IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.35584 of 2019

Orchid Pharma Ltd
Rep By Mr.Ramkumar Sripatham
Venkatsubramanian
Resolution Professional
My Home Vihanga Gachibowli
Hyderabad Rangareddy
Telegana 500032 ... Petitioner

Vs.

1.Kotak Mahindra Bank Ltd.
Rep by its Area Recovery Manager
Mr.V.V.Sriramamurthy
Mount Road Branch II Floor No.185
Anna Salai, Chennai-600 006.

2.K.Raghavendra Rao
Suspended Chairman and Managing Director
Orchid Pharma Ltd, Orchid Towers
No.313/Valluvar Kottam Hugh Road
Numgambakkam, Chennai-600 034.

3.Debts Recovery Tribunal-II at Chennai
Rep by its Registrar
4th Floor, Dewa Tower
770-A Anna Salai, Chennai-600 002 ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of Learned Debt Recovery Tribunal II at Chennai dated November 19 2019 in I.A No.818 of 2019 in O.A.No.207 of 2014 whereby the petitioner was directed to deposit an amount of Rs.1,04,61,20,016 within 7 days from the date of insolvency resolution plan coming into force and quash the same and consequently forbear the Respondent No.3 from passing any orders in the proceedings of O.A.207 of 2014 against the Petitioner pending the Corporate insolvency proceeding of the Petitioner.

For Petitioner : Mr.Pradeep Joy

For Respondents : Mr.Manoj Menon,
for M/s.Menon,
for 1st respondent

Mr.C.Mohan,
for M/s.King and Patridge,
for intervenor,
State Bank of India

Second respondent served
None has entered appearance.

ORDER

(Made by the Hon'ble Chief Justice)

W.M.P.No.4059 of 2020 is filed by the State Bank of India to intervene in this writ petition. This petition is allowed and the intervenor has been heard.

2. The writ petition is by a Resolution Professional and it is submitted that by an order of February 28, 2020, a final resolution plan has been approved by the Supreme Court.

3. According to the petitioner, the impugned order could never have been passed by the Debts Recovery Tribunal since a moratorium was in place. At any rate, the first respondent, the relevant secured creditor, accepts that in view of the resolution plan being finalised, the order impugned passed by the DRT cannot be implemented or enforced.

4. However, the first respondent secured creditor says that it has applied before the National Company Law Tribunal to be regarded as a secured financial creditor of the company rather than an unsecured creditor.

5. It is evident that the order impugned dated November 19, 2019 passed by the Debts Recovery Tribunal II at Chennai cannot be enforced in view of the acceptance of the resolution plan finally by the Supreme Court on February 28, 2020. Indeed, State Bank of India, the lead bank, states that it has closed the accounts and books pertaining to the transactions after receipt of payment by March 31, 2020. The Resolution Professional also informs the Court that the implementation of the resolution plan has been completed.

6. For whatever it is worth, an application has been field by the first respondent herein seeking to assert a claim in excess of Rs.104 crore. The first respondent says that if it is successful in establishing that it should be regarded as a secured creditor, it stands to get 90% of its dues rather less

than 1.22% as an unsecured creditor. Surely, since the application has been filed before the NCLT, such application has to be permitted to run its course.

7. Accordingly, W.P.No.35584 of 2019 is disposed of by recording that the order impugned dated November 19, 2019 may no longer be implemented or enforced in view of the subsequent finalisation of the resolution plan by the Supreme Court order of February 28, 2020. But, the order may be cited in furtherance of the application filed by the first respondent before the NCLT for the NCLT to dispose of the relevant application in accordance with law as expeditiously as possible.

8. It is clarified that no view is expressed on the merits of the application filed before the NCLT, including the permissibility thereof, and it will be for the NCLT to consider the application in accordance with law, without being influenced by any observation herein.

9. There will be no order as to costs. Consequently, W.M.P.No.36455 of 2019 is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kpl

To:

1.Kotak Mahindra Bank Ltd.
Rep by its Area Recovery Manager
Mr.V.V.Sriramamurthy
Mount Road Branch
II Floor No.185 Anna Salai
Chennai-600 006

2.Debts Recovery Tribunal-II at Chennai
Rep by its Registrar
4th Floor, Dewa Tower
770-A Anna Salai
Chennai-600 002

3.National company Law Tribunal,
Chennai.

4.Debts Recovery Appellate Tribunal
Chennai
Rep by its Registrar

+cc to M/s.King and Patridge, Advocate Sr.No.25214
+cc to M/s.Menon Karthik, Advocate Sr.No.24904

W.P.No.35584 of 2019

PL(CO)
baf 04/05/2021