BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH
CORPORATE BHAWAN, PLOT NO.4-B
GROUND FLOOR, SECTOR- 27-B, MADHYA MARG
CHANDIGARH-160019

Ref: NCLT/Chd/Reg/CC/ 527 Dated: 06/07/2022

CP (IB) No. 10/Vol./Chd/Hry/2021
Under Section 59 of the IBC, 2016

In the matter of:
M/s. Rio Tinto Exploration and Mining (India) Private Limited
...Applicant Company

To,

Sh.Vishav Bharti Gupta,
#404, GH-14, MDC, Sector-5,
Panchkua, Haryana.

Please find enclosed herewith 01 certified copy order dated 30.06.2022 as applied vide application No.181 dated 05.07.2022 .

Encl: as above.

(Kartikeya Verma)
Registrar
NCLT, Chandigarh Bench

THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

CP (IB) No.10/Vol./Chd/Hry/2021

Under Section 59 of the Insolvency and Bankruptcy Code, 2016 read with IBBI (Voluntary Liquidation Process) Regulations, 2017

In the matter of :

M/s Rio Tinto Exploration and Mining (India) Private Limited
through Liquidator, Mr. Arun Gupta
having its registered office at
21st Floor, DLF Building No.5, Tower-A,
DLF Cyber City, Phase III,
Gurgaon - 122002, Haryana
CIN: U14200HR2012PTC047370

... Applicant Company

Judgment delivered on: 30.06.2022

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

For the Applicant Company : Mr. Ashutosh Gupta, Advocate

For the Income Tax Department: Mr. Tejender Joshi, Senior Standing Counsel

For the Registrar of Companies: Ms. Sweety Kumar, Assistant Registrar of Companies

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

1. The present Company Petition has been filed by the Liquidator, Mr. Arun Gupta, on behalf of the "M/s Rio Tinto Exploration and Mining (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, which are just and necessary for adjudication, are narrated hereunder:-

2.1 The Applicant Company i.e. M/s Rio Tinto Exploration and Mining (India) Private Limited is a company, incorporated under the provisions of the Companies Act, 2013 having CIN No.U14200HR2012PTC047370 and its registered office is situated at 21st Floor, DLF Building No.5, Tower-A, DLF Cyber City, Phase III, Gurgaon - 122002, Haryana.

2.2 It is stated that the object of the company was to carry on in India or any of the businesses of reconnaissance, prospecting, exploring, evaluating, mining, research, finding, drilling, digging, crushing, washing, treating and raising all sorts of present and future ores and mineral including but not limited to gold, silver, diamonds, precious stones and other stones etc. To act as consultants/advisors, experts and technical collaborators to render technical and consultancy services in relation to above mentioned activities. And to design, manufacture, supply, buy, import, export and deal in plant and machinery, tools and equipments related to the above stated activities. Memorandum of Association of the Company, a copy of which is attached as Annexure-A of the petition.

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2 The Authorized Share Capital of the Applicant Company is Rs.10,00,00,000/- divided into 1,00,00,000 (One Crore) Equity shares of Rs.10/- each. The

issued, subscribed and paid-up share capital of the Company is Rs.5,01,00,000/- divided into 50,10,000 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-A, 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 03.09.2018 (Annexure-D) 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 in petition (Annexure-B)

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 27.09.2018 to pass a special resolution to voluntarily liquidate the company and to appoint Mr. Arun Gupta, Insolvency Professional (Registration No.IBBI/IPA-002/IP-N00051/2016-17/10095) to act as the Liquidator. Copy of Minutes of the Board Meeting dated 05.09.2018 and copy of Minutes of the Extra Ordinary General Meeting dated 27.09.2018, have been annexed as Annexure-C & E, respectively.

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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) on 01.10.2018 and in "Jansatta" (Hindi) edition on 01.10.2018 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-H and Annexure-I, 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-G.

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 09.11.2018 to the members of the applicant company on 09.11.2018. A copy of Preliminary Report has also been annexed with the petition as Annexure-M.

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2.9 It is stated in the petition that the applicant company has received claims from the Creditors and Shareholders and the List of Stakeholders in compliance of Regulation 30 of the Regulations was prepared based on the above. Further, one of the creditor has provided 'No Objection Certificate' that they deny their claim which was submitted to the Liquidator and one more creditor provided 'Credit Note' in lieu of their claim (Annexure-L).

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. The certified copy of No Dues Certificate from the Income Tax Department is annexed with petition as Annexure-K.

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 'Rio Tinto Exploration and Mining (India) Private Limited – in Voluntary Liquidation', with Standard Chartered Bank (Account No.53105100972) on 15.10.2018 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.

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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.

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 06.01.2021 and 05.01.2021 respectively.

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 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-*

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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 is not carrying on any business activity and management of the Company and does not have any future plans to run the affairs of the Company as there is a serious lack of business prospects as desired by the members of the Company. Thus, the Board of Directors of the company have 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 post realization of all the assets and paying off the liabilities, surplus fund was remitted to the Shareholders of the Company. In support of the same, the company has duly passed the requisite Special Resolution in its Extra Ordinary General Meeting on 27.09.2018 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. Arun Gupta, Insolvency Professional, having Registration No.IBBI/IPA-002/IP-N00051/2016-17/10095 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 quarter and 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 11.08.2021. In compliance of the above order, RoC filed its report vide Diary No.155/7 dated 22.04.2022, whereby it has stated that no inquiry/inspection/complaint/legal action has been proceeded/pending against the subject company. Further, the liquidation process of Corporate Person could not be completed within the time period of one year as prescribed under Regulation 37(1) of IBBI (Voluntary Liquidation Process) Regulation, 2017. As per order dated 29.03.2022, to the above stated query, the applicant has filed its response vide Diary No.0155/06 dated 09.03.2022 and mentioned that inadvertently; the liquidation process of corporate person could not be completed within one year however, in pursuance of Regulation 37, the meeting of contributories of the Company has been called on 10.10.2019, the copy of the same is annexed as Annexure-I of the said affidavit. Hence, the query raised by RoC is satisfied.

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 30.01.2019. The certified copies of No Dues Certificate from the Income Tax Department is enclosed as Annexure-K 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.53105100972 in the name of Corporate Person with Standard Chartered 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.

13. The Liquidator has also annexed copy of preliminary report (Annexure-M), copy of Final Report, Form GNL-2 alongwith 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 Rio Tinto Exploration and Mining (India) Private Limited shall stand dissolved with effect from date of this order i.e. 30.06.2022.

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.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

June 30, 2022
AV/ASH

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Sd/-
(Harnam Singh Thakur)
Member (Judicial)

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