

THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(through web-based video conferencing platform)

CA No. 490/2019 & IA No. 42/2020

In

CP (IB) No. 2/Chd/CHD/2018

Under Sections 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Regulation Process for Corporate Persons) Regulations, 2016.

In the matter of:

Allahabad Bank

... Financial Creditor

Versus

M/s. Vardhman Chemtech Limited

... Corporate Debtor

And in the matter of CA No. 490/2019:-

Committee of Creditors
represented through Chairman of
Committee Hemanshu Jetley
Resolution Professional in the matter of
Vardhman Chemtech Limited
(Corporate Debtor)
(Undergoing Corporate Insolvency
Resolution Process)

... Applicant-Resolution
Professional

And in the matter of IA No. 42/2020:-

Committee of Creditors
represented through Chairman of
Committee Hemanshu Jetley
Resolution Professional in the matter of
Vardhman Chemtech Limited
(Corporate Debtor)
(Undergoing Corporate Insolvency
Resolution Process)

... Applicant-Resolution
Professional

CA No. 490/2019 & IA No. 42/2020

In

CP (IB) No. 2/Chd/CHD/2018



Order delivered on: 12..01.2021

Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. RAGHU NAYYAR, MEMBER (TECHNICAL)

Present through Video Conferencing:

For the Resolution Professional : 1. Mr. G.S. Sarin, Practising Company Secretary
2. Mr. Krishan Vrind Jain, Chartered Accountant
For the Resolution Applicant : Ms. Pooja Mahajan, Advocate
For the Income Tax Department: Mr. Yogesh Putney, Senior Standing Counsel

Per: **Ajay Kumar Vatsavayi, Member (Judicial)**

ORDER

IA No.42/2020

This application has been filed by the Resolution Professional for placing on record additional documents/ information in CA No. 490/2019. The same is taken on record and IA 42/2020 stands disposed of.

CA No. 490/2019

The present application 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 dated 15.06.2019 along with addendums dated 25.06.2019 and 10.12.2019 as approved in the meeting of the CoC held on 20.06.2019.



CA No. 490/2019 & IA No. 42/2020
In
CP (IB) No. 2/Chd/CHD/2018

2. It has been submitted that the insolvency petition was filed by the Financial Creditor i.e. Allahabad Bank under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP) in the case of M/s Vardhaman Chemtech Ltd. (Corporate Debtor) and the same was admitted vide order dated 25.09.2018, initiating the CIRP of the Corporate Debtor, imposing moratorium under Section 14 of the code and appointing Mr. Manoj Sehgal as Interim Resolution Professional (IRP). It is submitted that 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. Financial Express, an English newspaper and Punjabi Jagran, Punjabi edition both dated 27.09.2018 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, claims were received from the Financial Creditors which were verified and after collation, the IRP constituted the CoC as per the provisions of Section 21 of the Code. It is stated that the CoC was constituted with three secured Financial Creditors, the details of which are as follows:-

S.No.	Name of the Financial Creditor	Amount Claimed	Amount Admitted	Voting Share %
1.	Allahabad Bank	1,17,05,67,246	1,17,05,67,246	28.42%
2	State Bank of India			55.64%
	State Bank of Patiala	1,97,97,17,774.59	1,97,97,17,774.59	
	State Bank of Hyderabad	31,25,31,519.54	31,25,31,519.54	
3	IDBI Bank	65,64,79,144	65,64,79,144	15.94%



4. It is submitted that the IRP appointed two Valuers to determine the liquidation value of the corporate debtor in accordance with Regulation 35 of the Regulations. Thereafter, a third Valuer was also appointed due to substantial difference in the reports presented by the Valuers earlier appointed and on the basis of their reports, the fair value and liquidation value as per Regulation 35 are ₹23.38 crores and ₹.14.02 crores respectively.

5. The CoC in its first meeting held on 29.10.2018 resolved to continue the IRP as Resolution Professional (RP) of the Corporate Debtor. Further, in the 2nd meeting of the CoC held on 03.12.2018, the CoC approved the Eligibility Criteria along with the format of Evaluation Matrix and also gave its approval for publication of Form G for inviting Expression of Interest (EOI).

6. It is also stated that the Expression of Interest was called from eligible resolution applicants as prescribed in Regulation 36A of the Regulations by publishing Form G in "Amar Ujala" in Hindi, "Business Standard" in English and "Punjabi Jagran" in Punjabi dated 05.12.2018.

7. It is submitted that after publication of Form G, the EOI have been received from only two Prospective Resolution Applicants and therefore, with a view to invite wider participation, the CoC in the 3rd meeting held on 08.01.2019 decided to publish fresh Form G and the same was published on 19.02.2019 inviting EOI in the same newspapers as earlier and the last date for submission of the EOI was fixed as 11.03.2019. Copy of publication of Form G on 20.02.2019 is attached as Annexure A-14.

CA No.154 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 15.03.2019. A copy of the order is part of document at Annexure A-13 of the paper book.

9. It is submitted that in response to the publication of fresh Form G, six participants submitted their E₁OIs and accordingly request for submission of the resolution plan (RFRP) was sent to all the prospective resolution applicants. Also, the last date for submission of resolution plan was extended to 23.04.2019 as was approved by the CoC.

10. It is submitted that out of total 6 prospective resolution applicants, the RP received resolution plan from 3 prospective resolution applicants in the 8th CoC meeting dated 02.05.2019 namely 1. KMG Industrial Traders Pvt. Ltd. 2. Jatalia Global Venture Limited and 3. DPB Antibiotics Limited for consideration of the CoC.

11. It is submitted that the resolution plans were opened and presented to the CoC members in the 9th meeting of CoC on 20.05.2019. The CoC members advised the resolution applicant DPB Antibiotics Pvt. Ltd. to improvise and revise the resolution plan. Accordingly, the said resolution applicant submitted the revised resolution plan and the same was presented to the CoC members in its 10th meeting on 15.06.2019.

12. In the 11th meeting of the CoC members on 20.06.2019, the members principally agreed on the revised resolution plan of M/s. DPB Antibiotics Private Limited. The RP conducted the e-voting on 20.06.2019 and the revised resolution plan was approved by 100% voting by the members of CoC.

