

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH- II

(IB)-349(ND)/2021

IN THE MATTER OF:

M/s Astellia Telecom Pvt. Ltd.
A-31, 3rd Floor, Firoz Gandhi Marg
Lajpat Nagar-II, New Delhi-110024

...Corporate Person

AND

Sh. Sanjay Kumar Jha
Liquidator of M/s Astellia Telecom Pvt. Ltd.
123/8, Gali No. 15, Main Market,
Sant Nagar, Burari, New Delhi-110084

...Applicant

**Section : 59(7) of IBC, 2016 read with Insolvency and Bankruptcy
Board of India (Voluntary Liquidation Process) Regulation, 2017**

Order Delivered on : 02.08.2021

CORAM:

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Petitioner : Mr. Harrish Khurana, CS

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

Under consideration is the CP (IB)-349/(ND)/2021 filed by the Applicant/Liquidator under Section 59(7) of the IBC, 2016 read with Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (for brevity, “**VLP Regulations**”) with the prayer for dissolution of the Corporate Person viz., M/s Astellia Telecom Pvt. Ltd. in Voluntary Liquidation (for brevity ‘**Company**’).

2. That the Company is a Private Limited Company incorporated on 26.10.2010 as subsidiary of a French Company under the erstwhile Companies Act, 1956 with CIN Number U64200DL2010PTC209822. The registered office of the Company is situated at A-31, 3rd Floor, Firoz Gandhi Marg, Lajpat Nagar-II, New Delhi -110024, which is within the territorial jurisdiction of this Bench of the Tribunal.

3. That the main objects of the Company as stated were :

“1. To carry on in India or elsewhere the business of establishing, operating and maintaining and managing wireless communication towers either on its own or in alliance with any other Person/Body corporate incorporated in India or abroad either under a strategic alliance or Joint Venture or any other arrangement and to carry on the business of leasing of antennae sites on multi-tenant towers for arrange of wire line and wireless communications industries including , cellular, ESMR,

SMR, paging and fixed microwave, as well as radio and television broadcasters within or outside India either on its own or in alliance with any other Person/Body Corporate incorporate in India or abroad either under strategic alliance or Joint Venture or any other arrangement.

2. To provide telecom network and to run and maintain telecom services like basic/fixed line services, cellular/mobile services, paging services, video-text, voice mail and. data systems, private switching networks services, transmission networks of all types, computer networks like local area network, wide area network, Electronic mail, intelligent network, multimedia communication systems or the combination thereof..”

4. It is submitted by the Applicant that in terms of operations, initial 4-5 years were good but subsequently, the telecom sector faced stress and operator companies stopped their spending on quality improvement for which the company was not able to procure any service order from the telecom operator companies. Consequently, it became difficult for the company to recover the cost of the employees and other operating expenses. It is further averred by the Applicant company that :

“4. That the company was not carrying any business activities during last two financial years i.e. 2018-19 & 2019-20, as per the audited financial statements of the company , and it does not have any employee, hence no one’s interest is likely to be affected.....”

Hence, the management of the parent company decided finally to close the operations of its Indian arm and dissolve the Company. Accordingly, the shareholders of the Company unanimously resolved and approved voluntary liquidation of the Company.

5. It is averred by the Applicant that the Shareholders of the Company had passed a Special Resolution of Voluntary Liquidation in the Extra Ordinary General Meeting (EOGM) held on 21.09.2020 (the date of Voluntary Liquidation Commencement) under the provisions of IBC, 2016 and VLP Regulations.



Extract from the Minutes of Extraordinary General Meeting of the Members of Astellia Telecom Private Limited held on Monday, 21st September, 2020 at 5.00 A.M. (IST) through Video Conference.

"RESOLVED THAT pursuant to section 59 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") read with the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 ("VLP Regulations") made there under (including any statutory modifications or re-enactment thereof for the time being in force), and subject to provisions Section 271 (a) of the Companies Act, 2013, as may be applicable, consent of the members of the Company be and is hereby accorded to liquidate the Company under the voluntary liquidation process covered under the relevant provisions of IBC.

