

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI**

**C.A. 1000 (PB) /2019
IN
Company Petition No. (IB) – 263 (PB) /2018**

In the matter of:

Mr. Arvind Garg

Applicant/Resolution Professional

AND

In the matter of:

Century Communication Limited

Corporate Debtor

*Under Section 33 of the Insolvency and Bankruptcy Code, 2016
for liquidation of the corporate debtor*

Judgment delivered on: 03.12.2019

Coram:

MR. CHIEF JUSTICE (RTD.) M. M. KUMAR HON'BLE PRESIDENT

MR. S. K. MOHAPATRA, MEMBER (TECHNICAL)

For the RP/ Applicant:

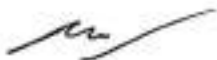
Mr. Rahul Mehndiratta, Advocate,
Mr. Tushar Tyagi, Advocate,
Mr. Abhishek Anand, Advocate



ORDER

S. K. Mohapatra, Member

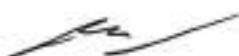
1. This is an application filed by the Resolution Professional under Section 33 (2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for issuance of directions for initiation of liquidation of the corporate debtor, M/s Century Communication Limited.
2. The facts in brief are that one of the financial creditors, State Bank of India, had filed an application under Section 7 of the Code bearing number IB-263(PB)/2018 for initiation of Corporate Insolvency Resolution Process against the corporate debtor, M/s Century Communication Limited. The said application was admitted by this Tribunal on 04.10.2018 initiating Corporate Insolvency Resolution Process against the corporate debtor M/s Century Communication Limited and there in appointed Mr. Arvind Garg, as the Interim Resolution Professional.
3. In terms of Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, public



announcement in Form A dated 15.10.2018 was made in the following newspapers: -

Newspaper	Language	Edition
Financial Express	English	All India Edition
Jansatta	Hindi	All India Edition

4. In terms of Section 18(1)(a) of the Code, the Interim Resolution Professional collated all claims submitted by the creditors pursuant to the public announcement and after determination of the financial position of the Corporate Debtor, constituted a Committee of Creditors comprising of 10 financial creditors of the Corporate Debtor.
5. The first meeting of the Committee of Creditors was convened on 03.11.2018 wherein the members of the CoC after discussions and deliberations unanimously concurred on appointment of IRP as Resolution Professional of the corporate debtor.
6. In the second meeting of the CoC held on 27.12.2018 the members of the CoC, in terms of Regulation 36A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations,



2016 unanimously with 100% voting share instructed the resolution professional to publish Expression of Interest (EOI) for the Corporate Debtor.

7. As per approval of the Committee of Creditors advertisement for invitation of submission of resolution plan in Form G was published on 03.01.2019. The copy of the advertisement was also uploaded on the website of IBBI in terms of regulation 36A (5).
8. Resolution Professional informed the CoC members that no EOI from any prospective resolution applicant has been received. The CoC members opined that large number of ongoing investigations in the affairs of the corporate debtor and its directors, may have deterred prospective resolution applicants from submitting any Expression of Interest. The CoC unanimously decided not to issue another expression of Interest. The relevant portion of the minutes passed unanimously with 100% voting share is extracted below for ready reference: -

“CoC opined that publication of another invitation for Expression of Interest would entail unnecessary cost and cost time. CoC declined to



grant its approval for publication of another invitation for Expression of Interest and also decided not to approve any further expenditure to be incurred on publication of another invitation for Expression of Interest, as there does not seem to be value in the CD as such to arouse the interest of any potential suitor.

XXXXX

Resolution:

Committee of Creditors of corporate debtor Century Communication limited, having not received any resolution plan under sub-section (6) of Section 30 of the Insolvency & Bankruptcy Code, 2016, hereby decides and resolves not to issue another invitation to prospective resolution applicants, to submit resolution plan(s)."

- 9.** In the next fifth meeting of the Committee of Creditors held on 29.03.2019, Resolution Professional apprised the members of the CoC that the CIRP of the corporate debtor is coming to end and extension of 90 days in terms of Section 12 of the Insolvency and Bankruptcy Code, 2016



has to be sought for completion of the CIRP. The CoC members unanimously decided not to seek extension of time for the corporate insolvency resolution period.

