

**NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(through web-based video conferencing platform)**

**CA No.389/2019  
In  
CP (IB) No. 102/Chd/CHD/2018**

**Under Section 30(6) of the Insolvency  
and Bankruptcy Code, 2016.**

**In the matter of:**

Weather Makers Private Limited ...Operational Creditor.

Vs.

Parabolic Drugs Limited ...Corporate Debtor

**CA No. 389/2019**

**And in the matter of:**

Raj Kumar Ralhan,  
Resolution Professional in  
Parabolic Drugs Limited,  
PWC Professional Services LLP,  
Building 10, 17<sup>th</sup> Floor, Tower C,  
DLF Cyber City,  
Gurgaon-122002

...Applicant-Resolution Professional.

**Order delivered on: 12.01.2021**

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)  
HON'BLE MR. RAGHU NAYYAR, MEMBER (TECHNICAL)**

**Present through Video Conferencing: -**

For the Resolution Professional: 1. Mr. Sumesh Dhawan, Advocate  
2. Ms. Vatsala Kak, Advocate  
3. Mr. Arora Vishwas Kumar, Advocate

For the Resolution Applicant: 1. Mr. Anand Chhibbar, Senior Advocate  
2. Mr. Amitabh Tewari, Advocate

For the Assenting Financial: 1. Mr. Abhishek Anand, Advocate  
Creditor (JMFARC Ltd.) 2. Mr. Viren Sharma, Advocate

For the Dissenting Financial  
Creditors : Mr. Rakesh Gupta, Advocate

For the Intervenor : 1). Mr. Anirudh, Advocate  
2). Mr. Tejas Patel, Advocate  
For Mr. Sundeep Thakkar, Advocate

**Per: Ajay Kumar Vatsavayi, Member (Judicial)**

### **ORDER**

CA No.389/2019 is filed by the Resolution Professional (**RP**) under Section 30(6) and 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the **Code**) read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the **Regulations**) seeking sanction of resolution plan dated 13.03.2019 as restated on 07.05.2019 along with addendums dated 08.05.2019 & 16.05.2019 as approved in the tenth meeting of the Committee of Creditors (**CoC**) through e-voting held on 18.05.2019 and concluded on 20.05.2019.

2. It has been submitted that the insolvency petition was filed by the operational creditor i.e. Weather Makers Private Limited under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of M/s Parabolic Drugs Ltd. (hereinafter referred to as **Corporate Debtor**) and the same was admitted vide order 23.08.2018. It is submitted that vide order dated 30.08.2018, Mr. Sanjay Kumar Aggarwal was appointed as Interim Resolution

Professional (**IRP**), but subsequently Mr. Sanjay Kumar Aggarwal was replaced and Mr. Raj Kumar Ralhan was appointed as RP vide order dated 08.10.2018. The IRP is stated to have issued a public announcement as per Regulation 6 of the Regulations read with Section 15 of the Code in Form A in newspapers of both regions i.e. Business Standard (English, All India Edition), Rozana Spokesman (Punjabi Edition) and on 02.09.2018 in Chandigarh Kesari (Hindi) thereby inviting claims from the creditors of the corporate debtor as envisaged in the Code. A copy of the public announcement in Form A was uploaded on the website of Insolvency & Bankruptcy Board of India (IBBI). Copy of public announcements dated 31.08.2018 uploaded on the IBBI website is marked as Annexure-8.

3. It is submitted that in pursuance of the public announcement, claims were received from the Financial Creditors which were verified and after collation, the IRP constituted the CoC as per the provisions of Section 21 of the Code consisting of the following 8 financial creditors: -

1	<i>JM Financial Asset Reconstruction Company Ltd.</i>
2	<i>Union Bank of India</i>
3	<i>Central Bank of India</i>
4	<i>Bank of Baroda</i>
5	<i>Export-Import Bank of India</i>
6	<i>Canara Bank</i>
7	<i>Small Industries Development Bank of India</i>
8	<i>PEC Limited</i>

4. It is submitted that the applicant as RP also appointed two registered valuers to determine the liquidation value of the corporate debtor in accordance with Regulation 35 of the Regulations and on the basis of their reports, the average fair value and liquidation value as assessed as per Regulation 35 are ₹209 crs and ₹110 crs respectively/-. Copies of Valuation Reports are annexed as Annexure-19.

