

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1**  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
**02-06-2022** AT 10:30 A.M. THROUGH VIDEO CONFERENCE

**IA(IBC)/320/2021**  
**CP(IB) No.343/7/HDB/2018**  
U/s 7 of IBC, 2016

**IN THE MATTER OF:**

Bank of India

...**Financial Creditor**

Vs

Southern Online Bio-Technologies Ltd

...**Corporate Debtor**

**C O R A M:-**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)**  
**SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

Orders pronounced vide separate sheets in **IA(IBC) No.320/2021**.

We partly allow this Application and pass the following orders:

- (1) Relief sought at para(i) regarding directions to Respondent No.1 to return the Income Tax Refunds is dismissed.
- (2) Relief sought at para(ii) to (iv) of the Application are hereby allowed.

**Sd/-**

**MEMBER (T)**

**Sd/-**

**MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH**

IA No. 320/2021

In

CP (IB) No. 343/7/HDB/2018

*Application under Section 60 (5) of IBC, R/w Section 53 of the IBC, 2016*

In the matter of Southern Online Bio Technologies Limited

Filed by

Dr. Devaiah Pagidipati

Beta 409, Jayabheri Silicon Colony

Kondapur Post, Madhapur, Hyderabad – 84

....Applicant

**VERSUS**

1. Bank of India  
Banjara Hills Branch  
Chandra Apartments  
8-2-541/1, Ground Floor, Road No. 7  
Banjara Hills, Hyderabad – 500034
2. State Bank of India  
SAMB Branch  
3-2-1, Kachiguda Station Road  
Rahamath Bagh, Mahalaxmi Nilayam  
Kachiguda, Hyderabad – 500027
3. UCO Bank  
Hyderabad Asset Management Branch  
6-3-1108, Ground Floor  
Nava Bharat Chambers, Raj Bhavan Road  
Somajiguda, Hyderabad – 500082
4. Punjab National Bank

PNB ARMB Branch  
2<sup>nd</sup> Floor, Saeed Plaza  
Lakdikapul, Hyderabad – 50004

....Respondents

Date of order: 02.06.2022

**Coram:**

Dr. N. Venkata Ramakrishna Badarinath, Hon'ble Member Judicial  
Shri Veera Brahma Rao Arekapudi, Hon'ble Member Technical

**Appearance:**

For Applicant : Shri S. Chidambaram, PCS  
For Respondent.1 : Shri Sethu Madhava Rao, Advocate

PER: BENCH

ORDER

1. The Applicant Dr. Devaiah Pagidipati, who has acquired the Corporate Debtor i.e. Southern Online Bio as a going concern under liquidation pursuant to approval by this Tribunal vide order dated 22.06.2020, has filed this Application under Section 60 (5), R/w Section 53 of IBC, 2016, inter-alia, seeking directions to Respondent No.1 to refund the Income Tax Refund to the tune of Rs. 26,30,889/- and interest amounting to Rs. 1,43,438/-.

2. The gist of the Application in brief are that this Tribunal vide order passed in CP (IB) No. 343/7/HDB/2018 dated 05.10.2018 had admitted the petition filed by Bank of India (Respondent No.1 herein) under Section 7 of IBC. Smt G. Kalpana was appointed as Interim Resolution Professional for conducting the CIRP, who continued as Resolution Professional.

3. Since the Resolution Professional failed to receive the plans for resolution of the Corporate Debtor, the COC in its 14<sup>th</sup> meeting held on 25.06.2019 had resolved for liquidation of the Corporate Debtor. Accordingly, this Tribunal ordered liquidation of the Company vide orders passed in IA 565/2019 dated 16.07.2019 and appointed Smt G. Kalpana as Liquidator. Pursuant to her appointment, the Liquidator had issued Sale Notice dated 13.10.2019 for the sale of the Corporate Debtor as a going concern. The Applicant was declared as successful bidder on 23.10.2019 in the e-

auction held on 22.10.2019. The Letter of Intent was issued to the Application on 29.10.2019. Consequent to payment of bid amount of Rs. 51,70,00,000/- as full and final amount, the Applicant took over the Corporate Debtor as a going concern.

