

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH, KERALA**

**IA No. 218/KOB/2020**

**&**

**MA/22/KOB/2020**

**In**

**TIBA/14/KOB/2019**

*(Under Rule 11 of NCLT Rules, 2016)*

**Order delivered on: 12<sup>th</sup> February, 2021**

Coram:

**Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)**

**Applicants**

1. George Vinci Thomas S/o MV.Tomy,  
R/o 26/507A, Yacht Club Enclave,  
Konthuruthy, Thevara PO, Kochi-682013.
2. Mrs. Elizabeth Thomas, W/o George Vinci Thomas  
R/o 26/507A, Yacht Club Enclave,  
Konthuruthy, Thevara PO, Kochi-682013.
3. Thomas George Thayil S/o George Vinci Thomas  
R/o 26/507A, Yacht Club Enclave,  
Konthuruthy, Thevara PO, Kochji-682013.

Vs.

**Respondents**

1. Sasitharan Ramaswamy,  
Resolution Professional in the matter of  
India Techs Limited, TC.55/33, Sarayu, Chirakkara  
Temple Road, Kaimanam, Pappanamcode PO  
Thiruvananthapuram-695018.
2. M/s India Techs Limited.  
60/2177B, Pattathil House,

K.P.Vallon Road, Kadavanthara, Ernakulam  
Kochi-682020 represented by its  
Resolution Professional Mr.Sasitharan Ramaswamy.

3. Committee of Creditors India Techs Limited  
Represented by Central Bank of India,  
MG Road, North End Branch,  
Ernakulam, Cochin-682035.

**Parties/Counsel present (through video conference)**

For applicant : Shri Sharad Joseph Kodianthara, Advocate  
For Respondents : Mr. Vinod PV along with the Resolution  
Professional for R1&2  
Ms.Latha Susan Cherian, Advocate for R3.

**ORDER**

This I.A has been filed by Mr. George Vinci Thomas and 2 others, who are the Suspended Directors of the Corporate Debtor M/s India Techs Limited & others against the Resolution Professional and others praying to extend the CIRP for 90 days in order to get a Potential Resolution Applicant.

2. The facts in brief are that the applicants herein filed a Miscellaneous Application MA/22/KOB/2020 for an extension of time to receive an Expression of Interest (Eoi) from a Prospective Resolution Applicant. When the MA was heard, this Tribunal verbally stated that an extension of time may be considered if a Prospective Resolution Applicant comes forth with a genuine Resolution Plan. Immediately thereafter Covid-19 Pandemic took its course and a nationwide lock down was announced on 24.03.2020. Due to the unforeseen circumstances, no Prospective Resolution Applicant came forward to submit a Resolution Plan.

3. In the meantime, the 1<sup>st</sup> Respondent / Resolution Professional filed MA 170/KOB/2020 seeking an extension of time to exclude lockdown period from the CIRP duration to complete all the procedures involved in the Corporate Insolvency Resolution Process. This Tribunal passed an Order dated 06.11.2020 in the above mentioned MA granting an extension of time for completion of the CIRP process on or before 30.11.2020.

4. The learned counsel for the applicants submitted that in the 8<sup>th</sup> meeting of the Committee of Creditors held on 23.11.2020, the Applicants were also participated. The e-mail sent by the 1<sup>st</sup> Applicant dated 20.11.2020 was discussed and it was informed to the Applicants by the 1<sup>st</sup> Respondent Resolution Professional that the 1<sup>st</sup> Applicant can be merely an observer in the meeting and therefore request for an extension of time made by the applicants cannot be entertained.

5. Subsequently being conscious of the provisions of Section 12 of the Insolvency and Bankruptcy Code 2016, the 1<sup>st</sup> Applicant herein addressed another letter dated 25.11.2020 to the 3<sup>rd</sup> Respondent- Committee of Creditors and 1<sup>st</sup> Respondent- Resolution Professional requesting the Committee of Creditors to take up the request for an extension of time and pass a resolution with respect to the same as per Section 12 of the IBC, 2016. The 1<sup>st</sup> Applicant referred to the Orders of the Hon'ble National Company Law Appellate Tribunal which was affirmed by the Hon'ble Supreme Court in the case of ***Quinn Logistics India Private Limited Vs. Mack Soft Tech Private Limited [(2018) 208Comp Cas 0432]*** wherein it was held that an extension of time for completion of CIRP, which will include an invitation for Expression of Interest (EoI) for a Prospective Resolution Application may be granted under exceptional circumstances and also listed various conditions under which the same can be granted. In the above mentioned decision of the NCLAT, it is also stated that any

aggrieved person can file an Application under Section 12 and approach the Tribunal with regard to the same.

