

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court -II)
KOLKATA**

**IA(IBC)/777(KB)2022
in
CP(IB)/1510(KB)2018**

*Under sections 54 and 60(5) of the Insolvency & Bankruptcy Code, 2016
read with rule 11 of the NCLT Rules, 2016
and regulation 45 of the IBBI (Liquidation Process) Regulations, 2016*

In the matter of:

Star India Private Limited

....Operational Creditor

Versus

Advance Multisystem Broadband Communications Limited
(CIN: U64202WB2000PTC091088)
Having its registered office at Bankim-Kanan, Chinsurah Station
Road, Near Radio Center, P.O. Chinsurah, West Bengal 712102

.... Corporate Debtor

And

In the matter of:

Mr. Kuldeep Verma,
Resolution Professional of Advance Multisystem Broadband Communications Limited

... Applicant

Order reserved on: 06/10/2023

Order pronounced on: 20/11/2023

Coram:

Smt. Bidisha Banerjee	:	Member (Judicial)
Shri Arvind Devanathan	:	Member (Technical)

Appearances (through video conferencing):

For RP	:	Mr. Rahul Auddy, Adv. Mr. Aditya Gooptu, Adv.
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For the Ministry of Communication,
Department of Telecommunications,
O/o. CCA, WB Circle

: Mr. Sailendra Kumar Tiwari, Adv.

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.
2. **IA(IBC)/777(KB)2022** is an application filed u/s. 54 and 60(5) of the Insolvency and Bankruptcy Code, 2016 (“**IBC 2016**”) read with rule 11 of the National Company Law Tribunal Rules, 2016 and regulation 45 of the IBBI (Liquidation Process) Regulations, 2016 by the Resolution Professional (“**RP**”) of **Advance Multisystem Broadband Communications Limited**, the Corporate Debtor, seeking following reliefs: -

(a) Exclusion of 400 days from the 270 days calculation of CIRP;

(b) Dissolution of the Corporate Debtor under Section 54 of the Code; and

(c) Such further and/or other order or orders as this Hon’ble Court may deem fit and proper

This application is supported by an affidavit¹ duly affirmed by Mr. Kuldeep Verma, the RP.

3. This Adjudicating authority *vide* order dated 30/09/2019 in CP(IB)/1510(KB)2018, had ordered initiation of CIRP against the Corporate Debtor appointing Mr. Kuldeep Verma as the Interim Resolution Professional (“**IRP**”). The said order was duly communicated to the IRP by the Registry, NCLT *vide* e-mail dated 09/10/2019.
4. In terms of regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short, **CIRP Regulations 2016**),

¹ At pages 24 to 27 of the application

Public Announcements² in **Form A** was published in “*Financial Express*” (All India English Edition) and “*Sukhabar*” (Bengali) on 11/10/2019 inviting claim from the creditors and duly formed Committee of Creditors (“CoC”) on 29/10/2019 with sole Financial Creditor, Indian Bank (erstwhile Allahabad Bank). Two Operational Creditors, being Star India Private Limited and Sony Pictures Networks India Private Limited were attending the meeting of the CoC since their dues were more than 10% of the total dues of the Corporate Debtor. This Adjudicating Authority *vide* its order dated 13/01/2020 had appointed the Interim Resolution Professional as Resolution Professional.

5. Altogether 13 meetings of the CoC were held on 08/11/2019, 20/11/2019, 27/01/2020, 07/02/2020, 17/02/2020, 13/03/2020, 09/10/2020, 18/11/2020, 02/03/2021, 03/05/2021, 09/09/2021, 14/06/2022 and 28/07/2022 respectively³.
6. As per the MCA records, there were four directors, viz., (1) Santimoy Ghosh (End Date 04/08/2018), (2) Sujit Das (End Date 04/08/2018), (3) Nalamuelil Rouse Koshy (End Date 19/02/2018) and (4) Subhashish Mazumdar (End Date 19/02/2018). All the four directors of the Corporate Debtor mentioned above had resigned before the initiation of the CIRP on 30/09/2019. None of them were not appearing or cooperating in this CIRP on the plea that they were not associated with the Corporate Debtor anymore and that they do not know any details. The registered office was in a rented place and no records were available there. The only information available to the RP was what was available in the public records. There were no fixed assets or realizable assets in the Company which the RP could take possession of. As such the applicant could not effectively proceed with the CIRP of the Corporate Debtor at all⁴.
7. Accordingly, the applicant had filed an application being IA(IBC)/45(KB)2020 u/s.19 read with sections 66 and 60(5) of the IBC, 2016. After hearing, this