4. Consequently, this Tribunal allowed IA No. 1038 of 2019 filed by the successful bidder, granting a direction that *“upon completion of sale of the corporate debtor as a going concern all the claims or demands made by or liabilities or obligations owned or payable to any actual or potential creditors of the corporate debtor including Government dues whether direct or indirect, whether admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallized, known or unknown, secured or unsecured, disputed or undisputed in relation to any period prior to the e-auction date or arising on account of the acquisition of control by*

*the applicant over corporate debtor pursuant to e-auction, will be written off in full and shall stand permanently extinguished”.*

5. It is averred that this Tribunal further at para 16 of the order dated 26.11.2019 had made it clear that the Applicant shall have the right over any amounts / benefits received by the Corporate Debtor upon payment of the total consideration. Para 16 of the order is as under:-

*“The Applicant further prays that a direction be given that he will be entitled to all rights, title and interest in the whole and every part of the Corporate debtor as soon as payment of balance of bid amount, since Applicant purchased the Unit as ongoing concern and naturally Applicant will be entitled to the Corporate Debtor as a rightful owner on payment of balance of bid amount. There is no need to give any separate direction because it is very much implied that when the Applicant purchased the Company as ongoing concern, he will be the owner and entitled to all the benefits as owner of the Company”.*

6. Thus, the Applicant on payment of total consideration of Rs. 51,70,00,000/- on 04.12.2019 and who is in receipt of the sale certificate on 02.01.2020 from the Liquidator, is the rightful owner of the Corporate

Debtor and all the liabilities of the Corporate Debtor got discharged. It is further averred that this Tribunal passed closure of the liquidation process of the Corporate Debtor on 22.06.2020. The Applicant had acquired all the assets which are part of the liquidation assets which are free from all encumbrances.

7. It is alleged that Respondent No.1, which is the lead member of the consortium, even after receipt of sale consideration is showing the Corporate Debtor as a will defaulter despite requests made by the Applicant to remove from the list of defaulters.
8. It is averred that the Applicant had sent reply to the demand notice dated 21.08.2020 issued by Respondent No.1 directing the Corporate Debtor to repay the loans, informing Respondent No.1 that he had acquired the Corporate Debtor under IBC in the liquidation process and hence Respondent No.1 cannot claim anything against the Corporate Debtor.

When no reply was forthcoming from Respondent No.1, the Applicant herein issued legal notice dated 26.12.2020 asking Respondent No.1 to remove the Corporate Debtor from the defaulters list. In response, Respondent No.1 stated that they would not initiate any action against the Corporate Debtor, but would proceed against the erstwhile promoters of the Corporate Debtor.

9. It is contended that since the status of the Corporate Debtor is still reflecting as defaulter in the NeSL, the Applicant is unable to secure loans from any banks or financial institutions and start its commercial production.
10. It is alleged that Respondent No.1 is appropriating the following Income Tax Refunds received on various dates as under, despite requesting Respondent No.1 to refund the same stating the Corporate Debtor has no right over the refunds and receivables:-

- (i) Rs. 12,64,929/- received by the Corporate Debtor on 10.06.2020.
- (ii) Rs. 5,06,680/- received on 14.08.2020.
- (iii) Rs. 8,59,280/- received on 31.03.2021.
- (iv) Rs. 1,43,438/- being interest deposited with Respondent No.1 Bank.

11. It is further alleged that despite this fact being in the knowledge of Respondents 2 to 4, who are members of Stakeholders Committee, nothing was done and indirectly supported the acts of Respondent No.1.

12. The Applicant stated that all the required information, including KYC as required by Respondent No.1 were provided to facilitate the new management of the Corporate Debtor to operate the bank account maintained with 1<sup>st</sup> Respondent. It is also alleged that the Respondents failed to release the mortgage on the assets of the Corporate Debtor even after receipt of the full consideration, which is causing hindrance in securing loans from bank to kick start the business.

13. It is further contended that the Applicant being an NRI, the Foreign Inward Remittance Certificate and KYC which are required for filing

requisite returns with Reserve Bank of India, has not been issued by the 1<sup>st</sup> Respondent so far, resulting in non-compliance of FEMA regulations by the Applicant. Thus submitting, the Applicant prayed the Tribunal for the following reliefs.

