

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5643 OF 2019

Richmond Investments Pvt. Limited. ..Petitioner.

Versus

Union of India and Others. ..Respondents.

Mr. Vikram Choudhari, Senior Advocate with Sajay Yadav, Karan Vyas, Harshit Sethi, Ms. Vineetha Khandelwal I/b S. K Saxena for the Petitioner.

Mr. D. P. Singh with Geetika Gandhi for Respondent No. 1-UoI.

Mr. Prakash Shinde, Niyati Merchant I/b MDP & Partners for Respondent No. 2.

Mr. Viraj Gauri I/b DSK Legal for Respondent No. 3.

Coram : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.

Date : **April 30, 2019.**

P. C. :

1. Heard the learned senior counsel for the Petitioner and the learned counsel appearing for the Respondents. The petition is filed for following reliefs :

"In view of above, it is most respectfully prayed that this Hon'ble Court may be pleased to :-

a] Read down section 82 of the Code of Criminal Procedure in order to save it from being rendered unconstitutional on the vice of falling foul of Article 14 and 21 of the Constitution of India and hold that a person could be called an 'absconder' only when the contingencies; conditions; stipulations contained in the said Section are satisfied and under no other circumstances, can a person be called as such;

b] Read down Sections 60(5)(c), 63 and 231 of the Insolvency and Bankruptcy Code, 2016 ("IBC") to hold that the bar of jurisdiction qua the Civil Court contained therein, cannot and does not in any manner limit or affect the jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India, which itself is a basic structure of the Constitution.

c] In terms of Section 12-A read with Regulation 30-A of Insolvency and Bankruptcy Board of India (Insolvency resolution process for corporate persons) Regulations, 2016 ("CIRP Regulations") and section 29-A of the IBC hold that :-

i. In respect of the withdrawal of an Application admitted under section 7 of the IBC, the word 'may' occurring in Section 12-A of IBC would be construed as mandatory upon the fulfillment of the conditions contemplated thereunder as well as under the Regulation 30-A of Insolvency and Bankruptcy Board of India (Insolvency resolution process for corporate persons) Regulations, 2016 ("CIRP Regulations") thereby making it obligatory upon Adjudicating Authority to permit the withdrawal of an Application admitted under section 7 IBC;

ii. The basis for allowing the withdrawal of an Application admitted under section 7 of IBC cannot depend upon any criminal proceedings that may have been initiated or pending against the promoters etc. as such issues would be extraneous / irrelevant to the object and purpose of IBC;

iii. The provisions of Section 29-A of IBC identifying "persons not eligible to be resolution applicant" has no bearing on the powers to be exercised by the Adjudicating Authority (NCLT) under section 12-A of IBC read with CIRP Regulations 2016.

d] Issue appropriate writ(s), orders(s), or direction(s) to quash / set aside the impugned order dated 11.3.2019 passed by Respondent No.4, National Company Law Tribunal, Mumbai Bench ("NCLT") in MA 951/2019 in CP (IB)-490/MB/2018 and all consequential proceedings arising

therefrom, wherein, inter alia, several prejudicial observations / remarks have been made against the promoters/ directors of the Sterling Biotech Limited ("Company") as such observations are not only irrelevant and extraneous and have no bearing on the lis pending before the NCLT but also such observations having been made without issuance of any notice to the promoters/directors and without affording opportunity any of hearing to them are absolutely non-est and cannot stand the test of scrutiny of law, equity or justice:

e] Issue appropriate writ(s), orders(s), or direction(s) to the Respondent No. 4 NCLT to decide the Application viz. MA No. 9512019 in CP (IB)-490/MB/2018 filed by Respondent No. 2 Andhra Bank before it in terms of section 12-A read with section 60(5) IBC for withdrawal of their Application admitted under section 7 thereof untrammelled by and without getting influenced in any manner about any extraneous factor including the criminal proceedings that may have been initiated or pending adjudication qua the company Sterling Biotech Ltd. and its Promoters/Directors."

2. Respondent No.2 – Andhra Bank filed the proceedings under section 7 of the Insolvency and Bankruptcy Code, 2016 [for short, "the IBC 2016"] against the corporate debtor Sterling Biotech Limited, of which the Petitioner is shareholder. The proceedings under section 7 are admitted on 11th June 2018. Subsequent thereto, there was settlement between the financial creditors and the corporate debtor, which is approved by a committee of creditors by 90.32% votes in its favour. Respondent No.2 thereafter on 8th March 2019 filed an application under section 12A read with section 60(5) of the IBC 2016 for withdrawal of CRIP process initiated against the

corporate debtor.

3. It is the case of the Petitioner that once application under section 12A of the IB Code is filed in the prescribed manner by the financial creditor or resolution professional, and if it is compliance to section 30-A of CIRP (Regulations) 2016, then, there is no alternative to NCLT but to allow the withdrawal of proceedings. Despite this, NCLT by passing order dated 11th March 2019 issued notices to the Central Government of India through Regional Director, the Ministry of Corporate Affairs, Enforcement Director, CBI, Income Tax on the premise that proposal submitted by Sandesara group is accepted by the financial creditor, create suspicion when the promoter / director is absconding and the ED and CBI are searching them.

4. The learned counsel for the Petitioner submitted that the conclusion is arrived by the NCLT on the basis of newspaper reports. Mr. Choudhari, the learned senior counsel for the Petitioner submitted that in any case, the criminal proceedings and the civil liabilities are two different things and the pendency of any criminal proceedings may not be a ground to refuse the settlement between the parties. Mr. Choudhari seriously dispute that the promoter /

directors of the Sandesara group are absconding. He submitted that they are seriously prosecuting the criminal cases pending before various authorities / courts. Mr. Choudhari apprehends that in the event Respondent No.2's application under section 12A is dismissed on this extraneous ground, serious consequences will follow and liquidation proceedings would commence that would be prejudicial to the interest of the Petitioner.

5. The learned counsel for Respondent No. 2 supported the petition. He submitted that the liquidation value of the corporate debtor is Rs. 429 crores whereas the OTS is for an amount of Rs. 3,110 crores and it is in interest of corporate debtor as well as creditor to allow this resolution by way of One Time Settlement.

6. Mr. Choudhari however does not dispute that in the case of dismissal of Respondent No.2's application under section 12A, there is a remedy of appeal before the NCLAT. He also submitted that the Petitioner will approach the Apex Court relying upon the decision of the Apex Court dated 14th December 2018 in *SLP (C) No. 31557 of 2018 in the matter between Brilliant Alloys Private Limited vs. Mr. S. Rajagopal and Others.*, He submitted that however the Petitioner /

financial creditor may be protected for some limited period of time.

7. In above circumstances, we dispose of this petition. However, in order to enable the Petitioner to approach the Apex Court, we are inclined to grant Petitioner a limited protection. In order to enable the Petitioner to avail the said remedy we grant limited protection to the Petitioner / corporate debtor Sterling Biotech Limited and accordingly direct that in the event any order in a proceedings filed by Respondent Nos.2 and 3 under section 12A of the IBC 2016, adverse to the interest of the Petitioner / corporate debtor / financial creditor is passed, the same shall not be given effect to for the period of 10 days from today.

8. All concerned shall act upon the copy of this order duly authenticated by the Registry of this Court.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]