

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO:II**

SPECIAL BENCH(Video Conference)

**CORAM: HON'BLE MADAN BHALCHANDRA GOSAVI – MEMBER JUDICIAL
HON'BLE DR.BINOD KUMAR SINHA-MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 03.09.2021 AT 12:00 PM THROUGH VIDEO CONFERENCE**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA(IBC)/47,130,194&395/2021 in CP(IB) No.72/9/HDB/2019
NAME OF THE COMPANY	Alekhya Drugs Pvt Ltd
NAME OF THE PETITIONER(S)	Trident Chemphar Ltd
NAME OF THE RESPONDENT(S)	Alekhya Drugs Pvt Ltd
UNDER SECTION	9 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

IA (IBC) No. 47/2021 is filed for approval of Resolution Plan. Order pronounced vide separate sheets. Application disposed as allowed.

IA (IBC) No. 130/2021 is filed by M/s. Trident Chemphar Limited, viz. Operational Creditor as well as Unsuccessful Resolution Applicant seeking to be brought on record as Respondent in IA No. 47/2021. This Adjudicating Authority has permitted the said applicant to file its objection in IA No. 47/2021 and the same has been filed by the applicant on 30.07.2021. Therefore, this IA stands disposed as infructuous.

Continued ...

AS

AS

IA (IBC) No. 194/2021 and IA (IBC) No. 395/2021 :

IA (IBC) No. 194/2021 is filed by M/s. RR Innovative (p) Ltd seeking condonation of delay of 293 days in filing its claim with the Resolution Professional and to direct Resolution Professional to admit its claim.

IA (IBC) No. 395/2021 is filed by Commercial Tax Department, Vijayawada, seeking condonation of delay of 05 days in filing its claim with the Resolution Professional and to direct Resolution Professional to admit its claim.

Both the Applications are *inter-alia* filed seeking condonation of delay in filing respective claims with the Resolution Professional. In these cases claims were filed after the approval of Resolution plan by CoC. If such claim is to be entertained at this stage, it would be detrimental to the interest of the other creditors and it would also increase the burden of the Resolution Applicant, whose plan is already approved by CoC. Further, CIRP Regulation 12(2) does not grant any discretion to the Resolution Professional for admitting belated claims as categorically held by Hon'ble NCLAT in Company Appeal (AT)(Insolvency) No.1050/2020 *Mukul Kumar, Resolution Professional of KST Infrastructure Ltd. Vs M/s RPS Infrastructure Ltd.*

Accordingly, Applications bearing IA (IBC) No. 194 and IA (IBC) No.395 of 2021 stand disposed of.



MEMBER (TECHNICAL)

Karim



MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-2**

IA (IBC) No. 47/2021

in

CP (IB) No. 72/9/HDB/2019

*Application under section 31(1) of the IB Code, 2016
Read with Regulation 39(4) of the IBBI (Insolvency
Resolution Process for Corporate Persons) Regulations, 2016.*

IN THE MATTER OF

M/S TRIDENT CHEMPHAR LTD

versus

M/s ALEKHYA DRUGS PRIVATE LIMITED

Filed by

Mr. Raghubabu Gunturu
402B, Technopolis, Chikoti Gardens
Begumpet, Hyderabad- 500016

...Applicant/
Resolution Professional

Date of order: 03.09.2021

Coram:

Shri Madan Balchandra Gosavi, Hon'ble Member (Judicial)
Dr. Binod Kumar Sinha, Hon'ble Member (Technical)

Appearance (via videoconference)

For Applicant: Shri P. Rama Krishna, Advocate

PER: BENCH

1. The present Application is filed by the Resolution Professional under section 31(1) of the IB Code, 2016, R/w regulation 39(4) of the IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016, seeking approval of resolution plan submitted by **Mr. K. Umamaheswara Rao** as duly approved by the Committee of Creditors.

2. The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order on 11.12.2019 and Mr. Ranga Rao Doradla was appointed as Interim Resolution Professional (IRP). The IRP was replaced by Shri Raghu Babu Gunturu as Resolution Professional vide order passed by this Adjudicating Authority on 12.03.2020 in IA No. 189/2020. The Applicant in compliance of the provisions of the Code and Rules framed there under conducted the CIRP of the Corporate Debtor. The CoC comprise of the following Financial Creditors.