- (i) directions to Respondent No.1 to return, the Income Tax Refunds of Rs. 26,30,889/- and Rs. 1,43,438/- to the Applicant received into the bank account of Corporate Debtor maintained with 1<sup>st</sup> Respondent Bank.
- (ii) directions to Respondents to release the security interest on the assts of the Corporate Debtor and remove the name of the Corporate Debtor from by NeSL portal and from credit rating agencies i.e. CIBIL, EXPERIAN, CRIF, etc.
- (iii) directions to 1<sup>st</sup> Respondent to issue FIRC and KYC to Corporate Debtor to enable the Applicant to file returns with RBI.
- (iv) directions to Respondents to accept the instructions issued by the duly constituted Board of Directors of the Corporate Debtor with regard to bank accounts maintained by the Corporate Debtor with the Respondents.

14. Per contra, the 1<sup>st</sup> Respondent, contends that the Application is not maintainable as this Tribunal allowed closure of liquidation proceedings

vide order passed on 22.06.2020 and therefore, this Tribunal has become  
*“functus officio”*.

15. The 1<sup>st</sup> Respondent contends that the assets/receivables as claimed by the Applicant are not listed in the current assets of the Company as per the valuation reports and that the amount claimed by the Applicant pertains to Income Tax Refunds, which is prior to the sale of the Corporate Debtor to the Applicant, as such the new management has no right over the said amount and needs to be distributed amongst the financial creditors. Thus submitting, prayed the Tribunal to dismiss the petition.
16. There was no representation for Respondents 2 to 4. Hence, this Tribunal vide order dated 25.03.2022 have set these Respondents ex-parte.
17. In the above backdrop, the points that emerge for consideration of the Tribunal are;

Whether the reliefs sought for by the Successful Bidder/Applicant herein can be granted?

18. We heard Shri S. Chidambaram, Ld. PCS for the Applicant and Shri V. Sethu Madhava Rao, Ld. Advocate for the 1<sup>st</sup> Respondent Bank, perused the records and case laws.
19. With regard to the 1<sup>st</sup> relief i.e. seeking directions to Respondent No.1 to return the Income Tax Refunds of Rs. 26,30,889/- and Rs. 1,43,438/- to the Applicant, the Ld. Counsel for the 1<sup>st</sup> Respondent would contend that since the Tribunal allowed closure of the liquidation proceedings vide order dated 22.06.2020 and the assets/receivables claimed by Applicant are not listed in the current assets of the Company as per valuation report and the amount claimed by the Applicant pertains to the period prior to sale of the Corporate Debtor to the Applicant, as such the said relief

cannot be granted. We find force in the said contention. Hence this relief hereby rejected.

20. In so far as the second relief is concerned, it is on record that the secured creditors pursuant to legal notice dated 26.12.2020 issued by the Applicant have stated that they will not initiate any action against the Applicant and would proceed against the erstwhile promoters. However, the 1<sup>st</sup> Respondent has not stated anything as to the release of security interest in the assets of the Corporate Debtor and removal of the Corporate Debtor from NeSL portal and from credit rating agencies i.e. CIBIL, EXPERIAN, CRIF etc. We, therefore find it necessary to allow this reliefs, besides the reliefs sought for at point (iii) and (iv) with regard to issue of FIRC and KYC to Corporate Debtor to enable the Applicant to file returns with RBI and to accept the instructions issued by the duly

constituted Board of Directors of the Corporate Debtor with regard to the bank accounts maintained by the Corporate Debtor with the Respondents.

21. Thus, we partially allow this Application and pass the following orders:

- (1) Relief sought at para (i) regarding directions to Respondent No.1 to return the Income Tax Refunds is dismissed.
- (2) Reliefs sought at para (ii) to (iv) of the Application are hereby allowed

Sd/-

Veera Brahma Rao Arekapudi  
Member (Technical)

Sd/-

Dr N.V. Ramakrishna Badarinath  
Member (Judicial)

*Binnu*