

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**


PRESENT: HON'BLE SHRI K ANANTHA PADMANABHA SWAMY – MEMBER JUDICIAL

PRESENT: HON'BLE SHRI BINOD KUMAR SINHA –MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 11.12.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No. 399/2019 in CP(IB) NO. 414/9/HDB/2018
NAME OF THE COMPANY	Thexa Pharma Pvt Ltd
NAME OF THE PETITIONER(S)	Shree G.Engineering Corporation
NAME OF THE RESPONDENT(S)	Thexa Pharma Pvt Ltd
UNDER SECTION	9 OF IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
G. MURALI	R.P Team	gmurali34@gmail.com	

Counsel for Respondent(s):

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

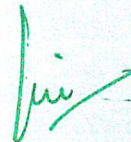
ORDER

IA No.399/2019

Order pronounced in open court. IA allowed vide separate order.



MEMBER TECHNICAL



MEMBER JUDICIAL

Rk

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

IA No.399 of 2019

In

CP (IB) No.414/9/HDB/2018

In the matter of Thexa Pharma Private Limited

Between:

M/s. Shree G.Engineering Corporation
Registered Office Situated at:
Shop no.11, 1st floor, 5-1-523, Hill Street,
Secunderabad, Telangana – 500 003

...Petitioner/
Operational Creditor

Vs.

M/s. Thexa Pharma Private Limited
Registered Office Situated at:
Survey No.40/13, Kolkulapally Village,
Modgul Mandal,
Mahaboobnagar District - 509 327

...Respondent/
Corporate Debtor

Madhusudhan Rao Gonugunta
Resolution Professional,
IBBI/IPA-001/IP-P00181/2017-18/10360
7-1-285, Flat No. 103, Sri Sai Swapna Sampada Apartments,
Balkampet, Sanjeev Reddy Nagar,
Hyderabad, Telangana, 500 038

...Applicant/
Resolution Professional

Date of Order: 11.12.2019.

Coram: Shri. K. Anantha Padmanabha Swamy, Member Judicial.
Dr. Binod Kumar Sinha, Member Technical.

Parties/Counsel Present:

For the Applicant:

Mr. G. Madhusudhan Rao, RP


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Per: Dr. Binod Kumar Sinha, Member Technical

ORDER

1. Present Application is filed under Section 30 of the Code, *inter-alia*, seeking following prayers:

- a) To pass an order for approval of the submitted Resolution Plan (which has been approved by COC) under section 31(1) of the IBC, 2016;
- b) To pass an order to discharge or provide immunity from all the liabilities/Disputes/proceedings/penalties/suits/attachments/cases whether civil or criminal filed against the Corporate Debtor whether accounted/known or not on payment of the agreed consideration by Resolution Applicant;
- c) To approve for waiver of the costs relating to increase of the Capital if needed, allotment of Securities (Equity Shares), Transfer of Shares and any other costs involved in the change of the control or shareholding of the company in favour of Resolution Applicant.
- d) To approve for waiver of Cost of transfer if any payable under respective statutes, in relation to Immovable Properties of the Corporate Debtor in favour of Resolution Applicant.

2. Brief submissions as stated by the Applicant are as under:

- a. That the Corporate Debtor was admitted for CIRP on 28.08.2018 and Mr. G. Madhusudhan Rao was appointed as Interim Resolution Professional (IRP) on 03.09.2018 and the same was confirmed as RP.
- b. That RP issued Invitation for Expression of Interest in Newspapers on 15.11.2018.
- c. That in the 4th CoC meeting held on 23rd January 2019, RP circulated the Resolution Plan received to the COC members, COC members read the

resolution plan and suggested the RP to call the Resolution applicant to the next COC meeting.

