

(2023) 02 NCLT CK 0061
In the National Company Law Tribunal
Case No : CP (IB) No.224/Chd/Pb/2022
BTL Builders Private Limited Vs

Date of Decision : 27-02-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 53, 59, 59(3)(a), 59(3)(c), 59(4), 59(8)
Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 — Regulation 8(1)(a), 9, 14, 34, 35, 38

Citation : (2023) 02 NCLT CK 0061

Hon'ble Judges : Harnam Singh Thakur, Member (J); Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Vishav Bharti Gupta

Final Decision : Disposed Of

Judgement

Harnam Singh Thakur, Member (Judicial)

1. The present Company Petition has been filed by the Liquidator, Mr Rajesh Dhawan, on behalf of BTL Builders Private Limited under Section 59 of the Insolvency and Bankruptcy Code, 2016 (in short, The Code) seeking the relief that the Applicant Company be dissolved as per the provisions of the Code and the Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

2. Brief facts giving rise to the filing of the instant Company Petition, which is just and necessary for adjudication, are narrated hereunder:-

2.1 The Applicant Company, i.e. BTL Builders Private Limited, is a company incorporated under the provisions of the Companies Act, 1956, having CIN No. U45200PB2006PTC030750, and its registered office is situated at Jalandhar Road Opp. Johal Hospital, Batala-143521.

2.2 It is stated that the main object of the company was to carry on the business of real estate, construction of residential houses/flats/apartments and commercial buildings, and builders and developers of land. constructors,

colonizers, and civil contractors and undertake any residential, commercial or industrial construction in India or abroad either independently or jointly in partnership, joint venture or an agency or subcontract basis either or on behalf of an individual, firm, body, corporate, association of society, central or state government. The Memorandum of Association and Articles of Association of the Company, a copy of which is attached as Annexure A-1 of the petition.

2.3. The Authorized Share Capital of the Applicant Company is Rs.24,00,000/- divided into 2,40,000 Equity shares of Rs.10/- each. Whereas the issued, subscribed and paid-up capital is Rs. 22,07,500/- divided into 2,20,750 Equity shares having a face value of Rs. 10/- each. A copy of the Master Data of the applicant company, as available on the website of MCA, has been attached as Annexure A-24 in the petition.

2.4 On perusal of the record, it is found that the applicant company has complied with Section 59(3)(a) of the Code by filing a declaration signed by the Board of Directors stating, inter alia, that full enquiry into the affairs of the company has been made and the company has no debts and if so claimed during the liquidation process, the company will be able to pay its debts/claims in full, from the proceeds of the assets to be sold in liquidation, within a stipulated period. The directors of the applicant company have also submitted the Declaration of Solvency by way of affidavits dated 05.03.2021 (Annexure A-4), deposing therein that the company is not being liquidated to defraud any person. Certified true copies of the two previous years of audited financial statements for the year 2018-19 & 2019-20 have also been attached to the petition (Annexure A-2).

2.5 It is stated that the Board of Directors of the company, as per Section 59(3) (c) of the Code, convened the Extra Ordinary General Meeting on 30.03.2021 to pass a special resolution to liquidate the company voluntarily and to appoint Mr. Rajesh Dhawan, Insolvency Professional (Registration No. IBBI/IPA-001/IP-P00952/2017-18/11572) to act as the Liquidator. Copy of Minutes of the Extra Ordinary General Meeting dated 30.03.2021, along with the notice, has been annexed as Annexure A-5.

2.6 It is further stated that in compliance of Regulation 14 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, the liquidator of the applicant company had published a public announcement in Form A of Schedule I in "Amritsar Tribune" (English) and in "Gurdaspur Bani" (Punjabi) edition on 02.04.2021 inviting claims of stakeholders, if any, to submit their claim within 30 days from the date of commencement of liquidation. A copy of the Public Announcement had also been sent to the Insolvency and Bankruptcy Board of India (IBBI) with a request to upload it on its website, and the same was uploaded on the website of IBBI. A copy of the newspaper publication as well as a copy of the notice sent to IBBI, have been annexed with the instant petition as Annexure A-8 and A-9, respectively.

