(2019) 09 NCLT CK 0020

In the National Company Law Tribunal

Case No : Company Petition No. 17 GB Of 2019

In The Matter Of: Moti Travels Pvt. Ltd.

Date of Decision : 06-09-2019

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 59, 59(3)(a), 59(3)(b), 59(7), 59(3)(b)(ii)
Income tax Act, 1961 — Section 178
Liquidation Regulations, 2017 — Regulation 3(1)(a)(ii), 9, 34, 38(1), 38(2), 38(3)

Citation : (2019) 09 NCLT CK 0020

Hon'ble Judges : Hari Venkata Subba Rao, J;Ashutosh Chandra, Member (Technical)

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This is an application filed under Section 59(7) of the Insolvency & Bankruptcy Code, 2016 (in short Code of 2016) for dissolution of M/s. Moti Travels Pvt. Ltd. read with Regulation 38(3) of the Insolvency & Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 by the Liquidator, Mr. Dhiraj Kumar Jain.

2. Mr. Dhiraj Kumar, learned PCA appearing on behalf of the petitioner as Liquidator has submitted that the company M/s. Moti Travels was incorporated on 18th December, 1996 as a Private Limited Company limited by private shares and presently, there were no operations and activities in the company. Therefore, in view of the cost and time involved in ensuring the compliances, a decision was taken to liquidate the company voluntarily as per provisions of Section 59 of the Code of 2016 read with IBBI (Voluntary Liquidation Process) Regulations, 2017. In this regard, the members of the company in their extra-ordinary general meeting held on 10-09-2018 passed special resolution containing the terms & conditions of appointment of Liquidator and remuneration payable to him and to voluntarily liquidate the company and appointed Mr. Dhiraj Kumar Jain, an Insolvency Professional as liquidator and to exercise all the powers and perform such actions as provided under the Code of 2016 and Liquidation Regulations,

2017. In this regard, e-form MGT-14 was filed with the Registrar of Companies, Shillong on 1 7-09-2018. Copies of the notice calling EGM, shorter notice, certified copy of Special Resolutions, Resolutions for appointment of Authorized Representative, Minutes of EGM dated 10-09-2018 and e-form MGT-14 along with its payment challan & its approval mail are annexed with the application.

3. It has also been submitted that estimated details of assets, their realizable value along with outstanding liabilities of the Corporate Person as on 12-08-2018 issued by M/s. Kishore K. Jain dated 12-08-2018 is annexed with the application.

4. That after appointment of Mr. Dhiraj Kumar Jain as liquidator of the Corporate Person, a public announcement was made in The Assam Tribune, edition in English Language and Amar Axom edition in Assamese Language on 14-09-2018 calling upon the stakeholders to submit their claims as on the liquidation commencement date as per provisions of Regulation 14 of the Liquidation Regulations, 2017 providing that the last date for submission of claims is 10-10-2018. Copy of the aforesaid announcements are also annexed with the application.

5. It has further been stated that the Corporate Person does not have any website, therefore, compliance of Regulation 14(3)(b) of the Liquidation Regulation, 2017 is not required in the present case and as required under the provisions of Regulation 14(3)(c) of the Liquidation Regulation, 2017, the aforesaid public announcement was published on the website of the Insolvency & Bankruptcy Board of India, copy of which is annexed to the application.

6. That as required under Regulation 3(1)(a)(ii) of the Liquidation Regulations, 2017 read with Section 59(3)(a) & (b) of the Code of 2016, a declaration of solvency from majority directors of the Corporate Person and the same along with other required documents was filed with the Registrar of Companies, Shillong on 17-09-2018 in e-form GNL-2, copy of which is annexed along with payment challan & approval mail are also annexed with the application.

7. The Liquidator vide his letter dated 14-09-2018 has given necessary intimation of the initiation of liquidation commencement to the Board of Directors of the Corporate Person, its employees and to the other concerned persons, copy of which is also annexed with proof with the application.

8. Further, the Liquidator vide his letter dated 25-09-2018 has also given necessary intimation of initiation of liquidation commencement to the concerned Income Tax Authority, copy of which is also annexed with the application and that though the aforesaid notice has been received by the Income Tax Authority on 25-09-2018 itself, no notice relating to setting aside of any amount payable as tax was received from the Income Tax Authority by the Liquidator within three months from the date of submission of initiation to the department as prescribed under Section 178 of the Income Tax Act.

9. As required under Regulation 34 of the Liquidation Regulations, 2017, the

Liquidator has also arranged to open a new bank account in the name "MOTI TRAVELS PRIVATE LIMITED IN VOLUNTARY LIQUIDATION" on 17-10-2018 for effectively managing the payment and receipts of the Corporate Person. The Liquidator has become the sole signatory of the said account. A copy of the resolution passed for opening the aforesaid bank account is also annexed with the application.

