

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI

MA/575 &576/2018 and MA/146/2019

In

CP/540/IB/CB/2017

Applications filed under section 60(5) of the IBC, 2016

In the Matter of M/s. Orchid Pharmaceuticals Limited

MA/575/2018

M/s. Ingen Capital Group, LLC

---Resolution Applicant

VS

1. Mr. S. V. Ramkumar, RP

For M/s. Orchid Pharmaceuticals Limited

2. State Bank of India

On behalf of Committee of Creditors

---Respondents

MA/576/2018

M/s. Ingen Capital Group, LLC

---Resolution Applicant

VS

1. Mr. S. V. Ramkumar, RP

For M/s. Orchid Pharmaceuticals Limited

2. State Bank of India

On behalf of Committee of Creditors

---Respondents

MA/146/2019 (IND No. 2873/2018)

Mr. S. V. Ramkumar, RP

For M/s. Orchid Pharmaceuticals Limited

---Applicant

VS

M/s. Ingen Capital Group, LLC & 3 Others

---Respondents

In the matter of:

M/s. Lakshmi Vilas Bank Limited

---Financial Creditor

Vs

M/s. Orchid Pharmaceuticals Limited

---Corporate Debtor

Order Delivered on: 28.02.2019

CORAM:

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

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

Present:

Counsel for Ingen: *Mr. P.S Raman, Sr. Advocate*
Mr. Kanagaraj, Advocate

Counsel for RP: *Mr. Sathish Parasaran, Sr. Advocate*
Mr. Edward James, Advocate
For Cyril Amarchand Mangaldas

Counsel for COC: *Mr. Vipin Warriar, Advocate*
Mrs. G. Anitha, Advocate
For Indian Law, LLP

COMMON ORDER

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

Order Pronounced on: 28.02.2019

It is an order covering MA575/2018, MA576/2018 and MA146/2019, out of these three MAs, MA575/2018 and MA576/2018 have been filed by M/s. Ingen Capital Group, LLC. One application (MA575/2018) seeking modification of the order dated 10.10.2018 passed in MA508/2018 stating that "closing date" has not been reflected as defined

in the Resolution Plan and another application (MA576/2018) seeking replacement of the Resolution Professional with Mr VijayakumarIyer – Deloitte Insolvency Professional having [Regn No: IBBI/IPA-001/IP-P00261/2017-18/10490] on the ground Mr. Iyer has more expertise than the present Resolution Professional. As to MA146/2019 (IND No.2873/2018) filed by the Resolution Professional, it is an application seeking prayers to annul the declaration of Ingen as the successful Resolution Applicant, to reinstate the Committee of Creditors and the Resolution Professional to ensure the running of the Corporate Debtor as a going-concern, to allow a period of 90 days to attempt at a fresh process and resolution by calling fresh bids for the CIRP of the Corporate Debtor rather forcing the Corporate Debtor into liquidation, and to bar Ingen and its men (Respondents) from applying as Resolution Applicants in the Insolvency Resolution Process of any entity in future and that there would be an enquiry as to the status of the implementation of any of the Resolution Plan of the Respondents that has been approved in any ongoing Insolvency Resolution Process of any entity.

2. Since the subject matter of all these three applications is regarding the Resolution Plan approved by this Bench and since the facts of these three applications overlapping on one another, instead of passing separate orders, this Common Order has been passed.

3. While these three applications remained pending under the caption of "Orders Reserved", Hon'ble National Company Law Appellate Tribunal (NCLAT) stayed the proceedings on an appeal filed by Ingen assailing the order dated 10.10.2018 passed by this Bench in MA508/2018. In view of the same, we did not pass any orders, as long as stay continued against the order dated 10.10.2018.

4. Thereafter, when the Resolution Professional mentioned that the Hon'ble NCLAT passed an order on 01.02.2019 holding that it is open to this Bench to pass appropriate order after hearing the Resolution Professional, the Managing Committee and the Committee of Creditors, and if there is a second plan complied with Section 30(2) is available, it is open to the Resolution Professional to place it before the Committee of Creditors and thereafter, before the Adjudicating Authority for necessary orders.

