

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

**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 01.10.2021 AT 10:30 AM THROUGH VIDEO CONFERENCE**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/202/2021 in CP(IB) No.56/9/HDB/2019
NAME OF THE COMPANY	Therdose Pharma Pvt Ltd
NAME OF THE PETITIONER(S)	Vance & Health Pharma Pvt Ltd
NAME OF THE RESPONDENT(S)	Therdose Pharma 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**

Order is pronounced in IA (IBC) No.202 of 2021. Resolution Plan is approved. The IA is allowed and disposed of.

-Sdl

**MEMBER (TECHNICAL)**

-Sdl

**MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD**

**IA No. 202 of 2021**

In CP (IB) No.56/9/HDB/2019

Under section 30(6) 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:-  
THERDOSE PHARMA PRIVATE LIMITED**

Mr. Madasa Kumar  
IBBI Regn. No. IBBI/IPA-001/IP-P01590/2019-2020/12465,  
Resolution Professional of  
Therdose Pharma Private Limited

...Applicant/  
Resolution Professional

**Date of Order: 01.10.2021**

**Coram: Shri. Madan B. Gosavi, Member Judicial.  
Dr. Binod Kumar Sinha, Member Technical**

**Parties/Counsel Present:**

For the Respondent: Mr. Madasa Kumar, RP  
Ms. JVL Bharathi, Counsel for RP

**Per: Bench**

**ORDER**

1. Under consideration is an interlocutory Application bearing IA No.202 of 2021 filed by the Applicant/Resolution Professional (in short **RP**) in the matter of M/s Therdose Pharma Private Limited u/s. 30(6) of the Insolvency and Bankruptcy Code, 2016, inter-alia seeking the following relief(s):

- a) The Hon'ble Adjudicating Authority may be pleased to approve the Resolution plan submitted by M/S Vance & Health Pharmaceuticals Pvt. Ltd., as approved by COC as per sec 30(4) IBC, 2016 which envisages a total plan payment of Rs.3510.00 Lakhs payable within 30 days from the date of approval of the Resolution plan including the EMD amount of Rs.25.00 Lakhs and the performance security amount of Rs.351.00 lakhs (already deposited).

-Sdt-

-Sdt-

b) To consider the reliefs and concessions sought by the Resolution applicant favourably.

2. Brief facts leading to filing of the Instant Application are as under:-

- a) That this Adjudicating Authority admitted the Application filed under section 9 of the IBC, 2016 vide its order dated 09.01.2020 in CP (IB) No.56/9/HDB/2019 and appointed Mr. Madasa Kumar as Interim Resolution Professional (IRP). Subsequently, the IRP has been appointed as RP by the COC in the 1<sup>st</sup> CoC meeting held on 06.02.2020.
- b) That in the mean while the Managing Director of the suspended board of Directors of the Corporate Debtor preferred an Appeal to the Hon'ble NCLAT and the NCLAT vide orders dated 13-03-2020 posted the case for admission (after notice) on 15-04-2020 and directed the IRP to ensure the company as a going concern.
- c) That as per the directions of the Adjudicating Authority, Public announcement was made in Financial Express (English) & Nava Telangana (Telugu), daily Newspapers on 15-01-2020, calling for the claims, duly fixing the last date for receipt of claims as 25.01.2020.
- d) That Form-G has been published on 12-02-2021 inviting expressions of interest from the PRA's. In response 17 EOI's have been received out of which the following resolution applicants submitted their resolution plans on 03-04-2021.
  - a) M/s. Vance & Health Pharmaceuticals Private Limited
  - b) M/s. Optimus Pharma Private Limited
- e) That the Liquidation value of the assets of corporate Debtor is Rs.3350.59 Lakhs and that the amount of Rs.3510 Lakhs offered by M/s Vance & Health Pharmaceuticals Pvt Ltd is more than the Liquidation value.
- f) That the committee evaluated the Resolution plans with reference to the evaluation matrix and declared M/s Vance & Health Pharmaceuticals Pvt Ltd as H1 and Optimus Pharma Pvt Ltd as H2.
- g) That further the committee resolved to authorize the resolution professional to issue LOI in favour of Resolution applicant who secure a minimum of 66% of voting subject to the outcome of the Appeal pending for adjudication by the Hon'ble NCLAT and that upon receipt of Performance guarantee, to file an IA with Hon'ble NCLT for approval of the successful Resolution plan.

