**NATIONAL COMPANY LAW TRIBUNAL**
**CHANDIGARH BENCH, CHANDIGARH**
**(Exercising the powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No.265/Chd/Hry/2019**

**Under Section 10 of the Insolvency and Bankruptcy Code, 2016.**

**In the matter of:**

**Modi Telecommunications Limited,**
having its registered office at 14th Floor,
Signature Tower-A, South City-1, NH-8,
Gurugram-122001. …. Petitioner-Corporate Debtor

**Judgement delivered on: 24.01.2020**

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)**
**Hon'ble Mr. Pradeep R. Sethi, Member (Technical)**

| | | |
|---|---|---|
| For Petitioner/ Corporate Debtor | : | Mr. V.K. Mahajan, Advocate |
| For Financial/Operational Creditors | : | Mr. Vishav Bharti Gupta, Advocate |
| For Operational Creditor – Department Of Telecommunications | : | Mr. Piyush Khanna, Advocate |

**Per: Ajay Kumar Vatsavayi, Member(Judicial)**

## JUDGEMENT

This petition has been filed by **Modi Telecommunications Limited,** the Corporate Debtor itself in Form No.6 as prescribed under sub rule (1) of Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, the 'Rules') for initiating Corporate Insolvency Resolution Process under Section 10 of Insolvency & Bankruptcy Code, 2016 (for short to be referred hereinafter as the 'Code'). The Corporate Debtor also falls within the definition of the term 'Corporate Applicant' as defined in sub-section (5) of Section 5 of the Code.

2. The Corporate Debtor's CIN is U64202HR1992PLC034756. It is stated that petitioner company has shifted its registered office from the State of Delhi to Haryana and a fresh certificate of incorporation was issued by the Registrar of Companies, Delhi & Haryana on 30.03.1992. Its registered office is at Gurugram in the State of Haryana and therefore, the mater falls within the territorial jurisdiction of this Tribunal. The certificate of incorporation of the corporate debtor is at page 37 of the petition.

3. The authorized share capital of the corporate debtor is ₹34,00,00,000/- and paid up share capital is ₹34,00,00,000/-.

4. The petition has been filed by the corporate-debtor through Ms. Asha Modi, Director, who has been authorized to file this petition under Section 10 of the 'Code' vide Board resolution dated 27.03.2019 (Annexure A-1 of the petition). The petition has been filed in pursuance of the special resolution passed in the Extraordinary General Meeting of members of corporate debtor held on 23.04.2019 (Annexure A-2). The contents of the application are supported by the affidavit of Ms. Asha Modi, Director, which is at Page No. 20-22 of the paper book.

5. As per Memorandum of Association of the corporate applicant at Annexure A-7 (colly) (page-38 of the paper book), the main objects of the corporate applicant are:

> *"To carry on all the business of telephone, telegraph, cable and wireless communications company and to establish, work, manage, sell, hire out and maintain telephone exchanges, cable communications, mobile telephones, circular telephones, wireless communications, radio receiving and*

*transmitting stations, electronic mail, tele newspaper, videotext, speech facsimile, telephone conferencing, video conferencing, video telephone, mobile text, mobile video telephone, mobile facsimile, mobile data mobile videotext, radio paging and any other systems for communications whether consisting of sounds, visual images, electrical impulses or otherwise". etc.*

6. It is stated that a notification was issued by the Department of Telecommunications proposing a package for migration of existing licenses of radio paging service (cities and circles) to New Telecom Policy (NTP-1999) and the petitioner-company did not opt for migration of existing licenses of radio paging service (cities & circles) to new Telecom Policy (NTP-1999) It is further submitted that on 05.10.2000, the petitioner company allotted 6,85,000 nos. of 0% unsecured debentures of ₹ 100/- each fully convertible into equity shares of ₹ 10/- each of the company. Further vide agreement dated 05.05.2017, the corporate debtor company agreed with the debenture holders to redeem 1,31,000 number of 0% unsecured debentures of ₹ 100/- each aggregating to ₹ 1,31,00,000. Debenture Holder - YKM Holdings Private Limited requested the corporate debtor vide letter dated 11.10.2018 (Annexure A-9) to convert 5,54,000 number debentures of ₹ 100 each aggregating to ₹ 5,54,00,000 0% fully unsecured debentures of ₹ 100 each aggregating to ₹ 5,54,00,000 (Rupees five crores fifty four lakhs only) into 53 Nos. equity shares of ₹ 10 each debenture on the completion of 216 months. Copy of Agreement with Debenture Holder and letter addressed to the corporate debtor for redemption of Debentures by the Debenture Holder is at Annexures A-8 & A-9 of the petition.