5. In view of this order, this Bench further heard the Resolution Professional on 18.02.2019 and posted this matter under the caption of "orders reserved". Now, this Bench hereby pass orders in all three MAs aforementioned.

MA/575 of 2018

6. It is an MA, the Resolution Applicant namely, M/s. Ingen Capital Group, LLC (herein after called as "Ingen") filed against the Resolution Professional (R1-RP) and State Bank of India on behalf of the Committee of Creditors (R2-SBI) u/s 60 (5) of The Insolvency & Bankruptcy Code, 2016 ("the Code") seeking modification of the Order dated 10.10.2018 passed by this Tribunal in MA/508/2018 filed by the RP.

7. The short point for consideration in this MA is that, since this Bench has mentioned in the Order dated 10.10.2018 recorded closing date as "17.10.2018" instead of mentioning it as closing date, therefore sought for replacement of 17.10.2018 date with the word "closing date" because, the closing date, according to this Applicant, can be either 30 days from the effective date or the date on which all actions as

envisaged under Schedule-II (implementation of the plan) are consummated, whichever is later.

8. The reason for seeking modification to the order dated 17.10.2018 is because in Schedule-I of the Resolution Plan it has been mentioned that closing date means the date falling on 30 days from the effective date or the date on which all actions as envisaged under Schedule-II (implementation of the plan) are consummated, whichever is later. As to this argument is concerned, it is true it has been mentioned, whichever day is later, that will become "closing date".

9. It is so happened that when RP filed MA508/2018 and argued on 10.10.2018 stating that Ingen has not paid ₹ 1000crores within five business days in pursuance of the terms and conditions of the Resolution Plan from the effective date i.e., 17.09.2018, since by that time already 24 days were over from the effective date, i.e., date of approval of the plan by this Adjudicating Authority, the term defined in the Schedule would come to close by 17.10.2018. The order dated 10.10.2018 was passed by looking at that Ingen did not, leave of paying of ₹ 1000crores as mentioned in the Resolution Plan, even make itself

available to the Resolution Professional and the Committee of Creditors. As the Corporate Debtor being a going-concern, it was required to pay salaries to the employees and other statutory payments, annual fees towards USFDA, by that time already Resolution Plan given by Ingen being approved by this Bench, Ingen indeed should have been leading the Corporate Debtor on constitution of Monitoring Committee as stated in the Resolution Plan with some of the members of the Committee of Creditors. But it did not happen as set out in the Plan. No Monitoring Committee was formed. Except, the RP, none else was present to lead the company. As to RP, he could not run the debtor company on his own, he has his own limitations. Since money did not come into the company as per terms of the plan, since Monitoring Committee was not formed, above all since no response was coming from Ingen, the only way left out to RP was to file MA508/2018 seeking reliefs to bring in Monitoring Committee in place and also to seek directions against Ingen, which disappeared without any clue.

10. As RP filed MA508/2018, in this piquant situation, there was no other go to this Bench except to constitute Interim Monitoring

Committee in the lines mentioned in the Resolution Plan so as to let the Corporate Debtor run with a direction to RP to spend the money from the account of the Corporate Debtor in discharging day-to-day affairs of the Company. At the time of passing the order dated 10.10.2018, Ingen counsel was present stating that he has no objection for release of the payment from the Corporate Debtor Account towards various requirements of it as mentioned in the e-mail dated 28.09.2018 sent by an SBI Official to Ingen. This order dated 10.10.2018 is no way concerned to "closing date".

11. The directions given in the order dated 10.10.2018 has no bearing either on the term mentioned in the Schedule or in respect to the closing date mentioned in the Schedule. Apart from the relief above mentioned, RP has also asked for appointment of Mr. Rajesh Gandhi, Mr. Umesh Bhatia and Mr. Haresh Bhatia as members of the Monitoring Committee to render all necessary cooperation to Ingen to facilitate the implementation of the Resolution Plan.