5. It is stated that in the second meeting of CoC held on 03.11.2018, the CoC resolved and approved the 'Eligibility Criteria' for resolution applicants and also gave approval for publication of Form G for inviting Expression of Interest (EOI) from prospective resolution applicants.

6. It is stated that the RP made a Public Announcement for invitation of EOI from prospective resolution applicants in Form G prescribed in Regulation 36A of CIRP Regulations, 2016 in Business Standard (English, All India Edition), Rozana Spokesman (Punjabi Edition) on 12.11.2018. The Form-G was also made available on the website of IBBI. A copy of publication of Form-G is annexed as Annexure-11.

7. It is also stated that the RP apprised the CoC regarding preparation of information memorandum which was issued to the corporate debtor in October, 2018 and regarding creation of a Virtual Data Room ("VDR") wherein relevant documents pertaining to the corporate debtor were made accessible to the prospective resolution applicants for their evaluation and preparation of their respective resolution plans for the corporate debtor.

8. It is submitted that after publication of Form G on 12.11.2018, the RP received EOI from six potential investors out of which 5 were eligible prospective resolution applicants namely, (a) JM Financial Asset Reconstruction Company Limited, (b) Dhanuka Laboratories Ltd. (c) Meghani LLP, (d) Shiva Consultants Private Limited and (e) IOL Chemicals & Pharmaceuticals Limited.

9. It is submitted that in the third meeting of the CoC on 29.11.2018, the CoC under the provisions of the Code read with Regulation 36B of the CIRP Regulations decided the issuance of Request for Resolution Plan ("RFRP") to the

prospective resolution applicants and in terms of Section 25(2)(h) of the Code, the RP released a RFRP dated 04.12.2018 thereby detailing each step in the process, and the manner and purposes of interaction between the RP and the prospective resolution applicant, along with corresponding timelines and inviting resolution plans from the prospective eligible resolution applicants.

10. It is also submitted that after the last date of submission of EOI, the RP received request for submission of EOI from one of the investors and therefore, to maximise the value of the assets of the corporate debtor, the last date for submission of EOI was extended to 16.01.2019. An addendum to the EOI was published in Business Standard on 10.01.2019. A copy of advertisement published is at Annexure-14. The RP supplemented the RFRP dated 04.12.2018 from time to time vide the First Addendum to the RFRP dated 11.01.2019 and the Second Addendum to the RFRP dated 26.02.2019

11. CA No.114 of 2019 was filed by the RP under Section 12(2) of the IBC, 2016 for extension of the CIRP time period by a further period of 90 days and the same was allowed vide order dated 22.02.2019. A copy of the order is at Annexure-16 of the paper book.

12. In the fifth meeting of CoC dated 07.03.2019, the members of CoC themselves undertook the task of evaluation of resolution plan and therefore they did not appoint any bid evaluator. Further, it is stated that after the extension of last date for submission of resolution plan, the resolution plan was received from only one resolution applicant namely Akums Drugs & Pharmaceuticals Ltd. on 13.03.2019 i.e. the Bid Due Date which was opened in the presence of the CoC in its 6th meeting held on 14.03.2019 and broad parameters (including financial bid)

was disclosed to the members of CoC. The said resolution plan was also uploaded on the Virtual Data Room.

13. The resolution plan was further analysed in the 7th, 8th & 9th meeting of the CoCs during which the resolution applicant submitted the amended resolution plan dated 13.03.2019 as restated on 07.05.2019 along with addendum dt.08.05.2019 & dt.16.05.2019 to the CoC for consideration. The CoC in its tenth meeting held on 18.05.2019, after detailed discussion declared the resolution plan 13.03.2019 as restated on 07.05.2019 read with the addendum dated 08.05.2019 and second addendum dated 16.05.2019 (revised Resolution Plan) submitted by Akums Drugs and Pharmaceuticals Limited as approved by 71.67% voting and accordingly issued a Letter of Intent dt. 20.05.2019 to the successful resolution applicant (Annexure-22).

