

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SINGLE BENCH, CHENNAI**

MA/139/2019 in CP/699/IB/CB/2017
filed under Section 33 of the Insolvency
and Bankruptcy Code, 2016

In the matter of **M/s. Gemini Communication Limited**

M/s. Baobab Broadband Limited

... *Financial Creditor*

-VS-

M/s. Gemini Communication Limited

... *Corporate Debtor*

Order delivered on 26th of February, 2019

CORAM :

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

Resolution Professional : Mr. R.Mukundan

ORDER

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. This MA/139/2019 in CP/699/IB/CB/2017 has been filed under Section 33 of the Insolvency and Bankruptcy Code, 2016, (in short 'I&B Code, 2016'), by the Resolution Professional viz., Mr. R. Mukundan.

2. The prayers made by the Applicant in the Application are as follows:—

a. Pass an order on Corporate Debtor, M/s. Gemini Communication Limited, be liquidated in the manner as laid down in the Insolvency and Bankruptcy Code, 2016.

b. Pass an order in terms of Section 34(4) & 34(5) of the Insolvency and Bankruptcy Code, 2016 to replace the Resolution Professional, Shri. R. Mukundan and to appoint a new insolvency professional as the Liquidator.

c. Pass such further or other orders/directions as deemed fit and appropriate by this Hon'ble Tribunal in the interests of justice.

3. Originally, CP/699/(IB)/CB/2017 was filed under Section 7 of the I&B Code, 2016, by the Financial Creditor viz., M/s. Baobab Broadband Limited against the Corporate Debtor viz., M/s. Gemini Communication Limited, which

was admitted by this Authority vide its Order dated 20.06.2018, the CIR Process was initiated against the Corporate Debtor and one Ms. Aishwarya Mohan Gahrana was appointed as Interim Resolution Professional (IRP) in the matter.

4. The IRP had taken over the management of the Corporate Debtor and had issued the Newspaper Publication as per Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016, inviting the claims from the creditors.

5. It is stated that the Resolution Professional has received 21 claims from various lenders out of which 8 claims were received within the stipulated time period and among the said 8 claims two claims were not included for the reasons, *inter alia*, for want of required documents.

6. It is stated that on 12.07.2018, the CoCs were formed and two registered Valuers were appointed to determine the fair value and liquidation value of the Corporate Debtor under Regulation 27 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Subsequently, newspaper publication were made inviting for 'Expression of Interest' ('EoI') on 03.09.2018 in respect of Corporate Debtor fixing 02.11.2018 as last date for submitting the Resolution Plans and on 13.08.2018 the IRP finalized the Information Memorandum.

7. In the 2nd Meeting of the CoCs held on 17.08.2018, the CoCs has decided to replace the Resolution Professional viz., Ms. Aishwarya Mohan Gahrana with the Applicant viz., Mr. R. Mukundan, which was later confirmed by this Authority vide Order dated 01.10.2018.

8. The Resolution Professional has taken over the records from IRP including the two "EoIs" received by her in

respect of the Corporate Debtor and took charge of the management w.e.f. 04.10.2018. On scrutiny of the “EoIs”, the Applicant has found that the same were *inter alia* not fulfilling the requisite eligibility criteria, and hence, both the “EoIs” were rejected. The Resolution Professional, with the approval of the CoCs, had made a fresh newspaper publication inviting for ‘EoI’ on 29.10.2018 in respect of Corporate Debtor fixing 27.12.2018 as last date for submitting the Resolution Plans. In the interregnum, on the recommendation of the CoCs, an Application was filed by the Resolution Professional before this Authority to extend the time period of CIR Process beyond 180 days from 17.12.2018 for 60 days. Accordingly, this Authority vide order dated 10.12.2018 has extended the time period of CIR Process for 60 day from 17.12.2018 to 15.02.2019.

9. In response to the fresh notification, two Applications from prospective Resolution Applicants were received by the Resolution Professional but, one of which was found to be fudged and was rejected. The Resolution Plan dated

29.12.2018 submitted by the other Resolution Applicant viz., M/s. Rare Asset Reconstruction Limited did not fulfill the mandatory conditions laid down in I&B Code, 2016. However, the same was placed before the CoCs for deliberations in the Meeting of CoCs held on 07.01.2019.