- d. That in the 5th CoC meeting held on 25th January 2019, COC members discussed, Reviewed and selected one Resolution Plan submitted by M/s. Cymex Life Sciences Private Limited.
- e. That the Resolution Professional has circulated copy of section 29A of Insolvency and Bankruptcy Code (Amendment) Act, 2017 dated 19th January 2018 to the COC members and COC members discussed on the compliance under section 29A of Insolvency and Bankruptcy Code (Amendment) Act, 2017 dated 19th January 2018. Resolution Professional circulated the Notarized Affidavit received from the Resolution Applicant in respect of the Resolution Plan received. COC members discussed on point to point compliances between the applicable Sec 29A and Notarized declarations submitted by the Resolution Applicant Company.
- f. That the Resolution Professional has circulated Section 30, section 31 of the IBC, 2016 along with Regulations of 37, 38 and 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 to the COC members, Resolution Professional examined the compliance of the sec 30(2) of IBC, 2016 with respect to the Resolution Plan.
- g. That the Resolution Professional and COC member i.e Andhra Bank examined the compliance of the Regulations 37 and 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016.
- h. That the COC member and RP called Mr. Ummadisetty Loka Ramakrishna, Director of the Resolution Applicant for negotiations who is highest bidder and after final negotiations with the resolution Applicant


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i.e M\s. Cymex Life Sciences Private Limited, they agreed for the followings:

- a) To improve the Resolution Plan consideration from Rs.9 Crores to Rs.10.50 Crores. And
 - b) Also agreed to pay the balance consideration of Rs.7.50 Crores within 30 days from the date of Approval of Resolution Plan by Hon'ble NCLT, Hyderabad instead of 60 days proposed in initial Resolution Plan submitted on 14th January, 2019. And
 - c) Also agreed to issue a Cheque for Rs.7.50 Crores as a part of the guarantee.
- j. That the COC members also informed to the Resolution Applicant about the following undertakings:
- i. In case of Resolution Plan has not been approved by COC or NCLT, Hyderabad, the initial Deposit of Rs. 3 Crores will be refunded without any Interest.
 - ii. In case of default in payment of installment after approval of Resolution Plan by National Company Law Tribunal, the Resolution Applicant has agreed for forfeiture of amount of Rs. 3 Crores plaid by them.
- k. That the COC members asked the RP about valuation reports of the Corporate debtor and the RP circulated the same after taking NDA. CoC Members discussed about the fair value of Rs.12.09 Crores and liquidation value of Rs.8.74 Crores with reference to the revised Resolution Plan Consideration of Rs. 10.50 Crores (First Resolution Plan Consideration is Rs.9 Crores).


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- l. That, in the 6th CoC meeting held on 30th January 2019, RP informed that letter of undertakings and letter of amendments and Cheque for balance Resolution Plan consideration of Rs. 7.5 Crores dated 29th COC members discussed, Reviewed and selected the Resolution Plan submitted by M/s. Cymex Life Sciences Private Limited. COC members in principally selected the Resolution Plan for total Consideration of Rs.10.50 Crores.
- m. That RP applied to Hon'ble NCLT, Hyderabad. Hon'ble NCLT, Hyderabad passed an order for extension of CIRP period by 90 days on 18.02.2019.
- n. That in the 8th CoC meeting held on 02.05.2019, members of the CoC i.e. Andhra Bank (Sole Financial Creditor), approved the revised Resolution Plan received on 30th January 2019 which contains the following:
 - a) Resolution Plan consideration improved from Rs.9 Crores to Rs.10.50 Crores and
 - b) Also agreed to pay the balance consideration of Rs 7.50 Crores within 30 days from the date of Approval of Resolution Plan by NCLT, Hyderabad instead of 60days proposed in initial Resolution Plan submitted on 14th January, 2019 and
 - c) Also given a postdated Axis Bank Cheque (No: 148317) dated 29th January 2019 for Rs.7.50 Crores as a part of the guarantee.
- o. The COC member i.e., Andhra Bank (Sole lender with 100% voting share) informed that their competent authority has approved the Resolution plan on 12.04..2019 with the following terms and conditions:
 - a) Legal action against the Promoter/Guarantors shall be continued independent of CIRP for recovery of dues.
 - b) SARFAESI proceedings will continue for sale of collateral securities.


