



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-V)

IA-3536/ND/2022

IN

Company Petition No. (IB)-87(ND)2020

Under Section: 33(2) of the Insolvency & Bankruptcy, 2016.

In the matter of:

Swiftmail Communications Limited

...Operational Creditor

Versus

Iriisnet Communication Private Limited

...Corporate Debtor

IN THE MATTER OF:

Hemi Gupta

Resolution Professional

For Iriisnet Communication Private Limited

24, Medi Center, Opp. Eves Petrol Pump,

Hapur Road, Meerut (U.P.)-250002

...Applicant/Resolution Professional

Versus

1. Hardik Jhanb

2. Alka Jhanb

Residential Address of Both Respondent No.1 & 2:

House No. 1260, Sector- 14,

Faridabad, Haryana

121007

...Respondents/Directors of the ex-management of the Corporate
Debtor

Order pronounced on: 21.09.2022

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IA 3536/ND/2022 in CP No. (IB)-87 (ND)2020

Swift Mail Communication Vs. Iriisnit Communication Pvt. Ltd.



CORAM:

SH. P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant/Resolution Professional: Mr. Sumit Shukla

ORDER

PER SHRI RAHUL BHATNAGAR, MEMBER (T)

This is an application filed by Ms. Hemi Gupta, the Resolution Professional of Iriisnet Communication Private Limited (*'the Applicant'*) under Section 33(2) of the Insolvency and Bankruptcy Code, 2016, (*'the Code'*) seeking the following main reliefs:

- a) *To consider the present application under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for Liquidation of the Corporate Debtor; and/or*
- b) *To appoint the Resolution Professional as Liquidator of the Corporate Debtor under Section 34(1) of the Code; and/or;*
- c) *To direct the Registry to communicate this order to the concerned registrar of the Companies and to the Insolvency and Bankruptcy Board of India (IBBI), New Delhi; and/or;*
- d) *To consider declaring under Section 31(3)(a) of the Code that order of Moratorium passed under 14 of the I&B Code, 2016 shall cease to have effects and fresh moratorium under Section 33(5) shall commence; and/or;*
- e) *To consider that this order is deemed to be a notice of discharge to the officer, employees and the workmen of the Corporate Debtor as per Section 33(7) of I&B Code, 2016; and/or;*
- f) *To consider that no suit, prosecution or other legal proceeding shall lie against the Insolvency Professional for anything done or intended to be done in good faith under Section 233 of the Code; and/or;*
- g) *To pass any such further order(s)/direction(s) which this Hon'ble Adjudicating Authority may be deemed fit in the interest of justice.*

2. This Adjudicating Authority *vide* its order dated 24.02.2022 on a Petition filed by M/s Swiftmail Communications Limited



(‘Operational Creditor’) under Section 9 of the Code directed initiation of the Corporate Insolvency Resolution Process (‘CIRP’) against M/s Iriisnet Communication Private Limited (‘Corporate Debtor’) and appointed Ms. Hemi Gupta as the Interim Resolution Professional (‘IRP’). The appointment of the IRP has been confirmed as the Resolution Professional (‘RP’) by the Committee of Creditors (‘CoC’) in its 1st CoC meeting held on 25.03.2022.

3. That the Applicant/RP sent an email to the suspended directors of the Corporate Debtor regarding the order dated 24.02.2022 initiating the CIRP against the Corporate Debtor. However, the suspended directors did not cooperate with the Applicant despite personal visits, emails and telephonic calls.
4. In terms of the Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the public announcement was made on 26.02.2022 in Financial Express (English) and Jansatta (Hindi) in New Delhi edition. The said public announcement was also uploaded on the website of the Insolvency and Bankruptcy Board of India (IBBI). On 02.03.2022, the Applicant also requested the ex-management to place the public announcement on the website of the Corporate Debtor to which no action has been taken at the end of the suspended board.
5. That only one claim was received by the Applicant till the close of the last date of receipt of claims i.e. 10.03.2022, from Swiftmail Communications Limited (Operational Creditor). Thereafter the Applicant constituted the CoC in terms of Section 21 of the Code on 19.03.2022.

