

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
SPECIAL BENCH (VIDEO CONFERENCE)
CORAM: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 29. 05. 2020 AT 11. 00 A. M.

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No. 320/ 2020 in CP (IB) No. 645/ 9/ HDB/2019
NAME OF THE COMPANY	India Pencillins Ltd
NAME OF THE PETITIONER(S)	Sri Sai Durga Enterprises
NAME OF THE RESPONDENT(S)	India Pencillins Ltd
UNDER SECTION	9 OF IBC

Counsel for Petitioner(s):


Name of the Counsel(s)	Designation	E-Mail & Telephone No.	Signature
Mrs. J V L Bharati	Advocate		
Mr. Madasa Kumar	RP		

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-Mail & Telephone No.	Signature

ORDER

IA No.320/2020, is listed today for passing orders.
Counsel for RP is present through video conference.
RP is also connected through video conference.
Orders passed in IA No.320/2020, vide separate orders.


Member(Judicial)

Pavani

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

IA No. 320/2020

IN

CP (IB) NO.645/9/HDB/2019

*Application under Section 30 (6) of IBC, 2016 R/w Regulation 39
(4) of IBBI (IRPCP) Regulations, 2016 and Rule 11 of NCLT Rules,
2016*

IN THE MATTER OF

M/s Sri Sai Durga Enterprises

Versus

M/s India Pencillins Ltd

MADASA KUMAR
Resolution Professional
H.No.11-5-39/4/A,Road No 8,
Venkateswara colony,Saroonagar,
Hyderabad 500 035

..Applicant

Date of order: 29.05.2020

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Appearance:

For Applicant : Ms JVL Bharathi, Advocate

Heard on: 27.05.2020

ORDER

**1. FACTUAL MATRIX LEADING TO FILING OF THE
PRESENT APPLICATION**

1.1 The Company Petition bearing CP (IB) No.
645/9/HDB/2019 filed by the Operational Creditor i.e.
M/s Sri Sai Durga Enterprises under Section 9 of

Insolvency & Bankruptcy Code, read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against M/s India Pencillins Limited/ Corporate Debtor was admitted by this Tribunal on 05.11.2019 and appointed Mr. Madasa Kumar, the Applicant herein as Interim Resolution Professional (IRP) who has been later confirmed as Resolution Professional (RP) in the 1st meeting of Committee of Creditors (CoC) held on 05.12.2019.

1.2 After assuming charge of IRP / RP, the Applicant herein managed the affairs of the Corporate Debtor in terms of the applicable provisions of the IBC for which he convened 04 Committee of Creditors (CoC) meetings.

1.3 This Interlocutory Application is filed by the Resolution Professional of **M/s INDIA PENCILLINS LIMITED** ("Corporate Debtor"), under Section U/s 30(6) of Insolvency & Bankruptcy Code (IBC) 2016, read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons), 2016, seeking directions to approve the resolution plan submitted by the Resolution Applicant viz. **M/s MAC LABS LIMITED** which is approved by the members of CoC with 76.71% voting share of the Operational Creditors present in its 4th meeting dated 17.03.2020

2. **AVERMENTS:-**

The averments germane to the Application in brief are:-

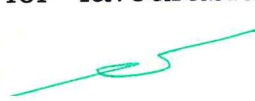
2.1 After assuming charge of Interim Resolution Professional / Resolution Professional, the Applicant herein has taken the following steps such as

- i). Carried out Public Announcement in Financial Express (English) & Nava Telangana (Telugu) Daily newspapers on 08.11.2019 was carried out inviting claims from the creditors of the Corporate Debtor. In Compliance of regulation 16 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, claims have been collated and the Committee of Creditors (COC) has been constituted with 18 number of largest Operational Creditors by value as there were no Financial Creditors and a report certifying Committee of Creditors has been filed with the Adjudicating Authority on 28-11-2019.
- ii) In the 1st meeting of Committee of Creditors (COC) convened on 05-11-2019 the IRP was confirmed as Resolution Professional by the COC and a report to this effect has been filed in this Tribunal on 13-12-2019.
- iii) Appointed two valuers on 11-12-2019 to value the Plant and Machinery and arrive at the Fair value and liquidation value.
- iv) Furnished Information Memorandum to the members of CoC on 19-12-2019.
- v) Published brief particulars of invitation for expression of interest in Form- G, in Business Standard and Nava Telangana dailies on 18-1-2020.
- vi) Issued Information Memorandum, RFRP, Evaluation Matrix, duly approved by COC, to the resolution applicants as per the provisions of the code, inviting resolution plans, on 7-2-2020.
- vii). In response to the RFRP, Resolution Plans were received from the following two Resolution Applicants:



- a) M/s. Mac Labs Limited
- b) M/s. Suzikem Drugs Private Limited.
- viii) As per the terms of RFRP, the sealed covers containing resolution plans were opened before COC in the meeting held on 17.03.2020. The Resolution Professional has examined the Resolution Plans with reference to the provisions of Sec.30 (2) of IBC and satisfying about their conformity with the said provisions has placed the following Resolution Plans before the CoC.

M/s Mac Labs Limited	Rs 13.50 Lakhs
M/s Suzikem Drugs Private Limited	Rs 10.00 Lakhs

- 2.2 It is averred both the offers were found to be in order with reference to the RFRP but were low when compared to the average liquidation value of Rs.15,52,740/-. Hence the COC after due deliberations advised the Resolution Applicants to enhance their offers. But one of the Resolution Applicants i.e. M/s Suzikem declined to enhance the offer. However, M/s Mac Labs Limited has revised and enhanced the offer to Rs 16,50,000/- and agreed for payment within 10 days from the date of issue of LOI and requested to waive the condition of submission of Performance BG and extend certain reliefs and concessions.
- 2.3 The Applicant avers that the CoC with 76.71% of the voting share of the members present approved the revised resolution plan submitted by M/s Mac Labs Limited and waived the condition of submission of Performance Guarantee in view of payment terms.
- 2.4 The resolution applicant is seeking reliefs and concessions, enumerated at para 6 (1) (a) to (h) which have been recommended by the committee for favourable
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consideration by the Adjudicating Authority. The Approved minutes of 4th COC meeting dated 17.03.2020 along with the resolution plan dated 09.03.2020 is annexed and marked as annexure- 1. The compliance Certificate in Form-H is annexed and marked as Annexure- 2.

2.5 The Applicant therefore prayed the Adjudicating Authority to approve the Resolution plan submitted by **M/S Mac Labs Ltd**, as approved by COC as per sec 30 (4), IBC 2016 which envisages a total plan payment of Rs.16.50 Lakhs payable within 10 days from the date of issue of LOI and to consider the reliefs and concessions sought by the Resolution applicant favourably.

3. **CONTOUR OF THE RESOLUTION PLAN:**

3.1 After evaluation, the CoC resolved to approve the revised Resolution Plan dated 09.03.2020 submitted by **M/S Mac Labs Ltd** / Resolution Applicant for Rs. 16.50 lakhs.

3.2 The amounts provided for the stakeholders under the revised resolution plan is as under:-

Sl. No.	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed (Rs. In lakhs)	Amount Admitted (Rs. In lakhs)	Amount Provided under the Plan# (Rs. In lakhs)	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	Nil	Nil	NA	NA
		(b) Other than (a) above:				
		(i) who did not vote in favour of the	Nil	Nil	NA	NA

		resolution Plan (ii) who voted in favour of the resolution plan	NIL	NIL	NA	NA
		Total[(a) + (b)]	Nil	Nil	NA	NA
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	Nil	Nil	NA	NA
		(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	Nil	Nil	NA	NA
		Total[(a) + (b)]	Nil	Nil	NA	NA
3	Operational Creditors	(a) Related Party of Corporate Debtor	10,68,278	10,16,587	91,805	9.03
		(b) Other than (a) above:	58,68,055	58,68,055	6,76,175	11.52
		(i) Government (ii) Workmen (iii) Employees				
		(iv) Other Operational Creditors	26,72,905	25,73,119	3,07,020	11.93
		Total[(a) + (b)]	96,09,238	94,57,761	10,75,000	11.36
4	Other debts and dues		NIL	NIL	NA	NA
	Grand Total		96,09,238	94,57,761	10,75,000	11.36

3.3. The Resolution Applicant vide its memo dated 26.05.2020 has furnished performance security amounting to Rs. 82,500/- (Rupees Eighty Two Thousand Five Hundred only), the details of which are as under