10. In the meantime, on 21.01.2019, on receipt of the order of this Authority, the Resolution Professional reconstituted the CoCs duly including M/s. Merrill Lynch International into the CoCs and distributing the proportionate voting share among the members. The CoCs have directed the Resolution Applicant to submit an improved and revised offer duly including M/s. Merrill Lynch International as a Financial Creditor.

11. On 25.01.2019, the Resolution Applicant viz., M/s. Rare Asset Reconstruction Limited has submitted a revised Resolution Plan which was placed before the CoCs for deliberations in its meeting held on 29.01.2019. The CoCs, after deliberations have taken the view as follows:-

- “ i) The offer was very low compared to the debt,*
- ii) The offer was discriminatory between the creditors which is not acceptable,*
- iii) The right to pursue personal guarantee cannot be waived by the members, and*
- iv) The right of the consortium of 4 members to 75% of the proceedings with the BSNL cannot be waived in favour of the Resolution Applicant.”*

12. In the 11th Meeting of the CoCs held on 05.02.2019, the Resolution submitted by the Resolution Applicant viz., M/s. Rare Asset Reconstruction Limited, was again discussed by the CoCs and the same was put to vote through ballot paper and electronic voting. The CoCs, decided to reject the Resolution by 74% of the voting share. The operative part of the Resolution reads as follows: -

“Thus, the Resolution (Plan) was rejected by the CoC by 74% of the Voting share”.

“Resolved that the Committee of Creditors decides to request the Honorable NCLT, Chennai to appoint a Liquidator for Gemini Communication Limited”

13. Accordingly, the Resolution Professional has filed MA/139/IB/2019 in CP/699/IB/CB/2017 with the prayers to pass an order for liquidation of the Corporate Debtor viz., M/s. Gemini Communication Limited and to appoint a new insolvency professional as the liquidator. Since no Resolution Plan has been received by this Authority under sub-Section (6) of Section 30 of the I&B Code, 2016, before the expiry of the Corporate Insolvency Resolution Process period, the Corporate Debtor has to be ordered for Liquidation.

ORDER

14. In view of the facts and circumstances recorded by Resolution Professional in MA/139/IB/2019 filed in CP/699/IB/CB/2017, the Resolution passed by the CoCs as referred hereinabove, and in exercise of powers conferred

under Sub-Clauses (i) (ii) and (iii) of Clause (a) of Sub-Section (1) of Section 33 of the I&B Code, 2016, this Authority proceeds to pass Liquidation Order as follows:-

- I. This Authority hereby orders for liquidation of the Corporate Debtor viz., M/s. Gemini Communication Limited, which shall be conducted in the manner as laid down in Chapter III of part II of the I&B Code, 2016;
- II. This Authority hereby appoints Mr. Kasiviswanathan, (whose Reg. No. IBBI/IPA-001/IP-P00396/2017-18/10714, Email ID: kasi.s@gopalaiyer.in) as Company Liquidator, who shall file the declaration disclosure statement in the Registry of NCLT, Chennai, within two working days from the date of the receipt of this order and shall issue a public announcement stating therein that the Corporate Debtor is in liquidation;

- III. The moratorium declared under Section 14 of the I&B Code, 2016, shall cease to have effect from the date of the order of liquidation;
- IV. Subject to Section 52 of the I&B Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.
- V. This Authority makes it clear that para (IV) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.
- VI. This Order shall be deemed to be a notice of discharge to the officers, employees and workmen

of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.

VII. 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 with the Company Liquidator viz., Mr. Kasiviswanathan. In addition to this, the Company Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the I&B Code, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

VIII. The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.

IX. The Company Liquidator shall be entitled to charge such fees for the conduct of the liquidation proceedings and in such a proportion to the value of the liquidation estate assets as specified under Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

X. The Registry is directed to communicate this order with immediate effect to the concerned Registrar of Companies, RD, OL, Registered Office of the Corporate Debtor and Company Liquidator viz., Mr. Kasiviswanathan for information and compliance.

15. In terms of the above, MA/139/IB/2019 in CP/699/IB/CB/2017 filed by the Resolution Professional under Section 33 of the I&B Code, 2016, for initiation of the Liquidation Proceedings against the Corporate Debtor viz., M/s. Gemini Communication Limited, is **allowed**.

16. The Order is pronounced in the open Court.


[CH. MOHD SHARIEF TARIQ]
MEMBER (JUDICIAL)

P. ATHISTAMANI