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	Punjab National Bank (erstwhile oriental bank of commerce)	76%	Voted for
2	T. Venkateswara Rao (unsecured financial creditor)	21%	Voted for
3	Nimmagadda Prashanth (unsecured financial creditor)	3%	Voted for
		100%	

2. As seen from the records, after granting extension of 90 days beyond 180 days and excluding the covid induced lockdown period, the CIRP came to an end on 19.02.2021.
3. During the period of CIRP, 05 Expression of Interest were received from the following prospective Resolution Applicants pursuant to publication of Form-G as under:-
- (1) Alcon Biosciences Private Limited
 - (2) West Bengal Chemical Industries Limited
 - (3) Trident Chemphar Limited
 - (4) Veerat Finance and Investment Limited
 - (5) Mr K. Umamaheswara Rao.
4. Out of the above five, only 04 Resolution Plans were placed before the CoC in its 8th meeting held on 16.11.2020 and the Resolution Applicants were asked to enhance the offer. The CoC after negotiations evaluated the Resolution Plans submitted by the Resolution Applicants as per the Evaluation Matrix and in terms of Section 29A of the Code. As per decision taken in the 10th CoC meeting held on 21.12.2020, the resolution plans

- submitted by Mr. Umamaheswara Rao and Trident Chemphar Limited were put for e-voting from 24.12.2020 to 31.12.2020.
5. The resolution plan dated 17.12.2020 along with the Addendum dated 31.12.2020 submitted by **Mr. K. Umamaheswara Rao** was approved by the CoC with **100%** votes in favour of it under Section 30(4) of IBC on 31.12.2020 and the Applicant further submits that all the mandatory requirements envisaged under the Code and Rules/Regulations made thereunder have been met.
7. The Applicant has received performance security in the form of fixed deposit of Rs. 2,10,29,000/- on 03.02.2021 (Rupees Two crore ten lakhs and twenty nine thousand only), in favour of the Corporate Debtor, copy of which is annexed as Annexure-8 to the application.
8. However, when the instant IA was pending before the Adjudicating Authority, a memo dated 19.04.2021 was filed by the Applicant stating that this Tribunal had, vide order dated 19.03.2021, condoned the delay in filing the claims of two Operational Creditors before the Resolution Professional directing him to scrutinize and consider the claims so received. The Applicant considered their claims and the updated list of claims of Operational Creditors as approved by the CoC is filed vide memo stated supra requesting the Adjudicating Authority to read the addendum as part of the Resolution Plan.
8. **CONTOUR OF THE RESOLUTION PLAN:**
- (A) The Resolution Professional during the CIRP has convened 10 CoC meetings. The Resolution Plan dated 17.12.2020 along with the Addendum dated 31.12.2020 is submitted by **Mr. K. Umamaheswara Rao/ Resolution Applicant**. He is the promoter and Director of Corporate Debtor. He has submitted an Affidavit to the Resolution Professional certifying that he and connected persons are not disqualified under Section 29A of the Code. The Resolution Plan is submitted by MSME Corporate Debtor through the promoters. The Resolution Applicant has 37 years of experience in manufacturing process of pharma and marketing of pharmaceutical industry.

(B) The CoC comprised of the following financial creditors and the distribution of voting share among them is as under:-

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	Punjab National Bank (erstwhile oriental bank of commerce)	76%	Voted for
2	T. Venkateswara Rao (unsecured financial creditor)	21%	Voted for
3	Nimmagadda Prashanth (unsecured financial creditor)	3%	Voted for
		100%	

(C) The Resolution Plan for an amount of **Rs. 21.0288** crores provided for the stake holders under the Resolution Plan along with addendum dated 31.12.2020 and 10.04.2021 is as under:-

