IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – II

IA/2228/2021 In C.P.(IB)/433(MB)2018

(Under Section 30(6) of the Insolvency and Bankruptcy Code, 2016.)

Prakash D Naringrekar, *Resolution Professional for M/s. Shreechem Pharmaceuticals Private Limited*

……Applicant

In the matter of

Rukson Packaging Private Limited

……Financial Creditor/Applicant

Vs

Shreechem Pharmaceuticals Private Limited

…….Corporate Debtor/Respondent

Order delivered on: 12.08.2022

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Shri Shyam Babu Gautam

Appearances:

For the Resolution Applicant : Mr. Aditya Udeshi

For the Resolution Professional: Mr. Prakash Sindhe

For the CoC : Adv. Manaswi Agrawal

<u>ORDER</u>

Per- Shyam Babu Gautam, Member Technical

It is an application filed under Section 30(6) of the Insolvency & Bankruptcy Code, 2016 ("**the Code**") for approval of the Resolution Plan by this Bench based on the approval already given by the Committee of Creditors **("CoC")** in its 16^{th} Meeting with requisite majority of 100% u/s 30(4) of the Code.

2. Looking at the application moved by the Resolution Professional, it reveals that Rukson Packaging Private Limited/Operational Creditor has filed the petition u/s 9 of the Code against the Corporate Debtor, which this Bench admitted on 08.05.2019 by initiating Corporate Insolvency Resolution Process **("CIRP")** and appointing Mr. Prakash D Naringrekar, as Interim Resolution Professional who was subsequently confirmed as the Resolution Professional in 1^{st} CoC meeting held on 06.06.2019. Thereafter, the Resolution Professional/Applicant appointed two registered valuers namely (1) Mr. Dharam Pal Bhatia, Mr. Puneet Tyagi, Dr. Anoop Kumar Goyal and (2) Mr. Sanjay Dayal, Mr. Ashish Pandit, Mr. Ravishankar Balakrishnan Aiyar as per

Regulation 27 of the CIRP Regulations to determine valuation of Plant and Machinery, land and buildings and Securities and Financial Assets of the Corporate Debtor in accordance with Regulation 35 of the CIRP Regulations, same was approved by the CoC in its 2nd meeting.

The Applicant has issued invitation for Expression of Interest **("EoI")**, as approved by the CoC, and has also made paper advertisement in Financial Express (English Ed.) and Navshakti (Marathi) on 22.07.2019, by fixing the last date for EoI as 06.08.2019. Further, the Resolution Professional received five EoI's. However, the Applicant has received the Resolution Plan from two Resolution Applicants viz. (1) Mr. Keyur Mehta and Mr. Sanjay Mehta (Joint Resolution Applicants) and (2) Mr. Chirag Mehta only, along with 25 Lacs of EMD by both, same was informed to the CoC in its 6th meeting held on 24.09.2019. The CoC discussed both the resolution plan submitted and requested the Successful RA's to revise their Resolution Plan. Meanwhile, this Tribunal allowed the extension of 90 days, on the application made by the present applicant.

3. In 12th CoC meeting held on 23.01.2020, the Applicant apprised the CoC that the Resolution Applicants have submitted a revised plan. Further, the CoC rejected their revised resolution plan with 100% voting right on the ground that the plan in the present form was not acceptable and mandate was given for the same. Moreover, the CoC voted for liquidation in its 13th meeting

held on 28.01.2020. In pursuance to same, the applicant filed an interlocutory application no. 699 of 2020 for liquidation of the Corporate Debtor. Further, being aggrieved by the rejection of the Resolution Plan, the Resolution Applicants have also filed an interlocutory application no. 512 of 2020 for considering the revised resolution plan.

