

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI  
C.P. NO. 246/I&BP/NCLT/MAH/2017**

**Coram:** B. S. V. Prakash Kumar, Member (Judicial)  
V. Nallasenapathy, Member (Technical)

In the matter of under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rule 2016)

1. Culrross Opportunities SP.

2. Peter Beck and Partners

... Applicants

V/s.

M/s. Sharon Bio-Medicine Limited

... Corporate Debtor

**Applicants' Counsel:** Mr. Sharan Jagtiani, Counsel, a/w. Mr. Arjun Gupta, Advocates i/b. Nishith Desai Associates for the Applicant.

**Corporate Debtors' Counsel:** None appeared.

**ORDER**

*(Heard & Pronounced on 11.04.2017)*

Per V. Nallasenapathy, Member (Technical)

1. This Company Petition is filed by M/s. Culrross Opportunities SP (hereinafter called as P1) and M/s. Peter Beck and Partners (herein after called as P2) against the corporate debtor M/s. Sharon Bio-Medicine Limited a Company incorporated under the Companies Act, 1956. This Petition is filed under Section 7 of IB Code, 2016 for initiation of corporate insolvency resolution process.

2. The Petitioners submit that the Board of Directors of the Corporate debtor, on 15-2-2007, authorised the issue of USD 1,50,00,000 zero percent convertible bonds subject to an overallotment option for up to USD 4,50,00,000, which was approved by the shareholders of Corporate Debtor by a Resolution on 15-3-2009. The Company circulated an offering circular

which forms part of the prospectus for the bonds, which contained the objections, risk factors, times of investment etc.

3. The petitioners are the registered holders of a certain portion of the USD 1,50,00,000 zero percent convertible bonds issued by the corporate debtor. P1 holds 18.18 percent and P2 holds 67.88 percent of the bonds as stated at para 184 of the petition. P1's and P2's ownership of the bonds is evidenced by the Trade confirmations submitted by the petitioners' counsel. The petitioners further submits that annexure A-1 Trust-deed dated 27-7-2007 was executed between the corporate debtor and Deutsche Trustee Company Ltd., (Trustee) constituting USD 1,50,00,000 zero percent unsecured foreign currency convertible bonds 2012 (subject to overallotment option up to USD 4,50,00,000 of bonds), convertible into equity shares of the corporate debtor.

4. The petitioners further state that the corporate debtor came forward to execute a Supplemental Trust deed for the Principal trust deed executed on 27-7-2007 and accordingly issued Annexure-A-2 notice to the bond holders. A Supplemental Trust deed was executed on 5-2-14 between the corporate debtor and the trustee. The said Supplemental Trust deed relates to principal trust deed dt.27-7-2007 in respect of USD 1,65,00,000 zero convertible bonds due 2012 issued by the issuer is shown in the Annexure-F of the written submissions.

5. The Supplemental Trust deed says that the bond holders by a written Resolution consented to amend the Principal Trust deed and directed the Trustee to concur for such amendments and execute the Supplemental Trust deed, in order to concur in and give effect to modifications and waivers. It further says that the bondholders approved, assented and agreed irrevocably to subscribe to new bonds which will be issued by the corporate debtor in



lieu of the accrued interest amount on the outstanding bonds constituted in terms of the Principal Trust deed.

6. Clause 2 of the Supplemental Trust deeds reads as below;

*"2.2. The bonds shall bear interest from 1 December, 2013 (the "Interest Commencement Date") at the rate of 5.35% per annum of the principal amount of the Bonds payable semi-annually in arrears on 1 June and 1 December in each year (each such date for the payment of interest, an "Interest Payment Date"). The first Interest Payment Date will be 1 June 2014 and the first such interest payment will be in respect of the period from and including the interest Commencement Date to but excluding the first Interest Payment Date and the last such payment being made on the Maturity Date for the period of 1 June 2017 through and including the Maturity date.*

*-----".*

7. According to the Supplemental Trust deed the first interest payment on the bonds fell due on 1-6-2014. The Supplemental Trust deed clearly shows that it was executed in lieu of non-payment of interest on the outstanding bonds constituted in terms of the Principal Trust deed. Subsequent to the execution of Supplementary Trust deed also, the corporate debtor failed to pay interest to the bond holder which fell due on 1-6-2014 as envisaged in the Supplemental Trust deed.

8. The Petitioners state that they constitute 86.06% of the holders of bonds and the bond holders passed a written resolution on 11.08.2016 waving and / or discharging the trustee of the bonds of all obligations in respect of initiating the winding up proceedings against the Company and accordingly they are entitled to take this insolvency resolution process.

9. The communications between the Reserve Bank of India and State Bank of India's Overseas Branch at Cuffa Parade (Authorised dealer)

enclosed to the petition clearly reveals that, Reserve Bank of India has no objection for the extension of the maturity period of zero coupon FCCBs of USD 1,65,00,000 issued by the corporate debtor, up to 4-12-2017.