6. The learned counsel for the applicants further submitted that on 30.11.2020, the 9<sup>th</sup> meeting of the Committee of Creditors was conducted in which various issues in relation to the completion of CIRP were discussed and the letter of 1<sup>st</sup> applicant was also discussed. The 1<sup>st</sup> Respondent- Resolution Professional again brought to the notice of the CoC that MA/22/KOB/2020 filed by the applicants herein is pending before this Tribunal, hence, the question raised in that M.A cannot be raised before the Committee of Creditors and advised him to take up the matter before the Tribunal.

7. The learned counsel for the Applicants argued that the applicants have made all efforts to seek extension of time to complete the CIRP under Section 12 of the Insolvency and Bankruptcy Code whereby it is clearly stated that a resolution has to be passed with 66% of the voting shares in the meeting of the Committee of Creditors and an Application also has to be filed by the 1<sup>st</sup> Respondent Resolution Professional before the Adjudicating Authority. It is pertinent to note that Section 12 clearly provides that an outer limit of 330 days can be prescribed as the period for completion of the CIRP and that benefit ought to be given in the case in hand for seeking out a Prospective Resolution Applicant.

**Reply by Resolution Professional:**

8. The learned counsel appearing for the respondent- Resolution Professional submitted that as per the provisions of the I & B Code,2016 the suspended Board of Directors are not empowered to approach this Tribunal seeking extension of CIRP and that the Committee of Creditors have categorically decided against the extension of time for receiving a Resolution Plan from a Prospective Applicant.

9. The Resolution Professional stated that on being appointed him as Insolvency Resolution Professional (IRP) vide order dated 25.10.2019, a public announcement was made on 08.11.2019. The 2<sup>nd</sup> CoC meeting held on 19.12.2019, decided to appoint the IRP as Resolution Professional (RP). During the third meeting of Committee of Creditors of Corporate Debtor held on 23.01.2020, it was resolved to publish Form G calling for Expression of Interest (Eoi) from Prospective Resolution Applicants and the eligibility criteria for Resolution Applicant and Evaluation matrix were resolved and voted in the CoC. Accordingly, Form G- Eoi was published in Indian Express and Kerala Kaumudhi, Kochi Edition on 24.01.2020. The last date for receipt of duly filled in EOI was 08.02.2020. It is further stated that, till the last date on 08.02.2020, no request for EOI format was received by the Resolution Professional from any of the potential/prospective Resolution Applicants. However, on 12.02.2020 the Resolution Professional received an email from Mr. N. V. George, Chairman & Managing Director, Geo Group of Companies, Sharjah, informing that he is interested in submitting a proposal and need a few days' time to submit the details. Through reply the EOI format and other details were forwarded by the Resolution Professional on 12.02.2020 informed him that the last date for submission of EOI is already over and as regards extension of time, the same is subject to approval/concurrence of Committee of Creditors of CD. Thereafter, the matter was followed up with Mr. N. V. George, through emails on 15.02.2020 and 17.02.2020, but there was no response from him.

10. However, in the meanwhile at the 4<sup>th</sup> CoC meeting held on 19.02. 2020, a discussion was made to extend the time for submission of Resolution Plan by prospective Resolution Applicant. The Resolution Professional stated that he explained to the Committee of Creditors regarding the non-receipt of EOI from any

Prospective Resolution Applicant till the last date 08.02.2020, and also informed the CoC regarding receipt of requests from Mr. N. V. George for more time to submit the details. Resolution Professional also explained to the CoC the spirit of IBC 2016 and placed before the CoC the resolution for extension of time for receipt of EOI up to 29.02.2020 and put the same for voting. The resolution for Extension of time for EOI was not approved by the CoC. In the 5<sup>th</sup> CoC meeting held on 02.03.2020, a Resolution was proposed for Liquidation of Corporate Debtor under Section 33 (2) of IBC, 2016, but the same was also not approved by the CoC. Thereafter, the M.A/170/KOB/2020 filed was allowed by this Tribunal and the period of lockdown was excluded till 30.11.2020.

11. In this respect, it is to be noted that the sole Resolution Applicant- Mr. N. V. George, who had requested for more time to submit details, as early as in the month of February, 2020, has neither submitted any credentials to prove his net worth and interest to continue with his request.