-sd-

-sd-

- h) That as the Resolution plan of M/s Vance & Health Pharmaceuticals Pvt Ltd has been approved by the members with more than 66% voting share, LOI has been issued to M/s Vance & Health Pharmaceuticals Pvt Ltd on 10-04-2021 with one of the conditions that they shall provide performance guarantee for Rs.351 Lakhs being 10% of the Resolution plan amount within 5 days from the date of issue of LOI i.e., on or before 15-04-2021.
- i) That Axis Bank Limited, one of the members of CoC exercised their vote on 14<sup>th</sup> April 2021 in favour of M/s Vance & Health Pharmaceuticals Pvt. Ltd. Hence an addendum to the minutes were circulated on 14<sup>th</sup> April 2021 revising the voting share to 92.78% in favour of the Successful Resolution Applicant.
- j) Statement showing payment structure of the Resolution Plan

Sl No	Description of the Payment	Amount provided under the Resolution plan
1	Insolvency Resolution Process Costs	NIL
2	Workmen dues	NIL
3	Provident Fund Dues along with delay period interest	2,53,55,295
4	Income Tax towards TDS deducted but not paid	89,14,785
5	ESI dues	14,24,941
6	Gratuity payable to the Employees	45,70,747
7	Secured Financial Creditors	12,47,23,394
8	Unsecured Financial Creditors	8,66,94,189
	<b>Operational Creditors</b>	
9	Government	49,90,909
10	Employees	1,41,48,574
11	Others	8,01,77,166
	<b>Total Resolution Plan Amount</b>	<b>35,10,00,000</b>

-sd/-

-sd/-

- k) That as there are no unpaid Insolvency Resolution process costs, no provision has been made for payment in the plan.
  - l) That the Resolution applicant proposed payment of Rs.8,51,68,075/- to the operational creditors i.e., 60.95% of the admitted claim amount. The Liquidation value of assets of the Corporate Debtor is Rs.33,50,75,285/- and the Resolution plan amount is Rs.35,10,00,000. The operational creditors would have got Rs.6,92,43,360/- as per the provisions of the section 53 in case the Corporate Debtor is liquidated for the liquidation value. Thus the amount offered for payment to operational creditors is in conformity to the provisions of the code.
  - m) The Resolution applicant is a 22 years old Organization with WHO-GMP, ISO 9001-2015 certification. Started in 1999, the Managing Director of the company has rich experience in pharmaceutical industry the RA started its own GMP unit in Roorkee, Uttarakhand. With operations expanding and building new product portfolio and as established very good market for their products in domestic market and in the LATAM region, the Managing Director can manage the Corporate Debtor with the help of the other 2 directors.
  - n) The Resolution Applicant proposed total payment under the plan upfront within one month and the implementation period proposed in the Resolution plan is one month from the date of approval of resolution plan by the Adjudicating Authority. The Resolution Applicant proposed a Monitoring Committee to supervise the implementation of the Resolution plan.
  - o) It is averred by the RP that the Resolution plan does not contravene any of the provisions of the law for the time being in force.
  - p) M/s Vance & Health Pharmaceuticals Pvt Ltd, the successful Resolution applicant has deposited Rs.351 Lakhs in the account of the Corporate Debtor on 15-04-2021 towards performance security.
  - q) Reiterating the above, the counsel for the Applicant prayed to allow the instant Applicant.
3. Heard counsel for the Resolution Professional/Applicant and perused the Resolution Plan and other documents submitted along with Application.
4. The RP has submitted that the Resolution Plan is in compliance to all the relevant sections of the Code. Section-wise compliance status is tabulated as under:

