

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - II, CHENNAI**

IA/361/IB/2020 & IA/117(CHE)/2021

IN

CP(IB)/889(CHE)/2019

*(Filed under Section 60(5) of the Insolvency Bankruptcy Code, 2016 read with Rule 11 of
the National Company Law Tribunal Rules, 2016)*

In the matter of ORCHID PHARMA LIMITED

KOTAK MAHINDRA BANK LIMITED

Reg Office:

No. 27-BKC, C-27, G Block,

Bandra Kurla Complex, Bandra (E),

Mumbai – 400 052.

... Applicant

-Vs-

ORCHID PHARMA LIMITED

Through its RP - Mr. SV Ramkumar

H. No. 303, Block 15,

Hill Ridge Springs, Gachibowli,

Hyderabad – 500 032.

... Respondent

Order Pronounced on 12th May, 2023

CORAM

SANJIV JAIN, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant : K. Manoj Menon, Advocate

For Respondent : Pradeep Joy, Advocate

COMMON ORDER

Per: SANJIV JAIN, MEMBER (JUDICIAL)

This interlocutory application (IA/361/2020) has been filed on 16.03.2020 by Kotak Mahindra Bank Limited (hereinafter referred to as 'Applicant') under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking the following reliefs:

- a. Declaring the Applicant as being a Secured Creditor of the Corporate Debtor;*
- b. Directing that any allocation of funds under any Resolution Plan and / or from other amounts of the Corporate Debtor be made recognizing its status as being a Secured Financial Creditor; and*
- c. Pass such further or other order(s) as this Hon'ble Court may deem fit in the facts and circumstances of the present case.*

2. Subsequently, the applicant filed another interlocutory application (IA/117(CHE)/2021) in the aforesaid (IA/361/2020) seeking to implead the proposed respondents 2 - 23 as respondents / Secured Creditors of the Corporate Debtor in relation to the Resolution Process.

3. Before advertng to the merits of the applications, it may be relevant to point out the history of the Resolution Process of M/s. Orchid Pharma Limited (hereinafter referred to as 'Corporate Debtor'). This Tribunal vide order dated 17.08.2017 had initiated Corporate Insolvency Resolution

Process of the Corporate Debtor. During the process of resolution, the Committee of Creditors (hereinafter referred to as 'COC') of the Corporate Debtor having voting share of 67.07 % approved a Resolution Plan submitted by M/s. Dhanuka Laboratories Limited (hereinafter referred to as 'Successful Resoultion Applicant'). Subsequently, this Tribunal vide order dated 27.06.2019 approved the Resolution Plan submitted by the Successful Resolution Applicant and constituted a Monitoring Committee for the supervision and implementation of the Resolution Plan.

4. The order of this Tribunal approving the Resolution Plan was challenged and the Hon'ble NCLAT set aside the order. The matter then went to Hon'ble Supreme Court where the Hon'ble Supreme Court vide order dated 28.02.2020 upheld the order of approval of the Resolution Plan. Admittedly, the Resolution Plan was duly implemented on 31.03.2020 and that there became a complete change in control and ownership of the Corporate Debtor.

5. Given the above circumstances, the primary issues for consideration at this stage are as follows:

- I. Whether after approval and implementation of the Resolution Plan, this Tribunal can entertain a declaratory relief as to the status of the applicant., and ;



II. Whether after approval and implementation of the Resolution Plan, the applicant can seek a direction for allocation of funds under the approved Resolution Plan.

6. It is evident from the record that the applicant was a member of the COC throughout the Resolution Process of the Corporate Debtor. The applicant had in fact sought to intervene in the appeal before the Hon'ble Supreme Court, however, the application for the impleadment was withdrawn by the applicant.

7. The prayer in IA/361/2020 pertains to classification of the applicant as a 'Secured Creditor', which is in the nature of modifying the terms of the approved Resolution Plan. Consequently, the applicant has sought allocation of funds under the Resolution Plan. In short, the applicant who is aggrieved by way of the treatment during the resolution process, by way of the present application, indirectly seeks to review / modify the order of this Tribunal approving the Resolution Plan.

