

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

VL(IB) –3 (PB)/2023

Under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016

IN THE MATTER OF:

M/s India SME Technology

...Applicant

Services Limited

(in voluntary Liquidation)

Through its CEO

Sh. Rajiv Kumar

Having its Registered Office at:

at 10th Floor, Atma Ram House, SIDBI

1, Tolstoy Marg, New Delhi-110001

Versus

Mr. Vinay Bansal

...Respondent/Liquidator

Order Pronounced on: 14 .10.2024

CORAM:

**CHIEF JUSTICE (Retd.) SHRI RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT**

**SHRI AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

| | |
|--------------------|--|
| For the Petitioner | : Mr. Nitin Dahiya |
| For the ROC | : Adv Jyoti |
| For the Liquidator | : Aditi Sharma with Mr Ajay Gupta, Liquidator |

ORDER

1. The present Application has been filed by Mr, Rajiv Kumar, CEO of **M/s India SME Technology Services Limited** under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 (“IBC” or “the Code”) r/w Rule 11., NCLT Rules, 2016 to withdraw/cancel the Voluntary Liquidation process initiated under sec 59 of the Code. Applicant has prayed for the following:
 - (a) *Declaring the present Voluntary Liquidation Proceedings as withdrawn/ Permanently Suspended in accordance with the provisions of the Insolvency and Bankruptcy Code and Regulations framed thereunder and/ or under the provisions of the National Company Law Tribunal Rules, 2016; and*
 - (b) *Passing any other order or direction as the Hon'ble National Company Law Tribunal may deem fit in the interest of justice.*
2. Applicant Company has been incorporated on **17.11.2005** with CIN: UL74140DL2005PLC142633, having Registered office at 10th Floor, Atma Ram House, SIDBI, 1, Tolstoy Marg, New Delhi-110001 under the provisions of the Companies Act, 1956 with the Registrar of Companies, NCT of Delhi. The Applicant Company is a joint initiative of SIDBI and four public sector banks namely, State Bank of India, Indian Bank, Oriental Bank of Commerce (now merged with Punjab National Bank), and India Overseas bank.
3. The Applicant Company has been offering technology related consultancy & advisory services in the area of Energy Efficiency and Sustainable Development. It was providing energy audit services to Micro, Small & Medium Enterprises (MSMEs) through empanelled agencies on a highly concessional fee. It was also empanelled as Project Management consultant with the Ministry of New and Renewable Energy (MNRE) for supporting 5 Ministries for installation of solar systems at rooftops of various offices of these ministries. The Applicant Company facilitated, through 10 nos. MSME vendors, installation of around 15.5 MW of solar rooftop projects with aggregate cost of around Rs.100 crore at 209 locations in the country. It has channelized incentive from Government of India aggregating to Rs. 25.16 crore to MSME solar vendors. These

solar rooftop projects would lead to generation of around 20,374 MWh per annum energy leading thereby to energy cost savings of around Rs.297.18 crore as well as GHG emissions reduction over the project life of 25 years.

4. It is submitted that the Board of Directors of SIDBI in its Board meeting dated **26.04.2019** proposed the idea to voluntarily windup/liquidate the Applicant company due to the reason that the Applicant Company had not been able to fulfil its main objective to promote technological upgradation in MSME sector and the financial performance of the applicant company was also not encouraging. Further, the Applicant Company in its 14th Annual General meeting, unanimously approved the voluntary liquidation process on 18.10.2019 and Mr. Vinay Bansal was appointed as Liquidator of the Applicant company. At the time of commencement of voluntary liquidation, it was decided by the shareholders that the ongoing projects were to be completed and complete handover was to be made to the clients by Applicant Company and subsequently, the "Operations and Maintenance" of the completed projects were to be handed over to SIDBI. Subsequently, the progress of ongoing projects got delayed due to the COVID-19 induced lockdowns and restrictions over physical movements. Since the projects were near to completion but not at the stage of commencement of O&M, the projects could not be handed over to SIDBI. The liquidation of the company could not be started by the Liquidator. The delay was exacerbated by the COVID-19 Pandemic and the consequent restriction on movement of goods etc.
5. In the meanwhile, SIDBI through an independent 3rd party namely, Brickwork Analytics (BWA) conducted a feasibility study for reviving the Applicant Company and withdrawal from voluntary liquidation. Further, feasibility study suggested that the credentials earned by the company in last 5-6 years can be utilized in the field of Green Energy and thus can create good value for the shareholders. Further, with the newfound impetus on the use of Renewable Energy in line with COP-26 (26th annual Conference of parties

under the United Nations Framework Convention on Climate Change Conference)/Panchamrit commitments, the shareholders now see an increase in opportunity of business and growth and thus want to give the Applicant Company one more chance.

