

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

**I.A. No. 356 of 2021
&
I.A. No. 379 of 2021
&
IVN 4 of 2021
&
I.A No. 99 of 2022
&
I.A. No. 193 of 2022
In
CP (IB) NO. 1634/KB/2018**

In the matter of:

Applications under section 33(1) and section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with rule 11 of the National Company Law Tribunal Rules, 2016

And

In the matter of:

CP (IB) NO. 1634/KB/2018

Alliance Broadband Services Private Limited, having its registered Office at 53A, Dr. Lal Mohan Bhattacharyya Road 2nd Floor Kolkata, 700014.

....Financial Creditor

-Versus-

Manthan Broadband Services Private Limited, having its Registered Office at 6 G C Avenue 3rd Floor Kolkata, 700013.

.... Corporate Debtor

And

In the matter of:

I.A. No. 356 of 2021

Alliance Broadband Services Private Limited

...Financial Creditor

Manthan Broadband Services Private Limited

.... Corporate Debtor

Mr. Kuldeep Verma, Resolution Professional of Manthan Broadband Services Private Limited

.... Applicant

And

In the matter of:

I.A. No. 379 of 2021

Hathway Cable and Datacom Limited, having its registered Office at “Rahejas”, 4th Floor, Corner of Main Avenue & V.P. Road, Santacruz (W), Mumbai-400 054 and corporate office at 805/806, “Windsor”, Off C.S.T. Road, Kalina, Santacruz (E), Mumbai-400098

.... Applicant

-Versus-

1. Mr. Kuldeep Verma, Resolution Professional of Manthan Broadband Services Private Limited
2. Committee of Creditors of Manthan Broadband Services Private Limited, Through CISCO SYSTEMS CAPITAL (INDIA) Pvt. Ltd.

.... Respondents

In the matter of:

IVN. No. 4 of 2021

Alliance Broadband Services Private Limited

....Financial Creditor

Manthan Broadband Services Private Limited

.... Corporate Debtor

Alliance Broadband Services Private Limited

.... Intervenor/Financial Creditor

Hathway Cable and Datacom Limited

.... Applicant

Kuldeep Verma, Resolution Professional of Manthan Broadband Services Private Limited

.... Respondent

In the matter of:

I.A. No. 99 of 2022

Alliance Broadband Services Private Limited

.... Financial Creditor

Manthan Broadband Services Private Limited

.... Corporate Debtor

Sony Pictures Networks India Private Limited

.... Applicant

Hathway Cable and Datacom Limited

.... Respondent

In the matter of:

I.A. No. 193 of 2022

Indian Cable Net Company Ltd..

...Applicant

-Versus-

Manthan Broadband Services Pvt. Ltd.,

.... Corporate Debtor

AND

Alliance Broadband Services Pvt. Ltd.,

...Financial Creditor

-Versus-

Manthan Broadband Services Pvt. Ltd.

.... Corporate Debtor

Date of hearing: 22/02/2022

Date of hearing of IA 193/KB/2022 :21/03/2022

Order Pronounced on : 06/04/2022

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

For Alliance Broadband Services Pvt. Ltd.]	Mr. Ratnanko Banerji, Sr. Adv. Ms. Swapna Choubey, Adv. Mr. Kanishk Kejriwal, Adv. Ms. Ashika Daga, Adv. Ms. Deepti Priya, Adv. Mr. Debendra Raut, PCS
For Applicant in IA/379/2021]	Mr. Jishnu Saha, Sr. Adv. Mr. Bishwajit Dubey, Adv. Mr. Souvik Mazumdar, Adv. Mr. Sourojit Dasgupta, Adv. Mr. Madhav Kanoria, Adv. Ms. Surabhi Khattar, Adv.
For RP in IA/847/2021 & IA/850/2021 For RP in IA/380/2021 & IA/386/2021]	Mr. Vivek Sibal, Sr. Adv. Ms. Manju Bhuteria, Adv. Mr. Rahul Auddy, Adv. on record Mr. Kuldeep Verma, RP in person
For CoC in IA/379/2021 (Cisco System Capital)]	Mr. Rachit Bigghe, Adv.
For Sony Pictures Network India Ltd.]	Mr. Jatinder Singh Dhatt, Adv.
For Applicant in IA/757/2021]	Ms. Payal Kakra, Adv. Mr. Akash Tyagi, Adv.
For Applicant in IA/847/2021 & For R-2 to R-7]	Mr. Rishav Banerjee, Adv. Mr. Sharath Sampath, Adv. Mr. Pratyaksh Sharma, Adv.
For Income Tax For Applicant in IA/193/2022]]	Mr. Debapriya Gupta, Adv. Mr. Joy Saha, Sr. Adv. Mr. Nitin Daga, Adv.