2.7 According to the applicant, as per the provision of Section 59(4) of the Code,

the applicant company had duly notified the Registrar of Companies about the voluntary liquidation & appointment of liquidator and declaration of solvency in e-Form MGT 14 and e-Form GNL 2 and the same was approved and taken into the record by Registrar of Companies, Punjab & Chandigarh. A copy of Form MGT-14 and Form GNL-2 has been annexed with the petition as Annexure A-4.

2.8 In compliance with Regulation 8(1) (a) and 9 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, the liquidator submitted a Preliminary Report dated 13.05.2021 to the members of the applicant company. A copy of the Preliminary Report has also been annexed with the petition as Annexure A-13.

2.9 It is stated in the petition that pursuant to the public announcement, claims were received from the stakeholders and the operational creditors, and the same has been settled.

2.10 It is averred that the liquidator informed the Income Tax Department about the voluntary liquidation of the company as well as his appointment as liquidator of the company.

2.11 In compliance with Regulation 34 of the Insolvency and Bankruptcy Code Board of India (Voluntary Liquidation Process) Regulations, 2017, the liquidator opened a bank account in the name of the 'BTL Builders Private Limited – in voluntary Liquidation', for the realization of money and payment to the members.

2.12 In compliance with the provisions of Regulation 35 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, and Section 53 of the Code, the liquidator distributed the proceeds from the realization of assets (Bank Balance Liquid Assets only) involved in the process of Voluntary Liquidation to the stakeholders from the aforesaid liquidation account.

2.13 The applicant liquidator has further informed that having made the necessary payment to the Members of the company, the liquidator has closed down the liquidation account on 05.04.2022. The closure statement is at Annexure A-17 of the petition.

2.14 In compliance with the provisions of Regulation 38 of the IBBI (Voluntary Liquidation Process) Regulations, 2017, the liquidator prepared a final report dated 28.03.2022 and submitted the same to the Registrar of Companies and to the Insolvency and Bankruptcy Board of India. A copy of GNL-2, along with challan and proof of despatch to IBBI, are attached as Annexures A-15 & 16 of the application.

3. On the basis of the aforementioned grounds and reasons, the company, through the liquidator, has prayed for an order from this Adjudicating Authority for the dissolution of the applicant company and making a declaration to this effect.

4. We have heard the authorized representative appearing on behalf of the

applicant company and, with their able assistance, have carefully gone through the contents of the present petition. We have also duly considered the merits thereof in the light of the statutory provisions of Section 59 of the Code read with other relevant Regulations. For the sake of convenience, the relevant provisions of Section 59 of the Code are being reproduced hereinbelow:-

59 Voluntary Liquidation of corporate persons

1. A corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of this Chapter.

2. The voluntary liquidation of a corporate person under sub-section (1) shall meet such conditions and procedural requirements as may be specified by the Board.

3. Without prejudice to sub-section (2), voluntary liquidation proceedings of a corporate person registered as a company shall meet the following conditions, namely:-

a. a declaration from majority of the directors of the company verified by an affidavit stating that-

i. they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and

ii. the company is not being liquidated to defraud any person;

b. the declaration under sub-clause (a) shall be accompanied with the following documents, namely;-

i. audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;

ii. a report of the valuation of the assets of the company, if any prepared by a registered valuer;

c. within four weeks of a declaration under sub-clause (a), there shall be-

i. a special resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily and appointing an insolvency professional to act as the liquidator; or

ii. a resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily as a result of expiry of the period of its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, as the case may be and appointing an insolvency professional to act as the liquidator.

Provided that the company owes any debt to any person, creditors representing two-thirds in value of the debt of the company shall approve the resolution passed under sub-clause © within seven days of such resolution

4. The company shall notify the Registrar of Companies and the Board about the resolution under sub-section (3) to liquidate the company within seven days of such resolution or the subsequent approval by the creditors, as the case may be.

5. Subject to approval of the creditors under sub-section (3), the voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution under sub-clause © of sub-section (3).

6. The provisions of sections 35 to 53 of Chapter III and Chapter VII shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.

