



S.No.3

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
11-07-2024 AT 10:30 AM**

CP (IB) No. 243/7/HDB/2021

AND

IA (IBC) (Plan) 12/2024 in CP (IB) No. 243/7/HDB/2021

u/s. 7 of IBC, 2016

IN THE MATTER OF:

Arcom Medical Devices Private Limited

...Financial Creditor

AND

B & A Health Care Private Limited

...Corporate Debtor

C O R A M:-

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

O R D E R

IA (IBC) (Plan) 12/2024

Learned Counsel Mr B Ravi Teja, for applicant present through Video Conference.

Learned Counsel for the applicant clarified the issues raised by the bench and also filed a clarificatory memo.

Matter passed over for orders.

Orders pronounced. In the result, **this resolution plan is approved, subject to the terms and conditions mentioned therein.**

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)



**NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH-I**

**I.A. (IBC) No.12 of 2024
IN
C.P.(IB)-243/07/HDB/2021**

**APPLICATION U/S 30(6) OF IBC 2016, R/W REGULATION 39(4) OF IBBI
(IRPCP) REGULATIONS, 2016, R/W RULE 11 OF NCLT RULES**

**IN THE MATTER OF
ARCOM MEDICAL DEVICES PRIVATE LIMITED
Versus
B & A BEST HEALTH CARE PRIVATE LIMITED**

Filed by

MR. GOPIKRISHNA BYADIGERA

Resolution Professional of

M/s. B & A Best Health Care Private Limited

at 2-2-271/73/1, Plot No 73,

Lakshmi Enclave, Phase-2, Near Sanjive Reddy Garden,

Macha Bolarum, Hyderabad, Telangana – 500010.

**... APPLICANT/
RESOLUTION PROFESSIONAL**

Date of order: 11.07.2024

Coram:

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

Shri Charan Singh, Hon'ble Member (Technical)

Appearance:

For Applicant: Shri Bendi Ravi Teja, Advocate



PER: BENCH

ORDER

1. This application is filed under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (“Code”) read with Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons), 2016, (“CIRP Regulations”) by MR. Gopikrishna Byadigera. Resolution Professional (“Corporate Debtor”) seeking approval of the resolution plan submitted by M/s East Pharma Technologies (Resolution Applicant) as approved by the Committee of Creditors (COC) with 79.92% of voting share.
 - 2.1 To put concisely, this Tribunal on 13.09.2022 admitted the petition filed under Section 7 by the Financial Creditor, i.e., M/s Arcom Medical Devices Private Limited and ordered commencement of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor i.e. B & A Best Health Care Private Limited and appointed Mr. Pavan Kankani as Interim Resolution Professional (IRP).
 - 2.2 Pursuant to the above order, the IRP made Public Announcement inviting claims from all the Creditors in Form A of the Schedule II, as per Regulation 6 of CIRP Regulations on 17.09.2022. The IRP on receipt of claims from the creditors verified and collated claims from the



Creditors of the Corporate Debtor and constituted the CoC. The COC after due deliberations, in the First Meeting of Committee of Creditors (“CoC”) of the Corporate Debtor held on 11 October 2022, the members of the CoC rejected appointment of the erstwhile IRP as RP.

2.3 It is stated that State Bank of India/Member of COC filed IA (IBC) No. 196/2023 before this Tribunal *challenging the inclusion of M/s Arcom Medical Devices Private Limited* i.e the Financial Creditor/Company Petitioner in the COC. Accordingly, this Tribunal vide order dated 13.06.2023 passed an order declaring *M/s Arcom Medical Devices Private Limited* as a related party to the Corporate Debtor and thereby ordered the erstwhile IRP to reconstitute the CoC. Pursuant thereto, the COC was re-constituted and the IRP filed report to that effect vide IA (IBC) No. 1103/2023, which has been taken on record vide order dated 12.07.2023.

2.4 The COC in its 5th COC meeting held on 14.07.2023, resolved to replace the IRP and consequently, this Tribunal *vide* Order dated 28 August 2023 appointed Sri. Gopikrishna Byadigera i.e., Applicant herein as the Resolution Professional.