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. The court convened by video conference today.
2. **CP (IB) NO. 1634/KB/201** was a company petition filed by Alliance Broadband Services Pvt. Ltd. under section 7 of Insolvency and Bankruptcy Code, 2016 against

Manthan Broadband Services Pvt. Ltd. for initiation of Corporate insolvency Resolution Process (CIRP).

3. Alliance Broadband Services Pvt. Ltd, being the petitioner Financial Creditor provided the Corporate Debtor with a loan for ₹10.20 Crore. On default of the same, Corporate Insolvency Resolution Process (hereinafter known as CIRP) against the Corporate Debtor was initiated *vide* this Adjudicating Authority's order dated 18.09.2019 in C.P. No.1634/KB/2018. Mr. Shashi Agarwal was appointed the Interim Resolution Professional and on his resignation the applicant became the Resolution Professional.
4. Thereafter the Hon'ble National Company Law Appellate Tribunal, *vide* order dated 26.09.2019, directed the Interim Resolution Professional to not constitute Committee of Creditors (hereinafter known as CoC) if, not already constituted. The said embargo was lifted *vide* Hon'ble National Company Law Appellate Tribunal's order dated 22.10.2019.
5. The 180 day CIRP time period expired on 18.03.2020, after which the lockdown started. The Tribunal, *vide* order dated 1.11.2020 extended the CIRP period by 90 days with effect from 1.11.2020. In the meantime, Atria Convergence Technologies Ltd. submitted Expression of Interest (hereinafter known as EOI) and subsequently withdrew it on 21.01.2021.
6. The time period of 270 days was about to expire on 28.01.2021. In the meantime, India Cable Network Company Limited (hereinafter known as ICNCL) expressed interest but backed out of the resolution process on 24.02.2021.
7. The Tribunal *vide* order dated 9.02.2021 further excluded a period of 50 days from calculation of 270 days. The time period of 270 days was now scheduled to expire on 19.03.2021.
8. Thereafter, after the date of submission of EOI had passed, Hathway Cable & Datacom Ltd (hereinafter known as "Hathway") expressed interest in submitting a resolution plan and requested for 2 weeks to do so *vide* email dated 26.02.2021. But since their mail was received by the Resolution Professional after 30 days of expiry of the last date of submission of EOIs, the Resolution Professional did not accept the EOI.
9. In the 10th CoC meeting held on 1.03.2021, the CoC discussed liquidation of Corporate Debtor and in 11th CoC, the CoC by 100% votes, approved resolution for liquidation.

- 10.** Accordingly, **IA. 356/KB/2021** has been filed by the Resolution Professional seeking the following reliefs:
- a) Liquidation of the Corporate Debtor as a going concern as per section 33 of the Insolvency and Bankruptcy Code, 2016;*
 - b) appointment of Applicant Mr. Kuldeep Verma, the Resolution Professional of Manthan Broadband Services Pvt. Ltd. as liquidator of the corporate Debtor.*
- 11.** Subsequently, **IA. 379/KB/2021** 2016 has been filed by **Hathway Cable and Datacom Limited** , under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of the National Company Law Tribunal Rules, seeking the following reliefs:
- a. An order directing the Respondents to grant two weeks' time to the applicant to submit the resolution plan;*
 - b. An order directing the Respondents to consider the resolution plan submitted by the applicant;*
 - c. An order be made by this Tribunal, dismissing the application filed by the Respondent No. 1 seeking liquidation of the Corporate Debtor and pass necessary orders in relation thereto.*
- 12.** The Applicant in **IA. 379/KB/2021** has submitted that the Respondent RP has acted in a manner contrary to the of objects IBC. Resolution Professional has rejected the EOI without presenting it to the CoC and without appreciation on merits, in spite of the fact that 21 days were remaining for the completion of 270 days period. It is well established that all attempts have to be made towards achieving a successful resolution of Corporate Debtor before liquidation is considered. The Resolution Professional has not adopted the said approach. Hence the instant application has been filed seeking 2 weeks' time to submit a resolution plan, direction upon Resolution Professional to consider the said resolution plan, and dismissal of IA 356/KB/2021.
- 13.** Furthermore, an application, **IVN. 4/KB/2021** has been filed by the intervenor, Alliance Broadband Services Pvt. Ltd, praying for the following reliefs:
- a) the Applicant Financial Creditor be permitted to intervene in interlocutory application I.A. 379/KB/2021;*
 - b) if necessary, Applicant Financial Creditor be added as a party respondent in I.A. 379/KB/2021;*

c) I.A. 379/KB/2021 be dismissed.