12. But Ingen instead of becoming members of the Interim Monitoring Committee, it has come up with the plea that it was asking limited

information from RP to raise funds towards debt component from M/s. J.M. Financial but RP was not providing any such information, therefore Ingen could not close the transaction as envisaged in the Resolution Plan. Ingen further says that though it had sent e-mail on 23.07.2018 seeking information, no such information has been made available; therefore Ingen could not raise the funds as stated in the Plan.

13. As to this specific plea, RP as well as the Committee of Creditors categorically mentioned that Ingen was provided access to data room having virtual data prepared by RP containing the information pertaining to the Corporate Debtor (including confidential information), basing on which only, Ingen has stepped up with the plan mentioning as to how much is to be paid, how much is to be used in the company. It is said nowhere in the plan or in the orders passed by this Bench, that implementation of the terms of this Resolution Plan is subject to the supply of information to Ingen. Indeed, whatever information that is required for placing the Resolution as well as approval of the Resolution Plan has taken by Ingen, it is not its case that Ingen came up with its plan without requisite information.

14. RP Counsel as well as SBI Counsel have categorically mentioned Ingen has invented this route so as to drag on paying ₹1000 crores to the Financial Creditors in accordance with the terms of the Resolution Plan. They further submitted that Ingen so as to bring this entire episode to square one by saying that implementation plan is dependent upon the information sought by Ingen.

15. On hearing the submissions of either side, it is evident to us that Ingen has filed this frivolous application so as to set up a defence against non-payment of ₹1000 Crores to the Financial Creditors. In the Resolution Plan, Ingen categorically mentioned that it has to pay ₹1000 Crores upfront cash payment to the Financial Creditors within five days from the date this plan was approved by this Bench. Since this bench has approved this plan 17.09.2018, this Applicant should have paid ₹1000 crores to the Financial Creditors within five days from the effective date i.e., date of approval, but till date Ingen has not even paid single paisa against ₹1000crores agreed to ground within five days from the effective date, of course Ingen has not paid any money to the

Financial Creditors despite this Bench passed order after order directing Ingen at least to deposit 1/3rd of the amount with the escrow account.

16. In this background, what right Ingen has in this Company, this Bench approved the plan on the resolution passed by the Committee of Creditors. This committee waived every rule, such as requirement of paying earnest deposit money, performance guarantee and undertaking required to be given as stated in the CIRP Regulations in approving this Resolution Plan. The result is Ingen has not made any effort to implement Resolution Plan except trying to put this Debtor in sufferance.

17. In view of the reasons aforementioned, we are of the view this that Ingen is not entitled to seek any kind of relief unless it has fulfilled its part of obligation of making payment of ₹1000 crores to the Financial Creditors. As to information is concerned, since Ingen has taken a conscious decision in giving the Resolution Plan by looking at the information given by the debtor company, and agreed to pay ₹1000 crores without any caveat, today Ingen could not say that it

could not implement the plan because information has not been provided.

18. As to closing date argument assailing the order dated 10.10.2018 saying that closing date not only does mean 30 days from the effective date, but also consummation of the plan would be closing date with a rider whichever is later, we differ with the relief sought by Ingen, because merely mentioning closing date as 17.10.2018 has not changed the rights of the parties, Ingen is no way aggrieved of that order, because the main point in these applications is that Ingen has not made ₹1000crores upfront cash payment within 5 days as stated in the Plan, to divert that point, Ingen has elected this circuitous route to deflect upfront cash payment within 5days from the effective date, therefore this MA is hereby **dismissed as misconceived.**

MA/576/2018

19. Apart from MA 575/2018 decided above, Ingen filed this MA against the RP (R1) and State Bank of India on behalf of the CoC (SBI) seeking appointment of Mr Vijayakumar Iyer – Deloitte Insolvency Professional having [Regn No: IBBI/IPA-001/IP-P00261/2017-18/10490] as

a Resolution Professional replacing RP for the Corporate Debtor on the ground that appointment of Mr Vijayakumar Iyer as a Resolution Professional in the place of the RP will be more conducive because he has experience in regard to the implementation of Resolution Plans, by adding further that unless Mr Vijayakumar Iyer is appointed as Resolution Professional, Ingen will be not be able to complete the Resolution Plan effectively and efficiently.

