IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH-I

IA No. 1434/MB/C-I/2020
And
IA No. 1281/MB/C-I/2020
And
IA No. 1433/MB/C-I/2021
In
C.P (IB) No.3080/MB/C-I/2018

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunals Rules, 2016

Filed by
In IA 1434 of 2020
Pranav Financial Services Private Limited
…Applicant

In IA 1281 of 2020

Zakir Salehbhai Vali
…Applicant No. 1

Zeeshan Vali
…Applicant No. 2

MahaIndra Holdings Private Limited
…Applicant No. 3

In IA 1433 of 2021

Faiz Vali

Versus

CA. Amit Chandrakant Poddar, Resolution Professional of Unijules Life Science Limited
…Respondent No. 1

Committee of Creditors of Unijules Life Science Limited
…Respondent No. 2

Adroit Pharmaceuticals Private Limited

…Respondent No. 3

In the matter of

Punjab National Bank

…Financial Creditor

Versus

Unijules Life Sciences Limited

… Corporate Debtor

Order Pronounced on: 04.08.2023

Coram:

Hon'ble Member (Judicial) : Mr. H.V. Subba Rao
Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Applicant in IA 1281
of 2020 And IA 1433 of 2021 : Mr. Nausher Kohli, Advocate.

For the Applicant in IA 1434
of 2020 : Mr. Amir Arsiwala, Advocate.

For the Resolution Professional : Mr. Rohit Gupta, Advocate.

ORDER

Per Coram:

IA 1434 of 2020

1. The Present Interlocutory Application filed by the Applicants being unsecured financial creditors 0.33% under Section 60(5) of the Insolvency and Bankruptcy Code of 2016, seeking direction from this

Tribunal that the Resolution Plan pending for approval before this Tribunal in Miscellaneous Application No. 102 of 2020 to be sent back for consideration to the Committee of Creditors and that the exercise of valuation is required to be undertaken with respect to an intangible asset of the Corporate Debtor.

2. The Applicant is a Financial Creditor of the Corporate Debtor and is a member of the Committee Creditors (hereinafter referred as the **"CoC"**) having 0.33% of voting share thereupon.

Brief facts of the case:

3. The CIRP was initiated against the Corporate Debtor vide order dated 08.03.2019, passed by this Tribunal in the present Company Petition. At the 1st meeting of the CoC held on 08.04.2019, the Interim Resolution Professional was confirmed as the Resolution Professional.

4. The criteria for prospective resolution applicants was discussed deliberated and decided in the 2nd CoC meeting which was held on 15.05.2019. Pursuant thereto, the Resolution Professional took out an advertisement on 20.05.2019, inviting expressions of interest from prospective resolutions applicants to submit resolution plan for the Corporate Debtor. In response to said advertisement, 3 expressions of interest were received. Subsequently, 3 resolution plans were received. However, the Committee of Creditor did not find any merits in these 3 resolution plans and rejected them at their 7th meeting. As a consequence of this, the Committee of Creditors directed the Resolution Professional to take out a fresh advertisement calling for new expressions of interest. Pursuant to this new advertisement taken

up one "Adroit Pharmaceuticals Private Limited" (hereinafter referred as the **"Resolution Applicant"**) submitted a Resolution Plan for consideration by the Committee of Creditors.

5. The Resolution Applicant was declared as the successful resolution applicant at the 11th meeting of the Committee of Creditors of the Corporate Debtor. In the e-voting held during the period between the 28th of November 2019, till the 2nd of December 2019, the CoC of the Corporate Debtor failed to approve the resolution plan submitted by the Resolution Applicant.

6. Further, it is submitted that the CIRP period was coming to an end on 03.12.2019. As a CoC failed to approve the resolution plan within CIRP period, the Resolution Professional called for another meeting of the CoC to be held on 03.12.2019. At this meeting of the Committee of Creditors, a resolution was passed for liquidation of the Corporate Debtor.

7. Subsequently, after the resolution for liquidation being passed, one of the secured financial creditors of the Corporate Debtor sent a communication to the Resolution Professional on 16.12.2019, requesting for meeting of the CoC to be convened as there is a chance that they may reconsider the decision viz-a-viz the resolution plan of the Resolution Applicant.

Pursuant to this request an urgent meeting of the CoC was called to be held on the very same day i.e., on 16.12.2019, and a resolution was passed to restart e-voting for approval of the resolution plan submitted by the Resolution Applicant. It is submitted that the Applicant was not in a position to attend to either of the meeting of

the Committee of Creditors held on 03.12.2019 or on 16.12.2019, as the notice was too short.

8. It is submitted that the secured financial creditor who requested voting to take-place once again on the approval of the resolution plan received from the Resolution Applicant, itself rejected the plan once again in e-voting re-opened from 17.12.2019 till 20.12.2019. However, the Resolution Applicant issued a communication to the Resolution Professional on 21.12.2019, requesting for another meeting of CoC to be called for the purposes of reconsidering the resolution plan. Pursuant to this request a meeting of the Committee of Creditor was called to be held on 23.12.2019 and which was continued on 26.12.2019, during this meeting resolution was passed with 74.23% voting share to reconsider and restart the e-voting to approve the same resolution plan submitted by the Resolution Applicant.

During this newest round of e-voting which was conducted from 27.12.2019 till 30.12.2019, the resolution plan submitted by the Resolution Applicant was approved with voting share of 75.49% votes. Accordingly, the Resolution Professional filed the above-mentioned miscellaneous Application No. 102 of 2020 Under Section 30(6) read with Section 31 of the IBC seeking approval of the resolution plan from this Adjudicating Authority.

9. The Applicant is filing the present application out of abundant caution seeking certain directions that would ensure that the Corporate Debtor is revived through the approval/sanction of a valid resolution plan under section 31 of the IBC and is not pushed into liquidation. The

Applicant stresses that it has no grievances against the Resolution Professional who has conducted the CIRP of the Corporate Debtor in good faith and to the best of his ability.

