



IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

IA/1694/2023

In

Company Petition No. (IB) – 687/ND/2021

*Under Section 33(2) of the Insolvency and Bankruptcy
Code, 2016 for liquidation of the corporate debtor*

In the matter of:

M/S. UNIWORD TELECOM LIMITED

...OPERATIONAL CREDITOR

VERSUS

M/S. ASIA TELECOM PRIVATE LIMITED

...CORPORATE DEBTOR

And in the matter of:

Abhishek Anand

Resolution Professional of M/s. Asia Telecom Private Limited

...Applicant

Order Pronounced on: 31.10.2023



CORAM:

SHRI. BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

SHRI. RAHUL BHATNAGAR, MEMBER (TECHNICAL)

For the Applicant: Mr. Abhishek Anand

ORDER

PER- BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This is an application filed by the Resolution Professional, under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the “Code”) for issuance of directions for liquidation of Corporate Debtor, M/s. Asia Telecom Private Limited.
2. The facts in brief are that an Application for initiation of the Corporate Insolvency Resolution Process (“CIRP”) was filed by M/s. Uniword Telecom Limited, the Operational Creditor against the Corporate Debtor under Section 9 of the Code. The Application was admitted by the Hon’ble National Company Law Tribunal (“NCLT”), New Delhi Bench vide Order dated 01.07.2022 wherein Mr. Abhishek Anand (IP Registration No. IBBI/IPA-002/IP-



N00038/2016- 2017/10077), was appointed as Interim Resolution Professional (“IRP”).

- 3.** Thereafter, the IRP had issued a public announcement in Form-A, which was published in the 'Financial Express' in English edition and in 'Jansatta' Hindi edition both dated 06.07.2022, calling on the creditors to submit their claims along with proofs. On receipt of claims and their verification/collation, the Committee of Creditors (CoC) was constituted by the IRP.
- 4.** That the last date of submission of claims as stated in the Public Announcement was 16.07.2022 and the IRP only received One (1) claim from M/s. Uniword Telecom Limited, the Operational Creditor in prescribed “Form-B” dated 12.07.2022 for a sum of Rs.1,86,00,000/- (Rupees One Crore Eighty-Six Lakh).
- 5.** The IRP duly verified the claim of the aforesaid Creditor and filed the List of Creditors under Regulation 13 (2) (d) of the CIRP Regulations, 2016 and Report certifying constitution of CoC under Regulation 17 (1) of CIRP Regulations, 2016 as on the last date of submission of claims on 16.07.2022 before this Tribunal and the same was taken on record vide order dated 04.08.2022.



Accordingly, the Committee of Creditor was constituted with 1 Operational Creditor and subsequently the IRP scheduled the 1st CoC Meeting of the Corporate Debtor on 01.08.2022 wherein the sole member of the CoC passed a resolution to appoint Interim Resolution Professional Mr. Abhishek Anand as Resolution Professional of the Corporate Debtor.

- 6.** That during the CIRP of the Corporate Debtor, the Resolution Professional conducted five CoC meetings on different occasions.
- 7.** That this Tribunal vide its order dated 09.11.2022 allowed the I.A. 4080 of 2022 filed seeking exemption from the appointment of the Registered Valuers and exempted the Resolution Professional from appointing Registered Valuers in the matter since there are no assets other than the Bank Account as submitted on Affidavit by the Resolution Professional.
- 8.** That the Resolution Professional has also prepared the Information memorandum pursuant to Section 29 of the Code read with Regulation 36(1) of the CIRP Regulations on 24.08.2022 showing the details of the assets and liabilities; the latest annual financial statements; provisional financial statements for the



current financial year; list of creditors; particulars of debt due from or to the corporate debtor, etc. The Information Memorandum prepared by the Resolution Professional was discussed during the Second CoC Meeting of the Corporate Debtor held on 25.08.2022.

- 9.** That in the 3rd CoC meeting of the Corporate Debtor held on 14.09.2022, the sole CoC Member rejected the proposal to publish Form G and bear its publication expenses.

- 10.** That in the 4th CoC Meeting of the Corporate Debtor held on 19.11.2022, the CoC of the Corporate Debtor decided to Liquidate the Corporate Debtor since the Corporate Debtor had no assets except negligible amount in its bank accounts which are also either dormant or frozen as per the information received from the bank through the enquiry made by the Resolution Professional. Further, in the 4th CoC Meeting, the CoC resolved to appoint the Resolution Professional as Liquidator of the Corporate Debtor and authorized the Resolution Professional to file an Application for initiation of the Liquidation Process of the Corporate Debtor under section 33 (2) of the Code and IBBI (Liquidation Process) Regulation, 2016.