7. Where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate person.

8. The Adjudicating Authority shall on an application filed by the liquidator under sub-section (7), pass an order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

9. A copy of an order under sub-section (8) shall, within fourteen days from the date of such order, be forwarded to the authority with which the corporate person is registered.

5. A bare perusal of the material available on record shows that the Board of Directors of the Company has taken a conscious decision to close down the company. Thus, the Board of Directors of the company have unanimously proposed to liquidate the company by invoking the provisions of voluntary liquidation under Section 59 of the Code.

6. It has been mentioned in the petition that the liquidator has settled all the claims; therefore, no prejudice and loss will be caused to anyone if the company is dissolved. In support of the same, the company has duly passed the requisite Special Resolution in its Extra Ordinary General Meeting on 30.03.2021 by confirming the decision of its Board of Directors and proposing its Voluntary Liquidation. The EOGM had also passed a further resolution to appoint Mr Rajesh Dhawan, Insolvency Professional, having Registration No. IBBI/IPA-001/IP-P00952/2017-18/11572 as Liquidator of the applicant company.

7. From the perusal of the record of the case, it is seen that the Liquidator, after his appointment, has duly performed his duties and completed the necessary formalities to complete the liquidation process of the applicant company, which has been averred in the present petition and, thus, the liquidator has prayed for an order from this Tribunal to dissolve the applicant company.

8. Since there is no objection received from any angle opposing the proposed voluntary liquidation/dissolution of the company either from the side of the shareholders or from creditors, nor any adverse comment, have been received from the public at large against such liquidation/dissolution, despite there being a public announcement by the liquidator and also updation of the same in the website of the Insolvency and Bankruptcy Board of India (IBBI). It is also evident from the record that the proposed liquidation was duly communicated to the Registrar of Companies, Punjab & Chandigarh, as per Form MGT-14 and Form GNL-2, and the same is also reported to have been approved.

9. Notice was issued to the Registrar of Companies (RoC), Punjab & Chandigarh, vide order dated 23.08.2022. In compliance with the above order, RoC filed its report vide Diary No.01035/4 dated 19.01.2023, whereby it has stated that no inquiry/inspection/complaint/legal action has been proceeded/pending against the subject company.

10. Apart as per record of the present case, it is seen that the company is not found involved in such kind of business activities, which are detrimental to the interest of the public at large. Further, it is not the case that the proposed liquidation may adversely affect its shareholders/members or is contrary to the provisions of the law.

11. The Liquidator had filed copies of the paper publication as well as copies of the paper announcement in Form-A. The Liquidator is found to have complied with the statutory provision to complete the liquidation process by taking necessary steps, as it is evident that he had duly opened an account in the name of a Corporate Person with Bank of Baroda for realization and payment to the members. The Liquidator had further intimated to the Income Tax Department regarding the voluntary liquidation of the company as well as his appointment as the liquidator.

12. The Liquidator has also annexed a copy of the preliminary report, a copy of the Final Report, Form GNL-2, along with a copy of the receipt and email sent to IBBI with the present application.

13. By taking into consideration the above-stated facts and circumstances, the present application deserves to be allowed for the proposed Liquidation/Dissolution of the Corporate Person.

14. Consequently, this Adjudicating Authority, in the exercise of the power conferred to it under Section 59 (8) of the Insolvency and Bankruptcy Code, 2016, orders that the Corporate Person (Applicant Company) Wellwisher Investment & Trading Limited shall stand dissolved with effect from the date of this order, i.e., 27.02.2023.

15. The Liquidator is directed to communicate a copy of this order to the respondent, i.e. Registrar of Companies, Punjab & Chandigarh, wherein the registered office of the company is situated. Further, a copy of this order should

also be communicated to the IBBI, New Delhi, for information. Such communication should be made within the stipulated period of fourteen (14) days from the date of receipt of an authentic copy of this order.

16. The Registry is directed to communicate a copy of this order to the Registrar of Companies, Punjab & Chandigarh, as well as to the Insolvency and Bankruptcy Board of India (IBBI).

17. Thus, the present Company Petition is allowed and stands disposed of.