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6. Thereafter, in compliance of Regulation 17(1) of the CIRP Regulations, 2016, the Applicant filed a report bearing I.A. No. 1353 of 2022 before this Hon'ble Adjudicating Authority certifying the constitution of CoC. That vide order dated 28.03.2022, the said report was taken on record.
7. That owing to the non-cooperation by the Respondents/ex directors of the Corporate Debtor, an application u/s 19 (2) of the Code bearing IA/1309/2022 was filed against the suspended directors as they failed to handover assets/records pertaining to the Corporate Debtor sought by the Applicant. Subsequently, this Hon'ble Adjudicating Authority vide order dated 28.03.2022 issued notice to the Respondents. That, after noting the fact that none appeared for the Respondents nor they furnished any information/documents, this Adjudicating Authority vide order dated 09.05.2022 directed the Applicant to file a criminal case against the respondents u/s 70 of the Code. It is submitted that the Applicant has filed an application before the IBBI for initiation of proceedings before Special Court under Section 70 of the Code against the suspended directors of the Corporate Debtor on 20.05.2022.
8. The Applicant further stated that in compliance of Section 22(1) of the Code read with Regulation 17(2) of the CIRP Regulations, 2016, the Applicant conducted the 1st Meeting of CoC on 25.03.2022 and the Applicant filed the 1st Progress Report capturing the progress made in the CIRP along with the first CoC meeting minutes which was numbered as IA No. 1707/ND/2022 and the same was taken on record by this Hon'ble Adjudicating Authority vide order dated 18.04.2022.
9. The 2nd CoC meeting was conducted on 26.04.2022 regarding the appointment of 4 Registered IBBI Valuers ('RVs') for



determining the Liquidation and Fair Value of the Corporate Debtor in accordance with the Code read with Regulation 35 of the CIRP Regulations. The Applicant also apprised the CoC that valuers for Land & Building valuation were approached. However, the concerned RVs have conveyed that there are no fixed assets under the head 'Land & Building', hence no Land & Building Valuation is required. It is further submitted that the RVs have sought checklist of information / documents for carrying out the valuation effectively. However, the same couldn't be provided due to non-receipt of complete records and documents from the ex-management and the Statutory Auditors till date. Further, the RP also placed following matters to be voted upon after discussion in the meeting viz. appointment of registered valuer and approval /ratify the cost of valuation, appointment of legal expert pursuant to Section 20 of IBC, approval of the expenses of the CIRP, opening of new bank account, approval of the Eligibility Criteria, Evaluation Matrix (EM) and Request for Resolution Plan (RFRP), approval for the publication of Expression of Interest (EOI) in form G, the timelines of the present CIR Process and approval for the deviations / delays in the timelines in the present CIR Process. It is submitted that the matters were put to voting but the CoC member abstained from the voting.

10. That the Applicant had prepared and issued Information Memorandum to CoC members on 11.04.2022, after the receipt of Confidentiality Disclosure from the respective members. The Applicant apprised the CoC that in the absence of the records of the Corporate Debtor, the RP is not able to ascertain the assets and liability of Corporate Debtor as on CIRP date. Further, the RP is not in a position to form any opinion whether the Corporate Debtor has been subjected to any transaction covered under sections 43, 45, 50 or 66 of the Code.



