NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

CP No. 4/74(2)/NCLT/AHM/2016

Coram: **Present: Hon'ble Mr. BIKKI RAVEENDRA BABU**
MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 2.1.2017

Name of the Company: Plethico Pharmaceuticals Ltd.

Section of the Companies Act: Section 74(2) of the Companies Act, 2013

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Barkha Deshmukh (on behalf of Devesh Khandelwal)	C.S	Petitioner	
2.				

ORDER

Ms. Barkha Deshmukh present on behalf of Learned CS Mr. Devesh Khandelwal for Petitioner.

Order pronounced in open court. Vide separate order attached.

02.01.17
(BIKKI RAVEENDRA BABU)
MEMBER JUDICIAL

Dated this the 2nd day of January, 2017.

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER (JUDICIAL)

C.P. No. 4/74(2)/NCLT/AHM/2016

Order under Section 74(2) of the Companies Act, 2013

In the matter of: Plethico Pharmaceuticals Limited

ORDER

Pronounced on: 2.1.2017

This Petition having come up for hearing before this Tribunal on 18.11.2016 in the presence of Mr. M.N. Marfatia Advocate for Petitioner and Mr. Harihara Sahoo, Deputy Registrar of Companies, Office of Registrar of Companies, Madhya Pradesh, Gwalior and having stood over for consideration till this date, this Tribunal pronounced the following final order on 2.1.2017.

FINAL ORDER

1. This Petition is filed by Plethico Pharmaceuticals Ltd. having its registered office at A.B. Road, Manglia, Indore- 452003, Madhya Pradesh, hereinafter called as "Petitioner company", under section 74(2) of the Companies Act, 2013 read with Rule 73 of National Company Law Tribunal Rules, 2016 seeking extension of time for repayment of Fixed Deposits mentioned in Para 15.6 of the Petition.

2. The Petitioner company is engaged in the business of manufacturing and marketing of wide range of pharmaceutical formulations, nutraceuticals, herbals, lozenges, candies, hospital consumables, food and dietary supplements and many other consumer and healthcare products in India and internationally to several key markets across the globe.

3. The subscribed and paid up share capital of the Petitioner company is Rs. 34,06,66,670/- divided into 3,40,66,667 equity shares of Rs. 10 each.

4. As per the averments in the petition, Petitioner company is facing difficulty in repayment of deposits received and payment of interests thereon due to temporary liquidity crisis attributable to the following reasons: -

i. Department of Income Tax has freezed Company's account u/s 226(3) of Income Tax Act, 1961.

ii. The Company supplies its products to French West Africa, CIS countries, South East Asia, GCC Countries etc. Due to the recent fluctuations in various currencies across the globe vis-à-vis US dollars, the local currencies of these countries have depreciated substantially, in some cases more than 30%.

iii. The Company having large export base (approx. 70% of the total turnover), unprecedented foreign exchange fluctuation and depreciation of currencies across the globe vis-à-vis US dollars has aggravated the liquidity for the Company by way of increase in debt realisation period, and also effected by way of reduction of profits of respective distributors and collection thereof.

iv. Recoveries from department of income tax, freezing of account and increase in debtors' realisation period has substantially affected cash flow of the Company, and created temporary liquidity crunch.

v. The Company has taken due actions for possible recoveries and streamline of the sales. However, the same shall take some time to streamline cash flow of the Company.

vi. The Company had from time to time approached the Bankers to revise the working capital limits for addressing its increasing operational requirements, however, the Bank's response was not encouraging. Subsequently, the Lead Banker of the Company referred the Company for implementation of the restructuring scheme under CDR mechanism, proposing to infuse additional working capital however, other banks did not support the same.

vii. The Company is unable to raise fresh funds for repayment of Fixed Deposits due to the fact that FCB bond holders had filed winding up petition against the Company before the Hon'ble Indore High Court. In the said winding up Petition, the Hon'ble Indore High Court has appointed Liquidator admitting the winding up petition. The said winding up petition is being contested by the Company.

5. It is further stated in the Petition that Petitioner Company has taken the following measures in order to streamline the operation and recoveries towards payment to the deposit holders: -

   i. The Company has altered product mix having relatively lesser credit periods like Pharma Generic Products.

   ii. The Company has developed sales by undertaking marketing in geographical segment having relatively lesser credit cycle.

   iii. The company has setup Credit Monitoring Committee to set limits customer wise and controlling and stopping sales to customers with due above pre-set credit levels.

   iv. The Company has undertaken aggressive collection program by offering discounts and special offers for encouraging collections.

6. As can be seen from the Further Affidavit filed by the Petitioner, as many as 236 depositors filed Application 1070/2014 and batch before Company Law Board, Mumbai Bench, Mumbai against the Petitioner Company under Section 58A(9) of the Companies Act, 1956, present section 74 of Companies Act, 2013 wherein the Hon'ble Member (Judicial) by his Order dated 27.6.2014 directed to pay arrears of interest accrued on FDRs to the respective fixed deposit holders within a period of 30 days and keep on paying the interest to be accrued on FDRs regularly, as per the terms of the FDRs to the respective Fixed Deposit holders.