However, at the present time, it is not possible for this Tribunal to approve/sanction the resolution plan pending before it for the reasons that shall be set out hereinafter. It is the case of the Applicant that the resolution plan pending sanction of this Tribunal cannot be accepted as it is not in conformity with the provisions of the IBC and is also severely undervaluing the Corporate Debtor.

(a) At the very outset, it is stated that the said Application cannot be entertained by this Tribunal at the present time as there is no valid resolution of the Committee of Creditors approving a resolution plan as is required under section 30 of the IBC. It is clear from the facts narrated above that, prior to the completion of the CIRP period, no resolution had been passed under section 30(4) of the IBC.

(b) On the contrary, the Committee of Creditors had, in fact, passed a resolution seeking liquidation of the Corporate Debtor on the very last day of the CIRP period. The Applicant submits that it would be worthwhile to refer to the judgement delivered by the National Company Law Appellate Tribunal in the case of *Sanjay Kumar Ruia v. Catholic Syrian Bank Limited* Company Appeal (AT) (Ins.) No. 560 of 2018 wherein it was held that upon completion

of the CIRP period the Committee of Creditors cease to exist and therefore has no jurisdiction to pass any resolution.

(c) As such, it is clear that there could not have been a meeting of the Committee of Creditors after the CIRP period came to an end, let alone pass any resolution for approval of any resolution plan. In fact, the said Application also acknowledges this fact as a specific prayer has been made for exclusion of appeal 47 days from the CIRP period. However, as a matter of law, such exclusion would not ratify any resolutions passed by the members of the Committee of Creditors after the CIRP period came to an end.

(d) The Applicant, which also desires resolution of the Corporate Debtor and does not want to jeopardise the same or allow the Corporate Debtor to go into liquidation, humbly submits that the proper course of action would be for the period of exclusion to be allowed and the Resolution Professional be directed to convene a meeting of the Committee of Creditors for the purpose of deliberating upon the resolution plans before it. It is submitted that the period of exclusion, once granted, would only give a further lease of life to the CIRP period but would not retrospectively ratify any resolutions passed after it came to an end.

(e) Another factor that needs to be appreciated is that the Committee of Creditors had, in fact, passed a resolution seeking liquidation of the Corporate Debtor. The Applicant humbly submits that the provisions of the IBC do not allow

the CIRP to continue after such a resolution is passed. In fact, section 33(2) of the IBC makes it abundantly clear that the Adjudicating Authority has no choice but to order of liquidation of a Corporate Debtor if so resolved by its Committee of Creditors.

(f) Therefore, in order for any resolution plan approved by the Committee of Creditors to be considered, the resolution for liquidation of the Corporate Debtor would have to be quashed and set aside. The Applicant humbly prays that this be done.

(g) As has already been stated above, the Applicant is an unsecured financial creditor of the Corporate Debtor and will certainly suffer if it is ordered to be liquidated. It is in the best interests of the Applicant that the Corporate Debtor be revived through a resolution plan; and that the resolution plan be of the best possible value. It is with this in mind, that the Applicant has filed the present application seeking necessary directions from this Tribunal so as to ensure the integrity of the CIRP process and that there is no legal infirmity to any resolution plan sanctioned under section31.

(h) The Applicant submits that there is no doubt that one of the important responsibilities of a resolution professional is to conduct the exercise of valuation of the Corporate Debtor in terms of regulation 27 of the CIRP regulations. It is also a settled position of law that the exercise of valuation of the Corporate Debtor is an important and integral one as it gives

the Committee of Creditors a proper idea as to the status and situation of the Corporate Debtor.

(i) In the discharge of his responsibilities under the regulation 27 of the CIRP regulations, the Resolution Professional prepared on information memorandum on the 3rd of May, 2019. Along with this information memorandum, valuation reports were also provided. It would be relevant to point out that ordinarily the valuation reports as well as the liquidation value of a Corporate Debtor is not disclosed to its Committee of Creditors before this stage of voting upon resolution plans. In fact, by way of an amendment to regulation 36 of the CIRP regulations with effect from the first of January, 2018, the requirement of the information memorandum containing the liquidation value was dropped.

(j) Be that as it may, it is the belief of the Applicant that the valuation report do not encompass the true and correct value of the Corporate Debtor. It may be seen that the Resolution Professional appointed 3 sets of valuers to conduct the exercise of valuation of the following categories of assets belonging to the Corporate debtor.

(i) Land & building;

(ii) Plant & machinery; and

(iii) Securities and financial assets.

(k) It may be noted that the Corporate Debtor is a company engaged in the business of pharmaceutical products. The Corporate Debtor is primarily into the business of

manufacturing and marketing of allopathic and herbal pharmaceutical branded and non-branded formulations for human and veterinary consumption. The Corporate Debtor has also worked significantly towards mastering the art of preparing pellets of herbal extracts and has in fact applied for multiple patents in this field. The Corporate Debtor has developed a system for administering drugs in pellet form which is a unique and novel drug delivery system currently being applied by it for its herbal products under the brand "Herbules Technology".

(l) The Corporate Debtor has developed numerous brands as can be seen from its website. A screenshot of the website of the Corporate Debtor displaying the various brands developed by its being annexed to the present application and is marked as **"Annexure2"**. A perusal of this list would go to show that the Corporate Debtor has invested significantly in 2 creating brand value with respect to its products and also developing a valuable "Intellectual Property Rights Portfolio". However, no valuation has been conducted for the "intellectual property" of the Corporate Debtor. It is the case of the Applicant that if the intangible assets of the Corporate Debtor are valued, then the liquidation value of the Corporate Debtor would be significantly increased.

(m) It is noted that the resolution plan which has been filed b y the Resolution Professional with this Hon'ble Tribunal is for

a total amount of Rs. 42 Crores only, which is less than 10% of the total liability of the Corporate Debtor. On the other, it is an admitted position that, even during the CIRP period, the Corporate Debtor has been earning revenues of Rs. 7 to 8 Crores month. Thus, it appears that the Corporate Debtor has, in fact, and more revenue during the CIRP period than the entire value of the resolution plan pending before this Hon'ble Tribunal.

