

NATIONAL COMPANY LAW TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

IA (I.B.C)/2166(PB)/2022 & IA(I.B.C.)/4672(PB)/2022

IN

CP (IB)/59(PB) /2018

In the matter of

UNION BANK OF INDIA

...FINANCIAL CREDITOR

VERSUS

M/s RADIUS INFRATEL PRIVATE LIMITED

...CORPORATE DEBTOR

AND

In the matter of

M/s RADIUS INFRATEL PRIVATE LIMITED

... APPLICANT/LIQUIDATOR

through

Mr. Arvind Garg, Liquidator

REG. NO. IBBI/IPA-03/IP-NOO029/2017-18/10189

Memo of parties

Mr. Arvind Garg,

...APPLICANT/LIQUIDATOR

Liquidator

M/s Radius Infratel Private Limited

having its registered office at:

302 A, Pal Mohan Plaza, Deshbandhu Gupta

Road, Karol Bagh, New Delhi-110005

Email: radius.arvind@gmail.com

**Under Section 35 (1) (n) of the Insolvency And Bankruptcy Code, 2016
read with Rule 11 of NCLT Rules, 2016 for seeking appropriate directions**

And

Under Section 60(5) of the Insolvency And Bankruptcy Code, 2016 read with Regulation 44(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 for directions to continue Liquidation Period of Corporate Debtor

Order Pronounced On: 15/03/2023

Coram:

Chief Justice (Retd.) Ramalingam Sudhakar :Hon'ble President
Shri Avinash K. Srivastava :Hon'ble Member
(Technical)

APPEARANCES

For the : Heerika Shukla, Adv. with Arvind Garg,
Applicant/Liquidator Liquidator

ORDER

PER SH. AVINASH K. SRIVASATAVA, HON'BLE MEMBER (T)

- 1.** The Application (**IA 4672/2022**) has been filed by the Applicant/Liquidator of **M/s Radius Infratel Private Limited (CD)**, under Section 35(1)(n) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code" or "IBC") read with Rule 11 of NCLT Rules, 2016 for seeking appropriate directions. Applicant/Liquidator has prayed for the following reliefs:
 - a.** Allow the present application; and
 - b.** Permit the Liquidator to undertake sale of the CD or the business of the CD as a 'going concern' during the remaining term of the liquidation period; and
 - c.** Pass any other/ further order(s) or direction(s) as this Hon'ble Adjudicating Authority may deem fit and proper in the interest of justice;

2. The Application (**IA 2166/2022**) has been filed by the Applicant/Liquidator of **M/s Radius Infratel Private Limited (CD)**, under Section 60(5) of the Code, read with Regulation 44(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (the Liquidation Regulations) for directions to continue Liquidation Period of Corporate Debtor. Applicant/Liquidator has prayed for the following reliefs:

- a.** That the Hon'ble National Company Law Tribunal may be pleased to allow continuation of liquidation process of CD by further period of one year from 31.05.2022 onward for its beneficial liquidation and protection of interests of CD's stakeholders;
- b.** That the Hon'ble National Company Law Tribunal may be pleased to issue such directions, as may be deemed appropriate;

3. Brief facts submitted by Applicant/ RP in IA 4672/2022 are as follows:

- Corporate Debtor, M/s Radius Infratel Private Limited was incorporated on 13.05.2008 under the provisions of the Companies Act, 1956. The Corporate Debtor (CD) is engaged in the business of providing Fiber to-the-Home network (FTTH network)
- Financial Creditor i.e. **Union Bank of India** had filed an application under Section 7 of the Code, bearing number IB- 59/(PB)/2018, for initiation of Corporate Insolvency Resolution Process (CIRP), against the Corporate Debtor. The said application was admitted by this Tribunal on **23.07.2018** initiating CIRP against the Corporate Debtor wherein the applicant, namely **Mr. Arvind Garg**, was appointed as the Interim Resolution Professional to discharge all the functions as per provisions of the Insolvency and Bankruptcy Code, 2016.
- This Adjudicating Authority passed an order dated **31.05.2021** in I.A **No. 975/2019** directing the liquidation of M/s **Radius Infratel Pvt. Ltd.** as per Chapter-III of the Code, and accordingly appointed **Mr. Arvind Garg ('Applicant')** as the Liquidator for the said purpose. A copy of the order dated 31.05.2021 is annexed as Annexure- A1.

