NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

**PRESENT: HON'BLE SHRI RATAKONDA MURALI– MEMBER JUDICIAL
HON'BLE SHRI NARENDER KUMAR BHOLA– MEMBER TECHNICAL**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 18.12.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.439&531/2019 in CP(IB) No.269/9/HDB/2018
NAME OF THE COMPANY	Apex Drugs Ltd
NAME OF THE PETITIONER(S)	Zheijang Tonxiang Trade (Group) Company Ltd
NAME OF THE RESPONDENT(S)	Apex Drugs Ltd
UNDER SECTION	9 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Amir Bavani for R.P. [Dhir & Dhir Associates]	Advocate	9949216962	Amir Ali

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
for R-1 in IA.No.531/2019. D.Narendar Naik	Adv	9849387366	
Vikram.C.Puttapaga	Adv	9160876539	Vikram

ORDER

Orders passed in IA No. 439/2019 vide separate orders.

IA No.531/2019, is taken up today for hearing.

List it again for hearing on 07.01.2020.

Counsel for Resolution Professional also filed affidavit of the Resolution professional in IA No.439/2019.

Member(T) **Member(J)**

Pavani

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH -I

CA No. 439 of 2019

IN

C.P. NO. (IB) 269/9/HDB/2018

U/s 30(6) & 31 of IBC, 2016

R/w Regulation 39(4) of IBBI (IRPCP)
Regulations, 2016

IN THE MATTER OF

M/S ZHEIJANG TONGXIANG FOREIGN TRADE GROUP CO.

VERSUS

APEX DRUGS LIMITED

MR. KAPIL DEV TANEJA
(RESOLUTION PROFESSIONAL)
56-C/BB, Janak Puri
New Delhi - 110058

..... APPLICANT

Date of order: 18.12.2019

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Hon'ble Shri Narender Kumar Bhola, Member (Technical)

Parties / Counsels present:

For the Applicant: Shri Amir Bavani & Ms Naveeni Jain, Advocates (Dhir & Dhir Associates)

Heard on: 14.08.2019, 29.08.2019, 13.09.2019, 27.09.2019, 24.10.2019, 13.11.2019, 05.12.2019, 13.12.2019

Per: SHRI RATAKONDA MURALI
MEMBER (JUDICIAL)

1. Under consideration before us is the Application filed by the Resolution Professional (RP) under Section 30(6) and 31 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Regulations) seeking approval of Resolution Plan of M/s Orbit Electro Equipments Private Limited in consortium with Mr. Siddharth Shah as approved by majority of 100 % of members of Committee of Creditors (CoC) of the Corporate Debtor.

AVERMENTS

2. The averments made in the Application in brief:-

(a) That this Tribunal admitted petition filed under Section 9 of IBC by M/s Zheijang Tongxiang Foreign Trade (Group) Co. / Operational Creditor and started Corporate Insolvency Resolution Process (CIRP) on 06.09.2018. Mr. Maligi Madhusudhana Reddy was appointed as Interim Resolution Professional who was later confirmed as Resolution Professional in the 1st meeting of CoC held on 12.10.2018. The Committee of Creditors comprising of State Bank of India, Bank of India and Allahabad Bank was constituted. Further pursuant to the decision taken in the second meeting of CoC held on 01.11.2018, the above Resolution Professional was replaced by Mr. Kapil Dev Taneja as the Resolution Professional (RP) of the Corporate Debtor vide order passed by this Tribunal on 26.11.2018. In all, 10 (Ten) CoC meetings were conducted by the Resolution Professional.

(b) The Resolution Professional carried out publication of Expression of Interest in Business Standard (English) and Nava Telangana (Telugu) on 11.01.2019. Further, it is averred that as per decision taken in the fifth meeting of CoC held on 29.01.2019, the period of inviting expression of interest was extended by another 15 days and Resolution Professional carried out fresh publication in Form-G on 04.02.2019 and that the last date for submission of Expression of Interest was 18.02.2019.

(c) It is averred this Tribunal vide orders passed in IA No. 126/2019 on 06.03.2019 extended the period of CIRP of Corporate Debtor by another 90 days.

(d) The Resolution Professional received six (06) Expression of Interest and the same were circulated to the members of CoC vide e-mail dated 28.02.2019.

(e) As per the decision taken in the seventh CoC meeting held on 26.04.2019, the members of the CoC approved RFRP / Process Document and extension of submission of EMD and Resolution plan as the said document was essential to identify the successful Resolution Applicant.

(f) In the 8th meeting of the CoC held on 07.05.2019, the Resolution Professional apprised the members of the CoC of the change of auditor viz. M/s Ganta and Associates in place of Ms. J Singh & Associates, for determining the transactions as covered under Section 43,45,50, and 66.

(g) It is averred in the ninth meeting of the CoC held on 15.05.2019, the CoC members were apprised regarding negotiations and modifications / improvements that were to be made in the Resolution plan by the Resolution Applicant.

(h) It is the case of Applicant that in the tenth meeting of CoC dated 31.05.2019, the revised Resolution Plan submitted by M/s Orbit Electro Equipments Private Limited in consortium with Mr. Siddharth Shah was placed before the members of CoC for their consideration. The e-voting for approval of the Resolution Plan was open from 01/06/2019 (10 AM) till 02/06/2019 (8 PM).

