

1. M/s Uno Medicare Limited (“UML”), a Public Limited Company is a leading Pharmaceutical manufacturing company incorporated in the year 1999 under the Companies Act, 1956 having its Registered Office in Delhi promoted by Mr. Saurabh Tyagi and Mr. Ranjan Singh. UML started its operations while setting a small manufacturing unit established in Delhi and during the financial year 1999-2000 recorded its net sales for Rs. 1 Crore and earned the profit of Rs. 10 Lakh.
2. At the time of the Incorporation of the company in the year 1999, Mr. Saurabh Tyagi was appointed the Chief Executive Officer having charge of the operations of the company and Mr. Ranjan Singh was appointed Chief Financial Officer who was managing internal and external finances of the company. UML showed good potential in the beginning and due to aggressive marketing as well as the Govt. Orders for its manufactured generic medicines helped the company to achieve the unrealistic sales target and company within Seven years of its operations crossed the net sales of Rs. 500 Crores with a profit of Rs. 50.7 Crores. The confirmed orders boosted the confidence of the lenders who have generously extended the credit facilities to UML which helped the company to expand its manufacturing operations from one unit to four units and the balance sheet for the year 2006-07 were booked as Rs. 500 Crores extended primarily for purchase of plant and machinery.

3. In the year 2008, the Board of Directors of UML decided to establish a Research and Development (R&D) Unit of UML to develop new and better medicines with an aim to achieve the pioneering in the health care business and in furtherance of the decision incorporated a wholly owned subsidiary company in the name of UNO Medicare Research & Development Centre Pte. Ltd. ("UMRDCPL") based out in Singapore.
4. Immediately upon setting up a wholly owned subsidiary, in order to procure the financing and working capital, UMRDCPL decided to avail the loan facility loans from DSB Bank, Singapore and accordingly loans in the form of External Commercial Borrowing ("ECB") facility was granted to UMRDCPL vide an Agreement dated 03.09.2008 to the tune of USD 50,000,000 at the rate of 9% interest per annum and thereby created charge over immovable assets of UMRDCPL and UML stood as corporate guarantor and created a charge against its properties.
5. During the year 2009, upon procurement of the aforesaid loan facility from DSB Bank, the operations of research was started and the scientist of UMRDCPL made an early breakthrough by inventing a combination of drug for treating cancer which after clinical trial were approved to tested on humans and after successful trial was approved for commercial purposes for the usages by public at large. The unique drug was named as "Cytosan" drug. UMRDCPL in the year 2011 got the registered patent on "Cytosan" worldwide.

6. In the year 2011, UML commenced the commercial production of “Cytosan” in all units and even since then “Cytosan” has been exported worldwide as leading drug for cancer. Govt Authority responsible for approval of medicine in USA namely Food and Drug Administration(FDA) and European Medicines Agency (EMA), a regulatory body for pharmaceutical company in Europe has also approved the drug Cytosan” for the use on human bodies to cure cancer. The above exports orders have been the real back bone of expansion of the business plans. UMRDCPL is further extended its research and discovered a drug for treating and controlling diabetes in the name of “Metformin” and is going on clinical test and expected to ready for commercial use by the end of year 2020.
  
7. In the year 2015, since UMRDCPL had no independent income and all income so generated through revenue from assignment of the registered patent from UML were utilized for further research and therefore, in order to meet the present and future financial requirements of UMRDCPL, board of directors of UML decided to buyback the entire equity of UMRDCPL according UMRDCPL merged with UML and therefore the entire assets and liabilities were transferred in the name of UML.
  
8. At the time of merger, UMRDCPL had the following assets and liabilities along with its valuation cost:

Plant and Machinery: Valued at Rs. 50 Crores

Land and Building : Valued at Rs. 50 Crore

Intangible assets : Valued at Rs. 700 Crore

Loans: Valued at Rs. 260 Crore ( USD 4,00,00,000)

And UML has the Following assets and liabilities along with its valuation cost:

Plant and Machinery: Valued at 500 Crores

Land and Building : Valued at 250 Crore

Loans : Valued at Rs. 1000 Crore

Evident from the above financial status of UML, UML was regular in servicing its all financial debts, which as of 31.03.2017 stood at INR 1160 Crores.

9. In the month of May, 2017, Dr. George Packer, a leading scientist released an evaluation thesis on the after effects of intake of medicine "Cytoxin" which was based on the study of 1000 humans who had been taking the drug for continuously two years. The evaluation report claimed that out of 1000 patients, 912 patients had been diagnosed the acute renal failure and due to which they have been forced to go on the dialysis. The valuation results were considered by FDA and considering the results shown in the evaluation report issued a temporary injunction and banned the manufacturing and marketing of "Cytoxin" drug with immediate effect and further directed the enforcement agency to cease all stock of "Cytoxin" drug. FDA further directed all doctors practicing in America not to prescribe "Cytoxin" medicine for cancer till further orders. EMA taking note of the study also following the same actions and

passed the similar orders in relation to “Cytosan” medicine and banned the medicine all across the Europe.