14. It is prayed to pass an order for approval of resolution plan submitted by resolution applicant – Akums Drugs and Pharmaceuticals Limited as approved with 71.67% voting under Section 30(4) of the Code in the tenth meeting of CoC of the corporate debtor held on 18.05.2019.

15. The RP has filed compliance certificate in Form H (Pg. No. 17-121 Dy.232/4 dt.17.09.2020) as required under I&B Code (Amendment) Ordinance 2018 No.6 of 2018 dated 06.06.2018. It is certified by the RP in para 4 of Form H that the resolution plan complies with all the provisions of the Code, CIRP Regulations and does not contravene any of the provision of law for the time being in force and that the resolution plan stands duly approved by the 71.67% of the voting share of the financial creditors. It is also stated in para 4 (ii) of Form H that the affidavit of the successful resolution applicant regarding its eligibility under

Section 29A of the Code is in order. Copy of the affidavit of the resolution applicant regarding its eligibility under 29A is attached as Annexure A-24 of the application.

16. It is also submitted that CoC while accepting the bid had taken care of all the provisions and Regulations. It is prayed that the application may be allowed and resolution as approved by the CoC in the CIRP of the Corporate Debtor be approved.

17. The learned counsel for the RP submitted that as per revised/updated Form H (Pg. No. 17-121 Dy.232/4 dt.17.09.2020), all the provisions of the Code and Regulations were complied with and that the approval of the resolution plan was made by 71.67% voting share of the major financial creditors in the meeting of the CoC held on 20.05.2019 and therefore, resolution plan submitted by M/s Akum Drugs and Pharmaceuticals Limited has been approved.

18. We have carefully considered the submissions of the learned counsel for the RP and the learned Counsel for the resolution applicant and have also perused the record.

19. The corporate debtor was incorporated on 22.02.1996 and as discussed above, the CIRP proceedings were initiated by order dated 23.08.2018. The present application is filed for the approval of resolution plan by M/s. Akums Drugs & Pharmaceuticals Ltd. The approval has been sought under the provisions of Section 31 (1) of the Code.

20. We may first of all state that after receipt, verification and collation of claims as discussed above, the IRP constituted the CoC as per the provisions of Section 21 of the Code. The details of the financial creditor, the distribution of voting

share among them and the position of voting for the resolution plan is as under (para no.5 of Form H (Diary No.232/4 dated 17.09.2020).

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	JM Financial Asset Reconstruction Company Limited	71.67	For
2	Union Bank of India	7.16	Against
3	Central Bank of India	6.95	Against
4	Bank of Baroda	5.90	Against
5	Export-Import Bank of India	2.70	Against
6	Canara Bank	2.31	Against
7	Small Industries Development Bank of India	1.71	Abstained
8	PEC Limited	1.60	Against

21. The details of stakeholders under the resolution plan given in para 7 of Form H (supra) is as follows: -

(Amount in rupees lakhs)

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	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	-NA-	-NA-	-NA-	-NA-
		(b) Other than (a) above:  (i) who did not vote in favour of the resolution Plan	42942	42942	3130	7.3%



		(ii) who voted in favour of the resolution plan	108616	108616	7238	6.7%
		Total[(a) + (b)]	151558	151558	10369@	6.8%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under subsection (2) of section 21	NA	NA	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	NA	NA	NA	NA
		Total[(a) + (b)]	-	-	-	-
3	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a) above:				
		(i) Government	45,044	32,394	375	1.2%
		(ii) Workmen & Employees	427	379	376	99.1%
		(iii) Other Operational Creditors	9071	4800	375	7.8%
		Total [(a) + (b)]	54541	37573	1126	3.0%
4	Other debts and dues	-	-	-	-	-
<b>Grand Total</b>			<b>206099</b>	<b>189131</b>	<b>11495</b>	<b>6.1%</b>

@This amount includes the CIRP costs to be paid by the applicant in full.