(i) It is averred the CoC representing 100% of the voting share in the CoC, voted in favour of the Resolution Plan submitted by M/s Orbit Electro Equipment Private Limited in consortium with Mr. Siddharth Shah and the Resolution Plan accordingly was approved by the CoC under Section 30(4) of IBC.

(j) The Resolution Professional / Applicant herein stated that CIRP period of 270 days is expiring on 03.06.2019 and that the Resolution Plan was approved by the CoC on 02.06.2019, which is within the stipulated time limit of 270 days, as required under Section 12(1) of the IBC.

(k) The Applicant / Resolution Professional herein filed compliance certificate dated 05.12.2019 in Form H as required under Regulation 39 (4) of CIRP Regulations, to the effect that the approved Resolution Plan meets all the requirements envisaged under the IBC and the Rules/ Regulations made thereunder.

(l) Thus Resolution professional / Applicant herein prayed this Tribunal to approve the Resolution Plan submitted by Orbit Electro Equipment Pvt Limited in consortium with Mr. Siddharth Shah as approved by majority of 100 % of voting share of members of Committee of Creditors (CoC) of the Corporate Debtor under Section 31 of the IBC.

DISCUSSION

3. We heard the Counsel for Resolution Professional. We have also seen the Resolution Plan submitted by M/s Orbit Electro Equipments Private Limited in consortium with Mr. Siddharth Shah who are the Resolution Applicants in the ratio of 70:30. The Resolution plan was approved by members of CoC with 100% voting share and attendance sheet is shown at page No.140.

S.No.	Name of Financial Creditor	Voting (%)	Voting for Resolution Plan
1.	State Bank of India	70.10%	For
2	Bank of India	17.32%	For
3.	Allahabad Bank	12.58%	For

4. The Learned Counsel for Applicant stated that, two Registered Valuers viz, G.P. Sankaram & Associates and M/s K. Dhanapathi Rao & Valuers Pvt Ltd were appointed to determine the fair value and liquidation value of the Corporate Debtor. The Learned Counsel stated that the Fair value was fixed at Rs. 16.96 crores and the Liquidation value at Rs. 10.13 crores. In all, the Applicant conducted 10 CoC meetings. The CIRP ended on 03.06.2019.

5. The details of Financial Creditors and the claim amount and admitted amount is as under:-

In Lakhs

S.No.	Name of Financial Creditor	Claim amount	Amount admitted
1.	State Bank of India	13867.00	13867.00
2	Bank of India	3426.00	3426.00
3.	Allahabad Bank	2489.00	2489.00

6. The Resolution Applicants propose to infuse funds for implementing the Resolution Plan and payment to various stake holders as follows:-

S.No,	Details of Stake holder	Amount proposed under Resolution Plan in lakhs
01.	Insolvency Process Cost	At Actuals
02.	Financial Creditors	1300.00
03 (a)	Employees and workmen	25.00
03 (b)	Statutory Creditors	
03 (c)	Litigations and Contingent Liability	25.00
03 (d)	Other Operational Creditors	
03 (e)	Shareholders	Nil
	Total	1350.00

The amount of CIRP cost as per Resolution Professional amounts to Rs. 67 lakhs and will be paid in priority over all other payments. The Resolution Plan further provides for payment of dues to the operational creditors on priority over financial creditors as per Regulation 38 (1) of CIRP Regulations.

7. The Resolution Plan also provides for keeping aside a sum of Rs. 25 lakhs proportionately of the claim received if any from the employees / workmen. Further it also provides a sum of Rs. 25 lakhs proportionately to be set apart for the claims received and approved by the Resolution Professional in respect of Operational Creditors. This total amount to the tune of Rs.50 lakhs is proposed to be kept in a separate account to be paid only if the claim is received by the Resolution Professional in a period of nine months and if no claims are received during that period, the amount would be distributed among the financial creditors accordingly.

8. The Resolution Plan further provides that the Resolution Applicants shall acquire the majority share of the Corporate Debtor and the Corporate Debtor would not be merged with any of the Companies of the Resolution Applicant and that the Resolution Applicants proposes to cancel 99.99% of the existing shareholding of the Corporate Debtor. The Resolution Applicant seeks to get complete operational control of the Corporate Debtor

on the date when the 25% upfront payment is made by the Resolution Applicant. The Resolution Professional or monitoring agency as appointed by CoC in consultation with Resolution Applicant can supervise the implementation of the Resolution Plan till the reconstituted Board is formed.