2.5 In the 7th CoC meeting, held on 06 November 2023, the Applicant herein apprised the CoC that, he has received Expression of Interest (“EOI”) from the following 13 prospective resolution applicants. pursuant to publication of Form G.

- i. Accredited Consultants Private Limited
- ii. Consortium of Arcade Casters & Surender Kumar Agarwal
- iii. Arcom Medical Devices Private Limited
- iv. Bommidala Enterprises Private Limited
- v. East Pharma Technologies
- vi. Eskag Pharma Private Limited
- vii. Silver Stallion Limited (Company incorporated in Mauritius).
- viii. Kamini Metalliks Private Limited
- ix. Nakshatra Asset Ventures Limited
- x. Naveen Srinivasa Yalamanchili
- xi. Consortium of Samala Rajasekhar & Rahul Bhaiya
- xii. Vinod Narayan Tandon
- xiii. Subhlaxmi Investment Advisory Private Limited

2.6 Accordingly, East Pharma Technologies, Consortium of Arcade Casters & Surender Kumar Agarwal, Consortium of Samala Rajasekhar & Rahul Bhaiya and Arcom Medical Devices Private Limited, submitted their resolution plans along with EMD of INR 50,00,000/- (Indian Rupees Fifty Lakh Only).



- 2.7 The Resolution Professional, after series of discussions and deliberations asked the PRAs vide email dated February 29, 2024, to submit their final resolution plans on or before 5 March 2024.
- 2.8 In the 10th CoC meeting, held on 16 March 2024, all the four Resolution Plans were placed before the members of CoC for voting and the Resolution Plan of **East Pharma Technologies** was approved by the CoC with 79.92% voting, which was concluded on May 16, 2024 and East Pharma Technologies was declared as Successful Resolution Applicant ("**SRA**").
- 2.9 The Resolution Professional received a Demand Draft of INR 50,00,000 (Rupees Fifty Lakh only) and subsequently a deposit Rs. 1,00,00,000/- through RFTG UTR Ref. RATNR52024052400078016 (total Rs. 1,50,00,000/-) towards Performance Security, from the Successful Resolution Applicant.
- 3. Contour of the Resolution Plan**
- (a) The Successful Resolution Applicant i.e. **East Pharma Technologies (SRA)** is incorporated in the year 2015 led by CEO Mr. Kiran Girajala. The SRA is into manufacturing of rubber packaging and rubber



products.

- (b) The CoC comprises of the following financial creditors and 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.	State Bank of India	79.92	For
2.	Mahidhara Chemicals Private Limited	20.08	Dissented
	TOTAL	100	

- (c) An amount of Rs. 5,25,00,000/- has been provided by the SRA to the stakeholders under the Resolution Plan as under:

(Amount in Rs.)

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan	Amount Provided to the Amount Admitted (%)
(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	-Nil-	-Nil-	-Nil-	-Nil-
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan	-Nil-	-Nil-	-Nil-	-Nil-
		(ii) who voted in favour of the resolution plan	4,00,06,042.00	4,00,06,042.00	4,00,06,042.00	100%
		Total[(a) + (b)]	4,00,06,042.00	4,00,06,042.00	4,00,06,042.00	100%



Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan	Amount Provided to the Amount Admitted (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	4,58,30,791.00	3,00,46,123.00	61,09,379.43	20.33%
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	1,00,53,082.00	1,00,53,082.00	20,44,127.04	20.33%
		(ii) who voted in favour of the resolution plan	-Nil-	-Nil-	-Nil-	-Nil-
Total[(a) + (b)]			5,58,83,873.00	4,00,99,205.00	81,53,506.47	20.33%
3	Operational Creditors	(a) Related Party of Corporate Debtor	89,12,338.00	89,12,338.00	-Nil-	-Nil-
		(b) Other than (a) above:				
		(i)Government	2,76,597.00	2,76,597.00	2,76,597.00	100%
		(ii)Workmen	-Nil-	-Nil-	-Nil-	-Nil-
(iii)Employees	-Nil-	-Nil-	-Nil-	-Nil-		
(c) Other than (a) and (b)	1,26,05,623.00	1,26,05,623.00	-Nil-	-Nil-		
Total[(a) + (b)]			2,17,94,558.00	2,17,94,558.00	2,76,597.00	1.27%
4	Other debts and dues		-Nil-	-Nil-	-Nil-	-Nil-
Grand Total			11,76,84,473.00	10,18,99,805.00	4,84,36,145.47	47.53%



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

- (d) The Financial Plan and proposed distribution of the Resolution Plan approved by the CoC is mentioned below.

