

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through web-based video conferencing platform)

IA No.673/2019
Under Section 33(2) of the
Insolvency and Bankruptcy Code, 2016
in
C.P. (IB) No.244//BB/2018

In the matter of:-

Smt. Ramanathan Bhuvaneshwari,
Resolution Professional,
M/s. Kavveri Telecom Infrastructure Limited
Plot No. 31 to 36, First Main, 2nd Stage,
Arakere Mico Layout, Bannarghatta Road,
Bangalore-560068

... Applicant/
Resolution Professional

Order delivered on: 03.02.2022

Coram: **Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)**
Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Applicant/
Resolution Professional : Smt. Ramanathan Bhuvaneshwari

ORDER

Per: Ajay Kumar Vatsavayi, Member (Judicial)

1. This application has been filed by Smt. Ramanathan Bhuvaneshwari, the Resolution Professional of M/s. Kavveri Telecom Infrastructure Limited (Corporate Debtor) under Section 33 of the Insolvency and Bankruptcy Code, 2016 r/w. Rule 11 of the NCLT Rules, 2016 for passing an order of Liquidation in the matter of M/s. Kavveri Telecom Infrastructure Limited (Corporate Debtor) and to appoint the Applicant herein as Liquidator for initiation of Liquidation process of the Corporate Debtor etc.

IA No.673/2019 in
C.P. (IB) No.244//EB/2018

— Sd —

2. CP (IB) No.244/BB/2018 filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by "M/s. Dena Bank (Now Bank of Baroda)" to initiate Corporate Insolvency Resolution Process (**in short 'CIRP'**) against M/s. Kavveri Telecom Infrastructure Limited was admitted on 21st March 2019 and Shri B.Hariharan was appointed as Interim Resolution Professional (IRP).
3. It is stated that the IRP constituted the committee of creditors, consisting of Dena Bank (Now Bank of Baroda), as the sole financial creditor of the corporate debtor holding 100% voting power.
4. In the first meeting held on 20th April 2019, the committee of creditors resolved to appoint Mr. B.Hariharan as Resolution Professional, in compliance with section 22(2) of the Code.
5. The resolution professional conducted the 4th meeting of committee of creditors on 6th July 2019. In the meeting, the COC was of the view that it is better to appoint a Bangalore based Resolution Professional for effective and speedy performance of the Resolution Process of the Corporate Debtor. The committee of creditors decided to exercise their power under section 27(1) of the code and recommended Ms.Ramanathan Bhuvaneshwari, holding IP Registration No. IBBI/IPA-002/IP-N00306/2017-18/10864 to be appointed as the RP. Accordingly, Smt. Ramanathan Bhuvaneshwari was appointed as Resolution Professional, in place of Mr.Hariharan, vide order dated 26th August, 2019. The copy of the order is enclosed (Annexure 2).
6. On taking over as RP on 28th August, 2019, the RP observed that the corporate debtor has installed assets in 100+ locations PAN India, which were operational till January, 2019 and hence Resolution is quite a possibility.
7. The RP also observed that the mandatory activities to be done under CIRP, namely, Appointment of Valuers, Valuation of business of the CD and valuation of the assets of the CD, activities relating to Invitation for

Expression of Interest (EOI) in order to get Resolution Plan, etc were not yet initiated even though more than 5 months of CIRP got over.

8. Accordingly, the RP conducted the 5th meeting of the committee of creditors on 11th September 2019, in which the COC members holding 100% voting share approved for extension of CIRP by another 90 days, which was duly approved by the Adjudicating Authority vide order dated 1st October, 2019 (Copy enclosed –Annexure 3 of the application).
9. A notice was issued for the 8th meeting of CoC and the extract of the same (as filed by the R.P. vide Diary No.3474, dt.09.12.2021) is as under:-

“Extract of Notice:

Subject: 8th CoC meeting – Kavveri Telecom Infrastructure LTd – 2nd December 2019 – at 3:30 pm

Dear All,

Greetings!