(n) Taking both these facts into consideration, it is clear that the resolution plan submitted by the Resolution Applicant is grossly undervalued. It is also clear that the Committee of Creditors of the Corporate Debtor is not in a position to properly evaluate any resolution plan until the exercise of valuation of "intangible assets" and "intellectual property" of the Corporate Debtor is also conducted. It is further submitted that in the absence of this valuation exercise being conducted in completed, no resolution plan possibly be approved by this Hon'ble Tribunal as it would be in violation of the provisions of section 30(2) of the IBC.

(o) In the above circumstances, it is humbly submitted that the best course of action would be for this Hon'ble Tribunal to issue a direction to the Resolution Professional to appoint registered valuers to conduct the exercise of valuation of the "intangible assets" and "intellectual property" of the Corporate Debtor; and only after this exercise is completed

can any resolution plan be voted upon in accordance with the provisions of the IBC.

(p) As has been stated above, the Resolution Professional has sought exclusion of 47 days from the CIRP period. For the reasons that have already been set out above, the only real course of action left for this Tribunal is to allow such exclusion and direct the Committee of Creditors to consider resolution plans after a proper evaluation of the intangible and intellectual property assets of the Corporate Debtor. However, given the heightened interest in pharmaceutical companies engaged in the business of herebal and ayurvedic medicines, it would be beneficial if the Resolution Professional is directed to invite potential resolution applicants one last time to submit a resolution plans to revive the Corporate Debtor. Needless to say, the more potential resolution applicants that come forward, the higher is the likelihood of the true value of the Corporate Debtor being found.

10. In the above circumstances, and for the above reasons, the Applicant has filed the present application seeking the reliefs that are set out hereinafter.

Reply to the additional affidavit filed by Applicant:

11. At the outset it is stated that the Applicant, being an unsecured creditor having voting share of 0.33% has filed the present Interlocutory Application somewhere in September, 2021 at the behest of the

promoters, seeking reliefs interalia for direction to the Resolution professional to conduct valuation of the intangible assets and intellectual property of the Corporate Debtor and thereafter vote for Resolution Plan. The Interlocutory Application is filed at a belated stage i.e., after the approval of such plan filed thereafter. Further, the present Interlocutory Application is filed without even considering the valuation reports and is nothing but an attempt to derail the CIRP process.

12. Further it is stated that the CoC members including the Applicant herein were provided with the valuation reports and notices for CoC meetings thereafter. However, at the relevant time, the Applicant herein had neither raised any dispute nor attended most of the CoC meetings. The present Application has filed the said Interlocutory Application to support to the Application filed by the promoters. It is submitted that entire thrust of the Application is re-voting on the Resolution Plan in order to accommodate the plan submitted by the promoters. All this on the basis of ground that the valuation is not proper and now the Corporate Debtor is MSME and therefore it will attain better valuation. As far as relief sought by the Applicant therein, of getting valuation of the intellectual property of the Corporate Debtor is concerned, the same has already been considered by the registered valuers appointed.

13. Resolution Professional submits that the Applicant being an unsecured creditor having 0.33% voting share was provided with all the valuation reports during the CIRP process. However, at the relevant time, the Applicant herein neither raised any dispute during CIRP process nor

attended most of the CoC meetings. The Applicant has filed the present Interlocutory Application at a belated stage taking undue advantage of the Covid-19 Pandemic and the change in laws and scenarios thereafter to dispute the entire CIRP process. Had the applicant been truly inclined to revive the Corporate Debtor, he would have attended and made the most out of the CoC meetings. The Information Memorandum of the Corporate Debtor on 03.05.2019 which was circulated to the members of the CoC in accordance with Regulation 36 of the CIRP Regulations, after receiving undertaking to maintain confidentiality of the information provided in the information memorandum. The valuation reports were also provided to the members of the CoC. The members of the CoC sought various clarifications and suggestions with regard to the valuation reports submitted. Pursuant to such discussions and suggestions by the CoC, the valuation reports were modified and thereafter confirmed by the valuers and the members of the CoC. It is clear for the above that the question of abstaining valuation reports does not even arise.

14. In terms of Regulation 27 of the CIRP Regulations, two registered valuers were appointed for each class of assets to determine the value of the respective assets of the Corporate Debtor in accordance with Regulation 3 of the CIRP Regulations. The valuers were appointed to determine the value of each class of the assets as follows:

a) **<u>Land & Building</u>**

i) Mr. Vivek Jagtap (IBBI Registration No. IBBI/RV/01 /2019/10579)

ii) Mr. Manoj Nashine (IBBI Registration No. IBBI/RV /07/2018/10055)

b) **Plant & Machinery**

i) Mangesh Shinde (IBBI Registration No. IBBI/RV/07/2019/11026)

ii) Mr. Vijay Bawane (IBBI Registration No. IBBI/RV/02/2019/10824)

c) **Securities and Financial Assets**

i) Mr. Pranab Kumar Chakrabarty (IBBI Registration No. IBBI/RV/05/2019/10780)

ii) Mr. Prashant Jain (IBBI Registration No. IBBI/RV/06/2018/10138).

15. The appointment of the valuers have been ratified by the CoC. As per the valuation reports, the valuers have followed standard practice for determining the value of the assets and depreciation value thereof. The valuation reports also relies on the ready reckoner values of the relevant time. The valuation of the Intellectual property rights of the Corporate Debtor at the relevant point of time has also been considered by the valuers appointed. I say that as per the Audited Balance Sheet of the Corporate Debtor as on 31.03.2018, the value of Trademarks is recorded as Rs 5.79 lakhs and the depreciated value of Rs 1.41 lakhs. Further, the balance sheet as on 31.08.2018 also values software of the Corporate Debtor at a book value of Rs 45.32 lakhs and net depreciation value of Rs 7.41 lakhs. Apart from the above, there are no other intangible assets of the Corporate Debtor as per their own records. It is pertinent to note that no valuation reports have been

placed on record by the Ex-Director, Ex-Promoter or objecting financial creditor.