- 14.** The intervenor here has a claim of ₹11.93 crores secured by way of pledge of equity shares and mortgage by deposit of title deeds of landed properties of Corporate Debtor in Tajpur, West Bengal. Intervenor was excluded from CoC due to being a related party of the Corporate Debtor.
- 15.** In 10th CoC meeting, the CoC was informed that Hathway Cable and Datacom Limited, a group company of Reliance Jio had expressed interest in submitting resolution plan. Due to this, the CoC decided to defer the decision to liquidate the Corporate Debtor by 1 week. At the 11th CoC, seeing that no Resolution Plan was submitted, the CoC passed resolution to liquidate Corporate Debtor.
- 16.** The intervenor has stated that already 2 prospective resolution applicants have approached the CoC with view to submit resolution plan and subsequently withdrawn from the process. Hathway wants to derail the CIRP by attempting to enter the fray after observing the entire proceedings from the side-lines. Hathway has waited till time all other prospective resolution applicants withdrew from the resolution process. Hathway has not shown diligence in pursuing participation in the CIRP of the Corporate Debtor, which is a time- driven process. After being refused to file EOI on 26.02.2021, Hathway waited till 24.03.2021 before filing IA 379/KB/2021. Even after filing IA 379/KB/2021, Hathway took no steps for urgent hearing of the matter.
- 17.** The intervenor has substantial claim and the inordinate delay in the resolution process is delaying the realisation of its claims.
- 18.** A Supplementary affidavit has been filed by the intervenor, wherein the intervenor has attempted to establish collusion between Hathway and Suspended director of Corporate Debtor by producing email dated 24.01.2021 (Annexure D of the Supplementary Affidavit) wherein the Suspended director, Mr. Rajib Dhamija is offering his personal shareholding (controlling interest) in Alliance Broadband Services Pvt. Ltd (intervenor company) to Hathway.
- 19.** Subsequently, **I.A. 99/KB/2022** has been filed by Sony Pictures Network Pvt. Ltd praying for:
 - a. Imposing exemplary cost of ₹1 crore on Hathway for committing abuse of the court, delaying the liquidation of Corporate Debtor by 10 months, thereby*

deteriorating the assets of Corporate Debtor by filing IA. 379/KB/2021 with self-contradictory prayers.

- b. Resolution Professional to explain his delay of 10 months in filing IA 356/KB/2021 for liquidation when s.33(2) of IBC is clear on the issue.*
- c. Hearing of IA 356/KB/2021 and IA 379/KB/2021 together and disposal of both within 3 months as ordered by Hon'ble HC in WPO 1767 of 2021.*

- 20.** The Applicant in IA 99/KB/2022 claims to be a secured operational creditor of Corporate Debtor, who has contributed to CIRP Cost, and has an admitted claim of ₹29 crores). The said applicant has submitted that on publication of form G, last date of submission of EOI was set on 21.12.2020. After the expiry of said date, ICNCL filed IA. 221/KB/2021 for seeking permission to submit EOI. This Tribunal allowed the same but the company withdrew from the process. Subsequently, Hathway jumped into the scenario with desire to submit EOI and demanded 2 weeks time. The Resolution Professional rejected the attempted tactics on 26.02.2021.
- 21.** The applicant in **IA. 99/KB/2022** has submitted that since till 538 days of CIRP no resolution plan was received, CoC passed resolution to liquidate the Corporate Debtor at the 11th CoC meeting dated 11.03.2021. accordingly, IA 356/KB/2021 was filed on 17.03.2021- after 546 days of CIRP. Again after staying silent till 24.03.2021, Hathway filed IA 379/KB/2021 with contradictory prayers.
- 22.** According to the said applicant, though as per section 33(2) of IBC, the Tribunal has no discretion but to allow for liquidation in case the resolution has been passed by 66% votes or more, the tribunal ordered disposal of IA 356/KB/2021 subject to outcome of IA 379/KB/2021, *vide* order dated 14.07.2021.
- 23.** Till now, 850 days of CIRP have passed and even 10 months have passed since the application for liquidation was filed. The conduct of Respondent has been against the mandates of the Code, against wisdom of CoC and has been deteriorating the assets of the Corporate Debtor. Aggrieved by the same, the said applicant filed WPO 1767 of 2021 before the Hon'ble Calcutta High Court. The Hon'ble High Court directed that the proceedings in CP (IB) 1634/KB/2018 be completed within 3 months, and IA 356/KB/2021 and IA 379/KB/2021 be heard together on same date.

