THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH

IA No.322/2023
In
CP (IB) No. 102/Chd/Chd/2018
(admitted matter)

Under Rule 11 of NCLT Rules, 2016

IN THE MATTER OF:

Weather Makers Private Limited

…Petitioner-OperationalCreditor

Versus

Parabolic Drugs Limited …Respondent-Corporate Debtor

AND IN THE MATTER OF IA No. 322/2023:

Vineet Gupta, S/o Shri Jai Dev Gupta
Resident of A-130, 2nd Floor,
New Friends Colony, New Delhi

…Applicant

Vs.

1. **Monitoring Committee**
   Through Shri Kumar Gaurav,
   JM Financial ARC Limited
   3rd Floor, B Wing, Suashish IT Park,
   Plot No. 68 E, Off. datapada Road,
   Opposite Tata Steel, Borivali East,
   Mumbai, Maharashtra- 400066

2. **Akums Drugs & Pharmaceuticals Limited**
   304, Mohan Place, L.S.C. Block-C,
   Saraswati Vihar, Delhi- 110034

3. **Akums Lifesciences Limited**
   Formerly known as Parabolic Drugs Limited
   301, Laxmi Tower-2, LSC, Block-C,
   Saraswati Vihar, Delhi-110034

4. **Registrar of Companies,**
   1st floor Corporate Bhawan,
   Plot No. 4b, Sector 27-B, Chnadigarh

…Respondents

Order delivered on: 08.08.2023

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

Present: -

For the Applicant	:	Mr. Puneet Bali, Senior Advocate Mr. Surjit Bhadu, Advocate Mr. K.V. Singhal, Advocate Mr. Veer Singh, Advocate
For Respondent No. 1	:	Mr. Abhishek Anand, Advocate Mr. Karan Kohli, Advocate Mr. Viren Sharma, Advocate
For Respondent No. 2	:	Mr. Atul V.Sood, Advocate Mr. Arora Vishwas Kumar, Advocate Mr. Suman Kumar Jha, Advocate

Per: Subrata Kumar Dash, Member (Technical)

JUDGEMENT

1. The present Applicationis filed by **Vineet Gupta, S/o Shri Jai Dev Gupta** (hereinafter referred to as 'Applicant") against **Monitoring Committee** (hereinafter referred to as 'Respondent No. 1"); **Akums Drugs & Pharmaceuticals Limited** (hereinafter referred to as "Respondent No. 2"); **Akums Lifesciences Limited** (hereinafter referred to as "Respondent No. 3") and **Registrar of Companies** (hereinafter referred to as "Respondent No. 4") under Rule 11 of the National Company Law Tribunal Rules, 2016 seeking direction to the Monitoring Committee and the Resolution Applicant to make all statutory compliance including filing of requisite forms and payment of fees etc. under Companies Act, 2013 and Rules / Regulations made thereunder and other formalities as required under legal provisions such as filing Corporate Action Form with the depository / RTA, stamp duty etc. in terms of their implementation of Resolution Plan.

2. The applicant has prayed for issue directions to the Monitoring Committee and the Resolution Applicant to make all statutory compliance including the filing of

requisite forms and payment of fees etc. under the Companies Act, 2013 and Rules / Regulations made thereunder and other formalities as required under legal provisions such as filing Corporate Action Form with the depository / RTA, stamp duty etc., in terms of their effective implementation of Resolution Plan. It is further prayed to direct the Registrar of Companies, Chandigarh to ensure that the Resolution Applicant and Financial Creditors make all statutory compliance including filing of requisite forms and payment of fees, stamp duty etc. and other formalities as required under legal provisions.

3. The brief facts of the case as stated in the application are that :-

i. The Corporate Debtor was admitted for CIRP by order dated 23.08.2018 thereafter, vide order dated 08.10.2018 and Shri Raj Kumar Ralhan was as Resolution Professional. The Resolution Professional filed an application bearing CA No. 389/2020 under Section 30(6) and 31 of the Code before this Hon'ble Tribunal seeking approval of Resolution Plan.

ii. The Resolution Plan was approved by this Adjudicating Authority vide Order dated 12.01.2021. The Resolution Plan provided for the term of the plan and its implementation scheduled as required under Regulation 38(2). As per the Resolution Plan, the Financial Creditors shall also be issued Equity Shares of the Corporate Debtor as on the Closing Date, in addition to the amounts stated to be provided in Resolution Plan.

iii. In the Resolution Plan, there are certain steps enumerated for the effective implementation of the plan and the relevant part of the plan is reproduced hereinbelow:-

> ***"SCHEDULE 2 | IMPLEMENTATION PROVISIONS***
> ***1. Step 1: Increase in authorised share capital and borrowing limits of Corporate Debtor***
> *1.1. The authorized share capital of the Corporate Debtor shall stand increased by an amount of*

IN 1,450,00,00,000 (Indian Rupees one thousand four hundred and fifty crore) or such higher amount as required to accommodate the transactions contemplated in this Schedule 2 (Implementation Provisions), and the capital clause of the memorandum of association and if required, the articles of association of the Corporate Debtor shall stand accordingly amended.