² Averments in paragraphs 3 and 5 at pages 14 and 15 of the application

³ Averments in paragraphs 6 at page 15 of the application

⁴ Averments in paragraphs 8 and 9 at pages 15 and 16 of the application

Adjudicating Authority vide its order⁵ dated 13/01/2020 had passed the following orders

“We have heard the RP. This application is only treated as under section 19(2). We direct the directors and officers of the corporate debtor to cooperate RP in successful completion of the CIRP in time-bound manner failing which IRP may approach local police for assistance and local police shall assist the RP for taking possession of the assets and books of accounts of the Corporate Debtor.”

8. Accordingly, the applicant had followed up with the police authorities and tried to communicate with the directors/ex-directors of the Corporate Debtor but they did not respond at all. *Vide* order⁶ dated 24/02/2020, this Adjudicating Authority had passed the following orders: -

“Issue notice to the directors of the Corporate Debtor for appearance before this Bench. Our order has not been complied with them. So, issue notice under Section 425 of the Companies Act for non compliance of directions of this Tribunal. RP to serve notice and file affidavit of service.”

9. The applicant searched the Registrar of Companies records of the Corporate Debtor and the balance sheets available online till 31/03/2018. *Prima facie* the details of assets as submitted by the said corporate debtor to the Registrar of Companies revealed to be most fictitious and most of the assets including documents and books of account were not traceable. In the aforesaid

⁵ Annexure ‘A’ at pages 28 and 29 of the application

⁶ Annexure ‘B’ at page 30 of the application

- circumstances, RP could not do valuation, prepare Information Memorandum, publish Form G and proceed with the resolution process including appointment of forensic auditor⁷.
10. The CoC at its 6th CoC meeting held on 13/03/2020 with 100% voting share approved extension of 90 days of the CIRP. Immediately thereafter lockdown was imposed due to COVID-19 pandemic. After removal of restrictions, an application bearing IA(IBC)/696(KB)2020 was filed for extension of CIRP period. *Vide* order⁸ dated 06/10/2020, this Adjudicating Authority had granted 90 days extension w.e.f. 06/10/2020 thereby the 270 days CIRP period has ended on 05/01/2021.
11. Since there was no progress in the CIRP, the RP and the CoC decided to approach the promoters/shareholders of the Corporate Debtor for assistance since the Corporate Debtor was a subsidiary of one entity known as INDUSIND MEDIA & COMMUNICATIONS LIMITED (“**IMCL**”). As per MCA records as on 31/03/2018, IMCL had a shareholding of 59.61% (699,452 shares of Rs.10 each) in the Corporate Debtor. The promoters shockingly and surprisingly responded that they have sold off its entire shareholding amounting to Rs.69,94,520/- for Rs.1 Lakh to one individual person⁹.
12. Accordingly, the applicant had filed an application u/s. 60(5) read with section 25(2)(j) of the IBC 2016 being IA(IBC)/841(KB)2020 for lifting of corporate veil and declare the sale of shares by the Holding Company of the Corporate Debtor as illegal sale and direction for forensic audit of the Corporate Debtor¹⁰. Another application being IA(IBC)/1288(KB)2020 was filed u/s. 60(5), 235A, 68 and 70 of the IBC, 2016 and sections 434 and 425 of the Companies Act, 2013 read with section 12 of the Contempt of Courts Act, 1971 due to non-compliance of the order dated 24/02/2020 by the directors/ex-directors of the Corporate

