

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**HYDERABAD BENCH - II**

**I.A. No. 78 of 2023 in  
I.A. No. 1468 of 2022 in  
CP (IB) No.682/07/HDB/2018**

**In the matter of  
M/s Mantena Laboratories Ltd,**

**Between:**

Prasada Raju M.R.V,  
Suspended Board of Directors of  
Mantena Laboratories Limited,  
R/o. 409, Rolling Residency, Street No. 2,  
Czech Colony, Sanath Nagar,  
Hyderabad- 500018.

...Applicant/  
Suspended Board of Director

Vs.

Sri. Vamsi Kambhammettu,  
Resolution Professional of  
Mantena Laboratories Limited.

...Respondent

**Date of Order: 06.02.2024**

**CORAM:**

Hon'ble Rajeev Bhardwaj, Member (Judicial)  
Hon'ble Sanjay Puri, Member (Technical)

**Counsels present:**

For the Applicant : Mr. Y. Suryanarayana, Advocate  
Mrs. A. Sandhya Rani, Advocate

For the Respondent : Mr. V.S.R. Avadhani, Advocate

Heard on : 02.02.2024

**[PER: BENCH]**  
**ORDER**

1. The present application filed by Prasada Raju M.R.V who was a Director in the suspended Board of M/s. Mantena Laboratories Limited, the Corporate Debtor (**CD**) Under Section 60(5) of the IBC<sup>1</sup> read with Rule 11 of the NCLT Rules, praying:
  - a. To direct the Respondent to forthwith furnish the Application IA No. 1468 of 2022 and further make available all documents including Resolution Plan of Successful Resolution Applicant (**SRA**) received during CIRP of CD.
  - b. To declare the Applicant as necessary party for proper adjudication of I.A. No. 1468 of 2022 and carry the amendment in cause title citing this Applicant as Respondent.
  - c. To direct the Resolution Professional to file report on sworn affidavit along with material papers/proof confirming that he complied Regulation 39(1) and allowed Resolution Applicants to modify plan one time during CIRP.

**Submissions of Applicant:**

2. The CD was admitted into CIRP<sup>2</sup> by this Adjudicating Authority vide orders dated 06.08.2021, where the Respondent herein was appointed as Interim Resolution Professional (**IRP**) and later CoC<sup>3</sup> appointed him as Resolution Professional (**RP**).
3. The Respondent had issued public announcement and taken control over the assets of CD as under law and constituted CoC as contemplated under section 21 of the Code. The Applicant claims to have provided all the information to Respondent about stock, intermediaries, raw materials

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<sup>1</sup> Insolvency & Bankruptcy Code, 2016

<sup>2</sup> Corporate Insolvency Resolution Process

<sup>3</sup> Committee of Creditors

and finished goods etc worth above 13 Crores. It is further contented that the Respondent committed a material irregularity in omitting stocks worth 13 Crores while ascertaining the marketable value and liquidation value of CD.

4. Respondent had published Form-G on 24.11.2021 and received EoI from five members/Company. The CD being MSME in nature, the Applicant had also submitted a Resolution Plan as per the terms of RFRP<sup>4</sup> to revive CD, but it was rejected by the CoC on 03.12.2022.
5. It is asserted by the Applicant that the Respondent had allowed Resolution Applicants (**RAs**) to modify Resolution Plans on multiple occasions, which he claims is evident from 9<sup>th</sup> CoC meeting to place final modified Resolution Plan before the CoC for calling voting rights within timelines from 11.03.2022 to 26.03.2022.
6. It is submitted that the Applicant has participated in 10<sup>th</sup> CoC meeting. The Respondent however did not share the minutes of the meeting till date to the Applicant which is a material irregularity committed by the Resolution Professional.
7. It is contended that the RP is obligated to attach all the documents, including Resolution Plans, to the CoC notice sent to the Applicant. Contrary to the same, it is stated, that the Respondent RP did not serve documents along with CoC notice to the Applicant and committed material irregularity. The Applicant being a competing RA had not made any demand to RP to forward the Resolution Plan so long as the CoC was carrying deliberations on plans with RAs.
8. The Applicant has referred to the case **Vijay Kumar Jain Vs. Standard Chartered Bank** decided by Hon'ble Apex Court (without any citation),