1.2. The borrowing limits of the Corporate Debtor and the limits of the Corporate Debtor for providing securities or giving guarantees shall stand increased to such an amount as may be required to accommodate the transactions contemplated in this Schedule 2 (Implementation
Provisions).

1.3. It is clarified that the approval of this Plan by the NCLT shall be deemed comoliance with all procedural requirements in terms of Section 61, Section 64, Section 180(1)(a), Section 180(1)(c), Section 186(3), Companies (Share Capital and Debenture) Rules, 2014, other applicable provisions of the 2013 Act and other Applicable Laws, for such increase.

2. Step 2: Resolution Applicant's primary infusion into the Corporate Debtor and provision of
New Loan amount into escrow

2.1. The Resolution Applicant (and if required, its nominees) shall subscribe to new Equity Shares of the Corporate Debtor for an aggregate consideration equal to the Subscription Amount ('Investor New Equity Shares") by way of primary infusion on preferential basis.

2.2. The Resolution Applicant shall deposit an amount equal to the New Loan into the Escrow Account. On or prior to the First Payment Date, such amount shall be released into the designated bank account of the Corporate Debtor in accordance with the terms and conditions of the Escrow Agreement and shall be utilised by the Corporate Debtor for the purpose of making the payments contemplated in Step 7 below.

2.3. The auditors of the Corporate Debtor shall provide the Resolution Applicant with the audited balance sheet of the Corporate Debtor as of the date of such subscription, prepared in compliance with applicable accounting standards. It is clarified for the avoidance of doubt that the subscription price for each Investor New Equity Share subscribed to by the Resolution Applicant (and its nominees, as the case may be) shall be in compliance with the applicable provisions of IT Act.

2.4. It is clarified that the approval of the NCLT and the Committee of Creditors shall constitute adequate approval for issuance and subscription of the Investor New Equity Shares in accordance with Section 42, Section 62(1)(c) and other applicable provisions of the

2013 Act, and other Applicable Law. Accordingly, no approval or consent shall be necessary from any other Person / Governmental Authority (including the Stock Exchanges and the jurisdictional registrar of companies) in relation to either of these actions under any agreement, the constitutional documents of the Corporate Debtor or under any Applicable Law.

3. Step 3: Conversion of outstanding debt into equity

3.1. The Unsustainable Lender Conversion Amount out of the Total Debt shall stand converted into Equity Shares of the Corporate Debtor at the same price per Equity Share at which the Investor New Equity Shares are issued. Such Equity Shares shall be issued to the Financial Creditors in proportion to their share of the Unsustainable Lender Conversion Amount converted into Equity Shares under this Paragraph 3.1. It is clarified that if certain Financial Creditors become entitled to a fraction of an Equity Share pursuant to the conversion of their respective portions of the Unsustainable Lender Conversion Amount, the Corporate Debtor shall not issue fractional Equity Shares to such Financial Creditors and shall consolidate the fractional Equity Shares and round up the aggregate of such fractions to the next whole number and issue such consolidated Equity Shares to JM Financial Asset Reconstruction Company Limited, for the benefit of such Financial Creditors.

4. Step 4: Selective reduction of capital

4.1. Upon conversion of the debt into equity as contemplated in Paragraph 3.1 above, the issued, subscribed and paid-up equity share capital of the Corporate Debtor relating to the Existing Security holders shall stand extinguished in full since such equity share capital is unrepresented by the available assets of the Corporate Debtor. Any other securities application money, equity linked securities, securities convertible into or exchangeable with Equity Shares of the Corporate Debtor and all other securities of the Corporate Debtor, if any, shall also stand cancelled and extinguished without any payment. The requirement of adding "and reduced" in the name of the Corporate Debtor shall be dispensed with.

8. Step 8: Issuance of Lender New Equity Shares

8.1. On the First Payment Date, after the payments under Paragraph 7.1 above, an appropriate portion of the Debt owed by the Corporate Debtor to the Financial Creditors that have chosen the Restructured Repayment Option, shall stand converted into new Equity Shares of the Corporate Debtor ("Lender New Equity Shares") on a pro-rata basis, by way of subscription on preferential basis, such that post allotment of the Lender New Equity Shares, such Financial Creditors shall collectively hold 10% (ten percent) of the total issued, subscribed

and paid-up equity share capital of the Corporate Debtor. For the avoidance of doubt, it is clarified that the Financial Creditors shall receive no rights in the Corporate Debtor pursuant to their subscription of the Lender New Equity Shares except for the rights available to them as shareholders of the Corporate Debtor under the 2013 Act."