20. Before coming to the relief sought by Ingen, it is imperative to know the historical facts of this case subsequent to approval of Resolution Plan by the CoC.

Normally, whenever a resolution plan is placed before CoC, it will ask for Earnest Money Deposit and also Performance Guarantee from a Prospective Resolution Applicant so as to test the credentials of such applicant.

21. Here, since Ingen has sought for waiver of the Earnest Money Deposit of ₹5crore as well as the Performance Guarantee amount of ₹50crores and Undertaking Letter of Intent, on which, the CoC, for the reasons best known to them waived all these compliances at the time of

approval of the resolution plan placed by Ingen. Before approval of this resolution plan, the CoC provided access to the virtual data of the Debtor including the confidential information to enable this resolution applicant to come out with a resolution plan with figures in respect to the payment to the Financial Creditors, other Creditors and infusion of funds to the equity. After having its own inquiry, Ingen mentioned in the Resolution Plan itself that he would make upfront cash payment of ₹1,000crores to the Financial Creditors within five business days from the effective date i.e., the date of approval by NCLT. Since this Bench has approved the Resolution Plan on 17.09.2018, as per the terms of the Resolution Plan, the first and foremost step has to be complied with, i.e., payment of ₹1000crores to the Financial Creditors but whereas till date, Ingen hasnot paid a single pie to the debtor or to the Financial Creditors. When Ingen remained disappeared and not in contact with either the CoC or with the Resolution Professional, on 10.10.2018, RP as well as CoC appeared before this Bench saying that since the CoC constituted during the CIRP having come to an end by approval of the Resolution Plan, as per the Resolution Plan a Monitoring Committee should have



been constituted with the co-operation of Ingen. Since it is a going concern with around 1500 employees doing business at International level, unless an effective management is in place, the business itself would come to standstill. Since Ingen has not come forward either to participate in the Interim Monitoring Committee or payment of ₹1000crores as stated in the Resolution Plan, RP has sought this Bench to constitute a Monitoring Committee with powers to deal with the business in its ordinary course. Since in that application, Ingen was made as Respondent, an Advocate had appeared on behalf of this Resolution Applicant, with his consent, an Interim Monitoring Committee was constituted to guide the Resolution Professional for discharging the functions of the company, how could it subsequently ask for replacement of the RP, that too without making any payment to the financial creditors despite this Bench directed Ingen to pay at least 1/3rd of the upfront cash payment agreed to pay to the financial creditors.

22. Ingen, instead of complying with the orders of this Bench, filed this MA asking for data and replacement of the Resolution Professional.

It is evident on record that Ingen came out with this Resolution Plan after having access to the records of the Company, therefore, where is the question of this applicant now asking access to the records of the company so as to implement the resolution plan. As I said in the earlier order that there is no caveat in the Resolution Plan stating that the implementation of Resolution Plan is dependent upon supply of further information to Ingen by the Resolution Professional.

23. By asking these kinds of reliefs, if at all any of these conceded, Ingen would keep asking frivolous reliefs instead of complying with the Resolution Plan which was approved by the CoC thereafter by this Bench.

24. Practically speaking, Ingen acquired de jure position as Resolution Applicant but if you see the ground position, Ingen neither has paid Earnest Money Deposit nor has given Performance Guarantee to say that it would incur some loss in case the relief sought by Ingen is not granted. Since it is a big company having international business, unless the applicant (Ingen) does not show the colour of the money, such person cannot be encouraged to seek any kind of relief, much less the

relief asking for replacement of Resolution Professional who has been successfully discharging the functions at the behest of CoC.

