

SK

COC withdrawal application order.

By Speed Post/Email

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

6th Floor, Fountain Telecom Building No. 1, Near Central Telegraph Office,  
M. G. Road, Fort, Mumbai - 400 001

In the matter of the Insolvency & Bankruptcy Code, 2016  
C.P. No. (IB) 490(MB)/2018

F. No.: CP/IB/490/NCLT/MB/2018/121-129

Date: 11.03.2019

**M/s Andhra Bank** -Petitioner

V/s

**M/s Sterling Biotech Limited** -Respondent

To,

1. **PETITIONER**

(a) Andhra Bank,  
82-83, 8th Floor, Markers Tower-F,  
Cuffe Parade, Mumbai- 400 005  
Email: zmmum@andhrabank.co.in, Ph. 022- 26876174

(b) **ADVOCATE OF PETITIONER**

AZB & Partners,  
AZB House, Peninsula Corporate Park,  
Ganpatrao Kadam Marg, Lower Parel, Mumbai- 400 013  
Email : mumbai@azbpartners.com, Ph. 022 6639 6880

(c) **ADVOCATE OF PETITIONER**

Shri Nishit Dhruva,  
MDP & Patners, 1<sup>st</sup> Udyog Floor, 29, Walchand, Estate,  
Mumbai- 400 001  
Email: nclt@mdppartners.com, Ph. 9820733932

2. **RESPONDENT**

(a) Sterling Biotech Limited,  
43 Atalanta, Nariman Point,  
Mumbai- 400 021.  
Email: sterlingbiotech@stergel.com

3. Shri Manmohan Juneja,  
Regional Director, Western Regional MCA  
Everest 5th Floor  
100, MARINE DRIVE  
MUMBAI - 400002  
Email: rd.west@mca.gov.in

4. Shri A.A. Shanker,  
Aayakar seva kendra (ask), Ground Floor, Aayakar Bhavan,  
**Income Tax Office**  
M.K. Road, New Marine Lines, Mumbai-400020  
Email: ccit.mumbai@incometax.gov.in

5. Shri Satyabrata Kumar, IRS,  
Joint Director, Mumbai Zonal Office - I,  
**Enforcement Directorate**  
Kaiser -I-Hind, 4th Floor,  
Currimbhoy Road, Ballard Estate,  
Mumbai - 400001  
Ph. 022-22719911

6. Shri Ajay Tyagi,  
Chairman, SEBI  
Plot No.C4-A, 'G' Block  
Bandra-Kurla Complex, Bandra (East),  
Mumbai - 400051, Maharashtra  
E-mail : sebi@sebi.gov.in
7. Joint Director,  
Zone-I, CBI,  
13th Floor, Plot No. C-35A, 'G' Block,  
Bandra Kurla Complex (BKC),  
Near MTNL Exchange, Bandra (East), Mumbai 400098.  
Email:- hozmum1@cbi.gov.in
8. Regional Director for Maharashtra and Goa  
Reserve Bank of India,  
Main Building, P.O.Box 901,  
Shahid Bhagat Singh Road,  
Mumbai-400 001.  
Email: rdmumbai@rbi.org.in

**Subject:** Petition filed under section 7 of the IB Code, 2016 by the Petitioner against Respondent.

Take notice that above Petition was heard by Division Bench No. I of NCLT, Mumbai Bench on 11.03.2019 and the order dated 11.03.2019 was passed by said bench in this regard. The copy of the said order is enclosed for your kind perusal and compliance.

Encl.: As Above

B.A-Patel

(B A Patel)  
Dy. Registrar  
NCLT, Mumbai Bench

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**MUMBAI BENCH, MUMBAI**

C.P. No.(IB)490(MB)/2018  
MA 951/2019

CORAM:

SHRI V. P. SINGH

MEMBER (J)

SHRI RAVIKUMAR DURAISAMY

MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL  
COMPANY LAW TRIBUNAL ON 11.3.2019

NAME OF THE PARTIES: Andhra Bank

Vs

Sterling Biotech Limited

Section 7 of the Insolvency and Bankruptcy Code, 2016.

