

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

I.A. No. 431/2024 along with I.A. No. 6175/2023

in

Company Petition (IB) No. – 409/PB/2017

IN THE MAIN MATTER OF:

M/s Edelweiss Asset Reconstruction Company Limited

... APPLICANT/FINANCIAL CREDITOR

Versus

M/s Net 4 India Limited

... CORPORATE DEBTOR / RESPONDENT

AND IN THE PRESENT MATTER OF:

Mr. VIKRAM BAJAJ,

(MONITORING AGENCY OF M/s NET 4 INDIA LIMITED)

308, 3rd Floor, Pearls Business Park, Netaji Subhash Place, Pitampura, Delhi - 110034

... APPLICANT

VERSUS

1. M/S OPEN PLATFORMS PRIVATE LIMITED

Allied House Building B-10 Market, Vasant Kunj, Nelson Mandela Marg, New Delhi

... RESPONDENT NO. 1

I.A. No. 431/2024 along with I.A. No. 6175/2023

Page 1 of 13

in

Company Petition (IB) No. – 409/PB/2017

2. MR. SUDHANSHU RAWAT

Allied House Building B-10 Market, Vasant Kunj, Nelson Mandela Marg, New Delhi

Email: sudhanshu@openplatforms.in

... RESPONDENT NO. 2

3. MR. DALIP KUMAR KEWALRAMANI

Allied House Building B-10 Market, Vasant Kunj, Nelson Mandela Marg, New Delhi

... RESPONDENT NO. 3

4. M/s NET 4 INDIA LIMITED

Through its Monitoring Agency Mr. Vikram Bajaj

Plot No. 139-A-1, S/F Mohammadpur, New Delhi- 110061

... RESPONDENT NO. 4

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Petitioner/Financial Creditor: Adv. R.P Agrawal & Adv. Reema Mishra.

For the Monitoring Agency: Ms. Arveena Sharma and Mr. Karan Vir Khosla, Advocates.

For the SRA: Mr. Sumit K. Batra, Mr. Manish Khurana & Ms. Priyanka Jindal, Advocates

For the Respondent/Corporate Debtor:

ORDER

PER – MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

DATE: 20.09.2024

Page 2 of 13

I.A. No. 431/2024 along with I.A. No. 6175/2023

in

Company Petition (IB) No. – 409/PB/2017

1. That I.A No. 431/2024 has been filed by Mr. Vikram Bajaj, the erstwhile Resolution Professional and the monitoring agency of M/s Net 4 India Limited (Corporate Debtor). The Applicant has filed the present Application under Section 33(3) of the Insolvency and Bankruptcy Code, 2016 read with Section 60(5) of the Code and Rule 11 of the National Company Law Tribunal Rules, 2016 seeking initiation of the liquidation of the Corporate Debtor and appointment of a Liquidator for the Corporate Debtor.

2. The applicant in **I.A No. 431/2024** has made the following brief submissions in the present application: -
 - (i) That vide order dated 8 March 2019, this Adjudicating Authority admitted an application under Section 7 of the Code filed by Edelweiss Asset Reconstruction Company Limited (Financial Creditor) and initiated corporate insolvency resolution process (CIRP) in respect of the Corporate Debtor.

 - (ii) That M/s Open Platforms and co-applicants Mr. Sudhanshu Rawat and Mr. Dalip Kumar Kewalramani (collectively referred to as the successful resolution applicant) had submitted a Resolution Plan which was approved by the CoC at its 6th CoC Meeting held on 17.09.2019 with a voting share of 77.867% in favour. Accordingly, the SRA had unconditionally accepted the Letter of Intent and on 10.10.2019 had submitted a cheque of Rs. 50 Lakhs as performance security.

 - (iii) Meanwhile, the SRA filed an application bearing IA No. 2193 of 2021 seeking withdrawal of the Resolution Plan ("Withdrawal Application"), inter alia on the ground of termination of accreditation/contracts of the Corporate Debtor by NIXI and ICANN. In the Withdrawal Application the Successful RA had pleaded that termination of such accreditation/ contracts has irreparably damaged and destroyed the business of the Corporate Debtor, making the Resolution Plan unviable and unprofitable.

 - (iv) Eventually, SRA on 28.02.2023 sought liberty to withdraw the Withdrawal Application, which was allowed by this Adjudicating Authority on 12.04.2023.