*Further, the applicant has also offered Equity shares representing 10% (ten percent) of the issued, subscribed and paid-up share capital of the Corporate Debtor as on Closing Date as defined in the resolution plan to the assenting financial creditors which is not included in the amount. It is not feasible to assign a value to the equity component.*

*#Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.*

22. The compliance of the resolution plan has been given in para No.9 of Form H (supra) as follows: -

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Part I – Business plan of the resolution applicant in relation to the corporate debtor at Pg. 27.	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Part II Mandatory Provisions Cl. 7 at Pg. 69	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Part II Mandatory Provisions Cl. 7 Sub. Cl. 7.1.1. at Pg. 70.  Affidavit dated 12.03.2019 at Pg. 125.	Yes
Section 30(2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment to the operational creditors?	Part III Cl. 3 at Pg. 72  Part III Cl. 5 Cl. 6 at Pg. 76	Yes  Yes

	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Affidavit dated 15.10.2019 filed by Resolution Applicant at Pg. 161 read with Reply filed by the Resolution Professional at Pg. 235 and Resolution Applicant at Pg. 225 to IA 195/20 filed by SIDBI.	Yes
	(d) provides for the management of the affairs of the corporate debtor?	Part II Cl. 4 Sub. Cl. 4.1 at Pg. 67	Yes
	(e) provides for the implementation and supervision of the resolution plan?	Part II Cl. 4 Sub. 4.2at Pg. 69	Yes
	(f) contravenes any of the provisions of the law for the time being in force?		Part II Cl. 6 at Pg.69
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC?  (b) has been approved by the CoC with 66% voting share?	PART II, Cl. 10 at Pg, 70	Yes  Yes Voting Result on the Resolution Plan at Pg. 135
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Part II Clause 4 Sub Clause 4.2 at Pg. 69 Clause 8 at Pg. 70	Yes
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the	-NA-	The Resolution Professional had appointed a Transaction Auditor to conduct the

	insolvency commencement date, under intimation to the Board?		transaction audit of the transaction entered into by the Corporate Debtor. The Auditor has submitted the Report on 07.01.2019. Accordingly, the RP has filed Application being CA No, 74/2019 with the Hon'ble Adjudicating Authority.
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	The amendment in Regulation 38(1) has come into effect from 28.11.2019 while the Resolution Plan was approved by the CoC on 20.05.2019 therefore, the said amended Regulation does not apply on the present Resolution Plan.	
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Part II Cl. 5 at Pg. 69	Yes
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	-NA-	Part II Cl. 9 at Pg. 70  -
Regulation 38(2)	Whether the Resolution Plan provides:	Part II	Yes

	(a) the term of the plan and its implementation schedule?	Cl. 3 at Pg. 67 Part II Cl. 4 at Pg. 67	Yes
	(b) for the management and control of the business of the corporate debtor during its term?	Part II Cl. 4.2 at Pg. 69	Yes
	(c) adequate means for supervising its implementation?		
38(3)	Whether the resolution plan demonstrates that – (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	Part I, Cl. 1-6 at Pg. 27 Part II, Cl. 3 at Pg. 67, Cl. 4.2 at Pg. 69 and Cl. 8 at Pg. 70	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	CA No. 74/19 filed on 11.01.2019	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Bank: State Bank of India, Industrial Finance Branch, New Delhi Date:21.05.2019 Amount:Rs. 25,00,00,000/- (Rupees TwentyFive Crores) at Pg. 122	Yes

23. The approval of the resolution plan has been sought under Section 31

(1) of the Code, reading as follows: -

*“(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall*

*be binding on the corporate debtor and 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 other stakeholders involved in the resolution plan.*

*Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.”*

24. The conditions provided for in Section 31(1) of the Code for approval of resolution plan are therefore: -

- (a) *The Resolution Plan is approved by the CoC under Section 30(4) of the Code;*
- (b) *The Resolution Plan so approved meets the requirements as referred to in Section 30(2) of the Code;*
- (c) *The Resolution Plan has provisions for its effective implementation.*

The satisfaction of the conditions is discussed below.