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- c) With respect to collateral securities provided to the Bank which are not traceable, necessary against the persons who offered security will be initiated, as there is discrepancy in the property mortgaged.
- p. The CoC i.e., Andhra Bank, which is the sole Financial Creditor of the Corporate Debtor, holding 100% voting rights have approved the Resolution Plan submitted by the highest bidder i.e., M/s. Cymex Life Sciences Private Limited and passed the following resolution for getting the approval from the Hon'ble NCLT, Hyderabad:

“Resolved that the Resolution Plan submitted by M/s. Cymex Life Sciences Private Limited has been approved with 100% voting share and Resolution Professional shall submit the approved resolution plan and other relevant certificates, Documents to the Adjudicating Authority i.e., Hon'ble NCLT, Hyderabad to get the approval at the earliest.”

3. The brief contents of the Resolution plan are as under:
- a. That the Resolution Applicant is a company i.e. CYMEX LIFE SCIECNES PRIVATE LIMITED and (hereinafter referred to as the “Group”). The company is into Pharma, Life sciences, etc., The promoters are Capable of Leading management team in identifying and correcting critical problems; reduces and streamlined overhead expenses, overhauled and improved operating processes and systems, resolved quality and management issues, and differentiated product line. Now. With the enough experience gained in other fields, the promoters being there in the Bulk drug manufacturing industry, planned to acquire this unit as a part of the forward integration plan.
- b. The amounts provided for the stakeholders under the Resolution Plan is as under:

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Sl. No.	Category of Stakeholder*	Amount claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the
1	Secured Financial Creditors	44,55,23,513	44,55,23,513	10,26,42,984	23.04%
2	Unsecured Financial Creditors	NIL	NIL	NA	NA
3	Operational Creditors	7,10,55,967	6,51,26,835	NIL	NIL
	Government	NIL	NIL	NA	NA
	Workmen	NIL	NIL	NA	NA
	Employees	NIL	NIL	NA	NA
	Total	7,10,55,967	6,51,26,835	NIL	NIL
4	Other Debts And Dues	NIL	NIL	NA	NA
	TOTAL	51,65,79,480	51,06,50,384	10,26,42,984	19.87%

- c. The Interests of existing shareholders have been altered by the Resolution as under:

Sl. No	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%)
1	Equity	1,25,53,672	NIL	100%	NIL
2	Preference	NIL	NIL	NIL	NIL

- d. That the Resolution Applicant confirms that it and connected persons are not disqualified under Section 29A of the Code.
- e. That in relation to the disclosure regarding “persons who will be promoters or in the management or control of the business of the Corporate Debtor during the implementation of the Resolution Plan”, please note that from the Effective Date, Resolution Applicant shall be in control of the business, as we shall be given taking over the Company as a going concern along with all the immovable Assets, movable assets, Subsidies/Incentives receivables from Statutory authorities even though change in ownership, intellectual property rights, molecules, products, all current assets, including receivables and other actionable claims of the Corporate Debtor etc.,

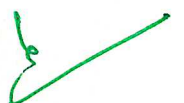
- f. That NCLT may recommend to the Government of India or any other State Government (including Government of Telangana) to extend Power Subsidy, Interest Subsidy, Investment Subsidy, Waiver of GST. etc., for a period of 5 years to the Resolution Applicant.
4. RP has filed a memo in compliance with amended Section 30(2)(b) of the Code, stating as under:

“The Applicant humbly submits that as per the provisions of Section 30(2)(a) of IBC, 2016 the Resolution Plan provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the [payment] of other debts of the corporate debtor;”

It is humbly submitted that the Payment of Insolvency Resolution Process Costs are provided in priority over other debts of the Corporate Debtor. (Provided as per the Clause 7.1(c) of the COC Approved Resolution plan at page no.92 of the IA No. 399 of 2019)”

