

**NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH**

**Under Section 60(5) of Insolvency and  
Bankruptcy Code, 2016**

**I.A. NO. 1141 OF 2020**

Filed by

**Mr. Amit Gupta,**  
Resolution Professional  
Having office at: 702, Janki Centre,  
Dattaji Salvi Road, Off. Veera Desai Road,  
Andheri West, Mumbai 400053

**...Applicant**

versus

**1. Corporation Bank**

Having Office at: Corporate Banking Branch,  
301-302, The Eagle's Flight, Suren Road,  
Andheri-Kurla Road, Andheri (East), Mumbai –  
400093

**2. ICICI Bank**

Having Office at: ICICI Bank Tower,  
Near Chakli Circle, Old Padra Road, Vadodra,  
Gujarat- 397007

**...Respondents**

In the matter of

**C.P. (IB) No. 197 OF 2018**

**ICICI Bank**

Having Office at: ICICI Bank Tower,  
Near Chakli Circle, Old Padra Road, Vadodra,  
Gujarat- 397007

**...Financial Creditor**

versus

**Unimark Remedies Limited**

Having its registered office at 501,  
E-Wing, Skypark CHS Ltd.,  
Oshiwara Garden Road, Next to HDFC House,  
Off. S.V. Road, Goregaon (West), Mumbai-  
400104

**...Corporate Debtor**

**Coram:**

**Hon'ble Shri. H.V. Subba Rao, Member (Judicial)**

**Hon'ble Shri. Shyam Babu Gautam (Member Technical)**

**Appearance:**

**For the Applicant/RP:** Adv. Rohan Rajadhyaksha

**For ICICI Bank:** Senior Counsel Mr. Sharan Jagtiani a/w Adv.  
Survankoor Das

**For Corporation Bank:** Adv. Rathina Marawarman

**Per: Hon'ble Shri. H.V. Subba Rao, Member (J)**

**Hon'ble Shri. Shyam Babu Gautam, Member (T)**

**Order Pronounced on: 19.11.2020**

**ORDER**

1. This is an Interlocutory Application filed by the Resolution Professional named Mr. Amit Gupta (hereinafter called the "Applicant" or the "RP") under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called the "Code"). The applicant is the Resolution Professional of Unimark Remedies Limited (hereinafter called as the "corporate debtor"), whose insolvency resolution process had been initiated by an application under Section 7, filed by ICICI Bank Limited which was admitted by this Tribunal vide an order dated 03.04.2018. The applicant was subsequently confirmed as the Resolution Professional of the corporate debtor in the first meeting of the Committee of Creditors (CoC).
2. Through this present application, the applicant seeks appropriate directions from this Tribunal with respect to order dated 24.02.2020 passed by this Adjudicating Authority in application bearing M.A. No. 1406 of 2019 which was filed by the Corporation Bank challenging the resolution plan approved by the CoC and seeking inter alia the appointment of fresh valuers.
3. The counsel for the applicant mentioned that an application bearing M.A. No. 23 of 2019 was filed by the Resolution Professional under Section 30(6) r/w Section 31(1) of the Code on 03.01.2020 seeking approval of Resolution Plan submitted by a consortium of Asset Reconstruction Company (India) Limited, Intas Pharmaceuticals and Shamrock Pharmochemi Private Limited ("ARCIL Consortium") which was approved by 72.25% voting share of the CoC.
4. The counsel further mentioned that an application bearing MA No. 384 of 2019 was filed by Corporation Bank *inter alia* objecting to approval of Resolution Plan of ARCIL Consortium, seeking filing of the valuation reports in sealed cover. The Corporation Bank also

filed another M.A. bearing no. 1046 of 2019 challenging the resolution plan approved by the CoC of the Corporate Debtor and seeking, *inter alia*, the appointment of fresh valuers to value the tangible and intangible assets of the Corporate Debtor. These applications were heard by the bench of Ld. Judicial Member Mr. Bhaskara Pantula Mohan and Ld. Technical Member Mr. V. Nallasenapathy.

