

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

CP (IB)490/MB/2018

Under Section 7 of IBC, 2016

In the matter of

Andhra Bank ... Petitioner

Vs

Sterling Biotech Limited.... Respondent

Order Delivered on 11.06.2018

Coram: Hon'ble Shri B.S.V. Prakash Kumar, Member (Judicial)
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Petitioners: Mr. Shyam Kapadia, Advocate a/w Ms. Pooja Kshirsagar,
Mr. Santosh Mariyapal, Advocates, i/b AZB & Partners.

For the Respondents: Mr. Prem Jha, Advocate.

Per B. S. V. Prakash Kumar, Member (Judicial)

ORDER

Order Pronounced on 11.06.2018

It's a Company petition filed under Section 7 of Insolvency & Bankruptcy Code, 2016 by this Financial Creditor, namely Andhra Bank against the Corporate Debtor namely, Sterling Biotech Limited, stating that for this Corporate Debtor having defaulted in making repayment of ₹250.13 crores dues outstanding in respect to the term loan dated 9.1.2015 and Open Cash Credit Facility dated 22.2.2006, the Petitioner filed this Petition for initiation of Corporate Insolvency Resolution Process against this Corporate Debtor.

2. According to the Petitioner, it has granted the Corporate Debtor two facilities, namely Rupee Term Loan and Working Capital Facility which are as follows:

1. Rupee Term Loan: The Rupee Term Loan Agreement dated 9.1.2015 (RTL Agreement) was executed interalia between Corporate Debtor and the petitioner alongwith other parties. Under the RTL Agreement two

facilities were granted to the Corporate Debtor (i) a Term Loan Facility- Facility C (Term Loan 1) of INR 32,74,00,000 was granted to the Corporate Debtor by the Petitioner, and the same was disbursed on 27.3.2015; and (ii) a Term Loan Facility – Facility A (Term Loan 2) of INR 5,00,00,000 (Rupees Five Crores) was granted to the Corporate Debtor by the Petitioner, and the same was disbursed on 27.3.2015. (RTL Agreement is at Exhibit B, Page 26 of Vol-I). The details of loan sanctioned by the Petitioner are at Page 122 of RTL Agreement.

2. Open Cash Credit Facility: On 22.2.2006, the Petitioner as lead banker of consortium executed the Working Capital Consortium Agreement with the Corporate Debtor (Exhibit H at Page 244 of Vol –II). It has been supplemented by the First Supplemental to Working Capital Consortium Agreement dated 21.8.2007, Second Supplemental to Working Capital Consortium Agreement dated 13.8.2008, Third Supplemental to Working Capital Consortium Agreement dated 2.4.2010; Fourth Supplemental to Working Capital Consortium Agreement dated 17.9.2011 (Exhibit I-1 to I-3 at Page Nos. 270 to 309). The current Open Cash Credit (OCC) limit sanctioned by the Petitioner is ₹138,52,00,000. The OCC has been revived by a revival letter dated 28.8.2017 (Exhibit F, Vol-II at Page 240). The amounts have been utilised by the Corporate Debtor from time to time under the OCC facility and the last date of disbursement was dated 28.9.2015.

3. To prove sanctioning and disbursal of the loan amount, the Petitioner placed Rupee Term Loan Agreement dated 9.1.2015 as Exhibit B, sanction letter No.1116/1/452 dated 17.2.2014 pertaining to Term Loan 1 and Term Loan 2 has been annexed with the Company Petition as Exhibit C, copies of accounts statements and certificate under Bankers' Books Evidence Act have been annexed as Exhibit D and E to the Company petition. In respect to OCC facility, sanction letter dated 28.7.2015 has been annexed and marked as Exhibit F, the letter dated 28.8.2017 reflecting revival of the limits has been annexed as Exhibit G, Working Capital Consortium Agreement dated 22.2.2016 in between the Corporate Debtor and Andhra Bank, UCO Bank, PNB, Allahabad Bank, The Catholic Syrian Bank, Oriental Bank of Commerce, Syndicate Bank, Vijaya Bank, Federal Bank and Bank of Maharashtra is annexed as Exhibit H, Supplemental Working Capital Consortium Agreements were made as Exhibit I-1 to I-3. A copy of the account statement alongwith the Certificate in respect to OCC facility has been annexed as Exhibit J and

interest report for account is annexed as Exhibit K. The details of disbursement of OCC and Term Loan Facility are set out as Exhibit L.

