahluwalia, Adv.
Ms. Misha Rohatgi, Adv.
Mr. Gautam Awasthi, AOR

Ms. Madhavi Diwan, ASG
Mr. Anuj Agarwala, Adv.
Mr. Aayush Agarwala, Adv.
Mr. Pramod B. Agarwala, AOR

UPON hearing the counsel the Court made the following
O R D E R

Permission to file Civil Appeal is granted.

The appeals are disposed of in terms of the signed order.

(R. NATARAJAN) (NISHA TRIPATHI)
COURT MASTER (SH) BRANCH OFFICER
(Signed order is placed on the file)

ITEM NO.2 Court 3 (Video Conferencing) SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Miscellaneous Application No. 972/2020 in C.A. No. 9473/2019

M/S RICHMOND INVESTMENTS PVT. LTD. Petitioner(s)

VERSUS

ANDHRA BANK & ORS. Respondent(s)

(FOR ADMISSION and IA No.39520/2020-APPROPRIATE ORDERS/DIRECTIONS)
(IA No. 125369/2020 - APPROPRIATE ORDERS/DIRECTIONS)

Date : 22-02-2021 This application was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE B.R. GAVAI

For Petitioner(s) Mr. Mukul Rohtagi, Sr. Adv.
Mr. Vikram Chaudhri, Sr. Adv.
Mr. Gautam Awasthi, AOR
Mr. Hemant Shah, Adv.
Mr. Nikhil Rohtagi, Adv.
Mr. Harshit Sethi, Adv.
Mr. Keshavam Chaudhri, Adv.
Mr. Rishi Sehgal, Adv.
Ms. Ria Khanna, Adv.

For Respondent(s) Mr. Tushar Mehta, Solicitor General
Mr. Kanu Agrawal, Adv.
Mr. Arvind Kumar Sharma, Adv.

Ms. Madhavi Divan, ASG
Mr. Pramod B. Agarwala, AOR
Mr. Aayush Agarwala, Adv.
Mr. Anuj P. Agarwala, Adv.
Mr. A. K. Mishra, Adv.
Mr. Rohan Agrawal, Adv.

Mr. Jose Abraham, AOR

Mr. Sandeep Bajaj, Adv.
Mr. Soayib Qureshi, AOR
Ms. Aditi Pundhir, Adv.
Ms. Sangya Gupta, Adv.

Mr. Sunil Fernandes, AOR

Signature Not Verified
Digitally signed by Jayant Kumar Arora
Date: 2021.02.22 16:51:05 IST
Reason:

UPON hearing the counsel the Court made the following
O R D E R

I.A.No. 125369 of 2020 seeking disbursal, pending Enforcement Directorate and CBI verification, is allowed, subject to an official of the Bank submitting undertakings to this Court that the said sum will be produced before this Court, if and when required.

All other interlocutory applications filed by M/s Richmond Investments Pvt. Ltd. are dismissed.

In view of above, misc. application is disposed of.

(JAYANT KUMAR ARORA)
COURT MASTER

(NISHA TRIPATHI)
BRANCH OFFICER