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27/02/2020

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH at AHMEDABAD

Free of Cost Copy

TP 96 of 2019 [CP(IB) 155 of 2019]

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF INDORE BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 02.01.2020

Name of the Company: Parks Infoway Ltd V/s ROC, Gwalior MP

Section of the Companies Act : Section 59 r.w 38 of IBC

S.NO. NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1. Arjun Sheth Nidhi Khabbaz	Adv & Solicitor Adv	Applicant	Nidhi
2.			

ORDER

The Petitioner is represented through respective Counsel(s).

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, vide separate sheet.

The TP 96 of 2019 [CP(IB) 155 of 2019] is conditionally **allowed** stands finally disposed of accordingly.

(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)

(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 2nd day of January, 2020.

VC

BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD

C.P. (I.B.) No. 155/59(7)/NCLT/AHM/2019

Coram: **Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)**
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)

<u>In the matter of:</u>

M/s. Parks Infoway Pvt. Ltd.
10, Race Course Road, Abhay Prashal,
Indore,
Madhya Pradesh - 452001.

Applicant/ Petitioner/Liquidator

Versus

The Registrar of Companies,
3rd Floor, 'A' Block, Sanjay Complex,
Jayendra Ganj, Gwalior – 474 009,
Madhya Pradesh.

Respondent

<u>Appearance:</u>

Mr. Arjun R. Sheth, Advocate and Solicitor for the Petitioner.
None for the Respondent.

Order delivered on 2nd January, 2020

ORDER

[Per: Shri Harihar Prakash Chaturvedi, Member (Judicial)]

1. The Applicant/Liquidator has preferred the present I.B. Petition under **Section 59(7)** of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code") **seeking for dissolution** of the applicant company **M/s. Parks Infoway Pvt. Ltd.**

2. The relief as being sought for, by the Applicant Company from this Adjudicating Authority has been stated in the prayer clause of present petition, which reads as under:

   "(a) That the applicant, Parks Infoway Private Limited (in voluntary liquidation) may kindly be ordered to be dissolved;"

3. The necessary information and particulars about the company has been described in the present Company Petition which states that the Petitioner Company was incorporated, under the provisions of Companies Act, 1956, on 09.11.1999 having CIN U72200MP1999PTC013838 as a private company limited by shares with Registrar of Companies, Gwalior, Madhya Pradesh. The company is having two directors namely, **Mr. Swayam Prakash Agrawal (DIN:02097061) and Mr. Karan Mittal (DIN: 00328725).** The registered office of the company is situated

at: 10, Race Course Road, Abhay Prashal, Indore, Madhya Pradesh - 452001.

4. It is stated that the authorised share capital of the company (in voluntary liquidation), i.e. M/s. Parks Infoway Pvt. Ltd. was Rs.1,00,000/- (Rupees One Lakh only) divided into 10,000 (Ten Thousand) equity shares of Rs.10/-(Ten) each.

5. It is also stated that the company was incorporated (as per its Memorandum of Association) for following objectives:-

"To carry on the business of computer software development, internet & intranet service provider, cubic T.V. operators, data processors, data bankers and all other business connected with information technologies and to buy, sale, import-export, modify, alter, develop, repair, service, maintain, support, establish, set-up, organise or otherwise to deal in all computer hardware, software, devices, accessories .....etc."

6. The Applicant (Liquidator) contends that the Petitioner Company was incorporated for the purpose of doing business as per its Memorandum of Association. However, it is contended that in the preceding years, there was no business activity in the company, therefore, the Board of Directors of the company duly considered such aspect of the company and decided to close down it by voluntarily

liquidation thereof because there is non-availability of business prospects for the Company. Therefore, the company, through its Board of Director, **proposed for its voluntary liquidation in its meeting dated 19.02.2018,** whereby, the Board of Directors has approved the draft declaration as stipulated under Section 59(3) of the Insolvency and Bankruptcy Code, 2016 with its requisite majority and signed and verified the same by way of an affirmation. It also convened an **Extra Ordinary General Meeting ("EOGM") on 24.02.2018 to consider, decide and to appoint a liquidator** for the above said purpose of liquidation of the applicant company. It is further contended that **the consents of Creditor of Company for the purpose of voluntary liquidation is not required** because the Company does not have any **debts or liabilities** on the date of passing of Special Resolution in the Extra Ordinary General Meeting ("EOGM") on 24.02.2018.

7. Thus, the **Applicant Company, by its special resolution has decided to go for its voluntary liquidation and further has appointed Mr. Rakesh Chaturvedi** (Registration No. IBBI/IPA-001/IP-P00242/2017-18/10471) to act as a Liquidator for the Company.

