

IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, CHENNAI

MA/86/2018

In

CP/540/IB/CB/2017

Application filed under section 43(1) and section 66 the IBC, 2016

In the matter of M/s. Orchid Pharma Limited

Mr. S. V. Ramkumar, RP

For M/s. Orchid Pharma Limited

---Applicant

Vs

M/s. Orchid Health Care Private Limited & 2 Ors

--- Respondents

In the matter of

M/s. Lakshmi Vilas Bank Limited

---Operational Creditor

Vs

M/s. Orchid Pharma Limited

---Corporate Debtor

Order delivered on: 04.07.2019

Coram:

B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

For the Applicant : *Mr. Vipin Warriar, Advocate*

Ms. Vidyalakshmi, Advocate

For RP & India Law

For Respondent-2 & 3: *Mr. P. Ramesh Kumar, Advocate*

ORDER

Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

Order dictated in the Open Court on 02.07.2019

It is an MA filed u/s 43 of the Insolvency and Bankruptcy Code, 2016 by the Resolution Professional of the Applicant (M/s.Orchid Pharma Limited) against the Corporate Debtor M/s.Orchid Healthcare Private Limited (R1) and its Directors Viz. Mr. Kailasam Raghavendra Rao (R2) and Mrs. Vijayalakshmi Raghavendra Rao (R3) seeking reversal of the said transaction and for a direction against R1 to pay the impugned transaction amount to the Corporate Debtor on the ground that the Respondents received benefit of payment falling within the ambit of Sec. 43 of The Insolvency and Bankruptcy Code (the Code).

2. On perusal of this MA and on seeing the counter filed by R1 (which is also under CIRP) and the counter of other Respondents, it is an admitted fact that when the Corporate Debtor wanted to hive off its Plant situated Aurangabad so as to clear some part of its debt under CDR mechanism led by IDBI Bank, which is the lead banker of Consortium, but whereas the very same IDBI Bank refused to give no objection for sale of the asset unless ₹30Crores was paid to it. To avert this situation, R1 (promoter of the Corporate Debtor) on

31.03.2015 paid ₹30Crores to IDBI Bank on behalf of the Corporate Debtor for the release of the property documents of plant of the Corporate Debtor at Aurangabad so as to enable the Corporate Debtor to sell that property to a third party (M/s. Hospira Healthcare India Private Limited) and to pay the sale proceeds of it to the Creditors of the Corporate Debtor. After the sale of that asset, the sale proceeds of more than ₹1000Crores was paid to the Creditor Banks. It is also an admitted fact that the Corporate Debtor, over a period of time, adjusted the money of ₹30crores paid by R1 against the payments payable by R1 and R2 to the Corporate Debtor. Here it is a fact to be remembered that all through transactions of the corporate debtor were in know of the Consortium of Banks until before this petition was admitted against the Corporate Debtor.

3. Now the grievance of this Applicant is that since these adjustments fall within two years before admission of this Company Petition and since R2 is a related party to the Corporate Debtor as contemplated under Sec. 5 (24) of the Code, these adjustments have to be construed as preferential transaction falling

within the relevant time and this Bench shall give directions to R1 and R2 to pay back that money to the Corporate Debtor as contemplated under Sec. 44 of the Code.

4. In the backdrop of these facts, it is apparent that R1 paid this money to IDBI Bank on behalf of the Corporate Debtor for release of the property documents of the Corporate Debtor lying with IDBI Bank so that the Corporate Debtor company would sell that property to a third party (M/s. Hospira Healthcare India Private Limited) so as to raise money for distribution of it to the Creditors of the Corporate Debtor under CDR mechanism. Soon after this payment was made by R1 to IDBI Bank, IDBI gave no objection for sale of the plant of the Corporate Debtor, accordingly plant was sold and made payments to the Creditors keeping part of the sale proceeds as Working Capital of the Corporate Debtor. Thereafter, as the Respondents were also liable to pay amounts, the amount payable by the Corporate Debtor in the year 2016 was adjusted against the monies to come from the Respondents. As to the excess remuneration of ₹10.44Crores for the period from 01.04.2011 to

31.03.2012 and 01.04.2013 to 30.09.2013 R1 drawn from the Corporate Debtor, since the Ministry of Corporate Affairs asked R2 to return the same to the Corporate Debtor, the said due was also adjusted in the amount payable by the Corporate Debtor to R1.

5. For there being mutual dealings and obligations in between these parties, since it is an adjustment made in respect to the payments to be made against each other, making such adjustments in the books of the Corporate Debtor, I am of the view, will not make any difference in respect to the liabilities against the Corporate Debtor to say that these adjustments are made so as to cause benefit to these Respondents in preference to other creditors in the event of a distribution of assets being made in accordance with Section 53 of the Code.

6. It need not be said separately that, to invoke Section 43 of the Code, there shall be two elements in the given facts, (1) there shall be transfer of property or interest from the Corporate Debtor to a Creditor, (2) and it must be for the benefit of such Creditors in preference to the other Creditors of the Corporate Debtor in the

event of a distribution of assets being made in accordance with Section 53 of the Code. As per Liquidation Process Regulation 29, where there are mutual dealings between the Corporate Debtor and another party, the sums due from one party shall be set off against the sums due from other to arrive at the net amount payable to the Corporate Debtor or to the third party.

7. Since it is an admitted fact that there are mutual obligations against each other and the adjustments being made to that extent showing in the books of the corporate debtor, I am of the considered opinion that it will not amount a transaction falling within the realm of Section 43 of the Code, therefore this MA/86/IB/2018 is hereby **dismissed**.

-SD-

(B.S.V PRAKASH KUMAR)
MEMBER (Judicial)

SR