THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

IA No. 364/2021
In
CP (IB) No. 265/Chd/Hry/2019
(Admitted Matter)

Under Sections 33(1) read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016

In the matter of:-

Modi Telecommunications Ltd. …. Corporate Debtor

And in the matter of IA No. 364/2021:-

Mr. Atul Mittal,
Interim Resolution Professional,
of Modi Telecommunications Limited,
174, Balco Apartments, Plot No. 58,
IP Extension, Patparganj,
New Delhi-110092

…Present Applicant-Resolution Professional

Vs.

Yogendra Kumar Modi
Son of late Shri K.N. Modi
Resident of # 33, Shivaji Marg,
Rangpuri, New Delhi – 110037
Suspended Director,
Modi Telecommunications Limited …Present Respondent No. 1

Asha Modi
Wife of Shri Y.K. Modi
Resident of # 33, Shivaji Marg,
Rangpuri, New Delhi – 110037
Suspended Director,
Modi Telecommunications Limited …Present Respondent No. 2

Prashant Modi
Wife of Shri Y.K. Modi
Resident of # 33, Shivaji Marg,
Rangpuri, New Delhi – 110037
Suspended Director,
Modi Telecommunications Limited …Present Respondent No. 3

Order delivered on: 24.01.2022

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

Present through Video Conferencing:-

For the Applicant : Mr. Vipul Joshi, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

ORDER

IA No. 364/2021

The present application has been filed by Interim Resolution Professional to liquidate Corporate Debtor under Section 33(1) of the Insolvency & Bankruptcy Code, 2016. In this case, the petition for initiation of CIRP process by the Corporate Debtor under Section 10 of the IBC, 2016 was admitted by this Tribunal by order dated 24.01.2020 and Mr. Atul Mittal was appointed as Interim Resolution Professional in respect of the CIRP pertaining to the company.

2. It has been submitted by the Applicant ("IRP") that he took all the necessary steps in terms of Regulation 6 of IBBI (Insolvency Resolution

Process for Corporate Persons) Regulation 2016 (IBBI Regulations 2016) and made the requisite public announcement inviting the creditors of the company to submit their respective claims. As per the said public announcement, the last date for submission of claims against the company was slated to be 07.02.2020. True copies of the said public announcements in (“Form-A”) alongwith the copies of various newspapers dated 27.01.2020, wherein the same was got published, are annexed with the main application and marked as Annexure-2.

3. It is further submitted by the applicant that the factum of the CIRP having been initiated in respect of the company duly communicated to its banker, namely, the ICICI Bank vide its letter dated 05.02.2020. Vide the said letter, the said bank was instructed not to carry out any transaction in the bank account of the company without written authorization from the present applicant. A true copy of the said letter dated 05.02.2020 is annexed with the main petition and marked as Annexure-3.

4. It is averred by the applicant that the applicant issued an email dated 28.01.2020 to the Department of Telecommunications, Government of India intimating it regarding the commencement of the CIRP in respect of the company. It is further submitted that vide the said email dated 28.01.2020 the applicant urged the said creditor i.e. the Department of Telecommunication, Government of India to submit its claim against the company by 07.02.2020. A true copy of the said email dated 28.01.2020 is annexed with the main application and marked as Annexure-5.

5. It is submitted by the applicant that the applicant did not receive even a single claim from any entity or individual till the last date of submission of claims i.e. 07.02.2020. Hence, the applicant could not file any list of any

creditors of the company before this Tribunal in terms of Regulation 13(2)(d) of the IBBI Regulations, 2016. It is further submitted by the applicant that as no claim has been received the present applicant could not form any Committee of Creditors (CoC) in terms of Regulations 17 (1) of the IBBI Regulations, 2016. Accordingly, the applicant filed a 'NIL' report dated 20.02.2020 before this Tribunal. A true copy of the said 'NIL' report is annexed with the main petition and marked as Annexure-6.

6. It is further submitted by the applicant that since no CoC could be constituted in the present case. The applicant continued to operate as Interim Resolution Professional. It is averred by the applicant that despite concerted efforts having been made by the applicant, not a single claim was received and not a single creditor of the company came forward in any manner. As a result, the CoC could not be constituted in the present case and consequently, no decision under Section 33(2) of the IBC, 2016 could be taken as to whether the company should be liquidated.

