



INSOLVENCY PROFESSIONAL AGENCY  
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

## Casebook Issue

20:

Corporate Insolvency  
Resolution Process of  
Apex Drugs Limited

**INSOLVENCY  
UNCOVERED**

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### **About M/s Apex Drugs Limited<sup>1</sup>**

M/s Apex Drugs Limited is a Public limited company, incorporated on 5<sup>th</sup> December 1989. It is classified as a Non-Government and an unlisted company, registered under Registrar of Companies, Hyderabad, now under Telangana. Its authorized share capital is Rs. 25.00 crores and its paid-up capital is Rs. 12.08 crores.

It is a company which is involved in manufacturing of different chemicals and chemical products.

The company M/s Apex Drugs Limited has three directors, Mr. Ghanshyam Surajbali Kurmi since 21<sup>st</sup> of April, 2006, Mr. Sandeep Kumar Verma since 1<sup>st</sup> March, 2010 but his tenure ended on 11<sup>th</sup> July, 2019 and Mr. Michael Victor Nigrel since 5<sup>th</sup> of November, 2016.

M/s. Apex Drugs Limited's Corporate Identification Number is (CIN) U24230TG1989PLC010737. Its registered address as per MCA records is 210, 2<sup>nd</sup> Floor, Ram's Enclave, Erragadda Hyderabad, Telangana - 500018, India.

### **Major Financial Creditors/Bankers<sup>2</sup>**

The major bankers/ financial creditors are State Bank of India, Bank of India and Allahabad Bank with a credit exposure of Rs. 66.54 crores, Rs. 23.85 crores and Rs. 16.00 crores respectively.

## **CIRP of M/s Apex Drugs Limited**

### **Initiation of CIRP under Section 9 of I&B Code, 2016<sup>3</sup>**

Under Section 9 of Insolvency and Bankruptcy Code, 2016 an Operational Creditor (OC) can file a petition for initiation of a CIRP against a Corporate Debtor.

Insolvency and Bankruptcy Code, prior to its the latest amendment, allowed initiation of CIRP on a default of Rs. 1 lakh and above. With the latest amendment the threshold is now Rs. 1.00 crore and above.

### **Admission and Initiation of CIRP of M/s Apex Drugs Limited<sup>4</sup>**

M/s Zhejiang Tongxiang Trade (Group) Company Limited was a company of China which used to export different chemical products through their mediator agent M/s Excel International based in Chennai. A notice was sent to M/s Apex Drugs Limited by M/s Zhejiang Tongxiang Trade (Group) Company Limited, the Operational Creditor, about their outstanding dues of USD 497730.00, which though was accepted by the Corporate Debtor and promised to be paid off, the dues was not cleared. Gradually the Corporate Debtor, M/s Apex Drugs Limited, stopped responding to the Operational Creditor M/s Zhejiang Tongxiang Trade (Group) Company Limited as well as their agent M/s Excel International. This forced the Operational Creditor to issue a demand notice and file a petition to the Hon'ble Court for initiation of CIRP against the Corporate Debtor (CD).

Corporate Insolvency Resolution Process (CIRP) was initiated and was presented for hearing before the Adjudicating Authority, NCLT of Hyderabad Bench. The bench was represented by Adv. Shri. G Subhash to represent M/s Zhejiang Tongxiang Trade (Group) Company Limited.

### **Eligibility of M/s Zheijang Tongxiang Trade (Group) Company Limited as an Operational Creditor<sup>5</sup>**

Though M/s Zheijang Tongxiang Trade (Group) Company Limited is not of Indian origin, but as per Section 3(23)(g) of IBC, 2016, provides that a person includes a person who resides outside India, as the Operational Creditor. Further Section 5 (20) defines a person to whom an operational debt is owed, is an operational creditor. As both the conditions were satisfied therefore M/s Zheijang Tongxiang Trade (Group) Company Limited was an eligible Operational Creditor.

