

**NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH**

**CA Nos.1105/2019 & 55/2020  
IN  
CP (IB) No.19/Chd/CHD/2018**

**Under Section 31 of the  
Insolvency and Bankruptcy  
Code, 2016.**

**In the matter of:**

**Small Industries Development  
Bank of India (SIDBI)**

...Financial Creditor

Vs.

**Mansa Print & Publishers Ltd.**

...Corporate Debtor

**And in the matter of:**

CA No.55/2020

**CA Jalesh Kumar Grover,**  
Resolution Professional,  
Mansa Print & Publishers Ltd.,  
SCO 818, 1<sup>st</sup> Floor, NAC  
Manimajra.

...Applicant-Resolution Professional.

**Order delivered on:18.03.2020**

**Coram: Hon'ble Mr. A.K Vatsavayi, Member(Judicial).  
Hon'ble Mr. Pradeep R. Sethi, Member(Technical).**

For the Resolution Professional: 1) Mr. Abhishek Anand, Advocate  
2) Mr. Viren Sharma, Advocate

**Per: Pradeep.R.Sethi, Member (Technical)**

**ORDER****CA Nos.1105/2019**

This application is filed by the Resolution Professional (**RP**) for seeking direction to allow him to convene the meeting of Committee of Creditors (**CoC**) for consideration of the resolution plan for the corporate debtor and exclude/extend a period of 29 days for CIRP. Vide order dated 26.11.2019, the RP was directed to hold the meeting and place before the CoC the resolution plan received on 26<sup>th</sup> day and if the CoC passes the resolution to file the instant application, then the present application shall be considered on merits. The matter was directed to be listed on 13.12.2019. The learned counsel for the RP submitted that in terms of the earlier order dated 26.11.2019, the meetings of the CoC were convened on 28.11.2019 and 12.12.2019 and the voting will commence on 13.12.2019 and accordingly, sought more time. The matter was thereupon directed to be listed on 05.02.2020.

2. CA No.55/2020 was filed on 08.01.2020 for approval of the resolution plan. CA No.1105/2019 thereby becomes infructuous and is disposed of.

**CA No.55/2020**

CA No.55/2020 is filed by the Resolution Professional (**RP**) under Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the **Code**) read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the **Regulations**) seeking sanction of resolution plan as approved in the meeting of the CoC held on 12.12.2019 and through e voting on 19.12.2019.

2. It has been submitted that petition was filed by the Financial Creditor i.e. Small Industries Development Bank of India (**SIDBI**) under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of M/s. Mansa Print & Publishers Limited (hereinafter referred to as **Corporate Debtor**) and the same was admitted vide order dated 28.02.2019 and the CIRP of the corporate debtor was initiated. It is submitted that vide the same order, the applicant was appointed as Interim Resolution Professional (**IRP**) and within three days of the appointment order, the IRP issued a public announcement as per Regulation 6 of the Regulations read with Section 15 of the Code in Form A in two newspapers i.e. Amar Ujala (Hindi) dated 02.03.2019 and in Financial Express (English), on 02.03.2019 thereby inviting claims from the creditors of the corporate debtor as envisaged in the Code.

3. It is submitted that in pursuance of the public announcement, total 3 claims were received from the secured financial creditors which were verified and after collation, the IRP constituted the CoC as per the provisions of Section 21 of the Code.

4. It is submitted that the applicant as IRP also appointed two registered valuers to determine the fair value and liquidation value of the corporate debtor in accordance with Regulation 35 of the Regulations and the fair value and liquidation value as assessed on the basis of these two reports comes to ₹15.49 and ₹9.56 crores respectively.

5. It is stated that in the first meeting of the CoC held on 29.03.2019, the CoC resolved to continue with the IRP and appointed him as RP and in the second meeting of CoC held on 02.05.2019, the eligibility criteria for prospective

Resolution Applicants was discussed and evaluation matrix along with request for resolution plan was approved by the CoC attached as Annexures-4A and 4B. The RP made a public announcement for invitation of resolution plan/expression of interest (**EOI**) in Form G on 07.05.2019 as prescribed in Regulation 36A of the Regulations.