7. It is submitted by the applicant that the requisite progress reports have been filed on a fortnightly basis before this Tribunal. True copies of the said progress reports dated 08.02.2020, 24.02.2020 and 08.03.2020 are annexed with the main application and marked as Annexure-7.

8. It is submitted by the applicant that the applicant gives his consent to be appointed as the liquidator of the company in terms of Section 34(1) of the IBC, 2016. It is also confirmed by the present applicant that the applicant is eligible to be appointed as liquidator of the company in the present matter, in terms of Regulation 3 of IBBI (Liquidation Process), Regulation 2016. A true copy of the written consent dated 11.03.2020 furnished by the applicant is annexed with the main application and marked as Annexure-8.

9. Now, coming to the merits of the application, before considering the prayer, we would like to refer the Section 33(1) of the IBC and the same is reproduced below:-

> *"Section 33: Initiation of liquidation.*
>
> *33. (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.*

10. A perusal of the provisions shows that there are three circumstances under which the liquidation order can be passed by the Adjudicating Authority:-

i. before the expiry of the insolvency resolution process period;

ii. 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; and

iii. if does not receive a resolution plan under sub-section (6) of Section 30.

11. We have carefully considered the submissions made in the application by the Interim Resolution Professional and have also perused the records. In view of the satisfaction of the conditions provided under Section 33 of the Code, the corporate debtor i.e. Modi Telecommunications Limited is directed to be liquidated in the manner as laid down in the Chapter III of the Code.

12. It has been submitted that despite an email on 28.01.2020 to the Department of Telecommunications, the biggest creditor in this case, during the CIRP proceedings, the former has not submitted any claim. The liquidator is directed to make further efforts with the Department of Telecommunications in this regard to make them aware of the procedures involved through registered post as well during liquidation process.

13. Accordingly, by exercising our power under Section 33(1) pass the following order:-

i. The Corporate debtor is liquidated with immediate effect in the manner provided under Chapter III Part II of the IBC 2016;

ii. Since the IRP has given his consent to act as Liquidator, therefore, Mr. Atul Mittal bearing Registration No.IBBI/IPA-001/IP-P00439/2017-18/10762, resident of 174, Balco Apartments, Plot No.58,IP Extn., Patparganj, New delhi-110092, Mobile No. 9871830777, e-mail: a.mittalmc@gmail.com. The Law Research Associate of this Tribunal has checked the credentials of proposed Liquidator and nothing adverse has been found on record, therefore, Mr. Atul Mittal, is hereby appointed as liquidator;

iii. The liquidator is directed to take custody and control of the assets, property of the Corporate Debtor with immediate effect and made a public announcement clearly stating that the Corporate Debtor is under Liquidation in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

iv. The Provision of Section 33 (5), (6) and (7) of the IBC, 2016 shall have come into force with immediate effect. 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;

v. This Order shall be deemed to be a 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;

vi. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five (75) days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;

vii. The Liquidator shall file regular progress reports as per Regulation 15 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016 every fortnightly thereafter;

viii. 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 Debtor, if any. This direction is hereby given in concurrence of the jurisdiction prescribed under Section 33(5) of the Code.

ix. On initiation of the liquidation process but subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the Liquidator to institute suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in Section 33(5) of the Code read with its proviso.

x. 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;

xi. 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 provisions 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;

xii. The Section 34(8) & (9) of the I&B Code, 2016 provide for the payment of the fees to the Liquidator. Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process), Regulations, 2016 lays down the procedure for determining the liquidator's fee. In the present case, the liquidator's fee is directed to be determined as per the aforementioned provisions.

xiii. The Registry is directed to communicate a copy of the Order to the Corporate Debtor immediately;

xiv. A copy of this order be sent by the Registry to the Registrar of Companies (RoC), NCT of Delhi & Haryana for updating the Master Data. After updating the Master Data, RoC shall send compliance report to the Registrar, NCLT within a period of 30 days;

xv. The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board of India for their record and for verifying the antecedents of the Liquidator.

xvi. The Liquidator is at liberty to seek any directions, if need be, from this Tribunal during the Liquidation Process.

14. Thus, IA No. 364/2021 stands disposed of.

Sd/-	Sd/-
(Subrata Kumar Dash) Member (Technical)	(Harnam Singh Thakur) Member (Judicial)

January 24, 2022
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