



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

IA/(IBC)/1515/CHE/2023 in CP/IB/297(CHE)/2021

(Filed under Section 33(2) of the Insolvency and Bankruptcy Code, 2016)

In the matter of *Nucleus Satellite Communications (Madras) Pvt. Ltd.*

Ms. Rongali Sridevi

Interim Resolution Professional of

Nucleus Satellite Communications (Madras) Pvt. Ltd.

Old No. 110, New No. 178,

Rangarajapuram Main Road,

Kodambakkam, Chennai – 600 024

... Applicant /Resolution Professional

Present:

For Applicant

:

S. Vedhavel, Advocate

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Order Pronounced on 12th September 2023

ORDER

***Per:* VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

This is an application filed under Section 33(2) and 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking reliefs as follows:

- (i) *Initiating liquidation of the Corporate Debtor M/s. Nucleus Satellite Communications (Madras) Private Limited in terms of Section 33 of the Insolvency and Bankruptcy Code, 2016 considering the decision of the*



CoC in the 11th CoC meeting held on 07.07.2023 to liquidate the Corporate Debtor.

- (ii) Appointing a Liquidator of the Corporate Debtor.*
- (iii) Pass any order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*

2. It is submitted that pursuant to an application filed under Section 9 of IBC 2016, the Corporate Insolvency Resolution Process was initiated against the Corporate Debtor viz. M/s. Nucleus Satellite Communications (Madras) Private Limited, by this Tribunal vide order dated 14.10.2022 and the Applicant herein was appointed as the Interim Resolution Professional (IRP).

3. It is stated that the Applicant made a Public Announcement in accordance with Section 15 of the Code read with Regulation 6 of Chapter III of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in the newspapers "New Indian Express (English) at Chennai and Tirupathi and "Dinamani" (Tamil) at Chennai and "Prajasaki", Tirupathi Edition dated 20.10.2022 and also in the website of the Insolvency and Bankruptcy Board of India.



4. It is stated that the Applicant admitted a total of 3 claims, wherein one was the Secured Financial Creditor M/s. IDBI Bank and others were two operational creditors viz. (i) M/s. POSCO India Processing Center Private Limited and (ii) M/s. ZV Steels Private Limited. It is stated that the Committee of Creditors was constituted with the sole Financial Creditor viz. M/s. IDBI Bank with 100% voting rights.

5. It is stated that the erstwhile promoter / directors of the Corporate Debtor were not co-operating with the Applicant and hence the RP filed application under Section 19(2) of IBC, 2016 against the ex-promoters / suspended directors of the Corporate Debtor. It is also stated that the Financial Creditor has not passed any resolution to either ratify the Applicant as the Resolution professional or appoint any new Resolution Professional.

6. It is stated that the Applicant filed the 1st progress report before this Tribunal in IA(IBC)/1436/2022 and the same was taken on record on 21.02.2023. It is stated that the Applicant has received certain new claims and accordingly she has reconstituted the CoC of the Corporate Debtor as follows;

S. Venkatesh



S. No.	Claimant	Amount Admitted	Nature of Claim	Voting Rights
1	IDBI Bank Limited	Rs.10,75,17,495.86/- on which Principal: Rs.8,55,88,843/- Interest: Rs.2,01,30,271.86/- Other Charges and Expenses: Rs.17,98,381/-	Secured Financial Debt	52.15%
3	M/s. Posco India Processing Center Pvt. Ltd.	Claim: Rs. 5,68,37,100.51/- Total: Rs. 1,55,60,943.45/- (with interest at 18% p.a. till 01.11.2021)	Operational Creditor	-
4	Anak Exports	2,08,93,660	Unsecured Financial Creditor	10.13%
5	Arjundas Pokardas	12,43,163	Unsecured Financial Creditor	0.603%
6	Quibus Resources Private Limited	2,07,00,726	Unsecured Financial Creditor	10.04%
7	Vridhi	4,35,21,089	Unsecured Financial Creditor	21.108%
8	Jagrani Leasing and Finance Co. Ltd.	1,23,09,590	Unsecured Financial Creditor	5.970%

7. It is stated that four registered valuers were appointed by the Applicant for determining fair value and liquidation value of the Corporate Debtor i.e. two for valuation of land and building (M



Mohanaram of M/s. Aathira Associates and M. Kathirvel) and two for valuation of plant and machinery (Axiom Valuation Services LLP and Pensar Valuation). It is further stated that Forensic Auditor Mr. G. Gunasekaran, Chartered Accountants, Coimbatore, was appointed to conduct transaction audit to identify the Preferential Transaction under Section 43, avoidance of undervalued transaction under Section 45, transactions defrauding creditors under Section 49 and fraudulent trading or wrongful trading under Section 66 of the Insolvency and Bankruptcy Code, 2016.

8. It is stated that in the meantime, the secured Financial Creditor viz. IDBI Bank took possession of the assets of the Corporate Debtor as per Section 13(4) of the SARFAESI Act and currently it is in the possession of the said Bank. It is stated that assets of the Corporate Debtor were handed over to the Applicant on 16.02.2023.