- The Applicant further submits that in the 16th COC meeting held on **22.02.2021**, COC deliberated upon the sale of the CD as a 'going concern'. It is submitted by Applicant that the CD is engaged in the business of providing Fiber- to-the-Home network (FTTH network) for which it has entered into various exclusive contractual agreements with its customers. Major tangible assets of the CD are the telecom network infrastructure which are either subterranean or inside premises of various residential societies. Value of the assets of the CD can be fully realized only if sold in conjunction with intangible assets of the CD, such as the customer base and contractual rights to operate telecom and IT services, with the various residential buildings/ societies. Removal of the FTTH network from its present sites would lead to destruction of value. Thus, prudence requires that the CD be sold as a 'going concern', bundling in both the tangible and intangible assets of the CD. If the CD is not sold as a 'going concern', along with its present contracts and agreements, then the optical fiber (FTTH network) alone would not have any significant value.
- Applicant further submits that he carried out the sale of the CD as a going concern in accordance with Regulation 32(e) and 32A of the Liquidation Regulations through first auction held on **16.08.2021**. During the e-auction, one VNPV Realty LLP emerged as the successful bidder with a bid of Rs. 15,79,00,000/- (Rupees Fifteen Crores and Seventy-Nine Lakhs only). Pertinently, the e-auction Process Information Document and the sale notice postulated that any sale through the e-auction would be subject to approval of the sale of CD as 'going concern' by the Hon'ble NCLT.
- The successful bidder, VNPV Realty LLP failed to honor the payment of monetary consideration within the stipulated period as per Schedule- I of the Liquidation Regulations and also within the additional time granted by Hon'ble NCLT vide its order dated 16.11.2021 for payment of balance consideration. Thus, the Applicant on 21.01.2022 was

constrained to cancel the sale of the Corporate Debtor to VNPV Realty LLP and forfeit the Earnest Money deposited by VNPV Realty LLP.

- Further, Applicant/Liquidator preferred **I.A No. 1451/2022** in the instant matter seeking leave of this Hon'ble Court to again attempt sale of the CD as a 'going concern'. In the meanwhile, the Applicant published a Sale Notice dated 03.05.2022 for e-auction of the CD as a 'going concern' to be held on 20.05.2022. However, the e-auction, which was to be held on 20.05.2022 could not be conducted as no EMDs were received by the Applicant. Thus **IA 1451/2022** became INFRUCTUOUS.
- In the 5th SCC (Stakeholders Consultation Committee) meeting held on **23.05.2022**, deliberations took place that Applicant should again attempt to sell the CD as a going concern. Members of SCC also recommended to fix the reserve price at Rs.15,00,00,000/- which is 5% less than the reserve price of second auction. In pursuance of this meeting, Applicant/Liquidator issued Sale Notice dated 27.05.2022 inviting interested purchasers to participate in the e-auction of the CD to be held on 28.06.2022. Applicant moved another **IA 2704/2022** seeking permission of this Adjudicating Authority to again undertake sale of the CD or the business of the CD as a 'going concern'. During this pendency, three more sale notices were published though no EOI were received for any of the sale notices published.
- Applicant further submits that IBBI vide notification No. IBBI/2022-23/GN/REG094 dated **16.09.2022** notified the IBBI (Liquidation Process) (Second Amendment) Regulations, 2022 amending inter alia Regulation 32 (A)(4). Relevant portion of the amendment is extracted below:

BEFORE AMENDMENT

(4) If the liquidator is unable to sell the corporate debtor or its business under clause (e) or (f) of regulation 32 within ninety days from the liquidation commencement date, he shall proceed to sell the assets of the corporate debtor under clauses (a) to (d) of regulation 32.]

AFTER AMENDMENT VIDE THE NOTIFICATION DATED 16.09.2022

"(4) The liquidator may sell the assets of the corporate debtor under clause (e) of regulation 32 exclusively only at the first auction."

- On **19.09.2022**, there was a meeting conducted of the stakeholders Consultation Committee wherein it was observed that in the light of the aforesaid amendment in Regulation 32A(4) of the Liquidation Regulations, permission of this Adjudicating Authority has to be sought, and that the previous pending application i.e.(**IA 2704/2022**) for approval of the sale of the CD as a 'going concern' had been rendered infructuous.
- It is the submission of the Applicant/Liquidator that the operation of the newly substituted regulation 32A(4) should be deemed to be prospective in nature and shall not apply to the present Corporate Debtor as the liquidation commencement date in the present case is **31.05.2021** and **IA 2704/2022** which was filed earlier in June 2022 by the Liquidator for permission for sale of CD as a going concern was already pending adjudication. It is further submitted by the Applicant/Liquidator that if it is not permitted to again attempt sale of CD as a 'going concern', significant attrition in the recoverable value of CD would occur.