13. It is submitted that as the Resolution Plan was approved in the 11th CoC meeting held on 20.06.2019 and the period of 270 days expired on 22.06.2019, an interim application bearing CA No. 491/2019 was filed by the Resolution Professional on 19.06.2019 seeking to exclude the time consumed in



preparation of CA No.490/2019 for filing an application under Section 30 of the Code for approval of the plan. CA No.490/2019 was filed on 28.06.2019. Vide order dated 04.09.2019, passed in CA No.491 of 2019, the delay of seven days was condoned.

14. In terms of Section 30 (6), of the Code, read with Regulation 39, of the CIRP Regulations, 2016, the resolution professional has submitted the Resolution Plan dated 15.06.2019 along with addendum 1 dated 25.06.2019 and addendum 2 dated 10.12.2019 for seeking an order under Section 31(1) of the Code, for approval of the resolution plan, passed by the committee of creditors under sub-section (4) of Section 30 of the Code.

15. It is further stated that revised affidavit of Mr. Devang Ajmera, authorised representative of DPB Antibiotics Private Limited, the resolution applicant regarding its eligibility under Section 29A read with Regulation 38 of IBC, 2016 is at Annexure A-7 of Diary No. 781 dated 28.01.2020. Also the RP has filed compliance certificate in revised Form H (Annexure A-7 of Diary No. 781 dated 28.01.2020) 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 revised 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.

16. 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.



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

18. The corporate debtor was incorporated on 21.08.1996 and as discussed above, the CIRP proceedings were initiated by order delivered on 25.09.2018. The present application is filed for approval of the resolution plan submitted by M/s. DPB Antibiotics Private Limited. 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.4 of revised Form H – Annexure 4 Diary No. 781 dated 28.01.2020):-

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	State Bank of India	55.64%	Voted For Resolution Plan
2	Allahabad Bank	28.42%	Voted For Resolution Plan
3	IDBI Bank	15.94%	Voted For Resolution Plan
	Total	100%	

20. The details of stakeholders under the resolution plan given in para 7 of Form H (Annexure 4 Diary No. 781 dated 28.01.2020) is as follows: -

(Amount in Rs.Crores)

Sr. No.	Category of Stakeholder*	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
1	Dissenting Secured Financial Creditors	-	-	-	-



2	Other Secured Financial Creditors	411.93	411.93	27.54	6.685%
3	Dissenting Unsecured Financial Creditors	-	-	-	-
4	Other Unsecured Financial Creditors	297.03	-	-	-
5	Operational Creditors				
	A. Statutory Authority				
	PF Authority against Village Nimbua Plant,	0.184	0.184	0.184*	100%
	PF Authority against D-6, Industrial Focal point	0.17	0.17	0.17	100%
	Other Statutory Authorities	307.00	307.00	0.68**	0.22%
	B. Workmen	0.19	0.18	0.18	100%
	C. Employees	0.89	0.87	0.86	96.63%
	D. Other Operational Creditors	13.78	13.78	0.20	1.45%
6	Other Debts and Dues	-	-	-	-
	Total	1031.174	734.114	29.814	2.89%

**Vide Addendum dated 10.12.2019 the resolution applicant has proposed full payment for PF dues in respect of Nimbua Plant of the corporate debtor thereby increasing the amount of resolution amount by said amount.*

***At the 10th COC meeting held on 15.06.2019, the RP disclosed that Edelweiss ARC had filed its claim against the corporate debtor which was submitted after the expiry of last date to submit claims due to which RP had requested them to withdraw their claim relying upon Regulation 12 of the IBC (CIRP) Regulations, 2016). However, pursuant to the recent judgments given by Principal Bench of NCLT stating that the above Regulation is directive in nature and the delay in submission of claim should be condoned and RP should accept the claim even after 90 days of CIRP date after which RP had provided updated list of claims to the*



resolution applicant and the resolution applicant has agreed to settle the claim submitted by Edelweiss ARC in their resolution plan. Accordingly, the resolution applicant proposed an amount of Rs.0.03 crores to be payable to Edelweiss ARC in the resolution plan. Copy of minutes of the 10th COC meeting is attached as Annexure A19 of the application.

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

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause and Relevant Page of Resolution Plan	Annexure No. of the Paper book	Compliance (Yes / No)
25(2)(h)	<p>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?</p> <p>The criterion for the resolution applicant was that the applicant should have net worth of Rs. 15 crores. The resolution applicant meets the criteria and submitted certificate of net worth along with request for EOI.</p>	Yes, as per Eligibility criteria at Page no. 166 and minutes of the sixth COC meeting at Page no. 164-174 of the instant application.	Annexure A14 and Annexure A15 of the instant application respectively.	Yes
Section 29A	<p>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?</p>	Yes, as per affidavit on Page no.118-119, Eligibility criteria at Page no. 166 and as per the final list of PRAs at Page no.	Annexure A7, A14 and A16 of the instant application respectively.	Yes



	<i>The resolution applicant is eligible to submit resolution plan as per the criteria fixed by the COC.</i>	<i>175 of the instant application.</i>		
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible? <i>The resolution applicants have submitted an affidavit stating that they are eligible to submit resolution plan.</i>	<i>Yes, as per affidavit on Page no. 118-119 of the instant application.</i>	Annexure A 7 of the instant application.	Yes
Section 30(2)	Whether the Resolution Plan: (a) provides for the payment of insolvency resolution process costs? <i>The resolution plan provides for the upfront Payment of unpaid CIRP cost as on the date of approval of plan if the same could not be paid from the cash flows of the company.</i> <i>"The unpaid CIRP Cost as proposed under resolution plan is Rs. 0.25 crores."</i>	<i>Yes, at Page no. 37 and Page no. 39-40 of the instant application.</i>	Annexure A 2 of the instant application.	Yes
	(b) provides for the payment of the debts of operational creditors?	<i>Yes, at Page no. 37 and Page no. 44-46 of the instant application.</i>	Annexure A2 of the instant application.	Yes



"According to the provisions of Section 30 of the IBC read with Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidation value due to operational creditors shall be provided before any payment to financial creditor.

