THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-I

I.A. 355 OF 2022

Under Section 60(5) of Insolvency & Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules, 2016

Tushti International Private Limited

…Applicant

Vs.

Mr. Ashok Kumar Dewan,
Liquidator of Corporate Debtor

…Respondent

In the matter of

C.P.(IB) No. 1687/MB/2018

Edelweiss Assets Reconstruction Company Limited

…Financial Creditor

Vs.

M/s Maxx Mobile Communication Limited

…Corporate Debtor

Order delivered on: 24.01.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances

For the Applicant : None

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application IA 355/2022 is filed by M/s Tushti International Private Limited ("Applicant") who is successful buyer of M/s Maxx Mobile Communication Limited ("Corporate Debtor") as going concern in the Liquidation Process under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 ("Code") read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking directions to the Liquidator Sh. Ashok Kumar Dewan ("Respondent"). The Applicant has sought following relief :

   a. Allow the present Application; and
   b. Allow the Applicant to open a bank account in the name of Maxx Mobile Communications Ltd. with its Banker; and
   c. Declare that the vesting of the management, control and ownership of the Corporate Debtor with the Applicant stands confirmed; and
   d. (a) Declare that the appointment of the Newly Appointed Directors nominated by the Successful Bidder stands confirmed and they are empowered to take all required decisions with respect to the operations and management

of the Corporate Debtor, and (b) the required consequent changes be reflected on the MCA portal; and/or

e. Pass such other and further orders as the Hon'ble Tribunal may deem fit.

2. The Applicant has submitted that the 'inactive' status of the Master-Data of the Company as displayed on the MCA portal, pursuant to the Liquidation Process (or closure thereof) of the Corporate Debtor, i.e. Maxx Mobile Communications Limited, is absolutely crippled in terms of taking any measures to effectively operate the business of the Corporate Debtor which was sold off as a '*going concern*' to the Applicant under Regulation 32(e) of IBBI (Liquidation Process) Regulations, 2016.
3. The Corporate Debtor underwent Liquidation *vide* Order dated 21.08.2019. The Stakeholders Consultation Committee in its meeting dated 29.10.2020, accorded their consent in terms of Regulation 31A (9) of the IBBI (Liquidation Process) Regulations,2016 resolving to approve the sale of the Corporate Debtor as a going concern in favor of the Applicant.
4. The Applicant made the entire payment of **Rs. 33.41 Crores** for acquiring the Corporate Debtor as a going concern about 11 months ago, i.e. on 11.03.2021. The Sale Confirmation Letter has already been issued in favour of the Applicant on 11.03.2021. The amount so paid has already been distributed to the stakeholders in terms of section 53 of the IBC and the process is complete. No due certificates have already been issued by the secured financial creditors. The physical possession of the Corporate Debtor has been handed over.

5. Even so, the Applicant is unable to gain effective management and control over the Corporate Debtor. The Applicant's authorized signatories have not been allowed to open the bank accounts in the name of the Corporate Debtor. Further the directors nominated by the Applicant on the Board of the Company have not been taken on record by the Registrar of Companies and to vacate the directorship of erstwhile directors. The Applicant is unable to raise invoices and encash the payments (such as the rental amounts) received from various vendors of the Corporate Debtor for effective utilization of its business, since the Applicant till date has not been able to operate and manage the banking operations of the Corporate Debtor independently. The Applicant is unable to open an account in the name of Maxx Mobile Communications Ltd. since the status of the Company with the master data of MCA portal is still inactive. The inability to operate and manage the banking operations of the Corporate Debtor has led to huge liquidity crisis for the Applicant and has brought the business of the Applicant to a standstill. The Applicant is not even able to pay his employees their salaries and dues. The situation is leading to a reduced availability of working capital for the Applicant.
6. The Liquidator is stated to have issued an auction notice dated 01.08.2020, with reference to the sale of assets of the Corporate Debtor. The Applicant on 17.08.2020 submitted the EMD for Lot No. 7 and Lot No. 8 with reference to the sale of assets of the Corporate Debtor.
7. However, thereafter, the Applicant indicated its intent to acquire Lot No. 1 i.e. "Sale of Corporate Debtor / Business as a going concern" by way of its email dated 02.09.2020. The Applicant also

deposited the EMD of Rs. 3,34,15,000/- vide within the prescribed time period.

8. It is imperative to mention that in addition to the payment of the EMD, the Applicant herein had also circulated a Term-Sheet for acquisition of the Corporate Debtor as a going concern, which were in the form of proposals to the Corporate Debtor and the Stakeholders Committee about the manner in which the Applicant proposes to acquire the Corporate Debtor, such as change in shareholding, extinguishment of the prior existing share capital structure, change in board structure, satisfaction of existing charges, extinguishment of liabilities, etc.
9. Thereafter the stakeholders committee convened a meeting on 03.09.2020 wherein the proposal received from the Applicant herein was discussed and deliberated and certain amendments were sought in the Term-Sheet. The Applicant therefore duly modified the Term-Sheet and submitted the modified Term-Sheet on 12.09.2020.
10. It is submitted that upon the categorical satisfaction and confirmation by the Stakeholders Committee and the Respondent about the terms and conditions of the modified Term-Sheet, the Applicant on 11.03.2021 has deposited the entire amount of Rs. 33,41,50,000/-. It is further relevant to note that the Term Sheet dated 12.09.2020 contained a specific provision under Paragraph 27 titled 'Compliances' as reproduced herein: -

> "*The jurisdictional Registrar of Companies to take on record and implement this term sheet, upon approval by NCLT, without any further compliances and re-initiate all the approvals and waive all the financial or other penalties/interest/prosecution of all type and nature including*

in respect of the restructuring of capital as per this term sheet including reduction/cancellation of capital, enhancement of authorized share capital and allotment of fresh shares to the Acquirer. ROC be directed to waive the past non-compliance and exempt the reconstituted MMCL from filings & compliances for the period before approval of term sheet.

