

(2023) 06 NCLT CK 0042

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : C.P. (IB) No. 308 Of 2023

Sterling Fabory India Private Limited Vs

Date of Decision : 16-06-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 59, 59(3)(a), 59(3)(b), 59(4), 59(7), 59(8)

Income Tax Act, 1961 — Section 178

Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 — Regulation 14, 38(3)

Citation : (2023) 06 NCLT CK 0042

Hon'ble Judges : Mehendra Khandelwal, Member(J);Rahul Bhatnagar, Member (T)

Bench : Division Bench

Advocate : Chetan Gupta

Final Decision : Disposed Of

Judgement

Rahul Bhatnagar, Member (Technical)

1. This is an application filed under section 59 of the Insolvency and Bankruptcy Code, 2016 ("the Code") by Mr. Chetan Gupta, Liquidator of Applicant Company i.e 'Sterling Fabory India Private Limited' (CIN: U51900DL2010PTC199832) (hereinafter referred as the Company) for seeking dissolution of the Company in terms of Section 59(7) of the Code.

2. Sterling Fabory India Private Limited was incorporated on 09.03.2010 under the Companies Act, 1956, as a private limited company. The registered office of the Company is presently situated at UNIT No. 515 DLF Tower-A, Jasola District Centre, New Delhi 110025. It was engaged in the business with objects of wholesale distribution, supply chain and vender management of non-automotive and automotive fasteners and standard and non-standard (customer specific) non-automotive electronic and other component, part, assemblies and sub-assemblies and fittings of all kinds and for all industries and component thereto. Its Board of Directors comprise of the following:

- i. Mr. Anil Aggarwal (Director) (DIN-00027214)
- ii. Mr. Atul Aggarwal (Director) (DIN 00126925)
- iii. Mr. Francisco Lobelle Terol (Director) (DIN 08967114)
- iv. Mr. Rene Marcel Pit (Director) (DIN 09045634)

3. Submissions made on behalf of Mr. Chetan Gupta, Liquidator

- a) That the Applicant Company is not carrying any business since November 2021 due to no business opportunities available.
- b) In pursuant thereto, the Board of Directors at the board meeting held on 10.05.2022 passed proposal to voluntarily liquidate the Company under the provisions of Section 59 of the Insolvency and Bankruptcy Code, 2016.
- c) That as proposed by the Board of Directors of the meeting held on 10.05.2022, the members of the Company in their Annual Meeting held on 31.12.2021 passed special resolution required under section 59 of the IBC read with the insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulation, 2017 ("Regulations") to liquidate the Company voluntarily and appointed Mr. Chetan Gupta, an Insolvency Professional, having IP Registration No. IBBI/IPA-002/IP-N01168/2021-2022//13950 to act as the Liquidator of the Company.
- d) That the company has no creditors on the date of commencement of Liquidation i.e June 03, 2022 therefore, the requirement of obtaining the approval of the creditor confirming the special resolution is not applicable on the company.
- e) That pursuant to Section 59(4) of the Insolvency and Bankruptcy Code, 2016, the Registrar of Companies of NCT of Delhi and Haryana and the Insolvency and Bankruptcy Board of India were notified within the prescribed time of seven (7) days of passing of the said Resolution.
- f) As per the requirement of Regulation 14 of the IBBI (Voluntary Liquidation Process) Regulations, 2017, the Liquidator published a notification in the newspaper, namely, "Financial Express" in English and "Jansatta" in Hindi dated 05.06.2022. Copy of the same are annexed with the petition and simultaneously published on the IBBI website.
- g) That pursuant to Section 59(3)(a) and (b) of IBC, 2016, the company duly prepared and filed a Declaration of Solvency along with audited financial statements and record of business operations of the company for the previous two years with the Registrar of Companies, NCT of Delhi and Haryana.
- h) It is submitted that the liquidator has also sent necessary intimations to all statutory authorities i.e. ROC, NCT of Delhi and Haryana, and Income Tax Authority etc. It is further submitted that the intimation vide letter dated 14.06.2022 was communicated to the office of the Commissioner of Income Tax.

i) That as required under the Regulations, the nomenclature of the Bank account of the Company bearing Account number 00932320005352 maintaining with HDFC bank, Badshah Khan chowk NIT Faridabad along with Authorised Signatory, was changed on September 17, 2022 for realization and payment to the stakeholders of the company.

j) Subsequent to payment to members of the Company, the Liquidator has closer the Liquidation account. A certificate from the HDFC Bank for the closer of the account enclosed and marked as Annexure L of the instant Application.

k) That the Liquidator has stated that till the last date of receiving claims, he has not received any claims during the liquidation.

l) That the IBBI vide its circular dated 15.11.2021 has clarified that as per the provisions of the Code, 2016 and the Regulations read with Section 178 of the Income-tax Act, 1961, an Insolvency Professional handling voluntary liquidation process is not required to seek any No Objection Certificate or No Dues Certificate from the Income Tax Department as part of compliance in the said process.

m) Applicant submitted that no other assets of the Corporate Person were left to be realized.

n) In terms of Regulation 9 of the IBBI (Voluntary Liquidation Process) Regulations, 2017, the Liquidator submitted a preliminary report to the company on 14.02.2022.

o) In compliance with the provisions of Regulation 38 of the IBBI (Voluntary Liquidation Process) Regulations, 2017, the liquidator prepared a final report and submitted the same to the Registrar of Companies and to the Insolvency and Bankruptcy Board of India. A copy of GNL-2, along with challan and proof of despatch to IBBI, are attached as Annexure K of the application

p) The applicant submitted that the affairs of the Company have been completely wound up in all respects and its assets have been completely liquidated as per law.

4. 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 applicant company and making a declaration to this effect.

5. 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 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.

6. 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. 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 liquidator has settled all the 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 Annual General Meeting ('AGM') on 03.06.2022 by confirming the decision of its Board of Directors and proposing its Voluntary Liquidation. The AGM had also passed a further resolution to appoint Mr Chetan Gupta, Insolvency Professional, having Registration No. IBBI/IPA-002/IP-N01168/2021-22/13950 as Liquidator of the applicant 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 applicant company, which has been averred in the present petition and, thus, the liquidator has prayed for an order from this Adjudicating Authority to dissolve the applicant company

9. There is no objection received from any one 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 updating 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 and Haryana, as per Form MGT-14 and Form GNL-2, and the same is also reported to have been approved.

10. 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.

11. The Liquidator had filed copies of the newspaper publication as well as copies of the public 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 in the name of a Corporate Person with HDFC Bank 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.

12. 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 receipt and email sent to IBBI with the present application.

13. By taking into consideration the above-stated facts and circumstances, the present application deserves to be allowed for the proposed Liquidation/ Dissolution of the Company.

14. 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 (Applicant Company) Sterling Fabory India Private Limited shall stand dissolved with effect from the date of this order.

15. The Liquidator is directed to communicate a copy of this order to the respondent, i.e. Registrar of Companies, NCT of Delhi and 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, 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.

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

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