

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

MA 2670/2019 in CP(IB)1687(MB)/2018

(Under Section 33 of the IBC, 2016)

Mr Ashok Kumar Dewan

... Applicant/RP

In the matter of

Edelweiss Asset Reconstruction Company Limited

...Financial Creditor

Vs

Maxx Mobile Communications Limited

...Corporate Debtor

Order delivered on 21.8.2019

Coram:

Hon'ble Member (Judicial) Mr V.P. Singh
Hon'ble Member (Technical) Mr Rajesh Sharma

For the Applicant: Mr Rahul Gaikwad

Dictated in open Court

ORDER

1. MA 2670/2019 has been filed under Section 33 of the Insolvency and Bankruptcy Code, 2016, seeking liquidation of the Corporate Debtor. Applicant Resolution Professional, Mr Ashok Kumar Dewan has filed this application stating that Petition filed under section 7 was admitted by order of this Bench dated on 31.01.2019 and by the said order, the applicant was appointed as the Interim Resolution Professional of the Corporate Debtor.

2. It is further stated that after collating all claims as submitted by the creditors and after determining the financial position of the Corporate Debtor, a committee of 12 financial creditors was formed. The total financial debt due to financial Creditor as on Corporate Insolvency Commencement Date is ₹1298,01,69,238/- (Rupees One Thousand Two Hundred and Ninety-Eight Crores One Lakh Sixty Nine Thousand Two Hundred and Thirty-Eight Only). It is further stated that in the first CoC meeting dated 01.03.2019, the CoC deliberated upon the appointment of the applicant as the Resolution Professional and by voting of 98.84% appointed the Applicant to act as the Resolution Professional.

3. It is further stated that in the second CoC meeting dated 04.04.2019. The CoC decided that the transaction review audit for the last two financial years and forensic audit for the period 01.04.2011 to 01.04.2015 shall be conducted by M/s GSA & Associates and hence they have been appointed as the auditors. Further, the CoC in its 2nd meeting discussed upon the invitation of Expression of Interest and decided upon net worth criteria of prospective resolution applicants and accordingly, approved the Form -G to be published by the Applicant. The Applicant subsequently published advertisement dated 11.04.2019 for the invitation for submission of Resolution Plan in Form -G and the last date for submission of Resolution Plans was mentioned as 10.07.2019.

4. It is stated that under the invitation for the bid of Resolution Plan, 'Outcome Commercial Private Limited', came forward as a Proposed Resolution Applicant (PRA). In the 5th CoC meeting, it was informed to the CoC that the PRA had not proposed any plan despite the extension of the period. However, despite enormous efforts by the Applicant, no one has come forward with a resolution plan. That the CoC further deliberated on the further course of action and weighed the options available. That the CoC deliberated on the circumstances surrounding the business of Corporate Debtor. That the CoC pondered that the probability of getting a resolution plan is hampered and chances of getting a viable and feasible plan are too low due to several reasons such as:

- "The obsolete product profile of necessary mobile charges which is nothing more than a simple assembly.*
- Extremely low levels of operations for last many years and that now the unit is not functional at all, few would be willing to take over the company for its real estate.*
- The incomplete project and outdated technology is not likely to attract any potential buyer who would be interested in taking over the company.*
- The attachment over the assets is likely to restrict potential buyers."*

5. It is stated that in the 5th meeting, post discussions and taking cognisance of the above reasons, the CoC concluded that it would not be commercially prudent to seek an extension of the CIRP period. That apart, the process would involve massive cost without any incremental benefit. The CoC hence unanimously decided to go for liquidation and requested the

Applicant to put the same for approval in e-voting. The CoC by a vote of 99.04% resolved that the Corporate Debtor be liquidated.

6. It is pertinent to mention that within the statutory period of 180 days, no resolution plan has been received. Therefore, the Applicant has filed this application for the liquidation of the Corporate Debtor in terms of Section 33(2) of the Code which deserves to be allowed.

ORDER

MA 2670/2019 is allowed, and we at this moment pass the order of liquidation Section 33 of IBC as follows:

- a. That the Corporate Debtor is liquidated in the manner as laid down in the Chapter by issuing a Public Notice stating that the Corporate Debtor is in liquidation with a direction to the Liquidator to send this order to RoC under which this Company has been registered.
- b. As to the appointment of Liquidator, Mr Ashok Kumar Dewan is at this moment appointed to act as a Liquidator for the liquidation of Corporate Debtor company with all powers as envisaged in the Code.
- c. On such appointment under Section 34 of the Code, all powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor shall cease to affect and shall be vested in the Liquidator.
- d. That the personnel of the Corporate Debtor shall extend all co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
- e. That the Liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate/assets as specified under Regulation 4 of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016 and the same shall be paid to the Liquidator from the proceeds of the liquidation estate under Section 53 of the Code.
- f. Since this liquidation order has been passed, subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor, in the event of initiation of a suit or legal proceeding by the liquidator on behalf the corporate debtor, it may initiate such proceedings with prior approval of this Adjudicating

Authority save and except as mentioned in sub-section 6 of Section 33 of the Code.

- g. This liquidation order shall be deemed to be notice of discharge to the officers, employees and workers of the Corporate Debtor except to the extent of the business of the Corporate Debtor continuing during the liquidation process by the Liquidator.

Moratorium declared vide Order dated 31.01.2019 in CP No. 1687/2018 ceased to exist. The registry is directed to communicate this order to the Liquidator immediately even by way of e-mail. MA 2670/2019 is disposed of accordingly.

Sd/-
RAJESH SHARMA
Member (Technical)

Sd/-
V. P. SINGH
Member (Judicial)

21st August 2019