11. That after the 4th CoC Meeting of the Corporate Debtor, the Resolution Professional of the Corporate Debtor withdrew his Consent for appointment as the Liquidator of the Corporate Debtor due to suspension of Authorization for Appointment.

12. That the Resolution Professional of the Corporate Debtor conducted the 5th CoC Meeting on 28.12.2022 and proposed to appoint CA Ankur Tayal having IP Registration No. IBBI/IPA-001/IP-P01790/2019-2020/12779 as the Liquidator of the Corporate Debtor and presented the consent form for proposed appointment as the Liquidator of the Corporate Debtor on behalf of CA Ankur Tayal before the CoC of the Corporate Debtor. The CoC passed the following resolutions:

“RESOLVED THAT the Committee of Creditors agrees to propose to Hon’ble NCLT for appointment of CA Ankur Tayal having IP Registration No. IBBI/IPA-001/IP-P01790/2019-2020/12779 as the Liquidator of the Corporate Debtor as per the provisions of Section 34(1) of the IBC, 2016”.

“RESOLVED THAT an amount of Rs. 25,000/- plus GST is fixed as Liquidators fees for the entire Liquidation Process.”

13. That the Insolvency Professional CA Ankur Tayal having IP



Registration No. IBBI/IPA-001/IP-P01790/2019-2020/12779 has also consented to be appointed as a Liquidator of the Corporate Debtor. Consent of the undersigned Insolvency Resolution Professional has been provided as per the provisions of section 34 of the Code.

14. Thus from the facts of the present case, it is seen that the present case is a case where the Resolution Professional is seeking Liquidation of the Company u/s 33(2) of the IBC, 2016 on the ground that the Corporate Debtor has no assets.

15. The Hon'ble NCLAT vide order dated 25.11.2021 in *Company Appeal (AT) (Insolvency) No.470 of 2019 in the matter of Innovative Construventures Private Limited and Anr. Vs Brainer Trade and Fin-Tech Private Limited and Ors.* held that the IBC empowers the Committee of Creditors to liquidate the Corporate Debtor any time after its constitution under Section 21 and before confirmation of Resolution Plan including any time before the preparation of Information Memorandum.

16. In the matter of *Sreedhar Tripathy vs. Gujarat State Financial Corporation and Ors.*, the Hon'ble NCLAT in para 7 stated as under:



The Explanation under Section 33(2) has been inserted by Act of 26 of 2019 contains the legislative declaration and intention. **The CoC in the Legislative Scheme has been empowered to take decision to liquidate the Corporate Debtor, any time after its constitution and before confirmation of the resolution plan. The power given to the CoC to take decision for liquidation is very wide power which can be exercised immediately after constitution of the CoC. The reasons which has been given in Agenda Item 1, it is made clear by the CoC that the Corporate Debtor is not functioning for last 19 years and all machinery has become scrap, even the building is in dilapidated condition and the CIRP will involve huge costs.** We are not convinced with the submission of learned counsel for the Appellant that the CoC's decision is an arbitrary decision. **CoC is empowered to take decision under the statutory scheme and when in the present case the decision of the CoC for liquidation has been approved by the Adjudicating Authority, we see no good ground to interfere at the instance of the Appellant.** However, we make it clear that the decision taken by the CoC was in the facts of the present case and it cannot be said that whenever decision is taken for liquidation the same is not open to judicial review by the Adjudicating Authority and this Appellate Tribunal. It depends on the facts of each case as to whether the decision to liquidate the Corporate Debtor is in accordance with the I & B Code or not. With these observations, the Appeal is dismissed.

17. It is well settled that decision taken by CoC for liquidation in commercial wisdom of the CoC should not be interfered with by the Adjudicating Authority.



18. In view of the above, the application is allowed by ordering liquidation of the Corporate Debtor, namely M/s. Asia Telecom Pvt.

Ltd. with following directions:

- a. That Mr. Abhishek Anand, the Resolution Professional of the Corporate Debtor, is relieved from the present assignment as Resolution Professional.
- b. That CA Ankur Tayal, holding Registration No. *IBBI/IPA-001/IP-P01790/2019-2020/12779*, is appointed as the Liquidator in terms of Section 32(1) of the Code;
- c. Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- d. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- e. This order shall be deemed to be notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency



and Bankruptcy Code, 2016;

- f. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.
- g. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.
- h. The Liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- i. The Liquidator shall submit Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
- j. Copy of this order be sent to the Financial Creditors,



Corporate Debtor and the Liquidator for taking necessary steps;

- k. I.A. 1694/2023 filed in IB- 687/ND/2021 is disposed of in terms of the aforesaid terms.

SD/-

(RAHUL BHATNAGAR)

MEMBER (TECHNICAL)

SD/-

(BACHU VENKAT BALARAM DAS)

MEMBER (JUDICIAL)