

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 2220 OF 2020

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016 r/w Rule 11 of
NCLT Rules, 2016

Edelweiss Asset Reconstruction Co.
Limited

...Applicant

Vs.

Peter Beck & Peter
Vermögensverwaltung Limited

...Respondents

I.A. 4003 OF 2019

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016 r/w Rule 11 of
NCLT Rules, 2016

State Bank of India

...Applicant

Vs.

Peter Beck & Peter
Vermögensverwaltung Limited

...Respondents

In the matter of

C.P.(IB) No. 246/MB/2017

Culrrossn Opportunitic SP & Anr.

Operational Creditor

Vs.

M/S Sharon Bio-Medicine Ltd

Corporate Debtor

Order delivered on: 21.11.2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)
Appearances

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

For the Applicant : Appearance not marked in the attendance
Sheet
For the Respondent : Appearance not marked in the attendance
sheet

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application IA 2220/2020 is filed on 09.11.2022 by M/s , Edelweiss asset Reconstruction CO. Limited, the Financial Creditor and member of erstwhile Committee of Creditors ("Applicant") in the Corporate Insolvency Resolution Process ("CIRP") in the matter of M/s Sharon Bio-Medicine Limited (Corporate Debtor or Respondent No. 3) under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 ("Code"), for declaration that the Resolution Plan approved by this Tribunal on 28.02.2018 as failed and for orders reinstating the erstwhile Resolution

Professional, Mr. Dinkar Venkatasubramanian as Resolution Professional to carry out further Resolution Process to ensure running of Corporate Debtor as a going concern and consequential extension of 90 days in CIRP period for invitation of expression of interest from prospective resolution applicants.

1.1. M/s Peter Beck and Peter Vermoegenverwaltung Ltd, Respondent No. 1 is The Successful Resolution Applicant, whose Resolution Plan for resolution of Corporate Debtor came to be approved by this Tribunal, and M/s EY Restructuring LLP, the Respondent No. 2 is Monitoring Agency for implementation of the approved Resolution Plan.

1.2. This Application is filed in view of the failure on part of Respondent No. 1 to implement the Resolution Plan approved by this Hon'ble Tribunal on 28th February 2018 which has been pending implementation for over 749 days as not a single payment has been made under the Resolution Plan including reimbursement of Corporate Insolvency Resolution Costs.

2. Another Application IA 4003/2019 is filed by State Bank of India, the Financial Creditor and member of erstwhile Committee of Creditors ("Applicant") in the Corporate Insolvency Resolution Process ("CIRP") in the matter of M/s Sharon Bio-Medicine Limited (Corporate Debtor) under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 ("Code"), (a) for direction that Rs. 10 Crores (equivalent of USD 13,99,928) remitted in account of the Corporate Debtor maintained with Abhyudaya Co-Operative Bank Limited be retained till the implementation or failure of the Resolution Plan and the Applicant be entitled to appropriate the money upon failure of the Resolution Plan; (b) to annul the declaration of the Respondent No. 1 as the successful resolution applicant; (c) to pass an order reinstating the erstwhile resolution professional to ensure the running of the Corporate Debtor as

a going concern; (d) to allow a period of 90 days to attempt at a fresh process and resolution by call for fresh resolution plans for the Corporate Debtor, rather than forcing the Corporate Debtor into liquidation; and (e) to direct, Respondent No. 3/Respondent No. 4 to initiate proceedings and pass orders under 74(3) of the IBC against M/s Peter Beck and Peter Vermoegenverwaltung Ltd, the Successful Resolution Applicant (“Respondent No. 1”).

