

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA/1215/CHE/2021 in CP/699/IB/2017

(filed under Section 35(1)(n) r/w Section 60(5) of the Insolvency & Bankruptcy Code, 2016 and Regulation 32(e) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 r/w Rule 11 of the NCLT Rules, 2016)

*In the matter of **Gemini Communication Limited***

M.S. Viswanathan,
Liquidator of Gemini Communication Limited,
15/35, Musafar Jung Bahadur Street,
Triplicane, Chennai – 600 005.

...
Applicant/Liquidator

-VS-

Pixtronic Global Technologies Pvt. Ltd,
122A, CASA Grande Pavilion,
Thalambur, Chennai – 603 103.

... Successful Auction Purchaser/Respondent

Along with

IA/1280/CHE/2021 in CP/699/IB/2017

(filed under Rule 11 of the NCLT Rules, 2016)

*In the matter of **Gemini Communication Limited***

M.S. Viswanathan,
Liquidator of Gemini Communication Limited,
15/35, Musafar Jung Bahadur Street,
Triplicane, Chennai – 600 005.

... Applicant/Liquidator

Order pronounced on 15th February, 2022

CORAM:

R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant : Mr. R. Venkatavaradan Advocate
For Respondent : Mr. B. Gopinath

COMMON ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

IA/1215/2021 is an application filed by the Liquidator of Gemini Communications Limited under section 35(1)(n) read with 60(5) of the IBC, 2016 and Regulation 32(e) of the IBBI (Liquidation Process) Regulations, 2016 seeking relief as follows;

- a. *To approve the sale of Corporate Debtor as going concern in accordance with the relief as sought set out in paragraph 16 of this application.*
- b. *To pass such other orders as it deems fit in the above circumstances of the case and thus render justice.*

2. IA/1280/2021 is an application filed by the Liquidator of Gemini Communications Limited under Rule 11 of NCLT Rules, 2016 seeking relief as follows;

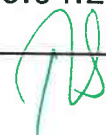
- a. *To condone the delay in distribution of the proceeds immediately of the realization of the Corporate Debtor within 90 days, which ends on 22.12.2021.*
- b. *To grant further time for distribution of the proceeds immediately upon the disposal of the applications filed by the Applicant seeking approval of the modified list of stakeholders numbered as IA/1168/2021 and the application seeking approval of the sale of the Corporate Debtor as a going concern numbered as IA/1215/2021*



3. The Corporate Insolvency Resolution Process in respect of the Corporate Debtor was ordered by this Tribunal vide order dated 20.06.2018 and one Aishwarya Mohan Gahrana was appointed as Interim Resolution Professional. Since no Resolution Plan was received during the CIRP, based upon an Application filed by the RP, this Tribunal vide its order dated 26.02.2019 passed in MA/139/2019 has ordered for Liquidation in respect of the Corporate Debtor and appointed one Mr. S. Kasi Viswanathan as the Liquidator. Since the said Mr. S. Kasi Viswanathan has expressed his inability to continue as the Liquidator, the Applicant herein was appointed as the Liquidator in respect of the Corporate Debtor on 20.02.2020.

4. It is averred in the Application that after appointment of the Applicant herein as the Liquidator in respect of the Corporate Debtor, the Applicant had published an advertisement in 'Business Standard' (English) and 'Makkal Kural' (Tamil) on 22.02.2021 to sell the Corporate Debtor *inter alia* as a "going concern" in one lot and also to sell the other assets of the Corporate Debtor in other individual lots through an e-auction which was conducted on 10.03.2021. However, it was submitted that no bidders participated in the said e-auction.

5. Thereafter, it was submitted that another e-auction notice was published on 30.03.2021 by fixing the date as 16.04.2021. In the



said e-auction, one M/s. Pixtronic Global Technologies Private Limited participated as a sole bidder for Lot 1 and emerged as a successful bidder for a bid amount of Rs.3,55,61,750/-. It was submitted that in pursuance of the same, the successful bidder remitted the 15% of the bid amount on 19.04.2021 and together with EMD, the successful bidder deposited 25% of the bid amount.

6. In the meantime, it is seen that the success bidder has filed an Application before this Tribunal under Regulation 47A of the IBBI (Liquidation Process) Regulations, 2016 seeking exclusion of time for payment of the balance amount. This Tribunal vide its order dated 14.09.2021 passed in IA/632/CHE/2021 has granted a 90 day extension for the successful bidder to pay the balance amount, i.e. on or before 24.09.2021. In pursuance of the same, it was submitted that the successful bidder has paid the balance sum of Rs.2,66,71,312/- to the Liquidator on 23.09.2021 within the time stipulated by this Tribunal. Also, the Applicant has issued a Sale Certificate dated 15.10.2021 to the successful bidder for the sale of the Corporate Debtor as a going concern.

