

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

IA No.1445 & 1460 of 2020

in

Company Appeal (AT) (Ins) No.612 of 2019

IN THE MATTER OF:

Andhra Bank

...Appellant

Versus

**Sterling Biotech Limited (Through Liquidator)
& Ors.**

...Respondents

For Appellant:

Shri A.K. Mishra, Advocate

For Respondents:

Shri Vikram Chaudhri, Sr. Advocate

Hossain Zoheb, Advocates

Shri Sumit Batra, Applicant (IA 1445 of 2020)

Tushar Gujjar, Hossain (ED) (IA 1460 of 2020)

**Sandeep Bajaj, Ms. Mamta Binani, Shri Darpan
Sachdeva, Advocates**

Shri Abhishek Baid, Advocate (R-4)

Shri Hemant Shah, Shri Ayush J Rajani, RP

Ms. Khushboo Shah Rajani, RP

O R D E R

27.07.2020

I.A. No.1445 of 2020

Heard Counsel for the Applicant. This Application has been filed in disposed Appeal by Madison Pacific Trust Limited for modification. The Applicant is seeking clarification/modification of the Clarification Order dated 18th November, 2019 to argue that the Corporate Debtor may be directed to pay all Financial Creditors as directed by Order dated 28th August, 2019. The Order dated 28th August, 2019 is at Annexure – B and Order dated 18.11.2019 is at Annexure – D. The grievance of the Applicant is that there should be direction to provide settlement to “all” stakeholders for the entire liability and it is claimed that for this purpose, the Applicant has sought

intervention and was even heard on 23rd September, 2019 but no specific direction was given when the Order dated 18th November, 2019 was passed. We have gone through the record. The Application has been filed relying on Rule 11 of the National Company Law Appellate Tribunal Rules, 2016 which relates to inherent power of this Tribunal to give such Orders or give directions as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Appellate Tribunal. The other Rule relied on is Rule 31 which applies to pending matters. Section 420 of Companies Act, 2013 (under which the Rules have been framed) states as under:-

“420. Orders of Tribunal.—(1) The Tribunal may, after giving the parties to any proceeding before it, a reasonable opportunity of being heard, pass such orders thereon as it thinks fit.

(2) The Tribunal may, at any time within two years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:

Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act.

(3) The Tribunal shall send a copy of every order passed under this section to all the parties concerned.”

2. Even if one was to say that this Section relates to the Companies Act, and not Insolvency and Bankruptcy Code, 2016 (IBC – in short), still the general principle would still be applicable that once against an Order, Appeal has been preferred, the Tribunal should not then entertain any modification or amendment. In the present matter, Reply filed by Resolution Professional states that one M/s Richmond Investments Pvt. Ltd. had filed Appeal against

the Order dated 18th November, 2019 which was registered as Civil Appeal No. 9473/ 2019 before the Hon'ble Supreme Court. In that matter, the Hon'ble Supreme Court on 17th December, 2019, passed the following Order:-

“O R D E R

Permission to file Civil Appeal is granted.

Having heard learned Senior Counsel for both sides, we are of the view that the 30 day period given in para 5 of the impugned order should be substituted by time till 31.03.2019.

In all other respects, the order stays.

Accordingly, the appeals are disposed of.

Pending applications also stand disposed of.”

3. It can be seen that while the Hon'ble Supreme Court gave further time substituting the period of 30 days mentioned in Para – 5 of our Order dated 18th November, 2019 (Annexure – D) by time till 31st March, 2020, it has been recorded that “In all other respects, the order stays.”

4. Reply of Resolution Professional (Diary No.20635) shows and it appears that later on, the said Appellant – M/s Richmond Investments Pvt. Ltd. filed MA 972 of 2020 to extend time for payment till 31st March, 2021 and on 4th March, 2020, Hon'ble Supreme Court directed to list the MA on 27th March, 2020. Thus, Application for seeking further time appears to be pending before Hon'ble Supreme Court and in such Application, Interlocutory Applications were sought to be withdrawn to avail of such remedies as may be available in law. Copy of the said Order has been filed at Annexure – E (Page – 48).

5. Learned Counsel for the Applicant is submitting that the Applicant was not party to the Appeal which came up before the Hon'ble Supreme Court and thus, the Applicant can seek modification. We are afraid that once Hon'ble Supreme Court has confirmed our Orders, however, granting further time (as seen in the Orders passed in the Civil Appeal 9473 of 2019 on 17th December, 2019), we cannot entertain any Application for modification. The learned Counsel for Applicant claims that Hon'ble Supreme Court granted liberty to avail of such remedies as may be available and thus, this I.A. has been filed. In our view, moving Application for modification of an Order which has been confirmed in Appeal, is not appropriate remedy. We cannot entertain the request.

The Application is rejected.

I.A. No.1460 of 2020

Heard Counsel for the Applicant. This I.A. has been filed claiming that there is non-compliance of Orders of this Tribunal and although this Tribunal had directed that the Promoters and/or Shareholders and/or Directors are allowed to pay the dues in individual capacity from their respective account which should not be proceeds of crime and to disclose source of funds to the Enforcement of Directorate, the promoters have not provided details of securities/assets pledged/mortgaged to avail term loan by Vision Views Company Ltd. The Counsel states that this is required to find out whether the said amount is being paid not from proceeds of crime. We had already allowed the Enforcement Directorate to "find out" whether the amount being paid is in individual capacity of the promoters or shareholders or Directors

and not from the proceeds of crime. It is for the Enforcement Directorate to find out and we cannot be involved at every stage for getting information which primarily is the job of Enforcement Directorate. Enforcement Directorate is free to resort to permissible legal ways to get information. We do not find any reason to entertain this Application in the manner in which it has been moved.

The Application stands disposed of.

[Justice A.I.S. Cheema]
Member (Judicial)

(Justice Venugopal M.)
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

/rs/md