25. It is submitted by the RP that the resolution plan has been approved by a vote of 71.67% of voting share of the financial creditor and therefore, the conditions provided for by Section 30(4) of the Code are satisfied.

26. The provisions of Section 30(2) of the Code are as follows: -

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

*(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the (payment) of other debts of the corporate debtor;*

*(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—*

- (i) *the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or*
- (ii) *the amount that would have been paid to such creditors; if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,*

*whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.*

*Explanation 1.—For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.*

*Explanation 2.—For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor—*

- (i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;*
- (ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or*
- (iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;*
- (c) provides for the management of the affairs of the corporate debtor after approval of the resolution plan;*
- (d) The implementation and supervision of the resolution plan;*
- (e) does not contravene any of the provisions of the law for the time being in force.*
- (f) confirms to such other requirements as may be specified by the Board.*

*Explanation – For the purpose of clause ( e ). If any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such*

*approval shall be deemed to have been given and it shall not be a contravention of that Act or law.*

27. The compliance of Section 30(2) of the Code is given in para No.9 of Form H (*supra*). The same is being further examined as under: -

**Section 30(2)(a):** The resolution plan (page 72 of the Dy. No.232/4 dt.17.09.2020) states that payment of insolvency resolution process cost shall be the paid in full towards final payment of the insolvency resolution process costs payable. Further, it is stated that the IRP Costs shall be paid by the Corporate Debtor in priority to any other creditors of the Corporate Debtor in accordance with the Code and the Corporate Debtor (or the Resolution Applicant, as the case may be) shall pay the IRP Costs to the relevant Persons as per the details (including the names, amounts payable to and bank account details of such Persons) provided by the Resolution Professional to the Corporate Debtor in writing at least 7 Business Days prior to the due date of IRP Costs. The plan proposes two repayment options to the financial creditors namely, upfront repayment option and restructured repayment option, the details of which are mentioned in Clause 4 Part II of the plan.

Upon payment of the IRP Costs, the Interim Finance Facility Agreement and all terms and conditions contained therein stand terminated and the Corporate Debtor shall stand released from any and all obligations under or in connection with the Interim Finance Facility Agreement, without the requirement of any further action from any Person. All rights and obligations arising out of or in connection with the provisions of the Interim Finance Facility Agreement shall cease to exist upon the payment of the IRP Costs.

**Section 30(2)(b):** The resolution plan (pg 76 of Dy. No. 232/4 dt.17.09.2020 and Part III Clause 5 & 6) states that the operational creditors shall be paid in full



and final satisfaction of their claims which includes payment of all the statutory dues and claims of governmental authorities of an amount upto ₹3,75,000/-. Further, the plan provides for an amount of ₹3,75,60,159/- to be paid towards full and final settlement of claims of workmen and employees which shall be paid on the first payment date. Apart from these, an amount of Rs.3,75,000/- is also proposed to be paid upfront to other operational creditors under the plan. It is stated in Form H that the average liquidation value is ₹110 crores.

On behalf of the dissenting financial creditors, it was submitted that the plan is not complying the requirements of Section 30(2)(b) read with Regulation 38(1)(b), as amended. However, on the other hand, the Resolution Professional and the Resolution Applicant submitted that the plan read with the addendums was approved by the COC on 18.05.2019 and since Section 30(2)(b) was amended on 16.08.2019 and that the corresponding Regulation 38(1)(b) was amended w.e.f. 28.11.2019, the said amendments have no application and hence, the plan shall be treated to be in consonance and in accordance with the requirements of the IBC. They further submitted that, however vide the addendum dated 09.10.2019, (Diary No. 5594 dated 15.10.2019) and the reply of the Resolution Applicant vide Diary No. 232/4 dated 17.09.2020, in terms of the orders/observations of this Adjudicating Authority dated 19.08.2019, the Resolution Applicant provided payment to the dissenting financial creditors, in the following manner:-

