

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SINGLE BENCH, CHENNAI**

MA/71/2019 filed in CP/682/IB/CB/2017
under Section 30(6) for approval of Resolution
Plan under Section 31 (1) of the Insolvency and
Bankruptcy Code, 2016 and Regulation 39(4).

In the matter of **M/s. Bafna Pharmaceuticals Limited**

M/s. Aries

... Operational Creditor

-VS-

M/s. Bafna Pharmaceuticals Limited

... Corporate Debtor

Order delivered on 1st of February, 2019

CORAM:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

Resolution Professional : Mr. Radhakrishnan Dharmarajan
For RP : Mr. A. Rengam, Counsel

ORDER

Per: CH MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. This relates to MA/71/2019 filed in CP/682/IB/CB/2017 under Section 30(6) for approval of Resolution Plan under Section 31(1) of the Insolvency and Bankruptcy Code, 2016, (in short 'I&B Code, 2016').

2. Initially, CP/682/(IB)/CB/2017 under Section 9 of I&B Code, 2016 read with Rule 6 of the Insolvency Bankruptcy (Application to Adjudicating Authority) Rules, 2016, was filed by M/s. Aries (in short, 'Operational Creditor') against M/s. Bafna Pharmaceutical Limited (in short, 'Corporate Debtor'). CP/682/(IB)/CB/2017 has been admitted on 16.07.2018 under which CIR Process was initiated against the Corporate Debtor, moratorium was declared and Mr. Gopal Swamy Ganesh Babu was appointed as IRP.

3. The IRP took over the management and affairs of the Corporate Debtor and caused public announcement on 18.07.2018 under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016, for filing the claims by the creditors. After verification of the claims received, the IRP constituted Committee of Creditors (CoCs). Thereafter, the Applicant viz., Mr. Radhakrishnan

Dharmarajan was appointed as Resolution Professional on 11.10.2018.

4. In the Meetings of the CoCs held on 27.09.2018 and 30.11.2018, it was decided to defer the issuance of 'Expression of Interest' ('EoI') on the ground that the Corporate Debtor is MSME. The Corporate Debtor was allowed to submit the Resolution Plan.

5. The Resolution Plan submitted by the Corporate Debtor was discussed in the 5th Meeting of CoCs held on 20.12.2018. However, as it required some more time to approve the Resolution Plan, the Resolution Professional was directed to file an Application for extension of the time period of the CIR Process. Accordingly, the Resolution Professional filed an Application under Section 12(2) of the I&B Code, 2016 and this Authority had extended the time period of CIR Process on 04.01.2019.

6. It is averred that the Corporate Debtor has submitted an improved Resolution Plan, which has been placed in the

6th Meeting of CoCs held on 04.01.2019. In the said Meeting of CoCs, after deliberations, the Resolution Plan submitted by the Corporate Debtor was unanimously approved by passing the Resolution as follows:-

***“Resolved** that resolution plan submitted by the Corporate Debtor be and is hereby approved with a voting % of 74.84% of the total voting powers of the Financial Creditors, voting in favour of the Resolution Plan”.*

7. The perusal of the ‘Resolution Plan’ shows that it provides for the Resolution for all the Financial Creditors, out of the total claim of Rs.49.23 Crores, the payment proposed is Rs.34.46 Crores. It further provides that 70% of the admitted claims of all the Financial Creditors shall be paid within three months from the ‘Approval Date’ as full and final settlement of the dues and personal guarantees. In relation to the Workmen dues, it provides for total payment of Rs. 0.24 Crores, as far as the Employees’ dues are concerned, the Plan provides for total payment of

Rs.0.32 Crores. The Plan also provides for payment of Insolvency Resolution Process Costs, the dues for PF and ESI. A provision has also been made for payments of Rs.6.53 Crores to other Operational Creditors and Rs.0.13 Crores towards statutory liabilities. In essence, the Plan provides to settle the claim of various stakeholders.

8. The Plan provides that to balance the interest of all stakeholders, a capital reduction is proposed and the capital of all the fully paid up equity shareholders as on 30.06.2018 shall be reduced to 10% and consequently, the existing 2.36 Crores number of shares shall be reduced to 0.236 number of shares.

9. The Resolution Plan provides that upon its approval the Resolution Applicant shall have authority to re-constitute the Board of Director and the Board shall have the authority to act and execute in the name and on behalf of the Corporate Debtor all deeds, receipts, and other documents, as may be required. However, the Resolution Applicant shall be responsible for the proper

implementation of the proposed Resolution Plan from the date of its approval. Further, the Resolution Plan provides that the Resolution Applicant will appoint a Chartered Accountant or a Resolution Professional qualified and registered under the IBBI as the supervisor (“supervisor”) for the supervision of the approved Resolution Plan, a representative from Corporate Debtor and other two representatives from the Financial Creditors. The supervisor shall be appointed for a period till the payment of all the liabilities mentioned in the Resolution Plan. Therefore, the Resolution Plan provides suitable arrangement for management of the Corporate Debtor and the implementation of the same (Plan).

10. Thus, the ‘Resolution Plan’ filed with the Application meets the requirements of Section 30(2) of the I&B Code, 2016 and Regulations 37, 38, 38(1A) and 39 (4) of IBBI (CIRP) Regulations, 2016. The ‘Resolution Plan’ is also not in contravention of any of the provisions of Section 29A. The Resolution Professional has also certified that the

“Resolution Plan” approved by the CoCs does not contravene any of the provisions of the law for the time being in force. The Compliance Certificate is placed at pages 7 to 11 of the typed set filed with the Application. The ‘Resolution Plan’ stands approved by the CoCs with 74.84% voting share.

11. In view of the above, the ‘Resolution Plan’ annexed with MA/71/IB/2019 filed in CP/682/IB/2017 is hereby approved, which shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan including Resolution Applicant.

12. The permission for reduction of capital, as proposed in the Resolution Plan is also granted. Accordingly, the MoA and AoA shall be amended and filed with the RoC for information and record as prescribed. While approving the ‘Resolution Plan’, as mentioned above, it is clarified that the Resolution Applicant shall pursuant to the Resolution Plan

approved under Sub-Section (1) of Section 31 of the I&B Code, 2016, obtain all the necessary approval as may be required under any law for the time being in force within the period as provided for in such law.

13. The order of moratorium dated 16.07.2018 passed by this Adjudicating Authority under Section 14 of the I&B Code, 2016 shall ceased to have effect from the date of passing of this Order.

14. The Resolution Professional shall forward all record relating to the conduct of the CIRP and the 'Resolution Plan' to the IBBI, so that the Board may record the same on its data-base.

15. The approved 'Resolution Plan' shall become effective from the date of passing of this Order.

16. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant.

17. The Order is pronounced in the open court.


(CH. MOHD SHARIEF TARIQ)
MEMBER (JUDICIAL)

P. ATHISTAMANI