11. The 3rd CoC meeting was convened on 01.06.2022, wherein the Applicant informed the members of CoC about the order of this Adjudicating Authority dated 09.05.2022. The CoC was also apprised that a claim has been received from Dy. Excise & Taxation Commissioner (ST), Faridabad (East) dated 26-05-2022 wherein they have submitted the proof of Interim Claim for an aggregating amount of Rs. 7262103/- due under HGST/CGST/AGST Act, 2017 for the period pertaining to 2018-19 & 2019-20 (April 2019 to September 2019). The said claim has not been admitted as it is received after completion of 90th Day from commencement of CIRP and the same is based on order of GST Tribunal passed during moratorium in force. The intimation to the department regarding the said claim was sent via email on 02.06.2022. The RP had also sought clarification on the-contents of claims from the Ex-management of the Corporate Debtor.
12. That the CoC further mentioned that despite giving more than sufficient time and several opportunities by the CoC to the ex-management to submit the complete books of records with an intent to keep the Corporate Debtor as a going concern, all such efforts have failed to reach to any logical conclusion and thus the CoC has no other option except to approve a resolution for the Liquidation of the Corporate Debtor. In view of aforesaid, pursuant to section 33(2) of the Code, the CoC has directed RP to proceed for liquidation of Corporate Debtor and appoint her as the Liquidator to carry out the Liquidation process of the Corporate Debtor.
13. It is further averred by the Applicant that the aforesaid Resolution for Liquidation along with all of the above resolutions were passed by the sole CoC member as recorded in the minutes



of the 3rd CoC meeting dated 03.06.2022. The resolution is reproduced below:

B1: To discuss and approve the appointment of Advocate pursuant to Section 20 of the Insolvency & Bankruptcy Code, 2016 ("IBC")

M/s. Lawedge Partners have submitted their fee quote to provide professional services such as drafting and filing of Applications, Replies, Progress Reports and to make an appearance for and on behalf of the RP as and when required. The quotation for the said activities has been received and is placed for consideration of the CoC Member. M/s. Lawedge Partners have provided their Legal Services in the First month of the CIRP and have carried out the work in a timely and efficient manner. The matter was discussed. Proposed Resolution with or without modification:

RESOLVED THAT remuneration of M/s Lawedge Partners as legal expert for assisting the Resolution Professional in various fillings with the Hon'ble NCLT and drafting and filing necessary applications and incidental services as mentioned hereunder be and is hereby ratified and confirmed w.e.f. 25th March 2022 and the said fees shall form part of Corporate Insolvency Resolution Process costs: .

- | | |
|--|---------------|
| 1. Professional Fee Drafting and Filing of Application | Rs. 25,000.00 |
| 2. Professional Fee Drafting and Filing of Report | Rs. 15,000.00 |
| 3. Professional Fee for Hearing | Rs. 10,000.00 |
| 4. NCLT Application Fee, Scanning, Printing, Paper At actual Book Charges, Stamp Paper, Notary Charges and Postage | At actual |
| 5. Clerkage Charges | @ 10% |

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B2: To consider and approve/ratify the expenses incurred in CIRP of Iriisnet Communication Private Limited

It was informed that the expenses for the period 25-03-2022 upto 25-04-2022 amounting to Rs. 2,26,495/- were incurred by the RP which were not ratified by the CoC in their 2nd CoC meeting. Thereafter, the expenses for the period 26-04-2022 upto 25-05-2022 amounting to Rs. 1,92,037/- were incurred by the RP. Details of the expenses are annexed as Annexure - 3.

After a brief discussion the COC noted the CIRP cost and asked the RP to put up the same for ratification by way of voting process.

Proposed Resolution with or without modification:

“RESOLVED THAT pursuant to applicable provisions of the Insolvency and Bankruptcy Code, 2016 and in accordance with the Rules and Regulations there under, the members of the Committee of Creditors approve/ratify, as the case may be, the expenses amounting to a total of Rs. 4,18,532 for the period 25-03-2022 to 25-04-2022 as per the details provided herein above, which shall form part of CIRP cost.”

B3: To open a CIRP Bank account to meet expenses CIRP

It was informed that pursuant to the initiation of CIRP and for the smooth conduct of the CIRP, it is proposed to open a CIRP Bank account to meet expenses pertaining to CIRP of the Corporate Debtor by appointing Mrs. Hemi Gupta, Resolution Professional as the sole signatory for the new current CIRP bank account of the Corporate Debtor.

Proposed Resolution with or without modification:

“RESOLVED THAT a new Current CIRP Bank Account of the Corporate Debtor titled “IRISNET Communication Private Limited (under CIRP) be opened with HDFC Bank Limited, Meerut Branch



and Mrs. Hemi Gupta, Resolution Professional be and is hereby appointed as the sole signatory for the current bank account of Iriisnet Communication Private Limited.