iv. The applicant has averred that in pursuance of the implementation of the Resolution Plan, certain upfront amount was paid by the Corporate Debtor, through funds infused by the Resolution Applicant in accordance with the Clause 6.3.3 of the Resolution Plan. The remaining debt, of Rs. 1426,42,96,788 was to be converted into 142,64,29,679 equity shares of Rs. 10 each, vide a resolution dated 04.02.2021 passed by the Board of the Corporate Debtor.these equity shares have been allotted to the lenders in the proportion of their share in the debt. Hence, JM Financial ARC Ltd. was allotted 102,22,69,377 shares and Central Bank of India was allotted 9,91,99,625 shares. The aforesaid equity shares were extinguished, vide a resolution dated 04.02.2021 of the Board of the Corporate Debtor.

v. It is alleged by the applicant that there are many deficiencies and statutory violations as well as evasion of the dues to the exchequer.

vi. It is further alleged that the Resolution Applicant passed a Board Resolution 04.02.2021 but there is no information available in the public domain as to whether reporting was done to ROC in Form MGT-14 as per the information available on ROC website. The Monitoring Committee and the Applicant needs to be directed to place on record the compliance

vii. It is stated that Akums had issued equity share capital to its lenders in the discharge of their admitted dues during CIRP and the issued equity share capital of Akums is thereafter, provided for extinguishment.

viii. It is further stated that the Authorized Share Capital of Akums does not appear to have been increased in terms of the Approved Resolution Plan and in fact, the Authorised Share stands at the same amount as it was at the time of commencement of CIRP.

ix. It is alleged that from a review of the information available at MCA Portal, it also appears SH-7 as provided under the Companies Act, 2013 was not filed by Akums Registrar of Companies in respect of the increase in Authorised Share Capital as increase was required of at least an amount of Rs. 1450 crores to accommodate the amount of new fully paid-up equity shares of over Rs. 1426 crores issued to lenders Akums, as the increase was necessary in the first place regardless of the fact newly issued equity shares would subsequently be extinguished.

x. It is submitted that the Monitoring Committee and Resolution Applicant Akums does not appear to have complied with the requirement to file the required Form SH-7 increase of Rs. 1450 crores in Authorised Share Capital and to pay the requisite fees thereon to the Ministry of Corporate Affairs, also non-compliance in filing the requisite Form for issuance of new equity share capital of Rs. 1426 crores to Financial Creditors/lenders of Akums and the requisite pertaining to subsequent extinguishment of the newly issued equity shares to Financial Creditors/lenders of Akums

xi. The applicant alleges that the corporate debtor has withheld the information from the public at large by not uploading the requisite Forms at the Portal of the Ministry of Corporate Affairs, Caused financial loss to the Government of India by not paying the fee and payments pertaining to the amount of increase in Authorised Capital of Akums, nonpayment of fees in respect of the Forms and by non-depositing of the stamp duty in respect of issuance new equity shares of Rs. 1426 crores.

xii. Reliance has been placed on the relevant extracts from the resolution plan which inter-alia states as under: -

> ***"Extracts from the Approved Resolution Plan:***
> *"1.1. The authorized share capital of the Corporate Debtor shall stand increased by an amount of INR 1,450,00,00,000 (Indian Rupees one thousand four hundred and fifty crore) or such higher amount as required to accommodate the transactions contemplated in this Schedule 2 (Implementation Provisions), and the capital clause of the memorandum of association and if required, the articles of association of the Corporate Debtor shall stand accordingly amended.*
> *[Emphasis supplied]*

xiii. In the Balance Sheets filed by the Corporate Debtor for the year ended on March 31, 2021, with the RoC, the authorized capital of the company is Rs. 72,00,00,000/-.

xiv. It is submitted that the Resolution Plan provides for Unsustainable Lender Conversion Amount to be converted into equity shares of the Company in terms of clause 3 of Schedule 2.1 "Implementation Provision" of the Resolution Plan. Accordingly, the Company issued 142,64,29,679 nos equity shares of the Company to the above Banks/FIs in proportion of their admitted claims aggregating to Rs. 1426,42,96,790 and the Company transferred the said amount on extinguishment to Capital Reserve instead of routing it through Profit and Loss Account. In this way, Rs. 139.09 Crores out of Working Capital / CC / LC Devolvement and Rs. 487.34 Crores out of Working Capital Term Loan, aggregating to Rs. 626.43 Crores, is Profit of PDL and should have been accounted as income of corporate debtor in Profit and Loss Account, and therefore, taxable as part of Taxable Total Income of corporate debtor under Section 41(1) of Income-tax Act, 1961, for FY 2020-21 / AY 2021-22. The Corporate Debtor saved income tax of Rs. 157.66 Crores by issuing Equity Shares in respect of the aforementioned amount of Rs. 626.43 Crores as the amount has been accounted as payment of Rs. 626.43 Crores by the Corporate Debtor.

xv. It is also alleged that the Corporate Debtor has made selective filings before ROC wherever their own interest was involved and they have failed to effectively implement the Resolution Plan in letter and spirit.

