

**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

**MA/211/IB/2018
In
TCP/540/IB/CB/2017**

Under Section 30(6) of the IBC, 2016

In the matter of

M/s.ORCHID PHARMA LIMITED

**Shri.Ramkumar S.V.,
Resolution Professional**

...Applicant

In the matter of

M/s.Lakshmi Vilas Bank Limited,

..Operational Creditor

Vs.

M/s.Orchid Pharma Limited,

..Corporate Debtor

Order delivered on: 17.09.2018

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**K. ANANTHA PADMANABHA SWAMY, MEMBER (JUDICIAL)
S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

For the RP : Shri.Gaurav Gupta, Advocate
: Shri.Edward James, Advocate

ORDER

Per: S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

- 1) The Applicant in the present Application prays as follows;
 - a) *That this Hon'ble Tribunal be pleased to approve the resolution plan submitted by Ingen Capital Group, LLC for the Corporate Debtor as has been approved by the CoC pursuant to its meeting held on 4th June 2018 and voting as concluded on 21st June 2018*

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as per Section 31(1) of the Insolvency and Bankruptcy Code, 2016;

- b) That this Hon'ble Tribunal be pleased to approve the consummation of all such steps contemplated for implementation of the resolution plan;*
- c) That this Hon'ble Tribunal be pleased to approve settlement or restructuring of all claims as per the terms set out in the resolution plan ;*
- d) Upon approval by the Hon'ble Tribunal as mentioned in prayer (a) above, declare that the moratorium order passed by the Hon'ble Tribunal under Section 14 of the Code vide its order dated 17th August 2017 shall cease to have effect;*
- e) For such other orders as this Hon'ble Tribunal deems fit in the facts and circumstances of the case.*

2) The Tribunal vide its order dated 17.08.2017 admitted an application initiating the corporate insolvency resolution process ("CIRP") in respect of the Corporate Debtor and declared moratorium under Section 14 of the Code and appointed Mr.CMA CS Rajasekaran as the Interim Resolution Professional (IRP).

3) The committee of creditors (CoC) constituted by the IRP at its first meeting held on 03.10.2017 resolved to recommend the appointment of the Applicant as the resolution professional (RP) vide order dated 26.10.2017. As the IRP suffered a stroke and was hospitalized and was unable to continue to function as an IRP even on the date of the order due to his health condition. The Tribunal vide its order dated 15.01.2018 extended the period of moratorium by 90 (ninety) days i.e., till 14.05.2018.

- 4) A print publication was made for expression of interest (EOI) in the newspaper, Economic Times on 01.11.2017 from prospective resolution applicants. Pursuant to such publication, 29 (twenty nine) EOIs were received. Further, non-disclosure agreements (NDA) were executed with potential resolution applicants and information memorandum were shared with them. Also, vendor due diligence report was shared with prospective resolution applicant upon payment of Rs. 5,00,000/- (Rupees Five lakh only) to the Corporate Debtor.
- 5) The CoC considered the various parameters that would form part of the Process Memorandum dated 19.02.2018 (Process Memorandum) such as deposit of earnest money (EMD) of Rs. 5,00,00,000/- (Rupees Five Crores only) in the form of bank guarantee/cash deposit, performance guarantee of Rs. 50,00,00,000/- (Rupees Fifty Crore only) by way of bank guarantee/cash deposit in the favour of Corporate Debtor among others.
- 6) The Applicant received non-binding investment offers (NBIO) from 12 (twelve) potential resolution applicants, who have signed the NDAs and furnished declaration under Section 29A of the Code among other requirement set out under the Process Memorandum. The CoC decided to give access to virtual data room and to make available the Process Memorandum to those applicants which have provided the NBIO. The

Process Memorandum has been procured by 10 (ten) out of the 12 (twelve) potential resolution applicants.

