

(2021) 03 DEL CK 0225

In the Delhi High Court

Case No : Company Petition No. 7 Of 2021

Pbe India Private Limited (In Members' Vol. Liqn.)

Date of Decision : 18-03-2021

Acts Referred:

Companies (Court) Rules, 1959 — Section 313, 315, 329

Companies Act, 1956 — Section 484(1)(b), 485(1), 488(2)(b), 490, 497, 497(6), 516

Citation : (2021) 03 DEL CK 0225

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : Sangeeta Chandra

Final Decision : Allowed

Judgement

C. Hari Shankar, J

1. This petition is filed under Section 497(6) of The Companies Act, 1956 (herein referred to as 'the Act') by the Official Liquidator (OL), seeking voluntary winding up of the Company PBE INDIA PRIVATE LIMITED (in members Voluntary Liquidation) (herein referred to as the 'petitioner Company').

2. A perusal of the petition shows that the petitioner Company was incorporated under the provisions of the Act on 15th May, 1995, having Corporate Identity Number U74899DL1995PTC068500, under the provisions of the Companies Act 1956, with the Registrar of Companies, NCT of Delhi & Haryana having registered office situated at 204-206, Tolstoy House, 15, Tolstoy Marg, Delhi - 110001.

3. That the Authorized Share Capital of the petitioner Company (in Vol. Liqn.) is Rs. 6,55,00,000/- (Rupees Six Crore Fifty-Five Lakhs Only) divided into 65,50,000 (Sixty-Five Lakh Fifty Thousand) equity shares of Rs. 10/- (Rupees Ten) each.

4. At the time of Members' Voluntary Winding up of the petitioner Company, there were two shareholders and three directors namely Mr. Chitranjan Dua, Mr. Sunil Malik and Mr. John Raymond Stoebner. The financial position of the petitioner Company as disclosed in the audited balance sheets ending as on 31st

July, 2010 and 31st December, 2009 are annexed to the petition.

5. In a Board meeting held on 25th October, 2010, the Declaration of Solvency was executed and approved by the Board of Directors. It was declared by all the Directors of the petitioner Company that they have made a full enquiry into the affairs of the Company, and having done so, they have formed the opinion that the petitioner Company has no debts. The Declaration of Solvency was filed with the Registrar of Companies on 26th October, 2010 in the prescribed Form No. 149 read with Rule 313 of the Companies (Court), Rules 1959 alongwith the Statement of the Company's Assets and Liabilities as at 22nd October, 2010 being the latest practicable date. An Independent Auditor's Report as per requirement under Section 488(2)(b) of the Companies Act 1956, has been attached with the Declaration of Solvency. The said documents are annexed to this present petition.

6. Pursuant to the provisions of Section 484(1)(b) and other applicable provisions of the 'Act', an Extra-ordinary General Meeting (EGM) of the petitioner Company was convened and held on 4th November, 2010 at the registered office of the petitioner Company situated at 204-206, Tolstoy House, 15, Tolstoy Marg, Delhi-110001 for passing a special resolution for voluntary winding up of the petitioner Company by its members. Accordingly, a special resolution was passed that the petitioner Company be wound up voluntarily and Mr. Deepak Kumar, Chartered Accountant was appointed as a Voluntary Liquidator u/s 490 of the Act. It is stated that the copy of minutes of the Extra Ordinary General Meeting dated 4th November, 2010 alongwith Form 23 has been filed with the ROC.

7. The petitioner Company has given notice of the resolution for members voluntary winding up, as required under Section 485(1) of the Companies Act, 1956 by advertisement in "Jansatta" (Hindi) and "The Indian Express" (English) on 8th November, 2010 respectively as well as in the Official Gazette (English & Hindi) on 4th December, 2010.

8. The notice by the Voluntary Liquidator of his appointment under Section 516 of the Act read with Rule 315 of the Company's (Court) Rule, 1959 was given in Form No. 151 as published in the newspapers and Official Gazette on 8th November, 2010 and 4th December, 2010 respectively (as mentioned in para 7 of this order) and in Form No. 152 for his appointment before the Registrar of Companies, NCT of Delhi & Haryana on 9th November, 2010. A copy of Form filed with Registrar of Companies alongwith copy of publication in the Official Gazette are annexed to the petition.

9. The Voluntary Liquidator has called the Final General Meeting of the members by advertisement of notice in Form No. 155 published in the newspaper namely 'The Pioneer' (English) on 31st January, 2019 & 'Quami Patrika' (Hindi) on 5th February, 2019 and in Official Gazette (English & Hindi) on 16th February, 2019.

10. The Final General Meeting of the petitioner Company was held on 10th April, 2019 and the Statement of Account in Form No. 156 for the period 4th

November, 2010 to 18th January, 2019 was laid before the members in the meeting and was adopted unanimously. The relevant documents have been annexed with the petition and are on record.

11. The Voluntary Liquidator has filed the audited Statement of Account in Form No. 156 and return in Form No. 157 with the ROC, NCT of Delhi & Haryana in terms of Section 497 as prescribed under Rule 329 of the Companies (Court) Rules, 1959.

12. It has been stated in the petition that the Voluntary liquidation of the petitioner Company has been pending since long. Despite various letters having been written by the office of the Official Liquidator to the Income Tax Department, the said Department has neither raised any demand nor issued any 'No Objection Certificate' (NOC). It has further been stated that on the e-filing portal of the Income Tax Department, in response to outstanding demand qua the petitioner Company i.e. PBE INDIA PRIVATE LIMITED, the status is indicated as - 'No Records Found'. It has thus, been presumed that there is no outstanding demand against the petitioner Company.

13. It is stated that in order to provide further safeguard, the Voluntary Liquidator has filed an Indemnity bond dated 8th August, 2019 undertaking that in case any bonafide claim or demand is made by a person/s and honored by the office of the Official Liquidator, the liquidator will, at all times, indemnify and keep harmless the office of the Official Liquidator from all claims and demands and all actions and proceedings taken against the said office by the said person/s.

14. The Registrar of Companies NCT of Delhi & Haryana, New Delhi vide its letter No. 8584 dated 14th February, 2020 has stated that it has no objection for dissolution of the petitioner Company (in Vol. Liqn.).

15. The Official Liquidator has scrutinized the records submitted by the Voluntary Liquidator and has recorded satisfaction that necessary compliances of Section 497 of the Act and the other relevant provisions of the Act have been made and that the affairs of the petitioner Company have not been conducted in any manner prejudicial to the interest of its members or to the public.

16. In view of the foregoing and the satisfaction accorded by the Official Liquidator, I may note that nothing is seen to be prejudicial to the shareholders or the public interest. Accordingly, this petition is allowed. The petitioner Company stands dissolved from the date of filing this petition i.e. 10th March, 2021.

17. The Voluntary Liquidator and the Official Liquidator may intimate the concerned ROC about this order for necessary compliance, within a period of 30 days hereof.