4. The respondent no. 1 has filed its reply and written submissions wherein it is stated that after the approval of the resolution plan by order dated 12.01.2021, the Monitoring Committee has been constituted for the implementation of the resolution plan. Schedule 2 of the plan also provides for the conversion of outstanding debt into equity and therefore reduction of the capital. Out of the total debt of Rs. 515,58,00,000/- in the books of the corporate debtor an amount of Rs. 1426,42,96,788/- is unsustainable and issued 142,64,29,679 equity shares of Rs. 10/- each with an objective to provide a clean slate to the Corporate Debtor. The approval of the plan shall constitute adequate approval for the issuance and subscription of equity shares by the financial creditors in accordance with Section 42 and Section 62(1)(c) of the Companies Act, 2013. Accordingly, no approval or consent shall be necessary from any government authority. The Board of Directors of the corporate debtor in a meeting held on 04.02.2021 discussed the cancellation of shares in terms of Clause 4 of Schedule 2.1 of the resolution plan. Upon conversion of debt into equity the share representing unsustainable share relating to the existing shareholders shall stand extinguished in accordance with the provisions of the resolution plan. The Resolution Applicant submitted PAS 3 with the RoC on 25.09.2021. The list of allottees along with the minutes of the meeting of directors held on 25.09.2021 are attached with the application. The resolution plan is fully implemented on 21.09.2022 by respondent no. 2 with in the prescribed timelines. The respondent no. 1 has also issued no dues letter dated 11.02.2022 to the resolution applicant stating that there are no dues payable by the resolution applicant. It is also

objected by the respondent no. 1 that the applicant being the erstwhile management has no locus standi to file the present application. The resolution plan has been implemented fully by the resolution applicant and the applicant has not raised any grievances qua the implementation of the resolution plan with the Monitoring Committee. The resolution plan approved by this Adjudicating Authority is also binding upon the applicant.

5. The respondent no. 2 and 3 have also filed replies and written submissions stating that the Applicant has no locus to file the present application before this Hon'ble Tribunal and subsequent to approval and implementation of the Resolution Plan, the Applicant cannot invoke Rule 11 of NCLT Rules, 2016. The applicant is neither a shareholder nor creditor or an aggrieved party whose rights are affected pursuant to the successful implementation of the approved Resolution Plan. The applicant has reproduced portions of the Resolution Plan on Pick and choose basis suiting his convenience with respect to Schedule 2 implementation provisions of the Resolution Plan. It is submitted that there was no requirement to file Form MGT-14 with the Registrar of Companies as stated in para 3.2, 4.2, 4.3, 4.4, 9 & 10 of the Resolution Plan. The conversion of the unsustainable debt into equity and an extinguishment thereof was *notional* and had no bearing or impact on any of the parties and was as per the plan approved by the COC. This was an integral part of and in accordance with the Plan and be deemed to have been carried out without any further deed or action required by the Corporate Debtor or any other Person. This was a notional action and has no bearing on the share capital or the shareholding position of the Company. The applicant is misleading the Tribunal by suggesting actions which are not applicable and are exempted in the case of CIRP.

6. A reference has been made to the relevant paragraphs in the approved resoluton plan dealing with the increase in authorized share capital.

7. It is further pointed out by Respondents No 2 & 3 that the Applicant is striving to prove that all the creditors were paid their full amount without any haircut and therefore, the Applicant is not obliged to make balance payments to the creditors against the personal guarantees given by them and against the properties pledged by them. There was no actual allotment of shares by the Corporate Debtor as there was no corresponding assets in the balance sheet of the Corporate Debtors, hence, the actual allotment may result into the mismatch of assets and liabilities of the Corporate Debtor. The allotment and subsequent cancellation against the Unsustainable Lender Account was only a way to clean the balance sheet against the lost assets.

8. The Respondents in their Additional written submissions have specifically pointed out that Respondent No. 4 is a “Registry Office” under the provisions of Companies Act 2013 and Report is based on the Record uploaded on “mca.gov.in” and Registry Record. The Ministry of Corporate Affairs has specifically issued a circular in which it has prohibited ROC to submit any opinion or analysis. It is averred that the applicant cannot seek a decree from the Hon'ble NCLT/AA as to which Form is required to be filed under the law and which is not required to be filed. The payments as proposed under the Resolution Plan stand paid which has been confirmed by the Monitoring Agency. It is contended by the Respondent No. 2 & 3 that under the relevant enactment(s), the statute provides for the establishment of regulatory authorities which are required to keep check on such necessary compliances. And, if any establishment fails to comply with the provisions relating to any compliance, then the concerned Regulatory Authorities are provided with appropriate powers/authorities under the respective laws to take action on them.

Neither the Companies Act, 2013 nor Insolvency & Bankruptcy Code, 2016, empowers the Tribunal as to which FORM is required to be filed, administer and adjudicate its compliance and/or supervise/direct the ROC to ensure such compliances.