- (v) Subsequently, the aforesaid Resolution Plan was approved by this Adjudicating Authority on 18.08.2023.
- (vi) As per financial proposal provided under the Resolution Plan, the SRA proposed that pursuant to approval of the Resolution Plan, the SRA shall inter alia infuse an upfront amount of INR 5 Crores as a mix of debt and equity in the Corporate Debtor within 90 days of the Plan Approval Order (i.e. by 16 November 2023) for the purpose of making payments to the stakeholders.
- (vii) On 02.09.2023, the Applicant requested the SRA to take note of steps required for implementation of resolution plan and initiate infusion of funds of INR 5 Crore for the purpose of implementing the Resolution Plan and also provide draft shareholder agreement, in relation to the proposed settlement of the secured financial creditors by issuance of equity shares.
- (viii) On 04.09.2023, a meeting was held between the Applicant and the SRA wherein the implementation of the Resolution Plan was discussed at length and it is contended that the SRA assured payment of upfront funds of INR 5 Crore to be infused in the Corporate Debtor at the earliest for distribution amongst the stakeholders in order of priority provided in the Resolution Plan. The SRA had also requested for arranging a meeting with NIXI/ICANN (the Registrars with whom Corporate Debtor had contracts) in pursuance of which the applicant herein had arranged a visit of SRA to Noida Office of the Corporate Debtor and also organized meeting with NIXI on 11 September 2023.
- (ix) Further, on 14.09.2023, a meeting was held to deliberate on progress in implementation of resolution plan, which was also joined by representative of EARCL (CoC member and member of Asset Sale Committee under the approved resolution plan).
- (x) However, by email dated 10.10.2023, the SRA for the first time raised concerns regarding changes in the state of the Corporate Debtor, such as cancellation of

ICANN accreditation, Nixi customers migration etc thereby highlighting that the Corporate Debtor has no revenue left and that the quantum of funds required to revive the Corporate Debtor have increased. On this ground, the SRA requested additional time from the applicant herein, to raise the required funds and to be in a position to take over the Corporate Debtor.

- (xi) SRA further raised its concerns regarding the increase in the CIRP costs and mentioned that the increased CIRP costs have jeopardised the Resolution Plan and it is not at all possible for the Successful RA to incorporate the additional CIRP costs as part of the implementation of the Resolution Plan.
- (xii) The Applicant informed the SRA that both the Resolution Plan as well as the Plan Approval Order mandates payment of the CIRP Costs in full, and the source of payment of CIRP Costs is also clearly identified under the Resolution Plan, thus, there is no additional burden which is now being casted on the Successful RA.
- (xiii) The applicant herein further informed the SRA that the approved Resolution Plan is binding on all stakeholders including the SRA. Further, in case the Resolution Plan is not implemented, and the infusion of funds is not done by 16.11.2023, the lenders will be constrained to forfeit the Performance Security and take necessary steps for liquidation of the Corporate Debtor.
- (xiv) On 16.11.2023, the SRA informed the Applicant and the Lenders that the Successful RA is still in process of raising required funds and that the discussion of the Successful RA with their investors is at an advanced stage and will be closed within the next 30-35 days and it will only be able to provide a clear update for implementation of the Resolution Plan by the beginning of December 2023. SRA further informed the lenders that it will be filing an application before this Adjudicating Authority requesting an extension of time for the implementation of the Resolution Plan along with clarification/directions from the AA regarding the CIRP costs.
- (xv) Consequently, on 17.11.2023, the Applicant vide email informed the erstwhile CoC

members/ Lenders that in view of the non-implementation of the Resolution Plan by the SRA, the Performance Security stands forfeited.

- (xvi) Despite almost approximately 120 days from Plan Approval Order, the SRA failed to implement the Resolution Plan, including payment of the CIRP costs.
- (xvii) On 22.11.2023, the lenders and the Monitoring Agency deliberated on the further course of action in view of the non-implementation of the Resolution Plan by the SRA and its request for extension to implement the Resolution Plan. It was noted that despite several follow-ups with the SRA, no funds have been infused and neither have any steps been taken by the SRA towards the implementation of the Resolution Plan during the implementation period of 90 days. Therefore, it was decided that the Monitoring Agency may file an application for liquidation of the Corporate Debtor in view of the non-implementation of the Resolution Plan.
- (xviii) The Applicant vide email dated 29 November 2023 apprised all ex-COC members of the aforesaid deliberations at the meeting held on 22.11.2023, and submitted that the Applicant shall proceed to file an application for liquidation of the Corporate Debtor.
- (xix) By email dated 05.12.2023, EARCL (being the lead CoC member holding 58.45 % voting share) had proposed the name of Stress Credit Resolutions Private Limited (Insolvency Professional Entity) ("IP Entity") as liquidator of the Corporate Debtor with Mr. Shashi Bhushan Prasad (Insolvency Professional) as designated Board Member of IP Entity for the liquidation proceedings of the Corporate Debtor.
- (xx) Accordingly, it is prayed that the present application for initiation of Liquidation Process of the Corporate Debtor may be allowed, in light of the fact that the SRA has failed to implement the approved Resolution Plan.