6. The RP apprised the CoC that EOI was received from 4 prospective resolution applicants, out of which one was found to be ineligible under Section 29A of the Code. Therefore, with a view to receive additional EOIs, Form G was again republished on 20.06.2019 in Punjab Jagran (All Punjab) (Punjabi Edition), Amar Ujala (Chandigarh, Himachal) (Hindi Edition) and Business Standard (Delhi, Chandigarh) (English Edition). The last date for submission of EOI was fixed as 05.07.2019. Copy of Form G dated 20.06.2019 is at Annexure-A7 of the application.

7. It is submitted that total 3 resolution plans were received by the RP out of which one of the applicants namely Siddhartha Super Spinning Mills withdrew its proposal as it was much lower than the other two applicants namely ANG Lifesciences (India) Limited (**ALIL**) and jointly by Anil Gupta and Shruti Gupta (**Joint Applicants**). Since the amounts proposed by the other two resolution applicants were much lower than the claim amounts, Form G was again published on 27.08.2019 for inviting fresh expression of interest. The last date for submission of expression of interest was fixed at 17.09.2019.

8. CA No.678 of 2019 was filed by the RP under Section 12(2) of the IBC, 2016 for extension of the CIRP time period by a further period of 90 days and the

same was allowed vide order dated 20.09.2019. A copy of the order is part of document at Annexure A-13 of the paper book.

9. In pursuance of publication of fresh Form G dated 27.08.2019, no new resolution plan was received and therefore, negotiations with respect to the resolution plan were held with the joint resolution applicants which was further analysed in the 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> meeting of the CoC but the same was rejected by the CoC.

10. Further, it is stated that an offer of ₹11.25 crores along with EMD of ₹10,00,00,000/- from another new prospective resolution applicant namely Diamond Copy House (DCH) was received by the applicant on 22.11.2019 and for convening the CoC meeting for consideration of the offer amount by the new applicant (DCH), the applicant filed a company application bearing CA No.1105 of 2019 seeking extension of the CIRP period under second proviso to section 12(3) of the Code

11. During the course of the hearing on 26.11.2019, the applicant was granted 17 days' time for convening CoC meeting to consider the resolution plan of the new prospective resolution applicant and accordingly, the 13<sup>th</sup> meeting of the CoC was convened on 28.11.2019 in which all the three prospective resolution applicants submitted their revised plan and the resolution plan submitted by ANG Lifesciences India Ltd. was declared H-1. The members by exercising their commercial wisdom approved the revised resolution plan submitted by ANG Lifesciences India Ltd. by 100% voting share in favour of it on 12.12.2019 and through e-voting on 19.12.2019.

12. When the matter was listed on 21.01.2020, it was observed that the Bank Guarantee already furnished by the successful resolution applicant along with the resolution plan was in favour of IDBI Bank instead of SIDBI and the amount of performance guarantee was also less than 5% of the total resolution debt amount. The RP was directed to file afresh performance guarantee along with appropriate affidavit with regard to the aforesaid observations.

13. In compliance of the aforesaid order, the RP filed compliance affidavit dated 17.02.2020 (Diary No.1313 dated 17.02.2020) along with a fresh performance guarantee dated 04.02.2020 amounting to Rs.67.50 lakhs (being 5% of the total debt amount which is Rs.13.50 crores) in favour of SIDBI attached as Annexure 3 of the affidavit.

14. The RP has filed compliance certificate in Form H (Annexure A-25) as required under I&B Code (Amendment) Ordinance 2018 No.6 of 2018 dated 06.06.2018. It is certified by the RP in para 4 of Form H that the resolution plan complies with all the provisions of the Code, CIRP Regulations and does not contravene any of the provision of law for the time being in force and that the resolution plan stands duly approved by the 100% of the voting share of the financial creditors. It is also stated in para 4 (ii) of Form H that the affidavit of the successful resolution applicant regarding its eligibility under Section 29A of the Code is in order. Copy of the affidavit of the resolution applicant regarding its eligibility under 29A is attached as Annexure A-26 of the application.

15. It is submitted that the CoC while accepting the bid had taken care of all the provisions of the Code and the Regulations. It is prayed that the application

may be allowed and the resolution plan as approved by the CoC in the CIRP of the corporate debtor be approved.

