

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-VI**

CP (IB)-147/ND/2023

[An application under Section 59 of The Insolvency and Bankruptcy Code, 2016]

IN THE MATTER OF:

M/s. RSCD TELECOMMUNICATIONS INDIA PRIVATE LIMITED.

(formerly known as M/s Marconi Telecommunications India Private Limited)

[CIN : U72900DL2000PTC107884]

Having Registered Office at: -

P-24, Green Park Extension, New Delhi – 110016

ACTING THROUGH LIQUIDATOR

Mr. Manish Kumar Sharma

[IBBI/IPA-002/IP-N00671/2018-19/12143]

B-32, Milansar Apartments, Plot No.2, Sector -14, Rohini, New Delhi - 110085

Email : manishattorney@gmail.com

... APPLICANT

versus

1. Insolvency and Bankruptcy Board of India

2nd floor, Jeevan Vihar Building, Parliament Street, New Delhi – 110001

Email : liqvol@ibbi.gov.in

... RESPONDENT NO. 1

2. Registrar of Companies, NCT of Delhi and Haryana

4th Floor, IFCI Tower, 61, Nehru Place, Delhi – 110019

Email: roc.delhi@mca.gov.in

... RESPONDENT NO.2

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Liquidator: Mr. Ankit Jain, Advocate.

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For the RoC : Ms. Shankari Mishra, Advocate.

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date: 08.07.2024

1. This application has been filed by the Liquidator under section 59 of the Insolvency and Bankruptcy Code, 2016 ("Code") read with Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 wherein the following prayers have been made: -

- (i) Condone the non-compliance of the applicant company in relation to pending compliance under the Foreign Exchange Management Act, 1999 pertaining to issue of shares/refund of application money within 180 days and also in filing of the requisite form FC-GPR with the Reserve Bank of India as stipulated under the provisions of the Foreign Exchange Management (Transfer of issue of security by a person resident outside India) Regulations, 2000.
- (ii) Seeking dissolution of M/s RSCD Telecommunications India Private Limited (hereinafter referred to as the "Company").
- (iii) Pass such further directions as deemed fit by this Adjudicating Authority in the interest of justice.

2. Vide order dated 17.03.2023, notice was issued to the RoC and IBBI.

3. It is stated in the application that the aforesaid Company was incorporated on 25.09.2000 under the provisions of the Companies Act, 1956. The Registered office of the Applicant is situated at New Delhi which lies within the territorial jurisdiction of this Bench.

4. The Liquidator has made the following submissions in the present petition: -

- i. That the company was incorporated with the objects of, inter alia, carrying on the business to manufacture, develop, sell, distribute, transfer, assemble and installation of transmission, access of private and public mobile networks, broadband routing and switching, multimedia and voice solutions, outside power and plant equipments, and to import, export, counter trade, buy, sell and deal in all kinds of goods, material, parts, components, substance articles, merchandise and software relating to the telecommunication products and services, whether as a principal or agent in India or abroad.
- ii. Considering the fact that the company had not been carrying out any business operations in India since 2007 and neither has any reasonable future prospects, therefore, the Board of Directors had at their meeting convened on 22.07.2020 passed a resolution to voluntarily liquidate the Company as per provisions of IBC.
- iii. The Board of Directors have filed a declaration of solvency along with audited financial statements and record of business operations of the applicant company vide form GNL-2 on 18.08.2020 with the Registrar of Companies, NCT of Delhi and Haryana.
- iv. Subsequently, the members of the applicant company at their annual general meeting held on 12.08.2020 had passed a special resolution as required under Section 59 of the IBC read with IBBI (Voluntary Liquidation Process) Regulations, 2017 to liquidate the applicant company voluntarily and had appointed Mr. Manish Kumar Sharma [IBBI/IPA-002/IP-N00671/2018-19/12143] to act as liquidator in the present matter.
- v. On 15.08.2020, public announcement was carried out in the following newspapers seeking submissions of claim by stakeholders, if any, within 30 days from the date of liquidation commencement date (14.09.2020): -
 - a. Financial Express (in English Language)
 - b. Jansatta (in Hindi Language)