10. A class action suit was brought in the name of “Association of Victims of “Cytosan” in the City Court, Michigan against UML. However, same was proceeded Ex-Parte and resulted in Ex-parte decree of compensation amounting to USD 100 Million. UML has already challenged the finding of the report of Dr. George Packer to be fictitious and without any basis before the competent court and also have challenged the award in higher court but no injunction has been granted in favour of UML. Since the issue of production of medicine was concerning public at large and therefore Indian Govt. also directed UML to stop manufacturing the said drug and the entire stock valued at around Rs. 100 Crores was seized by Indian Govt.

11. In the year 2017, the sale of the company was drastically gone down due to which UML was forced to order lock down its three plants and also started defaulting in repayment of its loan from October, 2017.

12. Krishna Bank who had given loan to the tune of Rs. 50 Crores for plant and machinery for unit of UML situated at Madhya Pradesh had an exclusive lien over plant and machineries of UML’s Plant situated at Madhya Pradesh approached DRT and got the property auctioned for a sum of Rs. 45 Crores.

13. The statement of account showed that outstanding principal amount for the extended loan was Rs. 45 Cores and Rs. 5 Cores was shown to be due and payable towards the Penal Interest and other Penal Charges.
  
14. On 18.05.2018, DSB Bank moved an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") which was admitted vide order dated 15.03.2019 by the Adjudicating Authority in Delhi. Vide same order, Mr. Nalin Tripathy was appointed as the Interim Resolution Professional (IRP). IRP made a public announcement on 17.03.2019 and collated claims received in pursuant to the public announcement.
  
15. Among other creditors, vide email dated 21.03.2019, "Association of Victims of "Cytosan" from Michigan City, USA filed a claim of decree amounting to USD 100 Million through its authorized representative before IRP as Financial Creditor. Upon verifying the same, IRP found that the proceedings in the higher court pertaining to decree are pending and therefore held that the decree so passed has not attained finality and dismissed the claim. Aggrieved by the order of IRP, Association of Victims of "Cytosan" has moved an application before the Adjudicating Authority for admission of their claim in entirety.
  
16. The List of creditors prepared by the IRP is as presented below:

Particulars	Principal (Amount in INR Crores)	Total Due Amount as at 15.03.2019 inclusive of Interest (Amount in INR Crores)
<b>Financial Creditors</b>		
DSB Bank	250	255
Krishna Bank	5	5.30
Real mine Bank	360	374
Fine loan Bank	500	517
<b>Operational Creditors</b>		
Exotica Maintenance Agency	3.5	4
Raw Material Suppliers	48	52
Other Operational creditors	47	52
<b>Employees and Workmen</b>	34	38.5
<b>TOTAL</b>	<b>1247.5</b>	<b>1297.5</b>

17. IRP constituted Committee of Creditors (COC) of Financial Creditors and conducted Meeting of Committee of Creditors (COC) whereby presented the list of creditors before COC Members as well explained the financial position of UML to all COC Members wherein COC Members confirmed the IRP as Resolution Professional (RP) who has filed his report before Adjudicating Authority.

18. One COC member namely Fine Loan Bank inspected the all claims of the financial creditor and witnessed that Krishna Bank filed a claim of Rs. 5.30 Crores as secured creditor before IRP as amount pending towards the penal interest and other penal charges. Fine Loan Bank filed an application before the Adjudicating Authority challenging the induction of Krishna Bank as the amount so claimed does not qualify to be the financial debt as described under Section 5(8) of IBC, 2016.

19. That during the course of CIRP Process of UML, RP found that the company had some pending order from Govt. of India with regard to generic medicine amounting to Rs. 12 Crores and in order to ensure that UML remain the going concern, RP requested Real Mine Bank to provide overdraft facility as was existing prior to Insolvency Commencement date and a claim arising out of the same facility has been approved by RP. Upon approval of overdraft from Real Mine Bank, an amount of Rs. 6 Crores only was procured for manufacturing of the pending orders and upon realisation of Invoice amount, RP returned the extended amount of Rs. 6 crores to bank along with usual Interest charges as applicable to loan. The COC Members upon coming to know this fact, DSB Bank, who is one of the COC Members objected the payment to Real Mine Bank and confronted in COC Meeting that such payment to Real Mine Bank is a preferential transactions in terms of the

provisions of Section 43 of the IBC, 2016 and infact RP is not authorized to disburse the proceeds of the company during the insolvency process and further the actions of RP is in adversaries to the other creditors of the company and therefore DSB Bank has moved to Adjudicating Authority praying that the action of RP to make the payment to Real Mine Bank to be treated as Preferential Payments terms of the provisions of Section 43 of the IBC, 2016.