⁷ Averments in paragraphs 12 and 13 at page 17 of the application

⁸ Annexure ‘C’ at page 31 of the application

⁹ Averments in paragraph 17 at page 18 of the application

¹⁰ Averments in paragraph 18 at page 18 of the application

- Debtor¹¹. This Adjudicating Authority *vide* common order dated 01/06/2022 (30/05/2022) had dismissed both the aforesaid IAs¹².
13. The CoC at its 9th meeting held on 02/03/2021 had decided to file necessary application for exclusion of the period of non-cooperation from the CIRP period. Accordingly, an application being IA(IBC)/321(KB)2021 was filed for exclusion of 177 days. This Adjudicating Authority *vide* its order¹³ dated 24/03/2021 has excluded the period of 177 days, thereby the 270 days CIRP period had ended on 30/06/2021.
14. The applicant had also filed an application being IA(IBC)/819(KB)2021 for exclusion of further 177 days from the CIRP period as no one was cooperating with the RP. However, *vide* order dated 30/01/2023 in IA(IBC)/819(KB)2021, this Adjudicating Authority has disposed of the said application as infructuous for the reasons that another application being IA(IBC)/777(KB)2022 has been filed for exclusion of 400 days from the CIRP period.
15. The 12th meeting of the CoC was held on 14/06/2022 and concluded on 20/06/2022. The members present in the said 12th meeting has deliberated on the order dated 01/06/2022 (30/05/2022) and decided that in absence of any traceability of the assets and vacant registered office of the Corporate Debtor and also due to dismissal of the aforesaid two applications, continuation of CIRP would not serve any purpose and would only lead to incurring of further expenses. It was further deliberated that since the Corporate Debtor has no assets, going through the liquidation process will be a futile exercise leading to further expenses only. A copy of the minutes of the said 12th CoC meeting forms **Annexure 'E'**¹⁴.
16. The 13th CoC meeting was convened on 28/07/2023 wherein the RP placed two judgments, wherein the Adjudicating Authority allowed dissolution of the

¹¹ Averments in paragraph 20 at pages 18 and 19 of the application

¹² Averments in paragraph 27 at page 20 of the application

¹³ Annexure 'D' at pages 32 and 33 of the application

¹⁴ At pages 34 to 45 of the application

Corporate Debtor under section 54 of the IBC directly from the CIRP stage. It was further deliberated in the CoC meeting that since the CIRP costs itself cannot be recovered, there was no purpose for going through the liquidation and then liquidation incurring additional expenses. Thus, the CoC unanimously passed the following resolution to dissolve the Corporate Debtor u/s. 54 of the IBC, 2016: -

“RESOLVED THAT the Corporate Debtor, Advance Multisystem Broadband Communications Limited, be dissolved as per provisions contained in the Insolvency and Bankruptcy Code, 2016 and applicable Regulation thereon and that Hon’ble Adjudicating Authority be informed of the decision of the Committee of Creditors of the Corporate Debtor.”

“FURTHER RESOLVED THAT the Resolution Professional Mr. Kuldeep Verma is hereby directed to intimate, by way of application, the decision of the Committee of Creditor of Corporate Debtor to recommend dissolution of the Corporate Debtor to Hon’ble Adjudicating Authority.”

A copy of the minutes of the said 13th CoC meeting forms **Annexure ‘F’**¹⁵.

17. Under regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the applicant has filed Compliance Certificate in Form H¹⁶. The applicant has also annexed copy of bank statement¹⁷ of the Corporate Debtor with the application.
18. *Vide* order dated 12/04/2023 this Adjudicating Authority had directed paper publication in two daily newspapers one in “*Financial Express*” (English) and one in “*Aajkal*” (Bengali). In compliance thereof an affidavit affirmed on 11/11/2022 has been filed annexing insertion of paper advertisements¹⁸ as directed.
19. *Vide* another order dated 30/01/2023, this Adjudicating Authority had passed the following orders:-

“(c) Since, before passing any order of dissolution, the claim of the GST

¹⁵ At pages 46 to 51 of the application

¹⁶ Annexure ‘G’ at pages 52 to 57 of the application

¹⁷ Annexure ‘H’ at pages 58 and 59 of the application

¹⁸ Annexure ‘B’ (colly) at pages 5 and 6 of the affidavit affirmed on 11/11/2022

Authorities shall have to be considered by the RP, we would direct the GST Authorities to submit their claim with the RP within two weeks”

In compliance of the aforesaid order another affidavit affirmed on 20/02/2023 has been filed by the RP communicating to the GST Authorities that the claim of Rs.36,70,63,789/- has been admitted. A copy of the communication made by the Resolution Professional to the GST Authorities forms **Annexure ‘B’**¹⁹.