7. It is averred in the application that as on 30.09.2021, a sum of Rs.3,67,53,569/- is lying in the Liquidation account of the Corporate Debtor which will be distributed amongst the stakeholders as per the waterfall mechanism as stipulated under Section 53 of

IBC, 2016. Further, it was submitted that there are receivables due to be paid to the Corporate Debtor which are yet to be recovered by the Applicant to the Liquidation Estate of the Corporate Debtor.

8. It is further averred that Applications viz. MA/127/2019 and MA/1181/2019 filed by the erstwhile RP under Section 66 of IBC, 2016 is pending adjudicating before this Tribunal. Also, it was submitted that the Corporate Debtor has accounts in various banks which are attached by the EPFO and ESI authorities and the Applicant is currently in correspondence with the said banks and other institutions to recover the money from those accounts and transfer the same to the Liquidation account.

9. Under such circumstances, the present Application has been filed by the Liquidator under Regulation 32(e) of the IBBI (Liquidation Process) Regulations, 2016 seeking approval from this Tribunal for sale of the Corporate Debtor as a going concern.

10. Heard the submissions made by the Learned counsel for the Liquidator and Learned Counsel for the successful bidder. It is seen that the Liquidator has already sold the Corporate Debtor as a going concern to the Respondent herein and has filed this approval seeking approval of the same.



11. In so far as Sale as a going concern is concerned, the term 'going concern' means all such assets and the liabilities, which constitute an integral business or the Corporate Debtor, that must be transferred together, and the consideration must be for the business or the Corporate Debtor. The buyer of the assets and liabilities should be able to run business without any disruption.

12. There are two going concern sales defined under Regulation 32 of IBBI (Liquidation Process) Regulations, 2016. The first one pertains to Sale of "*Corporate Debtor as a going concern*" under Regulation 32(e) and sale of "*Business of Corporate Debtor as a going concern*" under Regulation 32(f).

13. In the sale of "*Corporate Debtor as a going concern*" under Regulation 32(e) of IBBI (Liquidation Process) Regulations, 2016 the Corporate Debtor will not be dissolved. In this part of sale, the entire business, assets and liabilities, including all contracts, licenses, concessions, agreements, benefits, privileges, rights or interests of the Corporate Debtor will be transferred to the acquirer. The existing shares of the Corporate Debtor will not be transferred and shall be extinguished.

14. In the sale of "*Business of Corporate Debtor as a going concern*" under Regulation 32(f) of IBBI (Liquidation Process) Regulations, 2016, the entire business(s) along with assets and



liabilities, including intangibles, will be transferred as a going concern to the acquirer, without transfer of the Corporate Debtor, and therefore, the Corporate Debtor will be dissolved. The existing shares will be extinguished. The remaining assets, other than those sold as part of business will be sold and the proceeds thereof will be used to meet the claims under Section 53 of IBC, 2016

15. Sale of a Company as a 'Going Concern' means sale of both assets and liabilities, if it is stated on 'as is where is basis'. The Hon'ble NCLAT in the matter of ***M/s. Visisth Services Ltd. Vs. Mr. S. V. Ramani, Liquidator of United Chloro-Paraffins Pvt. Ltd. Company Appeal (AT)(Ins) No. 896 of 2020*** held that as per Regulation 32A of the IBBI (Liquidation tProcess) Regulations, 2016 the Sale as a 'Going Concern' means sale of assets as well as liabilities and not assets sans liabilities. We conclude that Sale of a Company as a 'Going Concern' means sale of both assets and liabilities, if it is stated on 'as is where is basis'.

16. The present Application has been filed under Regulation 32(e) of IBBI (Liquidation Process) Regulations, 2016 seeking approval for sale of the "Corporate Debtor as a going concern". Apart from the above, the Liquidator has also sought for certain relief and concession, which is set out in para 16 of the Application. These relief are ordered as follows;