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed (in lakhs)	Amount Admitted (in lakhs)	Amount Provided under the Plan# (in lakhs)	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	0	0	0	0
		(b) Other than (a) above:	0	0	0	0
		(i) who did not vote in favour of the resolution Plan	1064.61	1064.61	1064.61	100%
		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	1064.61	1064.61	1064.61	100%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	0	0	0	0
		(b) Other than (a) above:	0	0	0	0
		(i) who did not vote in favour of the resolution Plan	353.00	345.09	345.09	97.76%
		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	353.00	345.09	345.09	97.76%
3	Operational Creditors	(a) Related Party of Corporate Debtor	0	0	0	0
		(b) Other than (a) above:				

		(i) Government (ii) Workmen (iii) Employees (iv) Suppliers / Vendors	21.45 2166.36	21.45 1920.10	21.45 546.10	100% 25.21%
		Total[(a) + (b)]	1719.13	1668.73	567.55	33.01%
4	Other debts and dues		0	0	0	0
Grand Total			3597.51	3351.25	1977.25	54.96%

(D) The timelines for the payment of the above mentioned debts of the Corporate Debtor are as follows:

Sl.No.	Description of stakeholder	Amount offered to stake holder (Rs.in lakhs)	Time period for payment
01.	CIRP costs	125.63	Within 30 days from the date of approval of RP by NCLT
02.	Secured Financial Creditor i.e. (there is only one Secured FC)	400.00	30 days from the date of order of NCLT approving the resolution plan
03.	Unsecured Financial Creditor	664.61	Within 6 months
04.	Operational Creditor	345.09	Within one year
		205.34	Within 30 days
		340.76	Within 06 months
05.	Workmen/Employees	21.45	Within 30 days from the date of order of NCLT
	Total amount	2102.88	

(E) Management of Corporate Debtor

The Resolution Plan has provided for constitution of Monitoring Committee consisting of two representatives from Resolution Applicant, the Resolution Professional and one representative from secured financial creditors who shall monitor and supervise the implementation of the Resolution Plan by the Resolution Applicant.

(F) Compliance of mandatory contents of Resolution Plan under the Code and CIRP Regulations:-


The Applicant has conducted a thorough compliance check of the Resolution Plan in terms of the Code as well as Regulations 38 & 39 of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016 (herein after referred to as Regulations) and has submitted his Form H under Regulation 39 (4). It is submitted that the Plan is in compliance with the provisions of the Code and the Regulations. That the liquidation value and fair value were also placed before CoC. The fair value is Rs. 29.01 crores and Liquidation value is Rs. 20.69 crores.





9. Further the Learned Counsel for the Applicant stated that the Resolution Plan takes care of the interest of the stakeholders concerned which includes Financial Creditors, Operational Creditors and payment of CIRP costs which is being taken care on priority to payment to the other creditors.
10. We heard the Counsel for Applicant. He submits that the Resolution Plan meets the requirement of Section 30 (2) of the Code in the following manner:
- (a) The Plan provides for the priority payment of CIRP costs estimated to the extent of Rs. 125.63 lakhs within 30 days from the date of approval of the plan by the Adjudicating Authority.
 - B. To pay an amount of Rs. 546.10 lakhs due to Operational Creditors and workmen claim of Rs. 21.45 lakhs of the Corporate Debtor in the manner indicated supra.
11. The Resolution Applicant proposed to appoint himself as Board of Director to manage the day to day affairs of the Corporate Debtor in terms of Section 30 (2) (d). The Plan also provides for constitution of Monitoring Committee for the implementation and supervision of the Resolution Plan as per clause 26 and 35 of the Plan. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force. The Resolution Plan is in compliance of Regulation 38 of the Regulations.
- (a) The payment due to operational creditors will be made in priority over Financial Creditors (Regulation 38 (1))
 - (b) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38 (1A)).
 - (c) Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of his related party has either failed or contributed to the failure of the implementation of any other approved Resolution Plan (Regulation 38 (1B)).