4. To get this loan, the Corporate Debtor mortgaged the immovable property in favour of the Bank on 19.1.2017, which is shown as Exhibit N to this Company Petition. Likewise, the Corporate Debtor on 20.2.2017 also created another Mortgage Deed in respect to other lands which is marked as Exhibit O. Another land was mortgaged on 23.1.2017 which is marked as Exhibit P to this Company Petition. Likewise, the Corporate Debtor created mortgage over several lands through various Mortgage Deeds dated 6.3.2017 and 15.3.2017. Apart from the mortgages, the Corporate Debtor also hypothecated its movable assets through Deeds of Hypothecation dated 23.2.2017, 19.1.2017, 23.1.2017, 22.2.2006. Besides this, Promoter Directors Mr. Chetan Sandesara and Mr. Nitin Sandesara executed Personal Guarantee deed on 31.3.2015. In addition to the above charges, the Company has deposited Title Deeds for various properties in support of the same, the Petitioner filed Memorandum of Entry dated 21.8.2007, 8.12.2008, 15.11.2010 and 10.6.2011 which are marked as Exhibit X. As to OCC facility is concerned the Company executed Joint Deed of Hypothecation dated 26.2.2006 in favour of the Petitioner alongwith other Banks and another Joint Deed of Hypothecation executed in favour of the petitioner and other banks on 17.9.2011. The aforesaid Promoter Director executed another Joint Deed of Guarantee on 17.9.2011 in favour of Andhra Bank Consortium, comprising of Banks set out in fourth Supplemental to the Working Capital Consortium Agreement dated 17.9.2011. As if all these are not sufficient, Mr. Chetan Sandesara pledged 51,92,000 equity shares of the Corporate Debtor in favour of the Andhra Bank on 24.10.2005. Memorandum of Entry depositing Title Deeds in respect to various properties was created on 21.8.2007 in favour of the Petitioner.

5. To establish the record of default, the petitioner filed copy of the CIBIL report dated 20.3.2018 (Exhibit BB) and copy of report of Central Repository of Information on Large Credits (CRILC) dated 26.2.2018 has been annexed as Exhibit CC to this Company petition. The Petitioner has also attached the 31st Annual Report of Corporate Debtor (2016-17) and also copy of the minutes of Meeting of Joint Lender Forum of the Corporate Debtor dated 15.11.2017 and 19.1.2018 are annexed as Exhibit DD and Exhibit EE to this

Company petition to prove the existence of financial debt and the amount and date of default from the record acknowledged by the Corporate Debtor.

6. Default and Total Outstanding : The dates of default are mentioned at part IV of Form 1 are as follows:

Sr. No.	Facility	Default amount (Including interest in ₹Cr)	Date of Default
1.	Term Loan 1	45.84	31.8.2015
2.	Term Loan 2	6.88	31.8.2015
3.	OCC	197.41	5.11.2015
TOTAL		250.13	

7. The Corporate Debtor defaulted in making repayments, the petitioner issued notices dated 28.7.2017, 9.3.2018 and 18.3.2018 to the Corporate Debtor calling it upon to repay the aforesaid outstanding but the Corporate Debtor has failed to repay the amounts and has not even responded to the notices sent by the Petitioner.

