



NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH
(SPECIAL BENCH)

3. IA/5187/2024 C.P. (IB)/83(MB)2022

IN THE MATTER OF

Mivaan Pharma

... Petitioner

Vs

Waxsen lifscience Pvt Ltd

... Respondent

U/s 7 of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 08.08.2025

CORAM:

SH. SUSHIL MAHADEORAO KOCHEY
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Applicant: Adv. Rakesh Gupta a/w. Prajakta Menezes (VC)

For the Respondent:

ORDER

IA/5187/2024- The Above IA/5187/2024 is listed for pronouncement of order. The same is pronounced in open court, vide a separate order.

Sd/-
CHARANJEET SINGH GULATI
Member(Technical)

Sd/-
SUSHIL MAHADEORAO KOCHEY
Member(Judicial)

//Avdhesh//



**NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – V**

**IA (I.B.C)/5187(MB)2024
IN
CP IB (IBC)/83(MB)2022**

[Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of National
Company Law Tribunal Rules, 2016]

**UNION BANK OF INDIA
FINANCIAL CREDITOR & COC MEMBER**

C/o:- Stressed Asset Management Branch,
104, Ground Floor, Bharat House, M.S. Marg, For
Mumbai- 400001

...Applicant

Vs.

**MR. RITESH PRAKASH ADATIYA
RESOLUTION PROFESSIONAL,
WAXSEN LIFESCIENCE PVT. LTD.
VERSUS**

C/o.: 10th Floor, 1003, Zion Z1, Ramdas Road,
Near Avalon Hotel, Thaltej, Ahmadabad - 380059

.....Respondent No. 1

**MIVAAN PHARMA, MR. DHIRAV THAKKAR,
MRS. JIGNA THAKKAR, MR. SAMYAK
SHETH,
MR. HARSHIL SHETH AND MR. TUSHAR
SHETH**

FINANCIAL CREDITOR & COC MEMBER

C/o.: The Sidhpura Co-Op. Industrial Estate,
38/A, Plot NO.3. Gaiwadi, S.v. Road,
Goregaon (W), Mumbai – 400104

.....Respondent No. 2

**CONSORTIUM OF MIS. SADHNA NITRO
CHEM LIMITED
WITH MSL INVESTMENT CONSULTANT LLP
RESOLUTION APPLICANT**



C/o.: 10, Bruce Street, 1 st Floor, 8/12, Homi Mody Street, Fort. Mumbai – 400001.

.....Respondent No. 3

IN THE MATTER OF

**MIVAAN PHARMA, MR. DHIRAV THAKKAR,
MRS. JIGNA THAKKAR, MR. SAMYAK
SHETH,
MR. HARSHIL SHETH AND MR. TUSHAR
SHETH**

... Financial Creditor

Vs.

WAXSEN LIFESICENCE PVT LTD

... Corporate Debtor

Order Dated: 08.08.2025

Coram:

Sh. Sushil Mahadeorao Kochey, Hon'ble Member (Judicial)

Sh. Charanjeet Singh Gulati, Hon'ble Member (Technical)

Appearances:

For the Applicant: Adv. Pulkit Sharma a/w Prajakta Menezes
and Rakesh Gupta (PH)

For the Respondent: Adv. Aniruth Purusothman G. R-1 (PH)

ORDER

1. This is an application to clarify that the subject property sold by the Applicant Bank under the SARFAESI Act prior to commencement of CIRP is not the asset of the Corporate Debtor, and for setting aside the decision of the Respondent no. 2 of approving the Resolution Plan dated 04.01.2024.



