IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

I.A.(IBC) No. 18/KOB/2021

In

TIBA/14/KOB/2019

(Under Section 33(1) of the Insolvency and Bankruptcy Code, 2016)

Date of decision: 5th March, 2021

CORAM

HON'BLE MR. ASHOK KUMAR BORAH, MEMBER (JUDICIAL)

Applicant:

Sasitharan Ramaswamy
TC/55/33, Sarayu, Chirakkara Temple Road,
Kaimanam, Pappanamcode PO
Thiruvananthapuram-695018.

In the matter of:

M/s Capedge Consulting Private Limited .. Operational Creditor
Versus
M/s India Techs Limited ....Corporate Debtor

Parties/Counsel appeared (through Video Conferencing)

For applicant : Mr. Vinod P.V, Advocate
Along with Resolution Professional

O R D E R

1. This Interlocutory Application has been filed under Section 33(1) of IBC, 2016 by Mr.Sasitharan Ramaswamy, Resolution Professional in the matter of M/s. India Techs Limited seeking the following reliefs: -

(a) To pass an order liquidating the Corporate Debtor under Section 33(1) of IBC, 2016 and;

(b) To appoint Mr.Sasitharan Ramaswamy, Insolvency Professional having IBBI Registration No. IBBI/IPA-002/IP-N00519/2017-18/11678 as the Liquidator in terms of the Resolution passed by the Committee of Creditors in its meeting held on 08.01.2021.

(c) To liquidate the Corporate Debtor as a going concern as per Regulation 39(C) of IBBI (Corporate Insolvency Resolution Process) Regulations, 2016.

The facts in brief are as under: -

2. This Tribunal vide order dated 25.10.2019 in TIBA/14/KOB/2019 admitted the application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 by M/s. Capedge Consulting Private Limited against the Corporate Debtor M/s. India Techs Limited and appointed the Applicant herein as the Interim Resolution Professional. On 08.11.2019 the Applicant caused a public announcement in Indian Express All Kerala Edition (English Newspaper) and Mangalam (Malayalam Newspaper). On 10.12.2019, the Second meeting of COC was held and the Applicant was appointed as Resolution Professional for carrying CIRP of the Corporate Debtor.

3. The Third Committee of Creditors meeting held on 23.01.2020, discussed the status of claims received and the Applicant informed the Committee of Creditors members that Information Memorandum was ready for circulation to the prospective Resolution Applicants. The criteria for the prospective Resolution Applicants and Evaluation Matrix were approved in the meeting. Under Regulation 36 A (1) of the Insolvency and Bankruptcy Board of India

(Insolvency Resolution Process for Corporate Persons) Regulations, 2016 invitation for Expression of Interest (Form G) was published on 24.01.2020 in Indian Express (Kochi Edition) and Kerala Kaumudi (Kochi Edition) inviting Expression of Interest from prospective Resolution Applicants and the last date for submission of Expression of Interest was fixed on 08.02.2020. On 12.02.2020 an e-mail was received from Mr. N.V. George, Chairman and Managing Director, Geo Group of Companies, Sharjah expressing interest in submitting a proposal. The Applicant forwarded the Expression of Interest format and informed Mr. N. V. George that, the last date of Expression of Interest has already expired and that Expression of Interest is subject to the approval of the Committee of Creditors. Thereafter, the Applicant followed up the matter with Mr. N.V. George, as there was no response to the Expression of Interest details sent to him. On 22.02.2020, an e-mail containing the profile of a Senior Executive and Profile of George V. Nereparambil which was replied by the Applicant on 25.02.2020. Thereafter, till date no further response has been received by the Applicant from him.

4. It is also stated that during the Fourth meeting of Committee of Creditors held on 19.02.2020, the Applicant moved a Resolution seeking the approval of the Committee of Creditors to extent the last date for submission of Expression of Interest by the Perspective Resolution Applicant by a further period 15 days in view of the fact that, an e-mail was received from Mr. N.V. George seeking further time for studying the matter and the same could not be passed by the

Committee of Creditors as Central Bank of India having 65% voting share had voted against the extension of time in view of the fact that, the unit is closed since 2015 and the last date fixed for Expression of Interest i.e. 08.02.2020 has already been expired and rest of the 6 members of the Committee of Creditors having a voting share of 35% voted in favour of the extension of time. In the fifth meeting of the Committee of Creditors held on 02.03.2020 since no Resolution Plan was received during the CIR process, a Resolution was proposed to liquidate the Corporate Debtor. However, the same could not be approved by the Committee of Creditors. In the ninth Committee of Creditors meeting held on 30.11.2020, Mr. Sathish Kolhapure representing Standard Chartered Bank (17.80% Voting Share) expressed his view that, 15 days extension of time can be granted if a Prospective Resolution Applicant can come forward and settle the due of all Creditors. Mr. Rajesh Kumar B. Ved, AGM, representing Central Bank of India (64.75% voting share) informed that, their Bank is not in favour of giving any further extension. None of the other Creditors in the Committee of Creditors expressed any views.

5. The Applicant further stated that the Tenth Committee of Creditors meeting was held on 08.01.2021 and the Committee of Creditors with 100% voting rights passed the following resolutions:

(a)Committee noted that no resolution was approved by the Committee of Creditors during the CIRP of the Corporate Debtor.