- vi. The aforesaid public announcement was simultaneously submitted to the Insolvency and Bankruptcy Board of India and was published on the IBBI website on 21.08.2020.
- vii. On 03.09.2020, an intimation was provided to Income Tax Department under Section 178 of the Income Tax Act, 1961 regarding commencement of the liquidation process and appointment of liquidator.
- viii. On 21.09.2020, the Liquidator had submitted a preliminary report to the applicant company.
- ix. On 20.01.2021, a liquidation bank account was opened with Kotak Mahindra Bank, K.G Marg Branch in the name of “RSCD Telecommunications India Private Limited in Voluntary Liquidation” bearing A/C No. 6245167447 for purpose of depositing/realization by the applicant and payments as per Section 53 of IBC.
- x. It is further contended that the funds lying in the HDFC Bank Account maintained at its branch at D-1, Shopping Center No.2, Vasant Vihar, New Delhi – 110057 bearing A/C No. 50200045134232 were transferred to the aforementioned Liquidation Account.
- xi. On 14.08.2022, the distribution of proceeds to stakeholders by the liquidator to the applicant company was done.
- xii. On 09.09.2022, the liquidation account of the applicant company was closed and accordingly, this date marks the completion of Voluntary Liquidation Process.
- xiii. On 10.09.2022, the auditors certificate from M/s CVM & Associates (Firm Registration No. 020433N) signed by CA Amit Kumar (Membership No. 524700) was obtained in relation to receipts and payments for the period 12.08.2020 to 09.09.2022.

- xiv. The liquidator has completed the entire process of liquidation as required under Section 59 of IBC and submitted the final report to IBBI and RoC, NCT of Delhi and Haryana on 12.12.2022 through speed post, electronically through email and in form GNL-2.
- xv. The final report was submitted before this Adjudicating Authority on 16.12.2022.
- xvi. There were no creditors of the applicant company on liquidation commencement date. Also, no claims were received from any third party.
- xvii. That the only realisation during the Voluntary Liquidation process was under the category “Cash/Bank Balances” amounting to Rs. 5,55,193/-.
- xviii. That no preferential / undervalued / extortionate credit or fraudulent transactions have been filed or pending before this Adjudicating Authority.
- xix. The details of distribution to stakeholders as per Section 53 of the IBC has been carried out in the following manner: -

S.No	Stakeholder	Amount Claimed	Amount Admitted	Amount Distributed	Percentage of amount distributed to the amount claimed
1.	Liquidation Cost	4,81,000	4,81,000	4,81,000	100%
2.	Preference Shareholders	4,00,000	4,00,000	75,000	18.67%
3.	Equity	26,04,000	26,04,000	0	0

	Shareholders				
TOTAL		34,85,000	34,85,000	5,56,000	15,95%

It is clarified that the above-mentioned table accounts for only 3 stakeholders for the reason that there were no other stakeholders in the present case as the company was not in operation since 2007.

xx. The details of the Directors of the Applicant company are as follows: -

NAME OF DIRECTOR	DESIGNATION	DIN	Address
Sonil Singhania	Director	00017602	P-24, Green Park Extension, New Delhi -110016.
Heather Marie Green	Director	07509232	Well House, Burgmanns Hill, Lympstone, United Kingdom, EX85HP.
Mark Andrew Webberley	Director	03608304	21, Carrs Crescent, Liverpool, Merseyside, United Kingdom, L372EU.

xxi. **INDULGENCE OF THIS ADJUDICATING AUTHORITY IS SOUGHT SEEKING THE RELIEF IN REGARD TO THE PRAYER No. 1**

The brief relevant facts are as follows: -

- (i) That the following Foreign Remittances were received by the applicant company: -

Details of FIRC's		
Date of FIRC	Amount (in INR)	Amount (in US\$)
February 01, 2002	19,27,794	40,000
February 07, 2002	19,36,553	40,000
March 07, 2002	41,57,240	86,000
April 10, 2002	30,10,100	62,000
May 16, 2002	48,69,000	1,00,000

TOTAL **1,59,00,687** **3,28,000**

- (ii) That the following allotments were made out of the foreign remittances received by the applicant company: -

Date of allotment	No. of shares allotted	Amount for which shares were allotted	Date of FC-GPR reporting to Reserve Bank of India ("RBI")
20/02/2002	3,850	38,50,000	18/03/2002
06/12/2002	6,148	61,48,000	27/12/2002
Total	9,998	99,98,000	

- (iii) That out of the total amount received of Rs. 1,59,00,687/- ; allotment was made against amount of Rs. 99,98,000/- only owing to change in capitalisation plans of the applicant company. Consequently, for the balance amount of Rs. 59,02,687/- , the applicant company had preferred an application dated 09.09.2008

to the RBI seeking permission to refund the balance advance amount in terms of RBI Circular No. 20 dated 14.12.2007.