SL. No.	RELIEF / CONCESSIONS SOUGHT FOR	ORDERS THEREON
1	The rights and title and interest in whole and every part of the Corporate Debtor including but not limited to intellectual property rights continue to vest in the Corporate Debtor and furthermore the assets, rights, titles and interest of the Corporate Debtor shall become free from charges, security interest, claims and counter claims.	Granted, subject to the provisions of IBC, 2016 and other Applicable laws
2	All permits, licenses, copyrights, trademarks or other statutory rights shall remain vested with the Corporate Debtor as it is being sold as a going concern	Granted, subject to the provisions of IBC, 2016 and other Applicable laws
3	Issuance of equity shares or any other security / investment of the Corporate Debtor on or after the effective date and the same shall be subscribed and allotted to the successful bidder or any of its nominee in lieu of the "Liquidation Sale Amount" received by the Liquidator in the Liquidation account of the Corporate Debtor. Further that, no further approval should be required under Companies Act, 2013 or SEBI Regulations, however, procedural compliances, if any, in terms of SEBI Regulations or listing agreement with the respective stock exchange in relation thereto shall be done by the Liquidator / Successful Auction Bidder.	Granted, subject to the provisions of IBC, 2016 and other Applicable laws.
4	That the Auction purchaser shall be entitled to reconstitute the existing share capital held by the promoters / their associate concerns and non – public shareholders including Institutional shareholdings and the existing public shareholding & shareholding pattern in the Corporate Debtor in accordance with the norms and relevant guidelines of SEBI and / or IBBI and any other applicable law.	Granted, subject to the provisions of IBC, 2016 and other Applicable laws.
5	That the Board of Directors of the Corporate Debtor would be reconstituted by removing the erstwhile board of Directors as existing on effective date and appointment of new Board of Directors nominated by the Successful Auction Bidder subject to the	Granted, subject to the provisions of IBC, 2016 and

	affidavit and undertaking that none of such directors of Board of Directors are disqualified under Section 29A of IBC, 2016	other Applicable laws
6	That the Registrar of Companies to change the status of the Corporate Debtor in its records from the effective date as "Active" from the status of "under Liquidation".	Granted
7	Granting exemption to the Corporate Debtor from the use of the work "and reduced" in its name as required under the provisions of Companies Act, 2013	Granted
8	That the charges registered with concerned RoC in respect of encumbrances over the assets of the Corporate Debtor shall stand satisfied and vacated.	Granted, subject to the provisions of IBC, 2016 and other Applicable laws
9	To satisfy the charges on secured assets in the records of RoC and other statutory and regulatory authorities, if any, from the effective date. The Liquidator / successful auction bidder shall do necessary filings and comply with procedural formalities in this regard as per the provisions of the Companies Act, 2013 or under other relevant statutes, if any.	Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</i> <i>2021 SCC Online SC 313</i>
10	That all claims of the Corporate Debtor against third parties and its related parties, shall remain outstanding, due and recoverable in accordance with their respective terms. Corporate Debtor / successful bidder shall have full right to recover / proceed against the party, whose account is recoverable in the books of the Corporate Debtor as on the Effective Date.	Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</i> <i>2021 SCC Online SC 313</i>
11	All liabilities and guarantees extended by the Corporate Debtor whether monetary or non-	Granted, subject to the provisions



	monetary, statutory, crystallized or not crystallized, claimed or not claimed, admitted or not admitted, disputed or undisputed, confirmed or contingent or due or overdue or future due, decrees obtained for satisfaction of debt and all such obligations of the CD shall stand extinguished and discharged in full without any recourse to the CD.	of IBC, 2016 and other Applicable laws
12	That successful auction bidder shall have a right to review and terminate any contract that was entered into prior to the commencement of CIRP during the time of CIRP / Liquidation process of the Corporate Person in accordance with the terms and conditions specified in such contract.	Allowed, subject to the provisions of IBC, 2016
13	To issue directions to the banks to change the operating signatories of bank account of the Corporate Debtor on or after the effective date for smooth transition of the Corporate Debtor to the successful bidder.	This is for the appropriate authorities to consider
14	The liabilities, if any, arising out of non-compliance of provisions of any laws, rules, regulations, directions, notifications, circulars, guidelines, policies, licenses, approvals, consents or permissions prior to effective date shall stand extinguished for the successful auction bidder and the same shall be settled by the Liquidator in accordance with the provisions of Section 53 of IBC, 2016	Allowed, subject to the provisions of IBC, 2016
15	The successful auction bidder / Corporate Debtor shall not be held responsible / liable for any past liabilities of the Corporate Debtor in enquiries, investigations, assessments, notices, criminal cases, civil cases, suits, claims, disputes, litigations, arbitrations or other judicial, regulatory, administrative proceedings or in relation to or in connection with the Corporate Debtor prior to effective date.	Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</i> <i>2021 SCC Online SC 313</i>
16	The successful auction bidder shall not be liable for any action / responsibility of the Corporate Debtor or its erstwhile management as per provisions of Section 32A of IBC, 2016.	Granted