12. The learned Resolution Professional further stated that the suspended Board of Directors, attended the Committee of Creditors Meeting of CD held on 30.11.2020, where the letter and email of Shri. George Vinci Thomas, was discussed or proposed for resolution. It is further stated that the representative of the major Financial Creditor in the CoC having a voting share of 64.75% informed that their Bank is not in favour of giving any further extension of time. Only representative of Standard Chartered Bank suggested having a voting share of 17.80% for giving another 15 days' extension. None of the other members of the CoC expressed any views. In view of the above, request for extension of time by further 90 days was not recommended. It is further stated that the applicant cannot take refuge under Covid-19 pandemic

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especially since all the timelines for the Prospective Resolution Applicant expired prior to the Lockdown declared by the Government of India.

13. The CoC represented by the Central Bank of India, even though entered appearance, they did not file any counter to this IA.

**Findings:**

14. I have heard the learned counsel for both sides and perused the orders passed by this Tribunal and the annexures produced with the petition. It is found that the Resolution Professional convened a meeting of CoC on 08.01.2021, where the committee with 100% voting ratified the action of filing liquidation of the Corporate under Section 33 (1) of the I & B Code and IA (IBC)/18/2021 was filed and the same is pending before the Tribunal. In order to decide the issue involved in the present I.A, I would like to refer to Section 12 of Insolvency & Bankruptcy Code, 2016. Section 12 prescribes the 'time limit for completion of Insolvency Resolution Process', which reads as follows:

*"12. Time-limit for completion of insolvency resolution process -*

*(1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.*

*(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of seventy-five per cent of the voting shares.*

*(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:*

*Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.”*

From a reading of sub-section (2) of Section 12, it is clear that Resolution Professional should file an application to the Adjudicating Authority for extension of the period of the Corporate Insolvency Resolution Process, only if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of 75% of the voting shares.

15. In this connection, reliance is placed on the order of Hon'ble NCLAT in ***Quantum Limited (Corporate Debtor) Vs. Indus Finance Corporation Limited - Company Appeal (AT) (Insolvency) No. 35 of 2018***; wherein it is stated that:

*“If within 180 days including the last day i.e. 180<sup>th</sup> day, a resolution is passed by the committee of creditors by a majority vote of 75% of the voting shares, instructing the Resolution Professional to file an application for extension of period in such case, in the interest of justice and to ensure that the resolution process is completed following all the procedures time should be allowed by the Adjudicating Authority who is empowered to extend such period up to 90 days beyond 180<sup>th</sup> day.”*

16. In the present case, the subject matter of the case is regarding the extension of the CIRP period, when the CoC resolved for liquidation of the Corporate Debtor. It is seen that the resolution for further extension of time for submission of EoI has been rejected by the Committee of Creditors in the 3<sup>rd</sup> CoC meeting held on 30.11.2020 and the Resolution Professional have no power for seeking extension based on a letter submitted by the erstwhile Director or the potential Resolution Applicant, who has not submitted any credentials to the Resolution Professional to prove his net worth and interest in the matter.

17. The underlying object and principle of the Code, in resolving a debt ridden Corporate Debtor, cannot be lost sight of. The adherence to specific timeline for resolution is the essence, which in effect would bring about successful resolution of a beleaguered Company. It is found that the invitation for EoI was widely published in two newspapers namely 'Indian Express' and "Kerala Kaumudhi", the last date of submission of EoI was 08.02.2020. The ground that the potential Resolution Applicant due to lack of knowledge failed to submit EOI within time cannot be accepted. Besides no indulgence can be given to someone who hasn't been vigilant enough. The Potential Resolution Applicant has not shown sufficient cause for its delay in submitting its EoI. Mere stating by the applicant herein that it is on account of Covid-19 Pandemic would not be considered as sufficient reason to condone the delay. No reason is assigned as to how the pandemic affected the efforts of the potential Resolution Applicant in approaching the Resolution Professional in submitting the EoI.

18. Therefore, I am not persuaded by the submissions made by the applicants herein on behalf of the potential Resolution Applicant to condone the delay and accept its EoI. The decisions referred to by the applicants are distinguishable on facts. The order therein was passed depending upon the relevant facts in the respective cases.

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Here, the facts are distinct. The potential Resolution Applicant, if any, has been negligent in submitting the EoI to the RP and the present application filed by the erstwhile Directors to grant further time during the last minute of completion of CIRP is not acceptable. Hence, the IA filed by the suspended Directors of the Corporate Debtor doesn't merit consideration and is liable to be rejected.

19. **I.A. No. 218/KOB/2020 in M.A. No.22/KOB/2020 is dismissed.**

Dated the 12<sup>th</sup> day of February, 2021

Sd/-  
**(Ashok Kumar Borah)**  
**Member (Judicial)**