Meanwhile, Phoenix ARC Private Limited, the sole member of the CoC filed an interlocutory application no. 1527 of 2021 under section 60(5) of the Code, seeking an exclusion of CIRP period and also an extension of time to complete the CIRP process. Moreover, in the said application the applicant also expressed their desire to consider the revised Resolution Plan provided by the Successful RAs. In view of the above, this Tribunal allowed the prayers made by Phoenix ARC Private Limited in order to complete the CIRP of Corporate Debtor. Similarly, in view of this order, interlocutory application no. 699 of 2020 was ordered as infructuous and interlocutory application no. 512 of 2020 was disposed of.

4. At the Fifteen CoC meeting held on 02.09.2021, the CoC member requested the successful RA's to further revise their Resolution Plan incorporating certain modification and changes as suggested by the CoC.

On 02.08.2021, the Successful RAs submitted the revised Resolution Plan after incorporating the modifications suggested by the CoC. After discussion and deliberations, the resolution was placed for approval of Resolution Plan for voting and same was approved with 100% voting shares by CoC members in its 16th meeting.

5. As regards the Resolution Plan, from Form – H filed by the Resolution Professional, it is evident that Fair Value is ₹18.95 Crore and the Liquidation Value is ₹14.29 Crore. It is also observed that admitted claim value against the debtor company is more than the liquidation value of the company.

Further, it is evident that the total consideration amount under the Resolution Plan will be INR 1618.1 Lacs, out of which the Financial Creditors shall receive INR 1500 Lacs and Operational Creditors shall receive INR 56.2 Lacs. Further, the balance amount of INR 61.9 Lacs is proposed for the CIRP cost. In relation to this, the Applicant submits that the Resolution Plan provides for any excess amount over and above the INR 61.9 Lacs shall be additionally borne by the Successful Resolution Applicant. It is further stated in Para (7.b) that once the CIRP costs have been paid in full, it is clarified that no claims, liabilities, fines, costs, expenses or any other payment of such nature or otherwise, that are or are claimed to constitute CIRP costs shall be payable by the Successful RAs.

6. As per Para (7c) of Resolution Plan, an amount of INR 1500.0 Lacs is proposed to be paid to the ***Financial Creditors*** as follows:

S. No.	Financial Creditors	Amount of Claim Admitted (Amount in Lacs)	Voting Share	Amount Proposed (INR) (Amount in Lacs)
1.	Phoenix ARC-CD Phoenix ARC-Invocation of Corporate Guarantee (Savvy Care and Cosmetics Pvt. Ltd.)	5,731.8 750.7		
Total		**6482.5**	**100%**	**1,500**

The aforementioned distribution is envisaged by the Successful Resolution Applicant and approved by the CoC to be paid as per the following payment terms:

Particulars	Rs. In Lacs
Along with Resolution Plan*	200.0
Total Upfront Payment	200.0
Year 1:	
One Month after CoC approval	200.0
By June 30, 2021	150.0
By September 30, 2021	150.0
By December 31, 2021	100.0
By March 31, 2022	150.0
Total Payment in Year 1	**750.0**
Year 2:	
By June 30, 2022	200.0
By September 30, 2022	350.0
Total Payment in Year 2	**550.0**
Total	**1,500.0**

It is further stated that all the securities of the Corporate Debtor whether exclusive, first charge, second charge, pari-pasu, mortgage, hypothecation, etc. on fixed assets, current assets, third party securities, collaterals, and other assets of the Corporate Debtor would be released by all the Financial Creditors immediately on the payment of the last tranche as per the above payment schedule.

7. As per Para 7(d) of Resolution Plan, ***the employee dues, employee state insurance and gratuity dues*** as per the assets and liabilities as on the insolvency date i.e. 8th May, 2019 are Nil. The Applicant has clarified that ESIC, Provident Fund (PF), TDS on salary and Profession Tax (PT) have been paid after the Insolvency Commencement Date and no further dues are in arrears to our understanding.

8. As per Para 7(e) of Resolution Plan, the Successful RAs has to make a payment of INR 56.2 Lacs to the ***Operational Creditors*** against such admitted Net Claim Amount or pro rata payable amount of INR 56.2 whichever is lower.

