

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

**I.A. NO. 1344/2022
IN**

CP(IB) No. 241/9/HDB/2021

**IN THE MATTER OF M/S. NEOASKA PHARMA PRIVATE
LIMITED**

DR. G. V. NARASIMHA RAO,
RESOLUTION PROFESSIONAL OF
M/S. NEOASKA PHARMA PRIVATE LIMITED

AND ON BEHALF OF
THE COMMITTEE OF CREDITORS

...Applicant

Date of order: 28.06.2023

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula,
Hon'ble Member Judicial

Shri Charan Singh, Hon'ble Member Technical

Appearance:

For Applicant: Shri Avinash Desai, Senior Advocate
assisted by Ms. S. Mrudula, Advocate

PER: BENCH
ORDER

- 1.** This Application is filed by the Resolution Professional of **M/s Neoaska Pharma Private Limited** (Corporate Debtor) under Section 30(6) & 31 of IBC, 2016 r/w regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 & Rule 11 of NCLT Rules, 2016, seeking approval of the resolution plan submitted by Madhya Pradesh Waste Management Private Limited (**MPWMPL/Resolution Applicant**) as duly approved by the Committee of Creditors with 100% votes.
- 2.** To put precisely, on an application filed by operational creditor i.e., M/s Afita Constructions Pvt. Ltd, this Tribunal vide order dated 01.04.2022 admitted the Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") and appointed Mr. Gullapalli Kishore Babu as the Interim Resolution Professional ("**IRP**") of the Corporate Debtor/**M/s Neoaska Pharma Private Limited** through the said order dated 01.04.2022.
- 3.** Upon his taking over charge, the IRP issued a public announcement of initiation of CIRP of Corporate Debtor and inviting claims on 07.04.2022. After collating and verification of the claim, the Committee of Creditors ("**CoC**") was constituted with **TWO** financial creditors having 100% of the voting share in the CoC.

4. Subsequently, the Applicant herein was appointed as the Resolution Professional *vide* order dated 08.07.2022 passed by this Tribunal considering the decision of the Committee of Creditors (“**CoC**”) in its 2nd meeting.
5. The Applicant avers that a total of seven COC meetings have been held during the CIRP period, as follows:

Particulars	Date of COC Meeting	Annexure
1 st COC Meeting	06.05.2022	Minutes of the meeting is annexed and marked as <u>Annexure 5.</u>
2 nd COC Meeting	31.05.2022	Minutes of the meeting is annexed and marked as <u>Annexure 6.</u>
3 rd COC Meeting	18.07.2022	Minutes of the meeting is annexed and marked as <u>Annexure 7.</u>
4 th COC Meeting	10.08.2022	Minutes of the meeting is annexed and marked as <u>Annexure 8.</u>
5 th COC Meeting	17.09.2022	Minutes of the meeting is annexed and marked as <u>Annexure 9.</u>
6 th COC Meeting	24.09.2022	Minutes of the meeting is annexed and marked as <u>Annexure 10.</u>
7 th COC Meeting	03.11.2022	Minutes of the meeting is annexed and marked as <u>Annexure 11.</u>

6. The Applicant complying with the provisions of the Code and Regulation 36B of Insolvency and Bankruptcy Board of India

(Insolvency of Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”) had made public announcement for Invitation for Expression of Interest (“**EOI**”) in Form G dated 20.07.2022.

7. The valuers were also appointed by the Resolution Professional to ascertain the fair value and liquidation value of the Corporate Debtor as required under Regulation 35 of the CIRP Regulations, 2016. Accordingly, the fair value, liquidation value and, the average fair and liquidation value of the Corporate Debtor are as under:

Valuer Class	Avg. Fair Value	Avg. Liquidation Value
Plant and Machinery	36.12	15.98
Land and Building	23.36	11.68
Securities and Financial Assets	0.18	0.04
Total	59.66	27.71

8. The Resolution Professional is in receipt of only one EoI i.e. Madhya Pradesh Waste Management Private Limited (MPWMPL) along with the refundable Earnest Money Deposit

- (“**EMD**”) in the form of Demand Draft for an amount of Rs. Two Crores, which was informed to the CoC by the Resolution Professional in the 5th meeting of CoC held on 17.09.2022.
9. In the 6th Meeting of CoC held on 24.09.2022, the Applicant deliberated on the resolution plan and informed the COC members that the plan is compliant as per the provisions of the code. However, the Prospective Resolution Applicant/MPWMPL was requested to improve the plan value and other terms of the plan. Accordingly, on 31.10.2022, MPWMPL submitted an amended signed resolution plan (“**Plan**”).
10. After deliberations, the Resolution Plan was put for e-voting in the 7th COC meeting dated 03.11.2022, and the following resolution was passed.