Please find below the Notice of the 8th meeting of CoC of M/s. kavveri Telecom Infrastructure Ltd. Scheduled to be held at 3:30 pm on 2nd December 2019 at Bank of Baroda, 2nd Floor, Vijaya Towers, Bengaluru to discuss the following agenda items:

Agenda for discussion:

1. To discuss and decide on the appointment of auditor, getting NOC from the previous auditor.
2. To discuss and decide on the liquidation of the Corporate Debtor
3. Any other item with the permission of the Chair.

B. List of Issues to be voted upon after discussions

- 1. To pass Resolution for appointment of Auditors and also Resolution for getting NOC from the previous auditor, for the audit of the year 2018-19.**

Explanation: We are yet to file the IT Return for the year and it attracts penalty of Rs.1 lac. The last date for this was 31st Oct 2019. We need to also file the annual returns with MCA for which the last date is 30th Nov 2019.

- 2.(Relating to point 2 above) To discuss and pass Resolutions- to decide on Liquidation of the Company and to appoint Liquidator.**

Explanation: The CIRP is getting over on 16th December 2019 and there is no Resolution plan received as on date. Though we lost 2 months in the RP appointment we may not be able to get back the same., as confirmed by NCLT in the hearing dated 20th November 2019 in which even the Chief Manager-Law of the CoC member Bank of Baroda was personally present. As the Company can be sold as a ‘going concern’ as per the amended liquidation relation guidelines the option seem to be to order for liquidation and then continue the present process under the banner of ‘Liquidation’. We do not have any other choice but to liquidate the Corporate Debtor effective 17th December 2019 and then take the liquidation process forward.

Regarding Liquidation:

As per section 33(1) of the Code, if Resolution plan is not received within the CIRP period, the Adjudicating Authority shall pass order for liquidation of the Corporate Debtor. U/s 33(2) CoC can at any time decide to liquidate the Company if no Resolution plan is received. U/s 34, the Resolution Professional appointed during CIRP shall be appointed as Liquidator, provided the RP submits consent letter to act as Resolution Professional to the adjudicating Authority.

Regarding Fee Payable to the Liquidator:

As per the Regulation 4 of Liquidation Process Regulation 2016, (1) The fee payable to the liquidator shall be in accordance with the decision taken by the committee of creditors under regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016. In other cases, the Liquidator shall be entitled to a fee-

- (a) at the same rate as the resolution professional was entitled to during the corporate insolvency resolution process for the period of compromise or arrangement under section 230 of the Companies Act, 2013 (18 of 2013); and*
- (b) as a percentage of the amount realized net of other liquidation costs, and of the amount distributed, for the balance period of liquidation."*

10. Accordingly, the CoC in its 8th meeting held on 09.12.2019, while rejecting the resolution for appointment of auditors, resolved to seek liquidation of the Corporate Debtor, with 100% voting share.

11. The Hon'ble NCLAT, in Praveen Kumar Nand Kumar v. VSL Securities Pvt Ltd. in CA No.1/2020 in CA No.308/2000, dated 09.06.2020, observed as under:-

"Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review".

12. We have carefully considered the submissions made in the application by the Resolution Professional and have also perused the records.

13. The relevant provisions of Sections 33(1) and 33(2) of the Code are as follows:-

"33. Initiation of liquidation.-

- (1) Where the Adjudicating Authority, —*
- (a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency*

resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein

, it shall

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1)."