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<sup>4</sup> Request for Resolution Plan

wherein according to the Applicant, in at Para No. 12, 16, 17 and 18, it was held:

*“12. Section 60(5)(c) is also very wide, and a member of the erstwhile Board of Directors also has an independent right to approach the Adjudicating Authority, which must then hear such person before it is satisfied that such resolution plan can pass muster under Section 31 of the Code.”*

*“16. The argument on behalf of the committee of creditors based on the proviso to Section 21(2) is also misconceived. The proviso to Section 21(2) clarifies that a director who is also a financial creditor who is a related party of the corporate debtor shall not have any right of representation, participation, or voting in a meeting of the committee of creditors. Directors, simplicitor, are not the subject matter of the proviso to Section 21(2), but only directors who are related parties of the corporate debtor. It is only such persons who do not have any right of representation, participation, or voting in a meeting of the committee of creditors. Therefore, the contention that a director simplicitor would have the right to get documents as against a director who is a financial creditor is not an argument that is based on the proviso to Section 21(2), correctly read, as it refers only to a financial creditor who is a related party of the corporate debtor. For this reason, this argument also must be rejected”*

*“17. We may also mention in passing that the Bankruptcy Law Committee Report of November, 2015 stated: “II. The Code will enable symmetry of information between creditors and debtors. 39 5. The law must ensure that information that is essential for the insolvency and the bankruptcy resolution process is created and available when it is required. 6. The law must ensure that access to this information is made available to all creditors to the enterprise, either directly or through the regulated professional. 7. The law must enable access to this information to third parties who can participate in the resolution process, through the regulated professional.” Paragraph II (7) correctly reflects the reason for Section 24(3)(b) of the Code.”*

*“18. We may indicate that the time that has been utilized in these proceedings must be excluded from the period of the resolution process of the corporate debtor as has been held in Arcelormittal India Private Limited v. Satish Kumar Gupta & Ors., Civil Appeal Nos. 9402-9405/2018 [decided on 04.10.2018] (at paragraph 83). In each of these cases, the appellants will be given copies of all resolution plans submitted to the CoC within a period of two weeks from the date of this judgment. The resolution applicant in each of these cases will then convene a meeting of the CoC within two weeks thereafter, which will include the appellants as participants. The CoC will then deliberate on the resolution plans afresh and either reject them or approve of them with the requisite majority, after which, the further procedure detailed in the Code and the Regulations will be followed. For all these reasons, we are of the view that the petition and appeal must be allowed and the NCLAT judgment set aside.”*

9. Ld. Counsel has also referred to one judgement of Ho’ble NCLAT in the case of **Saravana Global**<sup>5</sup> to argue that for the Applicant who was the promoter of the CD which is an MSME, it was not necessary to compete with other Resolution Applicants to regain control of the CD. The following part of that judgement was quoted,

*“in exceptional circumstances, if the ‘Corporate Debtor’ is MSME, it is not necessary for the Promoters to compete with other ‘Resolution Applicants’ to regain the control of the ‘Corporate Debtor’”<sup>6</sup>*

On the basis of afore said judgement, it is contended that the Applicant being a Post Graduate in Organic Chemistry and having an experience of more than 20 years in the Pharma Industry and the person who has introduced several lifesaving drugs, is such exceptional circumstance, in

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<sup>5</sup> Saravana Global Holdings Ltd. v. Bafna Pharmaceuticals Ltd., 2019 SCC OnLine NCLAT 962: order dated 04<sup>th</sup> July 2019

<sup>6</sup> Para 22 of the order (*Supra*)

which it should not have been necessary for him to compete with other RAs.