In the present case, the Claims of workmen's and secured financial creditors are more than the assessed liquidation value, hence the liquidation value available to all other operational creditors-stakeholder shall be "Nil".

However, the resolution applicant has proposed Rs. 2.06 Crores as payment to Operational Creditors which shall be paid upfront, in priority over Financial Creditors, within 30 days from the Effective Date.

The payment of Rs. 2.06 crores is to be distributed as follows-

Rs. 0.86 crores is proposed to be paid to the employees, Rs. 1.00 crores is proposed to be paid to the statutory



	<p>authorities and Rs. 0.20 crores is proposed to be paid to the operational creditors being suppliers of goods and services.</p>			
	<p>(c) provides for the management of the affairs of the Corporate debtor?</p> <p>On the day of issuance of New Equity Shares as mentioned above and simultaneously with the issuance, the entire Equity Shares 30768603 of the Company, held by entire erstwhile 13 shareholders shall be reduced to 13 equity shares. Post reduction these 13 equity shares shall be compulsorily transferred to DPB Antibiotics Pvt. Ltd. at face value of INR 10 per share.</p> <p>On and from NCLT Approval Date, the Resolution Applicant shall take over the management control of the Company, including its business activities. While the implementation of the Resolution Plan shall happen in parallel, the board of directors of the Company shall be reconstituted on the Closing Date and they shall take up the responsibilities of the day to day affairs of the</p>	<p>Yes, at Page No 58-60 of the instant application.</p>	<p>Annexure A2 of the instant application.</p>	<p>Yes</p>



	<p>Company and manage it in its regular course.</p> <p>Erstwhile promoters will not be in control or promoters in the Company with effect from NCLT Approval Date, although the Equity Shares might be held by them (13 shares out of 100000 shares)</p> <p>The erstwhile Board of Directors of the Company shall remain suspended and the Resolution Professional (with Committee of Creditors) shall continue to manage the affairs of the Company until the Closing Date. On and from the Closing Date, all the existing Directors, shall vacate their respective offices. On the Closing Date, a new Board of the Company shall be formed by the Resolution Applicants in the manner provided in Chapter VI of Resolution Plan.</p>			
	<p>(d) provides for the implementation and supervision of the resolution plan?</p> <p>In order to ensure that the Resolution Plan is implemented in accordance here of and that the obligations undertaken herein are adhered to in letter and</p>	<p>Yes, at Page No 63-67 of the instant application.</p>	<p>Annexure A 2 of the instant application.</p>	<p>Yes</p>





<p>spirit, an appropriate monitoring agency/entity shall be constituted ("Monitoring Agency") on the NCLT Approval Date.</p> <p>The monitoring agency shall comprise as follows-</p> <ol style="list-style-type: none"> 1. One representative each of the 3 Financial Creditors. 2. The Resolution Professional, Mr. Hemanshu Jetley, registered Insolvency Professional, membership no. IBBI/PA-001/IP-P00219/2017-2018/10457. 3. One representative proposed by the resolution applicant. <p>The term of the "Plan" shall commence from effective date and shall continue until the implementation of the financial settlements of plan in accordance with Term specified in Plan i.e. 120 days from Effective Date.(Resolution Plan: IMPLEMENTATION OF THE PLAN).</p>			
<p>(e) contravenes any of the provisions of the law for the time being in force?</p> <p>The Resolution Applicant represents and warrants that to the</p>	<p>NO, at Page no. 61 of the instant application.</p>	<p>Annexure A2 of the instant application.</p>	<p>No</p>



	<p>best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.</p> <p>Resolution Professional has reviewed the plan and is satisfied with the contents of the plan and confirms that the plan complies with the applicable laws.</p> <p>The Resolution Plan has been prepared in terms of the provisions of the Insolvency & Bankruptcy Code, 2016 and amendments thereon and does not contravene any provisions of the Act. (Resolution Plan Chapter- VI, Point A, Clause 1.4)</p>			
Section 30(4)	<p>Whether the Resolution Plan (a) is feasible and viable, according to the COC?</p> <p>The Resolution Applicant proposes a Payment of 30.03 crores. The Resolution applicant has sufficient net worth- Sources to pay off the entire consideration.</p> <p>In addition to the above</p>	Yes, at Page No. 37-38 of the instant application.	Annexure A2 of the instant application.	Yes



	<p>the resolution applicant will infuse Rs. 10 crores as working capital and Rs. 6 crores for capital expansion.</p> <p>Further, the Resolution Applicant has experience in the pharmaceutical industry and has formed a detailed strategy for its revival.</p>			
	<p>(b) has been approved by the COC with 66% voting share?</p> <p>"RESOLVED THAT, the Resolution Plan submitted by DPB Antibiotics Pvt Ltd be and is hereby approved in compliance with the provisions of section 30(4) of the Insolvency and Bankruptcy Code, 2016 with 100% voting rights. Further the COC authorizes the Resolution Professional Mr. Hemanshu Jetley to move an application under section 31 on behalf of the COC for approval of resolution plan from the Adjudicating Authority".</p>	<p>Yes, at Page No. 135-136 of the instant application.</p> <p>(minutes of the 11th COC)</p>	<p>Annexure A11 of the instant application.</p>	<p>Yes</p>
	<p>Whether the Resolution Plan has provisions for its effective implementation plan, according to the COC?</p> <p>In order to ensure that</p>	<p>Yes, at Page No 63-67 of the instant application.</p> <p>(Minutes of the 11th COC meeting)</p>	<p>Annexure A 2 of the instant application.</p>	<p>Yes</p>