“Resolved that the signed Resolution Plan submitted by Madhya Pradesh Waste Management Private Limited (“MPWMPL”) on October 31, 2022 along with the clarificatory addendum received on 08-11-2022 from MPWMPL which is an integral part of the Resolution Plan, is hereby approved by the Committee of Creditors of Neoaska Pharma Private Limited pursuant to Section 30(4) of the Insolvency and Bankruptcy Code, 2016 and the rules and regulations thereunder considering its feasibility and viability in relation to the corporate insolvency resolution process of Neoaska Pharma Private Limited and that the RP Dr. Govindarajula Venkata Narasimha Rao be and is hereby authorized to submit the

resolution plan as approved by the Committee of Creditors to the Hon'ble NCLT, Hyderabad for its approval and do all such acts and deeds as may be required to give effect to the said resolution ”

11. The successful Resolution Applicant has provided Performance security on 09.11.2022 by way of cash transfer. A true copy of the bank statement is annexed and marked as **Annexure 18.**
12. The Applicant hereby certifies that the contents of the Resolution Plan submitted by the Successful Resolution Applicant, meets all the requirements of the IBC and the Regulations. The Compliance Certificate of the Resolution Professional under Regulation Clause 39(4) of the CIRP regulations, 2016 prescribed in Form – H is annexed and marked as **Annexure 19.**
13. The Members of the Committee of Creditors evaluated the said Resolution Plan strictly as per the evaluation matrix and Section 29A. After evaluating in terms of both qualitative and quantitative criteria and aggregate, the said resolution plan was put for e-voting from 05.11.2022 to 08.11.2022. The Resolution Plan submitted by Madhya Pradesh Waste

Management Private Limited (Successful Resolution Applicant/SRA”) was approved by members of CoC with 100% voting share in favour of it, pursuant to which Letter of Intent (LoI) was issued on 09.11.2022. Thus submitting, prayed the Tribunal to approve the Resolution plan submitted by Madhya Pradesh Waste Management Private Limited (MPWMPL). Form H as per the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations 2016 is annexed and marked as **Annexure 20**.

14. SALIENT FEATURES OF THE RESOLUTION PLAN APPROVED BY THE COC:-

(A) Madhya Pradesh Waste Management Private Limited (MPWMPL/ SRA) is a Company established in the year 2010 which was promoted by Oxford Ayyappa Consulting Services (I) Pvt. Ltd and engaged in Asset holding and Investment. The Company is stated to have diversified its operations in real estate etc. and willing to penetrate into waste management consultancy area and acquiring stressed assets under IBC.

(B) The CoC comprised of the following Financial creditors and the distribution of voting share among them is as under:-

Sl. No.	Name of Creditor	Voting Share)%(Voting for Resolution Plan)Voted for / Dissented / Abstained(
1	Maximus ARC Limited	98.51%	Voted in favour
2	Visakha Pharma City Limited	1.49%	Voted in favour

(C) FINANCIAL PROPOSALS: The amount provided to the stakeholders of the Corporate Debtor is tabulated below:-

(Amount in Rs. Crs(

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (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	18.49	18.49	18.49	100%
		Total[(a) + (b)]	18.49	18.49	18.49	100%

2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (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	- 0.28	- 0.28	- 0.28	- 100%
		Total[(a) + (b)]	0.28	0.28	0.28	100%
3	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a) above: (i) Government (ii) Workmen (iii) Employees (iv) Others	0.036 - - 35.34	0.036 - - 28.41	0.32** - - 2.84	100% - - 10%
		Total[(a) + (b)]	35.37	28.44	3.16	-
		4	Other debts and dues	Unpaid CIRP Costs	-	-
			54.13	47.19	22.38	41.3%

** Although the RP received claim from Employees State Insurance Corporation for for Rs. 36 Thousand, which has been fully admitted, the plan provides for full payment of dues as per the audited FY 22 financials.