- (iv) In response to the aforesaid application, the RBI after taking the necessary applications on record had vide its letter dated 12.01.2009, allowed the refund of pending share application money subject to compounding of violation of provisions of A.P. (DIR Series) Circular No. 20 dated 14.12.2007 for the period from 29.11.2007 to 06.11.2008.
- (v) As instructed by the RBI, the applicant company had filed the compounding application on 13.02.2009 and after hearing the applicant company, the RBI had passed order dated 19.06.2009, compounding the offence of paragraph 8 of Schedule 1 to the Notification No. FEMA.20/2000-RB relating to the refund of pending share application money by imposing compounding fee of Rs. 3,50,000 which was duly paid by the applicant company.
- (vi) Thereafter, the applicant company moved another application dated 21.10.2010 to seek specific permission from RBI to make partial refund of Rs. 49,00,000 /- out of the total pending share application money of Rs. 59,02,687/- to its holding company due to insufficiency of funds with the applicant company. It is contended that RBI allowed the said application vide order dated 11.01.2011 and further directed therein that the remaining amount of Rs. 10,02,687/- be paid within 180 days of the said order.
- (vii) Since the applicant company had insufficient funds to pay the balance amount after completing the partial refund of Rs. 49,00,000/- ; the applicant company had filed fresh compounding application dated 20.02.2018 with the RBI seeking specific approval to allot equity shares to the Holding Company for the

balance amount, i.e. Rs. 10,02,687/-. In response to the said application, RBI vide its order allowed the application subject to payment of penalty u/s 13(1) of Foreign Exchange Management Act, 1999 or adjudication by DoE.

- (viii) Subsequently, the applicant company had allotted 1,00,000 equity shares to its Holding Company amounting to Rs. 10,02,687/- as approved by Board of Directors at their meeting held on 25.04.2018. Thereafter, the applicant company tried filing Form FC-GPR thrice in accordance with the Foreign Exchange Management (Transfer of issue of security by a person resident outside India) Regulations, 2017 as amended from time to time for intimating the allotment of said shares with RBI, however the same got rejected due to the reasons specified therein.
- (ix) Subsequently, the Liquidator on behalf of the applicant company had submitted his response to the objections raised by the RBI vide his letters dated 06.08.2021 and 25.08.2021. However, the aforesaid response(s) were not accepted by RBI.
- (x) Accordingly, it is pleaded that the applicant company is non-compliant with the requirement of filing Form FC-GPR with RBI for allotment of shares to non-resident shareholders. The Liquidator has placed on record communication(s) between the applicant company and the Reserve Bank of India.
- (xi) Accordingly it is prayed that this Adjudicating Authority may: -
 - a) Condone the non-compliance of the applicant company in relation to pending compliance under the Foreign Exchange Management Act, 1999 pertaining to issue of shares/refund of application money within 180 days.

b) and also condone/dispense with the requirement of filing of the requisite form FC-GPR with the Reserve Bank of India as stipulated under the provisions of the Foreign Exchange Management (Transfer of issue of security by a person resident outside India) Regulations, 2000.