25. The person who has to make payment within five business days from the effective date having failed to make any payment even after lapse of four months, then how can it ask for replacement of Resolution Professional against whom no allegation has been made? Moreover, if at all, payment has been made as contemplated under the Resolution Plan, neither the Resolution Professional will remain nor the CoC will remain on Board but this Applicant instead of doing that, it has taken this device to scuttle the performance of the company and also to scuttle the implementation of Resolution Plan.

26. Therefore, this Bench by looking at this application, we hereby hold that the Applicant has no locus to ask for the replacement of Resolution Professional, henceforth we **dismiss** this MA as **misconceived**.

MA/146/2018 (IND/2873/2018)

27. It is an MA filed by the Resolution Professional (RP) seeking following directions when Ingen (The Resolution Applicant) failed to

give effect to the plan approved by this Bench on 17.09.2018, which are as follows:

- a. *To annul the declaration of the Resolution Applicant as the successful Resolution Applicant.*
- b. *To reinstate the CoC and Resolution Professional to ensure the running of the Corporate Debtor as a going-concern.*
- c. *To allow further time of 90 days to attempt a fresh process of resolution to call for fresh bids for the CIRP of Corporate Debtor rather than forcing the CD into liquidation.*
- d. *Bar Resolution Applicant from applying as Resolution Applicant in the Insolvency Resolution Process of any other entity, in future there would be an enquiry as to the status of implementations of any other resolution plan of Respondents that has been approved in any ongoing Insolvency Resolution Process.*

The facts relevant for adjudication of this application:

28. This Bench has, on 17.09.2018 approved the Resolution Plan of Ingen looking at the approval given by the CoC. For adjudication of this application, since it is imperative to examine the Approved Resolution Plan, as this Bench going through the Resolution Plan, it has noticed that Ingen shall bring in ₹1060crores towards Insolvency Resolution Process Costs (₹ 10crores), claims secured financial creditors (₹ 1000crores),

operational creditors (₹ 37crores) and workmen and employees dues(₹ 13crores) within five business days from the effective date i.e., the date of approval of the Resolution Plan by this Adjudicating Authority. As to other conditions are concerned, they will come into implementation only after making this upfront cash payment of ₹1060Crores to various claims as mentioned above. This Resolution Plan was approved for consideration of ₹1490Crores. As to the upfront cash payment of ₹1060Crores, "closing date" mentioned in the plan will not have any bearing because this upfront cash payment ought to be paid by Ingen within five business days. Therefore, notwithstanding the fact as to what date or what day would be the closing date, Ingen ought to infuse ₹1060crores towards the payment as agreed within five business days from the date of approval of the plan.

29. As the said payment did not come from Ingen, since both RP and CoC became *functus officio* upon the approval of the plan, RP filed MA/508/2018 before this Bench seeking directions against Ingen for implementation of the plan; this Bench accordingly passed the order on 10.10.2018, which is as follows:

