

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

**IA/(IBC)/68(KOB)/2021**

**in  
IBA/21/KOB/2019**

**(Under Section 33(3) of Insolvency and Bankruptcy Code, 2016**

**Order delivered on 30<sup>th</sup> June 2021**

**Coram:**

**Hon'ble Shri Ashok Kumar Borah, Member (Judicial)  
Hon'ble Shri Satya Ranjan Prasad, Member (Technical)**

**Applicant:**

The South Indian Bank Ltd having its  
Regd.Office at SIB House, TB Road,  
Thrissur-680001, Branch at Kumily,  
Idukki District represented by its  
Chief Manager, DRT Cell, Ernakulam  
Vs.

**Respondents**

1. M/s Churakulam Tea Estates Pvt.Ltd  
Vandiperiyar, Idukki-685533.
2. Mr.Jose Pradeep,  
Valiyaparambil House,  
St.Vincent Road, Ernakulam North  
Kerala-682018

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

For the applicant	: Shri Sunil Shanker, Advocate
For the respondent	: Smt. Jagriti Sanghi, Advocate
For the Resolution Professional	: Shri Jasin Jose, RP

**ORDER**

This Application has been filed under Section 33(3) of the I&B Code,2016 by the South Indian Bank [hereinafter referred to as “Financial Creditor”] to order liquidation of M/s. Churakulam Tea Estate [hereinafter referred to as the Corporate Debtor”]and to appoint the Resolution Professional as the Liquidator of the Corporate Debtor.

2. It is stated in the application that the Resolution Plan submitted by Mr. Jose Pradeep was approved by this Tribunal on 08.01.2021, and the Monitoring Committee was formed under the Chairmanship of the Resolution Professional to implement the Resolution Plan. In the approved Resolution Plan, it was agreed by the Resolution Applicant to pay an interim fund of Rs.1.60 Crores within two weeks from the date of approval of the Resolution Plan by the Adjudication Authority. However, Resolution Applicant Mr. Jose Pradeep failed to infuse funds as agreed to by him. Meanwhile, the Resolution Applicant filed an Interlocutory Application seeking the modification of the Resolution Plan and an extension of two months to the timelines stipulated under the Resolution Plan. The Applicant Bank submits that the Resolution Applicant has contravened the provisions of the Resolution Plan approved by this Tribunal.

3. It is also stated that the 1<sup>st</sup> meeting of the Monitoring Committee held on 01.02.2021 determined that the Resolution Applicant had failed to infuse funds as provided in the Resolution Plan. Moreover, it also proves the Resolution

Applicant's financial inability to meet the commitments made under the Resolution Plan. The initial payments were approximately less than 10% of the total committed fund infusion. Therefore, they state that the contravention of the Resolution Plan has been prejudiced the interests of the Applicant.

4. It is further stated that the Liquidation Value of the Company is Rs.41.74 Crores which is more than the amount offered by the Resolution Applicant under the Resolution Plan i.e., Rs.26.75 Crores. Therefore, the liquidation of the Corporate Debtor will maximise the value of all stakeholders. Hence, this Application has been filed by the Applicant for the aforesaid relief.

5. We have heard the learned counsel for the Applicant, through video conferencing and had gone through the records placed before this Tribunal. It appears from the record that failure of the Resolution Applicant to infuse funds as proposed in the time line has contravened the provisions of the Resolution Plan approved by this Tribunal.

6. In this respect, it is relevant to reproduce Section 33(3) & (4) of the Insolvency and Bankruptcy Code,2016 which is as under:

*“3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).*

*(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).”*

7. From a reading of the above provision, it is clear that if the Resolution Applicant fails to implement the Resolution plan within the timeframe as agreed, any person other than the Corporate Debtor can apply for Liquidation of the Corporate Debtor. In this Application, the Financial Creditor South Inian Bank who has 89.12% of secured debt of the Corporate Debtor has by filing this Application prayed before this Tribunal to liquidate the Corporate Debtor. Moreover, to uphold the notion with which I&B Code,2016 was enacted is to protect of the interests of the stake holders and maximisation of the value of assets of the Corporate Debtor. In the present case, the Liquidation Value of the Corporate Debtor is ₹ 41,74,00,000 which is more than the upfront payment offered in the Resolution Plan i.e. ₹26,75,00,000 and that the Resolution Applicant has failed to honour his commitments in the Resolution Plan. The only course open to this Tribunal is to invoke Section 33 (3) and (4) of the I&B Code,2016 and order Liquidation of the Corporate Debtor.

8. Shri Jasin jose, the proposed Liquidator has not filed the prescribed form accepting his appointment as Liquidator. Hence he has to be directed to produce the consent as per rules.

9. For the aforesaid reasons, IA(IBC)/68/KOB/2021 is allowed with the following order:

**ORDER**

- (i) M/s. Churakulam Tea Estate Private Limited is hereby put under liquidation with immediate effect under Section 33 (1) of I&B Code, 2016.
- (ii) Shri. Jasin Jose, (former Resolution Professional) with IBBI/IPA-001/IP-P00695/2017-2018/11225, is appointed as the Liquidator of the Corporate Debtor subject to submission of written consent under Section 34 (1) of the I&B Code, 2016 in the prescribed form within a week.
- (iii) The Liquidator is directed to adhere to Section 33(1) (ii) & (iii) and discharge his powers and duties as specified under Section 35 to 41 of IBC, 2016 and meticulously adhere to the Rules and Regulations issued by IBBI in this regard from time to time.

Dated the 30<sup>th</sup> day of June, 2021

Sd/-

*(Satya Ranjan Prasad)*  
*Member (Technical)*

Sd/-

*(Ashok Kumar Borah)*  
*Member (Judicial)*