5. The Roc have filed their report dated 22.05.2023 making the following submissions: -

- (i) The Authorized Capital of the company was Rs. 3100000 and Paid-up Capital was Rs. 3004550.
- (ii) That as per available records, last Balance Sheet and Annual Return were filed by the company for the Financial Year 2020-2021 in e-form MGT-7A & AOC-4 vide SRN R49553597 & R4955429 dated 12.08.2022 respectively. Further, the company has failed to file financial statement for the period from 01.04.2020 to 11.08.2020 in compliance with section 137(1) of the Companies Act, 2013.
- (iii) Following E-forms has been filed by the petitioner company regarding Voluntary Liquidation and same has been taken on record this office:
 - a) Company has filed MGT-14 vide SRN R50347764 dated 18.08.2020 in respect of Special Resolution passed by the shareholder dated 12.08.2020 for Voluntary liquidation of the Company under Insolvency and Bankruptcy Code, 2016.
 - b) Company has filed GNL-2 vide SRN R50350446 dated 18.08.2022 in respect of Declaration of Solvency by the directors dated 09.07.2022 & 22.07.2020 under Insolvency and Bankruptcy Code, 2016.
 - c) Company has filed GNL-2 vide SRN F52729167 dated 12.12.2022 in respect of Final report dated 09.09.2022 by the liquidator of the Company pursuant to regulation 38 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process), Regulations, 2017.

- d) Further as per data received from various cell in this office as per their records, no inquiry / inspection / complaint /legal action has been proceeded/pending against the subject Company. That this office has complied the above factual report based on the records maintained & document filed by the concerned Company on MCA21 portal.
- e) On perusal of Final Report, it is seen that Liquidator has not completed the liquidation proceeding in stipulated time frame, as per Regulation 37(1) of IBBI (Voluntary Liquidation Process) Regulation, 2017. Since no further document has been filed by the liquidator in reference to voluntary liquidation before MCA portal, therefore, this office is unable to comment upon any compliance, if done, by liquidator with respect to regulation 37(2) of IBBI (Voluntary Liquidation Process) Regulation, 2017. The Liquidator may place compliance before Hon'ble Tribunal.
- f) The IBBI is the concerned authority under Insolvency & Bankruptcy Code, 2016. However, present status report about the company based on information/record as available on MCA21 portal is being filed by this office in compliance of Hon'ble NCLT order dated 25.04.2023.

6. SUBMISSIONS BY LIQUIDATOR REGARDING OBSERVATIONS BY THE ROC

- (i) That as per the requirements of Section 137(1) of the Companies Act, 2013, a copy of the financial statements, along with all the documents which are required to be or attached to such financial statements under the Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar within thirty days of the date of annual general meeting.
- (ii) In terms of the definition provided under Section 2(40) of the Companies Act, 2013, financial statement in relation to a company includes *inter alia* a balance sheet as at the end of the financial year and a profit and loss account for the financial year. Further, as per Section 2(41) of the companies Act, 2013 "financial year" in relation to any company means the period ending on the 31st day of March every year. Since, the liquidation of the Corporate Debtor commenced well before the completion of the financial year ending 31st March 2021 therefore, no financial statements for the financial

year 2020-21 were prepared. That, accordingly, the requirements under Section 137(1) of the Companies Act, 2013 were not applicable to the Corporate Debtor as liquidation had started under the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "**IBC**") before the completion of the said financial year. Therefore, there was no violation of the provisions of Section 137(1) of the Companies Act, 2013 by the Corporate Debtor.

- (iii) That as per Regulation 4 of the IBBI (Voluntary Liquidation Process) Regulations, 2017, the effect of the commencement of liquidation of the company is as follows:

The Corporate person shall from the liquidation commencement date cease to carry on its business except as far as required for the beneficial winding up of its business.

The Corporate person shall continue to exist until it is dissolved under Section 59(8) of the IBC

- (iv) That as per Regulation 37 of the IBBI (Voluntary Liquidation Process) Regulations, 2017, the Liquidator is required to endeavour completion of process in 12 months and if the same is continuing for more than 12 months, the Liquidator is to hold a meeting of the shareholders within 15 days from the end of 12 months to update the progress of liquidation.
- (v) Therefore, in view of the abovementioned Regulations, and because the management of the Corporate Debtor company now rests with the Liquidator and no decisions are to be taken by the shareholders with respect to the company or for approval of accounts, the requirement to hold an Annual General Meeting of the Corporate Debtor company is no longer applicable.
- (vi) That as regards the compliance of Regulation 37(2) of the IBBI (Voluntary Liquidation Process) Regulations, 2017, the Liquidator has held a meeting of the contributories of the Corporate Debtor company on 24.08.2021 wherein an Annual Status Report was presented indicating progress made in the liquidation process.
- (vii) That further, the Liquidator has held another meeting of the contributories of the Corporate Debtor on 22.08.2022 wherein an Annual Status Report was presented indicating progress made in the liquidation process.
- (viii) That **IBBI** is the concerned authority which has to give its comments/observations on the dissolution of the Corporate Debtor, however,

despite Orders dated 25.04.2023 and 11.07.2023 passed by this Hon'ble Tribunal, the **IBBI** has not yet filed its Status Report/Reply in the matter.

