Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT No. - I
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IA No. 1783/MB/2020
in
C.P. (IB) No. 42/MB/2019

(An Application under Section 30(6) of the Insolvency and Bankruptcy Code, 2016)

Mangesh Vitthal Kekre,
Resolution Professional of
Syncom Healthcare Limited,
607, Chetak Centre, RNT Marg,
Indore, M.P. 452001. … **Applicant**

In the matter of
Bank of India
Bandra Kulra Comples,
Star House, C-5, G Block,
Bandra East, Mumbai – 400 051.
Branch Address:202, Saket Nagar,
Indore M.P. – 452 001. … **Petitioner**
V/s
Syncom Healthcare Limited
F44, 1st Floor Shagun Arcade CHS,
A K Vaidya Marg, Opp. HDFC Bank,
Malad, East, Mumbai – 400 097 … **Corporate Debtor**

Date of Order: 14.06.2021

CORAM:

Janab Mohammed Ajmal, Hon'ble Member (Judicial)

Shri V. Nallasenapathy, Hon'ble Member (Technical)

Appearance:

For the Applicant: Mr. Rahul Totala, Advocate with Associates.

For the Resolution Applicant: Mr. Ayush J. Rajani, Practising Chartered Accountant.

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This is an Application filed by the Resolution Professional of the Corporate Debtor under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (the Code), seeking approval of the Resolution Plan submitted by Dr. Bharat Agrawal in consortium with M/s Theta Labs Private Limited (Resolution Applicant).

2. The facts leading to the Application are as under.

    a. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order dated 14.08.2019 upon admission of a Petition under Section 7 of the Code and Mr. Jagdish Kumar Parulkar was appointed as the Interim Resolution Professional (IRP). The moratorium was declared w.e.f. 14.08.2019 and IRP after receipt of order on 19.09.2019 took over the charge of the Corporate Debtor on 20.09.2019.

    b. The IRP made a public announcement on 21.09.2019 inviting claims from the creditors of the Corporate Debtor. After receipt of claims the IRP constituted the Committee of Creditors (CoC) of the Corporate Debtor on 14.10.2019 and conducted its 1st meeting on 19.10.2019. The CoC resolved to appoint Mr. Jagdish Kumar Parulkar as Resolution Professional (the erstwhile RP) and the same was confirmed by this Bench.

    c. The erstwhile RP issued Form-G on 19.11.2019, inviting expressions of interest (EoI) from prospective resolution applicants (PRAs). He received EoIs from 4 PRAs namely, Prudent ARC Limited, Sanjay Badrilal Punglia and Sudeep Sampathlal Dasani, Archerchem Healthcare Private limited and Skymap Pharmaceuticals Private Limited.

d. The erstwhile RP reconstituted the CoC on 27.11.2019 after receipt of one more claim from the creditor falling under the category of Financial Creditor. Two of the PRAs, namely from Archerchem Healthcare Private Limited in a joint proposal with Mr Ajay Bankda and Skymap Pharmaceuticals Private Limited, out of the four, submitted Resolution Plans. The same were placed for discussion before the CoC in its 5th meeting held on 01.02.2020.The Resolution Plan received from Archerchem Healthcare Private Limited in a joint proposal with Mr Ajay Bankda was not considered as Mr. Ajay Bankda was barred under section 29A clause (f) of the Code and the Resolution Plan Submitted by Skymap Pharmaceuticals Private Limited was rejected with 100% voting.

e. The erstwhile RP filed an Application MA No. 524 of 2019 for extension of CIRP period. The same was allowed by this Tribunal vide its order dated 14.02.2020 by extending period of CIRP by 90 days to end on 10.05.2020.

f. The CoC in its 6th meeting held on 17.02.2020 resolved to publish the Form-G afresh to give a fair chance of resolution of the Corporate Debtor. Thereafter, the erstwhile RP published the Form-G on 19.02.2020. The last date for submission of Resolution Plan was set as 22.04.2020 which was later extended to 29.06.2020 due to nationwide lockdown declared by Central Government on account of Covid-19.

g. After the republished Form-G, the erstwhile RP received EoIs from 2PRAs i.e. Dr. Bharat Agrawal in consortium with M/s Theta Labs Private Limited and Skymap Pharmaceuticals Private Limited.