- 24.** The said applicant claims that the intent of Hathway is not genuine, otherwise it would have approached the Tribunal under Regulation 2B of Insolvency and Bankruptcy Board of India (Liquidation Process Regulations), 2016 to acquire the Corporate Debtor which was not a going concern even before the initiation of CIRP. The applicant has relied on various precedents in order to establish the unambiguous nature of section 33(2) and that the same cannot be diluted.
- 25.** Subsequently, In January, 2022, **IA 193 of 2022** has been filed by the Applicant, Indian Cable Net Company Ltd., engaged in similar business as that of Corporate Debtor seeking the following reliefs:
- a) *Time to file Expression of Interest by the Resolution Applicant/ Petitioner in connection with the instant matter be extended by two weeks from the date of the order;*
 - b) *Time to file the Resolution Plan by the Resolution Applicant/ Petitioner in connection with the above matter be extended by four weeks from the date of the order*
- 26.** It is stated by the applicant that it has substantial reputation and goodwill in the market and has the necessary expertise, knowhow and finances to revive and rehabilitate the Corporate Debtor and to bring about a Resolution with regard to the affairs of the Corporate Debtor.
- 27.** It is submitted by the applicant that it be allowed to file Resolution Plan at this stage and the delay in filing the Resolution Plan may be condoned, for the reasons mentioned in this application. It is also stated by the applicant that if permitted by the Adjudicating Authority, it will deposit a sum of Rs. 10 Crores to demonstrate the genuine, intent and motive of the Applicant.
- 28.** The relief sought by the applicant in the above application is opposed by Alliance Broadband Services Private Limited on the following grounds :-
- i. Alliance, though a Financial Creditor, could not be placed on the CoC because Corporate Debtor holds shares in Alliance. However, the same shares are pledged with Alliance for a substantial loan obtained by the Corporate Debtor. Alliance also has equitable mortgage of land owned by CD at Tajpur. Initially, though Corporate

Debtor offered to settle the matter with Alliance by making payment of the debt but this was not done.

- ii. The application by Indian Cable Net Company Limited [ICNCL] is a mala fide attempt to delay and scuttle the CIRP of the Corporate Debtor.
- iii. On an earlier occasion, ICNCL had filed IA No. 221/KB/2021 *inter alia*, seeking extension of time to file a Resolution Plan in respect of the Corporate Debtor. On February 22, 2021 considering the fact that ICNCL was prevented from filing the Expression of Interest due to the surge of the Covid-19 pandemic, this Hon'ble Tribunal condoned the delay and granted a strict timeline of 5 days i.e. until February 27, 2021 to file a Resolution Plan in respect of the Corporate Debtor.
- iv. Just 2 days after the order of this Tribunal, on February 24, 2021 ICNCL withdrew its EOI and decided not to file any Resolution Plan. This will be evident from a list of dates filed by the RP in IA(IB) 850 / KB/ 2021.
- v. After more than 1 year of liquidation resolution having been passed, ICNCL has now filed yet another application expressing its interest to put in a Resolution Plan.
- vi. Having decided to not put in a Resolution Plan on February 24, 2021 despite being allowed by this Hon'ble Tribunal to do so, ICNCL ought not to be allowed to abuse the process of law by withdrawing its Expression of Interest.
- vii. CoC has exercised its commercial wisdom to pass a resolution for liquidation. The CoC resolution of March 8, 2021 is still subsisting. The provision of Section 33(2) of the IBC, 2016 mandates that the Adjudicating Authority shall pass an order in terms of sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) of Section 33 upon application filed by the RP. The jurisdiction and decision of CoC in this regard cannot be questioned. NCLT has no power to reverse a commercial decision. **Section 33 (2) of IBC, 2016.**
- viii. The Hon'ble Supreme Court, in Ebix Singapore Judgment – 2021 SCC Online SC 707, has reiterated that CIRP timelines must be followed. If CIRP timelines are not followed, then, the liquidation value will further go down. Timelines would have to be maintained, as also directed by the Hon'ble Supreme Court.

29. The following dates and events may be necessary to determine issues raised in present applications and for taking a decision to the relief prayed for in I.A. 379/KB/2021 and I.A. 193/KB/2022:

S. No.	Date	Particulars
1.	18.09.2019	CIRP against the Corporate Debtor was initiated in Cp. 1634/KB/2018
2.	18.03.2020	180 day period scheduled to expire.
3.	24.03.2020	lockdown announced on 24.03.2020
4.	1.11.2020	extension of 90 days given w.e.f 1.11.2020 the 270 day time period now scheduled to expire on 28.01.2021
5.	10.11.2020	in IA 471/2020- order for extending the CIRP for 90 days was passed. To take effect from 1.11.2020.
6.	15.12.2020	date of EOI- Form G publication
7.	21.12.2020	Last date of receipt of EOI
8.	22.12.2020	<ul style="list-style-type: none"> • 8th Meeting- only 1 EOI submitted. Atria submitted EOI- Resolution Professional said that information memorandum will be shared with Atria on the basis of audited financials for year ended 31 March 2017. • Provisional list of PRAS initiated by Resolution Professional
9.	21.01.2021	Atria withdrew from CIRP via email.
10.	25.01.2021	<ul style="list-style-type: none"> • 9th Meeting held- ICNCL's interest in submitting Resolution Plan is discussed. Said interest was presented via email dated 25th January, 2021 (on 266th day of CIRP) • ICNCL has not submitted EOI.
11.	25.01.2021	Last date of submission of Resolution Plan