10. During the hearing, the Ld. Counsel of the Applicant fairly conceded that the Applicant's dual role as both, a Resolution Applicant and a part of the suspended management, presented a conflict of interest so far as the deliberations of CoC were concerned. However, it was argued that since the Applicant's Resolution Plan had been rejected, any conflict of interest no longer remained and he should have been given access to all Resolution Plans to demonstrate alleged procedural violations by the Respondent RP.
11. It has been thus contended that the Applicant is just and necessary party to IA No. 1468 of 2022, through which the Resolution Plan adopted by the CoC has been placed before this Tribunal for approval, and that he should be allowed access to the Resolution Plans submitted by other Resolution Applicants.

**The Counter:**

12. It is submitted by the Respondent RP that the order dated 06.08.2021 passed by this Adjudicating Authority admitting the CD under CIRP attained finality through the order of dismissal dated 28.11.2022 passed by Hon'ble Supreme Court in Civil Appeal No. 2550 of 2022 filed by the Applicant. It is submitted that the Applicant is a litigious person and has at every stage tried to stall CIRP of the CD by filing multiple litigations. He has not been providing information and resorting to non-cooperation.
13. It is asserted that the Resolution Plan was approved by the CoC by 79.41% votes and therefore the RP preferred application under section 30(6) of the IBC which is pending approval by this Adjudicating Authority.

14. The Respondent denies the averment made by the Applicant regarding stock, intermediaries, and raw material worth 13 Crores as the Applicant never submitted any details regarding the same. The Respondent RP has categorically denied having committed any irregularity concerning the finished stock, intermediaries or the raw material, and that the valuation of the CD's assets was conducted as per Regulation 35 of CIRP Regulations by the Registered Valuer as approved by the CoC.
15. Respondent has also denied that he had allowed RAs to modify Resolution Plans on multiple occasions. It is stated that two Resolution Plans were received by him, which were placed before the CoC for examination. The CoC was also appraised about the regulations, and the CoC, as per the said regulations, permitted modification of the Resolution Plan only once to both the RAs including the Applicant herein. Case of ***Vistra***<sup>7</sup> was cited to argue that “*the CoC retain its jurisdiction to negotiate with one or other Resolution Applicants, or to annul the Resolution Process and embark on to re-issue RFRP. Regulation 39(1A) cannot be read as a fetter on the powers of the CoC to discuss and deliberate and take further steps of negotiations with the Resolution Applicants*”. It was claimed therefore, that the CoC did nothing that was not permissible under the law.
16. It is averred that the case of *Vijay Kumar Jain Vs. Standard Chartered Bank* relied on by the Applicant is factually different and does not apply to the present Applicant. It is contended that the CD being MSME, the Applicant, who was a promoter/director of the CD, was permitted to submit a Resolution Plan. Therefore, he was participating in CoC meeting in dual capacity as part of the suspended management and also as a Resolution Applicant. During the proceedings relating to verification and examination of the Resolution Plans, the same being confidential, the

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<sup>7</sup> *Vistra ITCL (India) Ltd. v. Torrent Investments (P) Ltd.*, 2023 SCC OnLine NCLAT 110

CoC informed the Applicant to exit the meeting and there after permitted him to rejoin.

17. The Respondent further denied that serious prejudice will be caused to the Applicant if Respondent does not share the copy of IA No. 1468/2023.

**Decision:**

18. Through this application, the Applicant essentially seeks access to the Resolution Plans submitted by the other Resolution Applicants. To this end, he has relied upon the judgment of *Vijay Kumar Jain Vs. Standard Chartered Bank*<sup>8</sup> to claim that as per the decision of Hon'ble Supreme Court in this case, he is entitled to the records of all the deliberations of the CoC, including all Resolution Plans considered by it.
19. It is a fact that the Applicant has a dual role in this case. Besides being part of the suspended Board, he is also one of the Resolution Applicants. As part of the suspended Board, he was given notices of the CoC meetings as required under section 24(3)(b) of IBC. He was also allowed to attend these meetings, except when the CoC was considering Resolution Plans.
20. However, the role of the Applicant as 'Resolution Applicant' is circumscribed. Under section 30(5) of IBC, "***the resolution applicant may attend the meeting of the committee of creditors in which resolution plan of the applicant is considered***". It clearly follows that a Resolution Applicant can attend CoC meeting only in respect of the plan that was submitted by him, and will have no access to the Resolution Plans submitted by others.
21. The cited caselaw of ***Vijay Kumar Jain Vs. Standard Chartered Bank***<sup>8</sup> also does not support the Applicant's argument. That case dealt with the