16. The learned counsel for the resolution professional submitted that as per Form H (Annexure A-25), all the provisions of the Code and the Regulations were complied with and that the approval of the resolution plan was made by 100% voting share of the financial creditors in the meeting of the CoC held on 12.12.2019 and through e-voting on 19.12.2019 and therefore, the resolution plan submitted by M/s. ANG Lifesciences India Ltd. may be approved.

17. We have carefully considered the submissions of the learned counsel for the RP and the learned Counsel for the resolution applicant and have also perused the record.

18. The corporate debtor was incorporated on 02.04.1990 under the Indian Parliament Act and as discussed above, the CIRP proceedings were initiated by order delivered on 28.02.2019. The present application is filed for approval of the resolution plan submitted by M/s. ANG Lifesciences India Ltd. The approval has been sought under the provisions of Section 31 (1) of the Code.

19. We may first of all state that after receipt, verification and collation of claims as discussed above, the IRP constituted the CoC as per the provisions of Section 21 of the Code. The details of the financial creditors, the distribution of voting share among them and the position of voting for the resolution plan is as under (para no.5 of Form H – Annexure A-25)

<b>Sr. No.</b>	<b>Name of Creditor</b>	<b>Voting Share (%)</b>	<b>Voting for Resolution Plan (Voted for / Dissented / Abstained)</b>
1	SIDBI	24.38%	Voted For
2	Phoenix ARC	40.74%	Voted For

	<i>Pvt. Ltd.</i>		
3	<i>IDBI Bank Limited</i>	34.88%	<i>Voted For</i>

20. The details of stakeholders under the resolution plan given in para 7 of Form H (Annexure A-25) is as follows: -

(Amount in Rs. Crore)

<b>Sl. No.</b>	<b>Category of Stakeholder*</b>	<b>Sub- Category of Stakeholder</b>	<b>Amount Claimed</b>	<b>Amount Admitted</b>	<b>Amount Provided under the Plan#</b>	<b>Amount Provided to the Amount Claimed (%)</b>
1	<b>Secured Financial Creditors</b>	(a) Creditors not having a right to vote under sub-section (2) of section 21	Nil	Nil	Nil	Nil
		(b) Other than (a) above:				
		<i>SIDBI</i>	17.09	17.09	5.75	33.65%
		<i>Phoenix ARC Private Limited</i>	28.56	28.56	2.21	7.74 %
		<i>IDBI Bank Limited</i>	24.45	24.45	4.90	20.04%
		<i>Total[(a) + (b)]</i>	70.1	70.1	12.86	61.43%
2.	<b>Unsecured financial creditors</b>	(a) Creditors not having a right to vote under sub-section (2) of section 21	1.95	1.95	0.00	Nil

		<i>(b) Other than (a) above:</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>
		<i>(i) who did not vote in favour of the resolution Plan</i>				
		<i>(ii) who voted in favour of the resolution plan</i>				
		<i>Total[(a) + (b)]</i>	<i>1.95</i>	<i>1.95</i>	<i>0.00</i>	<i>Nil</i>
<b>3.</b>	<b>Operational Creditors</b>	<i>(a) Related Party of Corporate Debtor</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>
		<i>(b) Other than (a) above:</i>				
		<i>Dues of Workmen</i>	<i>0.12</i>	<i>0.12</i>	<i>0.12</i>	<i>100%</i>
		<i>Dues of Employees</i>	<i>2.29</i>	<i>0.15</i>	<i>0.15</i>	<i>100%</i>
		<i>Dues related to Trade Payables</i>	<i>11.49</i>	<i>6.61</i>	<i>0.00</i>	<i>Nil</i>
		<i>Statutory Dues</i>	<i>9.77</i>	<i>9.77</i>	<i>0.00</i>	<i>Nil</i>
		<i>Other Creditors</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>Nil</i>
		<i>Total[(a) + (b)]</i>	<i>23.67</i>	<i>16.65</i>	<i>0.27</i>	
<b>4</b>	<b>Other debts and dues</b>		<i>Nil</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>
<b>Grand Total</b>			<b>95.72</b>	<b>88.7</b>	<b>13.13</b>	

