IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

IA-64/2024 in CP(IB)-178(MB)/2022

Under Section 33(1) of IBC, 2016.

Manmohan Sharma
…Resolution Professional/
Applicant

In the matter of
Arkom Telecommunications Private Limited
……...Corporate Applicant

Order pronounced on : **29.08.2024**

Coram:

Ms. Anu Jagmohan Singh Hon'ble Member (Technical)	Mr. Kishore Vemulapalli Hon'ble Member (Judicial)

Appearance:

For the Applicant: : Mr. Animesh Khandelwal a/w Rashi Gupta i/b Senatus Legal, Advocates.

O R D E R

1. This is an Interlocutory Application filed on 24.04.2024 by Mr. Manmohan Sharma, Resolution Professional of the Corporate Applicant under Section 33(2) of Insolvency and Bankruptcy Code, 2016, seeking liquidation of **Arkom Telecommunications Private Limited**.

2. **Brief facts of the Case:**

A. This Tribunal vide an order dated 25.07.2023 in Company Petition (IB)-178(MB)/2022, filed under Section 10 of the IBC, 2016 by **Arkom Telecommunications Private Limited** (hereinafter referred to as the "Corporate Applicant") admitted the Petition and Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Applicant. The applicant herein was appointed as Interim Resolution Professional by this Tribunal vide the admission order dated 25.07.2023. He was later appointed as Resolution Professional (RP) of the Corporate Applicant by the CoC in its First meeting held on 20.09.2023.

B. The Applicant submits that upon receiving the intimation, the Applicant made public announcement in Form A on 27.07.2023. After receiving the claim, he constituted CoC with sole member viz. Bharat Sanchar Nigam Limited (BSNL) on 13.09.2023. However, the Applicant later received one more claim from Axis Bank and RP admitted the claim. Thereafter, RP reconstituted the CoC with the Financial Creditor as sole member and the Second CoC meeting was held on 17.11.2023. Thereafter, the RP admitted another claim from an Operational Creditor viz. Veegent Technology Pvt. Ltd. and again reconstituted the CoC on 20.01.2024. The Third CoC meeting was convened on 15.01.2024. However, no concrete decision was taken in the meeting except approving the RP to seek 90 days of CIRP extension beyond 180 days.

C. The Applicant sought 90 days extension of CIRP and this Tribunal extended the CIRP period till 20.04.2024 vide order dated 19.03.2024.

D. The Applicant further stated that during the CoC meetings held in the past he sought approval for the publication of Form G, however, the CoC did not approve for the same. Hence, he could not publish Form G. Further, no expenses ratified by the CoC and no payment to the IRP/RP made so far. He has filed an additional affidavit detailing the statement of expenses incurred by him as well as his professional fees.

E. The Applicant further submits that the Fifth CoC meeting was held on 12.04.2024 and in the said meeting the liquidation of the Corporate Applicant was approved by the CoC with 67.34% majority of voting. The relevant resolution is reproduced below:

"RESOLVED THAT in pursuant to Section 33(2) of the Insolvency & Bankruptcy Code, 2016 and the rules made thereunder, the consent of members of the CoC be and is hereby accorded to approve the filing of application with Hon'ble NCLT, Mumbai Bench IV, for initiation of liquidation of Corporate Debtor under Section 33(2) of the Insolvency and Bankruptcy Cod, 2016".

"RESOLVED FURTEHR THAT the Resolution Professional be and is hereby authorised to do all such acts, deeds and things as may be required or considered necessary or incidental thereto for initiating liquidation of the Corporate Debtor."

F. The Applicant further states that in accordance with the provisions of Regulations 39B(2) of the CIRP Regulations, the members of CoC have estimated the value of the Liquid assets available to meet the liquidation costs and further the CoC has also resolved to sale of Corporate Debtor or business of Corporate Debtor as a going concern with 67.34% by passing the following resolution:

"RESOLVED THAT pursuant to Regulation 39B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Committee o Creditors, in consultation with the Resolution Professional, be and is hereby estimate the Liquidation Cost of Arkcom Telecommunications Private Limited (Corporate Debtor) as Rs.3,70,000/- details of which were placed on the table of the meeting, plus Liquidator's fee, as may be approved by CoC/Hon'ble NCLT Stakeholders Consultation Committee, as the case may be.