RESOLVED FURTHER THAT Mr. Sanjay Kumar Jha, Insolvency Professional, holding registration number IBB/MPA-002/IP-N00684/2018-19/12031, eligible to be appointed as a liquidator in terms of Regulation 6 of the VLP Regulations, be and is hereby appointed as the liquidator of the Company for the purpose of voluntary liquidation of the Company at the remuneration of INR 100,000/- (Rupees One Lakh only) plus applicable taxes exclusive of any other liquidation expenses incurred while performing his duties as per actuals, reimbursement of actual out of pocket expenses that may be incurred in the process of voluntary liquidation of the Company.

RESOLVED FURTHER THAT Mr. Harish Khurana, PCS, C. P. 3506, New Delhi be and is hereby appointed as consultants to review the overall process of voluntary liquidation and to represent the company before the Hon'ble National Company Law Tribunal, New Delhi in the matter of voluntary liquidation and seeking directions from time to time from the Hon'ble Tribunal or any other authority as and when required and to do all such acts and deeds which are necessary to assist the Liquidator at a remuneration of Rs. 400,000/- (Rupees

ASTELLIA
BEYOND THE NETWORK

Four Lakhs only) plus applicable taxes and exclusive of expenses incurred by him for discharging his duties.

RESOLVED FURTHER THAT pursuant to section 35, section 37 and other applicable provisions of IBC 2016, Chapter IV of the VLP Regulations and other applicable provisions, if any, liquidator, shall inter-alia, exercise the following powers:

- a. To institute or defend suit, prosecution or other legal proceeding, civil or criminal in the name of and on behalf of the Company;
- b. To carry on the business of the Company so far as may be necessary for the beneficial liquidation of the Company;
- c. To appoint any professional at a reasonable remuneration to assist him in discharge of his duties for matters other than listed above;
- d. To appoint such other professional or to continue with the appointment of the existing statutory auditor of the Company as may be required till the dissolution of the Company;
- e. To discharge all power, functions duties as required under section 35 of the IBC, 2016 read with the VLP Regulations or any other applicable provisions;
- f. To open separate bank account on behalf of the Company as per the requirement of the IBC, 2016 or to change the name of the existing bank account of the Company as may be deemed appropriate;
- g. To invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code;

ASTELLIA
BEYOND THE NETWORK

- h. To do all such other things as may be in the beneficial liquidation of the Company and distribution of assets including but not limited to obtaining any consultation from the stakeholders of the Company;

RESOLVED FURTHER THAT the Liquidator, inter-alia, be and is hereby authorised to do all such acts and deeds which are permissible under the code and regulations including to obtain consultation as may be required from time to time, from the contributory in writing duly signed by an authorised officer/ director thereof."

By order of the Board
For Astellia Telecom Private Limited


Kuntal V Desai
Director
DIN: 00325699

Add: 6 Shreshtha Shangri La, 6 New Beach Road,
Tiruvanmiyur, Chennai - 600041, Tamil Nadu.

6. It is added by the Applicant that a Certified true copy of the said Special Resolution passed in the Extra Ordinary General Meeting of the Company held on 21.09.2020 and Declaration of Solvency signed by Directors were filed by the Company with ROC in e-Form MGT-14 vide SRN R57498370 dated 22.09.2020 and e-Form GNL-2 vide SRN R57770638 dated 22.09.2020 respectively.

7. That it is submitted that the Directors of the Company have given the Joint Declaration of Solvency on Affidavit stating the following:

- “(ii) We have made full inquiry into the affairs of the company and having done so we have formed the opinion that the Company will be able to pay its debt in full.
- (iii) The Company is not being liquidated to defraud any person.”

Copy of the Declaration (annexed on page-86) is reproduced below:

Members' Voluntary Winding Up
Declaration of Solvency, embodying a statement of assets and liabilities
 [Pursuant to Section 59 of the Insolvency and Bankruptcy Code, 2016]

Name of the company: **Astellia Telecom Private Limited**
 CIN: **U64200DL2010PTC209622**
 Presented by: **Mr. Kamlesh R Maheshwari, Director (DIN: 06800897)**

DECLARATION OF SOLVENCY

We, Kamlesh Rangopal Maheshwari (DIN: 06800897) and Parupalli Sessa Sivanand (DIN 08765379), Directors of Astellia Telecom Private Limited, do solemnly affirm and declare that we have made a full enquiry into the affairs of the Company, and that having done so, we have formed the opinion that the Company will be able to pay its debts in full from the proceeds of the assets to be sold in voluntary liquidation and the company is not being liquidated to defraud any person, and we append a statement of the Company's assets and liabilities as at August 27, 2020 being the latest practicable date before the making of this declaration, and we make this solemn declaration believing the same to be true.

