IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, (Court – II)
KOLKATA

IA(IBC)(LIQ.)/4(KB)2024

C.P. (IB)/618(KB)2020

An application under Section 33(1)(a) of the Insolvency and Bankruptcy Code, 2016.

-And-

In the matter of:

(1) RELIANCE BROADCAST NETWORK LIMITED (CIN: U64200MH2005PLC158355), having its registered office at Unit No. 503, 5th Floor, ARC Plaza Industrial Estate, 48 Oshiwra Village, Jogeshwari (West), Mumbai City – 400 102**.**

... Operational Creditor

-Versus-

(2) YESCOM INDIA SOFTECH PRIVATE LIMITED (CIN: U74120BR2015PTC024533) having its registered office Incubation Unit Ganga – 2, 3, 4 Near Govt. Polytechnic, Rajeev Nagar Road, Patliputra Colony, Patna – 800013**.**

... Corporate Debtor

-And-

(3) Mr. S V Ramani, Resolution Professional of the Corporate Debtor having his office at Room No. 207, 'A' Block Anandalok, 227 Acharya Jagadish Chandra Bose Road, Kolkata – 700 020**.**

... Applicant

Date of pronouncing of the order: 09/04/2024

Coram:

Smt. Bidisha Banerjee	**:**	**Member (Judicial)**
Shri D. Arvind	**:**	**Member (Technical)**

Appearances (via video conferencing/physically):

Ms. Rakhi Purnima Paul, Adv.	**:**	**For the Resolution Professional**

O R D E R

Per: Bidisha Banerjee, Member (Judicial)

1. The court convened through hybrid mode**.**

2. Ld. Counsels appearing for the parties were heard in extenso**.**

3. This application **IA(IBC)(LIQ.)/4(KB)2024** has been preferred to seek the following reliefs, inter alia**: -**

(a) *Pass necessary orders for initiation of liquidation process of the Corporate Debtor under Section 33(1) of the Insolvency and Bankruptcy Code, 2016.*

(b) *Pass any other or further or consequential order(s) as this Hon'ble Tribunal may deem fit in the facts and circumstances of the instant case.*

4. **Factual matrix of the case are as under: -**

(a) This application was filed by **Reliance Broadcast Network Limited** (hereinafter referred to as the "Operational Creditor") under Section 9 of the Insolvency and Bankruptcy Code, 2016 being C.P. (IB)/618(KB)2020 before this Tribunal for initiating Corporate Insolvency Resolution Process (hereinafter called as "CIRP") against **Yescom India Softech Private Limited** (hereinafter referred to as the "Corporate Debtor")**.**

(b) This Tribunal *vide* its Order dated 1st May, 2023 admitted the application bearing C.P. (IB)/618(KB)2020 for initiation of Corporate Insolvency Resolution Professional against the Corporate Debtor and appointed Mr. S. V. Ramani as the Interim Resolution Professional **("IRP").**

(c) In terms of Regulation 6(1) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 **("CIRP Regulations")** Public Announcement in **Form A** was published on 19th May, 2023 in "Morning India Newspaper" in English and "Sanmarg Newspaper" Ranchi Edition (Hindi, regional language) inviting claims from the creditors. Committee

of Creditors **("CoC")** was duly formed with the sole petitioning Financial Creditor**.**

(d) The IRP collated the claims on the basis of claims received on or before 27th May, 2023, i.e., the last date for submission of claims as mentioned in the Public Announcement. The Committee of Creditors was duly constituted in terms of Section 21(1), (2) and (3) of the Insolvency Bankruptcy Code, 2016 and the 1st meeting of the CoC was held on 11th July, 2023, 13th July, 2023 and 17th July, 2023**.**

The list of CoC and voting share is as under**: -**

Sl. No.	**Name of the Financial Creditor**	**Amount Admitted**	**Revised Voting share (In % age)**
1.	Reliance Broadcast Network Limited	Rs. 47,27,875/-	100
	Total	**Rs. 47,27,875/-**	**100.00**

(e) Despite several written communications to the suspended members of the Board of Directors neither handed over the various crucial and/or important documents/information/records of the Corporate Debtor nor did they attend any of the meeting with the Resolution Professional. The Resolution Professional, therefore, could not take any steps due to such non-availability of documents and non-cooperation from the suspended directors. The RP visited the registered office of the Corporate Debtor where he found that the office was functioning and few employees were also there. There RP had no other option and hence, filed an application being IA(IBC) No. 1384/KB/2022 before the National Company Law Tribunal, Bench – I under Section 19(2) and Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 for non-cooperation of the

suspended directors in carrying out the Corporate Insolvency Resolution Process in an effective manner**.**

