BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

I.A.No.32/2021
U/s. 60(5) R/w Section 54 of the IBC, 2016
& R/w Rule 11 of the NCLT Rules, 2016
And
C.P. (IB)No.98/BB/2020
U/s.7 of the IBC, 2016
R/w Rule 4 of I&B (AAA) Rules, 2016

In the matter of:

Raghuram Manchi
Resolution Professional of
Mack Telecom Services Private Limited
Flat No. A 406, 4th Floor,
Mantri Greens, 01 Sampige Road,
Malleswaram,
Bengaluru - 560 003 - Applicant

Date of Order: 4th February, 2021

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present, through Video Conference:

For the Applicant : Shri K. Dushyanth Kumar, PCS

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.32/2021 is filed by Raghuram Manchi, Interim Resolution Professional of Mack Telecom Services Private Limited (Applicant), U/s. 60(5) R/w Section 54 of the IBC, 2016 & R/w Rule 11 of the NCLT Rules, 2016, by inter alia seeking the following reliefs:

(1) To dissolve the Corporate Debtor viz., (Mack Telecom Services Private Limited) with immediate effect;

(2) To direct the Financial Creditor, M/s. VOXTBV India Pvt. Ltd., to make payment of the expenses pertaining to the CIRP amounting to Rs.4,36,580/- to the IRP;

(3) To direct Life Insurance Corporation of India to pay Rs.38,552/- to Mr. Manjunath.G to his Bank Account Number:04110150 6231 maintained at ICICI Bank, Yelahanka Branch, Bengaluru (IFSC:ICIC0000411);

(4) To Direct the Life Insurance Corporation of India (LIC) to process the surrender of LIC policy bearing No.520833 and to pay the balance available to M/s. VOXTBV India Private Ltd., by issuing demand draft;

(5) To Direct the Financial Creditor, M/s. VOXTBV India Pvt. Ltd., pay an amount of Rs.1 Lakh towards the rental advance paid of the Corporate Debtor on account of transfer of the same to their books;

2. Brief facts of the instant Application, which are relevant to the issue in question, are as follows:

(1) Initially, the main Company Petition bearing C.P.(IB)No.98/BB/ 2018 was filed by M/s. VOXTBV India P. Ltd (Petitioner), U/s.7 of the IBC, 2016, by inter alia seeking to initiate CIRP in respect of M/s. Mack Telecom Services Private Limited (Respondent/ Corporate Debtor), same was admitted by the Adjudicating Authority, vide its Order dated 09.11.2020, by appointing the Applicant as IRP, imposing moratorium etc. During the 1st meeting of CoC was held on 07.12.2020 the IRP was confirmed as RP.

(2) Pursuant to Section 15 of the IBC, 2016 R/w. Rule 6 of IBBI (CIRP) Regulations, 2016, the IRP has made Public

Announcement in Form-A on 14.11.2020, in two newspapers namely Financial Express (English) and Samyuktha Karnataka (Kannada) to give intimation to the creditors of Corporate Debtor regarding initiation of CIRP and to receive the claims from them within the prescribed time limit. The Applicant has received claim from the following creditors:

Financial Creditors:

Sl. No.	Name of the Financial Creditor	Amount claimed (Amount in Rs.)	Amount admitted (Amount in Rs.)
1	VOXTBV India Private Limited	2,91,22,268.53	2,91,22,268.53
	Total	**2,91,22,268.53**	**2,91,22,268.53**

Operational Creditors (Statutory Authority)

Sl. No.	Name of the Operational Creditor	Amount claimed (Amount in Rs.)	Amount admitted (Amount in Rs.)
1	Employees' State Insurance Corporation	38,529.00	38,529.00
	Total	**38,529.00**	**38,529.00**

(3) Further, the Applicant has received a claim from Income Tax Department for an amount of Rs.28,14,693/-. However, the Applicant has requested for the assessment order passed by the Department in this regard and response is awaited.