S.No	Particulars	INR
1.	Upfront payment towards CIRP cost	40,63,854.53
2.	Payment to Secured Financial Creditors	4,00,06,042.00
3.	Settlement of debts of Unsecured Financial Creditors	81,53,506.47
4.	Payment towards Workmen and Employees	-
6.	Payment towards Statutory dues	2,76,597.00
	Total Resolution amount to the stakeholders	5,25,00,000.00
7.	Amount towards purchase of new machinery	2,85,00,000.00
8.	Estimated expenses towards bringing the factory into working condition	1,50,00,000.00
9.	Initial working capital requirements	1,00,00,000.00
	Total	10.60,00,000.00

- (e) The aforesaid resolution amount shall be paid to implement the resolution plan within 90 days from the date of approval of the resolution plan.

(f) **Monitoring Committee**

On approval of the resolution plan, a Monitoring Committee comprising of the Resolution Professional, one representative of the Resolution



Applicant and one representative of COC will be constituted to supervise the implementation of the resolution plan. **(Part-E, clause-29 of the Resolution Plan).**

(f) Compliance of mandatory contents of Resolution Plan under the Code and 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 and has filed Form 'H' prescribed under Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The fair value and Liquidation value as submitted in Form-H is Rs. 8,03,79,505.50 and Rs.4,95,01,270.00 respectively.

4. In the above backdrop we heard Shri Bendi Raviteja, Ld. Counsel for the Resolution Professional. He submits that the Resolution Plan meets the requirement of Section 30 (2) of the Code, as under: -

- a. **Compliance of Section 30 (2) (a): (Clause-14 of the Resolution Plan).** The Resolution Plan considers payment of the CIRP Costs of Rs. 40,63,854.53 on priority to all other payments.
- b. **Compliance of Section 30 (2) (b): (Clauses 18,19 & 20 of the Resolution Plan):** The Resolution Applicant proposes NIL payment to the operational creditors. However, a sum of Rs.



2,76,597.00 has been earmarked towards statutory dues, in full and in priority over financial creditors.

- c. Compliance of Section 30 (2) (c): (Clause 16.5 and 17.4 of the Resolution Plan);** As per the plan, the Financial creditors who did not vote in favour of the resolution plan shall be paid not less than the amount to be paid to such creditors in accordance with sub-section (1) of Section 53, in the event of liquidation of the Corporate Debtor and in the manner laid out in clause 15 of the Plan. There is only one Secured Financial Creditor and hence, this requirement does not arise.
 - d. Compliance of Section 30 (2) (f):** Declaration by the Resolution Applicant that the plan does not contravene any of the provisions of the applicable laws for the time being in force. **(Clause 33 of the Resolution Plan).**
5. The Resolution Plan is in compliance of Regulation 38 of the Regulations in the following manner:
- a. Compliance of Regulation 38(1)(a) of the CIRP Regulations 2016:** The Plan provides for payment of Rs. 40,63,854.53 towards CIRP Cost, which will be paid in priority to all other creditors.
 - b. Compliance of Regulation 38 (1A):** 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. (Clause 15 of the Resolution Plan)
 - c. Compliance of Regulation 38 (1) (B):** Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of its related party has either failed or contributed to the failure of



the implementation of any Resolution Plan approved under the Code. (Clause 34 of the Resolution Plan)

6. ***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*”.
7. 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.***
8. 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”.

9. 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.....”

10. 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.
11. We therefore, hereby approve the Resolution Plan submitted by **East Pharma Technologies** (“Successful Resolution Applicant”) along with annexures, 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 & 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 of Rs.1,00,00,000/- in lieu of Performance Bank Guarantee, made by the Resolution Applicant shall remain as performance Guarantee till the amount proposed to be paid to the creditors under the 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 (plan) 12/2024 stands disposed of.

SD/-

Charan Singh
Member Technical

SD/-

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

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