- 2) *“On perusal of this application as well as the Approved Resolution Plan, we have noticed that this RP has been requested to continue his duties and obligations as set out in the Code and CIRP Regulations; continue to have powers of the Board vested in him in accordance with the Code and Regulations; and manage the business of the Corporate Debtor acting on the sole instructions of the Monitoring Committee. And that the Monitoring Committee constituted shall have full and final authority to decide all matters relating to the business of the Corporate Debtor rising during the Term (the word Term has been defined as 30 days from the effective date (date of Approval of the Plan) until closing date i.e., 30th day from the effective date) and the composition of the Monitoring Committee will include members nominated by the Resolution Applicant in consultation with the CoC. Since the Term has been defined as 30 days from the effective date, this Monitoring Committee shall cease to have any powers, duties or obligations and the terms of this Plan after completion of the Term because that Committee shall stand replaced by the Board of Directors as nominated by the Resolution Applicant. Since this Term has started from the date of approval of this Plan i.e. 18.09.2018, it will come to close by 17.10.2018.*
- 3) *Knowing fully well the Corporate Debtor has more than 1000 employees continuing on rolls; the company is under obligation to pay annual fees towards USFDA; salaries of the employees and various other expenditure arising in the ordinary course of business, this Resolution Applicant ought to have taken interest in constitution of Monitoring Committee in consultation with COC members, but on the contra, R1 to R4 till date have neither contacted the RP nor the Committee of Creditors to find out as to how to go about future action having regard to carrying the functions of the Company.*
- 4) *The Resolution Professional’s concern is, since the CIRP is concluded and the Resolution Professional has become functus officio on approval of the Resolution Plan, he could not exercise powers as before,*

therefore unless Monitoring Committee has been immediately constituted as set out in the Resolution Plan, there could not be any possibility to this Resolution Professional to carry the functions of the Company. Now, because the CoC has ceased to continue after approval of the plan, the COC could not also supervise the functioning of the company as before.

- 5) On one side, the Resolution Professional has become functus officio, on the other, this Resolution Applicant has so far not come forward to constitute Monitoring Committee, to overcome this predicament, this applicant has sought reliefs as mentioned above so as to keep this Company as a going concern at least until the corporate debtor company has been handed over to the Resolution Applicant in terms of the Resolution Plan.*
- 6) Today when this matter has come for hearing, the Resolution Applicant counsel has appeared on behalf of the Resolution Applicant stating that 2nd Respondent has sent an e-mail to an official of SBI, namely Mr. Ramalingappa on 28th September, 2018 authorizing them to release the payments as mentioned in the e-mail sent by Mr. Ramalingappa on 28.09.2018. Besides this e-mail, this counsel has also shown another e-mail dated 9th October, 2018 asking his counsel to e-mail to SBI to release payments mentioned in the e-mail sent by Mr. Ramalingappa on 28th September, 2018. Authenticating those mails, this counsel has filed a memo appending this e-mail correspondence reflecting 2nd Respondent conceding the lenders of the Corporate Debtor to release the payments towards various requirements of the company as mentioned in the e-mail sent by Mr. Ramalingappa, SBI official on 28th September, 2018.*
- 7) Though 2nd Respondent was required to take initiative to constitute Monitoring Committee in consultation with the CoC members, the same not having happened, we are of the view that some immediate steps have to be taken so as to let this company continue as going*

concern at least until further steps are being taken by the Resolution Applicant.

- 8) *So far the interest of the Financial Creditors has not been cleared by the Resolution Applicant, we hereby suggest the Resolution Professional 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."*

30. Despite the orders aforementioned against Ingen, when it did not take any initiative either to constitute the Monitoring Committee as per the plan or to infuse funds as promised, again on the mentioning made by the RP, this Bench passed another order on 02.11.2018 which is as follows:

- "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, 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 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 financial 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."*

31. Despite this Bench passed order after order directing Ingen to make at least one third of the total payment payable to the Financial Creditors, Ingen has not made any payment till date, on the top of it, Ingen started pressing this Bench for replacement of the RP and also for correction of the order dated 10.10.2018.

32. When the RP as well as the CoC realised that Ingen has no intention to implement the plan and it is difficult to manage this going-concern running with 1500 employees generating income to the Debtor Company, the CoC, in the meeting held on 15th November, 2018, having

opined that it is not prudent to send this Company bringing positive cash flows and foreign exchange and providing livelihood to 1500 employees solely dependent on this company into liquidation simply on the reason the plan approved failed to take off, RP has sought the reliefs as mentioned above.