(f) The CoC during its 2nd meeting held on 14th September, 2023 was approved the appointment of Mr. S. V. Ramani as the Resolution Professional of Yescom India Softech Private Limited and also discussion was made regarding the ongoing settlement between the parties. The said Resolution put up in E – Voting was approved by 100 % of voting share by members of the Committee of Creditors**.**

(g) An amount of Rs. 4.5 lakhs was paid to Digital Radio (Delhi) Broadcasting Ltd. from ICICI of the Corporate Debtor which is recorded in the minutes of the second CoC meeting**.**

(h) The CIRP of Corporate Debtor was initiated *vide* Order dated 1st May, 2023 and the 180 days happened to be 2nd November, 2023, the CoC in the third CoC meeting held on 9th October, 2023 was approved the extension of CIRP by additional 90 days which was approved by this Tribunal on 8th December, 2023. Hence, the last date of CIRP happened to be on 1st February, 2024, and third CoC meeting and the Order dated 8th December, 2023**.**

(i) The settlement proposal made by the Corporate Debtor stated that an amount of Rs. 20 lakhs will be paid in two tranches, i.e., 15 lakhs immediately upon acceptance of the proposal and Rs. 5 lakhs on or before 15th October, 2023 along with the CIRP costs will also be paid to the Operational Creditor. Due to non-fulfilment of the settlement proposal the CoC came to a decision that the Corporate Debtor will be liquidated but OC being the member of the CoC is also undergoing CIRP, therefore, the fourth meeting of the CoC could only be held on 8th February, 2023**.**

(j) The applicant is yet to hold a meeting for appointment of the registered valuers to determine the fair value and liquidation value of the Corporate Debtor as well as to conduct the transaction audit of the Corporate Debtor**.**

The applicant is also yet to hold a meeting for appointment of the transaction auditor to determine**: -**

i. Preferential transactions under Section 43**;**
ii. Undervalued transactions under Section 45**;**
iii. Extortionate credit transactions under Section 50**;**
iv. Fraudulent transactions under Section 66**;**

The RP after being appointed as the RP by this Tribunal, immediately sent various emails to the erstwhile directors of the Corporate Debtor requesting them to provide all the documents required for conducting the process. However, till date, the RP did not receive full set of documents. The valuation exercise and transaction audit exercise will not progress unless the documents are provided by the erstwhile directors of the Corporate Debtor**.**

(k) After being appointed as the RP of the Corporate Debtor and while performing his duties in respect of the same, it came to the notice of the RP that the Corporate Debtor is a going concern with reasonable revenue generation, therefore, the applicant refrained from making Expression of Interest since the matter was in the verge of being settled**.**

5. The rival contentions were noted and the decisions were considered**.**

6. **<u>Analysis and Findings</u>: -**

(a) We have considered the submission made by the Ld. Counsel and perused the record**.**

(b) Section 33(1) of the Code enjoins the Adjudicating Authority to pass an order for liquidation of the Corporate Debtor when there is a contravention of the approved Resolution Plan. However, even before approval of the plan, Resolution failed due to reason mentioned in para (i) of this order**.**

(c) Hence, we do find merit in the prayers made in **IA(IBC)(LIQ.)/4(KB)2024**, and deem it fit to order liquidation of the Corporate Debtor**.**

7. **This Bench, therefore, hereby orders as follows: -**

a. Prayers as sought for in **IA(IBC)(LIQ.)/4(KB)2024** filed by RP, is allowed and **Yescom India Softech Private Limited**, the Corporate Debtor is ordered to be liquidated in terms of section 33(1) of the Code**;**

b. **Debdas Chakraborty** having registration no. **IBBI/IPA-001/IP-P01794/2019-2020/12758, email: ipddc2019@rediffmail.com,** is hereby appointed as Liquidator is hereby appointed as Liquidator as provided under section 34(1) of the Code subject to a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which she is a professional member**;**

c. The Liquidator shall initiate liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016**.**

d. Public Notice shall be issued in the newspapers stating that the Corporate Debtor is in liquidation**.**

e. All the powers of the Board of Directors, and of key managerial persons, shall cease to exist in accordance with section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator**.**

f. The personnel of the Corporate Debtor are directed to extend all assistance and co-operation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor**.**

g. 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 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**.**

h. In accordance with section 33(7) of the Code, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor except to the extent of the business of the Corporate Debtor continued during the liquidation process by the Liquidator**.**

i. In terms of section 33(1)(b)(iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, West Bengal, within whose jurisdiction the Corporate Applicant is registered**.**

8. The application bearing **IA(IBC)(LIQ.)/4(KB)2024** shall stand **disposed of** in accordance with the above directions**.**

9. List the main **C.P. (IB)/618(KB)2020** for reporting progress on **10.06.2024.**

10. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps**.**

11. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities**.**

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on: 9th of April, 2024.

Ar.