-sd/-

-sd/-

S. No.	Section/ Regulation	Provision	Compliance	Page No. in Resolution Plan
1	Section 30(2)(a)	Provide for payment of Insolvency Resolution Process Cost in priority to other debts	Complied-As there are no unpaid Insolvency Resolution process costs, no provision has been made for payment in the plan	112
2	Section 30(2)(b)/Regulation 38(1)	Provide for fair and equitable payment of debts of operation creditors	Complied- It is proposed to pay Rs.851,68,075 to operational creditors as against an amount of Rs.6,92,43,360 payable under sec 53 in the event of liquidation	113
3	Section 30(2)(c) & Regulation 38(2)(b)	Provide for the management of the CD after approval of the Resolution Plan	Complied - as the resolution applicant has rich experience of over 22 years of operation and management of pharma Unit	126
4	Section 30(2)(d) & Regulation 38(2)(a)	The implementation and supervision of the resolution plan during implementation period.	Complied - a monitoring committee has proposed with RP, representative of RA and representative of financial creditor i.e. Central bank of India	126
5	Regulation 38(1)	Payments to be made to the Operational Creditors	Complied-the payment to the operational creditors has been provided as per the provisions of the code and regulations	113

-Sdt-

-sd-

6	Regulation 38(1)(b)	The resolution plan to include a statement to the effect that neither the RA nor any of the related parties have failed to implement nor contributed to their failure of implementation of any other resolution plan approved by the Hon'ble AA at any time in the past	Complied- The resolution plan includes a statement to the effect that neither the RA nor any of the related parties have failed to implement nor contributed to the failure of implementation of any other resolution plan approved by the Hon'ble AA at any time in the past.	125
7	Regulation 39(3)	The committee shall deliberate on feasibility and viability of the resolution plan	Complied - The committee has deliberated on feasibility and viability of the resolution plan which is recorded in the minutes of the 7 <sup>th</sup> CoC meeting.	50

5. The RP has inter-alia filed the following Certificate in Form H:-

*"I have examined the Resolution Plan received from Resolution Applicant, M/s Vance & Health Pharmaceuticals Pvt. Ltd. and approved by Committee of Creditors (CoC) of M/s. Therdose Pharma Pvt. Ltd.*

*I hereby certify that-*

- 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. Vance & Health Pharmaceuticals Pvt. Ltd. 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*

-sd-

-sd-

made thereunder. The Resolution Plan has been approved by 92.78% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

- iv. The meeting of the CoC was held on 08-04-2021 where 5 out of 11 members of CoC with 92.78% voting share have attended the meeting.

And I sought vote of members of the CoC by electronic voting system which was kept open at least for 24 hours as per the regulation 26 and all the 5 CoC members having 92.78% voting share voted in favour of M/s Vance & Health Pharmaceuticals Pvt Ltd.”

6. 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.
7. 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.
8. In the recent judgement in *Essar Steel (Civil Appeal No.8766-67 of 2019)* the Hon'ble Apex Court clearly laid down that the Adjudicating Authority will not have power to modify the Resolution Plan as approved by the CoC in their Commercial Wisdom. In para 42 of the said judgment, Hon'ble Apex Court has observed as under:
- Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is*

-sd-

-sd-

*concerned, the parameters of such review having been clearly laid down in **K. Shashidhar** (supra).*

9. 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. 202 of 2021 filed in CP(IB) No.56/9/HDB/2019 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.
10. 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 has also been held by Hon'ble Supreme Court in Ghanashyam Mishra and Sons Private Limited Versus Edelweiss Asset Reconstruction Company Limited.
11. 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.
12. The approved 'Resolution Plan' shall become effective from the date of passing of this Order.
13. This Adjudicating Authority hereby directs constitution of a Monitoring Committee comprising of one Representative of the Financial Creditor, One representative of the Resolution Applicant and the Resolution Professional. The RP to supervise the implementation of the Resolution

-sdl-

-sdl-

plan and file status of implementation of Resolution Plan before this Adjudicating Authority from time to time.

14. 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.
15. The Resolution Professional shall forward all record relating to the conduct of the CIR 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.
16. The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and to IBBI.
17. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant.
18. Accordingly, IA No.202 of 2021 is disposed of as allowed. However, same shall be subject to outcome of the Appeal pending before Hon'ble NCLAT.



**Dr. Binod Kumar Sinha,**  
**Member Technical**



**Madan B. Gosavi**  
**Member Judicial**

Santi/SKRathi