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<sup>8</sup> Vijay Kumar Jain v. Standard Chartered Bank, (2019) 20 SCC 455

eligibility of a former director who, being an unrelated financial creditor of the CD, sought access to CoC meetings and Resolution Plans submitted by Prospective Resolution Applicants. The Apex Court decision in that case affirmed the right of such individuals to attend CoC meetings and access Resolution Plans. However, that judgment will not apply to a suspended promoter/director who is also a Resolution Applicant.

22. In the present case, not only the Applicant is related to the CD, being a promoter/director, he is also a Resolution Applicant. The CD being the MSME, he was permitted to submit a Resolution Plan. However, he was rightly kept out by the CoC from the proceedings of examination and evaluation of the Resolution Plans submitted by other Resolution Applicants.
23. We are also not persuaded by the argument of the Ld Counsel for the Applicant that, after the Applicant's plan was rejected by the CoC the conflict of interest does not survive and he should have been allowed access to all deliberations of the CoC including the Resolution Plans submitted by other Resolution Applicants.
24. As succinctly explained by Hon'ble Supreme Court in the case of **A.C.Muthaiah**,<sup>9</sup> that:

*“the principle of **“conflict of interest”** is a much wider, equitable, legal and moral principle which seeks to prevent even the coming into **existence of a future and/or potential situation** which would inhibit benefit or promise through any commercial interest in which the principal actors are involved..... the entire purpose of “conflict of interest” rule is to prevent and not merely to cure situations where the fair and valid discharge of one's duty can be affected by commercial interests*

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<sup>9</sup> A.C. Muthiah v. Board of Control for Cricket in India, (2011) 6 SCC 617

*which do not allow the fair and fearless discharge of such duties.”*

(emphasis supplied)

Clearly the ‘conflict of interest’ for the Applicant, who was part of the CoC in the dual capacity did not end with him being rejected as Resolution Applicant. His capacity to be an impartial observer of the CoC’s deliberations was compromised and his views on the Resolution Plan submitted by any other Resolution Applicant would necessarily have a potential of bias even after he was out of the race.

25. The other argument of the Ld. Counsel that being an expert in the field of pharmaceuticals, the Applicant presents those ‘exceptional circumstances’ in which it should have not been considered necessary for him to even compete with other Resolution Applicants, is also not convincing. Firstly, in this application, this is not the relief that the Applicant has sought, as he has already competed with other Resolution Applicants. Secondly, it is his “expertise” in managing the affairs of the CD which has resulted in the present state of affairs. If he was so exceptional, he would not have run a debt of more than Rs 127 crores which the CD was neither able to service nor repay, and was to be admitted into CIRP.
26. About the allegations of the Resolution Applicants being allowed to modify the plan more than once, and thus violative of the Law, is the matter to be examined by this authority while examining IA No. 1468/2023, through which the successful Resolution Plan has been presented. As held earlier, the Applicant has no locus-standi in that application.
27. Applicant being an unsuccessful Resolution Applicant is not a necessary party for the approval of a Resolution Plan. Once the CoC has endorsed a

Plan by requisite percentage of voting share, it is only for this Authority to adjudicate thereon and approve it under the provisions of IBC.

For the reasons as above, this application is dismissed.

**Sd/-**

**(SANJAY PURI)  
MEMBER (TECHNICAL)**

**Sd/-**

**(RAJEEV BHARDWAJ)  
MEMBER (JUDICIAL)**

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