

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 761 of 2019

[Arising out of Order dated 25th/27th June, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench, Chennai in MA/579/2019 in CP/540/IB/2017]

IN THE MATTER OF:

M/s. Accord Life Spec Private Limited
No.29, Thilak Street, T. Nagar,
Chennai – 600017.

.... Appellant

Versus

1. M/s. Orchid Pharma Limited,
Through its Resolution Professional,
Sripatham Venkatasubramanian Ramkumar,
Having its registered office at
“Orchid Towers”, No.313, Valluvar
Kottam High Road,
Nungambakkam, Chennai 600034.

.... Respondent No.1

2. M/s. Dhanuka Laboratories Limited
7-km Old Manesar Road,
Village Mohammedpur, Gurgaon,
Haryana – 122001.

.... Respondent No.2

3. State Bank of India,
Through its AGM,
Stressed Assets Management Branch,
32, Montieth Road,
Red Cross Society,
Egmore, Chennai – 600008.

.... Respondent No.3

Present:

**For Appellant: Mr. Ravi Raghunath and Ms. Aakash Lodha,
Advocates.**

**For Respondents: Mr. Satish Parasaran, Senior Advocate with
Mr. P.V. Dinesh, Mr. Sindhu, Mr. Ashwini
Kumar Singh and Mr. R.S. Lakshman,
Advocates for Respondent No.1.**

**Mr. Ramji Srinivasan, Senior Advocate with
Mr. Sanjay Kapur, Mr. Bharathi Gangadharan
and Mr. Nikhil Ramdev, Advocates for
Respondent No.3.**

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and Mr. Nikhil Ramdev, Advocates for
Respondent No.3.**

**Mr. NPS Chawla, Mr. Suresh Baxy,
Mr. Satvinder Singh, Advocates for
Respondent No.2.**

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

In the 'Corporate Insolvency Resolution Process' against M/s. Orchid Pharma Limited one Mrs. J. Srinisha, one of the unsuccessful Resolution Applicant filed application for direction on the 'Resolution Professional' to reconsider the 'Resolution Plan' submitted by M/s. Dhanuka Laboratories Ltd. having been rejected by the 'Committee of Creditors'. The Adjudicating Authority (National Company Law Tribunal), Division Bench, Chennai by impugned order dated 25th/27th June, 2019 dismissed the application on the ground that 'Resolution Plan' was considered on merit, based on viability and feasibility of the 'Plan'. The said order dated 25th/27th June, 2019 has been challenged by the Appellant – Accord Life Spec Private Limited in one of the Appeal, i.e., Company Appeal (AT) (Insolvency) No.762 of 2019.

2. The 'Resolution Plan' submitted by M/s. Dhanuka Laboratories Ltd. was approved by the Adjudicating Authority (National Company Law Tribunal), Division Bench, Chennai by impugned order dated 25th/27th June, 2019. The aforesaid order has been challenged by the same Appellant in Company Appeal (AT) (Insolvency) No.761 of 2019.

3. Learned Counsel appearing on behalf of the Appellant submitted that 'Resolution Plan' submitted by M/s. Dhanuka Laboratories Ltd. was approved by voting share of 65.33%, as opposed to the statutory requirement of 66%, as required under Section 30(4) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the '**I&B Code**'). However, according to the 'Resolution Professional' and also apparent from the impugned order dated 25th/ 27th June, 2019, we find that the 'Resolution Plan' was approved by the 'Committee of Creditors' with 67.07% of voting share.

4. It was next contended that the 'Resolution Plan' submitted by the M/s. Dhanuka Laboratories Ltd. is not viable nor feasible. It was initially dissented by the Members of the 'Committee of Creditors', but subsequently, they voted in favour. However, as the 'Plan' was approved with voting share of 67%, we are not inclined to accept the submission.

5. The question arises for consideration is whether the approved 'Resolution Plan' submitted by M/s. Dhanuka Laboratories Ltd. is viable and feasible or not?

6. Learned Counsel for the Appellant submitted that actual 'Resolution Value' proposed by M/s. Dhanuka Laboratories Ltd. is Rs.570 crores as against 'Liquidation Value' of Rs.1309 crores. A tabular statement has been submitted by the Appellant, comparing the 'Liquidation Value' and the approved 'Resolution Plan' submitted by M/s. Dhanuka Laboratories Ltd., is quoted below: -

Liquidation Value (Amount in Crores)		As per approved Resolution Plan (Amount in Crores)	
Other assets	1002.26	Funds infused by 2 nd respondent	570.00
Cash balance as on CIRP commencement date	123.18	Cash Balance of Corporate Debtor as on 31.03.2019	321.98
		OPL EBITDA + surplus cash (estimates) – (made available for distribution to creditors)	30.00
		WC infusion through equity by 2 nd respondent	40.00
Cash Balance (disputed between lenders)	184.06	Cash Balance (disputed between lenders)	184.06
Total	1309.50	Total	1146.04

7. It was further submitted that equity infusion of Rs.40 crores as working capital cannot be included in the resolution value for the purpose of finding out the value of the 'Plan'. The upfront payment alleged to be less than the 'Liquidation Value' of Rs.1309 crores.