6. Applicant Company in its application has submitted that it is expected to experience revenue growth in FY2024-2025 onwards as it starts to gain more project work, increase its customer base, and expand to new business lines. It is expected to take high value high margins projects. The operating margin is expected to be approximately 20.51% and profitability margin is expected to be approximately 10.91% on average.
7. Therefore, in this background, the Board of SIDBI at its 215th meeting held on August 5, 2022 considered the proposal for revival of company and withdrawal of voluntary liquidation and thereby Board approved the said proposal. Copy of the minutes of 215th Board meeting of SIDBI is annexed as **Annexure A8** of the application, relevant part of which is reproduced below:

15. Revival of India SME Technology Services Limited

The Board members deliberated on the proposal. In light of India's green commitments, institutional orientation, several emerging potential areas in energy / energy efficiency/waste to energy/distributed renewable energy, energy Conservation amendment Bill 2022, etc., as also scope for technical consultancy & advisory services, Board considered the proposal for revival. The Board advised that the Bank may explore technical partnerships with professional experts/firms engaged in such activities. It was apprised to the Board that the key stakeholders like MNRE, BEE, TERI, etc. currently are / had been partners of SIDBI and ISTSL, and the same shall be renewed/leveraged. It was also informed to the Board that BCG has also been advised to look into overall structure/strategy of ISTSL.

Regarding the operations and reconstitution of the Board of ISTSL, it was suggested that the Bank may favourably consider giving an equity stake in ISTSL to the partner firms as mentioned above and their representation on the Board of ISTSL. After detailed discussions, the following resolution was passed:

"RESOLVED that the proposal for revival of ISTSL by withdrawing the Voluntary Liquidation process as contained in the Memorandum SIDBI B. No.41/2022-23 dated July 30, 2022 be and is hereby approved.

FURTHER RESOLVED that CMD / DMD be and are hereby authorized for approving the reconstitution of the Board of ISTSL and modification in the object clause of the Memorandum of Association of ISTSL, on behalf of SIDBI and also hiring of adequate number of employees including CEO/Deputy CEO from the market at suitable market linked remuneration."

Further, on **22.09.2022**, a proposal was put before the stakeholders of the Applicant Company to withdraw from the Voluntary Liquidation and thus, revive the company and the representatives of the stakeholders holding 100% voting rights attended the said meeting and the proposal to withdraw from the Voluntary Liquidation was accepted unanimously by 100% votes in favour of withdrawal from Voluntary Liquidation. Also, there has been no objection to this special resolution by any stakeholder or third party. Copy of the minutes of stakeholder's meeting dated **22.09.2022** is annexed as **Annexure A9. Relevant part of the stakeholders meeting is reproduced below:**

| Agenda Item No. | Agenda Item | Discussion | Decision/Resolution |
|-----------------|---|--|---|
| 1 | Proposal for withdrawal of Voluntary Liquidation. | <ul style="list-style-type: none"> Liquidator presented and read out the Explanatory Statement on the proposal to withdraw the Voluntary Liquidation, which was already circulated to all the stake holders beforehand along with the notice of this meeting. Mr. Shivam – SBI Asked for the future benefits of running the company and expected shareholder value creation, if the Voluntary Liquidation is withdrawn. CEO – Explained the members present that SIDBI got a feasibility study conducted by an independent third party. The report presented by such independent party suggests that, the credentials earned by Company in last 5-6 years, can be utilized in a much better manner to work in the field of Green Energy, and thus can create good value for shareholders. Mr. Nitil Pandya- PNB, Mr. R Shivshankar – IOB, Mr. Manoranjan Das – Indian Bank All of them have expressed their desire to reduce their respective equity holding to 10 % from the current level of shareholding. This is required as per the directions of RBI. CEO – The reduction in equity shareholding can be achieved once the Company comes out of Voluntary Liquidation and with the introduction of new investors in the company. | All the Members present voted in favour of withdrawal of Voluntary Liquidation. |

8. Applicant Company has submitted that it has huge growth potential. Such revival not only gives growth opportunity to the Applicant Company but also provides opportunity for increase in employment and State's tax revenue. It further submitted that at present there are no dues present against the Applicant Company, and such revival shall not cause any prejudice to any of its stakeholders or any third party. It is contended that the revival of the Applicant Company shall not cause any prejudice to the parties .

