



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

IA-115/2022 in CP(IB)-197/MB/2018

Under Section 60(5)(c) of the IBC, 2016

In the matter of

Union Bank of India ...Applicant
(Erstwhile Corporation Bank)

v/s.

1. Amit Gupta

(Resolution Professional)

2. Resolution Applicant

(Consortium of Asset Recovery
Company (India) Ltd., Shamrock
Pharmachemi Pvt. Ltd. & Intas
Pharmaceuticals Ltd.)

...Respondents

In the matter of

ICICI Bank ...Financial Creditor

v/s.

Unimark Remedies Ltd.

...Corporate Debtor

Order Pronounced on: **17.04.2023**

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant: Ms. Rathina Maravarman, Advocate.



For the Respondent: Ms. Pooja Mahajan a/w Ms. Mahima Singh, Ms. Arveena Sharma & Mr. Jineshkumar Gandhi i/b Arihant Associates, Advocates. Mr. Amit Gupta, RP present in person. Mr. Nausher Kohli a/w Mr. C. Keswani i/b Economic Laws Practice, Advocates.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

This is an Application filed by Union Bank of India (erstwhile Corporation Bank) a Dissenting Financial Creditor of the Corporate Debtor seeking (i) appointment of fresh valuers for revaluation of the tangible and intangible assets of the Corporate Debtor, (ii) not to approve the Resolution Plan submitted by the Resolution Applicant and (iii) to seek clear statement of accounts of the business of the Corporate Debtor during the CIRP period, from the Resolution Professional (RP).

Brief Facts of the Case:

1. The CIRP was commenced in the Corporate Debtor viz. Unimark Remedies Ltd. vide an admission order dated 03.04.2018 of Court-1 of this Bench in CP(IB)-197/MB/2018 filed by ICICI Bank; a Financial Creditor. Mr. Amit Gupta was appointed as IRP of the Corporate Debtor. As per the regulations, the IRP called for the claims of the creditors and CoC was constituted, Information Memorandum was prepared and then called for Expression of Interests from the public. Thereafter the prospective resolution applications were presented in the CoC for approval of the resolution plan.



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

IA-115/2022 in CP(IB)-197/MB/2018

2. In the CoC meeting, the resolution plan was voted by CoC members favouring 72.25%. Accordingly, the resolution plan submitted by the consortium of Asset Recovery Company (India) Ltd., Shamrock Pharmachemi Pvt. Ltd. and Intas Pharmaceuticals Ltd. was approved by the CoC whereas the Applicant herein was one of the Dissenters.
3. Having aggrieved by the majority decision of the CoC, the Applicant herein filed an application bearing MA-1406/2019 seeking appointment of fresh valuers to value the tangible and intangible assets of the Corporate Debtor and to declare the resolution plan submitted by the aforesaid resolution applicant. The said MA was heard and split verdict was passed by the Bench i.e. while the Judicial Member allowed the MA, the Technical Member dismissed the Application. The Resolution Professional then approached the Hon'ble NCLAT challenging the order of the Judicial Member for appointing fresh valuers. However, the Hon'ble NCLAT vide order dated 17.10.2019 directed Mumbai Bench to refer the matter to a third member in view of the Split Verdict delivered.
4. A Special Bench (Single) was constituted and the case was heard by the Special Bench and an order was passed on 20.01.2020 directing appointment of fresh valuer with limited scope for valuing the intangible assets of the Corporate Debtor considering the international standard of valuation, as applicable to a pharmaceutical company.
5. At this point, the Resolution Applicant challenged the Special Bench order before the Hon'ble NCLAT vide Appeal No. 418/2020, which was disposed of on 13.03.2020 upholding the Special Bench Order. Accordingly, GAA



Advisory was appointed as fresh valuer to value the intangible assets of the Corporate Debtor.

6. The Respondent-1/RP submits that the Applicant has raised the same issues in the earlier Applications which were heard and adjudicated. It is now only to delay the resolution plan. Therefore, the Application needs to be dismissed.

Findings:

7. This case was first heard in Court-1 as the main Company Petition was heard and admitted into CIRP by Court-1 and the matter was running there since 2018. Thereafter, it was transferred to Court-3. After a short while, it is again transferred from Court-3 to this Court (Court-4). This Bench heard various IAs on few occasions.
8. We note that Hon'ble NCLAT in Appeal No. 418/2020 declined to interfere with the order dated 20.01.2020 passed by Court-5 of Mumbai Bench of NCLT whereby fresh decision for fresh valuation, limited to intangible assets was challenged. The Hon'ble NCLAT held that *"as no party has a right to say whether the Adjudicating Authority should go for further valuation before approval of the plan or not and it is open to the Adjudicating Authority to satisfy itself of the plan approved by the Committee of Creditors, to ascertain whether to approve the plan under Section 31 of the I&B Code or not. As the matter is pending since long, we hope that the Adjudicating Authority (NCLT), Mumbai Bench will pass appropriate order under Section 31 in the application taking into consideration the valuation and the plan as approved by the Committee of Creditors"*.



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

IA-115/2022 in CP(IB)-197/MB/2018

9. Further an order dated 19.11.2020 was passed by the Bench in IA-1141/2020, which was an application of Corporation Bank holding about 7% of shares. Vide this order, the order dated 20.01.2020 was reaffirmed by this Bench. We note that this order was again challenged in Appeal No. 1120/2020 before NCLAT and it held vide its order dated 23 December 2020 that -

“It appears to us that it was not appropriate to keep shuttling the matter on an issue on which the Resolution Professional has acted after the Orders were passed by the third Hon’ble Member. The Corporation Bank had objections with regard to the valuation done earlier and thereafter another Valuer has been appointed and it appears that Report has been filed. Still Appellant is objecting. When such developments have taken place, on technical issues, we do not intend to interfere with the Impugned Order.”

10. In view of the above decision of Hon’ble NCLAT upholding valuation of intangible only and declining to interfere any further in the interest of Corporate Debtor, this Bench is hereby **dismissed** the present application seeking fresh valuation.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)