Application was filed under Section 9 of the IBC by M/s Zheijang Tongxiang Trade (Group) Company Limited as an Operational Creditor seeking initiation of CIRP of M/s Apex Drugs Limited on 06<sup>th</sup> September, 2018. Along with it, the moratorium under Section 14 of I&B Code, 2016 was also declared.

### **Appointment of Shri Maligi Madhusudhana Reddy as the IRP<sup>5</sup>**

On 6<sup>th</sup> September 2018, vide order number CP (IB)269/9/HDB/2018 Shri Maligi Madhusudhana Reddy was appointed as the Interim Resolution Professional (IRP) for the CIRP process of M/s Apex Drugs Limited. The IRP Shri Madhusudhan Reddy was directed to do all the necessary actions in terms of announcements, publications and declarations in consonance to Section 13 of IBC, 2016.

### **1<sup>st</sup> Meeting of CoC and Change of status from IRP to RP<sup>6</sup>**

On 12<sup>th</sup> October 2018 the 1<sup>st</sup> CoC meeting was convened and Shri Maligi Madhusudhana Reddy who was appointed as the Interim Resolution Professional was confirmed as the Resolution Professional by the CoC The Committee of Creditors (CoC) comprised of State Bank of India, Bank of India and Allahabad Bank.

### **Request for Change of Resolution Professional<sup>7</sup>**

Subsequently the 2<sup>nd</sup> CoC meeting was arranged on 1<sup>st</sup> November 2018 wherein it was proposed that Shri Maligi Madhusudhana Reddy be replaced by Mr, Kapil Dev Taneja. The request for change of RP was placed by State Bank of India, who had 70.10% of voting share, and the other members of CoC also approved unanimously. Mr. Kapil Dev Taneja on 26<sup>th</sup> Nov, 2018 took over as the Resolution Professional. Mr. Kapil Dev Taneja moved to NCLT Bench Hyderabad requesting for an extension of CIRP by another 90 days beyond 180 days and same was approved on 06<sup>th</sup> March 2019.

### **Floating of Expression of Interest for Resolution Applicant<sup>8</sup>**

Invitation for Expression of Interest (EOI) was floated in Business Standard and Nava Telangana newspapers on 11<sup>th</sup> January,2019 but as no proper response was received therefore on 29<sup>th</sup> January, 2019 during the 5<sup>th</sup> CoC Meeting, extension decision for another 15 days for inviting the Resolution Plan was taken whose publication was done on 4<sup>th</sup> February, 2019 and the last date of submission of EOI was 18<sup>th</sup> February, 2019.

In all six (6) EOI was received and was shared with CoC vide e-mail on 28<sup>th</sup> February 2019.

### **M/s Orbit Electro Equipment Private Limited being identified as the best Resolution Applicant<sup>9</sup>**

After verification of the RFRP, other process documents and eligibility criteria checks, in the 10<sup>th</sup> CoC Meeting on 31<sup>st</sup> May 2019, M/s Orbit Electro Equipment Private Limited in consortium with Mr. Siddharth Shah was identified as the best Resolution Applicant.

The Resolution Plan was approved with 100% voting by the CoC. The voting was in the form of e-voting and the lines for voting were open from 1<sup>st</sup> June 2019 to 2<sup>nd</sup> June 2019 till 08:00PM under section 30(4) of IBC, 2016.

The CoC approved the Resolution Plan on 2<sup>nd</sup> June 2019, while the CIRP Process expiry date was 3<sup>rd</sup> June 2019 after extension of 90 days, which was much within the stipulated time period of 270 days as per the Code. The Resolution Professional prayed the Tribunal for approval of the Resolution Plan abiding by the terms under section 30(6) and under section 31(1) of the Code.

### **Claims received by the Resolution Professional<sup>10</sup>**

Claims received from State Bank of India, Bank of India and Allahabad Bank were Rs. Rs. 138.67 crores, Rs. 34.26 crores and Rs. 24.89 crores respectively amounting to Rs. to Rs. 197.82 crores in total. The total amount was admitted by the Resolution Professional.