	<p>the Resolution Plan is implemented in accordance here of and that the obligations undertaken herein are adhered to in letter and spirit, an appropriate monitoring agency/entity shall be constituted ("Monitoring Agency") on the NCLT Approval Date.</p> <p>The monitoring agency shall comprise as follows-</p> <ol style="list-style-type: none"> 1. One representative each of the 3 Financial Creditors. 2. The Resolution Professional, Mr. Hemanshu Jetley, registered Insolvency Professional, membership no. IBBI/IPA-001/IP-P00219/2017-2018/10457. 3. One representative proposed by the resolution applicant. <p>The term of the "Plan" shall commence from effective date and shall continue until the implementation of the financial settlements of plan in accordance with Term specified in Plan i.e. 120 days from Effective Date.</p>			
 <p>Regulation 35A</p>	<p>Where the resolution professional made a determination if the corporate debtor has</p>	<p>Transaction report received 10.05.2019</p>	<p>Audit dated was on</p>	<p>Yes</p>

<p>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>Only one preferential transaction was reported by the Transaction auditor amounting to Rs. 4.75 lacs.</p> <p>Mr. Suyog Jain (member of the suspended board of director) has submitted with the RP a cheque amounting to Rs. 4.75 Lacs as contribution against the above mentioned preferential transaction as per Transaction Audit Report.</p> <p>No other qualifications has been made in the Transaction Audit Report by the Transaction Auditor however, the RP and committee was of the view that an application should be filed on the basis of available facts which raises suspicion as no documentary proofs are available to prove the bona-fide intentions of the management beyond reasonable doubt.</p>	<p>20.05.2019.</p> <p>At page no. 159-160 of the instant application.</p> <p>(Minutes of the 10th COC meeting)</p>	<p>Annexure A 12 of the instant application.</p>	
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	<p>Hence, RP has identified certain preferential transactions under section 43 and fraudulent transactions under section 66 of the Code in addition to the findings of the Transaction Auditor.</p> <p>RP has filed an application with Hon'ble NCLT to report the said transactions on 11 December 2019 (Diary no. 7028).</p>			
Regulation 38 (1)	<p>Whether the amount due to the operational creditors under the Resolution Plan has been given priority in payment over financial creditors?</p> <p>The Resolution Applicant proposes to pay an upfront sum of INR 1.04 Crores, ("Workmen Payment") within 30 days from the Closing Date, towards full and final amount and one time settlement of all workmen and employees dues.</p> <p>Further, as stated in the addendum to the plan dated 10.12.2019 the resolution applicant has undertaken to increase the amount of plan to provide for additional PF dues in respect of Nimhua plant of corporate debtor</p>	Yes, at Page no. 44-45 of the instant application.	Annexure A 2 of the instant application.	Yes



	<p>It is proposed that the claims of the Operational Creditors – Trade Payables (other than workman and statutory liabilities and Related Parties) shall be settled at INR 0.20 crores proportionately among all such claims.</p> <p>Further, as per Regulation 38(1) of the CIRP Regulations, the amount due to the Operational Creditors shall be given priority in payment over the Financial Creditors.</p>			
Regulation 38(1A)	<p>Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?</p> <p>The Plan envisages a justifiable payout to the different class of creditors.</p>	Yes, at Page No. 52-54 of the instant application.	Annexure A2 of the instant application.	Yes
Regulation 38(1B)	<p>(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code ?</p>	Yes, at Page No. 88 of the instant application. (Addendum to the Resolution Plan)	Annexure A3 of the instant application.	Yes
	(ii) If so, whether the	N.A.	N.A.	N.A.



	<p>Resolution Applicant has submitted the Statement giving details of such non-implementation?</p>			
Regulation 38(2)	<p>Whether the Resolution Plan provides:</p> <p>(a) the term of the plan and its implementation schedule?</p> <p>The term of the "Plan" shall commence from effective date and shall continue until the implementation of the financial settlements of plan in accordance with Term specified in Plan i.e. 120 days from Effective Date*.</p> <p>*the date of approval of resolution plan by NCLT.</p> <p>All the payments proposed under the resolution plan shall be paid within 120 days of effective date i.e. approval of plan from Adjudicating Authority.</p>	<p>Yes, at Page No. 63-71 of the instant application.</p>	<p>Annexure A2 of the instant application.</p>	<p>Yes</p>
	<p>(b) for the management and control of the business of the corporate debtor during its term?</p> <p>On the day of issuance of New Equity Shares as mentioned above and</p>	<p>Yes, at Page No. 58-60 of the instant application.</p>	<p>Annexure A2 of the instant application.</p>	<p>Yes</p>




simultaneously with the issuance, the entire Equity Shares 30768603 of the Company, held by entire erstwhile 13 shareholders shall be reduced to 13 equity shares. Post reduction these 13 equity shares shall be compulsorily transferred to DPB Antibiotics Pvt. Ltd. at face value of INR 10 per share.

On and from NCLT Approval Date, the Resolution Applicant shall take over the management control of the Company, including its business activities. While the implementation of the Resolution Plan shall happen in parallel, the board of directors of the Company shall be reconstituted on the Closing Date and they shall take up the responsibilities of the day to day affairs of the Company and manage it in its regular course.

Erstwhile promoters will not be in control or promoters in the Company with effect from NCLT Approval Date, although the Equity Shares might be held by them (13 shares out of 100000 shares)
The erstwhile Board of Directors of the




	<p>Company shall remain suspended and the Resolution Professional (with Committee of Creditors) shall continue to manage the affairs of the Company until the Closing Date. On and from the Closing Date, all the existing Directors, shall vacate their respective offices. On the Closing Date, a new Board of the Company shall be formed by the Resolution Applicants in the manner provided in Chapter VI of resolution plan.</p>			
	<p>(c) adequate means for supervising its implementation?</p> <p>In order to ensure that the Resolution Plan is implemented in accordance here of and that the obligations undertaken herein are adhered to in letter and spirit, an appropriate monitoring agency/entity shall be constituted ("Monitoring Agency") on the NCLT Approval Date.</p> <p>The monitoring agency shall comprise as follows-</p> <ol style="list-style-type: none"> 1. One representative each of the 3 Financial Creditors. 2. The Resolution Professional, 	<p>Yes, at Page No 63-6 of the instant application (resolution plan). Also, at Page No 140-14 of the instant application. (Minutes of the 11th COC meeting)</p>	<p>Annexure A2 & A 11 of the instant application.</p>	<p>Yes</p>