*If there are sub-categories in a category, please add rows for each sub-category.

Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.

(D) The Resolution Plan provides for payment of entire Plan consideration within 90 days of approval of the Plan by this Tribunal. The timelines for implementation of the Plan is proposed as below:

Sl. No.	Actionable Item	Timeline
1	Approval of the Resolution Plan by NCLT and receipt of order	T
2	Formation of Monitoring Committee with 1 representation from Financial Creditors, 1 from Resolution Applicant & the Resolution Professional.	T
3	Existing Equity Shares of the Corporate Debtor shall stand cancelled and extinguished on NCLT Approval Date	T
4	Applicant to infuse INR 18.62 Crores resulting in issuance of equity shares at face value of INR 10/- to MPWMPL	Within T+90 days
5	Applicant will settle and pay the Unpaid CIRP Costs, from the fund infusion	

6	After settlement of Unpaid CIRP Costs, the Applicant will cause the Corporate Debtor to pay INR 2.84 crs towards full and final settlement to Operational Creditors and INR 0.32 crs towards full and final settlement to unpaid statutory dues	
7	Applicant will cause the Corporate Debtor to pay Financial Creditors an amount of INR 15.02 crs in cash and issue equity at face value of INR 10/- worth INR 3.76 crs by way of conversion of balance claimed amount to Equity or any other convertible instrument as may be mutually agreed with Financial Creditors resulting in full payout of INR 18.78 crs to Financial Creditors	
8	Upon settlement of all Payments as proposed under the Resolution Plan, the Monitoring Committee shall stand dissolved, and all the existing powers granted to the Monitoring Committee shall stand transferred to the new Board of Directors appointed by the Applicant. Full handover of assets of Corporate Debtor to MPWMPL shall take place.	

(E) The break-up of resolution plan amount to the stakeholders is as under:-

Category of Creditor	Amount Claimed	Amount Admitted (B)	Amount Provided under the Plan (c)	% Recovery vis-a-vis Admitted claim
Financial Creditors	18.78	18.78	18.78*	100%
Operational Creditors other than Statutory dues	35.35	28.41	2.84	10%
Workmen and employees	NIL	NIL	NIL	-
Sub Total	54.13	47.19	21.62	45.81%

- (a) *Plan proposes cash payment of INR 15.02 Crores to Financial Creditors and an additional allotment of equity share capital worth INR 3.76 crs at face value of INR 10 (equivalent to 16.8%) as conversion of balance claimed amount into equity, to be issued and allotted on the Closing date i.e., date on which all the cash payments are paid out pertaining to unpaid CIRP cost, Operational Creditor payments, Financial Creditor payments.

(b) The Plan also provides for full payment of unpaid CIRP costs and the statutory dues as per the audited books of accounts in FY2022 from the infusion of funds by the Resolution Applicant, even though no claim has been received from the departments. The details of the same are as follows:

(in INR Cr.)

Category of Creditor	Dues (B)	Amount Provided under the Plan (C)	% Recovery
Full payment of Unpaid CIRP Costs	0.44	0.44	100%
Full payment of unpaid Statutory dues as per books of FY 2022 audited accounts (Note 1)	0.32	0.32	100%
Grand Total	0.76	0.76	100%

(c) The details of unpaid statutory dues as per the audited FY2022 books of accounts of the Corporate Debtor for which no claim has been filed by the respective department to the Applicant are as follows:

S.no	Stat Dues	Amount
		(In Rs. Lakhs)
1	Output GST	12.83
2	Income Tax payable	8.77
3	TDS Payable 192B	3.25
4	TDS Payable 194C - Contractors	2.52
5	PF Payable	1.54
6	TDS Payable 194i - Rent	1.36
7	TDS Payable 194J - Professionals	0.76
8	PT Payable	0.18
9	ESIC	0.02
Total		31.23

(F) MONITORING COMMITTEE

The Monitoring Committee shall comprise of one representative of the Resolution Applicant, one representative from the COC and the Resolution Professional. The Monitoring Committee shall be responsible for looking after the affairs of the Corporate Debtor till new Board of Directors is formed by the Resolution Applicant.

