
(2024) 03 NCLT CK 0023

In the National Company Law Tribunal

Case No : CP (IB) No. 63/Chd/Hry/2023

Wuxi Yushou Medicare Private Limited Vs

Date of Decision : 07-03-2024

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 59, 59(4), 59(7)

Citation : (2024) 03 NCLT CK 0023

Hon'ble Judges : Harnam Singh Thakur, Member (J); Rahul Prasad Bhatnagar, Member (T)

Bench : Division Bench

Advocate : G.S. Sarin, Ajay Bhagwati

Final Decision : Disposed Of

Judgement

1. This application has been filed by Wuxi Yushou Medicare Private Limited (hereinafter referred to as "Company" or "Corporate Debtor") through its Liquidator, Sanyam Goel, under Section 59 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 the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

2. The corporate debtor was incorporated on 28.12.2012. The master data, Certificate of Incorporation, Memorandum of Association, and Articles of Association of the Company have been attached as Annexures A-1, A2 and A3 of the application.

3. The Company, in its meeting of the Board of Directors on 03.01.2022, 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 03.01.2022 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 an Extra Ordinary General meeting, approved the voluntary liquidation of the company and the appointment

of Sanyam Goel, Insolvency Professional, having Registration No. IBBI/IPA/-002/IP-N000138/2017-18/10397 to act as the liquidator of the company on 03.01.2022.

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 07.01.2022. The public announcement was made in Form A on 06.01.2022, and was published in two newspapers, i.e., The Financial Express (English) and Jansatta (Hindi), on 07.01.2022. The liquidator informed the Registrar of Companies on 01.12.2022, and IBBI on 07.01.2022, and other regulatory authorities about his appointment and commencement of voluntary liquidation. The last date for submission of claims was 02.02.2022.

6. The Liquidator did not receive any claim in pursuant to the Provisions of IBBI (Resolution Process for Corporate Person) Regulation, 2016 instead of the IBBI (Voluntary Liquidation Process) Regulation, 2017.

7. It is submitted that the company does not have any creditors. Further, the Company did not receive any claim from the stakeholders, and the same is evident from the statement/report (Annexure A-14) showing assets at estimated realizable values and liabilities as on 31.12.2021.

8. The Audited Financial Statements of the Company for the period 31.03.2020 and 31.03.2021 are annexed as Annexure A9 of the application.

9. The liquidator prepared a Preliminary Report dated 17.02.2022, 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 submitted to the target company by the liquidator.

10. 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 the Liquidator vide letter dated 12.01.2022. The circular No. IBBI/LIQ/45/2021 dated 15.11.2021 issued by IBBI, wherein it has dispensed the requirement of obtaining NOC/NDC from the Income Tax Department (Annexure A-16). The affidavit of service is filed vide Dairy No. 00409/2 dated 21.03.2023.

11. It is submitted that there were two shareholders namely, Mr. Ajay Jain and M/s Wuxi Yushou Medical Appliances Co. Ltd. all of them have been duly paid off in proportion of their shareholding. Final distribution to Mr. Ajay Jain was made on 20.09.2022 and to M/s Wuxi Yushou Medical Appliances Co. Ltd. made on 28.09.2022.

12. The liquidator closed the previous bank account of the company maintained at CITI Bank and opened a bank account in the name of Wuxi Yushou Medicare Private Limited- voluntary liquidation with Kotak Bank, Gurgaon, bearing A/c No. 0146120495 was closed on 12.07.2022.

13. Further, the liquidation accounts were duly audited on 03.01.2022 to 30.09.2022. The final report prepared by the applicant in compliance with the Regulations has been annexed as Annexure A20 and A21 of the application, and the same has been sent to IBBI and RoC in Form GNL 2 on 01.12.2022.

14. The ROC has filed its report vide Dairy No. 00409/3 dated 18.05.2023. The ROC, in its report, has submitted that no inquiry/inspection/complaint/legal action has been proceeded/ pending against the company. The extract of the said point in status report is mentioned below:

1. Company has filed MGT-14 vide SRN T70785589 dated 07.01.2022 in respect of passing of Resolution at the Board of Directors Meeting of the Company for approve the Voluntary Liquidation dated 03.01.2022. Copy of the said -form with annexures has been annexed herewith as Annexure-III.

2. Company has filed MGT-14 vide SRN T70788898 dated 07.01.2022 in respect of passing of Special Resolution at the Extraordinary General Meeting of the Company for approval of voluntary liquidation dated 03.01.2022. Copy of the said -form with annexures has been annexed herewith as Annexure-IV.

3. Company has filed GNL-2 vide SRN T88916705 dated 17.03.2022 in respect of Declaration of Solvency of the Company dated 03.01.2022 and resolution for voluntary liquidation and appointment of liquidator dated 03.01.2022. Copy of the -form with annexures has been annexed herewith as Annexure-V.

4. The Company has filed GNI-2 vide SRN F50932409 dated 01.12.2022 in respect of filing of final report dated 01.12.2022 on the online MCA portal to be submitted after the completion of the process of Voluntary Liquidation. Copy of the said -form with annexures has been annexed herewith as Annexure-VI.

Further, as per the data available and maintained, no inquiry/inspection/complaint/legal action has been proceeded/pending against the subject company. This office has compiled the above factual report based on the records maintained and documents filed by the concerned Company on MCA portal That the IBBI is the concerned authority under Insolvency & Bankruptcy Code, 2016. However, said status report about the Company based on information/record as available on MCA portal.

15. The liquidator has deposed by way of affidavit filed vide Dairy No.00409/4 dated 03.07.2023 that there are no adverse remarks/objections in the ROC Report.

16. 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.

17. 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 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.

18. 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.

19. It has been mentioned in the petition that the Board of Directors, in its meeting dated 03.01.2022, and the shareholders of the petitioner company, by Extra Ordinary General Meeting, approved the voluntary liquidation of the company and the appointment of Sanyam Goel, Insolvency Professional, to act as Liquidator of the company on 03.01.2022.

20. 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.

21. The ROC in its report dated 15.05.2023 clarified that no inquiry/inspection/complaint/legal action has been proceeded/ pending against the company. Since there is no objection received from any quarter opposing the proposed voluntary

liquidation/dissolution of the company, either from the side of the shareholders or from creditors, nor has 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.

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

23. As per the record of the present case, it is seen that the company is not found involved in such kinds of business activities, which are detrimental to the interests 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.

24. 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 'voluntary liquidation' account was opened with Kotak Bank, Gurgaon, bearing Account No. 0146120495 for realization and payment to the members, which was closed on 16.11.2022. The Liquidator had further intimated the Income Tax Department regarding the voluntary liquidation of the company as well as his appointment as the liquidator.

25. The Liquidator has also annexed a copy of the preliminary report, a copy of the Final Report, Form GNL-2.

26. 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.

27. 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) Wuxi Yushou Medicare Private Limited shall stand dissolved with effect from the date of this order.

28. 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.

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

30. Thus, CP (IB) No. 65/Chd/Hry/2023 stands allowed and disposed of.