

S.No.3

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
22-06-2023 AT 10:30 AM

IA (IBC) 515/2023 in Company Petition IB/223/2021
u/s. 9 of IBC, 2016

IN THE MATTER OF:

Vasthi Trading Pvt Ltd

...Operational Creditor

VS

Farmax India Ltd

...Corporate Debtor

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

ORDER

IA (IBC) 515/2023

Orders pronounced. Recorded vide separate sheets. In the result, the IA is allowed.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

IA 515 OF 2023

IN

CP (IB) NO.223/9/HDB/2021

*Under Section 30 (6) of I & B Code, 2016, R/w Regulation 39 (4) of IBBI
(IRPCP)*

IN THE MATTER OF M/S. FARMAX INDIA LIMITED

Mr. Chinna Gurappa

Resolution Professional

M/s Farmax India Limited

Survey No. 658, Bowrampet Village

Qutubullapur Mandal, Sub-urban of Hyderabad

Telangana - 500043

... Applicant/

Resolution Professional

Date of order: 22.06.2023

Coram:

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

Shri Charan Singh, Hon'ble Member Technical

Appearance:

For Applicant: Party in person

PER: BENCH

ORDER

1. The instant Application bearing IA No. 515/2023 is filed by the Resolution Professional of M/s. Farmax India Limited under Section 30(6) and 31(1) of the Insolvency & Bankruptcy Code, 2016, r/w regulation 39(4) of the IBBI (Insolvency Resolution

Process for Corporate Persons) Regulations, 2016, seeking approval of the Resolution Plan submitted by Mr. Reddy Srinivasa Reddy (“RSR/ ‘Resolution Applicant’) as duly approved by the Committee of Creditors with 100% voting share.

2. To put precisely, this Tribunal vide order dated 01.07.2022 admitted the petition filed under Section 9 of IBC, 2016 by M/s Vasthi Trading Private Limited and ordered Corporate Insolvency Resolution Process against Corporate Debtor/M/s Farmax India Limited by appointing the Applicant herein as Interim Resolution Professional who was subsequently confirmed as Resolution Professional.
3. Upon his taking over charge as IRP, the Applicant herein made public announcement in Form-A inviting claims from the creditors of the Corporate Debtor. Upon receipt of the claims, the Resolution Professional collated and verified the same and constituted the Committee of Creditors which consists of the following creditors.

S. No.	Name of the creditor	Amount of Claim submitted Rs.	Final Claim admitted Rs.	% of Voting Rights
A: Financial Creditors: Non-related				
1	Reliance Asset Reconstruction Company Limited	1,82,53,249	1,82,53,249	100.00%
TOTAL		1,82,53,249	1,82,53,249	100.00%

4. It is further submitted that the Resolution Professional has appointed 2 IBBI Regd Valuers each or valuation of Buildings and Securities or Financial Assets on 14-09-2022. Details of fair

value and liquidation value of the Corporate Debtor is given below:

S.No	Asset Class	Fair Value (Rs.)	Liquidation Value (Rs.)
1	Land & Buildings		
	(a) VLN Murthy	30,67,072	26,07,000
	(b) Thavva Chandra Obula Reddy	44,87,500	31,41,250
	Average	37,77,286	28,74,125
2	Securities or Financial Assets (both valuers same value)	7,88,579	7,88,579
	Total value of the CD	42,65,865	36,62,704

The liquidation value is 85.86% of the fair market value. The details of the valuations are stated in Compliance Certificate "Form H".

5. Pursuant to publication of Expression of Interest in Form G in Nava Telangana (Telugu) and Financial Express (English) on 30-09-2022, the resolution professional has not received any requests and accordingly the resolution professional in the 3rd CoC on 02.11.2022 after approval of of COC, published revised Form G on 06.11.2022 and against the same only one prospective applicant expressed interest in submitting the resolution plan which fulfilled all the requirements as per the EOI conditions by payment of EMD as prescribed. Subsequently, the Resolution Professional has announced the provisional list of applicants as on 01-12-2022 as per the Regulation 36 of the IBC, 2016. The provisional list of prospective applicants is in **Annexure -5**.
6. The Resolution Professional on acceptance of the claim from the Financial Creditors on 03.01.2023, had reconstituted the CoC and filed a Memo with the Hon'ble NCLT on 04.01.2023. The Resolution

Professional had requested the Prospective Resolution Applicant for submission of the revised Resolution Plan after inclusion of the claim of the Financial Creditors and after consultation with sole financial creditor.

