
(2023) 08 NCLT CK 0011

In the National Company Law Tribunal

Case No : CP (IB) No. 295/Chd/Hry/2022

Trend Communications India Privatelimited Vs

Date of Decision : 07-08-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 59, 59(4), 59(7)
Income Tax Act, 1961 — Section 178
Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 — Regulation 9, 30, 35, 39(2)

Citation : (2023) 08 NCLT CK 0011

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

Bench : Division Bench

Advocate : G.S. Sarin

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

1. This application has been filed by M/s Trend Communications India Private Limited (hereinafter referred to as "Company" or "Corporate Debtor") through its Liquidator, Shri. Sanyam Goel, under Section 59(7) of the Insolvency and Bankruptcy Code, 2016 (herein referred to as "the Code"), seeking the relief that the petitioner company be dissolved as per the provisions of the Code read with Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

2. The corporate debtor was incorporated on 06.09.1999. The master data, Certificate of Incorporation, Memorandum of Association, and Articles of Association of the Company had attached as Annexures A-1 and A-2 of the application.

3. The Company, in its meeting of the Board of Directors on 23.12.2020, approved the declaration as stipulated U/s 59(3) of the Code, which was later duly signed and verified by affirmation and the Board Resolution dated 23.12.2020 to voluntarily liquidate the company in accordance with provisions of

Section 59 of IBC, 2016 was passed.

4. The shareholders of the petitioner company, by a special resolution, approved the voluntary liquidation of the company and the appointment of Sh. Sanyam Goel, Insolvency Professional, having Registration No. IBBI/IPI/-002IIP-N00138/2017-18/70397 to act as the liquidator of the company on 28.12.2020.

5. The Company duly filed the copy of the Board Resolution regarding the liquidation of the Company with the Registrar of Companies in compliance with Section 59(4) of the Code in Form MGT-14 on 01.01.2021. The public announcement was made on 31.12.2020 in two newspapers, i.e. Business Standard (English) and Business Standard (Hindi). The liquidator informed the Registrar of Companies, IBBI, and other regulatory authorities about his appointment and commencement of voluntary liquidation on 30.12.2020. The last date for submission of claims was 27.07.2021.

6. The Liquidator received only one claim from the Municipal Corporation of Greater Mumbai via email dated 11.01.2021 pursuant to the Provisions of IBBI (Resolution Process for Corporate Person) Regulation, 2016 instead of IBBI (Voluntary Liquidation Process) Regulation, 2017 and hence, the same could not be considered. The Liquidator requested the claimant to re-file the claim under the appropriate regulation for further proceedings via email dated 12.01.2021 following a reminder on 12.07.2021. It has been submitted that till date, no reply/claim has been received from the Municipal Corporation of Greater Mumbai.

7. The Company does not have any creditors, and the same is evident from the statement showing assets at estimated realizable values and liabilities expected to rank as on 02.12.2020 is annexed as Annexure A-8.

8. The Audited Financial Statements of the Company for the period ended on 31.03.2019 and 31.03.2020 are annexed as Annexure A-9 of the application.

9. The liquidator prepared a Preliminary Report dated 10.02.2021 under Regulation 9 of the Regulations for the shareholders of the Company within the stipulated 45 days from the date of commencement of the Liquidation Process, and the same was shared with the Corporate Debtor vide email dated 10.02.2021.

10. The Liquidator duly prepared the list of stakeholders under Regulation 30 of the Regulations, 2017 on 05.03.2021 and intimated the IBBI vide email dated 11.03.2021.

11. It has been stated that the corporate debtor intimated the Income Tax Department u/s 178 of Income Tax Act, 1961, regarding the commencement of the Voluntary Liquidation Process and appointment of Liquidator vide letter dated 20.01.2021, which stood undelivered. Subsequently, another letter was sent on 27.09.2021 in response to which a demand notice dated 06.10.2021 was received from the Income Tax Department. It is stated that the applicant liquidator filed a detailed reply to the said demand notice with a request to file a

claim as per the said demand of the Income Tax Department and issuance of a No Objection Certificate. Furthermore, despite repeated requests of the applicant, along with the issuance of another letter dated 17.05.2022 for the issuance of a NOC, no claim has been received from the Income Tax Department till date.