14. **Prescribed period for filing application** - In the present case, the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 was admitted on 21.03.2019 and the period of 180 days were completed on September, 2019. In IA 27/2019, vide order dated 04.02.2019, this Hon'ble Adjudicating authority directed to file the amended Form 1. Further, in IA 356/2019 vide order dated 26.08.2019, Hon'ble Adjudicating authority appointed Smt. Ramanathan Bhuvaneshwari to act as Resolution Professional. As per order dated 01.10.2019 on IA No. 479/2019 this Adjudicating Authority has allowed to extend the CIRP Period by 90 days starts from 18.09.2019 till 16.12.2019. The present application is filed on 13.12.2019, i.e, within the expiry of the CIRP period.
15. **Appointment of Liquidator** - Section 34 (1) of the Code provides that where the Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Section 33, the Resolution Professional appointed for the CIRP shall, subject to submission of written consent, act as the Liquidator for the purpose of Liquidation. **Smt. Ramanathan Bhuvaneshwari, Resolution Professional with Registration No. IBBI/IPA-002/IP-N00306/2017-18/10864 has filed the written consent dated 10.12.2019.** The Law Researcher of this Tribunal has checked the credentials of proposed Liquidator and nothing adverse has

been found on record. Therefore, **Smt. Ramanathan Bhuvaneshwari** is appointed as the Liquidator.

16. Regulation 39B, 39C and 39D in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been inserted by Notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019. Relevant aspects in this respect are examined hereunder

- a. **Liquidation Cost [Regulation 2A of IBBI (Liquidation Process) Regulation, 2016]** – The CoC has not approved the estimation of cost as per Regulation 39B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016]. Therefore, the Liquidator is directed to take necessary action under Regulation 2A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016.
- b. **Assessment of Sale as a going concern [Regulation 32 of the IBBI (Liquidation Process) Regulations, 2016]** – The CoC approved the sale of asset of Corporate Debtor as a going concern as per Regulation 39C of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 in their 8th meeting held on 9th December, 2019. Therefore, the Liquidator shall follow the Regulation 32 of the IBBI (Liquidation Process) Regulations, 2016.
- c. **Fees of the Liquidator [Regulation 4(2) of the IBBI (Liquidation Process) Regulations, 2016]** - The CoC has not approved the liquidator fee as per Regulation 39D of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016]. Therefore, the Liquidator shall charge fee for the conduct of the liquidation proceedings as per Regulation 4(2) of the IBBI (Liquidation Process) Regulations, 2016.

17. **Pending applications, if any, and its effects** – The Learned Counsel for the Applicant has stated that there is no pending application before any Court of law or any other authority or any other Tribunal, which will have a bearing on the instant I.A.

18. The resolution professional filed a memo dated 09.12.2021 vide diary No.3474 in compliance of order dated 10.12.2021 and the same is taken on record.

19. In view of the satisfaction of the conditions provided under Section 33 (2) of the Code, the Corporate Debtor **M/s. Kavveri Telecom Infrastructure Private Limited** is directed to be liquidated in the manner as laid down in Chapter III of the Code. Some of the directions are noted as under:

- i. That as per Section 33 (5) of the Code and subject to Section 52 of the code, no suit or other legal proceedings shall be instituted against the corporate Debtor;
Provided that a suit or other legal proceedings may be instituted by the Liquidator on behalf of the Corporate Debtor, with the prior approval of the Adjudicating Authority;
- ii. That the provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator; and
- iii. That this order of liquidation under Section 33 of the Code shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator; and
- iv. That all the powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested in the Liquidator; and
- v. That the personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor and provision of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation to

liquidation process with the substitution of references to the liquidator for references to the Interim Resolution Professional.

- vi. That the Liquidator shall publish public announcement in accordance with Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stake holders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date.
- vii. That the announcement shall be published in accordance with Regulation 12(3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation 2016.
- viii. That in accordance with Regulation 13 of the Insolvency and Bankruptcy Board of India (Liquidation Process), Regulations, 2016, the 'Liquidator' shall file his preliminary report within 75 days and to file regular progress reports as per Regulation 15 every fortnightly thereafter.

20. Thus **I.A No. 673 of 2019** stands disposed of.

21. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies, Bengaluru forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

— Sd —

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

— Sd —

(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)

Mythreye(LRA)