7. Further as many as 128 deposit holders field Application Nos. 2291A of 2013 and batch before Company Law Board, Mumbai Bench, Mumbai against petitioner Company under section 58A (9) of the Companies Act, 1956 wherein the Hon'ble Chairman of the Company Law Board ordered the Company shall pay the amount due along with interest at contractual rate accrued thereon through demand draft in terms of the undertaking given by the Company to the depositors. In the said Order, the Company is directed to pay the deposit holders on or before 30.4.2014 in case of those whose deposits are not mature.

8. In the Further Affidavit, it is stated that ROC filed Criminal Case no. 1627 of 2015 against the Petitioner Company before Chief Judicial Magistrate, Gwalior alleging violation of section 74 of the Companies Act, 2013.

9. It is also mentioned in the Further Affidavit that the Government of Madhya Pradesh by a Notification dated 16.6.2015 declared that the Petitioner Company a relief undertaking for a period of one year from the date of notification under section 3 of M.P. Shayata Upkaram (Vishesh Upbandha) Adhiniyam, 1978 and the said Notification was extended for a period of one year from 16.6.2016 by way of another Notification dated 19.9.2016 on condition that within 30 days from 19.9.2016, the Company shall submit one time settlement proposal to the banks/financial institutions for their outstanding dues and on condition that Company shall pay interest regularly to the bankers/financial institutions during the period of relief undertaking.

10. The Further Affidavit also disclose that the Company Petition no. 35/2013 filed against the Petitioner Company for winding up is pending before the Hon'ble High Court of Madhya Pradesh, bench at Indore and in the said Company Petition, Petitioner Company filed IA 4759/2015 seeking stay of the further proceedings in Company Petition no. 35/2013. The Hon'ble High Court of Madhya Pradesh considering the effect of section 3 of the M.P. Shayata Upkaram (Vishesh Upbandha) Adhiniyam, 1978, ordered for stay of further proceedings in the winding up petition till 16.6.2016 but the order dated 7.4.2015 passed in the winding up petition appointing provisional liquidator shall not be affected.

11. It is pertinent to mention here that the Petitioner Company without disclosing all the facts, filed this Petition. Later as per the oral submission of the Learned CS for the Petitioner made on 13.10.2016, filed further affidavit stating the true and correct affairs of the Petitioner Company.

12. While this Petition is at the admission stage, the Registrar of Companies, Madhya Pradesh, Gwalior filed IA 30/2016 to implead the ROC Madhya Pradesh as a party to this Petition. In the said Application, the ROC also stated that the

Company has not complied with the orders passed by the Company Law Board previously and the conditions laid down in the Notification issued by the Madhya Pradesh Government under Section 3 of M.P. Shayata Upkaram (Vishesh Upbandha) Adhiniyam, 1978.

13. The point for consideration is whether CP 4/2016 can be admitted and any relief can be granted to the Petitioner Company.

14. Perused the entire material on record. Heard the arguments of Learned Advocate for Petitioner and Deputy Registrar of Companies, Madhya Pradesh, Gwalior.

15. The material on record show that the Petitioner Company has to pay Rs. 136,97,44,755 to the depositors numbering 18,968 vide DPT 4 Column no. 5.

16. A perusal of the cash flow statement, balance sheet and turnover of the Company for the last two preceding financial years annexed to the Petition show that the financial position of the company is not at all augmenting. The so-called steps Petitioner company claims to have taken or planning to take cannot afford any guarantee of repayment of deposits to the deposit holders. Moreover, the material on record conclusively establish that petitioner Company more than once violated the directions given by the Company Law Board, Mumbai and the Company is also facing prosecution before criminal court.

17. Coming to the Notifications issued by the Madhya Pradesh Government under Section 3 of the M.P. declaring the Petitioner Company as a 'relief undertaking' till 16.6.2017 is subject to certain conditions laid down in the Notification dated 19.9.2016. It is not the case of the Petitioner Company that they have complied with the conditions mentioned in the Notification dated 19.9.2016. Therefore, Petitioner Company cannot claim protection under the Notification dated 19.9.2016. Even otherwise, the said Notification is issued with a view to provide relief against unemployment and also to safeguard the interest of the labour working in the industrial company.

18. Coming to the winding up petition pending before the Hon'ble High Court of Madhya Pradesh, it is stayed only till 16.6.2016. No order is placed before this Tribunal to show that the Stay order has been extended pursuant to the Notification dated 19.9.2016 issued by the M.P. Government under Section 3 of the M.P. Shayata Upkaram (Vishesh Upbandha) Adhiniyam, 1978.

19. When the Petitioner company is not at all taking any effective steps and it is violating the orders passed by the Company Law Board, and in view of the pendency of the winding up petition, it is not entitled for any extension of time to repay the deposits to the deposit holders.

20. In the result, this Petition is dismissed at the admission stage itself. No order as to costs.

21. Order typed by me and pronounced by me in open court on this the 2nd day of January, 2017.

02.1.17

SRI BIKKI RAVEENDRA BABU
MEMBER (JUDICIAL)

Dated this the 2nd day of January, 2017.