



NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1,
MUMBAI BENCH

Item No. 20

IA(L.B.C)/2216(MB)2025 IN C.P. (IB)/490(MB)2018

CORAM:

SH. PRABHAT KUMAR SH. SUSHIL MAHADEORAO KOCHEY
HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON 29.07.2025

NAME OF THE PARTIES: ANDHRA BANK V/s STERLING BIOTECH LIMITED

Section 7 and 60(5) of the Insolvency and Bankruptcy Code, 2016

ORDER

1. Ms. Kinnari Mukadam, AROC, ROC Mumbai present. Gaurav Jaiswal, Company Prosecutor for Rd WR MCA present. Adv. Nausher Kohli a/w Rishabh Chandra and Neel Mehta for the Petitioner present.
2. This Application has been filed by the Applicant under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016, seeking following reliefs:-
 - a) *Declare that the restriction contained in Rule 41 of the Companies (Incorporation) Rules, 2014 is not attracted to the Applicant on account of the acquisition of the Applicant on a clean slate basis by the Acquirers vide the Approval Order;*
 - b) *Direct the Respondents to take on record the conversion of the Applicant from Public Company, Limited by Shares to Private Company, Limited by Shares, pursuant to Approval Order of this Hon'ble Tribunal dated November 11, 2022 alongwith Approved*



Acquisition Plan dated May 26, 2022 and thereby, take on record the change in the name of the Corporate Debtor from 'Sterling Biotech Limited' to 'Sterling Biotech Private Limited' with effect from Effective Date i.e. November 17, 2022 in terms of the Approval Order dated November 11, 2022 expeditiously and in a time bound manner;

- c) Direct the Respondents to issue new Certificate of Incorporation (COI) expeditiously or within such time as fixed by this Hon'ble Tribunal alongwith updation on MCA Website and its records with updated CIN considering Applicant as Unlisted Private Limited Company with effect from November 17, 2022, i.e., the Effective Date, to give effect to the Conversion of Applicant from Public Company, Limited by Shares to Private Company, Limited by shares;*
- d) Waive any fine, penalty, fees, dues, Annual Custodian Fees, Annual Listing Fees, Annual Service fees by RTA, Share Registry Maintenance Charges, Depository Charges, adjudication, or any such other charges on account of non-compliances of any kind, under any law for the time being in force, on the Applicant, Acquirers/ new Management, its Directors, Officers and employees that may become due and/or payable by the Applicant, Acquirers/ new Management, its Directors, Officers and employees due to the delay by the Respondents in taking on record the conversion of the Applicant from Public Company, Limited by Shares to Private Company, Limited by shares and issuance of new COI with effect from November 17, 2022, i.e., the Effective Date;*



- e) Direct the Depositories to cancel the existing ISIN (Equity shares INE324C01038 and Debentures INE324C07019) in the name of Sterling Biotech Limited pursuant to Extinguishment/Cancellation/Reduction of existing Share Capital and Debt Capital as per Approval Order alongwith approved Acquisition Plan and allotment of New !SIN in the name of Sterling Biotech Private Limited in respect of allotment of Equity Shares on acquisition of Corporate Debtor by the Acquirers pursuant to Approval Order alongwith approved Acquisition Plan;*
- f) Any other reliefs that this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.*

3. The present Application has been filed by the Applicant/Corporate Debtor, seeking reliefs against the Respondents for allowing the Corporate Debtor to change its name from 'Sterling Biotech Limited' to 'Sterling Biotech Private Limited' pursuant to the approval of an acquisition plan for the sale of the Corporate Debtor, vide an order of this Hon'ble Tribunal.
4. The Corporate Debtor, a listed company, was admitted to CIRP by an order of this Tribunal dated 11.06.2018. Liquidation proceedings were initiated against the Corporate Debtor by an order of this Tribunal dated 08.05.2019. Perfect Inc. submitted an acquisition plan, for the acquisition of the Corporate Debtor on a going concern basis ("Acquisition Plan"). The Acquisition Plan, inter-alia, provided for the de-listing of the equity shares of the Corporate Debtor from the Stock Exchanges and for conversion of the Corporate Debtor from a public listed Company to a private Company, with the extinguishment of the existing share capital of the Corporate Debtor held by the public.