7. It is submitted that the petitioner company does not have any revenue from operations to meet its obligations towards its creditors.

8. The list of financial creditors and operational creditors is attached at Annexure A-4 and A-5, respectively, which is reproduced below:-

**LONG TERM BORROWINGS (Financial Creditors)**

| S. No. | Name & address | Total debt raised | Date when debt incurred | Amount of default |
|---|---|---|---|---|
| 1. | YKM Holdings Pvt. Ltd. 14th Floor, Signature Tower-A, South City-1, NH-8, Gurugram-122001 | 6,85,00,000 | 05.10.2020 | 5,54,00,000 |
| 2. | Mr. Yogendra Kumar Modi, 33, Shivji Marg, Rangpuri, New Delhi-110037 | 76,000 | 04.08.2017 | 76,000 |

**TRADE PAYABLES (Operational Creditors)**

| S. No. | Name & address | Total debt raised | Date when debt incurred | Amount of default |
|---|---|---|---|---|
| 1. | Department of Tele-communications, Sanchar Bhawan, New Delhi-110001 | 30,40,64,098 | 31.03.2014 | 30,40,64,098 |
| 2. | YKM Holdings Pvt. Ltd. 14th Floor, Signature Tower-A, South City-1, NH-8, Gurugram-122001 | 75,30,083 | 01.04.2008 | 75,30,083 |
| 3. | Audit Fees, Sales Tax and ESI payables | 69,806 | 01.04.2008 | 69,806 |

9. The corporate debtor raised long term borrowing (Annexure A-4) to the tune of ₹ 5,54,76,000/- from two borrowers. Further, trade payables are stated to be ₹ 31,16,63,987 as per Annexure A-5 (Page 30 of the paper book).

10. Notice of this petition was issued to all the financial creditors as well as the operational creditors annexed at Annexure A-4 & A-5 of the petition. On 07.08.2019, the petitioner has filed affidavit of service vide Diary No. 5158 dated 27.09.2019 which shows delivery of notices on all the financial as well as operational creditors.

11. On the last date of hearing, the learned counsel representing YKM Holdings Pvt. Ltd. (one of the Financial Creditor & also one of the operational creditor) and Yogendra Kumar Modi (Financial Creditor) submitted that the financial creditors and the said operational creditor have no objection for the admission of the petition.

12. Mr. Piyush Khanna appeared for the Department of Telecommunication, who is one of the operational creditor, on 19.11.2019 and sought more time to file reply. The same was granted with the stipulation that in case the reply is not filed, their right to file the same shall stand forfeited. No reply has been filed by the learned counsel representing the Department of Telecommunication despite granting sufficient opportunity on several occasions.

13. We have heard the learned counsel for the corporate debtor/applicant and learned counsel for the financial/operational creditors and gone through the records.

14. Sub-section (4) of Section 10 of the Code says that the Adjudicating Authority by an order:-

> *"(a) admit the application if it is complete (and no disciplinary proceeding is pending against the proposed resolution professional); or*
>
> *(b) reject the application, if it is incomplete (or any disciplinary proceeding is pending against the proposed resolution professional).*

*Provided that Adjudicating Authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within seven days from the date of receipt of such notice from the Adjudicating Authority."*

15. In order to comply with the requirement of clause (a) of Section10(3) of the Code the petitioner has placed on record all the necessary documents to prove the existence of financial/operational debt and the amount as required in column 3 of Part-III of the Application Form. The details of the operational debt in default have also been provided. The petitioner has also filed its audited financial statements for the years 2016-2017 & 2017-18 as Annexure A-10, the provisional financial statement as on 31.03.2019 at Annexure A-11 and the Statement of Affairs as on 27.04.2019 at Annexure A-12 of the petition.