- 10.** As CoC decided not to seek extension of CIRP period and refused to publish another invitation to prospective resolution applicants, the following agenda were again put for e-voting on 16.04.2019: -

“Committee of Creditors of corporate debtor century communication limited, in decides and resolves that the Resolution Professional be and hereby is directed to file a report before Hon’ble National Company Law Tribunal, praying for liquidation of corporate debtor.”

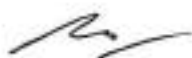
- 11.** It is submitted that the CoC in its fifth meeting has resolved by 79.25% majority to liquidate the corporate debtor as there were no Expression of Interest submitted by any prospective resolution applicants. Accordingly, as instructed by the Committee of Creditor, the Resolution Professional has filed the present application seeking liquidation of the Corporate Debtor under Section 33 of the Code.



- 12.** The relevant sub-section 2 of Section 33 of the Code envisages that:

“Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates that Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six per cent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

Explanation – For the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.”



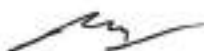
- 13.** Therefore, as per the mandate of the Code liquidation has to follow as recommended by the Committee of Creditors. Admittedly no Expression of Interest was received despite public advertisements and the Committee of Creditors with majority decision of 79.25% voting share decided to initiate liquidation of the corporate debtor upon failure of resolution process. Adherence to statutory requirement has to be in toto. When the language of the Code is clear and explicit the Adjudicating Authority must give effect to it whatever may be the consequences.
- 14.** In the factual background and in the absence of any Expression of Interest, there is no other alternative left but to order in conformity with the majority decision of the Committee of Creditors with 79.25 % voting share, *for liquidation of the corporate debtor under Section 33 (2) of the Code.*
- 15.** In CA. 1249 (PB)/2019 and C.A. 1901 (PB)/2019 the Indian Overseas Bank one of the members of the Committee of Creditors has proposed the name of Mr. Vivek Raheja with Registration No. IBBI/ IPA-001 / IP-P00055 / 2017-18 / 100133, email id corporate@isirresolution.com and



having address 1205, Chiranjiv Tower, 12th Floor, 43, Nehru Place, New Delhi - 110019 for appointment of liquidator of the corporate debtor. Affidavits of Union Bank of India, Andhra Bank and State Bank of India have been filed expressing their no objection for appointment of Mr. Vivek Raheja as liquidator. It is also seen that Mr. Vivek Raheja has given his consent to act as liquidator in Form AA dated 26.06.2019 in terms of Regulation 3(1). In the circumstances CA-1249(PB)/2019 and CA-1901(PB)/2019 are allowed by appointing Mr. Vivek Raheja as the liquidator of the corporate debtor.

16. In the result the application is allowed by ordering liquidation of the corporate debtor, namely M/s Century Communication Limited in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 along with following directions:

- a.** Mr. Vivek Raheja with Registration No. IBBI/ IPA-001 / IP-P00055 / 2017-18 / 100133, having email id corporate@isirresolution.com is appointed as



Liquidator in terms of Section 34(1) of the Code.

- b.** The liquidator is directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- c.** The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- d.** The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- e.** The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency

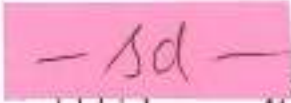


and Bankruptcy Code, 2016 and in accordance with the relevant regulations.

- f.** The liquidator shall investigate the financial affairs of the corporate debtor in accordance with provisions of Section 35 (l) of the Code.
- g.** The liquidator shall also follow up the pending applications for its disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- h.** The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
- i.** Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.



- j.** C.A. 1000 (PB) /2019, CA-1249(PB)/2019 and CA-1901(PB)/2019 filed in IB 263(PB)/2018 are disposed of in the aforesaid terms.

 - Sd -

03.12.2019
(M.M. KUMAR)
PRESIDENT

 - Sd -

(S. K. MOHAPATRA)
MEMBER (T)