8. The Petitioner submits that the Corporate Debtor owes ₹250.13 crores debt (on the date of filing the above petition) to the Petitioner. By letter dated 3.5.2017, the Company's Joint Managing Director namely Chetan Sandesara, addressed the Managing Director and CEO of the Petitioner on 3.5.2017 admitting total dues as on 31.3.2017 to various financial institutions including the petitioner to the tune of ₹3096 crores. In the said letter, in Annexure I, the said Joint Managing Director acknowledged the debt to the Petitioner as ₹218 crores. Though there is variance in respect to the amount of dues mentioned by the Corporate Debtor, this letter principally reflects the Joint Managing Director of the Company admitting the liability payable to this Petitioner.

9. The Petitioner further submits, for this Promoter Directors of the Corporate Debtor having been indulged in various fraudulent activities laundering the money of the company, the Director of Enforcement issued a provisional attachment order on 29.5.2018 for hatching criminal conspiracy with dishonest intention to cheat Andhra Bank and other public sector banks, in pursuance thereof, Enforcement Directorate conducted 44 searches and

made seizure under PMLA to unearth the fraud, in doing so Enforcement Director has noticed seizure of lot of incriminating documents indicating the involvement of the promoter directors of this company. An FIR was registered by CBI, BS&FC on 25.10.2017 under Section 13(2) read with 13(1) (d) of PC Act, 1988 and 120(b) read with 420, 467, 468 and 471 of IPC against this Bank. It is being said that funds obtained from the banks were diverted/siphoned to various shell companies from which they were withdrawn by the promoters for purchase of luxury, personal use, etc.

10. The Petitioner submits that the Corporate Debtor has about 1200 employees, since the promoters and Managing Director of the Corporate Debtor have not been attending the office/absconding, the Corporate Debtor is currently managed/run by the officers/employees of the Corporate Debtor therefore, in view of the interest of the Creditors, employees and the Corporate Debtor, the Petitioner has sought for commencement of CIRP by appointment of independent Resolution Professional so that the professional would be in a position to take charge of the assets of the Corporate Debtor at least to preserve the remaining assets of the company from being further frittered away.

11. Though a Counsel appeared on behalf of the Corporate Debtor, no submission has been made by him except standing still when the Petitioner Counsel was arguing the case, thereby this Bench falls back on the material papers provided by the Petitioner to pass this order.

12. On perusal of the material papers placed before this Bench, this Bench is satisfied that the debt is in existence against the Corporate Debtor and that the Corporate Debtor has defaulted in making repayment of the claim amount mentioned in this Company Petition despite hectic efforts were made by the petitioner to get back the due outstanding against the Corporate Debtor, for nothing has been worked out, the Petitioner proceeded against this Corporate Debtor under Section 7 of Insolvency & Bankruptcy, 2016.

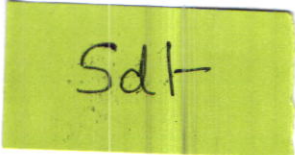
13. The Petitioner having filed documents showing existence of debt and default, this Bench hereby admits this Company Petition with the following reliefs:

- I.(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);
 - (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- (II) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
 - (III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 - (IV) That the order of moratorium shall have effect from 11.06.2018 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
 - (V) That the public announcement of the Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the Code.
 - (VI) That this Bench hereby appoints Mr. Sundaresh Bhat, BDO Restructuring Advisory LLP, The Ruby, Level 09, North West Wing,

Senapati Bapat Marg, Dadar (W), Mumbai - 400 028, Email sundareshbhat@bdo.in, having Registration No. IBBI/IPA-001/IP-P00077/2017-2018/10162 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

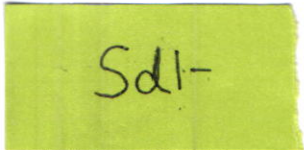
14. Accordingly, this Petition is admitted.

15. The Registry is hereby directed to communicate this order to both the parties within seven days from the date order is made available.



Sdt

RAVIKUMAR DURAISAMY
Member(Technical)



Sdt

B. S. V. PRAKASH KUMAR
Member (Judicial)