Particulars	As per earlier plan			As per revised plan			Remarks Calculations
	Upfront	Deferred	Total	Upfront	Deferred	Total	
	Upfront	Deferred	Total				
Dissenting Creditors	12.65	88.35	101	3.58	27.58	31.17	28.33% of ₹110 Cr. (₹31,16,70,700)

Other Creditors				9.07	63.32	72.38	71.6663% of ₹101 Cr. (₹72,38,29,630)
Total amount	12.65	88.35	101	12.65**	90.90	103.55	

It is further submitted that the contention with regard to priority in payment to the dissenting financial creditors over other financial creditors is not tenable since the amendments are subsequent to the approval of the plan.

The Hon'ble Supreme Court of India in **Rahul Jain vs. Rave Scans Pvt. Ltd. & others – CA No. 7940 of 2019 dated 08.11.2019**, while dealing with Regulation 38(1)(c) and in the identical circumstances observed as under:-

*“Given that the resolution process began well before the amended regulation came into force and the resolution plan was prepared and approved before that event, the wide observations of the NCLAT, requiring the appellant to match the pay out (offered to other financial creditors) to Hero was not justified.”*

In this view of the matter the contention made on behalf of the dissenting financial creditors is rejected.

**Section 30(2)(c)(d) & (e):** In Part II, Clause 4 of the resolution plan (Pg. 67 of Dy. No. 232/4), it is stated that pursuant to the approval of the plan, a Monitoring Committee comprising of 2 representatives the CoC and 2 representatives of the Resolution Applicant shall be constituted which shall have powers of the board of directors of the company vested in it. Further, it is stated that the chairman of the monitoring committee will be representative of the resolution applicant and the monitoring committee may appoint a professional agency acceptable as Managing Agency for supervision and management of the CD until the closing date. On and from the effective date, the resolution applicant and its nominees shall be the majority shareholder of the corporate debtor and the monitoring committee and the

managing agency shall cease to exist. Until then the resolution applicant and the managing agency shall jointly supervise the implementation of the plan. The monitoring committee will consist of the following members (Diary No.5570 dated 14.010.2019):

S.No.	Representatives of COC	Representatives of the Resolution Applicant
1	Renu Kochar (JMARCL)	Sandeep Jain
2	Kumar Gaurav (JMFARCL)	D.C.Jain

**Section 30(2) (f):** In Form H (*supra*) (para No.4), the RP has certified that the resolution plan complies with the provisions of the Code and Regulations and does not contravene any of the provisions of law for the time being in force

28. When the matter was listed on 20.09.2019, all the parties were directed to submit their suggestions regarding disbursement of the amount of ₹2.3 crores to be paid by Orbit Lifesciences Private Limited on the basis of the observations made by the **Hon'ble NCLAT in the order dated 12.09.2019 in Company Appeal (AT) (Insolvency) No.846 of 2019**. Also the resolution applicant, resolution professional as well as the Lenders of the resolution applicant were directed to file their convenience compilations and the resolution applicant was also directed to file an affidavit with regard to the latest amendment made to Section 30(2) of the Code before the next date of hearing.

29. In compliance of the order dated 20.09.2019, the learned counsel for the RP filed affidavit vide Diary No.5673 dated 16.10.2019 stating therein that the expenses incurred for running the corporate debtor as a going concern during the

period when the Bailor Bailee Agreement was in subsistence (prior to the initiation of the CIRP of the corporate debtor and immediately thereafter) have been borne out of the interim finance provided by the lenders of the corporate debtor as CIRP costs during the CIRP of the corporate debtor. Therefore, the dues amounting to ₹2.3 crores payable by Orbit Lifesciences Private Limited should be utilised towards CIRP costs. It is further submitted that in case the above stated amount of ₹2.3 crore is not utilised towards CIRP costs, the same may be considered to be distributed in the manner and in the order of priority as provided under Section 53 of the Code, which deals with distribution of proceeds from the sale of assets in the event of liquidation of the corporate debtor.