12. M/s Trident Chemphar Ltd/ being Operational Creditor having approx. 34% of debt and Unsuccessful Resolution Applicant filed objections in this IA vide memo dated 30.06.2021. In the said memo, they questioned the alleged arbitrary and unreasonable conduct of Resolution Professional. They submit that they were barred from attending certain CoC meetings and were asked to leave in certain COC meetings when the discussions on the resolution plans were held. That the minutes of the meetings provided to them were also abridged and that no voting on the plans was held. The learned Counsel would contend that two CoC meetings were held on 28.01.2021 and 03.02.2021 after the approval of the Resolution Plan on 31.12.2020.
13. It is further contended, the procedure contemplated by the Code was not followed by the Resolution Professional. Aggrieved by the actions of the Resolution Professional, the unsuccessful Resolution Applicant had filed IA No. 26/2021 which was allowed and directed the Resolution Professional to provide copies of all CoC meetings, resolution plan and other related documents to them for effective participation in the meetings. However, the RP on 25.02.2021 informed them that he cannot provide the same as there was a possibility of "conflict of interest" arising vis-à-vis certain discussions at the CoC meetings. They allege that the minutes of the 10th CoC meeting circulated to them did not disclose any voting or approval.
14. The Unsuccessful Resolution Applicant further accused the Resolution Professional of suppressing pendency of IA no. 2/2021 and acting at the behest of one of the Financial Creditors. He alleged that private discussions are held with the suspended Director/Resolution Applicant seeking directions to CoC de-novo consideration of the resolution plans and questioning the eligibility of promoters to submit a resolution plan.
15. We have considered the objections filed by Trident Chemphar Ltd. According to the provisions of IBC, 2016 once a CIRP application is admitted, it is the duty of RP to constitute CoC





and thereafter publish EoI, Information Memorandum and evaluation matrix on the basis of decisions taken in CoC meetings. Thereafter, upon receipt of EoI by potential Resolution Applicants, various Resolution plans are examined by the RP and the same are put up before the CoC for deliberations about each of those plans for considering their feasibility and reliability. In this regard, it is pertinent to note here that under the provisions of the Code, the commercial wisdom of the CoC has been given paramount status without any judicial intervention. As has been categorically held by Hon'ble Apex Court *in K. Shashidhar vs. Indian Overseas Bank & Ors (2019).....* ***"There is an intrinsic assumption in the framework of the Code that that the Financial Creditor are fully informed about the viability of the Corporate Debtor and feasibility of the proposed Resolution Plan. They act on the basis of thorough examination of the proposed Resolution plan and the opinion expressed by them after due deliberations in the CoC meetings through voting, as per respective voting shares, is a collective business decision. The legislature, consciously has not provided any ground to challenge the 'commercial wisdom' of either the individual Financial Creditor or their collective decision before the Adjudicating Authority that is made non-justiciable."***

16. In the recent judgement in *Arcelor Mittal India Pvt Ltd vs. Satish Kumar Gupta, 2019 2 SSC1*, Hon'ble Apex Court have laid down that a resolution applicant cannot claim a vested right that his Resolution plan be considered and therefore, no challenge can be preferred to the Adjudicating Authority at this stage. However, if on the other hand, a Resolution plan has been approved by the CoC and has passed muster before the Adjudicating Authority, this determination can be challenged before the NCLAT under section 61 or further challenged before the Supreme Court under section 62, if a question of law arises out of such order. In para 79 of the order, Hon'ble Supreme Court held as under:

“79. Given the timeline referred to above, and given the fact that a resolution applicant has no vested right that his resolution plan be considered, it is clear that no challenge can be preferred to the Adjudicating Authority at this stage. A writ petition under Article 226 filed before a High Court would also be turned down on the ground that no right, much less a fundamental right, is affected at this stage. This is also made clear by the first proviso to Section 30(4), whereby a Resolution Professional may only invite fresh resolution plans if no other resolution plan has passed muster.”