	<p>Mr. Hemanshu Jetley, registered Insolvency Professional, membership no. IBBI/IPA-001/IP-P00219/2017-2018/10457.</p> <p>3. One representative proposed by the resolution applicant.</p> <p>The term of the "Plan" shall commence from effective date and shall continue until the implementation of the financial settlements of plan in accordance with Term specified in Plan i.e. 120 days from Effective Date.</p>			
38(3)	<p>Whether the resolution plan demonstrates that</p> <p>—</p> <p>(a) it addresses the cause of default?</p> <p>As per the Analysis of the Resolution Applicant, the major reason for deteriorated financial condition of the Corporate Debtor was acquisition of VLSPL having Pen- G facility located at Cuddalore, Tamil Nadu funded by way of Promoters equity of Rs. 135.21 crores and Term debt of Rs. 142 crores.</p> <p>The project could not get commissioned because of reasons beyond the control of the company.</p>	<p>Yes, at Page No. 62-63 of the instant application.</p>	<p>Annexure A2 of the instant application.</p>	<p>Yes</p>



<p>All the lenders assigned their debt to Edelweiss ARC for Rs. 144 crores in 2014-15.</p> <p>The ARC sold the plant and machinery of the project through open bidding when it failed to find a resolution.</p> <p>Vardhman Chemtech Limited invested an amount of Rs. 135.21 crores towards the project implementation which became a dead investment and led to cash flow crisis and liquidity crunch in the company leading to its downfall.</p>			
<p>(b) it is feasible and viable?</p> <p>The Resolution Applicant Proposes a Payment of Rs. 30.03 crores. The Resolution applicant has sufficient net worth-Sources to pay off the entire consideration.</p> <p>In addition to the above the resolution applicant will infuse Rs. 10 Cr as working capital and Rs. 6 Cr for capital expansion.</p> <p>a. The Resolution Applicant is already into the same business and has a set channel of networks / agents all over the consuming</p>	<p>Yes, at Page No. 37-39 of the instant application.</p>	<p>Annexure A 2 of the instant application.</p>	<p>Yes</p>



	<p>centres to market their production.</p> <p>b. The Resolution Applicant aims to leverage the existing networks and relationships, to market the additional production after acquisition of the company</p> <p>c. The Resolution Applicant is an existing supplier of intermediate chemicals to the Vardhman Chemtech and this acquisition will be a forward integration for the Applicant.</p> <p>d. This will in turn result in having cost synergies for both the Corporate Debtor and the Resolution Applicant, which will help the Company in acquiring higher market shares and boosting revenues.</p>			
	<p>(e) it has provisions for its effective implementation? In order to ensure that the Resolution Plan is implemented in accordance here of and that the obligations undertaken herein are adhered to in letter and spirit, an appropriate monitoring agency/entity shall be constituted ("Monitoring Agency") on</p>	<p>Yes, at Page No. 63-67 of the instant application (resolution plan).</p> <p>Also, at Page No. 140-14 of the instant application (Minutes of the 11th COC meeting)</p>	<p>Annexure A2 & A 11 of the instant application respectively.</p>	<p>Yes</p>

<p>the NCLT Approval Date.</p> <p>The monitoring agency shall comprise as follows-</p> <ol style="list-style-type: none"> 1. One representative each of the 3 Financial Creditors. 2. The Resolution Professional, Mr. Hemanshu Jetley, registered Insolvency Professional, membership no. IBB/IPA-001/IP-P00219/2017-2018/10457. 3. One representative proposed by the resolution applicant. <p>The term of the "plan" shall commence from effective date and shall continue until the implementation of the financial settlements of plan in accordance with term specified in plan i.e. 120 days from effective date.</p>			
<p>(d) it has provisions for approvals required and the timeline for the same?</p> <p>The Licenses and approvals held by the Company, which shall expire prior to the Closing Date or within a period of 6 months thereafter shall be renewed/ extended by</p>	<p>Yes, at Page No. 72-77 of the instant application.</p>	<p>Annexure A2 of the instant application.</p>	<p>Yes</p>



<p>the relevant Governmental Authorities, and the Company shall be permitted to continue to operate its business and assets in the manner operated prior to submission of this Resolution Plan until the renewal /extension of such licenses and approvals. The relevant Governmental Authorities will provide a reasonable period of time, after the Closing Date in order for the Resolution Applicant to;</p> <p>i) assess the status of licenses and approvals required by the Company and to procure that the Company applies for the same; and</p> <p>ii) regularize any non-compliances under the Applicable Law (including non-registration, inadequate/non stamping of documents under as required under Applicable Law) existing prior to Closing Date.</p>			
<p>(e) the resolution applicant has the capability to implement the resolution plan?</p> <p>The Resolution Applicant Proposes a Payment of 30.03 crores. The Resolution applicant through his</p>	<p>Yes, at Page No. 37-39 of the instant application.</p>	<p>Annexure A 2 of the instant application.</p>	<p>Yes</p>



	<p>group entities has sufficient net worth-Sources to pay off the entire consideration.</p> <p>In addition to the above the resolution applicant will infuse Rs. 10 Cr as working capital and Rs. 6 Cr for capital expansion.</p> <p>Further, the Resolution Applicant has relevant experience in the pharmaceuticals Industry and has formed a detailed strategy for its revival.</p>			
39(2)	<p>Whether the RP has filed applications in respect of transactions observed, found or determined by him?</p> <p>Only one preferential transaction was reported by the Transaction auditor amounting to Rs. 4.75 lacs.</p> <p>Mr. Suyog Jain (member of the suspended board of director) has submitted with the RP a cheque amounting to Rs. 4.75 Lacs as contribution against the above mentioned preferential transaction as per Transaction Audit Report.</p> <p>No other qualifications has been made in the Transaction Audit</p>	<p>Transaction Audit report dated 10.05.2019 received on 20.05.2019.</p> <p>At page no. 159-160 of the instant application. (Minutes of the 10th COC meeting)</p>	<p>Annexure A 12 of the instant application.</p>	Yes



	<p>Report by the Transaction Auditor however, the RP and committee was of the view that an application should be filed on the basis of available facts which raises suspicion as no documentary proofs are available to prove the bona-fide intentions of the management beyond reasonable doubt.</p> <p>Hence, RP has identified certain preferential transactions under section 43 and fraudulent transactions under section 66 of the Code in addition to the findings of the Transaction Auditor.</p> <p>RP has filed an application with Hon'ble NCLT to report the said transactions on 11 December 2019 (Diary no. 7028)</p>			
Regulation 39(4)	<p>Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B</p> <p>A demand Draft or a Term Deposit for 10% of resolution plan, amounting to INR 3.00 crores shall be deposited with the Resolution</p>	Yes, at Page no. 39 & 120-122 of the instant application.	Annexure A2 & A8 of the instant application.	Yes



	professional or with the COC on approval of resolution plan by COC.			
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22. 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.