9. The respondent No. 2 & 3 further submitted that the amount, which is a 'hair cut' is called "Unsustainable Lender Conversion Amount" in the Resolution Plan and the book entry treatment only was provided in the Plan in Schedule 2. The haircut of RS. 1,426 Cr. was a part of the Plan on account of operation of "doctrine of clean slate" and it cannot be said that the Plan contemplated actual payment of any amount by way of issue of shares. It is further submitted that after distribution of Plan amount under the waterfall mechanism, the entire remaining claims are extinguished and the RA gets the CD on a clean slate. In the present case also, Rs. 1426,42,96,788/- has to be extinguished which is in the nature of 'hair cut' pursuant to the Plan. Since the amount was huge, the RA had provided a book treatment only. It is asserted by The Respondent No. 2 & 3 that the Taxation Issue as highlighted in the short written submissions, submitted by the Applicant is beyond his pleadings and as such cannot be considered as these allegations are neither part of Application nor the Rejoinder filed by the Applicant. Therefore, in absence of the pleadings, such allegation cannot be taken into consideration. Additionally, the question related to the creation of liability of tax on part of Corporate Debtor shall be determined by the relevant Tax Department only. It is also submitted that The applicant does not have locus to file the application that too after 2 years of the sanction/implementation of the Plan with an aims to disrupt the Personal Insolvency Proceedings initiated by the Financial Creditors and to drag the RA and CD into the Personal Insolvency proceedings. The judgment of Hon'ble Supreme Court, of Vijay Kumar Jain vs. Standard Chartered

Bank, as relied upon by the Applicant, relates to the matter - where the guarantors are being asked to pay the amount more than the unrecovered debt. In present case, the FC have been paid their proposed amount as per the terms of the resolution plan and FCs can recover the unrecovered amount from the Applicant (being Guarantor) in terms of the Approved Resolution Plan

10. The respondent No.4-Registrar of Companies, Punjab and Chandigarh in its reply has stated that as per the available records with the Office of the Registrar of Companies, there is no such increase in the authorized share capitals as the Company has not filed Form SH-7 required for the increase of authorized share capital and there is no amendment in the Memorandum of Association and Articles of Association. There is no resolution for the allotment of the shares on the preferential basis to the financial creditors in proportion to their shares of the debt into equity shares which is filed with the RoC. The Registrar of Companies has also filed another reply dated 02.06.2023 stating that as per the available records, the authorized capital of Akums Lifesciences Ltd. is Rs.72 Crore and Company has neither paid fees for the increased in the authorized capital nor filed Form SH-7 for increasing the capital by an amount of Rs.1450,00,00,000/-. Also there is no such resolution which was required to be filed by the Company in Form MGT-14 with regard to the conversion of the outstanding debt into the equity shares. It is also submitted by the Registrar of Companies that as the records do not show any increase in the authorized share capital, therefore, the issue regarding the extinguishment of the equity shares of the company does not arise. The Registrar of Companies has stated that they were not a party to the Resolution Plan when the same was approved by this Adjudicating Authority and the documents filed with the

Registrar of Companies are public documents which can be obtained after filing of the requisite fees.

11. The rejoinder has been filed by the applicant denying the submissions made by the respondent Nos.1, 2 and 3. It is submitted that the applicant has locus to file the present application as the applicant was a Director in the Corporate Debtor M/s Parabolic Drugs Ltd.and a personal gurantor.His interest would be seriously jeopardised if the entire debt of the Financial Creditors against the Corporate Debtor does not stand settled fully and finally in terms of money as well as issuance of shares. Reliance is placed on the judgment of ***Vijay Kumar Jain Vs. Standard Chartered Bank - 2019 (20) SCC 455***, held as under: -

> *"we find that Section 31(1) of the Code would make it clear that such members of the erstwhile Board of Directors, who are often guarantors, are vitally interested in a resolution plan as such resolution plan then binds them. Such plan may scale down the debt of the principal debtor, resulting in scaling down the debt of the guarantor as well, or it may not. The resolution plan may also scale down certain debts and not others, leaving guarantors of the latter kind of debts exposed for the entire amount of the debt. The Regulations also make it clear that these persons are vitally interested in resolution plans as they affect them. (*Emphasis Supplied)

12. The applicant also submits that the submission made by the respondent Nos.2 to 3 with regard to the notional capital is misconceived as in the said Resolution, there is nothing mentioned that the same is "notional" The respondents cannot bypass the requirement of increasing the authorized share capital and then allotting the equity shares to the lenders in proportion to their debt by filing the required Forms with the ROC.

13. We have heard the learned counsel for the applicant and the respondents and have pursued the record carefully.

14. The issues to be decided in this application are

i. Whether the applicant- ex-director who is also a Guarantor has the locus to file this application

ii. Whether this adjudicating authority has jurisdiction to entertain any matter which is subsequently invoked after implementation of the resolution plan

iii. Whether it was incumbent on the Successful Resolution Applicant to increase the authorized share capital and allot the same to the lenders in proportion of their debt and also to file required Forms with Registrar of Companies.

