

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI, COURT-III

IA-24/2024

IN

IB -596(ND)/2023

Order under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.

IN THE MATTER OF IB -596(ND)/2023:

M/s. PHONIC ONLINE PRIVATE LIMITED

..... Corporate Debtor

AND IN THE MATTER OF IA-24/2024:

Mr. ANKUSH MUNJAL

Resolution Professional of M/s. Phonic Online Private Limited

Order Pronounced On: 04.09.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, MEMBER (TECHNICAL)

APPEARANCES:

For the RP: Mr. Alok Kumar Kuchhal, Ms. Anshita Argal Advs.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The Application has been filed by Mr. Ankush Munjal, the Resolution Professional of the Corporate Debtor before this Adjudicating Authority under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code") read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking initiation of liquidation proceedings of the Corporate Debtor on the basis of the decision taken by the Committee of Creditor ("CoC") in the 6th CoC meeting held on 09.05.2024 with 100% voting shares. The Applicant seeks the following reliefs:

i) Pass an order of initiation of liquidation of the Corporate Debtor i.e. Phonic

Online Private Limited.



- ii) *To confirm the appointment and fees of Mr. Ankush Munjal, the present Resolution Professional as Liquidator.*
- iii) *Pass any other order or further order of any nature, direction as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*

2. Brief Background of the Case

- i. An Application (C.P. No. IB-596/(ND)/2023) for the corporate insolvency resolution process was filed by M/s. Phonic Online Private Limited (hereinafter referred to as the 'Corporate Debtor') under section 10 of the Insolvency and Bankruptcy Code, 2016, which was admitted by the Hon'ble NCLT, New Delhi Bench, Court- III vide order dated 11.01.2024 wherein the Applicant i.e. Mr. Ankush Munjal (IBBI Registration No. IBBI/IPA-001/IPAP01129/2018-19/11825) was appointed as the Interim Resolution Professional, for taking necessary actions in accordance with the relevant provisions of the Code.
- ii. A public announcement in Form A was published on 14.01.2024, pursuant to publication of form A, the IRP received Eight claims in respect of the Corporate Debtor, the IRP duly verified the claims and constituted the Committee of Creditors in terms of section 21 of IBC 2016. Thereafter, IRP had conducted 1st COC meeting on 09.02.2024 wherein Mr. Ankush Munjal was appointed as the Resolution Professional by the COC member. This fact was communicated to the Hon'ble Tribunal and the same was taken on record by Hon'ble Tribunal vide order dated 22.03.2024.
- iii. Subsequently on 10.03.2024, the Resolution Professional Published Form G following this publication, six entities expressed interest and made inquiries. The Resolution Professional subsequently shared the process memorandum with these interested parties. Despite this initial interest, only one entity submitted an Expression of Interest (EOI) along with the necessary documents. However, the said entity was later deemed ineligible due to its failure to submit the required documents within the prescribed timeline.



- iv. Thereafter in the 6th meeting of the Committee of Creditors (COC) dated 08.05.2024, the COC member opined that the prospects of revival of the Corporate Debtor are negligible, further the COC also noted that the Corporate Debtor has no tangible assets on its books, making the chances of revival exceedingly slim.
- v. The cost of the CIRP is being covered by Interim Finance. Given these circumstances, the COC is of the view that the most reasonable action at this stage is to liquidate the affairs of the Corporate Debtor.
- vi. Subsequently the COC, decided to liquidate the affairs of the Corporate Debtor. In terms of this decision, the following resolution was passed with 100% majority:
- "RESOLVED THAT in pursuant to Section 33(2) of the Insolvency and Bankruptcy Code, 2016, the approval of the Committee of Creditors be and is hereby accorded to liquidate the corporate debtor and the Resolution Professional -Mr. Ankush Munjal (IBBI Registration No.: IBBI/IPA-001/IP-P01129/2018-2019/11825) be and is hereby authorized to file with the Hon'ble NCLT, the decision of the Committee of Creditors to liquidate the corporate debtor. "*
- vii. The present application is filed by the Resolution Professional i.e. Mr. Ankush Munjal at the instance of the Committee of Creditors as per the provisions of Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for initiation of liquidation of Corporate Debtor and confirmation of the appointment of Resolution Professional as Liquidator of the Corporate Debtor.
- viii. The Applicant has filed a brief note with regard to the compliance under the provisions of the Code and Regulations as directed by this Adjudicating Authority vide order dated 01.08.2024.
- ix. It is submitted by the Resolution Professional that the present Application is being filed in the interest of justice and the same is bona fide in nature.
- x. We have heard the arguments of the Ld. Counsel appearing for the Applicant and perused the records carefully.



