

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

MA 12/2018 in CP No. 246/I&BP/NCLT/MAH/2017

Under section 30(6) of IBC, 2016

The Resolution Professional Applicant

In the matter of

Culross Opportunities SP.....

Peter Beck and PartnersFinancial Creditor
Vs

Sharon Bio Medicine Ltd

..... Corporate Debtor

Order delivered on :28-02-2018

Coram:

Hon'ble Mr. B.S.V. Prakash Kumar, Member (J)

Hon'ble Mr. V. Nallasenapathy, Member (T)

For the Applicant: Mr. Dhananjay Kumar, Mr. Manav Mehta, Mr. Bhargav Joshi,
Mr. Anush Mathkar, i/b Cyril Amarchand Mangaldas

Per V. Nallasenapathy, Member (Technical)

ORDER

This is an Application filed by the Resolution Professional under Section 30(6) of the Insolvency and Bankruptcy Code, 2016, read with Regulation 39(4) of the IBBI (Insolvency Resolution Process of Corporate Person) Regulations 2016, seeking the following reliefs:

- a. To approve the resolution plan submitted by Peter Beck and Partners (PBP) for the Corporate Debtor as has been approved by the COC pursuant to its meeting held on 27.12.2017 and voting as concluded on 30.12.2017 as per Section 31(1) of the IB Code, 2016;
- b. To approve the reduction of share capital of the Corporate Debtor as proposed in the resolution plan of PBP as has been approved by the COC pursuant to its meeting held on 27.12.2017;
- c. To approve settlement or restructuring of all claims based on the terms as mentioned in the resolution plan.



d. Upon approval of the relief (a) above, declare that the moratorium order passed by the Hon'ble Tribunal under Section 14 of the Code vide its order dated 11.4.2011 shall cease to have effect.

2. The Corporate Debtor, Sharon Bio-Medicine Ltd. was put under Insolvency Resolution Process by an order of this Adjudicating Authority dated 11.4.2017. Mr. Dinkar T. Venkatasubramanian was appointed as Interim Resolution Professional (IRP), the said IRP issued Public Announcement inviting the Creditors to submit the proof of their claim on 26.4.2017 as per section 13 of the Insolvency and Bankruptcy Code read with Regulation 6(2)(b)(i) of the CIRP Regulations in two newspapers and after verification of claims constituted Committee of Creditors (CoC).

3. The IRP conducted the first meeting of Committee of Creditors on 22.5.2017 wherein the IRP was confirmed as Resolution Professional. The Resolution Professional issued advertisement inviting prospective investors to put forward their proposals in the Economic Times on 13.6.2017. Subsequently, in the third COC meeting held on 11.7.2017, it was decided to appoint Merger and Acquisition advisor for the Corporate Debtor to assist the RP in the resolution process and accordingly, one Mr. Nitin Jain was appointed as Merger and Acquisition Advisor. The Applicant states that based on the Information Memorandum and diligence conducted by the proposed investors, 7 non-binding bids were received from prospective applicants in sealed envelopes. The COC in the 4th meeting held on 23.8.2017 agreed that 23.9.2017 was fixed as the last date for the prospective investors to submit their resolution plans. The COC in the 5th meeting held on 31.8.2017 discussed about the non-binding bids received earlier and shortlisted 4 bidders for conducting further due diligence and submitting a binding offer. The 6th meeting of COC was held on 22.9.2017; it was decided to seek extension of resolution period and on the request of the proposed Resolution Applicant the date for submission of binding bids was extended to 29.9.2017. Accordingly, this Adjudicating Authority extended the CIRP period by 90 days, i.e. upto 7.1.2018 by an order dated 29.9.2017.

In the 8th meeting of COC, the prospective Resolution Applicants, i.e. Shriji, PRP and () presented their proposal. The COC in the 9th meeting held on



17.10.2017 deliberated on the proposals received from PBP and Phoenix and gave in-principle approval to the proposal submitted by PBP which provided for better value and recovery. The Resolution Professional submitted before the COC held on 27.12.2017, wherein the approval of resolution plan submitted by PBP was taken up, the report of ITCOT Consultancy and Services Limited who was appointed to conduct techno economic viability report on the resolution plan of PBP which says that the resolution plan submitted by PBP confirms to the technical feasibility and financial viability.

5. Thereafter, since the resolution plan submitted by PBP was found to be in compliance with all requirements under the Code and CIRP Regulations, the same was put to vote for approval before the COC in the meeting held on 27.12.2017. Since all the members of COC was not present, the Resolution plan was approved by 93% of majority of members of COC through electronic voting that started at 4:00 p.m. on 29.12.2017 and ended at 4:00 p.m. on 30.12.2017. The Bank of Maharashtra which abstained from voting, subsequently on 3.1.2018 consented to the resolution plan. Hence the applicant says that Resolution plan is approved by 100% voting of the Committee of Creditors but the post voting consent given by the Bank of Maharashtra has to be ignored and it should be taken as approval of Resolution Plan by 93% in the COC.

6. The Resolution Plan approved by the Committee of Creditors provides for the following payments to the stakeholders:

Ranking	Category	Name/Category	Submitted Claims (Rs Crores)	Admitted Claims (Rs Crores)	Liquidation Value (Rs Crores)	Payment structure	Total payment envisaged In base case i.e. as per the resolution plan
B	Workmen's dues	Workmen's dues for 24 months preceding liquidation	0	0.716	0.16	Rs 0.16 Cr within 30 days of approval of the plan and balance within 12 months	Rs. 0.16 Cr. within 30 days of approval of the plan and balance Rs. 0.556 Cr. within 12 months of approval of the plan.