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12.	5.02.2021	IA 221/KB/2021 was filed by ICNCL for permission to submit resolution plan.
13.	9.02.2021	<i>vide</i> order in IA 142/KB/23021, exclusion of 50 days was ordered. CIRP now scheduled to expire on 19.03.2021
14.	22.02.2021	in IA 221/kb/2021, ICNCL was allowed 5 days to submit Resolution Plan. Accordingly, Resolution Professional shared information memorandum with ICNCL.
15.	24.02.2021	ICNCL withdrew interest in submission of Resolution Plan within 48 Hrs of getting the information Memorandum.
16.	26.02.2021	Hathway Cable & Datacom Ltd. wrote email to Resolution Professional submitting its EOI, requesting 2 weeks for submission of Resolution Plan. Resolution Professional informed Hathway via email, on the same day, that last date of submission of EOI had passed on 25.01.2021 and hence the EOI could not be admitted.
17.	1.03.2021	10th meeting held- Hathway's communication discussed. CISCO asked if there was any further communication from Hathway. The Resolution Professional replied that there was no further communication. The Resolution Professional informed the meeting regarding the pending IAs. Liquidation of Corporate Debtor was discussed but no resolution for liquidation was passed, due to CISCO not having internal permission.

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18.	08.03.2021	11 th meeting held. Hathway's interest was discussed again. However, it was decided that the Corporate Debtor should be liquidated. Accordingly, CoC voted on Liquidation by 100% votes
19.	17.03.2021	IA 356/kb/2021 filed by Resolution Professional for liquidation of Corporate Debtor
20.	19.03.2021	period of CIRP expired
21.	20.03.2021	Hathway again wrote to Resolution Professional for submission of Resolution Plan.
22.	22.03.2021	Resolution Professional informs Hathway that resolution for liquidation had been passed and application for liquidation has been filed before NCLT
23.	23.03.2021	IA 379/KB/2021 was filed by Hathway
24.	1.10.2021	12 th Meeting held wherein the pending IAs before NCLT were discussed
25.	19.07.2021	IVN .A 4/KB/2021 was filed by financial creditor- Alliance Broadband Pvt. Ltd. Applicant prayed for: a) Applicant be permitted to intervene in IA 379/KB/2021 b) Applicant be made a party in IA 379/KB/2021 c) IA 379/KB/2021 be dismissed
26.	22.01.2022	IA. 99/KB/2022 was filed by Sony Pictures Network Pvt. Ltd after filing WPO 1767 of 2021 before Calcutta High Court wherein it was directed by the Hon'ble High Court that the proceedings in CP. 1634/KB/2018 be completed within 3 months, and IA

		356/KB/2021 and IA 379/KB/2021 be heard together on same date.
27.	21.02.2022	I.A. 193/KB/2022 has been filed by ICNCL seeking leave to submit a resolution plan within two weeks from the date of order.

30. Ld. Senior Counsel Mr. Jishnu Saha strenuously argued that his client *i.e* Hathway has reasons to believe his request for putting up a Resolution Plan sent to the RP was not put before the CoC and this has prejudiced him and thus applicant has a right to approach this Authority and invoke the powers of this Tribunal under Section 60 (5) of Insolvency and Bankruptcy Code Read with Section 11 of NCLT Rules to seek the direction to RP place and to grant the relief as sought in the present case. However, this submission was opposed by the Resolution Applicant. In order to determine the veracity and correctness of the argument of the Ld. Senior Counsel appearing for the applicant, this Adjudicating Authority summoned the record *i.e* minutes of the CoC meetings and it have been produced before us and thus we had to opportunity to examine these minutes.

31. From the above facts emanating from record the picture that emerges is summarized as under:-

- i. Hathway Cable and Datacom Ltd. hereinafter called as Hathway, expressed interest submitting Resolution Plan and requested for two weeks *vide* email dated 21th February, 2021.
- ii. The Resolution Professional rejected the request of applicant on the basis of having received it 30 days after expiry of last date of submission of EOI that is 25.01.2021
- iii. In the 10th meeting of Committee of Creditors (hereinafter referred to as the CoC) at Internal Page 4 of the minutes under Item 4. It was observed and reproduced hereinafter;

To take note of status of IA 408/KB/2020 and IA 1424/KB/2020 and two other applications filed by Resolution Professional

a. Progress between last meeting of CoC held on 25.01.2021 onwards

<i>Date</i>	<i>Events</i>
<i>27.01.2021</i>	<i>IA 142/KB/2021 filed by RP after seeking legal opinion for 50 days exclusion from CIRP</i>
<i>28.01.2021</i>	<i>Hon'ble NCLT took on record progress report filed by RP. Next date of hearing 09.02.2021.</i>
<i>09.02.2021</i>	<i>Hon'ble NCLT allowed application in IA 142/KB/2021 allowing exclusion of 50 days of CIRP. Last date of CIRP on 19.03.2021.</i>
<i>22.02.2021</i>	<i>Application No. IA 221/KB/2021 filed by interested bidder M/s Indian Cable Net Company Ltd (ICNCL) came up for hearing before NCLT. Hon'ble NCLT, after lot of persuasion from ICNCL, allowed 5 days' time to submit Resolution Plan.</i>
<i>22.02.2021</i>	<i>After receiving undertaking from ICNCL, RP shared information Memorandum with ICNCL.</i>
<i>24.02.2021</i>	<i>ICNCL withdrew its interest for submission of Resolution Plan. RP shared the mail by ICNCL with members of CoC and directors.</i>