15.1 The learned counsel for the respondent has argued that compliances other than those already made by the Corporate Debtor were not mandated to be made as per the relevant provisions of the approved resolution plan.

15.2 In this context, the excerpts relating to the increase in the authorized share capital as approved by this authority are extracted below:

> *"Step I: Increase in authorised share capital and borrowing limits of Corporate Debtor*
>
> *1.1. The authorized share capital of the Corporate Debtor shall stand increased by an amount of INR 1,450,00,00,000 (Indian Rupees one thousand four hundred and fifty crore) or such higher amount as required to accommodate the transactions contemplated in this Schedule 2 (Implementation Provisions), and the capital clause of the memorandum of association and if required, the articles of association of the Corporate Debtor shall stand accordingly amended.*
>
> *3.1. The Unsustainable Lender Conversion Amount, i.e., 1426,42,96,788 out of the Total Debt shall stand converted into Equity Shares of the Corporate Debtor at the same price per Equity Share at which the Investor New Equity Shares are issued. Such Equity Shares shall be issued to the Financial Creditors in*

proportion to their share of the Unsustainable Lender Conversion Amount converted into Equity Shares under this Paragraph 3.1. It is clarified that if certain Financial Creditors become entitled to a fraction of an Equity Share pursuant to the conversion of their respective portions of the Unsustainable Lender Conversion Amount, the Corporate Debtor shall not issue fractional Equity Shares to such Financial Creditors and shall consolidate the fractional Equity Shares and round up the aggregate of such fractions to the next whole number and issue such consolidated Equity Shares to JM Financial Asset Reconstruction Company Limited, for the benefit of such Financial Creditors.

4.1. Upon conversion of the debt into equity as contemplated in Paragraph 3.1 above, the issued, subscribed and paid-up equity share capital of the Corporate Debtor relating to the Existing Security holders shall stand extinguished in full since such equity share capital is unrepresented by the available assets of the Corporate Debtor. Any other securities application money, equity linked securities, securities convertible into or exchangeable with Equity Shares of the Corporate Debtor and all other securities of the Corporate Debtor, if any, shall also stand cancelled and extinguished without any payment. The requirement of adding "and reduced" in the name of the Corporate Debtor shall be dispensed with." *(Emphasis Supplied)*

15.3 Further in this context, we notice the para 32 of the order dated 12.01.2021 in CA No. 389/2019 approving the Resolution Plan of the corporate debtor extracted as below: -

"*32. Further, the RP and the Resolution Applicant filed their separate affidavits (Dy. No 1590 & 1591 dt.26.02.2020) in compliance of order dt.06.02.2020 stating therein that the conditions mentioned under clause 11 of Part 1 of the resolution plan shall no longer be treated as Conditions Precedent and the resolution applicant shall approach the relevant statutory and other authorities for grant of approval of consent, if required under clause 11 of Part I of the said Resolution Plan which shall be processed in accordance with law. <u>Further, it was stated that the resolution applicant agrees that the Reliefs and Concessions sought under para 6.13 of part I of the resolution plan shall not be treated as Reliefs and Concessions before the adjudicating authority and in respect of such relief and concessions, the resolution applicant will approach such relevant authorities in future. Also, it was stated that the non-grant of Conditions Precedent and Relief and Concessions sought</u>*

under the scheme shall not affect the implementation of the resolution plan by the resolution applicant. Copy of the affidavit of the resolution applicant is attached as Annexure -1 (Dy. No. 1590) and copy of board resolution dated 13.02.2020 is attached as Annexure -1 (Dy. No. 1591).”.

15.4 Clause 11 refers to the waiver pertaining to creditors, Government Authorities, the release of incumbrances over assets and certain other assumptions in Appendix 3 of the resolution plan. Similarly, Clause 6.13.6.2 refers to relief from payment of stamp duty, registration charges etc and also mentions that “*the RoC, Chandigarh to take on record and implement the plan, upon approval of the plan by NCLT, without any further compliance”.*

16. To place the issues in context, we refer to the following extracts from the affidavits filed before this authority prior to the approval of the resolution plan in the case of Parabolic Drugs Limited filed in CA No. 389/2019 ;

- ***The affidavit on behalf of Resolution Applicant dated 22.02.2020 in CA No. 389/2019.***

  “5. Accordingly, the Condition Precedent as contained in para 11 of Part I of the said Resolution Plan shall no longer be treated as Condition Precedent by the Resolution Applicant for the implementation of the said Resolution Plan. Similarly, Reliefs and Concessions sought under para 6.13 of part I of the Resolution Plan shall also not be sought as Reliefs and Concessions by the Applicant from the Hon'ble Adjudicating Authority for the implementation of the said Resolution Plan and shall not affect the implementation of the Resolution Plan.”