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Ranking	Category	Name/Category	Submitted Claims (Rs Crores)	Admitted Claims (Rs Crores)	Liquidation Value (Rs Crores)	Payment structure	Total payment envisaged In base case i.e. as per the resolution plan
B	Secured Financial Creditors	Financial Creditors having secured debt	702.4	702.4	170.69	<p>Sustainable debt Rs 230 Cr.</p> <ul style="list-style-type: none"> - Rs 10 crores upfront. - Rs 190 crores sustainable debt repayable in 10 years at floating MCLR (presently 8.70%) with an interest moratorium of 12 months and principal repayment moratorium of 24 months. - Redeemable Preference Shares (RPS): Rs 30 Cr redeemable after 7 years. <p>Compulsorily Convertible Preference Shares: Rs 300 Cr, to be converted within 5 years into such number of equity shares such that the aggregate equity would not exceed 40% of the diluted paid up share capital of the Company as of the effective date of the plan.</p>	<p>Sustainable debt of Rs. 230 Cr.</p> <ul style="list-style-type: none"> - Rs. 10 Crores within 6-8 weeks of NCLT approval and approval from necessary authorities such as RBI, SEBI etc. for the plan. - Rs 190 crores sustainable debt repayable in 10 years at floating MCLR (presently 8.70%) with an interest moratorium of 12 months and principal repayment moratorium of 24 months. - Redeemable Preference Shares (RPS): Rs 30 Cr redeemable after 7 years.



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Ranking	Category	Name/Category	Submitted Claims (Rs Crores)	Admitted Claims (Rs Crores)	Liquidation Value (Rs Crores)	Payment structure	Total payment envisaged In base case i.e. as per the resolution plan
						Secured Financial Creditors shall agree that remainder of secured financial debt (viz. Rs 172.4 Cr.) is written down to nil.	Market value of 40% equity of the Company as on date of approval of plan from committee of creditors was Rs. 32Cr. Lenders can sell the equity and realize equity upside after the lock in period.
C	Employees dues	Salaries and Unpaid dues to employees excluding promoters for 12 months	0	2.04	-	Gratuity towards employees shall be paid as per actual outflow of gratuity payments over the course of three years and other dues of Rs. 0.81 Cr. shall be paid within one year from effective date of the plan.	Gratuity towards employees shall be paid as per actual outflow of gratuity payments over the course of three years and other dues of Rs. 0.81 Cr. shall be paid within one year from effective date of the plan.
D	Unsecured Creditors	FCCB Holders and India Factoring & Financial Services	188.9	188.9	-	Rs. 184.4 Cr owed to FCCB holders shall be converted into 4.39 Cr equity shares. Rs 4.5 Cr owed to India Factoring shall be converted into 13 lakh equity shares.	FCCB holders can realize equity upside by selling of their stake subject to the lock in period. Same as FCCB holders.
E	Government dues	Government and Statutory Dues	0	0.53	-	Rs 0.53 Cr to be paid in 1 year from effective date of the plan.	To be paid within 12 months of approval of the plan by NCLT.



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Ranking	Category	Name/Category	Submitted Claims (Rs Crores)	Admitted Claims (Rs Crores)	Liquidation Value (Rs Crores)	Payment structure	Total payment envisaged In base case i.e. as per the resolution plan
F	Remaining dues	Operational Creditors	36.0	26.5	-	On best effort and case to case basis.	Over a period of 3-6 years on case to case basis.
B	Remaining dues	CIRP Cost	5	5	5	Rs 5 Cr payable from funds infused by resolution applicant.	CIRP cost to be paid within 30 days of approval of plan or as agreed upon by the agencies constituting CIRP cost.
	Total		932.3	926.08	175.85		

7. The Resolution Professional as required under Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 certified that (i) the contents of the resolution plan meet all the requirements of the Code and the CIRP Regulations, and (ii) the resolution plan has been approved by the CoC.

8. The Resolution Professional has enclosed in this application many disclaimers regarding the Resolution Plan in Page Nos.107 to 109, and subsequently by an Affidavit dated 24.2.2018 filed on 26.2.2018 withdrawn the disclaimers made by him.

9. On perusal of the resolution plan, approved by the CoC with 93% voting, this Bench being satisfied with the same, approves the resolution plan. Further, the reduction of share capital as proposed in the resolution plan is also approved.

10. Accordingly, this MA No: 12/2018 is hereby allowed by vacating the moratorium already granted at the time of admission of Company Petition No: 246/2017.

11. In view of the approval of the Resolution Plan as sought by the Insolvency Resolution Professional, this Bench hereby discharges the Insolvency Resolution Professional from duties of the Insolvency Resolution Process on submission of all the



records maintained by him before the Insolvency and Bankruptcy Board of India as provided under the Insolvency and Bankruptcy Code, 2016 and the regulations thereunder.

sd/-

V. NALLASENAPATHY
Member (Technical)

sd/-

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



Certified True Copy
Copy Issued "free of cost"
On 08/03/2018


Assistant Registrar

National Company Law Tribunal Mumbai Bench