Employees:

Sl. No.	**Name of the Employee**	**Amount claimed (Amount in INR)**	**Amount Admitted (Amount in INR)**
1	Manjunath G	1,42,479.00	1,42,479.00
2	Samson P Patil	41,559.00	41,559.00
	Total	**1,84,038.00**	**1,84,038.00**

(4) Subsequent to review of financial position of the Corporate Debtor, the appointment of Registered valuer is not required, as the Corporate Debtor does not have any tangible assets and any realizable assets, except for a Gratuity Group Cash Accumulation (GGCA) Policy (No.520833) from Life Insurance Corporation of

India, P&GS Department, Bengaluru (G501). Further, as the Corporate Debtor is not a going concern for the last 6 years and all previous efforts to revive the unit have not succeeded, no viable resolution plan is expected to be received. During the second meeting of CoC was held on 27.01.2021, the Members reviewed the financial position and approved for dissolution of the Corporate Debtor. Further, the Committee authorized the Applicant to file necessary Application before this Adjudicating Authority.

(5) It is stated that the financial data of the Corporate Debtor, had come to a conclusion that the substratum of the Corporate Debtor was not in a good shape and its assets are not sufficient to settle the dues of the creditors ,who have lent money to the Corporate Debtor also including trade payables. The Corporate Debtor is not in a position to extinguish all the liabilities, by way of repayment. The following are the financial details of the Corporate Debtor as per the audited Balance Sheet as at 09.11.2020.

OUTSIDE LIABILITIES:

Sl. No.	Details of the Liability	Amount
1	Shareholders' Funds	39,07,547.00
2	Long Term Borrowings	2,39,87,749.00
3	Trade Payables	77,01,690.00
4	Other Current Liabilities	33,08,691.00
	TOTAL	**3,89,05,677.00**

ASSETS:

Sl. No	Details of the Assets	Amount (Rs.)	Whether realizable/non-realizable

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1.	Long Term Loans and Advances	65,91,310.00	Out of this amount, rental deposit of Rs.1,00,000/- is proposed to be shifted to M/s. VOXTBV India, the holding Co. All others are statutory receipts (Service tax Deposit, Income Tax Refund & Book entry of MAT). These are not immediately realizable.
2.	Trade Receivables	2,99,85,604.00	These are disputed and not Realizable.
3.	Short Term Loans and Advances	7,01,838.00	EPF Deposit with EPF department, not immediately realizable.
4.	Other current assets	15,75,593.00	LIC and Gratuity –Realizable, subject to the approval from LIC.
5.	Cash and cash equivalents	51,331.00	Cash available is 10,906/, and remaining balance from Yes Bank, ICICI and SBI accounts which are now dormant, and subject to payment of bank charges. Realizable amount is negligible.
TOTAL ASSETS		3,89,05,677.00	
TOTAL VALUE OF THE REALISABLE ASSETS approx) (100000+1575593+10906)		Rs. 16,86,499/-	
DEFICIT		Rs. 3,72,19,178/-	

(6) The Corporate Debtor had not been carrying business in the past six years and all the advances and receivables are time barred and the Corporate Debtor also did not generate revenue as it is not having favourable conditions for business and is not able to get viable business opportunities. Corporate Debtor was not functioning as a going concern due to the financial and other business difficulties. The realizable properties of the Corporate Debtor are insufficient to cover the cost of the liquidation process; and when the affairs of the Corporate Debtor do not require any further investigation.

(7) There is no scope for a Resolution Plan and the Corporate Debtor has to go into the Liquidation Process. However, considering the aspect of viability, and that the assets of the Corporate Debtor do not fetch any Liquidation value, taking the Corporate Debtor through the Liquidation Process would only result in augmentation of Liquidation Costs.

(8) They have relied upon the order dated 08.02.2019, passed by Mumbai Bench of NCLT.

"In Central Bank of India Vs Dev Blessing Traders Private Limited (C.P.(IB)-1284/(MB)2017), wherein the Company had no much realizable assets and the Resolution Professional Mr. TejasJatin Parikh had pleaded for early dissolution as it is not viable to carry on the Corporate Insolvency Resolution Process thereof. The Hon'ble Mumbai Bench had opined that the case was a fit case of a Corporate Debtor to be dissolved as prescribed under Section 54 of the Insolvency and Bankruptcy Code, 2016."