3. The Company Petition 246/I&B/NCLT/MAH/2017 was admitted by order of this Tribunal on April 11, 2017 inter alia initiating corporate insolvency resolution process in respect of Sharon Bio-Medicine Limited ("Corporate Debtor"), and this Tribunal, vide its order dated February 28, 2018, in Miscellaneous Application No. 12 of 2018 approved the resolution plan submitted by Respondent No.1. The order passed by this Tribunal was challenged by appellants Lalit Mishra and others before the Hon'ble National Company Law Appellate Tribunal ("Hon'ble NCLAT") in Company Appeal (AT) Insolvency No.164 of 2018. The Hon'ble NCLAT vide its order dated December 19, 2018, dismissed the appeal and upheld the order of this Hon'ble NCLT. Further, the appellants challenged the order of Hon'ble NCLAT dated December 19, 2018 before the Hon'ble Supreme Court in Civil Appeal No.1603/2019. The Hon'ble Supreme Court by its order dated April 5, 2019 dismissed the appeal and upheld the order of Hon'ble NCLAT.
4. We have heard the Counsel and perused the material available on record.
 - 4.1. We find that this Tribunal had approved the Resolution Plan for resolution of the Corporate Debtor on 28.02.18. The approved resolution plan envisages a time bound repayment of financial obligations of the Corporate Debtor, and the Successful Resolution Applicant was to make equity capital infusions and raise secured debt for capital requirements of the Corporate Debtor as set out in the plan. The Resolution plan contained an indicative schedule

detailing the time frame implementation of approved plan within a period of 180 days.

- 4.2. The Successful Resolution Applicant were given several extensions for remedying the lapses and delays affected by them and implement the Resolution Plan. Despite several opportunities, the earlier Resolution Applicant failed to implement the resolution plan.
- 4.3. We also find that the Resolution Professional informed this Tribunal on 26.09.2023 that the Resolution Applicant has already submitted before the Hon'ble Supreme Court that they are not in a position to implement the Resolution Plan, and the Successful Resolution Applicant has filed another application IA 1360/2022 seeking refund of Rs. 10.00 crores approx.. (equivalent to USD 13,99,928) deposited pursuant to approval of its Resolution Plan in first round, and the Applicant in IA 4003/2019 filed an application IA 2989/2023 seeking forfeiture of USD 13,99,928 (equivalent to INR 10,06,85,725) deposited by Peter Beck and Peter Vermoegnesverwaltung Ltd on account of non-implementation of Resolution Plan by them and to appropriate this sum amongst the secured financial creditors of the Corporate Debtor.
- 4.4. In view of non-implementation of the Plan by Peter Beck and Peter Vermoegnesverwaltung Ltd, the Hon'ble Supreme Court vide its order dated 28.02.2022 granted liberty to the lenders of the Corporate Debtor to initiate a fresh CIRP. Thereafter, this Bench on 03.06.2022 allowed an application filed by the lenders of the Corporate Debtor for initiation of fresh CIRP granting 105 days for the completion of the CIRP and further appointed the Applicant as the Resolution Professional to invite fresh expression of interest from the Prospective Resolution Applicants. Thereafter, the resolution plans received from the Resolution Applicants in second were examined by the Applicant for their compliance with the Code and the Resolution plan submitted by the another Resolution Applicant in second round after failure of M/s Peter Beck and Peter Vermoegenverwaltung Ltd was approved by the CoC with a

majority of 79.28% and the Applicant, as the Resolution Professional, filed the plan approval application before this Bench. The resolution plan of another Resolution Applicant, approved by this Tribunal subsequently has since been implemented by such Resolution Applicant.

- 4.5. Accordingly, we are of considered opinion that the prayer in IA 2220/2020 and IA 4003/2019 are rendered infructuous, in so far it seeks to restore the CIRP process in the case of Corporate Debtor and extension of CIRP period. As regards prayer for retention of Rs. 10 Crores (USD 13,99,928) in IA 4003/2019 is concerned, this prayer stands modified in IA 2989/2023, which seeks forfeiture of this sum. Since IA 2989/2023 seeking forfeiture of this sum, and IA 1360/2022 seeking refund thereof are pending consideration, this Bench is of considered opinion that the prayer for retention is also rendered, as the prayer in IA 2989/2023 is expansive in nature, and convers the prayer in IA 4003/2019. As regards prayer for direct to Respondent No. 3/Respondent No. 4 in IA 4003/2019 to initiate proceedings and pass orders under 74(3) of the IBC against M/s Peter Beck and Peter Vermoegenverwaltung Ltd, the Successful Resolution Applicant (“Respondent No. 1”) is concerned, the same shall be dealt with while disposing of IA 2989/2023 in terms of other orders.
5. In view of the above discussion, the IA 2220/2020 & IA 4003/2019 are disposed of as infructuous.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)