9. It is stated that due to delay, the Form – G was issued only on the 158th day of CIRP. The Form – G was published on 21.03.2023 in “Daily Thanthi” (Tamil Nadu Edition), “The Hindu” (Chennai and Tirupathi Edition), Andhra Jyothi, (All Andhra Pradesh Edition), “Business

S. Venkatesh

S. Venkatesh



Standard” and “Times of India” (Mumbai and Delhi Edition) and in the website of IBBI.

10. It is stated that, there were 8 prospective Resolution Applicants. In the 7th CoC meeting, a discussion took place to approve the issuance of Request for Resolution Plan (RFRP) including Evaluation Matrix and Information Memorandum. In the meantime, the RP filed an Application for extension of CIRP and this Tribunal vide its order dated 13.06.2023 passed in IA(IBC)/634(CHE)/2023 extended the CIRP period in respect of the Corporate Debtor till 11.07.2023.

11. It is stated that, out of the 8 PRAs, only one PRA submitted the Resolution Plan. However, the said Resolution Plan was rejected by the CoC in its 10th meeting held on 02.06.2023, for the reason that the Resolution Plan is non-compliant with the terms of Request for Resolution Plan (RFRP) and provisions of IBC, 2016. Thereafter, it is seen that on the 11th CoC meeting held on 07.07.2023, it has been unanimously decided to Liquidate the Corporate Debtor. The Resolution passed in the CoC is extracted hereunder:

“Resolved that committee of creditors as per voting results in 100% voting recommend for liquidation of Corporate Debtor as provided in section 33(2) of the IBC, 2016 and Resolution Professional has to

S. V. Srinivasan

[Signature]



intimate the same to the Adjudicating Authority by filing an application requesting the Adjudicating Authority to order for liquidation of the corporate debtor as per section 33(2) of the IBC, 2016"

12. It is stated that in the 11th CoC meeting, the Committee could not arrive at a conclusion as to the Liquidator. The 5 Unsecured Creditors having voting rights of 47.85% voted in favour of the Applicant/Interim Resolution Professional Ms. Rongali Sridevi, while the sole secured financial creditor having voting rights of 52.15% voted for Mr. Ramakrishnan Sadasivan to act as the Liquidator of the Corporate Debtor. Both of them have given their written consent in Form AA and also holds valid AFA.

13. Heard the submissions made by the Learned Counsel for the Applicant.

14. It is seen that the CoC in its wisdom rejected a Resolution Plan on the ground that the Resolution Plan is non-compliant with the terms of Request for Resolution Plan (RFRP) and provisions of IBC, 2016 and unanimously passed a Resolution to liquidate the Corporate Debtor.

Further, the Hon'ble Supreme Court in the matter of **K. Sasidharan** –

S. Venkatesh

[Signature]



Vs– Indian Overseas Bank (2019) SCC OnLine SC 257 has held that the commercial wisdom of CoC in approving / rejecting a Resolution Plan or for recommending for Liquidation of the Corporate Debtor cannot be subjected to judicial review by the NCLT.

15. In relation to the appointment of Liquidator, it is seen that IBBI vide its power vested under Section 34(4)(b) has recommended that an Insolvency Professional other than the RP / IRP shall be appointed as Liquidator, in all the cases where an order of Liquidation is passed.

16. As a consequence, the Corporate Debtor is ordered for liquidation as per Section 33(1)(a) of IBC, 2016. **Mr. Ramakrishnan Sadasivan** with **Reg. No. IBBI/IPA-001/IP-P00108/2017-2018/10215** is appointed as the Liquidator of the Corporate Debtor, to carry out the liquidation process subject to the following terms of the directions.

- a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 as amended upto date enjoined upon her.
- b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/

S. Venkatesh

S. Venkatesh



employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.

- c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file suitable application before this Adjudicating Authority.
- d) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.
- e) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section – 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.
- f) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.

S. Venkatesh

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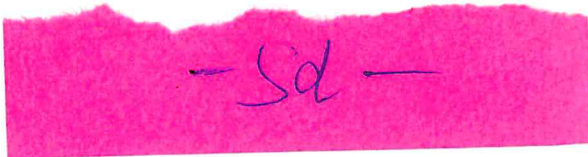


17. The Registry is directed to communicate this order to the Registrar of Companies, Chennai and to the Insolvency and Bankruptcy Board of India;

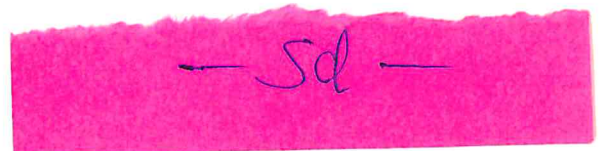
18. The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.

19. Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor.

20. With the above said directions, this **IA(IBC)/1515/CHE/2023** filed for Liquidation of the Corporate Debtor stands **allowed**.



VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)



SANJIV JAIN
MEMBER (JUDICIAL)

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