2. The relevant facts leading to the filing of this Application are briefly as under:-

CONTENTIONS OF THE APPLICANT: -

3. It is contended by the Applicant that the Corporate Debtor availed various credit facilities sanctioned and disbursed by the Applicant from time to time for an amount of Rs. 1378.02 lakhs vide sanction letter dated 27.09.2019, and secured by Equitable Mortgage and hypothecation over the subject property vide letter of continuity dated 30.09.2019. For execution of memorandum of deposit of title deed permission was granted by the lessor Gujarat Industrial Development Corporation vide permission letter dated 13.02.2015. It is contended that it is an admitted fact that the said loan of the Corporate Debtor was classified as NPA on 31.01.2020 and thereafter following due process under SARFAESI the applicant took symbolic possession of the property under Section 13(2) and (3) of the SARFAESI Act. The Physical possession was taken by the Applicant pursuant to the order dated 29.09.2022 of the District Magistrate Bharuch. E-auction was successfully conducted on 10.09.2022 wherein the M/s. Survival Technologies Private Limited was declared as the highest bidder, sale certificate was issued on 15.12.2022 and subsequently, registered on 07.06.2023, vide sale certificate dated 15.12.2022 and registered sale certificate dated 07.06.2023.
4. It is contended that in view of the judgment of the Hon'ble Supreme Court in the matter of "*Sakina vs. State Bank of India [2019] IBCLaws.in 133 SC*" the issuance of sale certificate under Section 5 contemplates sale and registration is not mandatory. Before initiation of CIRP, the Corporate Debtor had issued No Objection Certificate dated 11.01.2022 to Gujarat Industrial Development



Corporation, clearly admitting to the successful conduct of e-auction by the Applicant/bank handover of the possession to the successful bidder.

5. It is therefore, contended that since, the subject property was sold by the Applicant Bank prior to CIRP process, it ceased to be the property of the Corporate Debtor and cannot form the part of the CIRP and therefore, it is required to be excluded.
6. It is further contended that the applicant submitted a claim in Form C of INR. 19969519.00 dated 14.03.2023 which comprised of the INR 18197897.00/- after adjusting sale proceeds of the mortgaged property and INR 1771622.00 towards the performance bank guarantee only. In respect of these residual debt the applicant's claim was admitted and the applicant was treated as unsecured creditor. The actions of the RP are clearly *mala fide* and is an attempt to exclude the claim of the bank on the said property while treating the said property as asset of the Corporate Debtor.
7. It is contended that the corresponding liability must necessarily to be included under CIRP. Consequently, the revised claim of the Applicant Bank was filed without prejudice amounting to Rs. 18,35,19,082/- on 24th May, which ought to have been admitted in its entirety and the CoC was required to be constituted accordingly.
8. The claim is deliberately disregarded. The contingency in the resolution plan regarding monetary payment of EPFO dues renders the resolution plan non-complied as per binding precedence laid down by the Hon'ble NCLAT in the



matter of “*Regional PF Commissioner vs. Ashsish Chhawchharia RP for jet airways*”. Wherein it is held that the Resolution Applicant must provide for payment of EPFO dues in full under the Resolution plan to ensure that the resolution plan complies with section 30(2)(e) of the Code. It is therefore, contended that the property sold prior to initiation of CIRP should be excluded and the resolution plan as submitted by the SRA in consortium of M/s Sadhana Nitrochem with MSL Investment and Consultant LLP being ultravires conditional, contingent, and contrary to provisions of Code should be set aside.

CONTENTIONS OF THE RESPONDENT: -

9. The Respondent/RP has filed his reply and contended that the Union Bank has proceeded in the present application on the basis that the subject property has been included in the CIRP whereas the same is misconceived. The subject property was secured in favour of Union Bank of India by the Corporate Debtor prior to initiation of CIRP. Union Bank of India sold the subject property on 10.12.2022, for an amount of Rs. 139,410,000/- only under the SARFAESI Act. The union bank of India also issued the sale certificate on 15.12.2022. Presently there is Securitization Application being SA No. 747 of 2022 pending before the DRT, Ahmedabad Challenging the sale of the subject property. The Debts Recovery Tribunal vide order dated 10.01.2023, in the Securitization Application held that any measure taken by the Union Bank of India would be subject to final outcome of the Securitization Application. During the CIRP proceedings RP in the Information memorandum duly included the detail of aforesaid ongoing litigation qua the subject property. The RP has not only given



details of the pending litigation but has also included all facts pertaining to sale conducted by Union Bank of India as well as sale certificate which were issued by the Union Bank of India. Pursuant to the information memorandum even the resolution plan only includes the ongoing Securitization Application and not the subject property *per-se*. The resolution plan only provides for the consequence of the Securitization Application more particularly the resolution plan provides for consequence in the event the DRT set aside the sale transaction taken by the Union Bank of India.