- ***The affidavit on behalf of Resolution Professional for Parbolic Drugs Ltd. in CA No. 389/2019***

  “i. The Conditions mentioned under Clause 11 of Part 1 of the Resolution Plan dated 13.03.2019, as restated on 07.05,2019 read with Addendum dated 08.05.2019 and Second Addendum dated 16.05.2019, in respect of the Corporate Debtor i.e. Parabolic Drugs Limited, filed before this Hon'ble Adjudicating Authority, shall no longer be treated as Conditions Precedent by the Resolution Applicant, for the implementation of the said Resolution Plan. That further, the Resolution Applicant shall, in future, approach the relevant authorities of the Central Government, the State Government, Autonomous Bodies,

Local Authority/Bodies, Administrative Authorities, etc., if so required and as the case may be, for grant of approval, consent, permission as envisaged under Clause 11 of Part I of the said Resolution Plan which shall be processed in accordance with applicable law.

ii. The Resolution Applicant has further, agreed that the Reliefs and Concessions sought under the Resolution Plan dated 13.03.2019. as restated on 07.05.2019 read with Addendum dated 08.05.2019 and Second Addendum dated 16.05.2019, shall not be treated as Relief and Concession from the Hon'ble Adjudicating Authority. xxxxx

4. I say that in view of the above, submissions made in para 45, 46 and 47 of the captioned application and directions/reliefs sought under prayer clause (ii) and (in) of the Prayer to the captioned Application shall stand withdrawn from the captioned Application i.e. C.A. No. 389/2019." (Emphasis Supplied)

17. The aforementioned extracts refer to certain provisions in the resolution plan which was undertaken to be withdrawn. For the sake of clarity, the relevant parts of these clauses in the resolution plan are extracted below:

*"11. **Regulatory approvals and other conditions precedent to the implementation of the Plan:-***

11.1. Notwithstanding anything contained in this Plan, performance of the obligations under the Plan is subject to the prior completion (unless waived in writing by the Resolution Applicant) of the conditions set out immediately below, to the satisfaction of the Resolution Applicant, by the Long Stop Date. If the conditions set forth in this Paragraph 11 of Part I (Business Plan of the Resolution Applicant in relation to the Corporate Debtor) are not met to the satisfaction of the Resolution Applicant by the Long Stop Date, this Plan shall not be effective or operative as against the Resolution Applicant and the Resolution Applicant shall have no obligations whatsoever under this Plan or otherwise to any Person, including having no obligation with respect to any earnest money deposit guarantee, performance guarantee, letter of intent or any other obligation and each such guarantee shall be promptly returned to the Resolution Applicant.xxxx

11.1.6. The (i) assumptions set out in Appendix III shall remain true, complete and accurate; (ii) reliefs, concessions and dispensations sought under this Plan shall have been granted and received; and (ili) there shall exist no breach of the terms and conditions of the Plan;"

"6.13.6 Assistance needed for successful revival

1. The Resolution Applicant shall implement its business plan as set out in this Plan and shall undertake all efforts for the recommencement of

operations and revival of the Corporate Debtor; however, in addition to such efforts, the revival of the Corporate Debtor shall be significantly aided by grant of the assistance, reliefs and concessions set out below and elsewhere in this Plan by the relevant Governmental Authorities that are competent to grant them. Açcordingly, the Resolution Applicant requests the relevant competent Governmental Authorities to consider and grant the following assistance, reliefs and concessions:

6.13.6.1 All relevant Governmental Authorities to grant relief from payment of stamp duty, registration charges and applicable fees (including fees payable to the Jurisdictional registrar of companies) for the (i) successtul implementation o the Plan (including for increase in authorised share capital, any capital reduction, issuance or transter of shares or debentures, provision of loan and related security interest and release of security, interest, as contemplated in this Plan); and (in) all other related documents that may be executed by the Resolution Applicant and / or the Corporate Debtor in respect of the transactions contemplated under the Plan including registration of the Pending Sale Deeds;

6.13.6.2. The registrar of companies, Chandigarh to take on record and implement the Plan, upon approval of the Plan by the NCLT, without any further compliances;

xxxx

6.13.6.5. All Governmental Authorities to waive the NonCompliances of the Corporate Debtor prior to the Closing Date (including Non-Compliances under Companies Act, 2013, Factories Act, 1948, Employees' Provident Fund & Miscellaneous Provisions Act, 1952. Industrial Disputes Act, 1947 and other Applicable Laws, and Non-Compliances in relation to non-payment of any outstanding charges and dues by the Corporate Debtor (including stamp duty, registration fee and property Taxes)"

18. With regard to the locus of the applicant, we observe that he is an ex-director of the Corporate Debtor. An ex-director, who is a personal guarantor of the Corporate Debtor have a substantial interest for the resolution process of the Corporate Debtor in view of the decision Hon'ble Supreme Court in the case of ***Vijay Kumar Jain (Supra).***

19. As regards the jurisdiction of this authority to entertain this application, it is clarified that the implementation of a resolution plan will be considered to be complete only when all the steps to implement the terms and conditions mentioned in

the approved plan are executed in letter and spirit. Till then, the implementation of the plan cannot be stated to be complete. The code provides for the liquidation of the Corporate Debtor in case the Successful Resolution Applicant fails to implement the resolution plan. As a prima facie case was made out in this application that certain steps have not been taken to implement the plan in its totality, we are of the opinion that this Authority can entertain an application and issue necessary directions.

