
(2022) 05 NCLT CK 0061

In the National Company Law Tribunal

Case No : CP (IB) No.07/Vol./Chd/Hry/2020

M/s GDF Suez Sales India Private Limited Vs

Date of Decision : 26-05-2022

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 53, 59, 59(3), 59(3)(c), 59(3)(c), 59(8)

Insolvency and Bankruptcy Of India (Voluntary Liquidation Process) Regulations, 2017 — Regulation 8(1)(a), 14, 34, 35, 38

Citation : (2022) 05 NCLT CK 0061

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

Bench : Division Bench

Advocate : Gunjan Mitta, Yogesh Putney

Final Decision : Disposed Of

Judgement

Harnam Singh Thakur, Member (Judicial)

1. The present Company Petition has been filed by the Liquidator, Mr. Anurag Sharma, on behalf of the "M/s GDF Suez Sales India 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 filing of the instant Company Petition, necessary for adjudication, are narrated hereunder:-

2.1 The Applicant Company i.e. M/s GDF Suez Sales India Private Limited is a company, incorporated under the provisions of the Companies Act, 2013 having CIN No. U40106HR2013FTC055545 and its registered office is situated at First Floor, Orchid Centre, Sector 53, Golf Course Road, Gurugram- 122002, Haryana.

2.2 It is stated that the object of the company was to carry on the business of purchase and sale of all forms of electrical power, both conventional and non-

conventional and also to supply, import and export or otherwise deal in all forms of electrical energy in all aspects and to promote and organise research and development in the field of power supply, trading, conservation of electricity and other related activities of the Company as mentioned in Memorandum of Association of the Company, a copy of which is enclosed as Annexure-A3 of the petition.

2.3 The Authorized Share Capital of the Applicant Company is Rs.10,00,000/- divided into 1,00,000 (One Lakh) Equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the Company is Rs.10,00,000/- divided into 1,00,000 Equity shares of Rs.10/- each. Copy of Master Data of the applicant company, as available on the website of MCA, has been annexed as Annexure-A1 in the petition.

2.4 On perusal of the record, it is found that the applicant company has complied with Section 59(3) of the Code, by filing declaration signed by the Board of Directors stating, inter alia, that full enquiry into the affairs of the company has been done 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 30.04.2019 (Annexure-A5) deposing therein that the company is not being liquidated to defraud any person. Certified true copy of audited financial statements for the last two years with Registrar of Companies have also been annexed as Annexure-A5 of the main petition and in IA No.75/2021 through an additional document.

2.5 It is stated that the Board of Directors of the company as per Section 59(3) (c) of the Code, convened an Extra Ordinary General Meeting on 09.05.2019 to pass a special resolution to voluntarily liquidate the company and to appoint Mr. Anurag Sharma, Insolvency Professional (Registration No.IBBI/IPA-002/IP-N00209/2017-18/10728) to act as the Liquidator. Copy of Minutes of the Board Meeting dated 29.04.2019 and copy of Minutes of the Extra Ordinary General Meeting dated 09.05.2019, have been annexed as Annexure-A4 and A6, respectively.

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 "Financial Express" (English) Delhi NCR Edition & Bangalore Edition on 14.05.2019 and in "Jansatta" (Hindi) Delhi NCR Edition and "Vartha Bharti" Kannad Newspaper (Bangalore Edition) on 14.05.2019 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 request to upload it on its website and the same was uploaded on the website of IBBI. A copy of newspaper publication as well as copy of email sent to IBBI and

screenshot of the website of IBBI depicting the publication of the aforesaid public announcement have been annexed with the instant petition as Annexure-A9 and Annexure-A10, 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 voluntarily liquidation and appointment of liquidator in Form MGT 14 and Form GNL 2 and the same was approved and taken into record by Registrar of Companies, NCT Delhi & Haryana. A copy of Form MGT-14 and Form GNL-2 has been annexed with the petition as Annexure-A7.