16. As regards to the contents of Paragraph 5 of the Additional Affidavit to the Interlocutory Application, I deny that the CoC did not had the benefit of knowing the true and correct value liquidation and fair values of the intangible assets of the Corporate Debtor.

17. In fact the Applicant, has till date failed to give the indicated valuations of the intangible assets and intellectual property mentioned by him in the Additional Affidavit. The item wise intangible asset/intellectual property tabulated by the Applicant are given below in a tabular format, with comment on each item:

Sr.No.	**Particulars**	**Comment of Resolution Professional**
1	Finished Dosage Form Approval—License to participate in Formulation	The same is neither an intellectual property right nor an intangible asset
2	Market Presence	The same is neither an intellectual property right nor an intangible asset
3	License/Technology Approval	The same is neither an intellectual property right nor an intangible asset
4	Patents of - Pellets of herbal extracts and the process or preparing pellets Herbal gastrointestinat controlled drug delivery dosage forms including pellets and their preparation process Rapid	The valuation of such patents has been considered in the overall valuation of the Corporate Debtor

	dissolvable oral film for delivering herbal extracts with or without other pharmaceutical agents	
5	FDA Approvals for the four manufacturing facilities in Nagpur	The same is neither an intellectual property right nor an intangible asset.
6	ISO 9001-2000 certification for the four manufacturing facilities in Nagpur	The same is neither an intellectual property right nor an intangible asset
7	WHO GMP certified manufacturing facilities	The same is neither an intellectual property right nor an intangible asset
8	For R&D center dedicated to herbal & Allopathic products	The same is neither an intellectual property right nor an intangible asset
9	Ayush Mark	The same is neither an intellectual property right nor an intangible asset
10	Technical know-how	
11	Goodwill of the Corporate Debtor given its time of operation and body of work	The Corporate Debtor has been a defaulter and its accounts are NPA since 2014. The company is indebted to its suppliers in the market for over Rs. 15 Crs. Due to which the suppliers are not ready to deal with the Corporate Debtor and supply materials to it. Pursuant to deliberations and hardwork of the Resolution Professional, the business of the Corporate Debtor.

18. As regards to the contention that valuation was not carried out in accordance with the provisions of the IBC read with the CIRP Regulations. In order to ascertain the true and correct value, the legislature and the board has provided mechanism, wherein valuation is required to be conducted. Accordingly, in terms of Regulation 27 of the CIRP Regulations, two registered valuers were appointed, for each class of assets to determine the value of the respective assets of the Corporate Debtor in accordance with Regulation 3 of the CIRP Regulations. Thus, proper and due process was followed for valuation of the Corporate Debtor. The CoC has considered the valuation reports submitted and exercise its commercial wisdom in approving the resolution plan.

19. The Resolution Professional of the Corporate Debtor have taken all necessary steps and followed due process enumerated under the Code and rules formed thereunder. Accordingly, appointed valuers in terms of Regulation 27 of the CIRP regulations and provided copies of the valuation reports to the CoC members as mentioned hereinabove. That point in time the Application had never raised any objections to the valuation reports despite the same being made available to them and being discussed in the CoC meeting attended by the Applicant. Therefore, the Applicant cannot now take advantage of the Covid-19 pandemic and the change in laws and scenarios thereafter to dispute the entire CIRP process and also in any manner infer that the Resolution Professional has not conducted or followed due process in the CIRP of the Corporate Debtor.

IA 1281 of 2020:

20. The present application is filed by the erstwhile Promoter Directors of the Corporate Debtor seeking following reliefs:

a) Allow the present application and permit the Applicants to present their Resolution Plan before the Resolution Professional and Committee of Creditor.

b) Direct the Resolution Professional and Committee of Creditors to consider the Resolution Plan in accordance with the Insolvency Resolution Process for Corporate Persons (Fourth Amendment) Regulations, 2020;

c) Allow the Applicants to present the Resolution Plan in a sealed cover before this Hon'ble Court.

d) Pass any such further and/or other order as this Hon'ble Court may deem fit and proper in the interest of justice.

In terms of Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016;

Brief facts of the IA 1281 of 2020:

21. The present application is preferred by the Applicants being Zakir Salehbhai Vali (herein after referred to as **"Applicant No. 1")**, Zeeshan Vali (herein after referred to as **"Applicant No. 2")** and Mahaindra Holdings Pvt. Ltd., through its Authorized Representative (herein after referred to as **"Applicant No. 3")** (hereinafter referred to as **"Applicants")** seeking appropriate directions from this Tribunal for permitting the Applicants No. 1 and 2 to present their Resolution Plan before the Resolution Professional and Committee of Creditors to consider the Resolution Plan in accordance with the Insolvency

Resolution Process for Corporate Persons (Fourth Amendment) Regulations, 2020.

22. The Applicant No. 1 has been the founder of the Corporate Debtor and has been instrumental in ensuring its growth. Whereas, Applicant No. 2 is grandson of Applicant No. 1 and is completing his education in the field of Pharma and is Majoring in Environmental Sciences (Chemistry Concentration) American University of Sharjha, UAE. The Applicant No. 3 is the Financial Sponsor in the Resolution Plan.

23. The Applicant No. 1 was earlier managing the operations of the Corporate Debtor wherein the Corporate Debtor had a tremendous growth. However, after few years the Applicant No. 1 stepped down from his position and the control was transferred to his son and due to unforeseen circumstances, the manufacturing units of Corporate debtor were temporarily shut and various bulk payments were delayed from institutional customers. The said unfortunate incident impacted the recoveries and also the business of the Corporate Debtor, and thus the same lead to be classified as NPA Status as on 30.09.2014.