### **Highlights of the Resolution Plan<sup>11</sup>**

The Resolution plan was of M/s Orbit Electro Equipment Private Limited in consortium with Mr. Siddharth Shah was identified as the best Resolution Applicant. The main features of the Plan were:

- The Consortium of M/s Orbit Electro Equipment Private Limited with Mr. Siddharth Shah was in the ratio of 70:30.
- The Resolution Applicants had agreed to infuse funds to pay off the outstanding dues of the related stake holders.
- The payment to the Operational Creditors was on priority over the Financial Creditors as per Regulation 38(1) of CIRP Regulations.
- The payment to the Resolution Professional was Rs. 67.00 Lacs and was on priority over all the other payments.
- A sum of Rs. 25.00 Lacs would be kept aside for any of the claims received from the employees or workmen.
- A sum of another Rs.25.00 Lacs would be kept aside for payment to claims received from other liabilities or operational creditors.

- This sum of Rs. 50.00 Lacs would be kept for any of the claims received by the Resolution Professional for a period of nine (9) months and if no claims is received during that period this amount would be paid to the Financial Creditors.
- The Resolution Applicant (RA) would acquire the majority of the shares of the CD and would not merge any of the RA.
- The RA would start its payments as mentioned in the Resolution Plan, with their first instalment of payment to begin within two (2) months of approval of the Resolution Plan.
- The RA furnished a Bank Guarantee of Rs. 1.50 crores issued from the South Indian Bank Limited, Hyderabad.

### **Concluding Notes<sup>12</sup>**

Mr, Kapil Dev Taneja Resolution Professional executed all the duties related to Affidavit of the RA, issuance of LOI, the declaration in respect to Section 29 (A). He also appointed two registered valuers so that the maximization of the value of the assets could be done.

The Revival Plan was approved by the Adjudicating Authority and was ordered to come into force with immediate effect and Section 14 ceased.

Monitoring agency was appointed by the CoC in consultation with the RA to supervise the implementation of the Resolution Plan till the reconstitution of the Board happened.

## CIRP Timeline

- 05th December, 1989
- Date of incorporation of M/s Apex Drugs Limited.

- 06th September, 2018
- CIRP of M/s Apex Drugs Limited
- Appointment Mr. Maligi Madhusudhana Reddy as IRP

- 12th December,2018
- 1st CoC Meeting
- Appointment of Shri Maligi Madhusudhana Reddy from IRP to RP

- 1st November, 2018
- 2nd CoC Meeting
- Proposal of Mr. Kapil Dev Taneja appointed in place of Mr. Maligi Madhusudhana Reddy as RP.

- 26th November, 2018
- Mr. Kapil Dev Taneja takes charge as RP

- 11th January, 2019
- Public Annoucments for Invitation of Expression of Interest

- 18th February,2019
- Last date for acceptance for EOI from RA

- 31st May,2019
- 10th CoC meeting for discussion of Resolution Plan from PRA

- 2nd June,2019
- Approval of Resolution Plan by CoC through 100% e-voting

## **Bibliography**

<sup>1</sup> <http://www.mca.gov.in/mcafoportal/companyLLPMasterData.do>

<sup>2</sup> <https://www.tofler.in/apex-drugs-limited/company/U24230TG1989PLC010737/financials#existingCharges>

<sup>3</sup> <https://ibbi.gov.in/legal-framework/act>

<sup>4</sup> [https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/6th%20Sep%202018%20in%20the%20matter%20of%20Apex%20Drugs%20Limited%20CP%20\(IB\)%20No.%20269-9-HDB-2018\\_2019-02-01%2009:38:36.pdf](https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/6th%20Sep%202018%20in%20the%20matter%20of%20Apex%20Drugs%20Limited%20CP%20(IB)%20No.%20269-9-HDB-2018_2019-02-01%2009:38:36.pdf)

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<sup>8</sup> <https://ibbi.gov.in/uploads/order/15a543a1dc59418c1bf3c98e78826d39.pdf>

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<sup>11</sup> <https://ibbi.gov.in/uploads/order/15a543a1dc59418c1bf3c98e78826d39.pdf>

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