- 7) The Applicant received resolution plans in sealed envelope submitted by three resolution applicants, namely, Ingen Capital Group LLC, USA (Ingen Capital), Fidelity Trading Corporation, Malaysia (Fidelity) and Union Quimico Farmaceutica, Spain (Uquifa Spain), before 4:00 p.m. on 15.03.2018 at the address mentioned in the Process Memorandum dated 19.02.2018.
- 8) At the 7th Meeting of the CoC, the CoC directed me to invite submission of resolution plan from prospective eligible resolution applicant in Form - G, as per Regulation 36A (5) once again as all the resolution plans received in the first round were ineligible. The CoC also asked the RP to inform Ingen Capital, Fidelity and Uquifa Spain about their non-compliances and ask them to get them corrected in the 2nd round of bidding, if they were taking part. A revised Form G was uploaded on the Company website and stock exchanges on 02.03.2018 and the last date for submission of resolution plans as per the revised Form G was 10.04.2018 to allow for a period of 15 days from the date of the revised Form G.



9) In the 8th CoC Meeting held on 17.04.2018 the CoC agreed that the resolutions plans of Ingen Capital and Fidelity were not compliant with the provisions of the Code and/or the Process Memorandum. Accordingly, the resolution plan submitted by Uquifa Spain, being the only resolution plan compliant with the Code and the Process Memorandum was taken up for discussion by the CoC. The members of the CoC were of the view that the financial proposal in the resolution plan submitted by Uquifa Spain was low. Accordingly, a vote was taken on whether the bids submitted by the resolution applicants on 10.04.2018 be rejected and a rebid be initiated. The resolution was approved by 98.84 % by value of the financial creditors. The CoC decided that the resolution plan of Uquifa Spain would be rejected on grounds of it being low and lack of clarity on other terms and to initiate a rebidding process, with last date for submission of bids being 25.04.2018.

10) In the third round of submission of resolution plans, four resolution applications were received on 25.04.2018. Ingen Capital, Fidelity and Uquifa Spain each submitted a revised resolution plan in the third round. In addition, Gland Pharma Limited and Gland Celsus Bio Chemicals Private Limited jointly submitted as Resolution Plan. Four

new EOIs were also received which were after the end of deadline for submission of resolution plans and were not considered.

11) At the 10th CoC Meeting held on 03.05.2018, resolution plans from resolution applicants that were in compliance with Section 29A of the Code, namely, Gland, Ingen Capital and Uquifa. The CoC had negotiated on the commercials and terms and conditions of the resolutions plans with the 3 shortlisted resolution applicants. For this purpose, the CoC members unanimously suggested that four CoC members with the highest voting percentage/exposure, namely, State Bank of India, Union Bank of India, Bank of India and Punjab National Bank shall form a sub-committee (CoC Sub-committee) along with the Applicant for negotiating with the resolution applicants in order to improve their bids. The sub-committee met with the shortlisted resolution applicants on 05.05.2018 and 08.05.2018 by audio conference and negotiated the contours of the respective resolution plans and was decided that the resolution applicants would submit their revised resolution plans.

12) Ingen Capital continued to be non-compliant with the Process Memorandum as it had not submitted earnest money deposit of Rupees Five Crores. Uquifa Spain submitted a revised resolution

plan on 07.05.2018 with two options for the CoC to consider. Gland, sent an email on 08.05.2018 stating that it would not be able to improve its proposal and was withdrawing from participation in the resolution process.

13) At the 11th CoC Meeting held on 08.05.2018 the CoC unanimously decided to consider Option 1 provided by Uquifa Spain as it offered higher net present value (NPV) to financial creditors and to have an e-voting for voting on the said resolution plan. Accordingly, upon voting, the resolution of the CoC to accept the resolution submitted by Uquifa Spain as per Section 30(4) of the Code did not obtain the requisite majority of the CoC. On 29.05.2018, the COC sub-committee had a conference call with representatives of Ingen Capital to discuss the resolution plan of Ingen Capital to improve its offer made out in its resolution plan dated 16.05.2018. In this regard, Ingen Capital also filed an application MA/105/IB/2018 in CP/540/IB/2017 before the Tribunal. In the Application, Ingen Capital has *inter alia* sought for waiver of submission of EMD of Rupees Five Crores citing restrictions arising out of the requirements of the laws of the United States of America.