**ORDER**

31. **MA 951/2019 IN CP (IB)-490/MB/2018**

MA 951/2019 has been filed under Section 12A of IBC, 2016 read with section 60(5) of IBC, 2016, seeking permission to withdraw the CIRP process initiated against the Corporate Debtor under the admission order dated 11.6.2018 under the Provisions of Section 12A of the Code.

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 per cent voting share of the committee of creditors, in such manner as may be prescribed.*"

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.

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 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 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 per cent voting 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.*
- (5) The Adjudicating Authority may, by order, approve the application submitted under sub regulation (4)\**

Given the provision of regulation 30A which specifically deals with the procedure for filing withdrawal application. It is clear that application under Section 12A shall be submitted to IRP or the RP as the case may be. Till date, we have not received any application/any communication from the RP.

This MA for withdrawal U/S 12A of the Code has been filed by Andhra Bank, i.e. the Financial Creditor of the Corporate Debtor Sterling Biotech Ltd.

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 invitation of Expression of Interest under Regulation 36A, shall ensure that the application is accompanied by the Bank Guarantee towards estimated cost incurred for purposes of Clause (c) and (d) of the Regulation 31 till the date of application.

This application has been directly moved by the Financial Creditor/Petitioner. Therefore, RP has not given any certificate whether CIRP costs has been provided in accordance with Regulation 30A(2) or whether he has received the Bank Guarantee relating to the CIRP costs. This application has been directly submitted by the Financial Creditor by the decision of the CoC.

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 letter dated 8.8.2018 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.*

*On instruction from the members of the CoC, the Resolution Professional filed an Application with this Tribunal under Section 60(5) of the Code on 6.9.2018 to seek an extension for 15 days for the identification of the potential resolution applicants."*

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."*

*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 13<sup>th</sup> 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 section 12A of the Code. 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 CRP, as well as the resolution for approval of resolution plan submitted by ACG, fails, then a resolution for the 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."*

*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 the 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 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 compliance with RBI norms;*
- (iii) 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 should 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.\**

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.

It is pertinent to mention that after getting the application under Section 12A of the Code, when Resolution professional asked the CoC to provide him with the details of 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 informed the Resolution professional that they will directly address the issue with the Tribunal and did not submit any information to the Resolution professional.

It is pertinent to mention that the promoters of the Corporate Debtor are absconder and we often get the news from the newspaper that various Government agencies like Enforcement Directorate, CBI, and other agencies are unable to trace the Promoters of the Corporate Debtor.

It is also pertinent to mention that in 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."*

It is also important to mention that OTS proposal is attached with this application along with Form FA which shows that OTS proposal is from Mr. Farhad Daruwalla who has signed on behalf of Sandesara Group. It is not mentioned in the OTS proposal whether Farhad Daruwalla has been authorised by the Corporate Debtor to submit OTS proposal. It is also important to point out that the **Corporate Debtor is Sterling Biotech Ltd, no proceeding under IBC, 2016 has been initiated against Sandesara Group.** How the proposal submitted by Sandesara Group is accepted by the Financial Creditors creates suspicion when the promoter /Director is absconder and Enforcement Directorate and CBI is searching them. In the background, before passing any further order, we would like to issue notice to the Central Government through Regional Director, Ministry of Corporate Affairs , Enforcement Directorate, Income Tax Authorities ,CBI ,SEBI and RBI , so that if they want to make any representation, they can make the same before passing any further order on this Miscellaneous Application for withdrawal.

Notices along with the copy of this order may be given to the concerned authorities within seven days from today, so that if they want to make any representation, they can make the same. Notices to the concerned authorities may be communicated by speed post as well as by way of email.

Registry is directed to comply with the above order and submit the report by 5:00 p.m. today.

List on 26.3.2019.

SD/-

**RAVIKUMAR DURAISAMY**  
Member (Technical)

SD/-

**V. P. SINGH**  
Member (Judicial)