5. The Acquisition Plan was approved by this Tribunal vide an order dated 11.11.2022. This Tribunal, while approving the Acquisition Plan, granted certain reliefs and concessions, including the cancellation and extinguishment of the existing share capital of the Corporate Debtor.
6. The Applicant addressed a letter to NSE and BSE on 16.12.2023, intimating the approval of the Acquisition Plan by this Tribunal and thereby, requesting the Stock Exchanges to delist its equity shares. Accordingly, as per the notifications of the NSE and the BSE dated 24.02.2023, the shares of the Applicant were delisted from 03.03.2023.
7. The Applicant also addressed a letter dated 16.12.2022, to Respondent No. 1 (Registrar of Companies, Mumbai, intimating that it was unable to update its details on the MCA website as its status is still reflected 'under liquidation', and requested Respondent No. 1 to take on record its newly constituted Board of Directors, extinguishment of its existing share capital and its conversion from a public listed company to a private company. The Applicant addressed another letter dated 05.01.2023, seeking Respondent No. 1 to take on record the deemed conversion of the Corporate Debtor from a 'Listed Company' to an 'unlisted company' upon approval of the Acquisition Plan by this Tribunal.
8. The Applicant also submitted Form RD-I SRN AA5969639 dated 23/10/2023 in terms of Section 14(1) of the Companies Act, 2013 seeking conversion into Private Limited Company on 27.05.2023 for the change in its name from 'Sterling Biotech Limited' to 'Sterling Biotech Private Limited'. The Applicant received a communication from Respondent No. 2 (Regional Director, Western Region, Ministry of Corporate Affairs) to resubmit Form RD-I under the radio button of conversion from a public to a private company. Thereafter, the Corporate Debtor resubmitted Form RD-



1. However, the change in the name of the Corporate Debtor did not take effect.
9. The Applicant addressed a letter dated 26.03.2024 to Respondent Nos. 2 and 3 (Ministry of Corporate Affairs), highlighting its difficulty in registering its conversion from a public company to a private company, due to non-acceptance of Form RD-1 by Respondent No.2. The Corporate Debtor again addressed letters dated 03.09.2024 and 18.10.2024 highlighting the delay in processing its name change application, however, no response has been received from the Respondents.
10. The Applicant has also made several communications to Respondent Nos. 4 (National Securities Depository Limited) and 5 (Central Depository Services (India) Limited), seeking deactivation of its existing ISIN Number of the Corporate Debtor in the name of Sterling Biotech Limited, and issuance of a new ISIN Number in the name of Sterling Biotech Private Limited. However, no action has been taken to this effect by Respondent Nos. 4 and 5.
11. Respondent No. 3 MCA Through Respondent No. 2 i.e. Regional Director (Western Region), Mumbai has filed a limited reply in compliance of direction given by this Tribunal vide their order dated 13/06/2025 stating that, at present one prosecution is pending against the company and also SFIO investigation may also result into prosecution as the details of the same is awaited from SFIO and Rule 41 of Companies (Incorporation) Rules, 2014 under Companies Act, 2013 disallows the conversion of company into private company if prosecution is pending against the company, accordingly, in view of provisions of Section 30(2) (e) of IBC providing that resolution plan should not contravene any provisions of law



for the time being in force, this Tribunal may pass appropriate orders without prejudice to the Respondent 2 and/or SFIO's rights.

12. Respondent No. 4 and 5 have neither appeared nor have filed any reply.
13. There are two issues in this application i.e. (a) Conversion of Applicant company into a Private Limited Company, which has not been allowed by the Respondent No. 2 in view of Rule 41(7)(ii) of Companies (Incorporation) Rules, 2014; and (b) Directions to Respondent No. 4 & 5 for cancellation of existing ISIN pertaining to equity shares and debentures issued by the Corporate Debtor prior to its acquisition by the new management in Liquidation Process as going concern.
14. As regards first issue, the controversy has arisen on account of pendency of one prosecution proceedings against the Corporate Debtor and ongoing SFIO investigation in its affairs. Admittedly, both of these proceedings pertain to the period prior to acquisition of Corporate Debtor as going concern by the new management.
15. The first proviso to Rule 41(7)(ii) of Companies (Incorporation) Rules, 2014 reads as "*Provided that the conversion shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.*"
16. The Respondent No. 2 has submitted that this Tribunal could not have granted allowed deemed conversion of the Applicant into Private Limited Company as no Resolution Plan, even if the acquisition plan in the Liquidation process, is considered akin to the Resolution Plan, can be approved by this Tribunal in terms of Section 30(2)(e) of Insolvency & Bankruptcy Code 2016 if such resolution plan contravenes any provisions of law for the time being in force. It is further submitted that the



explanation to Section 30(2) relaxes the approval of shareholders under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, while Section 14 of the Companies Act, 2013 requires approval of Central Government for conversion of a Public Limited Company into Private Limited Company. It was also submitted that Section 238 of the Code only has overriding effect in relation to provisions of the Code and can not be extended to the provision under the Resolution Plan.