30. During the course of hearing on 17.10.2019, the learned Senior Counsel appearing for the resolution applicant submitted that they have no objection, if the amount payable by the Orbit Lifescience Private Limited is shared among the financial creditors and that they will not have any claim over the same. The statement of the learned Senior Counsel for the resolution applicant was taken on record. Also JMFARC Limited-financial creditor with 71.6% voting share in the CoC submitted that they have no objection, if the resolution plan is approved by this Tribunal.

31. In compliance of order dt.14.11.2019, the RP filed compliance affidavit (Dy. No.6507 dt.21.11.2019) stating that the resolution plan is in compliance with all the provisions of section 30(2) and COC has approved the said plan by applying its commercial wisdom after thorough examination. Reliance is placed on the decision held by the Hon'ble Apex court in the matter of **Essar Steel India Ltd. Vs.**

**Satish Kumar Gupta & Ors.**

32. Further, the RP and the Resolution Applicant filed their separate affidavits (Dy. No 1590 & 1591 dt.26.02.2020) in compliance of order dt.06.02.2020 stating therein that the conditions mentioned under clause 11 of Part 1 of the resolution plan shall no longer be treated as Conditions Precedent and the resolution applicant shall approach the relevant statutory and other authorities for grant of approval of consent, if required under clause 11 of Part I of the said Resolution Plan which shall be processed in accordance with law. Further, it was stated that the resolution applicant agrees that the Reliefs and Concessions sought under para 6.13 of part I of the resolution plan shall not be treated as Reliefs and Concessions before the adjudicating authority and in respect of such relief and concessions, the resolution applicant will approach such relevant authorities in future. Also, it was stated that the non-grant of Conditions Precedent and Relief and Concessions sought under the scheme shall not affect the implementation of the resolution plan by the resolution applicant. Copy of the affidavit of the resolution applicant is attached as Annexure -1 (Dy. No. 1590) and copy of board resolution dated 13.02.2020 is attached as Annexure -1 (Dy. No. 1591)

33. With regard to complaint of Mr. Japsreet Singh vide email to the Finance Minister against the approval of the said resolution plan and as per order dt.10.11.2020, reply has been filed by 3 financial creditors namely JMFARCL, Central Bank of India (CBI) and SIDBI. The JMFARCL in its reply (Dy. No. 251/10 dt.20.11.2020) has submitted that there is no locus standi of Mr. Jaspreet Singh to challenge the commercial wisdom and decision of the COC. Also reliance has been placed on para 42 of the decision of Hon'ble Supreme Court in **K. Sashidhar Vs. Indian Overseas Bank & Ors. (Civil Appeal No.10673 of 2018 dated**

**05.02.2019)** *inter alia* stating that no corresponding provision has been envisaged by the legislature to empower the resolution professional., the Adjudicating Authority (NCLT) or for that matter the appellate authority (NCLAT), to reverse the “commercial decision” of the CoC. It was also held that from the legislative history there is contra indication that the commercial or business decisions of the financial creditors are not open to any judicial review by the adjudicating authority or the appellate authority. The said decision was also recently affirmed by the Hon’ble Supreme Court in the matter of **Committee of Creditors of Essar Steel India Limited vs Satish Kumar Gupta & Ors. (Civil Appeal No. 8766-67/2019)**. Further it has been submitted that the issue pertaining to liquidation value is Res Integra and has been settled by the Apex Court in the case of **Maharashtra Seamless Limited vs. Padmanabhan Venkatesh & Ors. on 22.01.2020, (2006) 6 SCC 298** (para 25-28 of the said order).

34. SIDBI in its reply (Dy.251/9 dt.17.11.2020) has submitted that it had filed a detailed complaint with IBBI under regulation 3(3) of Grievance and Complaint Handling Procedure Regulation, 2017 and also before the Institute of Insolvency Professionals of ICAI (IIPI) under section 204 (f) of the code regarding the irregularities committed by the RP and his associates. Copies of same are attached as Annexure R-1 & R-2 resp. Central Bank of India in its reply has submitted that it being a minority shareholder could not object to the CIR proceedings undertaken by the RP as per the direction of JMFARCL, however CBI adopts the same reply as that of SIDBI (Dy. No.1097/2 dt.9.11.2020).