10. It has also been stated that the Liquidator visited the registered office of the Corporate Person on 20-09-2018 to take stock of its books of accounts and he noticed that the same are completed as on the liquidation commencement date.

11. The Liquidator has also prepared preliminary report as per Regulation 9 of the Liquidation Regulations, 2017 and submitted the same to the Corporate Person on 25-10-2019 and in relation to liabilities other than shareholding of the Corporate Person from the date of public announcement till the date of signing of the application, the Liquidator has not received any claim from the stakeholders concerned with the Corporate Person.

12. In relation to assets of the Corporate Person, on the commencement of the liquidation process, the Corporate Person has no assets except cash and bank balance which has been utilized in discharge of liabilities incurred during the liquidation period and remittance of remaining amount to its members. The bank account of the Corporate Person has also been closed with effect from 05-03-2019.

13. The Liquidator further confirm that all the assets as available on the date of liquidation commencement date have been recovered and all the liabilities as on the liquidation commencement date and occurred during the liquidation process have been discharged. Copy of the audited accounts of liquidation dated 13-05-2019 showing receipts and payments pertaining to the liquidation since the liquidation commencement date for the period 10-09-2018 to 05-03-2019 is also annexed with the application.

14. In view of above, after completion of liquidation process, in terms of Regulation 38(1) of the Liquidation Regulations, 2017, the Liquidator of the Corporate Person prepared the final report consisting of the following (wherever applicable):

a) audited accounts of the liquidation, showing receipts and payments pertaining to liquidation sine the liquidation commencement date;

b) a statement demonstrating that-

(i) the assets of the corporate person has been disposed of;

(ii) the debt of the corporate person has been discharged to the satisfaction of the creditors;

(iii) no liquidation is pending against the corporate person or sufficient provision has been made to meet the obligations arising from any pending litigation,

(c) a sale statement in respect of all assets containing-

(i) the realized value;

(ii) cost of realization, if any;

(iv) the manner and mode of sale;

(v) an explanation for the shortfall, if the value realized is less than the value assigned by the registered valuer in the report of the valuation of assets under section 59(3)(b)(ii) or Regulation 3(1)(b)(ii), as the case may be;

(vi) the person to whom the sale is made; and

(vii) any other relevant details of the sale."

15. The Liquidator, as per Regulation 38(2) of the Liquidation Regulations, 2017, has submitted the Final Report with the Registrar of Companies and e-Form GNL-2 on 21-05-2019 and to IBBI by mail on the same day, copy of which are annexed with the application.

16. The Company has two directors and they have filed declaration of solvency declaring that they have full enquiry in to the affairs of the company and that having done so, they have formed the opinion that the company has no debts.

17. The learned Liquidator has submitted that the company has been declared liquidated and there is nothing left for distribution and that the directors have also declared that the company is liquidated not to defraud any person and that the payments due to certain Official Creditors have been paid for and copy of receipts of payments are also seen annexed as with the application showing that there is no balance fund left.

18. Upon hearing Mr. Dhiraj Kumar Jain, learned PCS appearing for the applicant and upon perusal of the records, we are satisfied that the assets of the corporate persons have been disposed of and there is no objective turned up despite issuance of publication in leading newspapers accosting to the learned Liquidator. Liquidation cost has also been paid for and the Liquidator has completed the voluntary liquidation process meeting out the requirement to be meted out under Regulation 3(1)(a)(ii) of the Liquidation Regulation, 2017 read with Section 59(3)(a) and (b) of the Code of 2016. Intimation has also been sent to the Income Tax Department. Annexure 1.10 to the petition proves that the Income Tax Authority concerned has been intimated about the initiation of liquidation commencement.

19. It is understood that no claimant turned up claiming any due from the corporate person under voluntary liquidation. The company had assets in the form of fixed deposit alone and the bank account has been closed w. e. f. 05-03-2019 as per Annexure-1.12. The audited accounts of the liquidation dated 13-05-2019 also seen produced as Annexure-1.13. The audited account of the voluntary liquidation showing the receipts and payment pertaining to liquidation since liquidation commencement date satisfactorily explains that the company

has no debts remaining and it has no liability. The shareholders of the company also approved the decision of the company to liquidate voluntarily and to dissolve the company vide special resolution dated 16-08-2018.

20. Having considered the above said factors, we are of the considered opinion that the Liquidator appointed here in this case in hand by the company for voluntary liquidation, has successfully completed the liquidation process and this application filed under Section 59(7) deserves to be allowed.

21. In the result, the application is allowed. The affairs of the corporate person have been completely wound up and its assets completely liquidated. The application is allowed passing an order that:

i) M/s. Moti Travels Private Limited stands dissolved.

ii) Registry is directed to forward a copy of the order within 14 days to the Registrar of Companies, N. E. Region, Shillong, the IBBI and to the Liquidator.