17. In **JMF ARC vs. Welldo Holdings and Export Pvt Ltd (Company Appeal (AT) No.134/2019)** Hon'ble NCLAT made it clear that no Interlocutory Applications before the Adjudicating Authority would be maintainable during the period of submissions of a CoC approved Resolution Plan by the RP before the Adjudicating Authority for final determination of that proposed CoC approved Resolution Plan. Even after determination of the Resolution Plan by the Adjudicating Authority, no IAs would be maintainable before the Adjudicating Authority, but only an appeal may be filed against such determination before Hon'ble NCLAT or before Hon'ble Supreme Court under section 62 of the Code, if a question of law arises out of such order.
18. In the instant matter, the CoC have approved the Resolution Plan submitted by the successful Resolution Applicant in terms of Section 30(4) and the same is pending before this Adjudicating Authority for determination under Section 31 of the Code. As laid down by Hon'ble NCLAT and Hon'ble Apex Court in the judgements supra, no challenge by way of an IA before this Adjudicating Authority or even by way of a Writ Petition before a High Court is possible at this stage, as no rights are affected at this stage. Therefore, the objections filed by the Trident Chemphar Ltd being Unsuccessful Resolution Applicant seeking to declare CIRP and process of consideration of resolution plans as vitiated and direct CoC de-novo consideration of the Resolution Plans cannot be acceded to. Accordingly, the objections are overruled.
19. In **K. Sashidhar v. Indian Overseas Bank & Others (in Civil Appeal No. 10673/2018)** the Hon'ble Apex Court held that if





the CoC had approved the Resolution Plan by requisite percent of voting share, then as per Section 30 (6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority. On receipt of such proposal, the Adjudicating Authority (NCLT) is required to satisfy itself that the resolution plan as approved by CoC meets the requirements specified in Section 30(2). No more and no less.

20. The Hon'ble Court has further held at para 35 of the said judgement that *the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements.*
21. The Hon'ble Supreme Court at para 7 of the judgement in the matter of *Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors (MANU/SC/1577/2019)*, has held that *a successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by the successful resolution applicant.*
22. In view of the above rulings of Hon'ble Apex Court, the Resolution Applicant takes over the Corporate Debtor with all its assets and liabilities as specified in the Resolution Plan subject to orders passed herein. The Resolution Plan has been approved by the CoC through e-voting from 24.12.2020 to 31.12.2020 with 100% votes in favour of the said Resolution Plan.
23. The Applicant/Resolution Professional has submitted that the Resolution Applicant has sought certain reliefs in the Resolution Plan. We are, however, not inclined to grant such

reliefs. The Resolution Applicant needs to approach the authorities concerned for permits, if required, and the same will be considered by the authorities concerned in accordance with law.

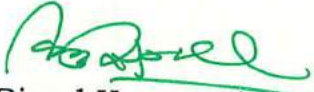
24. The Plan also provides for keeping the Company as a going concern and operate in its normal course of business upon implementation of Resolution Plan.
25. In the light of above and settled position of law, the instant Resolution Plan meets the requirements of Section 30 (2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law.

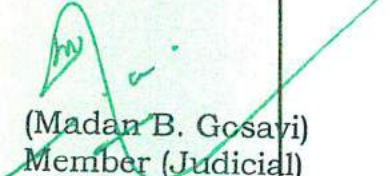
ORDER

26. The Resolution plan dated 19.05.2019 submitted by **Mr. K. Uma Maheswara Rao** ("Resolution Applicant") for **M/s ALEKHYA DRUGS PRIVATE LIMITED**, annexed to the Application is hereby approved and effective from date of passing of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
27. It is clarified under the Insolvency and Bankruptcy Code, 2016, all crystallized liabilities and unclaimed liabilities of the Corporate Debtor as on the date of this order shall stand extinguished on the approval of this Resolution Plan.
28. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor and shall be dealt with by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned. As

regards to the reliefs sought, the Corporate Debtor has to approach the authorities concerned for such reliefs and we trust the authorities concerned will do the needful.

29. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC) Hyderabad for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
30. Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to in para 8 (C) supra.
31. The moratorium under Section 14 of the Code shall cease to have effect from this date.
32. There shall be constitution of Monitoring Committee consisting of two nominees of Resolution Applicant, one nominee of Secured Financial Creditor and Resolution Professional for implementation and supervision of Resolution Plan. Resolution Professional will submit progress reports from time to time.
33. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this order for information.
34. The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.
35. The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and to IBBI.


(Dr Binod Kumar Sinha)
Member (Technical)


(Madan B. Gosavi)
Member (Judicial)