(G) 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 & 39 of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016 (herein after referred to as Regulation) and has submitted his Form-H under Regulation 39 (4). It is submitted that Resolution Applicant has filed an Affidavit declaring that they are eligible to submit the plan under Section 29A of the Code and that the contents of the said affidavit are in order. The fair value and Liquidation value as submitted in Form-H is Rs. 59.66 Crores and Rs. 27.71 crores respectively.

15. In the above backdrop we heard Shri Avinash Desai, Learned Senior Counsel for the Resolution Professional. He submits that the Resolution Plan meets the requirement of Section 30 (2) of the Code, as under:-
- (a) Provides for payment of Rs. 0.44 crores towards CIRP Cost on priority in terms of Section 30 (2) (a) of IBC.

- (b) The Plan provides for payment of Rs. 2.84 crores which is 10% of the total admitted claims of operational creditors on priority in terms of Section 30 (2)(b).
 - (c) The Resolution Plan also provide payment of Rs. 0.32 crores towards full payment to government and statutory dues on priority to Financial Creditors. It is also stated that upon payment as above, all liabilities/claims of all operational creditors whether claimed or unclaimed shall stand extinguished.
16. The Resolution Plan is in compliance of Regulation 38 of the Regulations in the following manner:
- (a) The Plan provides for payment of 10% to the admitted claims of the operational creditor on priority.
 - (b) 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). {Section E2(2) and E2(4)}
 - (c) 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)){Section H (Sl.no.7)}
17. ***In K. Sashidhar v. Indian Overseas Bank & Others (in Civil Appeal No. 10673/2018) the Hon'ble Apex Court*** 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. On receipt of such 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”.*
18. The Hon’ble Supreme Court has further held at para 35 of the above judgement that ***the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 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.***
19. The Hon’ble Supreme Court in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors**, held that *“the limited judicial review available to AA has to be within the four corners of section 30(2) of the Code. Such review can in no circumstance trespass upon a business decision of the majority of the CoC. As such the Adjudicating*

Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved”.

20. The Hon’ble Supreme Court of India, in the recent ruling in re **Vallal RCK vs M/s Siva Industries and Holdings Limited & Ors**, has held as under:-

21. *This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in the cases of K. **Sashidhar v. Indian Overseas Bank and Others, Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another, and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.***

27. *This Court has, time and again, emphasized the need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this Court made in the case of **Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another:***

“95.However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework

envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.....”

21. Therefore, the resolution plan, when tested on the touch stone of the aforesaid facts and the rulings, we are of the view that the instant resolution plan satisfies the requirements of Section 30 (2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. We also found that the Resolution Applicant is eligible to submit the Resolution Plan under Section 29A of the Code.
22. We therefore, hereby approve the Resolution Plan submitted by Madhya Pradesh Waste Management Private Limited, along with annexure, schedules forming part of the Resolution Plan annexed to the Application and order as under:
 - (i) The Resolution Plan along with annexures and schedules forming part of the plan 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 of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

- (ii) All crystallized liabilities and unclaimed liabilities of the Corporate Debtor as on the date of this order shall stand extinguished on the approval of this Resolution Plan.
- (iii) The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/ liabilities of the Corporate Debtor and shall be dealt with by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned as held by Hon'ble Supreme Court in the matter of ***Ghanashyam Mishra And Sons Private Limited Versus Edelweiss Asset Reconstruction Company Limited in CIVIL APPEAL NO.8129 OF 2019 dated 13.04.2021.***

- (iv) It is hereby ordered that the deposit made by the Resolution Applicant shall remain as performance Guarantee till the amount proposed to be paid to the creditors under this plan is fully paid off and the plan is fully implemented.
- (v) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC) Hyderabad 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.
- (vi) Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to supra.
- (vii) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- (viii). 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.

- (ix). The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.
- (x). The Registry is directed to furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016.
- (xi) The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and also forward a copy to IBBI.
- (xii). Accordingly, IA 1344/2022 stands disposed of.

SD/-

(Charan Singh)
MEMBER (TECHNICAL)

SD/-

(DR. N.V. Ramakrishna Badarinath)
MEMBER (JUDICIAL)

Binnu