35. As regards the amendment in Section 30(2)(b) made by Act No.26 of 2019 w.e.f. 06.08.2019, the plan provides amount for the treatment with regard to

dissenting financial creditors which had been discussed in para no 27 (supra) and therefore, the provision in this case has been complied with and that as regards operational creditors, the provision is made for ₹3,75,60,159 towards claims of the Workmen and Employees of the Corporate Debtor and ₹3,75,00,000 separately each for the claims of other operational creditors, statutory dues and labour dues are more than the amounts payable to them under Section 30(2)(b)(i) and (ii) of the Code.

36. We now examine the compliance of the proviso to Section 31(1) of the Code that the resolution plan has provisions for its effective implementation. The resolution plan states that Monitoring Committee and Managing agency as defined in clause Clause 4.1.1 & clause 4.1.2 of Part II of the resolution plan shall monitor and supervise the implementation of the resolution plan from the date of approval of the plan by the adjudicating authority till closing date. Also Clause 8 Part II contains the details pertaining to the implementation provisions of the plan. The term of the plan is stated to be 4 years from the date of NCLT approval. Apart from infusion of ₹112,25,60,159/- in the Corporate Debtor for repayment of the Corporate Debtor's creditors, the Resolution Applicant also proposes to infuse additional capital of around ₹40,00,00,000 for investment in capital expenditure in plant, machinery and equipment and working capital needs.

37. With reference to compliance of Section 30(2) (c) and (d) of the Code, we have discussed that the resolution plan states that the resolution applicant undertakes that on approval of the resolution plan by the Adjudicating Authority, the resolution applicant proposes to appoint a Monitoring and Supervising Committee to provide for implementation and supervision of the plan in Phase I.

The constitution of the committee is also discussed above. The terms of the plan and its implementation schedule is stated to be four years from the approval of the plan by the Adjudicating Authority.

38. As per Regulation 39(4) of the regulations, the resolution applicant has furnished performance security in the form of bank guarantee of amount ₹25cr. dated 02.11.2020 which is valid till 30.11.2021. Copy of the Bank Guarantee is at Annexure -2 (Dy. No.2321/13 dt.24.11.2020)

39. In part 15 of Form H supra, it is stated that 4 applications have been filed with the NCLT under Section 43, 45, 50 and 66 of the Code regarding preferential, undervalued, extortionate credit transaction and fraudulent transaction. The relevant applications are under hearing by the Tribunal.

40. We have discussed above that the requirements under Section 31(1) of the Code are satisfied in the present case. In para No.4 of Form H (*supra*) the RP has certified that the resolution plan complies with all the provisions of the Code and Regulations and does not contravene any of the provisions of the law for the time being in force. The RP has also certified that the resolution applicant namely Akums Drugs & Pharmaceuticals Ltd. has submitted affidavit pursuant to Section 30(1) of the Code confirming its eligibility under Section 29A of the Code to submit the resolution plan and the contents of the said affidavit are in order. The RP has submitted that the resolution plan has been approved by the CoC with 71.67% voting share in accordance with the provisions of the Code and CIRP Regulations made thereunder and after considering the feasibility and viability and other requirements specified by the CIRP Regulations.



41. In view of the above discussion, the resolution plan submitted by M/s. Akums Drugs & Pharmaceuticals Ltd. as approved by the CoC under Section 30 (4) of the Code is approved and the resolution plan so approved shall be binding on the corporate debtor and 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 other stakeholders involved in the resolution plan.

42. Under the provisions of Section 31 (3) of the Code, we also direct as under: -

- a) The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 23.08.2018 shall cease to have effect; and
- b) The RP shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its database.

43. CA No.389/2019 is disposed of.

(Raghu Nayyar)  
Member (Technical)

Sd/-  
(Ajay Kumar Vatsavayi)  
Member (Judicial)

January 12<sup>th</sup>, 2021  
YP