h. The CoC in its 7th meeting held on 20.03.2020 resolved to replace the erstwhile RP with Mr. Mangesh Vitthal Kekre as RP (the Applicant) and the same was approved by the NCLT, Principal Bench vide order dated 08.06.2020. The Applicant took charge of the Corporate Debtor on 22.06.2020.

i. The Applicant filed IA no. 1158 of 2021 on 22.04.2021 for exclusion of period covered within the Covid 19 pandemic from 23.03.2020 to 31.08.2020. It is submitted that the Resolution Plan was approved by the CoC on 04.09.2020 and the present Application has been filed on 28.09.2020. Considering the developments, the Application for exclusion was allowed by this Tribunal vide order dated 03.06.2021 by extending the CIRP period till the filing of the plan before this Tribunal.

3. The Applicant received only one Resolution Plan on 31.08.2020 from PRA- Dr. Bharat Agrawal in consortium with M/s Theta Labs Private Limited. The other PRA (Skymap Pharmaceuticals Private Limited) did not furnish any Plan. After due verification of the eligibility of the PRA in terms of Section 29 (A) of the Code, the CoC in its 15th meeting held on 04.09.2020 considered the Resolution Plan and approved the Plan with 96.84% voting share. The details of Voting shares are as follows:

Sr. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented/ Abstained)
1	Bank of India	96.84%	Voted in Favour
2	Technologies LLP	3.16%	Dissented

4. **<u>Salient features of the Resolution Plan:</u>**

a. SUCCESSFUL RESOLUTION APPLICANT (SRA):

The Successful Resolution Applicant (SRA) is the consortium of Dr. Bharat Agrawal (individual) having PAN ADFPA6925N and Theta Labs (P) Limited. Dr. Bharat Agrawal is acting as the Lead Member with 25% share in the consortium, while Theta Labs (P) Limited holds the remaining 75% share. Theta Labs (P) Limited was incorporated in the year 1994. It is a professionally managed Company under the guidance by Dr. Bharat Agrawal and Dr. Meena Agrawal. The Company is engaged in the business of Marketing and Trading of Pharmaceutical products for more than 25 years with consistent performance.

b. TERM OF RESOLUTION PLAN:

The term of Resolution Plan shall be from the "Effective Date" until the "Completion Date". The Resolution plan shall come into effect on the date of approval of this plan by this Bench, which will be the "Effective Date" of Resolution plan. (Clause 16.9 of the Resolution Plan). "Completion date" means the date on which all measures specified in the Resolution Plan have been implemented, being a day not later than 90 days from the Effective Date or such other date as may be mutually agreed between the SRA and the members of the CoC who approved the Resolution Plan. (Clause 1.1 of the Resolution Plan)

c. FINANCIAL TERMS:

The total consideration in the plan is ₹. 1283.39 lakh and the details are as follows:

(Amount in Lakhs)

Sr. No.	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan
1.	Secured Financial Creditors	(a) Creditors not having right to vote under subsection (2) of Section 21	-	-	-
		(b) Other than (a) above: (i) Who did not vote in favour of the Resolution Plan	-	-	-
		(ii) Who voted in favour of the Resolution Plan (Note 1)	3091.00	3091.00	1280.00*
		Total (a) +(b)	3091.00	3091.00	1280.00
2	Unsecured	(a) Creditors not having a			

	Financial Creditors	right to vote under sub Section (2) of Section 21	-	-	-
		(b) Other than (a) above: (i) Who did not voted in favour of the Resolution Plan (ii) Who voted in favour of the Resolution Plan	100.74 -	100.74 -	1.00 -
		Total (a) + (b)	100.74	100.74	1.00
3	Operational Creditors (Note 2)	(a) Related Party of Corporate Debtor	-	-	-
		(b) Other than (a) above: (i) Government (Statutory Dues) (ii) Workmen (iii) Employees (iv) Suppliers	0.62 - 0.23 154.31	0.62 - 0.23 154.31	0.62 - 0.23 1.54
		Total (a) +(b)	155.16	155.16	2.39
4	Other debts and dues		-	-	-
Grand Total			3346.90	3346.90	1283.39

*This amount includes payment towards the outstanding CIRP cost ₹. 1,25,00,000/- on Effective Date. As per clause 7.4.10 of the resolution plan, if there is any unpaid CIRP costs as on effective date, the same shall be adjusted from the amount of Rs.1280 lakhs which is proposed to be paid to BoI (secured Financial Creditor).