24. Thereafter, in the year 2018, an application was filed by Punjab National Bank under Section 7 of the Insolvency and Bankruptcy Act, 2016 against the Corporate Debtor before this Tribunal, Mumbai Bench wherein vide order dated 08.03.2019 this Learned Tribunal initiated Corporate Insolvency Resolution Process against the Corporate Debtor. Mr. Amit Chandrasekhar Poddar as the Interim Resolution Professional an subsequently, Mr. Amit Chandrasekhar Poddar was appointed as a Resolution Professional by the Committee of Creditors. During the Corporate Insolvency Resolution Process, the

Resolution Professional in compliance of the applicable rules and regulations called for the resolution plan and to the knowledge of the Applicants, a Resolution Plan was submitted by one Applicant being "Adroit Pharmaceuticals Private Limited" and after negotiations the same was approved by the Committee of Creditors and an application for the approval of the said resolution plan was filed before the Learned Tribunal.

25. The Applicant No. 1 and Applicant No. 2, were unable to present the Resolution Plan at that time, on account of their proximity to the Director of the Corporate debtor, being Mr. Faiz Vali, who was purportedly not qualified to present the Resolution Plan due to bar provided under Section 29A (c), (e) and (h) of the Code.

26. During the pendency of the application for the approval of resolution plan, the Government of India announced a nation vide lock down due to the outbreak of Covid-19. The said lockdown was extended time to time by the Government of India. The nation vide lockdown lead to the economic downfall in the country and in order to stabilize the economic condition, the Government of India introduced various amendments in the provisions of law. One such amendment was made to the Micro, Small and Medium Enterprises Development Act, 2006 wherein the classification of Micro, Small and Medium enterprises as provided under Section 7 of the Act was amended with effect from 01.07.2020. Due to the amendment, the Corporate Debtor came within the purview of a MSME and qualified to avail benefits under Section 240A of the Insolvency and Bankruptcy Code, 2016.

Therefore, the Applications herein became eligible to present a resolution plan for the Corporate Debtor.

27. It is submitted that the Resolution Plan envisaged by the Applicants herein, proposes to infuse an amount of Rs.53,00,00,000/- (Rupees Fifty-Three Crore Only) for the benefit of the stakeholders, excluding the amount to be raised for the working capital. Further, the Applicants are also annexing a copy of cheque for infused amount along with present application. This clearly shows the bona-fide of the Applicants.

28. The Applications in its resolution plan has treated every creditor equally without making any discrimination. Furthermore, the plan of the Applicants promotes maximization of the value of the assets of the Corporate Debtor by inducting experienced personnel's, who shall work alongside with the Applicants to secure the positive growth of Corporate Debtor.

29. The Resolution Plan promoted by the Applicants enables the Corporate Debtor to be brought back into the economic mainstream and enhances the viability of credit in the hands of financial institutions. The Resolution Plan of the Applicants protects the interests of all stakeholders by infusing investment of Rs.53,00,00,000/- (Rupees Fifty-Three Crores Only) into the Corporate Debtor which will help to ease the business and lead to higher economic growth and development. All these remedial measures are being suggested without enforcing sale of the assets of the Corporate Debtor, but by utilizing the assets for its own growth and for providing employment to hundreds of employees and

workmen who are dependent on the revenue being generated from the Corporate Debtor.

Thus, in view of the above said facts and circumstances, the present applications has been preferred before this Learned Tribunal.

IA 1433 of 2021

30. The present Application is filed by the erstwhile-promoter director of the of the Corporate Debtor seeking following reliefs;

i) Direct that the resolutions approving the resolution plan by Adroit were not proper and therefore, cannot be said to have been valid as per the provisions of the IBC.

ii) Direct that the interlocutory Application No.102 of 2020 filed by the Resolution Professional under Section 31 of the IBC be rejected;

iii) Direct that a proper valuation be undertaken of the corporate debtor;

iv) Direct that the CoC invite a fresh EOI, on a time bound basis, on the basis of the update valuation of the Corporate Debtor so that better resolution plans can be availed by the Corporate debtor so that better resolution plans can be availed by the Corporate Debtor.

v) Costs of this interlocutory application:

vi) Any other order that this Hon'ble Tribunal may deem fit in the facts and circumstances of this case.

Brief Facts of the IA 1433 of 2021:

31. It is stated that by the last date of receipt of resolution plans as per the 2nd EOI invite, the RP received 4 resolution plans from (i) Adroit Pharmaceuticals Private Limited, (ii) M/s Paras. Foods, (iii) Rohit

Iron & Steel (India) Private Limited, and (iv) M/s Oracity Life Sciences LLP.

32. Further, it is stated that during the 11th Meeting of the CoC conducted on 16.11.2019, the 4 plans were discussed in detail by the CoC and Adroit came to be declared as the successful Resolution Applicant. Annexed to application and marked as **"Annexure4"** is a copy of the minutes of the 11th Meeting of the CoC. Thereafter, the 12th Meeting of the CoC was convened on 20.11.2019 upon request of M/s Paras Foods, another round of discussions on the proposal of Paras Foods, on its resolution plan the same Meeting was adjourned and was continued on 21.11.2019 wehrein at the end of the day. The present successful Resolution Applicant Adroit Pharmaceutical Private Limited was again confirmed as the successful resolution plan. After, it is stated that e-voting was conducted from 25.11.2019 to 28.11.2019 on the agenda of approval of the resolution plan Adroit Pharmaceutical Private Limited. However, during the period of e-voting, Adroit Pharmaceutical Private Limited addendum to its plan regarding distribution patter of funds between the members of CoC due to this on the majority of request of the CoC on-going e-voting was cancelled.

33. Thereafter, the 13th Meeting of the CoC was called on 28.11.2019 the Applicant contended that the said meeting had been called with notice of less than 24 hours hence, it is contrary to what has been mandated under Regulation 19(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 **("Regulation")**. It is stated that qua the 13th

Meeting, the addendum to the plan of Adroit regarding distribution pattern was discussed. It was decided to put to vote. 3 issues for e-voting, including *inter alia*, to declare Adroit as successful RA and approve its resolution plan. It is stated that a resolution was also passed by the CoC to apply to the NCLT for exclusion of 30 days from the CIRP process but it was not done.