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14) At the 12th Meeting of the CoC on 04.06.2018 meeting the resolution plan dated 24.04.2018 and the resolution plan dated 01.05.2018 submitted by Ingen Capital were presented before the COC. This Tribunal has instructed this Applicant to place the resolution plan dated 16.05.2018, before CoC for their consideration further the applicant has stated that the final signed resolution plan in respect of the resolution plan dated 24.04.2018 had not been received. The COC had taken the following decisions:

"To accept the resolution plan provided by Ingen Capital (resolution plan submitted as per mail dated 1st Jun 2018 from Mr. Umesh Bhatia) for total consideration of INR 1490 Cr, as against the proposal forwarded by the NCLT, since Ingen has improved its offer.

To declare Ingen Capital as the successful bidder and issue Letter of Intent with the condition that the entire amount offered as per resolution plan shall be transferred to an escrow account within 30 days from the date of NCLT order approving Ingen Capital's resolution plan.

The e-voting window on the acceptance of Ingen Capital as Successful Bidder shall be kept open for 24 hours from 4PM on 13th June 2018 to 4PM on 14th June 2018.

To waive off the process memorandum condition of submission of bid bond guarantee of INR 5 Cr along with resolution plan by the resolution applicant, subject to acceptance from all the CoC members through e-mail.

To waive off the process memorandum condition of submission of performance guarantee of INR 50 Cr by the resolution applicant on the issue of Letter of Intent subject to acceptance from all the CoC members through e-mail."

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15) The CoC had requested the RP to take confirmation on waiver of bid bond guarantee of Rupees 5 Crores and performance guarantee of Rupees 50 Crores with respect to Ingen Capital from all the CoC members, by email. It was informed by the RP to the CoC that in the event all the CoC members do not confirm by email, the same also shall be put to e-vote. As the said confirmation was not received by from all members of the CoC, the same was also to be put to vote. The vote in respect of the aforesaid matters was to be held from 13.06.2018 at 4:00 PM until 14.06.2018 at 4:00 PM. **(Exhibit G)**. An email from Axis Bank by which a scanned copy of signed resolution plan by Ingen Capital dated 31.05.2018, received at Axis Bank's office, was shared with the RP. **(Exhibit - H)**

16) On 11.06.2018 the RP has sent an e-mail stating that

“Many of the CoC members have approached me informing that due to lack of response/ information from the Resolution Applicant as also since the Resolution Applicant has sent atleast three plans, CoC members has sought clarity on the Plan. Coc members will be able to take a decision and vote on the matter only after the information sought by them is received.

In the light of the above, I am agreeable to keep the voting on June 20, 2018. I will be filing the status update to Hon'ble NCLT on the matter for information and guidance.”

17) The e-voting commenced on Wednesday, 20.06.2018 (4:00 PM) and ended on Thursday, 21.06.2018 (4:00 PM) on the following

resolutions which are set out below along with percentage of votes cast in favour (by value) out of the votes cast in respect thereof:

Description of Resolution		Results
(i)	Acceptance of resolution plan with total consideration of Rupees 1490 Crores submitted by Ingen Capital Group LLC and declare them as successful bidder;	78.64% votes in favour of the resolution
(ii)	Waiver of Earnest Money Deposit (INR 5 Crore) requirement to be given by the Resolution Applicant;	71.83% votes cast in favour of the resolution
(iii)	Waiver of Performance Guarantee (INR 50 Crore) requirement to be given within 7 days of issuance of Letter of Intent to Successful Resolution Applicant	71.32% votes cast in favour of the resolution

18) The resolution plan submitted by Ingen Capital was approved by 78.64% of the votes cast in respect of the resolution having serial no. (i) (Approved Resolution Plan). All the other resolutions approved and were above the 66% prescribed in this regard.

19) The resolution plan submitted by Ingen Capital provides for the following:

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A. Terms of Settlement of Admitted Claims and Sources of Funds - The terms of settlement as proposed by the Resolution Applicant include upfront payment of Rupees 1000 Crores to the secured financial creditors in the manner set out in Section 2 of the Approved Resolution Plan read with Schedule 2 annexed thereto.