- xi. The Hon'ble Supreme Court in the matter of **K. Sashidhar Versus Indian Overseas Bank & Ors.** in Civil Appeal No. 10673 of 2018 has held that the commercial decision of CoC is non-justiciable. In this case, it is seen that CoC with 100% majority has passed the resolution seeking liquidation of the Corporate Debtor.
- xii. The above-quoted judgement, makes it clear that the "Commercial wisdom of CoC" is to be given paramount status. This Adjudicating Authority is not endowed with the powers of jurisdiction or authority to analyse or evaluate the commercial decision of the CoC. The members of the CoC are the best judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by this Adjudicating Authority for the reason that it is not a part of the judicial function to examine their commercial decisions.
3. In light of the above facts and circumstances, it is hereby ordered as follows:
- i. The **IA-24/2024** filed by Mr. Ankush Munjal, the Resolution Professional of the Corporate Debtor is **allowed** and the Corporate Debtor is ordered to be liquidated in terms of Section 33(2) of the Code read with sub-clause (i) of clause (b) thereof;
 - ii. The Insolvency and Bankruptcy Board of India ("IBBI") vide its circular number IP-12011/1/2020-IBBI/343/351 dated 28.06.2024 in the exercise of its powers conferred under Section 34(4)(b) of the Code had recommended that an IP other than the RP/IRP may be appointed as Liquidator in all the cases where Liquidation order is passed henceforth and the Liquidator can be appointed from the panel list of the IBBI.
 - iii. Therefore, this Adjudicating Authority appoints **Mr. Mukesh Chand Jain** as the Liquidator of the Corporate Debtor from the available list of panel of Resolution Professionals/Liquidators as maintained by the IBBI. The Registration number of the Liquidator is IBBI/IPA-002/IP-N00960/2020-2021/13054, the address of the Liquidator is F-703, Munirka Apartments, Sector-9, Plot-11, Dwarka, New Delhi, National Capital Territory of Delhi-110075 and the e-mail id of the Liquidator is mcjain.jmca@gmail.com and the contact no. of the Liquidator is 9810147919. Therefore, the Liquidator



shall file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order.

- iv. Mr. Ankush Munjal, the Resolution Professional of the Corporate Debtor is relieved from the present assignment as the Resolution Professional. The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed Liquidator forthwith.
- v. The Liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the Liquidation estate assets as specified by the IBBI and the same shall be paid to the Liquidator from the proceed of the Liquidation estate under Section 53 of the Code.
- vi. The Liquidator shall initiate the Liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- vii. The Liquidator will also serve a copy of this order to the various Government Departments such as Income Tax, GST, VAT, etc., who are likely to have any claim upon the Corporate Debtor so that the authorities concerned are informed of the Liquidation order timely.
- viii. All the powers of the Board of Directors, and key managerial personnel, shall cease to exist in accordance with Section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- ix. The personnel of the Corporate Debtor are directed to extend all assistance and cooperation to the Liquidator as required by him in managing the Liquidation process of the Corporate Debtor.
- x. The Order of Moratorium passed under Section 14 of the Code shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Code shall commence. 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 the 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.

- xi. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.
 - xii. The Liquidator shall also follow up on the pending applications for disposal during the process of Liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
 - xiii. 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;
 - xiv. The Liquidator and the Registry are hereby directed to send a copy of this order within 3 days from the date of this order to the Registrar of Companies, NCT of Delhi & Haryana. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.
 - xv. The Registry is further directed to send a copy of this order to the IBBI for their record.
 - xvi. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
- No order as to costs.

Sd/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**