20. In support of the application Ld. Counsel for the Resolution Professional has submitted following two orders of the Coordinate Bench of the NCLT:

(a) Order dated 25/05/2022 in IA(IB) No. 949/KB/2022 in CP(IB) No. 835/KB/2018 in the case of Poddar Business Private Limited –vs- Basukinath Agro Private Limited of the NCLT, Kolkata Bench I; and

(b) Order dated 19/09/2022 in I.A. No. 1058 of 2022 in C.P. No. 4016 of 2018 in the case of M/s. Godrej and Boyce Manufacturing Co. Ltd. – vs- Technic Projects Constructions Pvt. Ltd. of the NCLT, Mumbai Bench, Court III.

21. We have heard the Ld. Counsel for the IRP, perused the application and the documents attached therewith.

22. Section 33(1)(a) of the Code mandates that the Adjudicating Authority shall pass an order of liquidation where no resolution plan is received before the expiry of the CIRP. Sub-section (2) thereof requires the Adjudicating Authority to pass the liquidation order where the Resolution Professional intimates to the Adjudicating Authority the decision of the Committee of Creditors approved by not less than 66% of the voting share to liquidate the Corporate Debtor.

23. Section 54 of the Codes reads as follows: -

“54(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.

¹⁹ At pages 7 of the affidavit affirmed on 20/02/2023

(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 14 of the IBBI (Liquidation Process) Regulations, 2016 reads as follows: -

*“Rule 14. **Early dissolution** - Any time after the preparation of the Preliminary Report, if it appears to the liquidator that –*

(a) The realizable properties of the corporate debtor are insufficient to cover the cost of the liquidation process; and

(b) The affairs of the corporate debtor do not require any further investigation; he may apply to the Adjudicating Authority for early dissolution of the corporate debtor and for necessary directions in respect of such dissolution”.

Rule 11 of the NCLT Rules, 2016 confers inherent powers on NCLT, which reads as follows: -

“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.”

Section 12 of the Code stipulates time-limit for completion of insolvency resolution process, which reads as follows: -

“12(1) Subject to sub-section (2) the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of seventy-five per cent of the voting shares;

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is

such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eight days by such further period as it thinks fit, but not exceeding ninety days.

Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.”

24. Upon conjoint reading of the above provisions, the ultimate objective of the Code is either to resolve the issue by way of approval of Resolution Plan or to liquidate and then to dissolve the Corporate Debtor, as expeditiously as possible.
25. In the instant case, there were no fixed assets or realizable assets in the Company which the RP could take possession of and that in view of the non-availability of the details of assets from the suspended members of the Board of Directors and books of account, the RP could not do valuation, prepare Information Memorandum, publish Form G and proceed with the resolution process in accordance with Code and Regulations including appointment of a forensic auditor.
26. The sole CoC member, who is happened to be the financial creditor, expressed their views that since the Corporate Debtor has no fixed assets or relisable assets and that even the CIRP costs itself cannot be recovered, no fruitful purpose would be served by going through the liquidation process first and then going for dissolution of the Corporate Debtor, which will only incur additional expenses one for liquidation and one for dissolution. Hence, this is a fit case where a Corporate Debtor needs to be dissolved in terms of Section 54 of the IBC read with regulation 14 of the Liquidation Process Regulations.
27. In view of the above facts and circumstances, it is prudent to **dissolve the Corporate Debtor, and it is ordered accordingly.** However, personal liability/Guarantee of any Director/Promoter of the Corporate Debtor, if any, would not absolve them of their liability by virtue of this order. Aggrieved party/parties, if any, shall be at liberty to continue or to take appropriate legal

remedies against them.

28. The Resolution Professional is further directed to serve a copy of this order upon the Registrar of Companies, West Bengal, immediately and, in any case, within fourteen days of receipt of this order. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.
29. The Resolution Professional shall stand discharged from his responsibilities, subject to all procedural compliances.
30. **IA(IBC)/777(KB)2022** is allowed with the above directions and the **IA(IBC)/777(KB)2022** and **CP(IB)/1510(KB)2018** are hereby disposed of accordingly.
31. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
32. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
33. File be consigned to records.

Arvind Devanathan
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 20th day of November, 2023.

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