BG NO.	DATE	AMT	VALID UPTO
Demand Draft bearing No. 269438	26.05.2020	82,500/-	For three months

3.4. The Resolution Applicant sought certain reliefs and concessions under Clause 18. Desired Reliefs and Concessions as detailed at page no. 6 to 11 of the resolution plan for consideration of this Tribunal are as under:-

- a) The requirement of obtaining no objection certificate under section 281 of Income tax Act, 1961 and provisions of taking over its predecessor's tax liability under section 170 of Income tax Act not to be applicable. Further, the transaction shall not be treated as void under section 281 of the Income Tax Act, 1961 for any claims in respect of Tax or any other sum payable by the Corporate Debtor. Similarly any requirements to obtain waivers from any Tax Authorities including in terms of section 79 and Section 115B of Income Tax Act, 1961 is deemed to have been granted upon approval of this Resolution Plan on the Plan Approval Date.
- b) Proceeding for ROC inspection, Non Compliances of various statutory provisions including but not limited to pollution noncompliance, labour laws noncompliance, revenue noncompliance, taxes & losses shall be withdrawn and the liability if any associated would be extinguished.
- c) All claims against the company by any person in any court, Judicial Authority, Quasi-judicial authority, tribunal or any other department to be treated as withdrawn /settled or ordered to be withdrawn . Any assets in financial statement (Including fixed assets, loans, advances, deposit, current assets, non-current assets or any other assets of any nature) of "VSPL" which

is considered as not recoverable / realizable and written off to be allowed as expenses under the Companies Act, Income Tax Act (Both for corporate income tax and Minimum Alternate Tax (MAT) purpose).

- d) All actions undertaken pursuant to implementation of the Resolution Plan approved by the Adjudicating Authority shall be deemed to be exempt from any Tax and stamp duty.
 - e) Proceeding for ROC Inspection, Non Compliance of various statutory provisions, shall be withdrawn & liability associated would be extinguished.
 - f) All the existing approvals, agreements (beneficial to company), No objections (beneficial to company), applications, permissions, licenses, certification, pollution permissions, registration shall continue without any additional cost or charges. No old dues of water, power, municipality, gram Panchayat, statutory dues or any other charges shall be payable.
 - g) The status of the company under CIBIL, CRICIL and all other rating agencies shall be cured for all defaults, cases, write offs up to the vesting date.
 - h) Till vesting date any charge on the property under section 82 of GST Act or any other attachment on property under section 83 of GST Act cease to be effected. Any demand under section 84 of GST Act or any other provision or any recovery measure shall be ceased and there shall be no liability/due of IPL till vesting date apart from the amount provided under financial proposal
- 3.5 The amount offered by the Resolution Applicant is Rs.16.50 lakhs which is more than fair value and Liquidation value of CD's assets.
- 3.6 The list of operational creditors of M/s India Pencillins Limited being members of the CoC and distribution of their voting share is as under:
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Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	CTO,Sarooranagar-3, Commercial Tax Dept,Govt of Telangana	62.90	Voted for
2	N.Ganga Reddy	7.73	Voted for
3	K.P.R.Reddy	6.27	Abstained
4	Sri Sai Durga Enterprises	5.17	Voted for
5	S.Srihari	4.62	Abstained
6	Drugs India Mahaveersy	2.27	Abstained
7	G.R.Traders	1.83	Abstained
8	I.P.L.Labs	1.58	Abstained
9	Vam Biltech	1.53	Abstained
10	Accord Pharma	1.38	Abstained
11	Sigma Chemicals	0.91	Voted for
12	Veenus Capsules	0.71	Abstained
13	Kapoor Chemist	0.59	Abstained
14	Prasad Multipack	0.58	Abstained
15	Kiran Packing	0.57	Abstained
16	Mahalakshmi Pharmaceuticals	0.55	Abstained
17	Rajguru Enterprises	0.46	Abstained
18	Varrahee Foils	0.35	Abstained
	Total	100.00	