21. The compliance of the resolution plan has been given in para No.9 of Form H (supra) as follows: -

<b>Section of the Code - Regulation No.</b>	<b>Requirement with respect to Resolution Plan</b>	<b>Clause of Resolution Plan</b>	<b>Compliance (Yes - No)</b>
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25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the COC having regard to the complexity and scale of operations of business of the CD?	Yes, as per Eligibility Criteria ( at Page no 15 of minutes of the 2 <sup>rd</sup> COC)	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Yes, as per 29A declaration and Eligibility Criteria and as per the final list issued (at Page no. 4 and 5 of minutes of the 8 <sup>th</sup> COC)	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Yes, as per affidavit dated 25 May, 2019.	Yes
Section 30(2)	Whether the Resolution Plan:	Yes, at <b>Page No. 33,44 and 66</b> of the Resolution Plan attached as <b>Annexure-A23</b> of the main application.	Yes
	(a) provides for the payment of insolvency resolution process costs?	Resolution Applicants have proposed to pay the entire CIRP cost of Rs.0.37crore (Estimated) within 30 days from the effective date. The CIRP cost shall be paid in priority to all other payments proposed in the resolution plan. The above said CIRP cost is the estimated and actual can differ. The additional CIRP cost ,if any shall be borne by Resolution Applicant.	
	(b) provides for the payment of the debts of operational creditors?	Yes, at <b>Page No. 44-45and 63-64</b> of the Resolution Plan attached as <b>Annexure-A23</b> which is part of the main Application.  The Resolution Applicant also intends to pay in full Workmen Dues and Employee Dues which are admitted by the RP as on date of COC approval, within 30 days from the Effective date and Any unclaimed amount shall stand extinguished after the approval of the Resolution Plan.  Claims of Rs.9.77Crore, Rs 1.95 and Rs. 11.49Crore(Admitted Claims – Rs.6.61 Crore)have been received from statutory departments, unsecured financial creditors and suppliers of goods and services respectively . Since the liquidation value available for operational creditors is Nil, Resolution Applicant has not proposed any amount under this category	Yes
	(c) provides for the management of the affairs of the Corporate debtor?	Yes, at <b>Page No.46 and 64</b> of the Resolution Plan attached as <b>Annexure-A23</b> which is part of the main application  Upon approval of the Resolution Plan by the Adjudicating Authority, Chandigarh	Yes

		<p><i>and after effective date, the existing directors of the corporate debtor shall resign, and the new directors as decided by Resolution Applicant, shall be appointed as directors of the corporate debtor to manage the affairs of the Company. The management of affairs of the Corporate Debtor after approval of the Resolution Plan shall be done by the newly constituted board of directors of the Corporate Debtor.</i></p>	
	<p><i>(d) provides for the implementation and supervision of the resolution plan?</i></p>	<p>Yes, at <b>Page No 48-49 and 64-65</b> of the Resolution Plan attached as <b>Annexure – A23</b> which is part of the main Application.</p> <p><i>Resolution Applicants propose to appoint present Resolution Professional as Monitoring and Supervising Professional for supervision and implementation of the Resolution Plan in terms of Provisions of Section 30(2)(d) of IBC read with Regulation 38(2)(c) of the CIRP Regulations.</i></p> <p><i>The appointment shall be at the mutually agreed fees with COC Members for the period with effect from the date of approval of the Resolution Plan by Hon'ble NCLT till the full payments proposed under this Resolution Plan.</i></p>	Yes