7. After due deliberations and negotiations, the revised Resolution Plan was submitted by the Resolution Applicant i.e. Reddy Srinivasa Reddy on 24.02.2023, which was placed before the COC in its 5th meeting held on 03.03.2023. Pursuant to the request of the sole COC Member, on 06.03.2023 the Resolution Applicant had agreed to increase the Resolution Amount. The sole Member 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 approved by members of CoC with 100% voting share on 09.03.2023.
8. The Successful Resolution Applicant has furnished a demand draft for a sum of Rs. 5,50,000/- to the RP towards 10% of the bid amount as stipulated in the RFRP document, in lieu of Performance Guarantee. Thus submitting, prayed the Tribunal to approve the Resolution plan submitted by **Mr. Reddy Srinivasa Reddy, Successful Resolution Applicant**, which is annexed at pages 121-127.
9. The Applicant states that the Resolution Plan received is in conformity with Section 30(2) of the Code and Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Resolution Plans also include the mandatory contents of the Code.
10. **Contour of the Resolution Plan**
 - (A) **Mr. Reddy Srinivasa Reddy, Successful Resolution Applicant** who submitted the resolution plan is a R/o Flat No. 603, Polaris A Wing, Meenakshi Sky Lounge, Hitex Road, Khanamet, Hyderabad- 500084 and has sufficient liquid funds/resources to bring the necessary funds as envisaged in the Resolution Plan.

- (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	Reliance Asset Reconstruction Company Limited	100.00%	Voted for
	Total	100.00%	

The break-up of the amount infused by the Resolution Applicant for various purposes are detailed as under:

Category of the Creditor	Claims Admitted (Rs.)	Total Plan Amount (Rs.)	Percentage on Claims Admitted
CRIP Cost	12,00,000	12,00,000	100.00%
Claims of Employees	Nil	Nil	Nil
Secured Financial Creditor	1,82,53,249	31,94,319	17.50%
Un-Secured Financial Creditor-Related Parties	10,00,000	Nil	Nil
Operational Creditors	1,05,23,214	32,622	0.31%
Other Operational Creditors: Govt. Dues	32,25,45,309	9,99,890	0.31%
Total distribution	35,35,21,772	54,26,831	1.53%
Contingencies	-	73,169	-
Total	35,35,21,772	55,00,000	

As per the Resolution Plan submitted by the Resolution Applicant, the Secured Financial Creditors will get major share i.e.74.27% of the resolution amount (17.50% of their dues) after deducting the CIRP Cost and balance amount would be paid to the Other operational

creditors & operational creditors at nominal rate i.e 0.31% of the dues/claims.

Note: Out of the Resolution Amount of Rs.55,00,000/- an amount of Rs.73,169/- has been allocated for contingencies to meet any other expenses & CIRP cost if any after March 2023.

*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.

(C) **Timeline for implementation of the Plan**

The estimated timelines for the implementation of the Plan are as follows:

S No	Event	Estimated Timeline
1	Approval of NCLT for the Plan	On the NCLT Approval Date
2	Appointment of Monitoring Agent	Within 7 days from the NCLT Approval Date
3	Extinguishment of promoter shareholding, and reduction of public shareholders	Announcement of Record date within 10 days from the NCLT approval date to determine the shareholder's names
4	Infusion of funds in the Company	Within 30 days from the NCLT Approval date for resolution amount and as per schedule given in 7 above for other amounts
5.	Equity allotment to Resolution Applicants, Strategic investor	After the infusion of funds by the Resolution Applicants and strategic investors within 90 days from the date of approval

(D) **MONITORING COMMITTEE**

The Monitoring Committee shall comprise of Resolution Applicant, the Resolution Professional and the Financial Creditor in carrying out the day-to-day functioning of the Corporate Debtor till the implementation of the Resolution Plan. After the effective date, the implementation of the Resolution Plan will be supervised by a suitable management team deployed by the Resolution Applicant.

(E) In the above backdrop, we heard Shri Chinna Gurappa, Learned Resolution Professional in person. He submits that the Resolution Plan meets the requirement of Section 30 (2) of the Code, as under:-

- (a) Provides for payment of Rs. 12 lakhs towards CIRP Cost on priority in terms of Section 30 (2) (a) of IBC.
- (b) The Plan provides for payment of Rs. 32,622/-towards operational creditors dues (other than workmen, employees and other than government dues) provided under the Resolution Plan to the operational creditors on priority in terms of Section 30 (2) (b). Further the amount provided towards dues to the Govt (ESIC, Central Excise and Service Tax, GST and Income Tax) is Rs. 9,99,890/-, which will be paid within 30 days of the approval of the Resolution Plan.
- (c) There are no dissenting financial creditors.

11. The Resolution Plan is in compliance of Regulation 38 of the Regulations in the following manner:

- (a) The Plan provides for payment of 0.31% 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)).

(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)).

12. 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".
13. 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.***
14. 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*".

15. 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.....”

16. 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.

17. We therefore, hereby approve the Resolution Plan submitted by **Mr. Reddy Srinivasa Reddy**, 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 amount furnished 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 515/2023 stands disposed of.

SD/-

(Charan Singh)
MEMBER (TECHNICAL)

sd/-

(DR N.Venkata Ramakrishna Badrinath)
MEMBER (JUDICIAL)

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