RESOLVED FURTHER THAT the said bank be and is hereby authorised to honour all cheques, bills of exchange and promissory notes drawn, accepted and all negotiable instruments whatsoever made on behalf of the corporate Debtor by Mrs. Hemi Gupta (Resolution Professional), relating to the account of the Corporate Debtor.”

B4: To review, discuss the timelines of the present CIR Process and approve the deviations/delays in the timelines in the present CIR Process-Annexure -4

The matter was discussed and the RP informed the CoC that there are various timelines as per the CIRP Regulations which could not be met due to the deliberate non-corporation from the Ex-Management and proposed that the deviations/delays be condoned.

After a brief discussion the COC noted the deviations and asked the RP to put up the same for approval/condonation by way of voting process.

Proposed Resolution with or without modification:

“RESOLVED THAT the COC hereby take note of the timelines as per Annexure -4 and approve condone all the delays (present & future) caused in the present CIR Process with no malafied/willful intention on the part of concerned IRP/RP and members of the CoC.”

B5: To discuss and decide upon the liquidation of the Corporate Debtor

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The matter was discussed in terms of discussion item no. A-8 the COC mentioned that the perpetual non-cooperation by the ex-management also blocked the valuation process, Preparation of Information Memorandum and publication of the From G inviting the prospective resolution applicants thus depriving the CD to keeping going as a business concern.

Accordingly COC asked the RP to put us resolutions, for voting process, for the liquidation of the Corporate Debtor.

Proposed Resolution with or without modification:

“RESOLVED THAT pursuant to the discussions held, the COC members hereby approve for the Liquidation of the Corporate debtor

RESOLVED FURTHER THAT the COC hereby authorize the RP to file necessary application before adjudicating authority.

RESOLVED FURTHER THAT the COC member hereby appoint the RP Hemi Gupta as the Liquidator for the Corporate debtor at a monthly fee of Rs 1,00,000 plus taxes and out of pocket expenses which shall be paid on actuals.

RESOLVED FURTHER THAT the RP shall continue to discharge its duties as the RP as per the same terms as approved in the 1st COC meeting held on 25th March 2022 till the disposal of the RP's application by the Hon'ble NCLT praying for the liquidation.”

14. That the RP has also filed his 'written communication' / consent to act as Liquidator of the Corporate Debtor as required under Section 34(1) of the IBC, 2016. The consent form to act as the Liquidator along with Form B 'Authorisation for Assignment' and IBBI certificate of registration is placed on record.



15. We have considered the submission made by the learned Counsel on behalf of the Applicant/RP and perused the record.
16. Section 33(2) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor where the Resolution Professional, at any time during the CIRP but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the CoC [approved by not less than sixty-six per cent. of the voting share] to liquidate the Corporate Debtor.
17. In sequel to the above, **the IA is allowed, ordering Liquidation of the Corporate Debtor, Iriisnet Communication Private Limited** in the manner as laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant Rules and Regulations along with the following directions:
- a) Ms. Hemi Gupta, having IBBI Registration No. IBBI registration Number (IBBI/IPA002/IP-N00147/2017-18/10383), is appointed as Liquidator, who has given her written consent to act as Liquidator in terms of Section 34 (1) of IBC 2016;
 - b) The Liquidator, is directed to issue 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;
 - c) 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;

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- d) 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;
- e) Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor to determine the undervalued and preferential transactions etc., if any.
- f) 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.
- g) **The Registry is directed to communicate a copy of this Order by email to the Operational Creditor, the Corporate Debtor and Liquidator Ms. Hemi Gupta at the earliest but not later than seven days from today.**
- h) A copy of this Order be sent by the Registry and Liquidator 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;
- i) The Registry and Liquidator are directed to communicate a copy of this Order to the Insolvency and Bankruptcy Board (IBBI) of India for their record.

18. IA-3536/ND/2022 filed in IB-87(ND)/2020 is allowed in the aforesaid terms.

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Member (Technical)

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