(b)Resolved to ratify the application filed by the Applicant for liquidation of the Corporate Debtor under Section 33(1) of IBC as no Resolution Plan received to the Corporate Debtor till the last date of the CIRP.

(c)Resolved to recommend the appointment of the Applicant Mr. Sasitharan Ramaswamy having Registration No. IBBI/IPA-02/IP-N-00519/2017-18/11678 as the liquidator for initiating liquidation process of the Corporate Debtor.

(d)Resolved that the fee payable to the liquidator to be fixed in terms of the Regulation 4 of IBBI (Liquidation) Regulations 2016.

(e) Resolved the estimated cost of liquidation as 8,50,000/- under Regulation 39(C) of IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 and liquid asset to meet the liquidation cost as “nil”.

(f)Resolved that all financial institution to contribute the excess of liquidation cost over the liquid assets of the Corporate Debtor in proportion to the financial debt as required under Regulation 2A of the IBBI (Liquidation Process) Regulations.

(g)Resolved that funds contributed shall carry an interest of 4.25% per annum, which shall form part of liquidation cost and resolved further that the contribution shall be deposited in an escrow account to be opened with the Central Bank of India, within 7 day of liquidation order.

(h)Resolved by the Committee of Creditors to recommend and direct the Liquidator to explore the selling of the Corporate Debtor as a going concern in pursuance of the Regulation 39(C) of IBBI (Liquidation) Regulations, 2016 and further resolved all assets of the Corporate Debtor should be considered to be sold as a going concern.

6. Hence, the Applicant has filed this IA with the aforesaid prayers.

7. The consent of the Resolution Professional in Form 2 accepting appointment as the Liquidator of the Corporate Debtor has been produced.

8. This Tribunal heard the learned counsel appearing for the Resolution Professional and had gone through all the case records including the Resolution passed by the Committee of Creditors in the 10th meeting held on 08.01.2021. Resolution No. 2 and Resolution No. 3 are as under: -

> *RESOLUTION NO. 2*
>
> *RESOLVED that, the Committee notes that no Resolution Plan was approved by the Committee of Creditors during the period of CIRP of India Techs Limited*
>
> *RESOLVED FURTHER, to ratify the application bearing filing No. 3214117/00157/2020 filed by the Resolution Professional for initiation of Liquidation Process of India Techs Limited, the Corporate Debtor as per Section 33 of the Insolvency and Bankruptcy Code, 2016 as no Resolution Plan was received till the last date of CIRP.*
>
> *All members of COC having a voting share of 100% voted in favour of the Resolution and Resolution voted and passed unanimously.*

<u>RESOLUTION NO. 3</u>

a) <u>Appointment of Liquidator</u>:

As per Section 34(1) Where the Adjudicating Authority passes an order for Liquidation of the Corporate Debtor under Section 33, the Resolution Professional appointed for the Corporate Insolvency Resolution Process under Chapter II shall, subject to submission of a written consent by the Resolution Professional to the Adjudicating Authority in specified form, act as the Liquidator for the purposes of liquidation unless replaced by Adjudicating Authority under Sub-Section (4). Accordingly, the Resolution Professional submitted the duly filled in consent form to act as Liquidator for approval of the Committee of Creditors.

9. Being satisfied with the conditions enshrined in the CIRP Regulations, this Tribunal pass the following order:

a) The Corporate Debtor M/s. India Techs Limited is hereby put under liquidation with immediate effect under Section 33(1) of IBC, 2016.

b) The Resolution Professional **Shri. Sasitharan Ramaswamy, <u>rsasidharan.in@gmail.com</u>, Reg.No.IBBI/IPA-002/IP-N00519/2017-18/11678, T. C. 55/33, Sarayu, Chirakkara Temple Road, Kaimanam, Pappanamcode P.O., Thiruvananthapuram, Kerala- 695 018.** is hereby appointed as Liquidator of the Corporate Debtor under Section 34 of IBC, 2016.

c) That the Corporate Debtor be liquidated in the manner as laid down in Chapter III by issuing a Public Notice stating that the Corporate Debtor is in liquidation. It is also directed that the Applicant shall send this order to ROC under which this Company has been registered.

d) The Applicant herein is hereby directed to act as a Liquidator for the purpose of liquidation of Corporate Debtor company with all powers of the

Board of Directors, key managerial persons, and the partners of the Corporate Debtor shall cease to have effect and hereby vested in the Liquidator. The personnel of the Corporate Debtor are directed to extend all co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.

e) Since the Liquidation Order has been passed, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor without prior approval of this Adjudicating Authority, save and except as mentioned in Sub-Section 6 of Section 33 of the Code.

f) The Liquidator shall co-ordinate with all the authorities, and the respective Govt. authorities shall provide complete information required by the Liquidator to facilitate the process of Liquidation.

g) The Liquidator is at liberty to seek any directions, if need be, from this Adjudicating Authority during the Liquidation Process.

h) The Liquidator is hereby Authorized to represent the Corporate Debtor before the Government Authorities, if need be.

i) Moratorium declared vide Order dated 25.10.2019 in TIBA/ 14/KOB/2019, henceforth ceased to exist

10 With the above orders, **IA (IBC)/18/2021 is disposed of**.

Dated the 5th day of February, 2021

Sd/-

(Ashok Kumar Borah)
Member (Judicial)