10. It is therefore, contended that the Resolution Plan is dealing with the asset which was sold prior to CIRP initiation is misconceived whereas in fact the resolution plan is not dealing with the asset in any manner but is only providing for a possible consequence of the ongoing litigation which is in no manner is impermissible under the Code and Regulations.

11. It is further contended that in view of the settled law as laid down in ***Ghanshyam Mishra case By the Hon'ble Supreme Court Reported in [2021] 9 SCC 657*** once the resolution plan of Corporate Debtor is approved all the past dues and securities interest in relation there to stands extinguished, the applicant bank is trying to take advantage of the sale which is under scrutiny and get out of the clutches of the CIRP by excluding the property. The resolution plan also proposes to pay the amount equivalent to the sale proceeds in the event the sale is set aside by the DRT. Therefore, the amount being recovered by the Union Bank of India against the subject property remains the same and no prejudice is caused from the Union Bank of India from the proposed Resolution Plan.



12. It is contended that the EPFO dues are fully considered. The objections raised are frivolous and therefore, the application should be dismissed.

POINTS FOR CONSIDERATION: -

13. After considering the rival contentions of both the party to the present application the points which arise for determination in this case is as under: -

- a. Whether, the property in question is required to be excluded from the CIRP process being not the asset of the Corporate Debtor?
- b. Whether, the plan as provided by the CoC is not viable and feasible and is required to be set aside?

ANALYSIS AND FINDINGS: -

As to point no.1:- Whether, the property is required to be excluded from the CIRP process as being not the asset of the Corporate Debtor ?

14. Learned counsel for the applicant has submitted that the property in question has been sold under the SARFAESI Act and the sale certificate is also obtained and the registration of the same is not required in view of the judgment of the Hon'ble Supreme Court in the Case of "*Sakina Vs. Bank of India*" cited above. It is therefore, submitted that that property in question is not the asset of the Corporate Debtor and it should not have been considered in the plan. Learned counsel for the respondent on the other hand submitted that the property in question is not considered as the asset of the Corporate Debtor in the plan, the sale of the property which was admittedly belonging to the Corporate Debtor has been challenged before the DRT and is pending and therefore the provisions



contingent to the order is made in the plan and therefore it cannot be said that the property sold prior to CIRP by the bank is included in the plan as asset of the Corporate Debtor.

15. It is an admitted position that the sale of the said property by the applicant bank has been challenged and the adjudication of the same is pending before the DRT. The DRT has also passed an order dated 10.01.2023, that the measures taken by the Union Bank of India would be subject to final outcome of the securitization application, therefore, the sale of the property as conducted by the applicant bank is under challenge and is pending adjudication before the DRT. The outcome of which may approve the sale, in the event of which, the property would be excluded as contended by the Respondent in the Reply. In the event of sale is set aside then the property is certainly required to be considered as an asset of the Corporate Debtor and it would form the part of the assets of the Corporate Debtor and is required to be dealt under the CIRP process. The Respondent has also categorically submitted that in the event, sale is set aside the plan makes the provision of payment of the amount which is already secured by the Applicant bank. Therefore, as of now the plan does not include the property as the asset of the Corporate Debtor. However, it is only in the event that the sale is set aside the provision to that effect is made and interest of the Bank to the extent of sale proceeds is also secured under the plan and therefore, it cannot be said that the sale conducted prior to the initiation of CIRP, cannot be considered as an asset of the Corporate Debtor. However, the contingent provision in the event the sale is set aside by the DRT, is made in the plan and therefore, there are no merits



and substance in the submissions of the learned counsel for the Applicant Bank so as to exclude the property from being considered in the plan.

As to point no.2: - Whether, the plan as provided by the CoC is not viable and feasible and is required to be set aside?

16. This issue pertains to feasibility and viability of plan which has to be considered when the plan comes up for consideration before the Adjudicating authority. Therefore, the present application devoid of any merits. No case is made out for interference as such following order is passed.

ORDER

In view of the facts and circumstances of the case and discussion herein above this **IA/5187/2024 IN C.P. (IB) No. 83/MB-V/2022 stands dismissed.**

Sd/-
Charanjeet Singh Gulati
Member (Technical)
/Anmol/

Sd/-
Sushil Mahadeorao Kochey
Member (Judicial)