8. The State Bank of India, in its reply has stated that Rs.184.06 crores cannot be treated to be as belonging to the 'Corporate Debtor' and belongs only to the State Bank of India. Therefore, according to the learned Counsel for the Appellant, if the increase in cash balance from Rs.123.18 crores to Rs.321.98 crores is also factored, the 'Liquidation Value' would be Rs.1508.30 crores. It was alleged that the 'Committee of Creditors' has constituted a Sub-Committee in its 19th meeting on 24th May, 2019 to

negotiate with all the 'Resolution Applicants'. Constitution of such Sub-Committee has been held to be illegal by this Appellate Tribunal in its decision in ***Standard Chartered Bank v. Satish Kumar Gupta, R.P. of Essar Steel Ltd. & Ors. – Company Appeal (AT) (Ins.) No.242 of 2019 etc.*** decided on **4th July, 2019**. It was further submitted that the impugned order is non-speaking one and the Adjudicating Authority has not said as to how the 'Resolution Plan' satisfies Section 30(2) of the I&B Code, which is mandatory.

9. Learned Counsel appearing on behalf of M/s. Dhanuka Laboratories Ltd. ('Successful Resolution Applicant') submitted that second round of negotiations began on the basis of the order passed by this Appellate Tribunal on 1st February, 2019 in Company Appeal (AT) (Insolvency) No.795/2018. It was submitted that 'Liquidation Value' is only a notional value and the same can never be realized in case of actual 'Liquidation' at a later stage. Reliance has been placed on the definition of 'Liquidation Value' as provided in Regulation 2(k) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which means the estimated realizable value of the assets of the 'Corporate Debtor', if the 'Corporate Debtor' were to be liquidated on the insolvency commencement date.

10. The 'Liquidation Value' is decided before the publication of the 'Information memorandum', which is published for the purpose of calling for 'Resolution Plan' from eligible 'Resolution Applicants'. It cannot be accepted that 'Liquidation Value' is 'Notional Value' and can never be realized during the 'Liquidation'. The objective of the I&B Code, 2016 is 'Resolution' and not 'Liquidation'. Further, the aim of the Code is to consolidate and amend the law relating to reorganization and insolvency resolution of corporate persons, partnership firms and individual persons in a time bound manner for maximization of the value of assets of such persons (Corporate persons herein), to promote entrepreneurship availability of credit and balance interest of such persons (Creditors)/ stakeholders. The maximization of value of assets of the 'Corporate Debtor' as also the maximization of the assets of the 'Financial Creditors' and the 'Operational Creditors', are the

basic essence of the I&B Code. Section 30(2)(b) of the I&B Code, as latest amended and applicable, reads as follows: -

“30. Submission of resolution plan.—(1) A resolution applicant may submit a resolution plan along with an affidavit stating that he is eligible under section 29A to the resolution professional prepared on the basis of the information memorandum.

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

xxx

xxx

xxx

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;”

11. Even if the earlier unamended Section 30(2)(b) is considered, the basic feature of the I&B Code was that an ‘Operational Creditor’ cannot be paid anything less than the ‘Liquidation Value’ and the basic principle is the maximization of the assets of the ‘Corporate Debtor’, balancing all the stakeholders by maximization of their assets, no ‘Resolution Plan’ can offer any amount upfront or by other way, which is less than the ‘Liquidation Value’. It will be against the object of the Code as also the provisions of Section 30(2) of the I&B Code.

12. Infusions of fund for maximization of the assets of the ‘Corporate Debtor’ cannot be counted for the purpose of the amount, which is being kept for distribution amongst the stakeholders, including the ‘Financial Creditors’ and ‘Operational Creditors’, if it is less than the

'Liquidation Value', such 'Plan' cannot be upheld, being against the object of the I&B Code and Section 30(2) of the said Code.

13. Admittedly, the amount offered in favour of stakeholders including the 'Financial Creditors' and the 'Operational Creditors' is being much less than the 'Liquidation Value', such 'Plan' cannot be accepted.

14. For the reasons aforesaid, we set-aside the impugned order dated 25/27th June, 2019 ordering approval the 'Resolution Plan', but do not interfere with the impugned order dated 25th/27th June 2019 by which the application filed by M/s. Accord Life Spec Private Limited, a 'Resolution Applicant' was rejected.

15. The Company Appeal (AT) (Insolvency) No.761 of 2019 is allowed. Company Appeal (AT) (Insolvency) No.762 of 2019 is dismissed. The matter stands remitted to the Adjudicating Authority for decision in accordance with law. As the approved 'Resolution Plan' has been set-aside by this Appellate Tribunal, no costs.

[Justice S. J. Mukhopadhaya]
Chairperson

(Justice A.I.S. Cheema)
Member (Judicial)

(Kanthi Narahari)
Member (Technical)

NEW DELHI

13th November, 2019

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