

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, CHENNAI**

MA/578/2018

in

CP/540/IB/CB/2017

Under Section 60(5) of the IBC, 2016

In the matter of M/s. Orchid Pharma Limited

In between

Mr. Ramkumar SV

(Resolution Professional representing the Corporate Debtor)

---Applicant

Vs.

M/s. Ingen Capital Group LLC & 3 Others

---Respondents

Order delivered on: 02.11.2018

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B.S.V PRAKASH KUMAR, MEMBER (JUDICIAL)

For the Petitioner: Mr. S. Sathiyarayanan, Advocate

For M/s. Axis Bank Limited

For the Respondent: Mr. Kanagaraj, Advocate

For M/s. Maxima.,

ORDER

Per: B.S.V PRAKASH KUMAR, MEMBER (JUDICIAL)

Order dictated in the open court on 02.11.2018

On having seen the Resolution Applicant not infused any funds into the company despite the Resolution Plan contemplates that the Applicant should infuse an upfront payment of ₹1,060 Crores within 30 days from

the date the Resolution Plan was approved, i.e., 17.09.2018, now to avert this live Company to get into liquidation, the Resolution Professional has filed this application seeking direction against the applicant for implementation of the approved resolution plan with immediate effect at least from hereof and also for a direction against the Resolution Applicant (R1) to immediately deposit an amount of ₹334 Crores, which is one third of the upfront payment the Resolution Applicant agreed to pay to the financial creditors in the Resolution Plan approved by this Bench, which shall lie in Escrow as Security for the performance of the obligations of the Respondents in implementing the approved Resolution Plan and shall be adjusted against the total payment of ₹1,060 Crores to be paid by R1 and also a direction to these Respondents to bear the costs of this application.

2. On perusal of this application, we understand that this Resolution Applicant (R1) as well as R2 and R4 are Directors of R1 and R3 is the Executive Vice President of R1 and that R2 and R3 are persons named in the Resolution Plan as responsible for implementation of the Plan.
3. Before filing this application, when RP filed MA/508/2018 on 10.10.2018 for no whisper from this Applicant to bring in money even after more than 20 days of the thirty days' time for bringing in upfront payment of ₹1060crores was over, this Bench ordered as follows:

“To constitute interim Monitoring Committee with the officials of State Bank of India, Union Bank of India, Punjab National Bank, Allahabad Bank and Andhra Bank, thereafter the Resolution Professional shall discharge the functions of the Corporate Debtor as per the instructions of the Monitoring Committee until further orders.”

4. The above order was passed by this Bench basing on email dated 10.10.2018 sent by R2 stating that R2 had already sent an email to an official of State Bank of India on 28.09.2018 authorizing them to realise the payments as mentioned in the email sent by the Bank Official on 28.09.2018, confirming the same, again he directed his counsel to email to State Bank of India to realise the payments from the Corporate Debtor account so as to make payments for various requirements of the Corporate Debtor.
5. By reading this application as well as on hearing the submissions of the Resolution Professional and the counsel appearing on various Banks behalf, it appears 30 days period for implementation of the Resolution Plan was already over, the promise made by the Resolution Applicant in the Plan has not seen the light of the day till now, though the Resolution Applicant placed the Resolution Plan for approval of CoC with a proposal that it would bring in upfront payment of ₹1,060 Crores within 30 days from the date of approval i.e., from 17.09.2018, but till date not

- even a single pie has come from the Resolution Applicant even after completion of 30 days' time mentioned in the Resolution Plan.
6. Fortunately, since the Corporate Debtor happens to be a going concern and getting some inflows, the RP as well as the Monitoring Committee is in a position to run the Company by making payment to more than 1000 employees of the Company and also meeting other requirements of the company.
 7. If at all this Resolution Applicant does not respond immediately, the Company will collapse and the sole reason for such collapse will come upon on the resolution applicant for want of bringing in money agreed upon.
 8. This Bench, on 10.10.2018 on the application MA/508/2018 filed by the RP and looking at the e-mail sent by the resolution applicant, gave directions to the Corporate Debtor to take out money from the Debtor Account and meet various requirements.
 9. As against these historical facts, now to the surprise of this Bench, one Mr. Venkateshan, counsel appearing on behalf of the Resolution Applicant has come out with Applications MA575/2018 and MA576/2018 for replacement of the RP and modification of the order dated 10.10.2018 and also seeking time to file reply to this MA, instead of infusing funds into the company as proposed by it in the Resolution Plan approved by the CoC and by this Bench.

10. In fact, the Financial Creditors approved this Resolution Plan believing that the Applicant would infuse funds as stated in the Plan approved, but today neither money has come nor has any assurance come saying that it would bring in money immediately.

11. In the backdrop of this factual scenario, the Monitoring Committee on 17.10.2018, “discussed and agreed that an upfront payment of at least one third of the total payment to the Financial Creditors as per the approved Resolution Plan needs to be brought into the Escrow Account by Ingen (the Resolution Applicant) for them to consider the following:

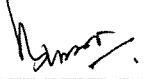
- Ingen’s request for inclusion of their representatives in the Monitoring Committee,
- Ingen’s request for additional information with regards to the Company’s operations.”

12. Today this MA is backed by the Monitoring Committee resolution asking the Resolution Applicant to immediately infuse at least one third of the total payment to the Financial Creditors.

13. On perusal of this resolution dated 17.10.2018 and previous order dated 10.10.2018, this Bench is of the view, if at all this company is to be saved from falling into the liquidation, it is very much essential on the part of the Resolution Applicant to deposit the amount as prayed by the Resolution Professional, therefore, this Bench hereby directs the Resolution Applicant to deposit, within five days from hereof, an amount of ₹334 Crores, which is one third of payment that has to be paid to the

financial creditors into the Corporate Debtor Account No.33998606181 having IFSC Code: SBIN0009999 and Swift ID: SBININBB174, which will lie in Escrow as Security for performance of the obligations of the Respondents in implementing the approved Resolution Plan and will be adjusted against the total payment of ₹1060crore to be paid by R1 within 30 days from 17.09.2018 as per the Resolution Plan, or else, the RP is at liberty to take up further course of action in accordance with law.

14. Accordingly, this **MA/578/2018** is hereby **disposed of**.


(B.S.V PRAKASH KUMAR)
MEMBER (JUDICIAL)

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