In this regard it is observed that against the verified claim of Rs.3,341.54 crores the Resolution Applicant pays Rs.1000 crores along with 10% equity shares in the recapitalized company.

B. Payment of insolvency resolution process costs - The resolution applicant provides for Rupees 10 Crores to meet the insolvency resolution process costs. In the event of insolvency resolution process costs being met out of the internal cash flows of the Corporate Debtor, the unutilized portion of the funds allocated by the resolution applicant will be utilized to satisfy claims of unsecured financial creditors. The insolvency resolution process costs shall be paid out of funds infused by the resolution applicant in priority to any payment made to any other creditors within 30 days of the approval of the resolution plan, as provided Section 8 (b) of the Approved Resolution Plan.

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C. Payment to Operational Creditors - The liquidation value payable to operational creditors (other than statutory liabilities and the mandatory workmen dues in relation to 24 months preceding liquidation) has been determined to be NIL; however, the resolution applicant provides for payment of Rupees 37 Crores to by way of an upfront settlement pursuant to the terms of the Approved Resolution Plan as set out in Section 5(h) of the Approved Resolution Plan read with Schedule 2 annexed thereto.

In this regard it is observed that against the verified claim amount of Rs.88.52 crores the Operational creditors receive Rs.37 Crores suffering a haircut of 58.21%.

D. Workmen and Employee Dues – the Resolution applicant provides for the payments of Rs.13 Crores to workmen/employees whose dues have been verified by the resolution professional pursuant to the terms of the Approved Resolution Plan as set out in Section 8(c) of the Approved Resolution Plan read with Schedule 2 annexed thereto.

E. Payment to dissenting financial creditors: The dissenting financial creditors shall be paid a minimum amount equal to the liquidation value due to them before any payment is made to assenting financial creditors in the manner set out in Section 8(f) of the Approved

Resolution Plan read with Schedule 2 annexed thereto.

- F. Payment of claims under litigation/ dispute: Payments in respect of claims that may arise on account of pending litigation and/ or dispute has been set out in Section 8(i) of the Approved Resolution Plan read with Schedule 2 annexed thereto.
- G. Management and Control of affairs of Corporate Debtor during the Term of the Resolution Plan - Management and control of affairs of Corporate Debtor during the term of the Resolution Plan shall be as per the manner set out in Section 9(b) and 9(c) of the Approved Resolution Plan.
- H. Implementation and Supervision of the plan and means for supervising its Implementation - The resolution plan provides for implementation in accordance with the implementation schedule set out in Schedule 2 of the Approved Resolution Plan.
- I. Manner of Implementation of the Resolution Plan - The manner of implementation of the Approved Resolution Plan has been as set out in Schedule 2 of the Approved Resolution Plan.
- J. Term of the Resolution Plan and Implementation Schedule: The list of activities and the indicative timelines for implementation of resolution plan has been set out in Schedule 2 of the Approved Resolution Plan.

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- 20) In view of the above, the resolution plan submitted by the Resolution Applicant Ingen Capital which was recommended by the COC pursuant to the meeting held on 04.06.2018 and voting concluded on 21.06.2018 stands approved.
- 21) The Resolution professional in consultation with COC will ensure that the Resolution Plan complies with section 30(2)(e) of the IBC, 2016 especially regarding compliance with FDI norms and provisions of FEMA and the regulations made there under.
- 22) The Resolution applicants are directed to adhere to the provisions of Section 53 of the IBC 2016 duly following the procedure for “water fall” in relation to the amounts brought in by the Resolution Applicants.
- 23) The Tribunal further observes that the as per Section 14 of the IBC, 2016, the moratorium shall cease to have effect from the date of approval of the resolution plan.
- 24) As per section 31(3)(b), the resolution professional is directed to forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the IBBI to be recorded on its database.

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With the above directions, the Application MA/211/IB/2018

In CP/540/IB/CB/2017 stands disposed of.

S. Vijayaraghavan.

(S.VIJAYARAGHAVAN)
MEMBER (TECHNICAL)



(K.ANANTHA PADMANABHA SWAMY)
MEMBER (JUDICIAL)

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