	(e) contravenes any of the provisions of the law for the time being in force?	<p>A statement to that effect is provided at <b>Page No 47 and 64</b> of the Resolution Plan attached as <b>Annexure –A23</b> which is part of the main Application.</p> <p>An order of the NCLT approving this Resolution Plan pursuant to the IBC shall be deemed to be adequate compliance with all relevant provision so any applicable law that would otherwise have become applicable in relation of the steps that comprise any part of the Resolution Plan. Further, Section 238 of the IBC stipulates that to the extent of any inconsistency between the provisions of the IBC and other laws, the former shall prevail.</p>	Yes
Section 30(4)	<p>Whether the Resolution Plan</p> <p>(a) is feasible and viable, according to the COC?</p>	<p>Yes, at <b>Page No. 66</b> of the Resolution Plan attached as <b>Annexure A-23</b> which is part of the main Application</p> <p>Resolution Applicant has more than 10 years of experience in industry. Further, specific industry Professionals will be appointed for quick turnaround of Company. RA has sufficient net worth to fund the proposal and introduction of necessary working capital.</p>	Yes
	(b) has been approved by the COC with 66% voting share?	<p>Yes, at <b>Page No ____</b> (minutes of the 14<sup>th</sup> COC)</p> <p><b>“RESOLVED THAT</b>, the Resolution Plan submitted by M/s. AKG Life sciences India Limited be and is hereby approved in compliance with the provisions of section 30(4) of the Insolvency and Bankruptcy Code, 2016 by COC members.</p> <p><b>RESOLVED FURTHER</b> that the Resolution Professional Mr. Jalesh Kumar Grover be and is hereby authorized to move an application under section 31, on behalf of the Committee of creditors, for</p>	

		<p>approval of Resolution Plan by the Adjudicating Authority.”</p> <p>The above resolution has been passed by e-voting of more than 66 per cent of the voting shares. Result of E voting is attached herewith at <b>Page No.</b>_____</p>	
Section 31(1)	<p>Whether the Resolution Plan has provisions for its effective implementation plan, according to the COC?</p>	<p>Yes, at <b>Page No.48-49and 66</b>of the Resolution Plan attached as <b>Annexure - A23 which</b> is part of the main Application.</p> <p>The Resolution Applicants undertakes that on approval of the Resolution Plan by the Adjudicating Authority, it shall comply with all the stipulations mentioned in the Resolution Plan proposed herein.</p> <p>Further the Resolution Applicants also proposes to appoint present Resolution Professional as Monitoring and Supervising Professional at the mutually agreed cost.</p> <p>Also, at Page No. ____ (Minutes of the 14<sup>th</sup> COC meeting).</p> <p><b>“RESOLVED THAT</b> the COC hereby appoints Mr.Jalesh Kumar Grover, registered Insolvency Professional, membership no. IBBI/IPA-001/IP-P00200/2017-2018/10390, as the monitoring agency in the matter of Mansa Print &amp;Publishers Ltd at a fee of Rs. 75000/- per month for the effective implementation of the resolution plan. The Fee of the Monitoring Agency shall be borne by Resolution Applicant”</p> <p>The above resolution has been passed by 100% per cent of the voting share.</p>	Yes
Regulation 35A	<p>Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66,before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?</p>	<p>Transaction Audit report dated 16.10.2019 was received on 21.10.2019.</p> <p>The Resolution Professional has identified and formed his opinion regarding three transactions, which fall under Section 66 of IBC, 2016 to defraud the creditors. RP has moved an application bearing CA No. 1076 vide Diary No. 6014 dated 31.10.2019 for avoidance of fraudulent and preferential transactions.</p>	Yes
Regulation 38 (1)	<p>Whether the Resolution Plan identifies specific sources of funds that will be used to pay the –</p>		

	(a) <i>Insolvency resolution process costs?</i>	<p>Yes, at <b>Page No.44</b> of the Resolution Plan (<b>Annexure –A23</b>).</p> <p>The Resolution Applicant proposes to pay the unpaid CIRP Cost amounting to Rs.0.37 (estimated) in priority to all other debts within 30 (thirty) days from the Effective Date.</p> <p>The Resolution applicant proposes the Payment of CIRP cost on actual basis within 30 days from effective date. Any Increase or decrease in CIRP cost shall be borne by RA.</p>	Yes
	b) <i>Liquidation value due to operational creditors?</i>	<p>Yes, at <b>Page No. 44-45 and 63-64</b> of the Resolution Plan attached as <b>Annexure – A23</b> which is part of the main Application.</p> <p>The Resolution Applicant also intends to pay in full Workmen Dues and Employee Dues which are admitted by the RP as on date of COC approval, within 30 days from the Effective date and Any unclaimed amount shall stand extinguished after the approval of the Resolution Plan.</p> <p>Claims of Rs.9.77 Crore, Rs 1.95 and Rs. 11.49 Crore (Admitted Claims 6.61 Crore) have been received from statutory departments, unsecured financial creditors and suppliers of goods and services respectively. Since the liquidation value available for operational creditors is Nil, Resolution Applicant has not proposed any amount under this category.</p>	
	c) <i>Liquidation value due to dissenting financial creditors?</i>	There are no dissenting financial creditors.	
Regulation 38(1A)	<i>Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?</i>	<p>Yes, <b>Page No. 45 and 65</b> of the Resolution Plan attached as <b>Annexure-A23</b> which is part of the main Application.</p> <p>The Plan envisages a justifiable payout to the different class of creditors (Summary of Payment to all Stakeholders is given in <b>Page No. 45</b> of the resolution plan).</p>	Yes