ANALYSIS AND FINDINGS:

9. We have heard the submissions made by the Applicant Company and also perused the records. **Notice has been served on ROC and ROC submitted a report in compliance of the order dated 02.05.2024. ROC in its report stated that Applicant Company has not filed MGT-14 on the MCA portal with regard to proposal of withdrawal from the voluntary liquidation. Applicant company had also not filed its financial statements and annual return for the financial year 2018-2019 on MCA portal. Therefore, the company has violated provisions of section 137(1) & 92(4) of the Companies Act, 2013. Further ROC stated that the withdrawal of the application of voluntary liquidation**

is based on a resolution passed by the shareholders which is based on the business decision of the company against which the ROC office has no comments to offer.

10. In our earlier order dated 04.06.2024, Counsel for the Applicant Company undertook to file an affidavit in response to observation of ROC. Applicant Company in compliance of order dated 04.06.2024 has submitted an affidavit, relevant part of which is as under:

3. That in compliance of the same, the petitioner has filed Form no. MGT- 14 alongwith fee receipt of Rs 7,800 dated 04.07.2024 and Form no. GNL-2 of alongwith fee receipt of Rs600 dated 25.06.2024. The copy of Form no. MGT- 14 alongwith fee receipt of Rs 7,800 dated 04.07.2024 and Form no. GNL-2 alongwith fee receipt of Rs 600 dated 25.06.2024 annexed as **Annexure-A1** **(Colly)**.

11. On 20.08.2024, Ld. Counsel for the RoC appeared through VC and states that she has received the copy of the affidavit and in view of the resolution passed by the shareholders seeking withdrawal of this petition under Section 59, RoC has no further comments/objections. On hearing the submissions made by the Ld. Counsel for the Applicant Company, ROC and after perusing the documents specifically the feasibility study regarding the revival of the Company, it appears that there are still the chances of revival of the Applicant Company. It is pertinent to mention here that under the scheme of the IBC, Liquidation should be resorted as the last measure. More pertinently, voluntary liquidation is filed in presence of unfavourable business conditions, when the company is operating at loss or the market has changed the direction or there can be any number of unfavourable circumstances due to which company is not able to pursue its objectives.

12. At this juncture, we would like to cite that the code contains the provisions for voluntary liquidation under section 59 but it does not

contain the provisions for withdrawal of voluntary liquidation. It is for this reason that this Adjudicating Authority vide order dated **04.10.2023** has given directions to Registry to register this case under a new case type **Voluntary Liquidation VL/ (PB)/2023**.

- 13.** Accordingly, in the facts of the present case, when Board as well as stakeholders of the Company have indicated for withdrawing the voluntary liquidation of the Applicant Company as recorded in **para 7** above. Therefore, this Adjudicating Authority deems it a fit case to invoke its inherent powers under Rule 11 of NCLT Rules, 2016 and allow this application under section 60(5) of IBC.
- 14.** Further, we deem it appropriate to send this order to IBBI to make suitable provisions/clarifications/amendments in the law to deal with such applications.

ORDER

- 15.** In view of the above facts and circumstances, the Company Petition bearing **VL(IB)/03/2023** is **ALLOWED and DISPOSED OF**.
- 16.** The Registry is directed to send e-mail copy of the order forthwith to the ROC for changing the status of the Company accordingly
- 17.** The Registry is further directed to send email copy of the order to IBBI for further consideration as per **para 14** above.
- 18.** Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

File be consigned to the record storage (final).

-Sd/-

RAMALINGAM SUDHAKAR
(PRESIDENT)

-Sd/-

+AVINASH K. SRIVASTAVA
MEMBER, (TECHNICAL)