(2020) 03 NCLT CK 0005

In the National Company Law Tribunal

Case No : Company Petition No. (IB) 487/MB Of 2020

Itp Technical Services Private Limited APPELLANT

Vs

Ketan S. Dand RESPONDENT

Date of Decision : 20-03-2020

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 59, 59(3), 59(6), 59(7), 59(3)(a), 59(3)(b)(i), 59(3)(c)(i)

Citation : (2020) 03 NCLT CK 0005

Hon'ble Judges : Suchitra Kanuparthi, J;Chandra Bhan Singh, Member (Technical)

Bench : Division Bench

Advocate : Ketan S. Dand

Final Decision : Allowed

Judgement

Chandra Bhan Singh, Member

1. This is a Company Petition filed under Section 59(7) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called â??Codeâ?) by a Corporate

Person, namely ITP Technical Services Private Limited through the Insolvency Professional, namely, Mr. Ketan S. Dand for dissolution of the

Corporate Person through voluntary liquidation and accordingly it has proposed for voluntarily winding up under Section 59 of the Code, read with

Rules and Regulations therein. The Corporate Person has completed requisite formalities and procedure of liquidation in compliance of law and has

filed this Petition for its dissolution under Section 59(7) of the Code.

2. The Corporate Person was incorporated on 06.03.2012, having Registered Office at 49, Wadia Building, 9/B, Cawasji Patel Street, Fort, Mumbai -

400 001.

3. The Board of Directors of the Corporate Person by a resolution dated 10.01.2018 decided to liquidate the company voluntarily. On 05.02.2018 the

Board of Directors, after having made full inquiry into the affairs of the Corporate Person, formed an opinion that the Company has no debt and the

Company is not being liquidated to defraud any person and filed a declaration to that effect and also filed declaration of solvency in form GNL-2 with

Registrar of Companies, Mumbai on 05.02.2018 as required under Section 59(3)(a) of the Code.

4. The Applicant enclosed the Audited Financial Statement for the latest two Financial Years ending on 31.03.2016 and 31.03.2017 as provided under

Section 59(3)(b)(i) of the Code.

5. On 05.02.2018 the members of the Corporate Person passed a Special Resolution in the Extra-Ordinary General Meeting to liquidate the Company

and to appoint Mr. Ketan S. Dand, as the Liquidator, with a remuneration of Rs. 4,00,000/- exclusive of Goods and Service Tax (GST) and other

liquidation expenses at actuals, incurred in the process of voluntary liquidation of the company for performing the job of liquidation of the Corporate

Person as required under Section 59 (3)(c)(i) of the Code. There were no creditors in the company, hence the requirement of the Special Resolution

being approved by creditors having 2/3rd value of shares as required under proviso to sub-section (3) of Section 59 does not arise.

6. The Liquidator notified the Registrar of Companies, Mumbai on 11.04.2018 vide Form GNL-14 and the IBBI, New Delhi on 08.02.2018 vide Form

A, about the passing of a Special Resolution to liquidate the Corporate Person. Further, the Liquidator has duly intimated the Income- tax Department

on 16.02.2018 about the voluntary liquidation of the Corporate Person and the Income tax Department has issued no objection certificate dated

01.04.2019 for the voluntary liquidation of the Corporate Person. The Liquidator also attached a copy of the TRACES portal of the Corporate

Person's dashboard showing â??no outstanding liabilityâ??.

7. The Liquidator further informed that on 02.05.2016, the Corporate Person sent a surrender letter to the Service Tax Department. Thereafter on

17.10.2018, the Office of the Deputy Commissioner CGST and Central Excise sent a notice to the Corporate Person regarding the mismatch of gross

taxable. On 14.01.2019, a Liquidator replied to the notice dated 17.10.2018 along with some documents and requested the Authorities to consider the

submission of the documents. Thereafter again on 26.06.2019 sent a letter requesting the GST Authorities to provide confirmation within 30 days of

receipt of said letter that no further dues are pending from the Corporate Person towards the Service Tax Department so that the Liquidator can

proceed with disbursement of balance funds to the shareholders of the Corporate Person.

8. The Corporate Person is a subsidiary of ITOCHU Plantech Inc (Japan based company). The Liquidator attached copy of Indemnity-cum-

Undertaking sent by the parent company of the Corporate Person i.e. ITOCHU Plantech Inc. dated 05.09.2019.

9. The Liquidator made a public announcement on 08.02.2018 and on 09.02.2018, regarding the liquidation of the Corporate Person in three

newspapers one in English, one in Hindi and another in vernacular language, calling upon the stakeholders, if any, to submit their claims as required

under Regulation 14 of IBBI (Voluntary Liquidation Process) Regulations, 2017 (hereinafter called â??IBBI Regulationsâ??).

10. The Liquidator further submits that the Corporate Debtor maintained two bank accounts with MUFG Bank Limited (erstwhile known as The Bank

of Tokyo-Mitsubishi UFJ, Limited) and HDFC Bank Limited, which were closed on 16.05.2018 and 08.02.2018 respectively. As per Regulation 34 of

IBBI Regulations, the Liquidator has duly opened a Bank Account on 16.05.2018 in the name and style of â??ITP Technical Services Private

Limited- In Voluntary Liquidationâ? in MUFG Bank Ltd. (Kanjurmarg, Mumbai) and the funds as available in erstwhile bank accounts were

transferred in the account named as â??ITP Technical Services Private Limited- In Voluntary Liquidationâ? maintained with MUFC Bank Limited

and the said account was also closed on 06.11.2019.

11. The Liquidator submitted preliminary report to the IBBI, New Delhi on 02.04.2018. The Liquidator further filed audited accounts of liquidation and

the statement in accordance with Regulation 38 IBBI (Voluntary Liquidation Process) Regulations, 2017.

12. There are no fixed assets in the Corporate Person. The assets of the company consist of only cash with bank to the extent of Rs. 30,76,329.57/-

and after meeting the expense for liquidation the Liquidator disbursed the available amount to the shareholders of the Corporate Person.

13. The Liquidator filed final report dated 30.01.2020, stating that liquidation process has been completed by annexing Audited Accounts of liquidation.

Finally, the Liquidator filed this Petition alongwith final report and sent a copy of the final report to the Registrar of Companies, Mumbai on 03.02.2020

vide Form GNL-2 and IBBI on 03.02.2020 (Compliance of Section 59(6) of Code, read with Regulation 32 and 34-38 of IBBI Regulations.)

14. On the Petition filed by the Liquidator under sub-section 7 of Section 59 of the Code for dissolution of this Corporate Person, we have noticed that

the affairs of the Corporate Person have been completely wound up and its assets are liquidated. We are of the considered view that this Corporate

Person, through its Liquidator, voluntarily liquidated itself so as to get dissolved, therefore, we hereby dissolve this Corporate Person directing the

Liquidator to file this order with concerned Registrar of Companies and IBBI within 14 days thereof. (Compliance of Section 59 (7-9) of the Code).

15. Accordingly, this Company Petition is allowed.