4. IA 2166/2022

- Applicant has filed this IA seeking extension of the liquidation period for a further period of one year from 31.05.2022.

- Applicant submitted that he carried out the sale of the CD as a 'going concern' in accordance with Regulations 32(e) and 32A of the Liquidation Regulations, through e-auction held on 16.08.2021 and **VNPV Realty LLP** emerged as the successful bidder with a bid of Rs. 15,79,00,000/- (Rupees Fifteen Crores and Seventy-Nine Lakhs only). That the successful bidder preferred an application through I.A No. 5235/2021 seeking extension of time to deposit balance sale consideration. This Adjudicating Authority allowed IA No. 5235/2021 seeking extension of time to deposit balance sale consideration by January 20, 2022. However, successful bidder failed to pay the balance consideration and the Liquidator was constrained to cancel the sale of the CD. Further, if the assets of the CD were to be liquidated piece by piece instead of selling the CD as a 'going concern', significant attrition to the value of the CD would occur resulting in loss to the stakeholders of the CD.
- Applicant submitted that based on the aforementioned facts and circumstances, time of One year is sought from 31.05.2022 so as to continue the liquidation process by taking it to its logical end. Applicant report in accordance with Regulation 44(2) of the Liquidation process regulation explaining reasons for liquidation not having been completed and specifying the additional time that shall be required for liquidation has been annexed as Annexure-VII.

5. ANALYSIS AND FINDINGS

- We have perused the application and submissions of the Applicant/Liquidator in the matter. On perusal, it is found that applicant is trying to sell the Corporate Debtor as a going concern but due to various reasons given above, it could not be completed.
- It has been held in catena of cases that first attempt should be of reviving the Corporate Debtor and Liquidation of the Corporate Debtor should be the last resort. If, liquidation is the only option left, then also in accordance

to regulations enshrined in the Code and in accordance to the Value maximization principle of the Code, Liquidator should first try selling the CD as a going concern.

- As far as the issue of the operation of the amendment in the Regulation 32A(4) to be applied prospectively and not retrospectively is concerned, it is iterated in many case by various courts of the country that any rule, law, amendment is to be applied prospectively unless it is specified otherwise. At this juncture, we do not see any hurdle in allowing the Applicant/Liquidator to sell the CD as a going concern.

6. ORDER

- i.** Prayer as sought for in **I.A. (IB) No. 4672/2022** filed by **Mr. Arvind Garg, Liquidator of M/s Radius Infratel Private Limited**, the Corporate Debtor, is **ALLOWED** and the Corporate Debtor is permitted to be sold as a going concern in the best interests of the CD and its stakeholders
- ii.** Prayers as sought for in **I.A. (IB) No. 2166/2022** for continuation of liquidation process of CD by further period of one year from **31.05.2022** onward for its beneficial liquidation and protection of interests of CD's stakeholders is **ALLOWED** and the time period to continue liquidation for one year from 31.05.2022 till **31.05.2023** is granted.
- iii.** **IA 2704/2022** is **DISPOSED OF** as **INFRUCTUOUS**.
- iv.** The Liquidator shall carry the further process as envisaged under the Code and the Liquidation Regulations, 2016 without any further delay.
- v.** The liquidator is also directed to provide a list of pending applications in a proper tabulated chart alongwith the status of those applications on the next date of hearing. Liquidator shall also follow up the pending applications for their disposal during the process of liquidation as the extended liquidation period is going to end on 31.05.2023.
- vi.** All steps to speed up the liquidation proceedings to be taken by the Liquidator. If there is any deliberate delay in action or if there is inaction

causing loss of value of Liquidation Estate and unnecessary expenditure, he will be subject to appropriate action as per law including removal.

- vii.** Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**LIST THE MAIN CP (IB) NO. 59(PB)/2018 FOR REPORTING PROGRESS
ON 27.03.2023**

-sd/-

**(RAMALINGAM SUDHAKAR)
PRESIDENT**

-sd/-

**(AVINASH K. SRIVASTAVA)
MEMBER, TECHNICAL**