20. RP issued the invitation for resolution plans, several companies came forward to submit resolution plans, primarily because of higher valued patents of UML and the high production capacity at the units of UML. After the initial round of bidding, two resolution plans were shortlisted for the final round of negotiations. The first of these plans was submitted by Bliss India Pharmaceutical Limited (BIPL) and the second was submitted by Lifeline care pharmaceutical Limited (LCPL), both are an Indian company.

21. The plan submitted by BIPL proposed an upfront cash payment of INR 425 Crores. A further debt of INR 750 Crores was proposed to be repaid over a period of 15 years in equal instalment of monthly payments. The resolution plan also promised a capital infusion of INR 250 Crores, after availing loan and credit lines from the existing / nationalized banks and also annexed a pre-approval letter / sanction letter from one NBFC. The remaining due amount, i.e., INR 122.8 crores was proposed to be written down to nil. Out of the upfront cash payment of INR 425 crores, INR 25 crores was set aside for payment to all operational creditors on a proportional basis.

22. The LCPL in their resolution plan proposed an upfront cash payment of INR 285 Crores. A further debt of INR 600 crores was proposed to be converted into equity in the form of Compulsorily Convertible Preference Shares ("CCPS") that are redeemable at the option of the holders after a period of 3 years. The plan also proposed a capital infusion of INR 100 Crores immediately on approval of the plan by the Adjudicating Authority in order to kick-start the company into operation. The remaining debt of INR 312.8 crores was proposed to be written down to nil. The disbursements as well as the haircut in favour of the financial creditors proposed under the resolution plan were in proportion to the respective debts of the financial creditors. Out of the proposed upfront cash payment of INR 285 crores, only INR 89.3 crores were set aside for payment to operational creditors. Amongst the operational creditors, the plan proposed to pay the Employees and Workmen their full claim amount, i.e., INR 38.5 crores, whereas the raw material suppliers were promised a payment of 90% of their claim amounts, i.e., INR 46.8 crores. At the same time, all other operational creditors were paid only the liquidation value. LCPL reasoned that employees and workmen as well as the raw material suppliers were proposed to be paid more in view of the fact their continued cooperation is crucial for the revival of the corporate debtor.

23. After much deliberation, majority of the COC members resolved to approve the resolution plan submitted by LCPL and as mandated under IBC, 2016, the resolution plan was placed before the Adjudicating Authority for its approval. However, BIPL being the resolution applicant objected the decision of the

COC and filed an application before the Adjudicating Authority against the plan submitted by LCPL. In the filed application, BIPL submitted that the proposed resolution plan of BIPL had better commercial viability vis a vis plan submitted by LCPL and sought a direction from the Adjudicating Authority to COC to re-examine the plan and consider revising its decision. Few operational creditors, who were being paid only the liquidation value in the approved plan also approached the Adjudicating Authority and challenged the approval of the resolution plan on the ground that the plan submitted by LCPL is discriminatory in nature in so far as same only propose to pay the liquidation value and financial creditor in long term are receiving 90% of their claimed amount. They also challenged the decision to pay the raw material suppliers on priority and such division in the same class of creditor is against the law. The above applications were contested by LCPL as well as the CoC. During the course of the hearing, the Adjudicating Authority passed an interim order directing some changes in the approved resolution plan especially on the payments to be made to the operational creditors. LCPL and the CoC sought the revocation of this interim order on the ground that the Adjudicating Authority does not have the power to change the terms of the resolution plan as only the CoC has the power to negotiate the terms of a resolution plan.

The Appellate Adjudicating Authority has fixed the date of 21.12.2019 for hearing all the issues arising in this Appeal.

Issues:

1. Whether rejection of claim by IRP filed by “Association of Victims of “Cytosan” from Michigan City, USA is legal?
2. Whether the claim filed by Krishna Bank qualified to be a financial debt in terms of Section 5(8) of IBC, 2016?
3. Whether the repayment of overdraft facility to Real Mine Bank during the course of CIRP is treated to be preferential transaction in terms of Section 43 of IBC, 2016?
4. Whether the Adjudicating Authority shall allow the application of other Operational Creditors on the ground that the plan proposed by LCPL is discriminatory in nature in so far as fixing the priority of payment and different haircut within one class of creditors?
5. Whether the Adjudicating Authority was justified in evaluating the commercial viability of the terms of the proposed successful resolution plan without the approval of the CoC and further whether adjudicating authority has power to amend the resolution plan and direct the CoC to incorporate the changes in resolution plan?

**Apart from the issues delineated above, participants are free to agitate any other issues, including those on maintainability and jurisdiction.**

**The Case Laws has been Prepared by:-**