The Successful RAs shall make the abovementioned payment in the following ways:

1. ***Trade Payables:*** *To be settled in full and final for INR 6.9 Lacs out of their outstanding claims admitted of INR 685.8 Lacs.*

*2. **Other Current Liabilities:** To be settled in full and final for INR 49.3 Lacs out of their outstanding claims admitted of INR 4933.0 Lacs.*

(The Operational Creditors, whose claims have been verified and admitted, shall be paid within 90 days from the Approval Date of Adjudicating Authority)

9. As per Para 7(f) of the Resolution Plan, it is proposed that all issued and paid up equity shares outstanding as on the CIRP Admission Date shall be cancelled. The Successful RAs shall infuse INR 500.0 Lacs as equity share capital in the Corporate Debtor. Such equity shares shall be issued at the face value of INR 10/- per share resulting in issuance of appropriate number of shares issued, subscribed and paid up equity shares to Mr. Keyur Mehta and Mr. Sanjay Mehta.

10. As per Para 7(g) of the Resolution Plan, it is proposed that the Successful RAs is proposing to pay NIL value against all the contingent liabilities and legal cases pending against the Corporate Debtors. Further submitted that on approval of the Resolution Plan, all such liabilities shall stand settled and extinguished.

Further any liability crystalizing out of the contingent liabilities or disputed legal cases or pending appeals of the Corporate Debtor or any other unknown or unclaimed liability pertaining to a transaction or incident dating to a period prior to the Insolvency Commencement date or during the CIRP which does not find a place in the approved the Resolution Plan, shall be deemed to have lapsed on the approval of the plan and the Corporate Debtor shall be deemed to have duly discharged from all legal liability arising from such antecedent claims.

11. Further, the Applicant submits that the Applicant has preferred an Interlocutory Application under Section 43 and 66 of the Code in respect of the Preferential and Fraudulent transactions before this Tribunal vide IA/418/2020 and the same is pending before this Bench. As contained in Para 7(j) of the Resolution Plan any recovery from the Preferential and Fraudulent transaction filed before the Adjudicating Authority under Section 43 and Section 66 of the Code against the existing Promoters, Directors shall be accrued to Financial Creditor and all expenses related to the said recovery shall be borne by the Financial Creditor. Moreover, this bench hereby directs that the Financial Creditor will pursue the abovementioned application till it is disposed of.

12. As per the provision of the Code, this Tribunal is duty bound to examine the Resolution Plan as to whether it satisfies the conditions as laid down in Section 30(2) of the Code. A comparison of the mandatory compliance under the Code *vis-à-vis* the same made under the Resolution Plan is tabulated hereunder;

MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS	COMPLIANCE UNDER RESOLUTION PLAN
S.30(1)- Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016	The Resolution Professional in Form-H has certified that the Resolution Applicant has submitted an affidavit.
S.30(2)(a)- Payment of insolvency resolution process cost in the manner specified by the Board	Clause 7(b) provides Rs. 61.9 Lacs, in total, towards CIRP cost. In case of additional CIRP cost arises, then such additional pay out shall be borne by the RA over the current pay out of Rs. 61.9 Lacs.
S. 30(2)(b) -Payment of debts of Operational Creditors in such manner as may be specified by the Board, which shall not be less that the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under Sec. 53	Clause 7(e) provides that The Successful RAs shall make the payment in the following ways: ***Trade Payables:*** *To be settled in full and final for INR 6.9 Lacs out of their outstanding claims admitted of INR 685.8 Lacs.* ***Other Current Liabilities:*** *To be settled in full and final for INR 49.3 Lacs out of their outstanding claims admitted of INR 4933.0 Lacs.*
S. 30(2)(c)- provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;	Yes, the Resolution Plan in Clause 8 provides for management of the Corporate Debtor by the Resolution Applicant. As per Clause 8, upon approval of the Resolution Plan, the Resolution Applicants shall constitute the board of the Corporate Debtor and appoint key managerial personnel, which may include independent professionals ("New Company Management"). The appointment of new directors/Key managerial personnel shall be after the consent of the Financial Creditors and a No-objection certificate ("NoC") shall be obtained from the Financial Creditors to that effect. The appointment of key managerial personnel shall be reviewed on an annual