23. 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) The Resolution Plan so approved meets the requirements as referred to in Section 30(2) of the Code;
- (c) The Resolution Plan has provisions for its effective implementation.

The satisfaction of the conditions is discussed below.

24. 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.

25. 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) provides for the payment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of, the corporate debtor under section 53;
- (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.

26. 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 (page 39 of Dy. No.781 dated 28.01.2020 and Chapter IV, Clause D of the Resolution Plan) provides for the upfront payment of unpaid insolvency resolution process cost estimated to the extent of ₹25,00,000/- within 30 days from the date of approval of resolution plan by the Adjudicating Authority in priority to any other dues. Further, any balance remaining from the CIRP cost allocated as such, shall be proportionately given to the Financial Creditors

Section 30(2)(b): The resolution plan (Page 44-46 of the Dy. No.781 dated 28.01.2020 and Chapter IV, Clause D of the Resolution Plan) states that, the resolution applicant has committed to pay a total amount ₹68,00,000/-* out of the claimed and verified amount to the **statutory authorities (except PF authorities)** against their claims in full and final settlement of the claim within 30 days from the date of approval of resolution plan by the Adjudicating Authority.

**The resolution plan provided for payment of Rs. 3,00,000/- against the claim of an unsecured Financial Creditors namely Edelweiss ARC. However, since the claim was rejected by the RP based on legal*



opinion and thereafter the application filed by the Unsecured Financial Creditor challenging the decision of the RP was also rejected by the Hon'ble Adjudicating Authority vide order dated 17.10.2019; the amount proposed as above has been attributed to be paid to the statutory authorities as suggested by the resolution applicant vide their mail dated 17.10.2019 at page no. 165 of application IA no. 42/2020.

Further, it is stated that the resolution plan provides an amount of ₹35,42,3694/- for payment to **Provident Fund authority** against their claims within 30 days from the date of approval of resolution plan by the Adjudicating Authority providing for 100% satisfaction of their claims (by virtue of Chapter IV, Clause D of the Resolution Plan at page no. 45 read with addendum at page no. 88 of the application IA no. 42/2020)

Further, an amount of ₹20,00,000/- is proposed to be paid to the **trade payables** of the corporate debtor within 30 days from the date of approval of resolution plan by the Adjudicating Authority in full and final settlement of the claim (Page 45 of the application IA no. 42/2020 and Chapter IV, Clause D of the Resolution Plan).

The resolution plan proposes payment of ₹1,04,00,000/- towards other dues of old **workmen and employees** (Page 44 of the application IA no. 42/2020 and Chapter IV, Clause D of the Resolution Plan). It is further stated that as the claims of the workmen's and secured financial creditors are more than the assessed liquidation value, 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. Since there are no dissenting financial creditors,



therefore, the liquidation value payable to them under Section 53(1) in the event of liquidation would be NIL. Hence, Section 30(2)(b) of the Act stands complied with.

Further it is submitted that there is no discrimination in the resolution plan in respect of class of creditors, as same treatment is provided to similarly situated class of creditors. So long as the provisions of the Code and the Regulations have been met, it is the commercial wisdom of the requisite majority of the Committee of Creditors which is to negotiate and accept a resolution plan, which may involve differential payment to different classes of creditors. Equitable treatment has been accorded to each creditor depending upon the class to which it belongs.

It is submitted that two properties (land) are owned by one of the promoters of the Corporate Debtor and the receipt of clear title of the lands is imperative for the resolution plan to succeed. Since the lands are mortgaged to lenders of the Corporate Debtor, the Resolution Applicant while relying upon the judgment in *State Bank of India vs MOR Farms Private Limited, Company Petition (IB) No. 51/CHD/HRY/2017* has offered to pay ₹6,50,00,000/- (included in the aforementioned amount of ₹27,54,00,000/-) as follows to the said banks: -

(a) Allahabad Bank: ₹2,90,00,000/- in respect of land at D-5, Industrial Focal Point, Derabassi, in the name of Sh. Suyog Jain.

(b) State Bank of India: ₹3,60,00,000/- in respect of land at Village Nimbua, Derabassi, in the name of Sh. Suyog Jain.



It is further submitted that the promoter has no objection to transfer the aforementioned land in the name of resolution applicant post the approval of the resolution plan by this Hon'ble Adjudicating Authority and his affidavit along with Special Power of Attorney authorizing the RP to

execute the transfer documents in favor of successful Resolution Applicant is attached as Annexure A-5 of Dy. No. 781 dated 28.01.2020 and as Annexure 1 (Diary No. 00245/3 dated 09.09.2020)

The affidavits of the said banks are affirming that the charge/mortgage over the land on which the plant of the Corporate Debtor stands will be relinquished by them post approval of the resolution plan by this Hon'ble Adjudicating Authority and that the banks shall have no objection on transfer of the said lands in favour of the successful Resolution Applicant are placed at Annexure A-6 of Dy. No. 781 dated 28.01.2020.