ANALYSIS AND FINDINGS

7. We have gone through the application filed by the applicant/ Liquidator seeking dissolution in terms of section 59(7) of the Code and have heard the arguments of the Ld. Counsel for the applicant. Consequently, upon perusal of the petition and the documents attached therein we are satisfied that all the statutory requirements have been complied by the applicant in terms of Section 59 of the IBC, 2016 read with the corresponding regulations under IBBI (Voluntary Liquidation Process) Regulations, 2017.
8. An email notification from RBI dated 11.08.2021 has been placed on record wherein it was intimated by the RBI that the reporting form FCGPR082185059 was rejected with the remarks that the following documents were required to be provided: -
 - (i) Foreign Inward Remittance Certificate
 - (ii) KYC
 - (iii) Authorised Representative Declaration
 - (iv) CS Certificate
9. Accordingly, the Liquidator has responded vide letter dated 27.08.2021 duly providing the aforementioned requisitions sought by RBI. However, it is contended by the Liquidator that there has been no acknowledgement subsequently by RBI to the said reply and accordingly has prayed before this Adjudicating Authority to condone/dispense with the filing of Form FC-GPR.
10. We observe that the RBI had made following orders in the matter: -
 - (i) Order dated 12.01.2009 allowing refund of share application money received by the applicant company from its holding company abroad.

- (ii) Compounding order dated 12.06.2009 compounding the contravention pertaining to [Paragraph 8 of Schedule 1 of Notification No. FEMA-20/2000-RB] on payment of an amount of RS. 3,50,000. It is contended that the compounding fee was duly paid on 22.09.2009.
- (iii) Order dated 11.01.2011 approving partial refund of share application money received by the applicant company from its holding company abroad.
- (iv) Order dated 22.03.2018 approving allotment of equity shares for the pending share application money (remaining after partial refund made), in favour of the holding company.

Therefore, in light of the material placed on record, it appears that the applicant company has complied with the directives of the Reserve Bank. The liquidator mentioned that is facing technical difficulty in filing Form FC-GPR. The response provided by the Liquidator to the RBI's observation(s) appears to be satisfactory, accordingly there being no other impediment, this Adjudicating Authority hereby condones the non-filing as prayed by the Liquidator.

11. It is observed that since the applicant company has made partial refund of Rs. 49,00,000/- and has subsequently also allotted further 1,00,000 equity shares amounting to Rs. 10,02,687/- (balance amount of advance money received) ; the same is construed as full and final settlement of the claim by the applicant company. The Liquidator has placed on record an email dated 13.04.2011 from HSBC Bank confirming transfer of funds to the holding company which has marked as Annexure – 6 to the instant petition.

12. That since the affairs of the Corporate Person have been completely wound up, and its assets completely liquidated the Liquidator has presented this Petition to this Adjudicating Authority for dissolution of the Corporate Person in terms of section 59(7) of the Insolvency & Bankruptcy Code, 2016.

13. In view of the foregoing steps taken and the satisfaction accorded by the Liquidator by way of the present application, there is no legal impediment in

allowing the prayer of the applicant. Accordingly, we hereby **allow** the prayer of Liquidator to dissolve the company U/S 59(7) of the Code and the said company is hereby dissolved with effect from the date of the present order. Under Regulation 41 IBBI (Voluntary Liquidation Process), the Liquidator is directed to preserve a physical or electronic copy of the reports, registers, books of account including Bank's statement evidencing closure of the Bank Account(s) and other documents referred to in Regulation 8 and 10 for at least eight years for electronic copy and at least three years for physical copy after the dissolution of the company at a secure place.

14. The Registry is directed to forward a copy of this order to the RoC, Delhi within 14 days from date of pronouncement of this order.
15. Let a copy of this order be served to the parties concerned. File be consigned to the Record Room.

-SD/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

-SD/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)