
(2023) 04 NCLT CK 0015

In the National Company Law Tribunal

Case No : CP (IB) No.11/Vol./Chd/Hry/2020

?Kanazawa Machine & Tool India Private Limited Vs

Date of Decision : 13-04-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 59, 59(4), 59(8)

Citation : (2023) 04 NCLT CK 0015

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

Bench : Division Bench

Advocate : Vaibhav Gupta,

Final Decision : Disposed Of

Judgement

Harnam Singh Thakur, Member (Judicial)

1. The present Company Petition has been filed by the Liquidator, Mr Pawan Kumar Garg, on behalf of Kanazawa Machine & Toll India Private Limited under Section 59 of the Insolvency and Bankruptcy Code, 2016 (in short, The Code) seeking the relief that the Petitioner 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 It is submitted that the company was incorporated on 26.07.2011 for sale of machine, tool equipment etc. Vide Board Resolution dated 25.01.2019, the Board decided to voluntarily liquidate the Company. Thereafter, notice for the purpose of holding EGM of the Members of Company were considered and approved.

2.2 It is further submitted that the declaration of solvency by majority of Directors was filed with Registrar of Company inform GNL 2 on 18.02.2019. The Board of Directors in its meeting dated 25.01.2019, shareholders of the petitioner company by special resolution approved the voluntary liquidation of the company and the appointment of Sh. Pawan Kumar Garg, Insolvency

Professional, to act as Liquidator of the company on 19.02.2019. On 20.02.2019, the above resolution was approved by creditors representing two third in value of debt of the company.

2.3 It is averred that Form MGT-14 was filed on 25.02.2019, with Registrar of Companies which was further revised on 27.11.2019. The public announcement was made on 21.02.2019. The liquidator intimated Registrar of Companies, IBBI and other Regulatory Authorities about his appointment and commencement of voluntarily liquidation on 25.02.2019. The liquidator intimated the Bank about voluntarily liquidation and the bank changed profile of current account of Company in the name and style of Kanazawa Machine and Tool India Pvt. Ltd. in voluntarily liquidation on 15.07.2019 and appointed Mr. Pawanj Kumar Garg as Authorized Signatory.

2.4 It is further averred that the liquidator prepared the list of Stakeholders on basis of claims submitted and accepted on 03.04.2019. The liquidator submitted preliminary report to the Company on 03.04.2019. There was no communication regarding the outstanding demand from the Income Tax Department ever received. The Annual Status Report dated 03.03.2020 containing details under Regulation 37 was presented in the meeting of Contributors of the Company.

2.5 It is submitted by the liquidator that all the assets and liabilities have been paid of and remaining bank balance was repatriated among the Shareholders in the ratio of their shareholding in the Company. The final report of liquidation process was prepared on 31.08.2020 and was submitted to Registrar Of Companies in form GNL 2. The final receipt and payment account of liquidation account was audited vide report dated 28.08.2020.

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 Petitioner Company and making a declaration to this effect.

4. Notice was issued to the Registrar of Companies (RoC), Haryana and NCT of Delhi. The affidavits of service were filed vide Diary Nos. 01457/2 dated 21.06.2021, 01457/20 dated 29.10.2021, 01457/18 dated 03.09.2021. In compliance with the above order, RoC filed its report vide Diary No.001457/22 dated 21.07.2022, whereby it has stated that no inquiry/inspection/complaint/legal action has been proceeded/pending against the subject company. The IBBI report is filed vide Diary No. 01457/4 dated 27.07.2021, wherein it is stated that as per Section 59(4) of the Code, the liquidator had informed the Board vide email dated 21.02.2019 about the commencement of voluntary liquidation of the Corporate Debtor in the instant case. Further, in terms of regulation 38(2) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulation, 2017 the liquidator had sent final report to the Board vide email dated 01.09.2020. Neither any action is contemplated by the Board, nor any action is pending against the liquidator before it. Board has no observation

against the dissolution of the Corporate Debtor.

5. We have heard the learned counsel appearing on behalf of the Petitioner Company and, with his 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.

6. 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.

7. It has been mentioned in the petition that the Board of Directors in its meeting dated 25.01.2019, the shareholders of the petitioner company by special resolution approved the voluntary liquidation of the company and the appointment of Sh. Pawan Kumar Garg, Insolvency Professional, to act as Liquidator of the company on 19.02.2019. On 20.02.2019, the above resolution was approved by creditors representing two third in value of debt of the company.

8. 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 Petitioner Company, which has been averred in the present petition and, thus, the liquidator has prayed for

an order from this Tribunal to dissolve the Petitioner Company.

9. 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, Haryana and NCT of Delhi, as per Form MGT-14 and Form GNL-2.

10. Registrar of Companies filed its report whereby it has stated that no inquiry/inspection/complaint/legal action has been proceeded/pending against the subject company. The IBBI report is filed wherein it is stated that neither any action is contemplated by the Board, nor any action is pending against the liquidator before it. Board has no observation against the dissolution of the Corporate Debtor.

11. 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.

12. 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 the bank changed profile of current account of Company in the name and style of 'Kanazawa Machine and Tool India Pvt. Ltd'. in voluntarily liquidation on 15.07.2019 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.

13. 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 tracking report and postal receipts with the present application.

14. 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.

15. 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 (Petitioner Company) Kanazawa Machine & Tool India Private Limited shall stand dissolved with effect from the date of this order, i.e., 13.04.2023.

16. The Liquidator is directed to communicate a copy of this order to the respondent, i.e. Registrar of Companies, Haryana and NCT of Delhi, wherein the registered office of the company is situated. Further, a copy of this order should also be communicated to the IBBI 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.

17. The Registry is directed to communicate a copy of this order to the Registrar of Companies, Haryana and NCT of Delhi, as well as to the Insolvency and Bankruptcy Board of India (IBBI).

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