12. The applicant has placed reliance upon the Circular No. IBBI/LQ/45/2021 dated 15.11.2021 issued by IBBI wherein the following has been stated:-

"The process of applying and obtaining of such NOC/NDC from the Income Tax Department, consumes substantial time and thus militates against the express provisions of the Code, and also defeats the objective of time bound completion of the process under the Code.

Therefore, it is here by the way that as per the provisions of the code and the regulation read with Section 178 of the Income Tax Act, 1961 an Insolvency Professional handling voluntary liquidation process is not required to seek any NOC/NDC from the Income Tax Department as part of compliance in the said process."

13. Considering the aforementioned circumstances, the applicant distributed the proceeds in accordance with the provisions of Regulation 35 of IBBI (Voluntary Liquidation Process) Regulations, 2016.

14. In order to transfer the funds to the foreign shareholders, i.e. M/s Ideal Industries Holdings Ltd. and M/s Ideal Industries INC, the liquidator sought certain documents from the corporate debtor, which were not provided by the corporate debtor and its consultant. The applicant made various efforts to procure the said documents, but since the remittance could not have been made without the mandatory requirement of those documents, the remaining fund of Rs.1,15,776/- was left to be considered as undistributed proceeds in terms of Regulation 39(2) of the Regulations and the same was transferred to Corporate Voluntary Liquidation Account in the Public accounts of India, maintained by the IBBI on 04.08.2022.

15. The liquidator opened a bank account in the name of Trend Communications India Private Limited- voluntary liquidation with Kotak Mahindra Bank Ltd. bearing A/c No. 6545302265 was closed on 22.08.2022, and the previous bank account of the corporate debtor maintained at Indian Overseas bank, Mumbai was closed on 05.07.2022.

16. Further, the liquidation accounts were duly audited by an independent auditor appointed by the applicant, which are usually attached as Annexure A/26 of the application.

17. The final report dated 09.09.2022 prepared by the applicant in compliance with the Regulations has been annexed as Annexure A/27 of the application, and the same has been sent to IBBI via email dated 09.09.2022 and RoC in form GNL 2 on 09.09.2022.

18. The applicant, in compliance with the order dated 28.03.2023 of this adjudicating authority, has placed on record his affidavit in which the copy of the reply dated 07.03.2023, received from the ROC through email dated 09.03.2023 has been placed on record. The ROC, in its report, has submitted that it has no objection as to this adjudicating authority passing any order as it may deem fit as per the merits of the case.

19. 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.

20. We have heard the learned counsel appearing on behalf of the Petitioner Company and 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.

21. 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 has unanimously proposed to liquidate the company by invoking the provisions of voluntary liquidation under Section 59 of the Code.

22. It has been mentioned in the petition that the Board of Directors in its meeting dated 23.12.2020, and the shareholders of the petitioner company by

special resolution, approved the voluntary liquidation of the company and the appointment of Sh. Sanyam Goel, Insolvency Professional, to act as Liquidator of the company on 23.12.2020. On 23.12.2020, the above resolution was approved by creditors representing two-thirds in value of the debt of the company.

23. 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.

24. 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 concerned Registrar of Companies, as per Form MGT-14 and Form GNL-2.

25. The Board has no observation against the dissolution of the Company.

26. As per the 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.

27. 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 the necessary steps. The current account of the company in the bank has also closed on 22.09.2020, and the 'voluntary liquidation' account was opened on 07.08.2020 for realization and payment to the members, which was closed on 18.11.2020. 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.

28. 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.

29. 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.

30. Consequently, this Adjudicating Authority, in the exercise of the power conferred to it under Section 59 (7) of the Insolvency and Bankruptcy Code, 2016, orders that the Corporate Person (Petitioner Company) Trend

Communications India Private Limited shall stand dissolved with effect from the date of this order.

31. The Liquidator is directed to communicate a copy of this order to the concerned Registrar of Companies 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.

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

33. Thus, CP(IB) No. 295/Chd/Hry/2022 stands allowed and disposed of.