26.02.2021	<i>Hathway Cable and Datacom Ltd wrote a mail to RP submitting its EOI and requested for 2 weeks' time for submission of Resolution Plan for Manthan. RP informed Hathway that last date for submission of EOI is over and CIRP is going to expire on 19.03.2021. Hence RP is not in a position to accept EOI at this stage.</i>
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- iv. *It was also deliberated that Hathway is a part of Reliance Jio Group and is a big Corporate. However, without leave of Hon'ble Adjudicating Authority, the EOI cannot be accepted at this late stage.*
- v. *CISCO checked with RP, whether Hathway replied to mail of RP of 26.02.2021. RP replied that there was no communication. Also, there is no direction from Adjudicating Authority to entertain late EOI submitted by Hathway.*
- vi. *Sony Star said that they have waited for long and have even contributed / agreed to contribute costs for smooth running of CIRP of Manthan. However, even after best efforts the Resolution Plan/revival for Manthan could not happen within the timelines of IBC, 2016 including seeking extension and exclusion. Both are of the view to opt for liquidation of Manthan as it is the only option left. Sony and Star are not in a position to contribute any further costs as indicated in the last meeting of CoC.*
- vii. *CISCO also stated that even after best efforts by all, it seems chance of resolution/revival is remote although there is a new bidder in form of Reliance Jio which has submitted its EOI.*
- viii. *In view of the request from CISCO, it was decided to convene 11th meeting of CoC on 8th of February, 2021 at 3 PM which was agreed unanimously.*

32. From the minutes of the 11th meeting of CoC it is emerges and is reproduced hereafter.

- i. *At internal Page- 4 of these minutes the CoC and other creditors deliberated in details all efforts put by the creditors to arrive at a successful and viable resolution plan within the framework of IBC, 2016 in spite of absolute non-cooperation from board of directors of the Corporate Debtor. The Operation Creditors (Sony/Star) even contributed costs/agreed to contribute certain costs (legal fees and 50% of RP fees) to run the CIRP along-with sole member of CoC (CISCO). The financials for FY 2017-18, FY 2018-19 and till insolvency commencement dated 18.09.2019 were never provided by the board of directors (suspended) till date, in spite of specific directions given by Hon'ble NCLT on an application by RP. The Board of Directors (suspend) of the Corporate Debtor never showed any seriousness other than false assurances at all times. It is further evident that most of the directors have not attended meeting of CoC of the Corporate Debtor except one or two meetings. The directors did not contribute any money for CIRP of the Corporate Debtor.*
- ii. *There are no operations in the Corporate Debtor since FY 2019 and there are no regular officials/employees left in the Corporate Debtor. There were two parties namely ATCL and ICNCL which expressed its interests for submission of Resolution Plan for the Corporate Debtor. However, both bidders did not submit any Resolution Plan for the Corporate Debtor and withdrew from CIRP.*
- iii. *In absence of any Resolution Plan pending for consideration of the CoC of the Corporate Debtor and in view of the timelines provided under Section 12 of the IBC 2016, there is nothing left for the consideration of the CoC of the Corporate Debtor in spite of putting best efforts to try for a successful resolution of the Corporate Debtor within the framework of IBC, 2016.*
- iv. *Mr. Gurmeet Singh, Director mentioned that liquidation should be avoided as there is an EOI from Reliance Jio (Hathway Cable and Datacom Limited) which was mentioned by the RP in the last meeting. Mr. Singh insisted that liquidation will not be beneficial for any creditor of the Corporate Debtor. He thanked the RP and the creditors for all the support during the CIRP process. He requested to wait for 48 hours more, before the liquidation resolution is put for vote, to see whether Hon'ble Adjudicating Authority permits Reliance Jio to submit a Resolution Plan*