5. RP further filed a memo enclosing Two No Objection Certificates (NOCs) from the Mr. Sharat Nalamothu – Suspended Managing Director of Corporate Debtor and Mr. Thiloatham Reddy Kolanu – Suspended Director of Corporate Debtor relating to approval of Resolution Plan submitted by M/s. Cymex Life Sciences Pvt Ltd which is already approved by 100% COC member and same has been perused.
6. Heard Resolution Professional and perused the Resolution Plan and other documents submitted along with Application.
7. Section 30(2) of the Code as amended w.e.f. 06.08.2019 enjoins upon the resolution professional to examine each resolution plan received by him to confirm that such plan –
- a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;


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- b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than:
 - i. the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or
 - ii. the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the Corporate Debtor.
- c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
- d) the implementation and supervision of the resolution plan;
- e) does not contravene any of the provisions of the law for the time being in force
- f) confirms to such other requirements as may be specified by the Board.

8. Section 30(4) of the Code as it stands at present after the amendment reads as follows: -

“(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six percent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board.”

9. Section 30(6) of the Code enjoins the resolution professional to submit the resolution plan as approved by the committee of creditors to the Adjudicating

Authority. Section 31 of the Code deals with the approval of the resolution plan by the Adjudicating Authority, if it is satisfied that the resolution plan as approved by the committee of creditors under section 30(4) meets the requirements as referred to in section 30(2).

10. Thus, before approving the Resolution plan, it is the duty of the Adjudicating Authority that it should satisfy itself that the Resolution plan as approved by the COC meets the requirements as referred to in sub-section (2) of Section 30.
11. On perusal of the Resolution Plan, this Adjudicating Authority has observed that the Resolution plan placed for consideration provides for the following:
 - a) Payment of CIRP Cost as specified U/s 30(2)(a) of IBC, 2016.
 - b) Repayment of Debts of Operational Creditors as specified U/s 30(2)(b) of IBC, 2016.
 - c) Provides for management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of IBC, 2016.
 - d) The implementation and supervision of Resolution Plan shall be done by Insolvency Resolution Professional and by the COC as specified U/s 30(2)(d) of IBC, 2016.
 - e) The Resolution Plan is not in contravention to any of the provisions of Law, for the time being in force, as specified U/s 30(2)(e) of IBC, 2016.
 - f) The Resolution plan conforms to such other requirements specified by the Board.
12. In terms of Regulation 27 of CIRP Regulations, Liquidation value was ascertained through two registered valuers, and the Resolution Plan offers more than the average liquidation value. The Liquidation value as ascertained by RP is Rs. 8,74,10,231/-


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13. The RP has complied with the code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of CIRP regulations.
14. The identity of the Resolution Applicants have been duly verified by the RP and affidavit as per section 30(1) of the Code has been obtained from the Resolution Applicants stating that it is not ineligible U/s 29A of the IB Code, 2016.
15. 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. There is no objection filed by any other person in this regard.
16. Copy of Form-H (Compliance Certificate) filed by the RP along with the Plan has been perused and considered. The RP *inter-alia* has certified as under:
 - i. The said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.
 - ii. The Resolution Applicant M/s. Cymex Life Sciences Private Limited has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.
 - iii. The said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution plan has been approved by 100% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.


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- iv. The voting was held in the meeting of the CoC on 02.05.2019 where all the members of the CoC were present.
17. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and Regulations thereunder.
18. It is also evident that the Resolution Plan placed before this Adjudicating Authority, was approved by the Committee of Creditors in its meeting dated 02.05.2019 with 100% votes cast in favour of Approval of Resolution Plan.
19. In *K Sashidhar Vs. Indian Overseas Bank & Others*, decided on 05.02.2019 in Civil Appeal No.10673/2018 with CA Nos.10719/2018, 10971/ 2018 and SLP(C) No.29181/2018, the Hon'ble Supreme Court, noticing the provisions of section 30(4), 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 (NCLT). On receipt of such a 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. In the said judgment, in para 35, the Hon'ble Supreme Court held that the discretion of the adjudicating authority is circumscribed by Section 31 and is 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. In view of the discussions in the foregoing paragraphs, the 'Resolution Plan' filed with the Application meets the requirements of Section 30(2) of the I&B Code, 2016 and Regulations 37, 38, 38(1A) and 39 (4) of IBBI (CIRP)