3. The SRA has filed an application bearing **I.A No. 6175/2023** wherein it has sought clarification regarding CIRP costs and has sought further time for implementation of the Resolution Plan. The brief facts contained in the said application are as follows: -

- (i) The main contention of the applicant relates to extending the time for the implementation of the Resolution Plan and that the CIRP cost had been arbitrarily increased to Rs. 2,18,89,767.36 /- by the RP as against an amount of Rs. 50 Lakhs provided for CIRP cost in the Resolution Plan submitted by them earlier.
- (ii) However, the respondent (Mr. Vikram Bajaj) in the said application has contended that Clause VI (3) of the approved Resolution Plan provides as follows: -

“Amount - The CIRP cost shall be paid in full towards the final payment of the insolvency resolution process costs payable in terms of Section 30 (2) (a) of the Code.”

- (iii) The respondent therein has contended that due to significant time elapsed between the approval of Resolution Plan by CoC vis-à-vis final approval of the Resolution Plan approved by this Adjudicating Authority, the CIRP costs have increased, the breakup of which is as follows: -

CIRP Cost	CIRP Cost Outstanding as on 18.08.2023 (Date on which Resolution Plan was Approved by this Adjudicating Authority)
RP fees with GST (Not paid 08.08.2020 to 18.08.2023)	Rs. 1,60,87,016.33
Security (Not paid from September 2020 to 18.08.2023)	Rs. 10,30,771.29
Legal	Rs. 28,50,331.00
Interest on interim finance	Rs. 13,63,081.44
IBBI – Fee under Regulation 31A (1)	Rs. 5,24,933.59
IBBI – Fee under Regulation 31A (2)	Rs. 33,633.91
TOTAL	Rs. 2,18,89,767/-

(iv) Moreover, the respondent therein has alleged that the SRA is attempting to wriggle out of its obligations under the Resolution Plan, as it has no adequate provision for funds as apparent from SRA's email dated 16.11.2023, excerpt attached below: -

"Our discussions with our investors is at an advanced stage and we anticipate closure on the same in next 30-35 days. We will be able to give you a very clear update by beginning of next month when we expect to be in absolute final stages of raising the funds."

ANALYSIS AND FINDINGS

4. Both the Interlocutory applications i.e. I.A No. 431/2024 and I.A No. 6175/2023 were heard together. Submissions on behalf of the RP and SRA were heard on both the Interlocutory applications. We have also perused documents placed on record by both the parties to substantiate their respective claims, and now proceed to adjudicate both the interlocutory application(s) on merits.
5. It is settled law that a Resolution Plan which is approved by this Adjudicating Authority is binding on all stakeholders including the SRA. Accordingly, the CIRP costs have to be in accordance with the Resolution Plan approved by this Adjudicating Authority vide its order dated 18.08.2023.
6. It is observed that as per financial proposal provided under the Resolution Plan, the SRA inter alia, had an obligation to infuse an upfront amount of INR 5 Crores as a mix of debt and equity in the Corporate Debtor within 90 days of the Plan Approval Order (i.e. by 16 November 2023) for the purpose of making payments to the stakeholders.
7. It is an admitted and undisputed fact that the SRA is still asking for further time for implementation of the approved Resolution Plan, which clearly indicates that the SRA has not yet implemented the approved Resolution Plan till date. In other words, there

has been a failure on the part of SRA in implementation of the approved Resolution Plan.

8. That despite repeated follow-ups by the Monitoring Agency, the SRA has not performed his obligations as per the approved resolution plan. In a meeting conducted on 22.11.2023, the Monitoring Agency and lenders had deliberated upon further course of action and seemed to have lost confidence in the implementation capabilities of the SRA and consequently, in their commercial wisdom had decided to proceed with liquidation of the Corporate Debtor as the last resort. Proceedings of the said meeting had been further intimated to all the ex-members of erstwhile CoC.
9. The Hon'ble NCLAT in the matter of "Yavar Dhala vs. JM Financial Asset Reconstruction Company Ltd and Ors, CA (AT) (INS) No. 13 of 2019", briefly held as follows (relevant extract): -

"In a situation where a Resolution Applicant succeeds as Corporate Debtor but fails to comply its assurance in terms of the resolution plan, what step is to be taken has already been listed down in Sub-section (3) of Section 33 of the I&B Code,In view of the specific provision made under the I&B Code, we are of the view that the Adjudicating Authority had no option but to pass order of liquidation and could not have resorted to revival of the Corporate Debtor by taking fresh resolution plans."