20. Now coming to the question of whether all steps have been taken in executing the plan, we notice that the approved plan laid down the increase in the authorized share capital of the Corporate Debtor by an amount of Rs. 1450 crores or such higher amount is required to accommodate the transaction contemplated in the Schedule 2 (Implementation Provisions) and also for amendment of the Articles of Associations if required. The Corporate Debtor passed a resolution on 04.02.2021 converting the debt of Rs. 1426 crores into equity and issue shares to the Financial Creditors. By another resolution on the same day, the shares allowed to financial creditors were extinguished.

21. Even at the risk of repetition, we summarise the arguments of the respondents below: All the payments as required under the approved resolution plan have been made; the requirement of conversion of unsustainable debt into equity is “notional” and has no bearing or impact on any of the parties; the MCA is a regulatory authority and they have not initiated any action with regard to any failure on the part of the Corporate Debtor to file necessary forms; for unsustainable conversion amount, only book entry treatment was provided in Schedule 2 of the approved plan and the plan did not contemplate any actual payment of any amount by issue of shares and as far as the issue of tax liability is concerned, It is for the Income Tax Department to look into the matter.

22. We are not persuaded by the above arguments of the respondents that the whole transactions were only “Notional”, as the language of the approved resolution plan, especially in Schedule 2 (Implementation provisions) as quoted in paragraph 13.2 above clearly laid down steps for converting of outstanding debt into equity and then selection, reduction of capital and shares of the lender in the equity shares and there is no mention in the said provisions that the states laid down are only “*notional*”.

23. Plain reading of this Schedule 2 (Implementation Provisions) as extracted above in paragraph 3(iii), clearly indicates that the approved resolution plan did not contemplate the word “Notional” converting of debt into equity and subsequent reduction of capital by passing resolutions on the same date. We further note that as mentioned in para 32 of our order dated 12.01.2021 in CA no. 389/2019, the Resolution applicant expressly undertook to approach relevant authorities, which included the RoC, Chandigarh for necessary reliefs and concessions. By circumventing these provisions, clearly laid down in the approved resolution plan, the respondent- Resolution Professional has definitely not acted in accordance with the provisions of the resolution plan. Furthermore, we note that the order of this authority dated 12.01.2021 had taken into consideration the separate affidavits filed by the resolution professional and resolution applicant (Diary Nos. 1590 and 1591 dated 26.02.2020) and did not allow the conditions and precedents mentioned under Clause 11 of part 1 of the resolution plan and relief and concessions stated under para 6.13 of part 1 of the resolution plan thereby making it clear that the Corporate Debtor had to approach the relevant statutory authority and other authorities for grant of approval of consent.

24. In this connection, we refer to the decision of the Mumbai bench of NCLT in the matter of ***State Bank of India Financial Creditor V/s Ushdev International***

Limited *IA/887/2022 & IA/1606/2022 In IA/1447/2021 In CP(IB)No. 1790/MB/2017 dated 14.10.2022*, wherein under similar circumstances, the Tribunal directed as under:

> "Further, waiving of fees and stamp duty for filing Form SH-7 with the Ministry of Corporate Affairs amounting to Rs. 2,65,44,000/- (Rupees Two Crores Sixty-Five Lakhs Forty-Four Thousand only) on implementation of the Resolution Plan is concerned, the applicant may approach the RoC concerned who would consider such request under the Companies Act, keeping in view the spirit of IBC legislation."

25. In view of the aforementioned discussions, we are of the view that with regard to the Increase in share capital relating to the issuance of shares and subsequent reduction, the Corporate Debtor has not followed the statutory provisions under the Companies Act, 2013 nor has obtained any exemption in this regard from the concerned authorities including the RoC, Chandigarh. In this context, the Successful Resolution Applicant is directed to approach the relevant authorities for seeking necessary reliefs and concessions within 15 days of this order. The Authorities are directed to consider the same, keeping in view the spirit of IBC legislation. In case the reliefs sought are not granted by the concerned authorities, the SRA/ Corporate Debtor are to implement the plan as per the steps laid down in Schedule 2 (Implementation process) of the approved plan within 60 days of this order.

26. In the result, IA No. 322/2023 is allowed as above and the same is disposed of accordingly.

-sd-
(Subrata Kumar Dash)
Member (Technical)

-sd-
(Harnam Singh Thakur)
Member (Judicial)

August 08, 2023
SM/SA