Note1: The CIRP cost of ₹. 125 Lakhs shall be paid in priority to the payment of other debts of the Corporate Debtor and within 90 days from the date of the receipt of the certified copy of order approving the plan (Clause 7.2 (d) of the Resolution plan).

Note 2: The amount due to the Operational Creditors of the Corporate Debtor under the Resolution Plan shall be given in priority over the Financial Creditor as per Regulation 38(1) of the Regulations.

d. MEANS OF FUNDS:

The Resolution Plan amount of ₹.1283.39 Lakhs is funded by the internal accruals and funds to be raised from the banks/ NBFC by the SRA. The Resolution Applicant has enclosed an in-principle sanction letter from Bank of

Baroda dt.02.12.2020 wherein the said bank agreed to sanction a Cash Credit of ₹5.75 Crores and Term Loan of 9 Crores.

e. REDUCTION OF SHARE CAPITAL:

On the completion date, the paid-up share capital of the Corporate Debtor shall stand extinguished.

f. PERFORMANCE SECURITY:

The SRA has provided Earnest Money Deposit (EMD) of ₹. 50,00,000/-. Further the SRA has made Fixed Deposit of ₹. 3 Crores in the name of the Corporate Debtor with Bank of India, Saket Nagar Branch, towards performance security as per Regulation 36B(4A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (the Regulations).

g. MANAGEMENT OF THE CORPORATE DEBTOR:

The management of the Corporate Debtor will be by the professionals/ persons nominated by the SRA. The reconstituted Board of directors of the Corporate Debtor shall constitute such number of directors as shall as determined by the SRA. The Reconstituted Board shall take charge of Corporate Debtor from the completion date.

h. SUPERVISION OF THE RESOLUTION PLAN:

The Monitoring Agency shall be constituted for supervision of the Resolution Plan consisting of the Applicant (RP), one member of CoC and one Nominee of the SRA. If the SRA and applicant fail to agree on the fee or other terms, the SRA shall have the right to appoint any other firm/ person in place of the Applicant as member of the Monitoring Agency. The Monitoring Agency shall mange the affairs of the Corporate Debtor and shall exercise the powers of its Board of Directors and shall function till the settlement of the Creditors as proposed in the Plan.

i. COMPLIANCE OF MANDATORY CONTENTS OF RESOLUTION PLAN UNDER THE CODE AND CIRP REGULATIONS:

The Applicant has conducted a thorough compliance check of the Resolution Plan in terms of the Code as well as Regulations 38 and 39 of the Regulations and has submitted his Form H under Regulation 39(4). The Plan is in compliance with the provisions of the Code and the Regulations. It is further submitted that the Resolution Applicant is not hit by the provisions of Section 29A of the Code. The Resolution Applicant has submitted an Affidavit dated 25.06.2020 confirming his eligibility in that regard. We are satisfied that the Plan is in compliance of the provisions of the Code and the & Regulations made thereunder.

5. The Applicant submits that the Resolution Plan meets the requirement of Section 30(2) of the Code in the following manner:

   A. Plan provides for the payment of CIRP cost in full and in priority from the fund to be infused by the SRA [Section 30(2)(a)].

   B. Proposes to pay the Operational Creditors of the Corporate Debtor in priority over the Financial Creditor. [Section 30(2)(b)].

   C. The Management of the affairs of the Corporate Debtor after approval of the Resolution Plan would be with the Resolution Applicant [Section 30(2)(c)].

   D. The Plan also provides for implementation and supervision of the Resolution Plan as stated above [Section 30(2)(d)].

   E. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force [Section 30(2)(e)].

6. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) of the Code as under:

a) Payment to Operational Creditor under the Resolution plan shall be given priority in payment over financial Creditors as per clause 7.3(g) of the Resolution plan (Regulation 38(1)(a) of the Regulations).
b) Provides for payment due to the dissenting Financial Creditors in priority over assenting Financial Creditors Regulation 38(1)(b) of the Regulations.
c) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38 (1A) of the Regulations).
d) Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of his related party has either failed or contributed to the failure of the implementation of any other approved Resolution Plan (Regulation 38(1B) of the Regulations).
e) The Plan also provides for term and implementation schedule, management and control of the Corporate Debtor and adequate means for supervising its implementation (Regulation 38(2) of the Regulations).
f) The Resolution Plan also addresses the cause of default, feasibility and viability, as required under Regulation 38(3) of the Regulations.