Solemnly affirmed and declared at Pune on this 2nd day of September ~~August~~ 2020, before me.

For Astellia Telecom Private Limited
 Kamlesh Ram Gopal Maheshwari
 Director
 DIN: 06800897

Parupalli Sessa Sivanand
 Director
 DIN: 08765379

BEFORE ME
 PRAKASH H. PARDESHI
 NOTARY, GOVT. OF INDIA
 PUNE DISTRICT

07 SEP 2020

8. Further, it is further submitted by the Applicant that vide the same Special Resolution passed in the Extra Ordinary General Meeting of the Company held on 21.09.2020, Mr. Sanjay Kumar Jha IP was appointed as Liquidator for the Company. Accordingly, the affairs of the Company were taken over by Sh. Sanjay Kumar Jha, the Liquidator with effect from 21.09.2020.

9. That it is stated by the Applicant that the public announcement was made by issuing an advertisement for voluntary liquidation in "Form A-Public Announcement" in terms of Regulation 14 of the VLP Regulations 2017, in the newspapers namely, Business Standard (English) and Business Standard (Hindi) on 22.09.2020. It is added that the copies of the same were sent by the Liquidator by e-mail dated 29.08.2019 to the IBBI.

10. It is further submitted by the Applicant that in response to the Public Announcement in the newspapers, he did not receive any claim from any stakeholder and as per books (declaration of solvency), no liability has been reported. Hence, neither any provision was made for any claimant or nor any amount was paid to anyone.

11. That the Applicant has made the following averments :

"17. That out of the funds available in Bank account of the company Rs. 15,10855.31/-, Rs. 563,354/- has been paid to the shareholders of the company in their proportion of holding after meeting all the liquidation expenses and other misc. expense and Rs. 9798.49 was left in the Bank account balance, which has been paid to the IBBI in the designated account with Punjab National Bank as per Regulation 39 of Voluntary Liquidation



*process Regulations. Copy of Liquidator Statement and report of the Chartered Accountants and certified copy of the Bank statement as on 12-04-2021 are enclosed herewith and marked as **Annexure A-11 (Colly)**.*

*18. That No objection from Income tax department has been obtained before distribution of funds to the shareholders. Copy of NOC issued by the income tax department is enclosed herewith and marked as **Annexure A-12**.*

*19. That payment of Rs. 363,354 /- to the shareholders consist return of share capital Amount of Rs.200,000 /- and balance Rs. 363, 354/- has been paid as deemed dividend which attracts income tax and Rs. 86,946 has been deposited as TDs vide challan no. 281/ 14089 dated 31.03.2021 through HDFC Bank copy of the challan has been enclosed herewith and marked as **Annexure A-13**.*

*20. That Income-tax return for March, 2020 has also been the financial year ending filed on 15-10-2020 and income tax of Rs. 35,4 40 /- was paid vide challan no. 280/ 18746 dated 14-10-2020 through HDFC Bank, copy of ITR acknowledgement and copy of the income tax paid challan are enclosed herewith and marked as **Annexure A-14 (Colly)**.”*

12. The Applicant has filed audited Financial Statements of the Company for the Financial Year ending 31.03.2019 and 31.03.2020 along with the application.

13. It is stated by the Applicant that the Bank Account maintained at HSBC, Branch situated at Birla Tower, Barakhamba Road, New Delhi-01 was utilised for the purpose of liquidation proceedings by the Liquidator.

14. That the Applicant/Liquidator has further submitted the following :

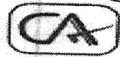
“21. That there shall be no adverse effect on the Directors, key managerial persons, promoters, depositors and creditors by the application of Voluntary Liquidation.

22. That there are no pending investigations under sections 206 to 220 Or chapter XIV or any other provision of the of the companies Act, 2013 or any previous Company Law, against any of the Applicant Company.”

15. It is further submitted by the Liquidator that as per Regulation 9 of the IBBI (Voluntary Liquidation) Regulations 2017, he has shared a Preliminary Report on 02.11.2020 with the Corporate Debtor.