Regulations, 2016. The 'Resolution Plan' is also not in contravention of any of the provisions of Section 29A. Hence, this Adjudicating Authority is satisfied that the Resolution Plan is in accordance with Law. Therefore, the 'Resolution Plan' annexed with Application bearing IA No. 399 of 2019 filed in CP(IB) No. 414/9/HDB/2017 is hereby approved, which forms part of this Order and which shall be binding on the corporate debtor and 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, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

22. However, the Resolution Plan approved shall not construe any waiver to any statutory obligations/liabilities arising out of the approved Resolution Plan and same shall be dealt in accordance with the appropriate Authorities as per relevant Laws. We are of the considered view that if any waiver is sought in the Resolution Plan, the same shall be subject to approval by the concerned Authorities. The same view has also been held by Hon'ble Principal Bench, NCLT in the case of *Parveen Bansal Vs. Amit Spinning Industries Ltd.* in CA No.360 (PB) 2018 in CP No (IB) 131 (PB)/ 2017.
23. Further with regard to retention of employees under clause 19 of the Resolution Plan, it is observed as "... *On acquisition of control over the Corporate Debtor by the Resolution Applicant in accordance with this Resolution Plan, the Resolution applicant proposes that the workmen and employees of the Corporate Debtor will be employed by the Corporate Debtor on that suitability and as per operational requirements, Suitable augmentation of human resources to implement the Resolution Plan be undertaken by the Resolution applicant. The Resolution applicant reserves the right to replace/remove existing employees to bring in operation*






efficiencies in the operations of the Corporate Debtor. The Resolution applicant may also enter into appropriate agreements with the employee. It is observed that any automatic termination of employees/labor would defeat the very purpose of IB Code, i.e., protecting the interest of all the stakeholders as the employees/labor (work force) are one of the major stakeholder of any corporate entity. Therefore, Resolution Applicant is directed to undertake that there shall be no automatic termination of employee/labor upon approval of the Resolution Plan.


24. This Adjudicating Authority orders for the Constitution of Monitoring Committee consisting of Mr G. Madhusudhan Rao, RP, one representative nominated by the Resolution Applicant and one representative nominated by the Financial Creditors to supervise the implementation of the Resolution Plan and further Resolution Professional is directed to file status of implementation of Resolution Plan before this Adjudicating Authority from time to time.
25. Accordingly, the MoA and AoA shall be amended and filed with the RoC for information and record as prescribed. While approving the 'Resolution Plan', as mentioned above, it is clarified that the Resolution Applicant shall pursuant to the Resolution Plan approved under Sub-Section (1) of Section 31 of the I&B Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for in such law.
26. The approved 'Resolution Plan' shall become effective from the date of passing of this Order.
27. This Adjudicating Authority hereby directs the RP to supervise the implementation of the Resolution plan and file status of implementation of Resolution Plan before this Adjudicating Authority from time to time.

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28. The order of moratorium passed by this Adjudicating Authority under Section 14 of the I&B Code, 2016 shall cease to have effect from the date of passing of this Order.
29. The Resolution Professional shall forward all record relating to the conduct of the CIRP and the 'Resolution Plan' to the IBBI along with Copy of this Order, so that the Board may record the same on its data-base.
30. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant.
31. Accordingly, IA No. 399 of 2019 is disposed of as allowed.


11.12.19
Dr. Binod Kumar Sinha
Member Technical


K. Anantha Padmanabha Swamy
Member Judicial

SKRathi