7. The SRA has sought certain reliefs, concessions and waivers at Clause 16 of the Resolution Plan.

8. It is beneficial to refer to the observation of the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta &Ors.:(2019) SCC OnLine SC 1478* as under:

> *"67. …………*
> *A successful resolution Applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution*

Applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution Applicant does on a fresh slate, as has been pointed out by us hereinabove."

9. In view of the above ruling of the Apex Court, the Resolution Applicant takes over the Corporate Debtor with all its assets and liabilities as specified in the Resolution Plan subject to orders passed herein. As already indicated the Resolution Plan has been approved by the CoC in its meeting held on 04.09.2020 with 96.84% votes.

10. In ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150)*** the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan with 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 is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is *'no more and no less'*. The Hon'ble Court further 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.

11. In **CoC of Essar Steel** (*supra*) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court 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 concerned, the parameters of such review having been clearly laid down in* ***K. Sashidhar*** *(supra)."*

12. The Applicant has filed an Affidavit dated 04.06.2021 stating that there are some inadvertent clerical errors in the Resolution Plan they are:-

a. .. At page No. 42 – clause 20.2 (c)(ii), clause 20.2(c)(iii)(d), at page No. 46 – clause 20.4(c), 20.4(f) and at page No. 48 – clause 21(a): The name of the Corporate Debtor would be subsequently changed to "*Theta Pharmaceuticals Private Limited"* instead of *"Theta India Private Limited"*

b. .. At page No. 9 – clause 301(v): Year "2020" has been mentioned while referring to the date of approval of RFRP by CoC i.e. it should have been *"09 December 2019"*instead of the typo error of "*09 December 2020"* and the date on which the same was shared by Resolution Professional should have been *"23 March 2020"* instead of *"19 December 2020"*

c. .. At page No. 35 – clause 16.5(c) GSTN to be mentioned as old GSTN – 05AAKCS3247G1ZD and new GSTN – 05AAKCS3247G2ZC

d. .. At page No. 6 – clause No. 1: Date of Resolution Plan should have been 30.08.2020 instead of typo error of 25.06.2020.

Accordingly in the Resolution Plan the above corrections are ordered.

13. In view of the discussions and the law thus settled, we are satisfied that the Resolution Plan as approved by the CoC under Section 30(4) of the Code meets the requirements of Section 30(2) of the Code and Regulations 37 and 38 of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved as provided under Section 31 of the Code. Hence ordered.

ORDER

The Application be and the same is allowed. The Resolution Plan submitted by Dr. Bharat Agrawal in consortium with M/s Theta Labs Private Limited annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order.

a. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

b. As far as the permits held by the Corporate Debtor and the rights and benefits accrued therein, the Corporate Debtor (under the new Management) needs to approach the authorities concerned for renewal and that the same may have to be considered by them favourably, subject to relevant Law and Rules, so that the implementation of Plan becomes smooth.

c. With regard to the reliefs and concessions sought by the Resolution Applicant in respect of the Corporate Debtor, the Monitoring Agency or the new Management, as the case maybe, may approach the respective authorities and departments for such reliefs. The authorities concerned may favourably consider such applications as deemed proper under law, keeping in view the object of resolution of the Corporate Debtor as envisaged in the Code and various pronouncements of the Hon'ble Apex Court.

d. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.

e. Henceforth, no erstwhile creditors of the Corporate Debtor can claim anything other than the liabilities referred to in Paras supra.

f. The moratorium under Section 14 of the Code shall cease to have effect from this date.

g. The Applicant shall supervise the implementation of the Resolution Plan and shall file Status Report of its implementation before this Authority periodical status report, preferably every quarter.

h. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.

i. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant for necessary compliance. The certified copy so granted shall include the Resolution Plan approved herein.

Sd/-
V. Nallasenapathy
Member (Technical)

Sd/-
Janab Mohammed Ajmal
Member (Judicial)