for the Corporate Debtor. He further mentioned that he tried to provide all help however there are constraints for him also. He further submitted that the business operations of the Corporate Debtor have been shut since 2019, the Head Office has been under lock and key by the landlord since October, 2019 and without electricity and water and absolutely non habitable till date, the access to the office where all the records of the Corporate Debtor are kept has been made available only since 23rd November, 2020. Full cooperation was provided for valuation exercise to RP by providing list of assets of the Corporate Debtor and also site visits. Necessary efforts for financials for FY 2017-18 and FY 2018-19 are being put. The erstwhile Directors of the Corporate Debtor are also incurring costs for towards counsels consultation and drafting of the petition to challenge the Illegal rights Issue by Alliance Broadband Services Pvt. Ltd. so as to appeal against the same and seek Direction from the Hon'ble NCLT for revoking of the Illegal Rights Issue which if granted will restore the Corporate Debtor to be the majority shareholder. The liquidation process is going to be long and painful and non-beneficial for all the creditors and it will kill any opportunity for revival of the Corporate Debtor. The 10.09 acres of the 13.5 acres Tajpur land is a converted land wherein the valuer has been informed that he should approach the local BLRO office to ascertain the same and arrive at the correct and proper valuation, considering the same as commercial land. The erstwhile Director of the Corporate Debtor had suggested that the CoC holds back its vote to understand and realize the full gamut of the Liquidation process and take an informed decision.

a. Resolution for liquidation of the Corporate Debtor

After deliberation and discussion above, the following agenda was put up for voting.

“RESOLVED THAT *the Corporate Debtor, Manthan Broadband Services Private Limited, be liquidated as per provisions contained in Chapter III of the Insolvency and Bankruptcy Code, 2016 and applicable Regulation thereon and that Hon'ble Adjudicating Authority be informed of the decision of the Committee of Creditors of the Corporate Debtor.*

In the National Company Law Tribunal,
Kolkata Bench

Alliance Broadband Services Pvt. Ltd. vs. Manthan Broadband Services Pvt. Ltd.

IA 356/KB/2021, IA 379/KB/2021, IA 99/KB/2022, IA 193/KB/2022 & IVN 4/KB/2021

IN

CP (IB) No. 1634/KB/2018

“FURTHER RESOLVED THAT the Resolution Professional Mr. Kuldeep Verma is hereby directed to intimate, by way of application under Section 33(2) of the IBC 2016, the decision of the Committee of Creditor of Corporate Debtor to recommend liquidation of the Corporate Debtor to Hon’ble Adjudicating Authority.”

The result of the decision made by CoC members through voice voting is as follows:

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In the National Company Law Tribunal,
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Result: The CoC with majority of 100% decided recommending liquidation of the Corporate Debtor M/s Manthan Broadband Services Private Limited.

b. Fixation of fees for Liquidator

The CoC and other creditors present recommended that the present RP as proposed liquidator of the Corporate Debtor. RP mentioned that the power to appoint liquidator vests with Hon'ble Adjudicating Authority.

The CoC after much deliberation on liquidator remuneration, requested the RP to share short note on the relevant amended provisions of IBC, IBBI (CIRP Regulations) 2016 and IBBI (Liquidation Process) Regulations 2016 so that the liquidator fees can be decided. RP requested to take independent legal help, if required, in understanding the legal provisions. RP further agreed to share a short note on relevant provisions to the CoC member. The CoC of the Corporate Debtor requested to put the resolution for fixation of fee through e-voting as it wanted to understand the latest provisions of law. The sole CoC member further communicated that the result would be communicated through email to RP on or before 6pm (IST) on 11.03.2021.

Hence the following resolution was put on e-voting:

“RESOLVED THAT *the CoC of Manthan Broadband Services Private Limited hereby approves that liquidator to be appointed by Hon'ble Adjudicating Authority would be entitled to a fee as prescribed under Regulation 4(2) of IBBI (Liquidation Process) Regulations, 2016.*

It is further evident from the minutes of this meeting of the CoC and the same is reproduced hereinafter.

After much discussions and deliberations, the CoC arrived at following conclusions:

- a. *There are no operations of the Company since mid of FY 2018-19 as per records. There is no running business of the Corporate Debtor. Hence the business of the Corporate Debtor cannot be sold off as a going concern within the meaning of Regulation 31(1) of the IBBI (Liquidation Process) Regulations, 2016.*
- b. *The CoC recommends to sell the Corporate Debtor under Regulation 32 C of the IBBI (Liquidation Process) Regulations, 2016.*

The following resolution was passed by CoC unanimously through voice voting

“RESOLVED THAT *in pursuant to the provisions of Regulations 39C of IBBI (CIRP) Regulations, 2016, the CoC recommends sale of Corporate Debtor as a going concern under Regulation 32(e) IBBI (Liquidation Process) Regulations, 2016 with all its assets and liabilities.”*

To approve the minutes of the previous meeting of the Committee of the Creditors

The minutes of the meeting held on 08th March, 2021 were approved and taken on record.