(9) There are no Financial Creditor except, the Petitioner has filed a claim. The CoC thus comprises of only the Operational Creditor. Considering this situation, the Applicant seeks to direct the Corporate Applicant, who submitted the Application for initiation of the CIRP to bear the CIRP Cost of Rs.4,36,580/-.

(10) The Corporate Debtor had taken a Gratuity Group Cash Accumulation (GGCA) Policy (No.520833) from Life Insurance Corporation of India, P&GS Department, Bengaluru (G501) for the purpose of meeting its gratuity liability whenever employees leave the Corporate Debtor from time to time. This policy was taken around the year 2002 and was kept renewed from time to time. A trust was formed with the then Directors of the Corporate Debtor as Trustees to manage the funds under the policy. As per the records available with the Corporate Debtor, premium was

last paid in respect of this policy in 2012, submitting a list of 70 employees who were covered under the policy to LIC. Summary position in this regard is as under:

Number of employees on rolls as on 28.03.2012.	70
Number of employees who left the company before becoming eligible for gratuity	54
Number of employees who were paid gratuity by the corporate debtor	15
Number of employees to whom gratuity is still payable as on date	1

(11) Gratuity is still payable to the employee, Mr. Manjunath.G (Employee No. M/1414). He has submitted a claim for Rs.1,42,479/- which includes the gratuity amount of Rs.38,552/-.

(12) Thereafter LIC has given an advice dated 07.09.2020 to the Corporate Debtor confirming that there is an accumulated fund of Rs.15,75,594/- under the policy, as on 31.03.2020. Further the RP has sent a letter to LIC informing about the initiation of CIRP of the Corporate Debtor on 9.12.2020. RP has further sent a letter on 01.02.2021 requesting LIC to accept surrender of the said policy and make payment of the up-to-date accumulated amount to RP in order to consider payment of the claims under CIRP. Also the employees for whose benefit the policy was taken have either been paid gratuity by the Corporate Debtor or are not eligible to be paid any gratuity as they left the job before becoming eligible for gratuity. Further, the activities of the Corporate Debtor have ceased and no employees have been on the rolls of the Corporate Debtor since 2014. The Directors who were Trustees have also left the Company and the Gratuity Trust itself has become defunct. Even then, the Corporate Debtor continued paying premiums in respect of the policy as long as

employees were on rolls. Accordingly, the Corporate Debtor is the rightful owner of the accumulated amount under the aforesaid GGCA Policy as on date.

(13) The Realization of Cash balance available with the Corporate Debtor is to the extent of Rs.10,906/-. The Applicant seeking to utilize this amount for distribution to creditors as per the list. There is a rental advance of Rs.1,00,000/- paid by the Corporate Debtor for the office occupied by them which is proposed to be used for distribution to creditors as per the proposed arrangement of distribution U/s.53 of IBC, 2016.

(14) It is stated that the amount realized to distribute as per the Section 53 of the IBC, 2016, considering the proposal that CIRP costs would be borne by the Corporate Applicant. The proposed distribution of the realizable amount is given below:

The expected realizations: (Approximate amounts in Rs. Lakhs):

1	Proceeds of the GGCA Policy from LIC less gratuity payable to Mr.Manjunath as per his claim (15.75 - 0.38552)	15.36
2	Cash Balance available with Corporate Debtor	0.10
3	Proceeds of the rental advance transferred to holding company	1.00
	Total	16.46

Proposed distributions as per Section 53 of IBC (Rs. in Lakhs)

S. No	Section	Particulars as per the Section	Amount proposed	Name of the Claimant
1	53(1)(a)	CIRP Costs– borne by the corporate applicant	0	
2	53(1)(b)(i)	Workmen's dues for 24 months from ICD	0	
3	53(1)(b)(ii)	Debts to Secured Creditors	0	
4	53(1)(c)	Wages/unpaid dues to employees within 12 months from ICD	**0**	
5	53 (1)(d)	Financial Debts owed to unsecured creditors	**16.36**	M/s VOXTBV India Pvt. Ltd (CIN U3220KA2002PTC 045431)
6	53 (1)(e)	Central/State Government/ unpaid secured creditors	0	
7	53 (1)(f)	Any remaining Debts	0	