The financial creditors to satisfy the charges filed with the Ministry of Corporate Affairs against the CD or any other directory/repository like CERSAI."

11. It is submitted that the Respondent thereafter even issued a Certificate of Sale on 11.03.2021 wherein it was stated and confirmed by the Respondent that the Corporate Debtor stood sold to the Applicant herein free from all the past liabilities. That, therefore, the Applicant has been the *de jure and de facto* owner of the Corporate Debtor as a going concern since 11.03.2021. The Applicant has been following up rigorously with the Respondent in order to take effective management and control of the business.
12. The Liquidator vide emails dated 05.04.2021 and 24.06.2021 had requested for activating the status of the Corporate Debtor in the Master Data present in the MCA portal – an exercise undertaken by the RoC and Insolvency and Bankruptcy Board of India ['**IBBI**'].
13. Since the distribution of proceeds to the stakeholders is complete, and it has been almost 2.5 years since the Liquidation commenced, the only procedure remaining is for the Liquidator to file a (i) Final Report; (ii) File the FORM-H Certificate; and

(iii) File an Application for Closure of Liquidation Process before this Hon'ble Adjudicating Authority, which would enable the Applicant herein to take effective control and management of the Corporate Debtor.

14. The Liquidator has filed e-Form INC-28 with the Registrar of Companies, intimating the sale of the Corporate Debtor as a going concern. Further, the Liquidator also by way of letters dated 20.03.2021 and 05.04.2021 intimated the various government authorities about the sale of the Corporate Debtor in favor of Applicant.
15. That vide its letter dated 07.07.2021, the Liquidator has confirmed that for change of status of the Company to Active in the master data of MCA portal, the required form has been filed.
16. That vide an email dated 15.07.2021, the Liquidator further confirmed the fact that the Corporate Debtor has been sold and transferred completely to the Applicant herein and further the Respondent also handed over the physical possession of the Corporate Debtor. Further, the fresh share certificates issued have also been handed over to the Applicant herein.
17. Despite the request by the Respondent, the names of the Newly Appointed Directors of the Corporate Debtor as appointed by the Applicant is still not reflected on the portal of the Ministry of the Corporate Affairs. Hence, despite the Newly Appointed Directors being duly appointed by the Respondent, the same is not being publicly acknowledged causing untold harassment and crippling the ability of the Applicant to establish its legitimacy as the owner of the Corporate Debtor and to transact any business whatsoever.

18. Notably, the Liquidator had filed IA No. 2064/2020 for approval of Term Sheet filed by the Applicant. Vide Order dated 21.01.2021, the Bench disposed the Application as withdrawn and stated as follows: -

> "*Heard the counsel for the Liquidator. After an elaborate arguments Counsel for the Liquidator seeks to withdraw this Application. The Application is dismissed as withdrawn. It is made clear that if the Auction Purchaser confronts any problem with any Authority in respect of the sale of the Company as a going concern by the Liquidator, it would be at liberty to approach this Tribunal for redressal.*"

19. Heard learned Counsel and perused the material available on record.

20. We find that the Applicant's main grievance is that, despite sale of the Corporate Debtor as going concern in the Liquidation process, the Corporate Debtor has still not been taken out of rigors of the Liquidation process which has disabled it to resume the operations in the Corporate Debtor.

21. It is not in dispute that the sale of Corporate Debtor as going concern is complete and the distribution of proceeds to the stakeholders has taken place. Accordingly, we find it appropriate to order that the status of 'Corporate Debtor' in the records of IBBI and MCA shall be changed and updated as 'Active'. The Liquidator shall provide necessary information and documents, as is required by these authorities within 3 days and the such authorities shall update the status of Corporate Debtor 'Active' within seven days from the date of receipt of information by liquidator or the applicant, as the case may be. Thereafter, the ROC shall accept manually the requisite form for making change in its

records relating to retirement of existing directors and appointment of new directors, if the efiling system does not accept the same electronically and the ROC shall ensure that these records are updated electronically also within 15 days.

22. The Banker shall allow the change in the name of directors in their records upon production of documents in relation thereto filed with the ROC and allow such directors or person authorised by such directors to operate the bank account of the Corporate Debtor. The GST authorities shall also permit the necessary amendments so as to activate the registration of the Corporate Debtor or obtain a new registration, as is permissible under their law.

23. In view of the foregoing, IA 355/2022 is allowed and disposed of accordingly.

SD/-	SD/-
Prabhat Kumar	**Justice V.G. Bisht**
Member (Technical)	Member (Judicial)