It is stated that the e-voting for such resolution was conducted from 28.11.2019 to 30.11.2019, extended up to 02.12.2019 wherein the resolution plan by Adroit was rejected since it could not attain majority, having received only 61.92% of the votes in favour, it was decided in the 13th Meeting that the RP would file appropriate application to exclude 30 days from the total 270 days of CIRP process. Annexed to application and marked as **"Annexure 6"** is a copy of the minutes of the 13th Meeting of the CoC.

34. Further, it is stated that since the timeline of 270 days was coming to an end on 03.12.2019, an urgent meeting was held on 03.12.2019 was held wherein the resolution for liquidation of the corporate debtor came to be passed. Thereafter, the RP received a communication from the one financial creditor of the corporate debtor, namely Allahabad Bank, stating that it may reconsider their earlier decision of rejecting the resolution plan of Adroit. It is stated that the Applicant has no objection to talking up possible plans for the resolution of the corporate debtor, as it is in the spirit of the IBC and several judgment laid down by the Hon'ble Courts that liquidation can only be a last resort.

35. Pursuant to request of the one of the Financial Creditor an urgent CoC meeting was called on 16.12.2019 being 15th Meeting for

reconsideration of its dissenting vote with the plan of Adroit. The CoC resolved in meeting to reconsider and restart the e-voting to approval of the resolution plan submitted by the Adroit. In pursuance of the 15th Meeting of CoC e-voting was conducted from 17.12.2019 to 19.12.2019, extended up to 20.12.2019, wherein the resolution plan of Adroit was voted on. However, it was again rejected as it received assent by only 62.93% votes, Allahabad Bank who had requested for re-voting had rejected the plan. The said meeting of the CoC was admittedly called upon the notice of less than 24 hours.

36. It is stated that thereafter the RA Adroit issued a communication to the RP stating that it be granted an opportunity to address the CoC one more time. Annexed to application and marked as **"Annexure 9"** is a copy of the communication issued by Adroit. It is stated that such an opportunity could not have been provided to Adroit alone. It is stated that the next 16th Meeting of the CoC was called for on 23.12.2019 and came to be adjourned and resumed on 26.12.2019. This time, Allahabad bank came with a written approval from its internal competent authority that they would approve the plan by Adroit. To note that the 16th Meeting was also called with less than 24 hours notice.

37. It is stated that the e-voting was conducted from 27.12.2019 to 30.12.2019 wherein the resolution plan submitted by Adroit was approved by the CoC by a vote of 75.29% in favour of the plan Annexed to application and marked as **"Annexure 10"** is a copy of the minutes of the 16 Meeting of the CoC along with the s voting result.

38. Thereafter, the RP has filed the impugned LA No.----of 2020, under Section 31 of the 1DC. praying *inter alia,* for the approval of the resolution plan by Adroit from this Hon'ble Tribunal. At the outset of the submissions hereunder, it is submitted that the Applicant is not in the least in favour of liquidation of the corporate debtor, it is stated and submitted that the Applicant is very much in favour of the fact that the CoC has chosen to entertain the possibility of resolution of the corporate debtor through a resolution applicant's plan. However, it is submitted that at the time of this consideration, a level playing field ought to have been opened so that the corporate debtor could receive the benefit of better plans.

LIQUIDATION & SUBSEQUENT CANCELLATION THHEREOF REQIRES ENTERTAINING FRESH PLANS DE-NOVO

39. It is stated and submitted that the CoC has to consider all available plans after reverting back from liquidation. It is submitted that this is especially true because the core reasons that the CoC is contemplating entertaining a resolution plan is twofold:

(i) The corporate debtor is an otherwise money-making company which deserves to be revived. It is stated that It is only because of a few years of negative market conditions that the corporate debtor has been unable to satisfy its lenders. However, it is pertinent note that during the entire CIRP period of the debtor, the debtor company has been functioning substantially to the extent of sales of Rs.4-5 crores each month. It is submitted that the fact that the Corporate Debtor is a company with great potential it has already earned more

in its CIRP period than the resolution plan value of Adroit, which is in fact less than 10% of the total liability of the Corporate Debtor.

(ii) It is stated that the reason why so many plans were rejected by the CoC was because the objective under IBC of maximizing the asset value of the corporate debtor has to be promulgated as much as possible. If today, at the end of the CIRP period, the CoC has decided to again entertain a resolution plan then in that case for the benefit of the corporate debtor, the receipt of plans cannot be limited to simply the resolution plan of Adroit. It is submitted that for this reason also, the application of the RP, to the extent of seeking approval of the resolution plan of Adroit has to be rejected as it would not be greater benefit of the corporate debtor. Another aspect that has to be seen is that the timeline of the CIRP has already come to an end on 03.12.2019. The RP's application is already contingent to this Hon'ble Tribunal granting exclusion of certain periods, then in such a case, the corporate debtor would be better served by entertaining all available resolution plans and not limit itself to Adroit's resolution plan.

MAXIMISING ASSET VALUE BY A TRUE VALUATION OF CORPORATION DEBTOR

40. It is submitted that there cannot be a case where a Resolution Applicant is essentially allowed to buy out an otherwise money-making corporate debtor company at a trifling-amounts as compared to its actual value. It is submitted that as seen in the summery of the valuation report of the corporate debtor, the valuation has been limited to only (i) Land & Building, (ii) Plant & Machinery, and (iii) Securities

and Financial Assets. It is submitted that this is completely contrary to the objective that is required to be followed of arriving at a true and proper valuation of the corporate debtor under Regulation 27 and 35 of the Regulations. It is submitted that the corporate debtor has not been properly valued by the registered values. In the sense that the valuation heads of intellectual Properties of the corporate debtor or its intangible assets have not been considered at all. It is submitted that a valuation which considers the Intellectual Property of the corporate debtor will significantly increase the fair value and liquidation value of the company.