16. The Applicant has also filed statement of receipts and payments from 21.09.2020 to 25.03.2021. The scanned copy of the same is reproduced below :

Annexure A-11 113



Ambani & Associates LLP
Chartered Accountants


Liquidator's Statement of Receipts & Payments for the Period from 21-09-2020 till 25-03-2021

Annexure A

| Receipts | Estimated Value (Rs.) | Value realized (Rs.) | Payments | Amount (Rs.) |
|-----------------|-----------------------|----------------------|--|--------------|
| Bank Balance | 14,11,588.00 | 14,11,588.39 | Legal, Liquidator Fees and other incidental payments: | |
| Cash | 90.00 | 90.00 | 1. Liquidator Fees | 118,000.00 |
| Deposits | | | 2. Publication Cost | 6,510.00 |
| FD at Bank | 103,479.00 | 99176.92 | 3. Consultant Fees | 472,000.00 |
| TDS | 19,976.00 | ---- | 4. Fees for IT Matter | 118,000.00 |
| | | | 5. ROC Filing Fees and Professional Fees | 41,612.00 |
| | | | 6. NCLT filing & Misc. exp etc. | 11,000.00 |

Contd. on Page 2

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W.P. 509, Shiv Market, Ashok Vihar
Phase - 1, Delhi - 110 052

+91 11 4708 1690, 4702 3550-60
+91 98119 09900

riteshambarani@hotmail.com
Web: ambaniandassociates.com

Liquidator's Statement of Receipts & Payments for the Period from 21-09-2020 till 25-03-2021 contd.

| | | | | |
|-------------|--------------|--------------|--------------------------------|--------------|
| | | | 7. C.A. Fees for Certification | 38,350.00 |
| | | | 8. Conveyance & Misc. Exp | 6,590.00 |
| | | | 9. Bank Charges | 3,254.82 |
| | | | 10. Income Tax & TDS | 122,386.00 |
| | | | 11. Excess deposit to IBBI | 9,798.49 |
| | | | Payment to Members | 563,354.00 |
| | | | Net Balance | NIL |
| Grand Total | 15,35,133.00 | 15,10,855.31 | Grand Total | 15,10,885.31 |

For Astellia Telecom Private Limited (In voluntary liquidation)

Sanjay Kumar Jha
Sanjay Kumar Jha
Liquidator

Place: Delhi
Date: 09.04.2021

Sanjay Kumar Jha
SANJAY KUMAR JHA
INSOLVENCY PROFESSIONAL
IP REG. No. IBBI/PA-02/NP-N00884/2018-19/12011
Email: sanjayjhafca@gmail.com
Mob. 9811579790

UDIN: 21506267AAAAJP3558

For AMBANI & ASSOCIATES

Chartered Accountants
ICAI Firm Registration Number 016923N

Hitesh Ambani
HITESH AMBANI
Partner

Membership Number 506267
Place: New Delhi
Date: 12.04.2021

17. That the Applicant has submitted that it has its Final Report dated 24.04.2021 in compliance of Regulation 38 of the VLP Regulations 2017. The relevant averment is reproduced below :

*"16. That upon completion of the liquidation process and after making all the payments towards the liquidation expenses and others, liquidator has prepared his final report as on 24-04-2021 under Regulation 38 of Voluntary Process Regulations, which has been filed with the Registrar of companies and Board (IBBI) on 25-04-2021. Copy of the report of the Liquidator along with duly audited Liquidator Statement and its filing proof with Registrar and Board are enclosed herewith and marked as **Annexure A-10 (Colly)**."*

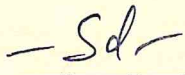
[Handwritten signature]

18. On examining the Application, documents annexed therewith and the submissions made by the Applicant/Liquidator, it emerges that the affairs of the Company have been completely wound up and its assets are completely liquidated and there is no litigation pending against the Company.

19. In view of the facts placed on record, averments and the submissions made by the Liquidator, the Company deserves to be dissolved. **Therefore, the Company is hereby dissolved with immediate effect.**

20. The **Application is Allowed** in the aforesaid terms.

21. The Applicant is further directed to serve a copy of this Order on the Registrar of Companies (ROC), with whom the Company is registered, within fourteen days of receipt of this Order. The Registrar shall take necessary action upon receipt of a copy of this Order.


(L. N. Gupta)
Member (T)


(Abni Ranjan Kumar Sinha)
Member (J)