10. The Financial creditors enclosed 27<sup>th</sup> annual report of the corporate debtor at annexure G of the written submissions wherein the financial debt was shown as "other loans and advances-FCCB", under the sub heading unsecured creditor, which was classified as long term borrowings. The Director's report which form part of the annual report under the heading significant events during period ended 31-3-2016 reads as below;

*"(ii) DEBT RESTRUCTURING: -*

*Company's Debt was restructured under the JLF Mechanism in 2014-15. Meetings and discussions with banks took place during the period under review but no major changes were occurred.*

*iii) FOREIGN CURRENCY CONVERTIBLE BONDS: -*

*The company had issued 165 Nos. of Zero Coupon Foreign Currency Convertible Bonds of US\$ 1, 00,000 each aggregating to US\$ 16.5 Million on 27, November 2007. These Bonds are convertible Bonds at the option of bond holders into equity shares of Rs. 10/- each fully paid at the conversion price of Rs. 315/- per share initially but now conversion price has been reset to Rs. 228.04/- per share, subject to the terms of issue, with a fixed exchange rate of Rs. 39.15 equal to US\$ 1.00 within 5 years and 7 days from the date of issue. The bondholders have agreed to extend the bonds for the further period of 5 years. Bondholders have agreed to extend the period between one year to five years and interest to be paid between LIBOR + 3.50% - 5% per annum, as per the ECB guidelines. The bondholders have given their consent as stated above and the company authorize dealer has submitted the documents to Reserve Bank of India (RBI), accordingly. The Company is still in process of issue of new Bonds of US\$ 8.046 Million from 30, November 2013. However, application for this B series bonds have been filed to RBI. These Bonds are*



*convertible Bonds at the option of bond holders into equity share of Rs.2/- each fully paid at the conversion price of Rs.28.85/- per share, subject to the term of Oissue within 3 years from the date of issue".*

11. The financial creditor says that the foreign currency convertible bonds is a financial debt, the existence of which is proved by the Principal Trust deed dated 27-7-2007 along with the Supplemental Trust deed executed on 5-7-14. Further the financial statement of the corporate debtors confirms the existence of financial debt.

12. The Supplementary Trust Deed executed on 5-7-14 provides that the first interest payment date is on 1-6-14 and since the said due is not paid to the bond holders till date, the Petitioners say that there is default and hence the petitioners have filed this petition for Insolvency Resolution Process against the corporate debtor.

13. The corporate debtor by a letter dated 29-4-14 addressed the Deutsche Trustee Company limited, the trustees of the bond holder, referring to the payment advice dated 22<sup>nd</sup> for USD 30,00,000 as partial payment on the bonds with accrued interest up to 30.04.14. The Corporate Debtor further acknowledge on 30.04.2014 that this payment is due on the Bonds on 30.04.2014 as per the revised terms and conditions of the bonds. The letter further states that the said partial payment plus accrued interest can be paid on 31.07.14.

14. The counsel for the petitioners cited (i) Bajan singh Samra v. Wimpy International Ltd., 185(2011) DLT 428, (ii) Shreeram Durgaprasad v. Sail Soap Stone Factory & Ors. 1982, MhLJ 912, (iii) J.G. Glass Ltd. v. Indian Bank and Anr. 2002 (104(1)) Bom LR 234, and (iv) Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, AIR 1962 Cal. 115, to say that the debt shown in the Balance Sheet of the corporate debtor is an acknowledgement of liability. The counsel further cited (i) S.F.Mazda v. Durgaprasad AIR 1961 SC 1236 and (ii) Khan Bahadur Shapoor Freedom Mazda v. Durga Prasad Chamaria & Ors. (1962) 1 SCR 140, to say that the letter dated 29-4-14 written by the corporate debtor

to the trustee amounts to an acknowledgement of debt u/s 18 of the Limitation Act and the period of limitation should accordingly be calculated afresh.

15. The Petitioners submit that the maturity date of Bonds was 30.11.2012, the Supplemental Trust Deed was executed on 05.02.2014, before the limitation period of the bond is over, the first interest payment fell due on 01.06.2014 and this Petition is filed on 31.03.2017, hence the debt is not barred by limitation.

16. The annexure A-9 legal notice dt.25-4-2016 issued by M/s Nishith Desai Associates on behalf of the majority bond holders in which the petitioners are constituents demanding payment from the corporate debtor, clearly shows that demand was made and the corporate debtor preferred not to make any payment and also there was no reply from the corporate debtor to the said notice.

17. The petitioners served a copy of the petition to the respondent corporate debtor on 3-4-17. Two emails were sent to the respondents. Further the petitioner has sent a letter to the corporate debtor stating that the case will be mentioned on 7-4-17, however, the corporate debtor has not appeared before this Bench.

18. The petitioner named Mr. Dinkar T. Venkatasubramanian, Ersnt & Young LLP, 6<sup>th</sup> Floor, Worldmark-1 IGI Airport Hospitality District, Aerocity, New Delhi- 110037, [dinkar.venkatasubramanian@in.ey.com](mailto:dinkar.venkatasubramanian@in.ey.com), Registration No. IBBI/IPA-001/IP-P00003/2016-17/I0011, as interim resolution professional who was given his written consent as required under Rule 9 of Insolvansy and Bankrupy ( Application to Adjudicating Authority) Rules 2016.



19. On careful reading of the petition, this Bench is of the view that the petition is in compliance of provisions of Sections 3(11), 3(12), 5(7), 5(8)(C) and 7 of IB Code 2016, and admits this petition declaring moratorium with consequential reliefs as below:

(i) That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(ii) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(iii) That the provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(iv) That the order of moratorium shall have effect from 11-04-2017 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

20. Accordingly, this Petition is admitted.

Sd/-

V. NALLASENAPATHY  
Member (Technical)

Sd/-

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