5. In this M.A. bearing No. 1406 of 2019, a split verdict was delivered on 11.09.2019 whereby the Ld. Judicial Member allowed the application and directed the appointment of an independent valuer for a fresh valuation of the Corporate Debtor, while the Ld. Technical Member differed and dismissed the application. Further M.A., 354 of 2019 was also dismissed as infructuous by that bench.
6. Later, this order dated 11.09.2019 of the then Bench was challenged by the applicant before the Hon'ble NCLAT by an appeal bearing No. Company Appeal (AT) (*Insolvency*) No. 1078 of 2019. This appeal was disposed of on 17.10.2019 with the following observation:

*"In the facts and circumstances, we are of the view that 'Resolution Professional' should bring this fact to the notice of the said Bench of the Adjudicating Authority comprising the same Members i.e. Mr. Bhaskara Pantula Mohan, Member (J) and Mr. V. Nallasenapathy, Member (Technical) who will take steps to refer the matter to the third Member in accordance with law and if so required, after necessary permission of the Hon'ble President, National Company Law Tribunal. The 'Resolution Professional' will also bring this fact to the notice of the President, National Company Law Tribunal who may pass the appropriate order to place the matter before the third Member.*

*In view of the fact that there is a dissenting order passed by the two Members, we are not considering the questioning of legality and propriety of the order or the adverse remarks passed against the 'Resolution Professional', which is left open for determination by the 3<sup>rd</sup> Hon'ble Member and if so required later it may be decided by this Appellate Tribunal.*

*The appeal stands disposed of with aforesaid observations".*

The Hon'ble President, NCLT vide an internal order dated 04.11.2019 constituted a Special Bench comprising Hon'ble Judicial Member Smt. Suchitra Kanuparthi to adjudicate on the issue whether fresh valuation can be ordered in view of the split verdict delivered on 11.09.2019. Thereafter, application bearing M.A. No. 1406 of 2019 filed by Corporation Bank was argued at length before this Bench and was reserved for order on 12.12.2020 and on 26.01.2020, this Special Bench disposed the M.A. bearing No. 1406 of 2019 with the following directions:

*“Therefore, it is ordered that the Resolution Professional take steps to appoint a fresh Valuer with a limited scope of valuing the Intangible asset considering the International Standard of Valuation of a Pharmaceutical Company and submit his report within a period of two weeks of receipt of the order copy and the CoC is directed to re-consider the valuation submitted by the third valuer.*

*The Misc. Application is disposed of with the above direction.”*

7. The applicant added that the intangible assets were valued at zero/nil in both the valuation reports. Also, vide the order dated 20.01.2020, the Special Bench directed the Applicant to take steps to appoint a fresh valuer with a limited scope of valuing only the intangible assets of the Corporate Debtor considering International Valuation Standards of a pharmaceutical company and to *“submit his report within a period of two weeks of receipt of the order copy”* and the CoC was directed to re-consider the valuation submitted by the third valuer.
8. The counsel for the applicant mentioned that accordingly, the meetings of the CoC were conducted wherein the applicant apprised the CoC members about the abovementioned directions passed by the Special Bench and the CoC after some discussion and deliberations regarding quotations received from registered valuers having expertise in carrying out valuations of tangible assets in the pharmaceutical sector as per International Valuation Standards, it was decided that the Resolution Professional shall take appropriate measures to appoint the third valuer to value the intangible assets of the Corporate Debtor. And pursuant to this, the applicant

appointed GAA Advisory to value the tangible assets of the Corporate Debtor.

9. Later, on 24.02.2020, an application bearing M.A. No. 3238 of 2019 was filed by the Employee State Insurance Corporation, Sub-Regional Office, Surat ("ESIC") against the Corporate Debtor which was listed before the Bench of Mr. B. P. Mohan (Member Judicial) and Mr. V. Nallasenapathy (Member Technical). This application was filed by ESIC against the non-consideration of its claim which was submitted to the applicant after over three months of CoC approval of the Resolution Plan of ARCIL Consortium. While hearing this application, the Hon'ble Judicial Member enquired about the status of M.A. No. 1406 of 2019 being the Corporation Bank Application, which was referred to Smt. Suchitra Kanuparthi on account of the split verdict. The counsel for the applicant informed the Bench about the order dated 20.01.2020 and the steps taken by him in compliance with the said order i.e. appointment of a fresh valuer namely GAA Advisory for valuing the intangible assets of the Corporate Debtor considering the International Standard of Valuation of a pharmaceutical company. Upon hearing the above, the following observation was made by the Bench:

*"This action on the part of the Resolution Professional in not consulting us for the appointment of independent valuer particularly when the specific direction has been given in our earlier orders dated 11.09.2019 that only the Bench shall appoint the valuer after obtaining necessary information from the market, the matter and the procedure in which the Resolution Professional has appointed a valuer which in our opinion is not correct."*

*"...its our opinion that fresh valuation is not just confined to intangible assets alone but also the tangible assets. It was the case of the applicant in Misc. Application, that the fixed assets were thoroughly undervalued. Hence a fresh valuation by independent expert valuers be undertaken for both tangible and intangible assets."*

*"In view of the same, we set aside the appointment of M/s G.A. Advisory LLP as valuer by the Resolution Professional."*

*We will appoint a suitable expert valuer to value afresh both tangible and intangible assets, on the next date of hearing after*

*obtaining necessary information from the market. We have requested Mr. Ram Ratan Kanungoo, a senior Chartered Accountant and also registered Resolution Professional to find someone by making enquiries and we also would request Mr. S. Raghunath & Co., Chartered Accountant and Resolution Professional to assist us for appointing a suitable valuer.*

*List this matter on 17.03.2020 for further consideration.”*

10. On 17.03.2020, the matter was listed for hearing but was not taken up and adjourned on account of the outbreak of COVID-19 pandemic and the preventive measures taken to control its spread. Meanwhile, the applicant approached the Hon'ble NCLAT by way of Company Appeal (AT)(Insolvency) No. 418 of 2020, challenging the direction of fresh valuation as made by the order dated 20.01.2020 of the Special Bench of Smt. Suchitra Kanuparthi, Member Judicial. The Hon'ble NCLAT vide an order dated 13.03.2020 disposed of the said appeal, declining to interfere with the order dated 29.01.2020.
11. The applicant submitted that as on date, on account of lack of clarity regarding the valuation of the Corporate Debtor, the CIRP of the Corporate Debtor hangs in the balance, with no closure in sight. As a result of the delay, the Corporate Debtor is facing enhanced operational and cash flow challenges, which have further jeopardised the successful closure of its resolution process. The Corporate Debtor was a going concern and producing various pharma products but due to lack of finances, rising operational costs and increasing CIRP costs in running the company, the operation of one of the plants located at Bavla, Ahmedabad of the Corporate Debtor had to be shut in December 2019. The applicant mentioned that per month the company is incurring amounts upto INR 3.48 Crores per month and the balance in the account of the Corporate Debtor as on 02.06.2020 was INR 6,55,854/-. The application for approval of resolution plan can also be taken up and considered by the CoC once the valuation is done. Therefore, this application was filed by the applicant requesting the same valuer to be allowed to continue with the valuation process.

12. Senior Counsel Mr. Sharan Jagtiani also appeared for the ICICI Bank and supported this application by the RP and prayed for appointing the same GAA Advisors to continue the valuation process of the corporate debtor. Adv. Ms. Rathina Marawarman appeared for the Corporation Bank and opposed this application stating her lack of faith on the said valuer.

### **FINDINGS**

We have heard all the parties concerned and taken all the documents submitted by them into consideration. It is observed that the applicant who is the Resolution Professional as well as the CoC wants to continue with the same valuer i.e. GAA Advisory who is well aware of the facts of the case and has done valuation of the Corporate Debtor earlier. On the other hand, the Corporation Bank does not have faith on the CoC, the RP as well as the GAA Advisory and therefore, wants this Tribunal to appoint a fresh valuer for conducting the valuation process.

We are of the opinion that the Corporation Bank holds approximately only about 7% of the share in the CoC and has time and again raised objections which has resulted in delay in the process of CIRP. As mentioned by the Resolution Professional, the Corporate Debtor has already crossed 550 days of CIRP and is incurring huge expenditure.

We would like to consent to the order passed by the Special Bench comprised of Member (Judicial) Mrs. Suchitra Kanuparthi.

Therefore, with a view to expedite the process, as the GAA Advisors are already aware of the position of the Corporate Debtor, it is advisable to continue with the same valuer. Also, majority of the CoC, under its commercial wisdom has agreed for the appointment of GAA Advisory.

In view of the same and with the above observations, we allow this application and direct the IRP to continue with the valuation process.

Sd/-

**SHYAM BABU GAUTAM**  
**Member (Technical)**

Sd/-

**H.V. Subba Rao**  
**Member (Judicial)**