Section 30(2)(c): In Clause B of Chapter 5 of the resolution plan (page 58 of the application IA no. 42/2020) and as recorded in the minutes of the 11th CoC dated 20.06.2019 enclosed as Annexure- A11 in item no. 11.06 at page no. 140-141 of the application IA no. 42/2020, it is stated that the erstwhile Board of directors of the company shall remain suspended and on the closing date, a new board of the company shall be formed and management and control of the business of the Corporate Debtor from the effective date till the completion of the term of resolution plan shall be done by the Board of Directors reconstituted by the Resolution Applicant replacing the existing board of directors and their constituted board will be performing its duties under the guidance of "Monitoring Committee" consisting of :-

1. One representative each of the 3 Financial Creditors.
2. The Resolution Professional, Mr. Hemanshu Jetley, Registered Insolvency Professional, membership no. IBBI/IPA-001/IP-P00219/2017-2018/10457.



3. One representative proposed by the resolution applicant.

Further, as mentioned in Form H, on the Closing Date, 1,00,000 New Equity Shares of INR 10 face value will be issued by the Company to the Resolution Applicant and their nominees, free from any Encumbrance. On the day of issuance of New Equity Shares as mentioned and simultaneously with the issuance, the entire 3,07,68,603 Equity Shares of the Company, held by entire erstwhile 13 shareholders shall be reduced to 13 equity shares. Post reduction these 13 equity shares shall be compulsorily transferred to DPB Antibiotics Pvt. Ltd. at face value of INR 10 per share.

The Resolution Applicant is acquiring New Equity Shares in the Company and the business of the Company will continue to be carried on as usual during the process of such acquisition. Erstwhile promoters might hold the Equity Shares.

Section 30(2)(d): In Clause B of Chapter VI of the Resolution Plan (Page 63-67 of the application IA no. 42/2020), it is stated that the Monitoring Committee shall monitor and supervise the implementation of the Plan from the date of order of approval of Resolution Plan by the Adjudicating Authority

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.

27. 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, an Implementation and Monitoring Committee will be constituted. The constitution of the Committee has been discussed *supra*. The terms of the plan and its implementation schedule is



stated to be 4 months from the date of order of approval of Resolution Plan by the Adjudicating Authority. Apart from payment of ₹27,54,00,000/- to the secured financial creditors including ₹15 lakhs advance cash deposit in the form of Earnest Money Deposit, the resolution applicant proposed to infuse ₹10Cr as working capital and ₹6cr for capital expansion, in order to successfully implement the plan and to improve & stabilize the operations of the corporate debtor.

28. 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 DPB Antibiotics Pvt Ltd 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 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. In compliance of the Regulation 38 (3), the net worth certificates of the resolution applicant has been placed on record at Annexure 9 at page no. 123-129 of the application IA no. 42/2020.

29. According to the Regulation 39(4), the resolution applicant has submitted Performance Security of Rs.3,00,00,000/- which is being presently retained in the form of fixed deposit and is attached as Annexure A3 (Dy. No.00245/3 dated 09.09.2020). 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.

30. The resolution professional has placed on record the compliance certificate under Section30(2) of the Code and has confirmed that the resolution plan submitted is in compliance with Section30 of the Code, r/w Regulation 38 and 39 of the Regulations. Resolution Professional has also placed on record a copy of the resolution plan as approved by CoC, stated to have been signed by the authorized representative of the resolution applicant.

31. The learned counsel for the RP submitted that as per revised Form H (Annexure 4 of IA No. 42/2020 Diary No.781 dated 28.01.2020), all the provisions of the Code and Regulations were complied with and that the approval of the resolution plan was made by 100 % voting share of the CoC in the meeting of the CoC held on 20.06.2019 and therefore, resolution plan submitted by M/s DPB Antibiotics Pvt. Ltd be approved.



32. With regard to the compliance under Regulation 35A, it is stated that the RP has filed an application IA no. 171/2020 (Dy. No. 7028 dated 11.12.2019) which is pending adjudication.

33. The case was reserved for orders on 10.09.2010 but during the course of examination, it was observed that subsequent to the approval of the resolution plan by COC on 20.06.2019 two addendums dated 25.06.2019 and 10.12.2019 were added but clarity regarding COC approval for the said addendums could not be traced out. Therefore, the matter was listed for rehearing on 26.10.2020 and the learned counsel was directed to file affidavit explaining its stand on said addendums. Accordingly, the learned counsel filed compliance affidavit of the successful resolution applicant (Diary No. 245/7 dated 02.11.2020) stating therein that as per the addendum dated 25.06.2019, the Resolution Applicant has sought an additional relief from the Adjudicating Authority which however, contains a typographical error and therefore, prays for withdrawal of the said addendum. Further, with regard to second addendum dated 10.12.2019, the Resolution Applicant has undertaken to make the additional payment of Rs. 3,28,064/- to the PF Department due to submission of revised claim by the PF department. Therefore, the claim of the PF Department will be paid by the Resolution Applicant in full. Also, the said amounts are over and above the said proposed resolution plan amount and no prejudice will be caused to any member of the COC pursuant to the disbursement of this additional amount to the PF Department. The resolution applicant has also provided an undertaking as per Regulation 38(IB) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 Further, Resolution Applicant has prayed



for directions from this Adjudicating Authority to direct DGFT for removal of name of the corporate debtor from the list of denied entities.

34. The Resolution Professional also filed an affidavit (Diary No. 245/9 dated 02.11.2020) stating that both the addendums were sent to the COC Members vide e-mails dated 26.06.2019 and 14.12.2019 (Annexure 1) but neither the COC Members have affirmed nor dissented to the said addendums till date. Therefore, the addendum dated 25.06.2019 stands withdrawn. With respect to the second addendum dated 10.12.2019, the RA has undertaken that neither the applicant nor any of its related parties have failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. Also, it is submitted that DGFT being an operational creditor of the corporate debtor, their claim will be satisfied as per the resolution plan upon its approval and the same is binding on all stakeholders of the corporate debtor including DGFT, as per Section 31 of the Code.

35. Further, during the course of examination, it is noticed that the resolution plan proposes for carry forward of all the losses of the Company in terms of Section 79 of the Income Tax Act, 1961 and accordingly opportunity was granted to Income Tax Department (ITD) to file its report. The ITD filed report (Diary No. 793 dated 29.01.2020), stating that no approval can be granted to the CD to carry forward the losses.