41. It is submitted that the corporate debtor is a company engaged in the business of manufacture of pharmaceutics! products that are able generally and are also put to veterinary use It is submitted that the corporate debtor manufactures allopathic and herbal pharmaceuticals, branded as well as unbranded, and tax worked towards mastering the methodology of preparing pellets of herbal extracts. It is submitted that the corporate debtor has put in years of time and effort towards creating a proficient system for the same and which enjoys significant brand value in the market.

42. It has to be mentioned that the corporate debtor has applied for multiple patents in its filed and has developed a system for administering drugs in pellet form, which is a novel drug delivery system in itself. This system is also applied by the corporate debtor. for its range of herbal products under the brand name of "Herbules Technology It is submitted that in the absence of any valuation of which market brand value of the corporate debtor, and in the absence

of any valuation of the trademarks, and labels of the corporate debtor, it would be incorrect to allow a resolution plan approval process to get through, *since it has been based on an incorrect valuation altogether.* It has to be noted that the debtor company has invested significantly in creating its brand value in relation to its products and has developed a worthy IP portfolio.

KEEP DEBTOR OPEN TO NEW RESOLUTION PLANS POST VALUATION

43. It is submitted that once the exercise of proper valuation of the corporate debtor is carried out, naturally his would encourage a large number of Resolutions Applicants to vie for the resolution of the corporate debtor, especially considering that the debtor company is a functioning unit and has been earning significantly even during the CIRP period.

44. It is submitted that it would not be in the spirit of the intent and objective of the IBC to permit a lower value resolution plan to be approved when the addition to the fair value of the corporate debtor, changes the entire valuation of the company. The resolution plans naturally have to conform as per the new valuation of the corporate debtor.

45. It is submitted that the best-case scenario for the corporate debtor, and which would be completely in line with the objectives of the IBC would of an appointment of a registered valuer who can realize its true value.

CORPORATE DEBTOR BENING A PHARAMACEUTICAL COMPANY HAS TREMENDOUS SCOPE IN A POST COVID MARKET

46. It is stated that the Covid-19 pandemic and the resultant lockdown has created a renewed focus on the healthcare and have also brought the pharmaceutical Industry into the limelight. The government's focus has further been on boosting MSME industries and in the interregnum it had released a number of beneficial legislations or amendments for such small industries. It is stated that the corporate debtor in fact belongs to both the segments, being an MSME as ell as being part of the healthcare and medical manufacture business. It is stated that one simply has to look at the rise in demand in the market for herbal products and t the various other companies who have progressed through an otherwise unfortunate time. For this reason also, it is submitted that the corporate debtor cannot be restricted to a resolution plan based on an undervalued valuation., which does not take into account its intangible assets or trademarks. It is stated that the as per the Information Memorandum the intangible assets of the corporate debtor as on the insolvency commencement date have been meagerly valued.

COC MEETINGS NOT CONFORMING TO MANDATORY REGULATION 19 OF THE REGULATIONS

47. It is stated and submitted that it is an admitted fact that number of the meetings of the CoC were conducted on a notice period of less than 24 hours. It is submitted that reference may be had to Regulation 19 of the Regulations:

"Regulations 19

(1)Subject to this regulation, a meeting of the committee shall be called by giving not less than five days' notice in writing to every participant,

at the address it has provided to the resolution professional and such notice may be sent by hand delivery, or by post but in any event, be served on every participant by electronic means in accordance with Regulations 20.

(2) The committee may reduce the notice period from five days to such other period of not less than twenty-four hours, as it deems fit:

Provided that the committee may reduce the period to such other period of not less than forty-eight hours if there is any anuthorised representative."

It is stated that in the meetings that led up to and in the final meeting of the CoC which approved the resolution plan by Adroit, the notice period for conducting the meeting was less than 24 hours. It is submitted that even if the CoC wanted to, it could not have ratified such a short notice of less than 24 hours as the Regulations clearly mandate 24 hours as a strict minimum notice period.

48. In the above circumstances, the Applicant humbly prays that the reliefs sought for are granted. It is stated and submitted that it is in the best interests all of the stakeholders of the Corporate debtor is any better resolution plans are considered by the CoC instead of restricting itself to Adroit's plan, especially since the approval of the plan is contingent to exclusion of certain time periods. It is submitted that the corporate debtor and the intent of the IBC will be better served in this matter.

Findings and Directions:

49. We have perused records and heard the submissions made by the parties.

50. It is prima facie noted that the Applicants **IA No.1434 of 2020** have two main grievances pertaining to procedural aspects which are merely technical in nature which are as follows:

i. Valuation does not have category of Intangible Assets

ii. Meetings were not conducted in accordance with Regulation 19 of CIRP Regulations, 2016 and meetings were conducted beyond 270days of CIRP Period.

51. We further appreciate the endeavors of the Resolution Professional that he has conducted CIRP process to achieve the ultimate goal of Insolvency and Bankruptcy Code, 2016. It is also noted that Applicant Creditor in IA 1434 of 2020 stressed that it has no grievances against the Resolution Professional who has conducted the CIRP of the Corporate Debtor in good faith and to the best of his ability. The Applicants cannot be allowed to now take advantage of the Covid-19 pandemic and the change in laws and scenarios thereafter to dispute the entire CIRP process.

52. In the interest of justice and power conferred under law as per sub-section (2) & (3) of section 12 of the Code, Adjudicating Authority (NCLT) can extent the CIRP time limit further 90 days. NCLAT have inherent power under Rule 11 of NCLAT Rules, 2016 to extend the time limit, which is reproduced here:

11. Inherent powers:

Noting in these rules shall be deemed to limit or otherwise affect the inherent powers of the Appellate Tribunal to make such orders or

give such directions as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Appellate Tribunal.

This is settled law that rules cannot override the main statute and the main status, here the Code, defined the maximum cap 330 days which is mandatory in nature.