17. Nevertheless, it ought to be appreciated by the Respondent No. 2 that the order dated 11.11.2022 passed by this Tribunal approving the acquisition plan filed by the Successful Buyer of Corporate Debtor as a going concern in Liquidation Proceeding has attained finality and this Tribunal is barred from reviewing its own order in terms of Rule 11 of NCLT Rules, 2016, accordingly, we can not delve into an inquiry whether such acquisition plan contravened any provision of law and ought not to be approved by this Tribunal in terms of section 30(2)(e) of the Code. There is an order passed by this Tribunal and so long as such order is in force, the same ought to be complied with unless challenged on grounds of perversity or illegality therein by any interested person. Admittedly, no such proceeding was contemplated by any such person. Hence, we consider it appropriate to refrain from going into this aspect as that would fall within the scope of review of own order, which this Tribunal is not competent to do.
18. For this purpose, it is necessary to refer to Section 32A of the Code, which reads as under –

32A. (1) *Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under [section 31](#), if the*



resolution plan results in the change in the management or control of the corporate debtor to a person who was not—

- (a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or*
- (b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:*

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:

Provided further that every person who was a “designated partner” as defined in clause (j) of [section 2](#) of the Limited Liability Partnership Act, 2008, or an “officer who is in default”, as defined in clause (60) of [section 2](#) of the Companies Act, 2013, or was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor’s liability has ceased under this sub-section.

2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under [section 31](#), which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not—

- (i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or*
- (ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.*

Explanation.—For the purposes of this sub-section, it is hereby clarified that,—

- (i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of*



*such property under such law as may be applicable to the corporate debtor;
(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.*

19. Section 32A(2) of the I B Code explicitly declares that no action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under sale of liquidation assets under the provisions of Chapter III of Part II of this Code unless the acquirer is a person specified in clause (i) and (ii) thereof. Admittedly, there is no allegation that the Corporate Debtor is not in control of any such specified person. Accordingly, even if any prosecution and SFIO investigation is pending against the company, the said prosecution or SFIO investigation has to abate qua the Corporate Debtor's assets sold in liquidation, accordingly, no adverse view can be taken by the Respondent while according his approval to the proposed conversion even in terms of Rule 41(7)(ii), as such proceedings or investigation stands abated qua Corporate Debtor's assets. However, we make it clear that such investigation or prosecution can continue against the persons other than Corporate Debtor and those proceedings shall not be prejudiced on account of abatement of prosecution or investigation qua Corporate Debtor's assets.
20. As regards Respondent No. 2's contention in relation to jurisdiction vested in this Tribunal under Section 60(5) of the Code, it is pertinent to note that there is an Order passed by this tribunal having attained finality and this Tribunal is vested powers under Section 424(3) to enforce its order in the same manner as if it were a decree made by a Court. In the present case, the applicant has sought directions for implementation of the order passed



by this Tribunal. Accordingly, we are of considered view that an appropriate direction can be issued by this Tribunal in this regard directing the Respondent No. 2 to consider the application of the Applicant herein for conversion de hors the pendency of any investigation or prosecution pending against the Corporate Debtor in relation to offences committed prior to its sale as going concern to the new management. Needless to say, the Respondent No. 2 shall dispose of the pending request within 30 days from the date of communication of this order by passing a reasoned order. Needless to say, the Respondent No. 1 shall do the consequential acts after the passing of appropriate order by Respondent No. 2.

21. As regards issue no. 2, since the existing capital and debentures issued by the Corporate Debtor prior to its sale as going concern under the liquidation process stands extinguished in terms of Order dated 11.11.2022, the Respondent No. 4 and 5 are directed to take note of that and cancel existing ISIN (Equity shares INE324C01038 and Debentures INE324C07019) within 30 days from the date of communication of this order.
22. IA (IB) 2216 of 2025 is allowed in terms of aforesaid directions.

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)

Nitesh Puri

Sd/-
SUSHIL MAHADEORAO KOCHEY
MEMBER (JUDICIAL)