9. It is also stated by the Resolution Professional that the interests of existing shareholders were altered by the Resolution Plan as under:-

Sl. No	Category of Share holder	No. of shares held before CIRP	No. of shares held after the CIRP	Voting share (%) held before CIRP	Voting share (%) held after CIRP
1	Equity	11076411	1107	100%	0.05
2	Preference	NA	NA	NA	NA

10. The Resolution Plan would be implemented as per time schedule mentioned in the Plan and the first instalment to be paid within a period of 2 months of receipt of LOI by Resolution Applicant post approval of the Resolution Plan by this Tribunal and the entire amount would be paid to the Financial creditors within a period of 270 days. The Resolution Plan was considered by members of CoC in its 10th meeting held on 31.05.2019. The minutes of the meeting of 10th CoC is shown at pages 128-139 of the Application. The CoC unanimously resolved to submit the Resolution plan to the Adjudicating Authority for approval. It is stated that Resolution plan given by M/s Orbit Electro Equipments Private Limited in consortium with Mr. Siddharth Shah in the ratio of 70:30.meets the requirements of the Code and Regulations. The Resolution Professional has given certificate to the said effect which is shown at page 141-145 of the Application.

11. The Resolution Applicant furnished a Bank Guarantee bearing No. 0263BG000052019 for Rs. 1,50,00,000/- issued by South Indian Bank Limited, Hyderabad valid for 12 months from the date of LOI issued by Resolution Professional i.e. up to 03.12.2020.

12. The Resolution Professional has furnished certificate in Form-H as per Regulation 39 of CIRP Regulations, 2016. The amounts provided for the stakeholders under the Resolution Plan is as under:-

(Amount/Rs in crores)

Sl. No.	Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
1.	Secured Financial Creditors	197.82 Cr	197.82 Cr	13.00	6.29
2.	Unsecured Financial Creditor -Not related -Related parties	-	-	-	-
3.	Operational creditors/Government	9.56 cr	7.29 cr	25 lacs	-
	Workmen & Employees	-	-	25 lakhs**	-
	Other than workmen and employee				-
4.	Other debts and dues (CIRP Costs)	-	-	67 lakhs	-
	Total			14.17 cr	-

** There are no claims filed by workmen/employees. Funds to be kept in an escrow a/c for 9 months. Payment to be made only on production of complete documents & after approval of Monitoring Committee. Unutilised amounts will be allocated to the Financial Creditors.

*** CIRP costs shall be borne separately by the Resolution Applicant.

13. The Resolution Professional has filed an Affidavit dated 17.12.2019 to the effect that if at all any money /proceeds come back to the Company as a result of IA 531/2019, the Resolution Applicant has undertaken to distribute the same to the financial creditors / lenders as confirmed vide email dated 11.12.2019. The said relinquishment by Resolution Applicant was intimated to Lenders/ Financial Creditors.

14. The Resolution Applicant M/s Orbit Electro Equipments Private Limited in consortium with Mr. Siddharth Shah has submitted an undertaking confirming their eligibility under section 29A of the Code to submit resolution plan.

15. The contention of the Learned Counsel for Resolution Professional that this Tribunal to approve the Resolution Plan granting certain reliefs as stated in Clause (F) at page No. 35 of the Resolution Plan. The Learned Counsel would contend the CoC with 100% of voting share approved the Resolution Plan submitted by the Resolution Applicant M/s Orbit Electro Equipment Pvt Ltd in consortium Mr. Siddharth Shah. The Counsel would contend that Resolution Applicant has endeavoured to maximize the value of the assets of Corporate Debtor. The Resolution Plan takes care of the interest of the stakeholders concerned which includes Financial Creditors, Operational Creditors as well as workmen and employees of Corporate Debtor and a provision is made for payment of CIRP costs. Counsel would contend that Plan complies all the requirements laid down under Section 30 R/w 31 of IBC, 2016 as well as CIRP Regulations 2016. As per the amendment to Section 31 (1), the Resolution Plan is binding on the central Government, any State Government or any Local Authority to whom a debt in respect of the payment of due arising under any law for time being in force such as authorities to whom statutory dues are

owed. The Resolution Applicants has to obtain necessary approval if any required with one year as per Section 31 (4) of the Code. We are convinced with the Resolution Plan approved by the CoC and as such the Application is question deserves consideration. Hence, we pass the following order:-

ORDER

16. In the result, the Resolution plan submitted by M/s Orbit Electro Equipments Private Limited in consortium with Mr. Siddharth Shah which is approved by members of CoC having 100% voting share stands **approved** as per Section 31 (1) of the Code. In other words we are satisfied with the Resolution Plan as approved by Committee of Creditors under Section 30 (4) of the Code and it meets the requirement as referred to in Section 30 (2) of IBC, 2016. Accordingly, the Resolution is binding on Corporate Debtor, its employees, Members, Creditors including the Central Government, any State Government or any Local Authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, Guarantors and stakeholders involved in the Resolution Plan in terms of Section 31 (1) of the Code.

17. The revival plan of the company in accordance with the approved resolution plan shall come into force with immediate effect. The moratorium order passed by this Tribunal under Section 14 shall cease to have effect from today.

18. The resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the IBBI to be recorded on its database.

19. The Resolution Applicant shall obtain necessary approval required under any law for the time being in force within a period of one year from the date of approval of the Resolution Plan or within such period as provided for in such law.

19. IA 439 of 2019 in CP (IB) No. 269/9/HDB/2018 is disposed of in terms of the above.

18.12.19
(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)

18/12/19
(RATAKONDA MURALI
MEMBER (JUDICIAL)

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