RESOLVED FURTHER THAT the Committee of Creditors estimates the available liquid assets to meet the liquidation cost as NIL.

RESOLVED FURTHER THAT the banks/financial institutions, which are members of Committee of Creditors, shall contribute the excess of the liquidation cost over the liquid assets of the Corporate Debtor in proportion to their admitted claim amount in accordance with the provisions of Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016."

G. The Applicant further submitted that the CoC has passed the following resolution to sell the Corporate Applicant as a going concern:

"RESOLVED THAT the Committee of Creditors hereby recommends that the Liquidator, in consultation with Stakeholders' Consultation Committee may first explore sale of Arkon Telecommunications Private Limited (Corporate Debtor), as a going concern under Clause (e) or Clause (f) of Regulation 32 of IBBI (Liquidation Process) Regulations, 2016.

"RESOLVED FURTHER THAT Liquidator be and is hereby authorised to sell Arkcom Telecommunications Private Limited (Corporate Debtor) as a going concern after identifying and grouping the assets and liabilities, to be sold as a going concern, in consultation with the Stakeholders' Consultation Committee."

3. Considering the facts and circumstances as submitted by the Applicant in the Application and by the Counsel appearing for the Applicant, this Bench is of the considered view that the Corporate Applicant be liquidated. Accordingly, this Bench orders that -

   a. The Corporate Applicant viz. **Arkom Telecommunications Private Limited** (CIN: U64204MH2017PTC295430) is 'under liquidation' w.e.f. the date of this order.

   b. Mr. Pramod Kumar Dokania, an Insolvency Professional, having IBBI Registration No. IBBI/IPA-001/IP-P01994/2020-2021/13062, email: pramoddokania123@gmail.com, mob.: 9970922574 is hereby appointed as the 'Liquidator' to conduct liquidation process of Arkon Telecommunications Private Limited as provided under Section 34(1) of the Code.

   c. The Liquidator would be entitled to the fees as mutually agreed between the Liquidator and the CoC or as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016 to conduct the liquidation proceedings.

   d. The Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of the Code by following the liquidation process given in the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

e. The Liquidator appointed under Section 34(1) of the Code, will have all powers of the Board of Directors, key managerial personnel and the partners of the Corporate Applicant, as the case may be, shall cease to have effect and shall be vested with the Liquidator.

f. The personnel of the Corporate Applicant are directed to extend all co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Applicant.

g. The Corporate Applicant to be liquidated in the manner as laid down in the Chapter by issuing Public Notice stating that the Corporate Applicant is in liquidation, with a direction to the Liquidator to send this order to the RoC under which this Company has been registered.

h. All the powers of the Board of Directors, key managerial persons, the partners of the Corporate Debtor hereafter ceased to exist. All these powers henceforth vest with the Liquidator.

i. On having liquidation process initiated, subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Applicant save and except the liberty to the Liquidator to institute suit or other legal proceedings on behalf of the Corporate Applicant with prior approval of this Adjudicating Authority.

j. The Liquidator shall take necessary legal action to recover the Trade Receivables and other Credits such as Loans and Advances from the parties which are reflected in the latest Balance Sheet of the Corporate Applicant, if any. This direction is hereby given in concurrence of the jurisdiction prescribed u/s 33(5) of the Code.

k. This liquidation order u/s 33(7) shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Applicant except to the extent of the business of the Corporate Applicant continued during the liquidation process by the Liquidator.

l. Moratorium declared vide Order dated 25.07.2023 in CP(IB)-178(MB)/2022, henceforth ceased to exist.

m. The Liquidator shall submit the progress report of liquidation periodically.

4. The CoC is directed to clear all dues payable to the Resolution Professional before handing over his charge to the newly appointed Liquidator.

5. With the above directions, the IA-64/2024 in CP(IB)-178(MB)/2022 filed u/s 33 of the IBC, 2016 by the Applicant is hereby **allowed** and disposed of.

Sd/-	Sd/-
Anu Jagmohan Singh	**Kishore Vemulapalli**
Member (Technical)	**Member (Judicial)**

29.08.2024/pvs