

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-III)
IA-4291/ND/2022
IN
Company Petition No. (IB)-761 (ND) 2021

IN THE MATTER OF:

M/s OM Telecom Logistics Private Limited

...Financial Creditor

Versus

M/s MKY Constructions Private Limited

....Corporate Debtor

AND IN THE MATTER OF:

Reetesh Kumar Agarwal
Resolution Professional
Unit no. 531, 5th Floor S.G Shopping Mall
New Delhi-11085

...Applicant/Resolution Professional

Order Delivered on: 25.01.2023

Under Section: 33(1) of the IBC, 2016.

CORAM:

SH. Bachu Venkat Balaram Das, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

ORDER

PER: DR. BINOD KUMAR SINHA, MEMBER- TECHNICAL

The instant IA bearing No. IA-4291/ND/2022 in IB 761/ND/2021 has been filed by Mr. Reetesh Kumar Agarwal, (**'the Applicant'**) / **Resolution Professional** (RP) under 33(1) of the Insolvency and Bankruptcy Code, 2016, for seeking commencement of Liquidation Process of the Corporate Debtor/ M/s MKY Constructions Private Limited.

2. Facts of the case in brief are that this Adjudicating Authority vide its admission order dated 13.05.2022 had initiated CIRP against the Corporate Debtor and the Applicant was appointed as the Interim Resolution Professional and later he was confirmed as Resolution Professional by the Committee of Creditors in its first meeting held on 11.06.2022.
3. It is stated by the Applicant that on 14.05.2022, the order of admission of the Corporate Debtor into CIRP was communicated to the Corporate Debtor and a public announcement in respect of initiation of the CIRP in respect of the Corporate Debtor and calling for submission of claims under Section 15 of the Code was also made on the same date.
4. It is further stated that the Applicant also filed the first progress report vide IA-IBC/2974/2022 and the same was allowed to be taken on record vide Order dated 14.07.2022.
5. It has been further stated that thereafter the report certifying the Reconstitution of the COC was filed before this Hon'ble Adjudicating Authority in IA-IBC/3574/2022 and the same was allowed to be taken on record vide order dated 01.08.2022.

6. It is submitted by the Applicant that the second COC meeting was held on 02.08.2022, where all the COC members deliberated upon the issue of the possibility of getting a resolution plan but it was observed from record that the Corporate Debtor had no cash flow and it had closed business operations. Having considered the above facts and other relevant factors, the COC came to the conclusion that it was most unlikely to receive any resolution plan for the Corporate Debtor. Thereafter, the COC has approved the initiation of liquidation of Corporate Debtor with majority votes i.e. 86.70%. A copy of the minutes of the 2nd meeting of the COC approving the liquidation along with voting results (E-voting) is also available on record.
7. It is stated by the Applicant that on 01.08.2022 in the 2ndCO C meeting, a resolution was also passed to authorise the Applicant with 86.7 % (in value) to file an Application for initiation of liquidation proceedings against the Corporate Debtor, before this Adjudicating Authority.
8. The RP has also filed his 'written communication' / consent to act as the liquidator of the Corporate Debtor as required under Section 34(1) of the IBC, 2016 and under regulation 3(1) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016).
9. In the circumstances stated above, this Adjudicating Authority has not received any Resolution Plan and the COC has authorised the RP to file the instant application in terms of section – 33(2) of the Code. There being no other alternative, this Bench is inclined to accept the Resolution of the COC and order Liquidation of the Corporate Debtor.

10. In sequel to the above, **the instant IA is allowed, ordering Liquidation of the Corporate Debtor, M/s MKY Constructions 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. Mr. Reetesh Kumar Agarwal, having IBBI Registration No. IBBI registration Number (IBBI/IPA-001/IP-P00878/2017-2018/11475), is appointed as Liquidator, who has given his written consent to act as Liquidator in terms of Section 34 (1) of IBC 2016;
- b. Hereinafter the powers of the Board of Director get vested in the Liquidator, and the Directors key managerial persons and employees of the Corporate Debtor are hereby directed to extend full cooperation to the Liquidator.
- c. 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;
- d. 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;

- e. 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;
- f. 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.
- g. 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, and continue to take further necessary steps for the Liquidation of the assets of the Corporate Debtor as provided in the Code and the Regulations.
- h. The Registry is directed to communicate a copy of this Order by email to the Operational Creditor, the Corporate Debtor and Liquidator Mr. Reetesh Kumar Agarwal at the earliest but not later than seven days from today.
- i. 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;

j. 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.

11. **IA-4291/ND/2022 filed in IB-761(ND)/2021 is allowed in the aforesaid terms.**

-Sd-

(Dr. BINOD KUMAR SINHA)

MEMBER (T)

-Sd-

(BACHU VENKAT BALARAM DAS)

MEMBER (J)