Regulation 38(2)	<p>Whether the Resolution Plan provides:</p> <p>(a) the term of the plan and its implementation schedule?</p>	<p>Yes, <b>Page No. 44 and 65</b> of the Resolution Plan attached as <b>Annexure-A23</b> which is part of the main Application</p> <p>The term of the Resolution Plan shall commence from Effective Date and shall continue until the implementation of the financial settlements of the Resolution Plan in accordance with Term specified in Plan i.e. 10months from the Effective Date</p>	Yes
	<p>(b) for the management and control of the business of the corporate debtor during its term?</p>	<p>Yes, at <b>Page No.46 and 64</b> of the Resolution Plan attached as <b>Annexure-A23</b> which is part of the main application</p> <p>Upon approval of the Resolution Plan by the Adjudicating Authority, Chandigarh and after effective date, the existing directors of the corporate debtor shall resign, and the new directors as decided by Resolution Applicant, shall be appointed as directors of the corporate debtor to manage the affairs of the Company. The management of affairs of the Corporate Debtor after approval of the Resolution Plan shall be done by the newly constituted board of directors of the Corporate Debtor.</p>	Yes
	<p>(c) Adequate means for supervising its implementation?</p>	<p>Yes, at <b>Page No.45 and 66</b> of the Resolution Plan attached as <b>Annexure--A23</b> which is part of the main Application.</p> <p>The Resolution Applicants undertakes that on approval of the Resolution Plan by the Adjudicating Authority, it shall comply with all the stipulations mentioned in the Resolution Plan proposed herein.</p> <p>Further, the Resolution Applicants also proposes to appoint present Resolution Professional as Monitoring and Supervising Professional at the mutually agreed cost.</p>	Yes
38(3)	<p>Whether the resolution plan demonstrates that –</p> <p>(a) it addresses the cause of default?</p>	<p>Yes, as per <b>Page No. 13-14 and 66</b> of the Resolution Plan marked as <b>Annexure No. A23</b> which is part of the main application</p> <p>As per the Analysis of the Resolution Applicant, the major reasons for deteriorated Financial condition of the Corporate Debtor are elaborated in the plan. The Resolution Applicant after the detailed analysis of the business of corporate Debtor incorporated the sufficient provisions to run the business with stability, post-acquisition.</p>	Yes

	(b) it is feasible and viable?	Yes, at <b>Page No. 66</b> of the Resolution Plan attached as <b>Annexure-A23</b> which is part of the main Application  Resolution Applicant has more than 10 years of experience in industry. Further, specific industry Professionals will be appointed for quick turnaround of Company. RA has sufficient net worth to fund the proposal and introduction of necessary working capital.	Yes
	(c) it has provisions for its effective implementation?	Yes, at <b>Page No.18-21 and 53-55</b> of the Resolution Plan attached as <b>Annexure--A23</b> which is part of the main Application.	Yes
	(d) it has provisions for approvals required and the timeline for the same?	Yes	
	(e) the resolution applicant has the capability to implement the resolution plan?	Yes, at <b>Page 33</b> of the Resolution Plan attached as <b>Annexure-A23</b> which is part of the main Application.  The Resolution applicant has proposed a payment of 13.50 Crores. The Resolution applicant has sufficient net worth/sources to pay off the entire consideration.	
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Transaction Audit report dated 16.10.2019 was received on 21.10.2019.  The Resolution Professional has identified and formed his opinion regarding three transactions, which fall under Section 66 of IBC, 2016 to defraud the creditors.  RP has moved an application bearing CA No. 1076 vide Diary No. 6014 dated 31.10.2019 for avoidance of fraudulent and preferential transactions.	