2.8 In compliance of the Regulation 8(1) (a) and (9) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 the liquidator had submitted a Preliminary Report dated 20.06.2019 to the members of the applicant company on 20.06.2019. A copy of Preliminary Report has also been annexed with the petition as Annexure-A13.

2.9 It is stated in the petition that the applicant company has not received any claims.

2.10 It is averred that the liquidator informed the Income Tax Department informing about the voluntary liquidation of the company as well as his appointment as liquidator of the company. A copy of NOC received from the Income Tax Department is annexed with petition as Annexure-A12.

2.11 In compliance of Regulations 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 'GDF Suez Sales India Private Limited – in Voluntary Liquidation', with Kotak Mahindra Bank Limited, KMBL, JMD Regent Square, Mehrauli, Gurgaon, Haryana - 122002 on 07.06.2019 for realization of money and payment to the members.

2.12 In compliance of 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 necessary payment to the Members of the company, the liquidator has closed down the liquidation account and in proof thereof, a copy of the Bank Statement showing 'Bank Account has been closed' has also been annexed with the present petition as Annexure-A17.

2.14 In compliance with the provisions of Regulation 38 of the IBBI (Voluntary Liquidation Process) Regulations, 2017, the liquidator had prepared a final report and submitted the same to the Registrar of Companies and to the Insolvency and Bankruptcy Board of India on 14.02.2020. The copy of final report also sent to ICSI IPA through e-mail dated 17.02.2020 (Annexure-A22). A copy of

confirmation e-mail dated 16.12.2019 received from the AD Bank/RBI regarding approval of FC-TRS is attached as Annexure-A16.

3. On the basis of aforementioned grounds and reasons, the company through the liquidator has prayed for an order from this Adjudicating Authority for 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 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

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 for closing down the company, because the company was incorporated for the object as stated hereinabove and the applicant company has been struggling for the business opportunities in India.

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 not received any 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 09.05.2019 by confirming the decision of its Board of Directors and proposing for its Voluntary

Liquidation. The EOGM had also passed a further resolution to appoint Mr. Anurag Sharma, Insolvency Professional, having Registration No.IBBI/IPA-002/IP-N00209/2017-18/10728 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 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, NCT of Delhi & Haryana 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), NCT of Delhi & Haryana, vide order dated 03.03.2021. In compliance of the above order, RoC filed its report dated 15.03.2021, whereby it has stated that no inquiry/inspection/complaint/legal action has been proceeded/pending against the subject company. Pursuant to the abovesaid report, nothing adverse has been found against the applicant company.

10. Pursuant to the filing of application for obtaining No Objection/No-Demand Certificate from Income Tax Department, the company had obtained No Dues Certificate from the Income Tax Department on 19.07.2019. The certified copies of No Dues Certificate from the Income Tax Department is enclosed as Annexure-A12 of the petition.

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 public at large. Further, it is not the case that the proposed liquidation may affect adversely to its shareholders/members or is contrary to the provisions of law.

12. The Liquidator had filed copies of paper publication as well as copy of 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 bearing Account No.5012976718 in the name of Corporate Person with Kotak Mahindra Bank Limited, KMBL, JMD Regent Square, Mehrauli, Gurgaon, Haryana - 122002, for realization and payment to the members and the liquidator, thereafter, has closed down the said liquidation account. 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 copy of Preliminary Report (Annexure-A13), copy of Final Report, Form GNL-2 along with copy of receipt and email sent to IBBI 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 exercise of power conferred to it under Section 59 (8) of the Insolvency and Bankruptcy Code, 2016, orders that the Corporate Person (Applicant Company) M/s GDF Suez Sales India Private Limited shall stand dissolved with effect from 26.05.2022.

16. The Liquidator is directed to communicate a copy of this order to the respondent i.e. Registrar of Companies, NCT of Delhi & Haryana, wherein the registered office of the company is situated. Further, a copy of this order should also be communicated to the IBBI, New Delhi and other statutory authorities, 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, NCT of Delhi & Haryana as well as to the Insolvency and Bankruptcy Board of India (IBBI).

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