33. As against the argument of Ingen saying that non-inclusion of Ingen in Monitoring Committee led to denial of access to the information of the Corporate Debtor resulting into causing inability to Ingen to raise fresh funds, the RP and the counsel appearing on behalf of the CoC has turned down these arguments are baseless and false because this very Resolution Applicant filed a Resolution Plan on taking due diligence from the virtual data including the confidential information made available to Ingen. Moreover it is born on record that Ingen was asked to join in Interim Monitoring Committee. That it has not done. When it was asked to infuse funds to meet the requirements of the Company, it has informed to meet the needs of the company from the Account of the Company. Ingen Plan was approved not to hear these kinds of free suggestions from Ingen (the Plan Applicant), which

miserably failed to timely infuse funds adhering to the time lines given in the Plan. That apart, Ingen, by indicating that it had investor to infuse funds, obtained the approval without even making Earnest Money Deposit, Performance Guarantee and unconditional undertaking by putting the CoC under the belief that it is not possible to fulfil all these pre-conditions under American Law. However, being impressed upon by the version of Ingen, the CoC rightly or wrongly approved the resolution; it was ultimately approved by this Bench looking at the compliance with Section 30(2) of the Code. Thereafter, the result is till today not even single paisa has come from Ingen as per the Resolution Plan, despite it is under obligation to infuse ₹1060crores as upfront cash payment within five business days from the effective date.

34. In the meanwhile, when Ingen filed an appeal assailing the order passed by this Bench directing it to deposit 1/3rd of ₹ 1000crores payable to secured creditors, the Honourable NCLAT made it open to this Bench to pass orders after hearing the Resolution Professional, Managing Committee and the Committee of Creditors.

35. Therefore in compliance of the order dated 01.02.2019 passed by the Hon'ble NCLAT, the RP filed an affidavit on 16.02.2019 submitting that there is no second resolution plan complying with mandate u/s 30(2) of the Code, but there is interest from investors in proposing the resolution plans provided one more chance is given to the RP as well as the CoC by extending CIRP period as required for publishing and approval of a Resolution Plan. In support of this Contention, RP has also mentioned that he has received e-mails from Divi's Laboratories Limited, Gland Celsus Biochemicals Private Limited and Fidelity Trading Corporation. Apart from this, he has also submitted that he has received oral enquiries from ART Capital (India) Private Limited, Everstone group, Aion Capital, Piramal Capital and Finquest group expressing interest in proposing Resolution Plans in respect of the Corporate Debtor.

36. In view of the submissions made by the RP and on perusing the order passed by the Honourable NCLAT, if the time gone into inviting Expression of Interest and approval of the Plan of Ingen is excluded and fresh lease of CIRP is provided for completion of repeat of the process




from the stage of invitation of Expression of Interest, in all probability, this company would be saved from the death warrant i.e., order of liquidation – the reason for arriving to this conclusion is that it is a company doing wonderful business and providing life to 1500 employee families and contributing wealth to the nation. Besides this, as per earlier plan, it would offset the debt liability by paying at least not less than 30 to 40% of its liability if restructuring is taken place.


37. Considering all these aspects, we hereby hold it is essential to annul the earlier plan approved by this Bench and provide fresh lease of life to the company to again undergo CIRP from the stage of invitation of Expression of Interest, so that there could be every possibility for bailing out this Company through restructuring.

38. As the Honourable NCLAT has already expressed in the order dated 01.02.2019 as to failure of Ingen in implementation of the Plan, and as to why action should not be taken against the persons behind the mask of Ingen, without getting into the subject in seizin of the Honourable NCLAT, this Bench going by the direction of Honourable NCLAT hereby annuls the Resolution Plan of Ingen, and provides 105

days of CIRP period by excluding whatever time this Corporate Debtor lost from inviting Expression of Interest until this day because this Bench has today annulled Ingen Plan. The RP and the Committee of Creditors will discharge their functions as before during this CIRP period.

39. Accordingly, this application is hereby **disposed of**.


(S. VIJAYARAGHAVAN)
MEMBER (Technical)


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

vs/TJS