The question was answered by Hon'ble Supreme Court in the matter of ***Committee of Creditors of Essar Steel India Vs. Satish Kumar Gupta & Ors.***

Hon'ble Apex Court struck-off the mandatorily word and held that while leaving the provision otherwise intact, the term "mandatorily" is struck down as being manifestly arbitrary under Article 14 of the Constitution of India and as being unreasonable restriction on the litigant's right to carry on business under Article 19(1)(g) of the Constitution. The effect of this declaration is that ordinarily the time taken in relation to the CIRP must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. If the delay or a large part thereof is attributable to the tardy process of the AA and/or the NCLAT itself, it may be open in such cases for the AA and/or NCLAT to extend time beyond 330 days. It is only in exceptional cases that time can be extended, the general rule being that 330 days is the outer limit within which resolution of the stressed assets of the CD must take place beyond which it is to be driven into liquidation.

As per above decision of the Hon'ble Supreme Court, NCLT as well as NCLAT can extend time limit under section 12 of the Code beyond 330 days.

53. This Tribunal finds it in the interest of Resolution of the Corporate Debtor to allow 60 days extension.

54. We have also examined the facts, in view of the judgement of the Hon'ble Supreme Court ***Kalpraj Dharamshi & Anr. Vs. Kotak Investment Advisors Ltd.*** since the facts of the captioned Application before us are akin to the aforesaid judgement. The relevant Para 155 to 158 are reproduced herein below:

"*155. It would thus be clear, that the legislative scheme, as interpreted by various decisions of this Court, is unambiguous. The commercial wisdom of CoC is not to be interfered with, excepting the limited scope as provided under Sections 30 and 31 of the I&B Code.*

156. No doubt, it is sought to be sought, that since there has been a material irregularity in exercise of the powers by RP, NCLAT was justified in view of the provisions of clause (ii) of sub-section (3) of Section 61 of the I&B Code to interfere with the exercise of power by RP. However, it could be seen, that al action of RP have the seal of approval of CoC. No doubt, it was possible for RP to have issued another Form 'G', in the event he found, that the proposals received by it prior to the date specified in last Form 'G' could not be accepted. However, it has been the consistent stand of RP as well as CoC, that al actions of RP, including acceptance of resolution plans of Kalpraj after the due date, albeit before the expiry of timeline specified by the I&B

Code for completion of the process, have been consciously approved by CoC. It is to be noted, that the decision of CoC is taken by a thumping majority of 84.36%. The only creditor voted in favour of KIAL is Kotak Bank, which is a holding company of KIAL, having voting rights of 0.97%. We are of the considered view, that in view of the paramount importance given to the decision of CoC, which is to be taken on the basis of 'Commercial wisdom'. NCLAT was not correct in law in interfering with the commercial decision taken by CoC by a thumping majority of 84.36%.

157. It is further to be noted, that after the resolution plan, NCLAT had heard the appeals on 27.02.2020 and reserved the same for orders. It is not in dispute, that there was no stay granted by NCLAT, while reserving the matters for orders. After a gap of five months and eight days, NCLAT passed the final order on 05.08.2020. It could thus be seen, that for a long period, there was no restraint on implementation of the resolution plan of Kalpraj, which was duly approved by NCLT. It is the case of Kalpraj, RP, CoC and Deutsche Bank, that during the said period, various steps have been taken by Kalpraj by spending a huge amount for implementation of the Plan. No doubt, this is sought to be disputed by KIAL. However, we do not find it necessary to go into the aspect of the matter in light of our conclusion, that NCLAT acted in excess of jurisdiction in interfering with the conscious commercial decision of CoC.

158. It is also pointed out, that in pursuance of the order dated

05.08.2020 passed by NCLAT, CoC has approved the resolution plan of KIAL on 13.08.2929. However, since we have already held, that the decision of NCLAT dated 05.08.2020 does not stand the scrutiny of law, it must follow, that the subsequent approval of the resolution plan of KIAL by CoC becomes non-est in law. For, it was only to abide by the directions of NCLAT. We are of the view that nothing would turn on it. The decision of CoC dated 13.04.2019 is a decision, which has been taken in exercise of its 'commercial wisdom'. As such, we hold, that the decision taken by CoC dated 13.04.2019, which is taken in accordance with its 'commercial wisdom' and which is duly approved by NCLT, will prevail. Further, NCLAT was not justified in interfering with the stated decision taken by CoC."

55. In the present matter we observed that the Intangible Assets of the Corporate Debtor were not valued separately. In such peculiar situation, at this juncture to set the record straight and to meet the ends of justice. We are of the considered view that the Intangible Assets of the Corporate Debtor shall be valued and categorized separately. Hence Ordered.

56. The Resolution Professional is directed to engage the services of IBBI Registered valuer for valuation of Intangible Assets of the Corporate Debtor. Further, the Resolution Professional is also directed to prepare a comprehensive valuation report categorizing assets in following category:

    a. Land & Building
    b. Plant & Machinery
    c. Securities and Financial Assets

d. Intangible Assets

The Report prepared by the Resolution Professional be placed before CoC for consideration and in terms of the said Report, the CoC is directed to vote on the Resolution Plan of the SRA. Thereafter, the Resolution professional is directed to place the minutes of the CoC meeting by way of an affidavit before this Tribunal.

57. With the aforesaid observation, **IA No. 1434 of 2020 in CP(IB) No. 3080/MB/C-I/2018** stands disposed of **in terms of above directions**.

58. Applicants in **IA No.1433 of 2021** and **IA No. 1281 of 2020** erstwhile promoter director are trying to blow hot and cold together, one hand when company was in there control at that time revenue was downgraded to such levels that the accounts were categorized as NPA; and eventually CIRP initiated. This shows intent of Applicants just to drag the CIRP and nothing else. Now at this juncture they are filling Interlocutory Applications for considering there plan which deserves to be Rejected. **IA No.1433 of 2021** and **IA No. 1281 of 2020 is disposed as rejected**.

Sd/- **Sd/-**

SHYAM BABU GAUTAM **H.V. SUBBA RAO**
MEMBER (TECHNICAL) **MEMBER (JUDICIAL)**
04.08.2023
SAM