17	As regards to carry forward of losses under the Income Tax Act, 1961, we hold that the Corporate Debtor under the new management under Section 79(2) of the Income Tax Act, 1961 would have to approach the concerned Income Tax Authority who may grant such relief, as permissible under law. The Corporate Debtor must be allowed to carry forward and set-off depreciation and losses under applicable provisions of Income Tax Act 1961 notwithstanding the change in the shareholding pattern of the Corporate Debtor.	This is for the appropriate authorities to consider
18	The Auction purchaser shall enter in their books of account to give effect to the transaction entered into and executed for the purpose of sale of the Corporate Debtor as a going concern.	Allowed, subject to the provisions of IBC, 2016
19	Liquidator to provide all support and assistance to the successful auction bidder for smooth implementation of sale of Corporate Debtor as a going concern.	Granted
20	The rating agencies like CRISIL, CIBIL., etc., must be informed by the Auction purchaser to delete all negative ratings for the CD and not to consider them as defaulters.	Granted
21	All liabilities and guarantees extended by the Corporate Debtor whether monetary or non-monetary, statutory, crystallized or not crystallized, claimed or not claimed, admitted or not admitted, disputed or undisputed, confirmed or contingent or due or overdue or future due, decrees obtained for satisfaction of debt and all such obligations of the CD shall stand extinguished and discharged in full without any recourse to the CD	Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</i> <i>2021 SCC Online SC 313</i>
22	That no liability shall arise out of all or any notices issued by or pending proceedings before any judicial, quasi-judicial, administrative, tax or any regulatory body or local authority against the Corporate Debtor, whatsoever to the Corporate Debtor or the successful bidder on or after the effective date.	Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset</i>

		<p>Reconstruction Company Limited.</p> <p>2021 SCC Online SC 313</p>
23	All proceedings initiated against the Corporate Debtor for recovery of monies by the claimants including the Secured Creditors and those who did not file their claims with the Liquidator shall stand dismissed and extinguished.	<p>Granted in terms of the judgment of the Hon'ble Supreme Court in Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</p> <p>2021 SCC Online SC 313</p>
24	All liabilities or debt whether crystalized, contingent, filed, not filed, admitted or not admitted by the Liquidator, disputed or undisputed or otherwise including those pertaining to statutory dues and penalties shall be deemed as having been fully discharged in accordance with the provisions of the Code and the Corporate Debtor and the successful bidder shall not be liable for the same.	<p>Granted in terms of the judgment of the Hon'ble Supreme Court in Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</p> <p>2021 SCC Online SC 313</p>
25	That all Creditors of the Corporate Debtor are to discharge and hand over all agreements, securities, instruments, collateral and third-party guarantees provided to them for the facilities they had extended to the Corporate Debtor.	<p>Granted, subject to the provisions of IBC and other Applicable laws</p>
26	The successful auction bidders / CD shall not be held responsible / liable for any past liabilities of the Corporate Debtor in enquiries, investigations, assessments, notices, criminal cases, civil cases, suits, claims, disputes, litigations, arbitrations or other judicial, regulatory, administrative proceedings or in relation to or in connection with the Corporate Debtor prior to effective date.	<p>Granted in terms of the judgment of the Hon'ble Supreme Court in Ghanashyam Mishra and Sons v. Edelweiss Asset</p>

		Reconstruction Company Limited. 2021 SCC Online SC 313
27	The Liquidator shall execute any further document in order to complete the sale of the Corporate Debtor as a going concern in all respects and requirements with the said purchase company.	Granted

17. Thus, the Application filed by the Liquidator for sale of "Corporate Debtor as a going concern" stands allowed. The Liquidator, after distributing the proceeds to the stakeholders as per Section 53 of IBC, 2016 may file an Application under Regulation 45(3) of the IBBI (Liquidation Process) Regulations, 2016 for closure of Liquidation process.

18. In so far as IA/1280/2021 is concerned, it is averred that the Liquidator has received the entire Sale consideration on 23.09.2021 and within a period of 90 days the Liquidator is required to distribute the same to the stakeholders. However, it is averred that the Liquidator is unable to distribute the sale proceedings for the reason that the approval of the modified list of stakeholders in IA/1168/2021 is pending before this Tribunal. Thus, for the aforesaid reasons, the delay is hereby condoned and the Liquidator is directed to distribute the sale proceeds to the stakeholders, within a period of 30 days from the date of the order approving the modified list of stakeholders.



18. With the above said directions, both the Application stands **allowed.**

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
R. SUCHARITHA
MEMBER (JUDICIAL)

Raymond