22. Section 30(2)(b) as substituted by Act No. 26 of 2019 w.e.f. 06.08.2019 is as follows:-

*“(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.*

*Explanation 1.—For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.*

*Explanation 2.—For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor— (i) where a resolution plan has not been approved or rejected by the Adjudicating Authority; (ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or (iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]”*

23. It is observed that as the liquidation value i.e. ₹9.56 crores, is not sufficient to cover the dues of the secured Financial Creditors, therefore, the value available to all other creditors/stakeholders shall be Nil. Since the liquidation value available for operational creditors is Nil, Resolution Applicant has not proposed any amount for the operational creditors as per Part VI clause F. Therefore, the amount to be distributed between operational creditors in the event of liquidation, if distributed in order of priority in Section 53(1) of the Code would be NIL. However, the resolution plan provides an amount of Rs.0.27 crores towards the dues of Workmen and Employees (100% of claims admitted) as they are integral for the operations and for the smooth revival of the company out of which Rs.0.12 crore has been provided for the claims of workmen and Rs.0.15 crore has been provided towards the claims of employees. Further, there are no dissenting financial creditors as the resolution plan has been approved by 100%

voting share of the Financial Creditors. Hence, Section 30(2)(b) of the Act stands complied with.

24. The approval of the resolution plan has been sought under Section 31 (1) of the Code, reading as follows: -

*If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.*

*Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.*

25. The conditions provided for in Section 31(1) of the Code for approval of resolution plan are therefore: -

- (a) *The Resolution Plan is approved by the CoC under Section 30(4) of the Code;*
- (b) *Section 30(2)(b) provisions have been extracted above and may be seen;*
- (c) *The Resolution Plan has provisions for its effective implementation.*

The satisfaction of the conditions is discussed below.

26. It is submitted by the RP that the resolution plan has been approved by a vote of 100% of voting share of the financial creditor and therefore, the conditions provided for by Section 30(4) of the Code are satisfied.

27. The provisions of Section 30(2) of the Code are as follows: -

*The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—*

- (a) *provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;*
- (b) Section 30(2)(b) provisions have been extracted above and may be seen;
- (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.*

28. The compliance of Section 30(2) of the Code is given in para No.9 of Form H (*supra*). The same is being further examined as under: -

**Section 30(2)(a):** The resolution plan provides for the payment of ₹0.37 crore (estimated) as CIRP cost in priority to all other debts within 30 days from the Effective Date. It is also stated that any increase or decrease in CIRP cost shall be borne by RA.

**Section 30(2)(b):** It is stated in Form H that the average liquidation value of the corporate debtor is ₹9.56 crores and since the claims of the secured financial creditors are much higher than the assessed value, hence the value available to all other creditors, stakeholders shall be nil. It is further stated that the liquidation value due to operational creditors other than workmen's is NIL. However, the resolution plan provides ₹.0.12 crore for the claims of workmen and ₹.0.15 crore towards the claims of employees of the corporate debtor within 30 days from the effective date.

**Section 30(2)(c) & (d):** The resolution plan provides complete plan for management of the affairs of the corporate debtor (page 412-417 of the application). It is stated in the resolution plan that the present RP i.e. Mr. Jalesh Kumar Grover shall be appointed as the Monitoring and Supervising Professional for supervision and implementation of the resolution plan. Further, as mentioned in Part XII Clause (f) of the resolution plan (pg. 412) and upon the NCLT Approval Date, the board of directors of the corporate debtor will be reconstituted and will consist of Mr. Rajesh Gupta and Ms. Saruchi Gupta as new directors for the management of the affairs of the Company. Further it is stated that all the existing shares of the corporate debtor shall stand extinguished and the shares of the Corporate Debtor shall be issued to new allottees after approval of resolution plan. The Resolution Applicant proposes to issue fresh equity shares of 1,35,00,000/- @ ₹10 each/- as equity induction. It shall be noted that, these new shares shall be pledged with the Secured Financial creditors till their final settlement in favour of all the financial creditors through DP account maintained with IDBI Bank as decided by the monitoring committee as per the Resolution Plan.