33. At internal Page 9 of the minutes of the 12th meeting which was referred and the same is reproduced hereinafter;

“Mr. Gurmeet Singh pointed out that liquidation will detrimental for the stakeholders. As explained by RP, the security interests of major assets of the Corporate Debtor (10.09 acres of Tazpur Land and 77500 shares in Alliance) are pending adjudication in IA 380 of 2021 and IA 386 of 2021. So, if Hathway is allowed to submit Resolution Plan and it is approved by CoC and Hon’ble Adjudicating Authority, it will be in line with the objective of IBC, 2016 which is to maximise the value of the Corporate Debtor.”

ITEM No. 5

To discuss and contribute to outstanding CIRP costs including legal costs. *RP shared that an estimate Rs. 15 lakhs in legal costs would be required for the pending legal matters as explained in Item No. 4 and requested to contribute to the credit of the banking account of the Corporate Debtor. An estimated amount*

of Rs. 5 lakhs is already spent on the legal costs post the last meeting of the CoC on 08.03.2021. The representatives of CISCO and Sony appreciated the efforts of the RP in safeguarding the assets of the Corporate Debtor expressed its reservations on any further contribution to costs even after much deliberations.

RP stated that an estimated amount of Rs. 5 lakhs towards legal cost is already due and he further estimates that further Rs. 10 lakhs cost is expected to be incurred. RP requested CISCO and Sony to contribute to the estimated legal costs of Rs. 15 lakhs so that he can defend the cases.

RP requested the creditors present to inform its decision of contribution/non/contribution towards CIRP costs by 07.10.2021 so that he can decide on next steps on to seek directions from Hon'ble Adjudicating Authority in this regard. RP also stated that till date no contribution for running CIRP/ funding of legal costs from board of directors (suspended) has been taken till date. It was also noted by members of the CoC that CIRP costs including fees of RP would accrue till the date of approval of resolution plan by Hon'ble Adjudicating Authority / passing of liquidation order by Hon'ble Adjudicating Authority.

- 34.** From the above minutes of the meetings of the CoC it is apparent that in spite of their being a request by applicant to put in a Resolution Plan and request by one director of the Corporate Debtor to consider this request to save the Corporate Debtor from liquidation, the CoC by 100% voting in its commercial wisdom took a conscious decision to go in for liquidation of the Corporate Debtor.
- 35.** In the matter of **Shashi Dhar Vs. Indian Overseas Bank and Ors [2019 SCCOnline SC 257]**, the Hon'ble Supreme Court has held that the legislature while enacting the IBC, consciously does not provide any ground to challenge the commercial wisdom of the individual Financial Creditors or the collective decision of the CoC before NCLT and the decision of the CoCs commercial wisdom has been made non-justiciable.

The Hon'ble Supreme Court re-emphasized the primacy of commercial wisdom of CoC in its ruling in **Committee of Creditors of Essar Steel India Ltd Vs. Satish Kumar Gupta and Ors**, wherein the Apex court held the following:

“there is no residual equity jurisdiction in the Adjudicating Authority or the Appellate Tribunal to interfere in the merits of a business decision taken by the requisite majority of the Committee of Creditors, provided that it is otherwise in conformity with the provisions of the Code and the Regulations, as has been laid down by this judgment.”

36. In light of the above decisions, we reject the interlocutory applications **IA 379/KB/2021 & IA 193/KB/2022**.
37. Further, in light of the dismissal of the abovementioned applications, **IA. 99/KB/2022** and **IVN. 4/KB/2021** have become infructuous and are hereby dismissed as well.
38. Keeping in view the fact that CoC by 100% voting took a decision for liquidation of the Corporate Debtor, this Adjudicating Authority orders as follows:
 - a. Prayers as sought for in I.A. (IB) No. 356/KB/2021 filed by Mr. Kuldeep Verma, RP of Manthan Broadband Services Private Limited, the Corporate Debtor, is allowed and the Corporate Debtor is ordered to be liquidated in terms of section 33(1) of the Code;
 - b. **Mr. Kuldeep Verma [Reg. No. IBBI/IPA-001/IP-P00014/2016-2017/10038]**, is hereby appointed as Liquidator, as provided under section 34(1) of the Code ,
 - c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
 - d. Public Notice shall be issued in the same newspapers in which advertisements were issued earlier, i.e., **Financial Express** (English) and **Aajkal** (Bengali) (Kolkata edition), stating that the Corporate Debtor is in liquidation.
 - e. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.

- f. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- g. On initiation of the liquidation process but subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in section 33(5) of the Code read with its proviso.
- h. In accordance with section 33(7) of the Code, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator.
- i. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, Kolkata, within whose jurisdiction the Corporate Debtor is registered. Additionally, the Registry shall also forward a copy of this Order to the Registrar of Companies, West Bengal, Kolkata.
- 39.** The application bearing **IA (IB) No. 356/KB/2021** shall stand disposed of in accordance with the above directions.
- 40.** The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 41.** Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
- 42.** List the main **CP (IB) NO. 1634/KB/2018** for reporting progress on **25/05/2022**.

Harish Chander Suri
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on the 6th day of April, 2022