8. At this juncture, it is relevant to refer to the decision of the Hon'ble NCLAT in the case *QVC Exports Pvt. Ltd. Vs United Tradeco FZC and Anr* [2020 SCC OnLine NCLAT 555] wherein the Appellate Tribunal while addressing the question as to whether the Adjudicating Authority has jurisdiction to entertain an application for rectification of Resolution Plan, has held as under:



Thus it is clear that the order which has attained finality cannot be reviewed under the inherent powers of the Court. This power can only be exercised to correct clerical errors or arithmetical mistakes in the judgment. By the impugned order the Adjudicating Authority has changed terms of Resolution Plan based on the application of one of the Resolution Applicant without even consent of the Appellant, even though he was the joint applicant in the Resolution Plan.

Thus we are of the considered opinion that the Adjudicating Authority had no jurisdiction to entertain an application for rectification of Resolution Plan and making substantial changes in the Plan, after a lapse of 13 months of the completion of CIRP, even after the approval and implementation of the Resolution Plan on the pretext of rectification of clerical or typographical error in the order.

9. In the same judgment, judgement of the Hon'ble NCLAT in the case **R.G.G. Vyapaar Pvt. Ltd. Vs Arun Kumar Gupta & Anr.** [Company Appeal (AT) (Insolvency) No. 509 of 2018] has been referred where it was held as under:

2. Having heard learned counsel for the Appellant as we are of the opinion that the Adjudicating Authority has no jurisdiction to reopen resolution process under Section 31 of I&B Code, the said Authority rightly rejected the application. No relief can be granted in absence of any challenge to the approved resolution plan. We find no merit in this appeal, it is accordingly dismissed. No cost.

10. Perusal of the above judgements would make it amply clear that this Tribunal does not have any powers to modify any terms of a Resolution Plan once the same is approved.



11. Given the factual matrix, it is to be noted that the applicant who is aggrieved by its categorization as an 'Unsecured Creditor' had sufficient opportunity to challenge the same during the consideration of the Resolution Plan before its approval by this Tribunal. This was not done by the applicant. The applicant had filed an application seeking intervention when the matter was taken in appeal before the Hon'ble Supreme Court. However, the application/petition was withdrawn by the applicant.

12. The scope of this Tribunal after approval of a Resolution Plan is very limited and is only to the extent of the implementation of an approved Resolution Plan. Any relief which could potentially change the terms of a Resolution Plan cannot be entertained.

13. Be that as it may, record says that no charge over the receivables of the Corporate Debtor in the bills tendered to the purchases for the payment to the applicant bank was registered as per the Register of Charge maintained by the Corporate Debtor which is mandatory as provided under Section 77(3) of the Companies Act, 2013. It was held in the case of *ONGC v. Official Liquidator of Ambica Mills Company Limited and Ors. (2015) 5 SCC 300* that unless charge created is registered with the Registrar of Companies, said charge become void against Liquidator and any creditor of the Company. The said order was confirmed by the Hon'ble Supreme Court

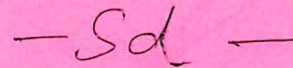
in the case of *Kerala State Financial Enterprises Ltd. v. Official Liquidator, High Court of Kerala (2006) 10 SCC 709*. We may also mention that in one of the MAs dated 03.07.2019 filed before this Tribunal, the applicant had admitted its position as Unsecured Financial Creditor.

14. For the aforesaid discussions, we are not inclined to entertain the application. Consequently, both the issues are answered against the applicant.

15. Accordingly, IA/361/2020 & IA/117/2021 stand dismissed and **disposed off**. No orders as to costs.



SAMEER KAKAR
MEMBER (TECHNICAL)



SANJIV JAIN
MEMBER (JUDICIAL)

V.Shreekumar