4. I heard the Counsel for Resolution Professional. This Application is filed under Sections 30 (6) of IBC read with Regulation 39 (4) of CIRP Regulations, 2016 seeking approval of the Resolution Plan submitted by **M/s Mac Labs Limited** ("Resolution Applicant").
5. The Learned Counsel for Applicant stated that, Registered Valuers were appointed on 11.12.2019 to determine the fair value and liquidation value of the Corporate Debtor. The Fair value was fixed at Rs. Rs. 22,18,342/- and the Liquidation value at Rs. 15,52,570/-. In all, the Applicant conducted 04CoC meetings.
6. The Resolution Plan submitted by **M/s Mac Labs Limited** was presented before the CoC for its voting at the 4th CoC

meeting held on 17.03.2020 which was approved by CoC with 76.71% of voting share of operational creditors present and voted. The term of resolution plan is just one month as the Resolution Applicant propose to pay the amount within 10 days from the date of approval of the plan.

7. The Resolution Professional would contend that the interests of existing shareholders were altered by the Resolution Plan as under:-

Sl. No	Category of Share holder	No. of shares held before CIRP	No. of shares held after the CIRP	Voting share (%) held before CIRP	Voting share (%) held after CIRP
1	Equity	9,27,900	9,27,900	100	100
2	Preference	Nil	Nil	NA	NA

8. The Resolution Professional filed Form-H, which is annexed and marked as Anneuxre-3 and further certified that the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016, the Insolvency and Bankruptcy Board of India)Insolvency Resolution Process for Corporate Persons(Regulations, 2016 and does not contravene any of the provisions of the law for the time being in force.
9. The Resolution Applicant / **M/s Mac Labs Limited** has submitted an affidavit in terms of section 30 (1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.



10. The implementation of the plan until the final payment shall be jointly supervised by the Monitoring Committee comprising of one representative to be nominated by CoC, one representative nominated by the Resolution Applicant, the Resolution Professional.
11. The Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 76.71% of voting share of Operational creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.
12. Further the Learned Counsel for the Applicant stated that the Resolution Plan takes care of the interest of the stakeholders i.e. Operational Creditors and a provision is made for payment of CIRP costs. The bid amount is above the Liquidation Value.
13. The Learned Counsel for Applicant further stated that the Resolution Applicant sought certain exemptions/or reliefs in the Resolution Plan which are essentially required for effective implementation of the Resolution Plan. The GST is one of the Operational Creditors in the CoC. Only operational creditors are in the CoC. GST Authority being member in the CoC, has approved the revised resolution plan. Therefore, exemption sought can be granted since GST was made a member in the CoC and the payment to the members of the CoC shall be in accordance with the Resolution Plan. With regard to the other exemptions, these can be granted in view of Insolvency & Bankruptcy Code (Amendment) Act 2019 which came into effect from 06.08.2019. As per the amendment of Section 31 (1), the Resolution Plan is binding on the central Government, any State Government or any Local Authority to whom a debt in respect of the payment of due arising under any law for

time being in force such as authorities to whom statutory dues are owed. So, the exemptions sought in the Resolution Plan are subject to the provisions of Section 31 (1) of the Code as amended wherever applicable.

14. As a sequel to above, the revised Resolution plan DATED 09.03.2020 submitted by **M/s Mac Labs Limited** ("Resolution Applicant") which was approved by members of CoC with 76.71% voting share present, stands approved as per Section 31 (1) of the Code. In other words I am satisfied with the Resolution Plan as approved by Committee of Creditors under Section 30 (4) of the Code and it meets the requirement as referred to in Section 30 (2) of IBC, 2016. Accordingly, the Resolution Plan stands approved and the same is binding on 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, such as authorities to whom statutory dues are owed, Guarantors and stakeholders involved in the Resolution Plan in terms of Section 31 (1) of the Code.
15. The moratorium order passed under Section 14 shall cease to have effect from today.
16. The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the Board to be recorded on its database.
17. The Resolution Applicant shall obtain necessary approval required under any law for the time being in force within a period of one year from the date of approval of the

Resolution Plan or within such period as provided for in such law.

18. The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and to IBBI.
19. In terms of above, IA 320/2020 filed by Resolution Professional under Section 30 (6) and 31(1) of IBC, for approval of Resolution Plan submitted by ***M/s Mac Labs Limited*** stands disposed of.


29.5.2020
**RATAKONDA MURAL
MEMBER (JUDICIAL)**

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