**Section 30(2) (e):** In Form H (*supra*) (para No.4), the RP has certified that the resolution plan complies with the provisions of the Code and Regulations and does not contravene any of the provisions of law for the time being in force.

29. We are now examining the compliance of the proviso to Section 31(1) of the Code that the resolution plan has provisions for its effective implementation. The resolution plan states that upon NCLT Approval Date, the present RP will be appointed as a Monitoring and Supervising Professional for supervision and implementation of the resolution plan as mentioned in Part XIII clause k (pg 414) of

the plan. The terms of the plan and its implementation schedule is stated to be 10 months from the approval of the plan by the Adjudicating Authority. Apart from upfront payment of ₹12.86 crores to financial creditors, the resolution applicant will also infuse funds amounting to ₹2 crores to meet the working capital requirement & up gradation & modernization of obsolete Plant & Machinery of the Corporate Debtor in addition to the proposed amount of ₹13.50Crores.

30. We have discussed above that the requirements under Section 31(1) of the Code are satisfied in the present case. In para No.4 of Form H (supra) the RP has certified that the resolution plan complies with all the provisions of the Code and Regulations and does not contravene any of the provisions of the law for the time being in force. The RP has also certified that the resolution applicant ANG Lifesciences India Limited has submitted affidavit pursuant to Section 30(1) of the Code confirming its eligibility under Section 29A of the Code to submit the resolution plan and the contents of the said affidavit are in order. The RP has submitted that the resolution plan has been approved by the CoC with 100% voting share in accordance with the provisions of the Code and CIRP Regulations made thereunder and after considering the feasibility and viability and other requirements specified by the CIRP Regulations. It has been held in para 42 of **K. Sashidhar Vs. Indian Overseas Bank &Ors. (Civil Appeal No. 10673 of 2018 dated 05.02.2019)** by the Hon'ble Supreme Court *inter alia* that no corresponding provision has been envisaged by the legislature to empower the resolution professional., the Adjudicating Authority (NCLT) or for that matter the Appellate Authority (NCLAT), to reverse the "commercial decision" of the CoC. It was also held that whereas, from the legislative history there is contra indication that the

commercial or business decisions of the financial creditors are not open to any judicial review by the adjudicating authority or the appellate authority. In view of the above discussion, the decision taken by the financial creditors falls within the ambit of its commercial and banking wisdom and is therefore, not being interfered with. A similar view has been taken in the case of Maharashtra Seamless Limited vs. Padmanabhan Venkatesh & Ors. in Civil Appeal No.s 4967-4968 of 2019.

31. We shall now discuss the requirements of Regulation 39(4) of the Regulations. The resolution applicant has given bank guarantee dated 04.02.2020 amounting to Rs.67.50 lakhs (being 5% of the total debt amount which is Rs.13.50 crores) in favour of SIDBI attached as Annexure 3 of the affidavit filed vide Diary No.1313 dated 17.02.2020. It is thereby submitted that the requirements of performance security under Regulation 39(4) of the Regulations read with 36B(4A) of the Regulations are complied with.

Further, the RP has also filed an application bearing CA No. 1076 vide Diary No. 6014 dated 31.10.2019 for avoidance of fraudulent and preferential transactions under section 43, undervalued transactions under section 45, extortionate credit transactions under section 50 and Fraudulent transactions under section 66, detail of which is mentioned in para15 of Form H (supra) and the said application is pending adjudication.

32. On the basis of discussion made above and in view of the provisions of Section 30(4) of the Code, we approve the resolution plan submitted by ANG Lifesciences India Limited as approved by the CoC. The resolution plan so approved 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.

33. Under the provisions of Section 31 (3) of the Code, we also direct as under: -

- a) The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 28.02.2019 shall cease to have effect; and
- b) The RP shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its database.

34. CA Nos. 1105/2019 and 55/2020 are disposed of.

Pronounced in open court.

Sd/-  
(Ajay Kumar Vatsavayi)  
Member (Judicial)

Sd/-  
(Pradeep R. Sethi)  
Member (Technical)

March 18, 2020  
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