36. In support of their respective submissions, the learned counsel for the income tax department placed heavy reliance on a decision of the Hon'ble NCLAT in Company Appeal No.467 of 2019 dated 04.12.2019 in **JSW Steels Limited Versus Ashok Kumar Gulla and Others** and the learned counsel for the Resolution Professional and Resolution Applicant have placed reliance on another



decision of the Hon'ble NCLAT in *Company Appeal No.957 of 2019 dated 17.02.2020* in *JSW Steel Limited Versus Mahender Kumar Khandelwal and Others*.

37. In Ashok Kumar Gulla (supra), the Adjudicating Authority approved the Resolution Plan for the Corporate Debtor Vardhman Industries Limited, with two conditions, one of which was pertaining to 'treatment of carry forward and set-off of losses' under Section 79 of the Income Tax Act, 1961. When the order of the Adjudicating Authority in imposing such a condition while approving the plan was challenged, the Hon'ble NCLAT after considering Section 79 of the Income Tax Act, 1961, observed as under:-

"12. As to the determination of the issue of 'carry forward losses' of the 'Corporate Debtor', in spite of notice to the Income Tax Authority, no reply has been filed and no objection has been raised.

However, taking into consideration the submissions made by the counsel for the Appellant- 'JSW Steel Limited' and taking into consideration the provisions of the Income Tax Act, 1961, including Section 79 and the Rules and Regulations framed thereunder, we hold that both the 'Successful Resolution Applicant' and the Income Tax Department will be guided by the Income Tax Act, 1961 and the Rules and Regulations framed thereunder. If the 'Successful Resolution Applicant' is entitled to 'carry forward losses' under Section 79 of the Income Tax Act it may claim such benefit before the appropriate Authority, who will pass appropriate order in accordance with Section 79 of the Income Tax Act, 1961 and the Rules and Regulations framed thereunder."

And accordingly, modified the order of the Adjudicating Authority to that effect.

38. In Mahender Kumar Khandelwal (supra), the Hon'ble NCLAT, while considering a batch of appeals filed against the order of the Adjudicating Authority in respect of the approval of the Resolution Plan of the Corporate Debtor i.e. Bhushan Power and Steel Limited clarified the order of the Adjudicating Authority as under:-



"129. Section 1.12 of the Resolution Plan deals with:

(i) List 'A': certain items forming an integral part of the Resolution Plan, which were deemed to have been granted by virtue of approval of the Resolution Plan by the Adjudicating Authority, as they are in the nature of standard and ordinary implications of any resolution plan approved by an Adjudicatory Authority which is binding on stakeholders.

(ii) List 'B': reliefs, concessions and entitlements for which specific orders were sought from the Adjudicating Authority as part of approval of the Resolution Plan:

130. However, the imposition of condition in Para 128(g) of the impugned order has created an ambiguity whether the same is intended to be limited to the reliefs and concessions set forth in List 'B' of Section 1.12 of the Resolution Plan or whether the aforesaid paragraph also relates to the matters in List 'A' of Section 1.12 of the Resolution Plan which constitute a mandatory part of the Resolution Plan.

131. While in para 121 of the impugned order, the Adjudicating Authority has separately dealt with List 'B' and has specifically observed that it cannot grant various concessions sought under List 'B', however, an ambiguity has crept in the concluding para 128(g) where it is unclear if such paragraph relates to only List 'B' or whether it extends to List 'A' also.

132. It was submitted that if para (g) of the impugned order also relates to 'List A', such condition would also amount to material modification of the Resolution Plan, without the consent of the Appellant, which has otherwise been found fit for approval.

133. List A is the integral part of the Resolution, therefore, the following orders shall be deemed to have been granted by virtue of approval of the Resolution Plan:

xxx

xxx

xxx

(iv) All penalties, interest, delayed payment charges, any other liabilities for any non-compliance with statutory obligations including taxes, including delays in filing returns or payment of tax dues, against the Company shall stand settled in accordance with the provisions of this plan as approved by NCLT."

xxx

xxx

xxx

148. The impugned Judgment dated 5th September, 2019 passed by the Adjudicating Authority approving the plan submitted by 'JSW Steel Limited' is approved with aforesaid modification/ clarification as made above. The order of stay of implementation of the plan stands vacated. The approved plan be given effect immediately in the manner as ordered by the Adjudicating Authority and modified/ clarified by this Appellate Tribunal.

149. The appeal preferred by 'JSW Steel Limited' is allowed. The appeals preferred by 'Mr. Sanjay Singal', 'Kalyani Transco', 'Jaldhi Overseas Pte. Ltd.', 'Medi Carrier Pvt. Ltd.', 'CJ Darcl Logistics Ltd.' and 'State of Odisha & Ors.' are dismissed.



150. For the reasons aforesaid, the application for impleadment of Mrs. Aarti Singal, equity shareholder and guarantor of the 'Corporate Debtor' is also rejected.

151. However, the Judgment passed by the Adjudicating Authority (National Company Law Tribunal) and this Appellate Tribunal will not come in the way of the Directorate of Enforcement or the 'Serious Fraud Investigation Office' or the 'Central Bureau of Investigation' to proceed with investigation or to take any action in accordance with law against erstwhile promoters, officers and others of the 'Corporate Debtor'. No costs.

39. A careful perusal of the above decisions shows that the decision in Ashok Kumar Gulla (supra) is applicable to the facts of the present case and hence, it is ordered accordingly. This view is applicable to the issue of removal of name of the corporate debtor from the list of denied entities, by DGFT also.

40. On the basis of discussion made above and in view of the provisions of Section 30(4) of the Code and subject to the observations made in Paras 33 to 39, we approve the resolution plan submitted by DPB Antibiotics Private 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. We may add that as discussed supra, the RP has stated that the total amount recovered by corporate debtor during CIRP (after payment of CIRP cost) would be distributed amongst the secured financial creditors in proportion to their shares.

41. 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 25.09.2018 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.

42. CA No. 490/2019 is disposed of.

(Raghu Nayyar)
Member (Technical)

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

January 12th, 2021
YP