16. Sub-Section (3) of Section 10 of the Code reads as under:-

*"The corporate applicant shall, along with the application, furnish-*

*(a) The information relating to its books of account and such other documents for such period as may be specified;*

*(b) The information relating to the resolution professional proposed to be appointed as an interim resolution professional; and*

*(c) The special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application."*

17. Under Clause (b) of Section 10(3) the corporate applicant is bound to propose the name of registered Resolution Professional to be appointed as Interim Resolution Professional. We have perused the written communication in Form No.2, Page No.26-28 (Annexure A-3) furnished by Mr. Atul Mittal, a registered Resolution Professional with IBBI. This Form contains all the particulars provided in the Form. He has furnished his written consent and stated that currently he is serving as Liquidator in two proceedings and authorised representative in one

proceeding. He has also certified that no disciplinary proceedings are pending against him with the IBBI or the Indian Institute of Insolvency Professionals of ICAI of which he is a member. His Registration number is IBBI/IPA-001/IP-P00439/2017-18/10762.

18. It is represented by the learned counsel for the corporate debtor that as per the financial statements, following is the status of the corporate debtor under different heads:-

| S.No. | Particulars | Amount (₹) |
|---|---|---|
| 1. | **REVENUE FROM OPERATIONS**<br><br>As on 31.03.2019<br>As on 31.03.2018<br>As on 31.03.2017<br>As on 31.03.2016 | <br><br>nil<br>nil<br>nil<br>nil |
| 2. | **NET PROFIT/ LOSS OF CORPORATE DEBTOR**<br>As on 31.03.2019<br>As on 31.03.2018<br>As on 31.03.2017<br>As on 31.03.2016 | <br>(30,13,350)<br>(40,924)<br>28,213,250<br>26,458 |

19. The figures extracted above indicate that there is no revenue from operations from the financial year 2015-16 till 2018-19. It could also be observed that the petitioner company went into a loss making concern from financial year 2017-18 to 2018-19. It is clear from the above that the corporate applicant has failed to pay its debt and has thus committed default. It is thus competent to set in motion the insolvency resolution process under the Code to ensure maximum value of assets which is in the interest of all the stakeholders. It could also be seen that the learned counsel representing financial creditors/operational creditor have submitted that the financial creditors /operational have no objection if the CIRP is initiated against the corporate debtor. It is further observed that despite of having

sufficient time and affording opportunities, one of the two operational creditors – Department of Telecommunications has failed to file reply.

20. In view of the above facts the petition is admitted. We declare the Moratorium in terms of sub-section (1) of Section 14 of the code as under:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

21. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

22. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench

approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

23. The Law Research Associate of this Tribunal has checked the credentials of the proposed Interim Resolution Professional and nothing has been found adverse against Mr. Atul Mittal.

24. In view of the above, we appoint Mr. Atul Mittal, Insolvency Professional, bearing Registration No. IBBI/IPA-001/IP-P00439/2017-18/10762, email Id: a.mittalmc@gmail.com, Mobile No. 9871830777, address: 174, BALCO Apartments, Plot No. 58, IP Extension, Patparganj, Delhi-110092 as an Interim Resolution Professional, with the following directions:-

i) The term of appointment of Mr. Atul Mittal shall be in accordance with the provisions of Section 16(5) of the Code;

ii) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim

Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

iii) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct' governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi) The Interim Resolution Professional shall after collation of all the claims received against the corporate debtor and the determination of the financial position of the corporate debtor constitute a committee of creditors and shall file a report, certifying constitution of the committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the committee within seven days of filing the report of constitution of the committee; and

vii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

25. A copy of this order be communicated to all the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

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| Sd/- | Sd/- |
| (Pradeep R. Sethi) | (Ajay Kumar Vatsavayi) |
| Member (Technical) | Member (Judicial) |

January 24, 2020
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