<table>
<tr><td></td><td>basis by the Resolution Applicants and such appointment of Key managerial personnel shall be ratified by the Resolution Applicants annually. The New Company Management shall have the authority to appoint the directors on the Board of the Corporate Debtor.</td></tr>
<tr><td><u>S.30(2)(d)</u>- Implementation and Supervision of the Resolution Plan</td><td>Clause 9 of the Resolution Plan states that on approval of the Resolution Plan by CoC and thereafter by the Adjudicating Authority, the Resolution Applicants shall from an “Implementation and Monitoring Committee” comprising of 3(three) persons:
1(one) will be qualified resolution professional registered under the IBBI as the Supervisor.
1(One) will be nominated by the RA.
1(One) representative will be appointed by the Financial Creditors.</td></tr>
<tr><td><u>S. 30(2)(e)</u>- Contravene any of the provisions of the law for the time being in force.</td><td>Does not contravene any of the provisions of the law for the time being in force.</td></tr>
<tr><td><u>S. 30(4)</u>- Committee of Creditors approve the Resolution Plan by not less than 66% of voting share of Financial Creditors, after considering its feasibility, viability and such other requirement as specified by the Board</td><td>The CoC, in its 16th meeting has approved the Resolution Plan in the following voting pattern;<table><tr><th>S. No</th><th>Name of Creditor</th><th>Ascent (%)</th><th>Dissent (%)</th></tr><tr><td>1.</td><td>Phoenix ARC-CD</td><td>100</td><td>-</td></tr><tr><td></td><td>TOTAL</td><td>100</td><td>-</td></tr></table></td></tr>
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13. A perusal of Form-H as filed by the Resolution Professional also posits the fact that the Resolution Plan is in compliance with the mandatory compliances as stipulated under Section 30(2) of the Code and also the Resolution Applicant has filed an

Affidavit to the effect that he is eligible to submit the Resolution Plan taking into consideration Section 29A of the Code. The Monitoring Committee shall supervise the implementation of the Resolution Plan and shall be in control of the management and affairs of the Corporate Debtor from the Appointed Date, until the Effective Date.

14. As to the Reliefs and Concessions stated in Clause 11 of the Resolution Plan, the exemption as sought for in relation to the payment of registration charges, stamp duty, taxes and fees arising out of the implementation of the Resolution Plan is not granted. As regards the other reliefs and concessions as sought for, which exempts the Corporate Debtor from holding them liable for any offences committed prior to the commencement of CIRP and as stipulated under Section 32A of IBC, 2016 is granted to the Resolution Applicant. With regard to other concessions and reliefs, most of them are subsumed in the reliefs granted above. The relief which is not expressly granted above, shall not be construed as granted. The exemptions if any sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted. Further in terms of the Judgement of Hon'ble Supreme Court in the matter of ***Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited***, on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of Resolution

Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the Resolution Plan. In view of the same, this plan is hereby **approved**.

15. The Resolution Professional is further directed to handover all records, premises / documents to Resolution Applicant to finalise the further line of action required for starting of the operation as contemplated under the Resolution Plan. The Resolution Applicant shall have access to all the records premises / documents through Resolution Professional to finalise the further line of action required for starting of the operation.

16. Accordingly, the Resolution Plan in **IA/2228/2021** is hereby allowed and approved.

Sd/-	Sd/-
SHYAM BABU GAUTAM	**JUSTICE P.N. DESHMUKH**
(MEMBER TECHNICAL)	**(MEMBER JUDICIAL)**

Arpan, LRA