(2023) 05 NCLT CK 0049

In the National Company Law Tribunal

Case No : C.P. No. 388/MB/2023

Kruger M and E Industries (India) Private Limited Vs

Date of Decision : 17-05-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 59
Income Tax Act, 1961 — Section 178, 195
Insolvency and bankruptcy Board of India (Voluntary Liquidation Process) Regulation, 2017 — Regulation 38

Citation : (2023) 05 NCLT CK 0049

Hon'ble Judges : H.V. Subba Rao, Member (J);Madhu Sinha, Member (T)

Bench : Division Bench

Advocate : Dhrumil Shah

Final Decision : Disposed Of

Judgement

1. This is a Company Petition filed by Kruger M and E Industries (India) Private Limited to initiate voluntary liquidation proceedings under Section 59 of the Insolvency and Bankruptcy Code, 2016 (IBC).

2. The Applicant Company was incorporated under the provision of the Companies Act, 1956 on 04th November, 1996 with the objective of carrying business in India or elsewhere to manufacture, market, trade,

buy, sell, import, export or indent, design, assemble or otherwise deal in dehumiditiers, fans blowers, ventilation equipments, systems.

3. The Applicant Company is not carrying on any business since the preceding Five years and not earning any income from business.

4. The Board of Directors of the Applicant Company considered the matter and were of the opinion that, as the Company is not carrying on any business activity since preceding several years and the management does not intend to commence any business activity in future, it is in the best interest of all the stakeholders to voluntarily liquidate the Company.

5. The Board of Directors of the Applicant Company in their Meeting held on 26th

July, 2022 passed a proposal to liquidate the Company voluntarily and appointed Mr. Venugopal Madhavan Panicker, an Insolvency Professional holding registration no. IBBI/IPA-001/IP-P01162/2018-2019/11915, as the Liquidator of the Company, subject to the approval of the Members.

6. As required under the Provision of Section 59 of the Insolvency and Bankruptcy Code, 2016 (IB Code), Mr. Guruprasad Rammurat Tiwari has signed the declaration of solvency and a Copy of declaration along with Audited Financial Statements for the Financial Year 2020-21 and 2021-22 and record of the statement of affairs of the Applicant Company for the period of 01st April, 2022 to 31st May, 2022 are enclosed.

7. As proposed by the Board, the Members of the Company in their Extraordinary General Meeting held on 29th July, 2022 passed a special resolution required under Section 59 of the IB Code read with the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (Regulations) to liquidate the Company voluntarily and appointed Mr. Venugopal Madhavan Panicker, an Insolvency Professional, having IP registration no. IBBI/IPA-001/IP-P01162/2018-2019/11915 to act as liquidator of the Company.

8. The declaration by majority of directors along with Audited Financial statements for the Financial Year 2020-21 and 2021-22 and record of the statement of affairs of the Applicant Company for the period of 01st April, 2022 to 31st May, 2022, Board Resolution for proposal to liquidate the Company voluntarily and Appointment of Mr. Venugopal Madhavan Panicker, an Insolvency Professional as the Liquidator of the Company were filed with Registrar of Companies, Mumbai in form GNL-2 and MGT-14 on dated 03rd August, 2022 and 02nd August, 2022 respectively.

9. The liquidator made a public announcement of commencement of liquidation in Form A, in The Free Press Journal English Newspaper and Navshakti Marathi (Vernacular) Newspaper on 02nd August, 2022 respectively, seeking submission of the claim by the stakeholders, if any, within 30 days for the date of commencement of liquidation further the public Announcement was simultaneously submitted to the Insolvency and Bankruptcy Board of India (IBBI) to place the same on its website. The same was published on IBBI website on 02nd August, 2022.

10. There were Unsecured Creditors amounting to Rs 6,500 as on liquidation commencement date and their consent has been obtained and is enclosed.

11. The liquidator has intimated to the Insolvency and Bankruptcy Board of India (IBBI) for voluntary winding-up and appointment of liquidator on dated 02nd August, 2022. A Copy of Intimation to Insolvency Bankruptcy Board of India (IBBI) for Voluntary winding-up and appointment of liquidator is enclosed.

12. The commencement of liquidation, appointment of liquidator and the public announcement made in newspapers was submitted to the Registrar of

Companies, Mumbai in Form MGT-14 and Form GNL-2. A copy of the Form MGT-14 and Form GNL-2 along with paid challans are enclosed to the Petition. The Form MGT-14 and Form GNL-2 filed with Registrar of Companies, Mumbai taken on the record.

13. As required under regulations, the liquidator opened a Bank account in the name of "KRUGER M AND E INDUSTRIES (I) P LTD VOL LIQ" with HDFC Bank, Thane Vartak Nagar Branch for realisation and payment for liquidation expenses.

14. As per provisions of Section 178 of the Income Tax Act, 1961, the liquidator intimated the commencement of liquidation and appointment of liquidator to the Income Tax Authority on 17th August, 2022 a copy of intimation duly acknowledged by the department is enclosed and marked as Annexure K. No Objection Certificate or No Dues Certificate from the Income Tax Department during Voluntary Liquidation Process under the Insolvency and Bankruptcy Code, 2016 is not required as per the IBBI Circular No. IBBI/LIQ/45/2021 dated 15th November, 2021.

15. As required under VLP regulations, the Liquidator submitted its preliminary report to the Company on 09th September, 2022.

16. Distribution has been made to the Equity Shareholder after deduction of Income Tax as required under section 195 of the Income Tax Act, 1961. The TDS so recovered has been paid to the Central Government.

17. Subsequent to the payment of distribution of proceeds to stakeholders, the liquidator has submitted the application for closure of Bank account on date December 13, 2022 to the HDFC Bank, Thane, Vartak Nagar Branch to close the liquidation Account. A copy of the Acknowledgement of submission of Application for closure along with Account Closure Confirmation letter dated 13th December, 2022. The said account was closed on 19th December, 2022

18. A copy of final report showing the realisation and payment of liquidation expenses, containing the details as required under Regulation 38.

19. The copy of final report was submitted to the Registrar of Companies in form GNL-2 and was send to the IBBI through email and registered post.

20. After hearing the submission made by the counsel appearing for the Petitioner and upon perusal of the documents annexed to the Petition, it appears that the affairs of the company have been completely wound up, and its assets have been completely liquidated in accordance with the provisions of the Code.

21. In view of the above facts and circumstances and Final Report of the Liquidator, we hereby direct that the Company shall be dissolved from the date of this order. The Petitioner is further directed to serve a copy of this order upon the Registrar of Companies, with which the Company is registered, within 14 (fourteen) days of receipt of this order. The registrar shall take necessary action upon receipt of copy of the order.