



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

IA-1890/2022 in CP(IB)-197/MB/2018

Under Sec 60(5) of the IBC, 2016

In the matter of

Amit Gupta ...Applicant/
Resolution Professional
v/s.

ICICI Bank Ltd. & Ors.
...Respondents

In the matter of

ICICI Bank Ltd. ...Financial Creditor
v/s.

Unimark Remedies Ltd.
...Corporate Debtor

Order Pronounced on: **17.04.2023**

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant:

Ms. Pooja Mahajan a/w Ms. Mahima Singh,
Ms. Arveena Sharma & Mr. Jineshkumar
Gandhi i/b Arihant Associates, Advocates. Mr.
Amit Gupta, RP present in person.



ORDER

Per: Kishore Vemulapalli, Member (Judicial)

This is an Application filed by Mr. Amit Gupta, Resolution Professional (RP) of the Corporate Debtor seeking (i) direction to CoC to remit Rs.15,00,000/- immediately towards CIRP costs and to pay the outstanding/unpaid CIRP costs incurred by the Applicant/RP for protecting the assets of the Corporate Debtor at Vapi and Bavla plants of the Corporate Debtor and (ii) for the early disposal of the MA-23/2019 seeking approval of the Resolution Plan of the consortium of Asset Reconstruction Company (India) Ltd., Intas Pharmaceuticals Ltd. and Shamrock Pharmachemi (P) Ltd., which was approved by the CoC of the Corporate Debtor by 72.25% of voting share.

Brief Facts of the Case:

1. The CIRP was commenced in the Corporate Debtor viz. Unimark Remedies Ltd. vide an admission order dated 03.04.2018 of Court-1 of this Bench in CP(IB)-197/MB/2018 filed by ICICI Bank; a Financial Creditor. Mr. Amit Gupta was appointed as IRP of the Corporate Debtor. As per the regulations, the IRP called for the claims of the creditors and CoC was constituted, Information Memorandum was prepared and then called for Expression of Interests from the public. Thereafter the prospective resolution applications were presented in the CoC meeting for approval of the resolution plan.
2. In the CoC meeting, the resolution plan was voted by CoC members favouring 72.25%. Accordingly, the resolution plan submitted by the consortium of Asset Recovery Company (India) Ltd., Shamrock Pharmachemi Pvt. Ltd. and Intas Pharmaceuticals Ltd. was approved by



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the CoC. The Resolution Plan approved by the CoC has been filed at this Tribunal by the RP vide an Application bearing MA-23/2019, which is pending for adjudication.

3. The Applicant submits that following the filing of the Plan Approval Application, various applications raising objections/opposing the CoC's approval of the Resolution Plan were filed with this Tribunal. Therefore, the adjudication of the Plan approval Application is considerably delayed. The Applicant further submits that a Resolution Plan was filed within 280 days of the commencement of the CIRP, however, the entire resolution process hung in the balance due to the pendency of various applications objecting the approval of the Resolution Plan, which increased operational and cash flow challenges. Due to limited cash flow, the two plants viz. Bavla and Vapi in Gujarat which were in operation even after the commencement of CIRP, become non-operational and are shut in December 2019 and in January 2022 respectively.
4. In the 36th CoC meeting held on 24.02.2022, the Applicant informed the CoC about various security and operation related issues faced at the Vapi Plant. Due to non-payment of salaries/wages, the workers stopped working and started agitating, which becomes difficult to run the plant. For maintaining the plants which are non-operational, will cost minimum Rs.15-20 lakhs. In the 37th CoC meeting held on 20.04.2022, the Applicant informed the CoC that the utility services viz. electricity, water, gas among other supplies have been disconnected and that there is a high risk to security as well. In the absence of electricity and basic facilities at the plant, even the security agency is facing issues in protecting the assets of



the Corporate Debtor. The Applicant/RP informed the CoC that he does not have sufficient funds to continue to avail the services of security agency for a long period of time and that the CoC will have to fund the said expenses to continue the services of the security agency. In the 38th CoC meeting held on 07.06.2022, the Applicant again informed the CoC members that the funds of the Corporate Debtor are drained and that the security agency at both Vapi and Bavla plants are being reluctant to render services due to non-payment of their outstanding dues. It was also informed that as on date, both the Plants of the corporate Debtor are uninsured. In light of these facts and the issues faced, the Applicant requested the members of the CoC to provide funds towards contribution of the security agency dues being the unpaid CIRP cost. The CoC after due discussion on the issues highlighted by the Applicant, it was resolved as under:

“RESOLVED THAT approval of the members of Committee of Creditors be and is hereby accorded for contribution towards unpaid Insolvency Resolution Process Costs amounting to INR 15,00,000/- (Rupees Fifteen Lacs Only) for the payment of Security Agency deployed at Vapi and Bavla Plants.”

5. Pursuant to the Resolution passed in the 38th CoC meeting, the Applicant followed up the CoC member with the percentage-wise contribution required to be made by each member. However, only Central Bank of India, IDBI Bank and Bank of Maharashtra paid their contributions amounting to Rs.2,58,000/- out of Rs.15,00,000/-. As no more payment received from the CoC members and the outstanding balance for the services provided by the security agency had been outstanding for more than six months, the Applicant paid Rs.2,41,570/- to the security agency for



the Vapi Plant to continue the services. To continue the services at Bavla Plant, the Applicant transferred Rs.2,75,000/- from his personal account and paid Rs.2,74,967/- to security agency at Bavla Plant.

6. The Applicant further submits that since the Corporate Debtor's funds have been completely depleted, this Bench may pass necessary directions to the CoC to pay the amount of Rs.15,00,000/- as approved in the 38th CoC meeting towards the CIRP costs to be incurred in securing the Corporate Debtor's assets.
7. The Applicant further submits that as on 10.07.2022 the total unpaid CIRP cost is Rs.94.39 crores. As the mounting unpaid CIRP costs would be adjusted from the amounts payable under the Resolution Plan to the financial creditors, continued delay in adjudication of the Plan approval Application, will cause major suffer to the financial creditors as also irreparable financial losses. There is also an apprehension that due to prolonged delay in the approval of the Resolution Plan, the whole process may get derailed and the Corporate Debtor may have to go for liquidation. Therefore, the Applicant prayed that in the interest of justice, the Resolution Plan may be approved at the earliest and also to direct the CoC to remit Rs.15,00,000/- immediately.
8. No reply filed by the Respondents/CoC members.

Findings:

9. The IA seeking approval of the Resolution Plan is already heard and reserved for orders on 09.02.2023. The said IA already takes care of



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payment of dues of RP. Hence, we feel that the prayers in this IA does not require any indulgence of this bench at this moment.

10. In view of the above, the present IA is hereby **dismissed** as infructuous.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)