8	53 (1)(g)	Preference Shareholders	0	
9	53 (1)(d)	Equity shareholders/partners	0	
		Total Amount	**16.36**	

3. Heard Shri K. Dushyanth Kumar, learned PCS for the Applicant, **through Video Conference.** We have carefully perused the pleadings of the party along with extant provisions of the Code, and the Rules made thereunder.

4. Before considering the merits of case, it is necessary to refer relevant provisions and rules, as available under the Code and the Rules made thereunder.

   "Section 54 of the Code reads as *(1) Where the assets of the Corporate Debtor have been completely liquidated, the liquidator shall make an Application to the Adjudicating Authority for the dissolution of such Corporate Debtor. (2) The Adjudicating Authority shall on Application filed by the liquidator under sub-section (1) order that the Corporate Debtor shall be dissolved from the date of that order and the Corporate Debtor shall be dissolved accordingly. (3) A copy of an order under sub-section (2) shall within seven days from the date of such order, be forwarded to the authority with which the Corporate Debtor is registered".*

   Rule 11 of NCLT Rules, 2016 *confers inherent powers on NCLT, which reads as " Rule, 11- Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.*

5. In terms of Section 60 of Code, the Adjudicating Authority shall be NCLT having territorial jurisdiction over the place, where the registered office of corporate person is located. By conjointly reading the above provisions, the ultimate objective of Code is either to resolve the issue by way of Resolution Plan or to dissolve the Corporate

Debtor, as expeditiously as possible. The above facts and circumstances of the case, justify there would not serve any purpose to keep the Corporate Debtor under CIRP proceedings, and thereafter under Liquidation proceedings, under the provisions of Code. Therefore, the Adjudicating Authority, by exercising its inherent powers conferred under the Act, can pass appropriate order(s) in the interest of speedy justice.

6. The facts as mentioned above justify dissolution of the Company rather than to continue the Corporate Debtor either under CIRP/ Liquidation process, under the extant provisions of the Code and Rules made there under. As details supra, total Assets of the Company is Rs.3,89,05,677/- out of which, total realizable Assets are approximately Rs.16,86,499. Therefore, instead of continuing the Corporate Debtor, either under CIRP or Liquidation process and incurring further expenditure would not serve any purpose. The paltry assets of the Company can be distributed as per rules, after dissolving the Company. Under the above circumstances, the CIRP/liquidation process under the provisions of Code is deemed to have been completed under the extant provisions of Code. Therefore, it would be just and proper for the Adjudicating Authority to dissolve the Company, as prayed for and permitting the Applicant to complete the consequential distribution of remaining assets as per law.

7. In the result, by exercising powers conferred on the Adjudicating Authority, under Section 54 of Code, especially exercising inherent powers conferred under *Rule 11 of NCLT Rules, 2016,* C.P.(IB)No.98/BB/2020 and I.A.No.32/2021, are hereby disposed of with the following directions:

(1) It is hereby dissolved the Corporate Debtor namely, M/s. Mack Telecom Services Private Limited, with immediate effect;

(2) The Registry is directed to forward a copy of this Order to the Registrar of Companies, Karnataka, Bengaluru; The Applicant is also directed to forward a copy of this Order to all other Statutory Authorities including IBBI, connected with the affairs of the Company.

(3) Personal liability/Guarantee of any Director/Promoter of the Corporate Company, if any, would not absolve them by virtue of this order. Aggrieved party/Parties are at liberty to continue or to take appropriate legal course of action against them.

(4) The Applicant is permitted to take all consequential actions in realising and distribution of remaining assets as detailed supra, as per law and he can also recover CIRP costs.

ASHUTOSH CHANDRA
MEMBER, TECHNICAL

RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL

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