10. It is further observed that more than an year has already elapsed till date since the date of approval of the Resolution Plan by this Adjudicating Authority i.e. 18.08.2023. No payment has been made by the SRA towards its obligations in the approved Resolution Plan till date. In such circumstances, request for further time for implementation (especially when no adequate provision for funds has been demonstrated by the SRA) appears to be unjustified and wholly to the detriment of the concerned stakeholders.

11. Accordingly, we are not inclined to grant indulgence to the prayers of the SRA in I.A No. 6175/2023, which in our considered view, stands liable to be **dismissed**.

12. Moving forward, the I.A No. 431/2024 seeking Liquidation of the Corporate Debtor has been filed under section 33(3) of the Insolvency and Bankruptcy Code, 2016. The relevant extract of the section is reproduced as under: -

Section 33: Initiation of liquidation.

“33. (3) Where the resolution plan approved by the Adjudicating Authority [under section 31 or under sub-section (1) of section 54L,] [Inserted by Act No. 26 of 2021.] is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).”

13. As stated above, the SRA has not implemented the Resolution Plan and thus has contravened provisions of the approved Resolution Plan. Accordingly, there being no other impediment, this Adjudicating Authority deems it fit to proceed with initiation of Liquidation Process in respect of the Corporate Debtor namely M/s Net 4 India Limited, with following directions: -

- (i) A fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence; by virtue of which no suit or other legal proceeding shall be instituted by or against the corporate debtor. However, any suit or other legal proceeding may be instituted by the Liquidator, with the prior approval of this adjudicating authority.

- (ii) The Performance Security worth Rs. 50 Lakhs which had been provided by the SRA via cheque, and consequently forfeited by the applicant who informed the CoC vide email dated 17.11.2023, shall form part of the Liquidation Estate.
- (iii) It is observed that EARCL (being the lead CoC member holding 58.45 % voting share) in a meeting with Monitoring Agency held on 22.11.2023, had proposed the name of M/s Stress Credit Resolutions Private Limited (Insolvency Professional Entity) ("IP Entity") as liquidator of the Corporate Debtor with Mr. Shashi Bhushan Prasad (Insolvency Professional) as designated Board Member of IP Entity for the liquidation proceedings of the Corporate Debtor.
- (iv) However, this Adjudicating Authority deems it appropriate to proceed with appointing a Liquidator from amongst the panel of Insolvency Professionals maintained with it. Accordingly, Mr. Niraj Kumar [IBBI/IPA-001/IP-P-02368/2021-2022/13586] is appointed as Liquidator in the present case. As per records reflecting on the IBBI website, the aforesaid liquidator has valid Authorisation for Assignment upto 30.06.2025.
- (v) The Registry is directed to communicate this order to the aforesaid liquidator intimating his appointment in the present matter on either of the following communication details: -

Mobile Number: 9818727408

Email id: njhaandco@gmail.com

- (vi) The aforesaid liquidator, is directed to file his consent declaration indicating his willingness to accept the present assignment within a period of 7 days from receipt of the aforesaid intimation regarding his appointment in the matter.

- (vii) The applicant in I.A No. 431/2024 namely Mr. Vikram Bajaj is hereby discharged from his role as Monitoring Agency and is further directed to handover all the records and documents pertaining to the present case forthwith to the aforesaid appointed liquidator namely Mr. Niraj Kumar, in order to enable the liquidator to carry out his duties efficiently as per law.
- (viii) Registry is further directed to communicate this order to the Registrar of Companies, NCT of Delhi & Haryana and also to the Insolvency and Bankruptcy Board of India.
- (ix) The Liquidator shall constitute the Stakeholders Consultation Committee (SCC) in terms of relevant regulations of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. Further, a copy of this order shall be forwarded by the Liquidator to the corporate debtor and all the members of the erstwhile CoC for their information.
- (x) The Liquidator so appointed is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.
- (xi) The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.
- (xii) The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.

- (xiii) The Liquidator shall submit Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- (xiv) In terms of Regulation 4(1) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 [amended upto 12-02-2024]; the Liquidator shall be entitled to such fee which shall be payable to the liquidator and would be in accordance with regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (xv) Accordingly, I.A No. 6175/2023 filed by the SRA seeking further time for implementation of resolution plan stands **dismissed**.
- (xvi) I.A No. 431/2024 filed by Mr. Vikram Bajaj (Monitoring Agency and erstwhile Resolution Professional for the Corporate Debtor) seeking initiation of Liquidation Process in respect of the Corporate Debtor stands **allowed**.
- (xvii) Let the copy of the common order be served to the respective parties.

Without costs.

-SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

-SD/-

(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)