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8. It is submitted that the Applicant Company filed declaration signed by the Board of Directors of the Applicant Company along with audited financial statements for the last two years with the **Registrar of Companies, Madhya Pradesh** at Gwalior, in compliance of Section 59(3) of the I.B. Code, 2016 in **E-Form GNL2** as per the provisions of Section 59(3) of the I.B. Code, 2016.

9. It is further submitted that as on **24.02.2018, there was no creditors in the company (either secured or unsecured).** Therefore, in compliance with the regulation 14 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, the Applicant (liquidator) got published a **public announcement in Form A of Schedule I in "Free Press" (English edition) and in "Choutha Sansaar" (Hindi edition) on 24.02.2018, i.e. within the period of 5 days** of his appointment on 24.02.2018 by calling upon the stakeholders, if any, of the company to submit their claims within a stipulated period of 30 days from the date of commencement of liquidation i.e. 24.02.2018. A copy of public announcement was also simultaneously sent to the Insolvency and Bankruptcy Board of India ("I.B.B.I.") with such request to place the same on its website on

27.02.2018. Therefore, the same was published on the website of IBBI.

10. It is further stated that, as per the provisions of Section 59(4) of the I.B. Code (which requires the Company to notify to the ROC and the I.B.B.I. about its voluntary liquidation within seven days of passing of special resolution in its Extra Ordinary General Meeting), the applicant company has duly notified to the ROC about its voluntary liquidation and about its appointment of a liquidator in **Form MGT 14 and Form GNL-2.** It is stated that the same was approved and taken in to record by the Registrar of Companies, Gwalior, M.P.

11. It is also reported that the Applicant (Liquidator) **did not receive any claims or objection(s)** because there are no other stakeholders (other than Equity Shareholders) in response to the advertisement made and published in the newspaper.

12. The Applicant (Liquidator) has furnished a list of shareholders along with shareholding pattern based on the details in the books of accounts and other records of the Company.

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13. It is submitted that in compliance of the Regulation 8(1)(a) and 9 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, the appointed liquidator produced a preliminary report dated 07.04.2018 to the shareholders of the applicant company, within a stipulated period of 45 days from the date of commencement of liquidation, i.e. 24.02.2018.

14. It is also reported that the Applicant (Liquidator), has intimated the commencement of liquidation process of the Company and about his appointment as a liquidator to the Income Tax Authority on 11.05.2018, as per the provision of Section 178 of the Income Tax Act, 1961. It is informed that no reply was received from the Income Tax Officer, Ward 4(1). A copy of such information sent to the Income Tax Department is annexed with the present application (Annexure H). Thus, the Applicant has made compliance of Regulation 14 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

15. In compliance with Regulation 34 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017. It is stated that the Liquidator has opened a bank account in the name of 'M/s. Parks Infoway Pvt. Ltd. (in Voluntary Liquidation)' with the **Union Bank of**

India, Indore, SSI Branch, bearing an **Account Number: 531201010035576** on 06.06.2018 for realisation of all money and for payment to the members as per the requirement of regulations.

16. It is stated that the Applicant (Liquidator), Mr. Rakesh Chaturvedi has properly distributed the proceeds from the realisation of assets (Bank Balance Liquid Assets only) involved in the process of Voluntary Liquidation among the stakeholders which were got transferred from the above stated liquidation account. Thereafter, he closed the aforementioned Bank Account by making payments to the members of the company. The said account was closed on 23.11.2018. A copy of the bank statement showing NIL balance has been annexed at page no.119.

17. It is submitted that in compliance with the provision of **Regulation 38 of the IBBI** (Voluntary Liquidation Process) Regulations, 2017, the Appointed Liquidator prepared a "Final Report" and submitted that same to the Registrar of Companies in E-Form GNL-2 and further communicated to the IBBI through an Email. A copy of the same has been annexed as Annexure K to the present petition (Page No.101).

18. Thereafter, the Applicant (Liquidator) has filed his Preliminary Report dated 07.04.2018 by submitting that **the company is not doing any business.** Its book of accounts reflects that the company has assets having book value of **Rs.39,044/-** (Rupees Thirty Nine Thousand Forty-Four only) which may be estimated to be realise with **Rs.45,588/-** (Rupees Forty-Five Thousand Five Hundred Eighty-Eight only).

19. Thereafter the Liquidator also filed its Final Report dated 18.12.2018 which has been annexed to the present petition wherein, he declared and reported that:

"i) The Company did not had any fixed assets on the date of commencement of voluntary liquidation. Cash Balances were deposited in the liquidation account on 08.06.2018, and Bank Balances were Deposited in liquidation Account on 09.07.2018 & 21.07.2018.

ii) There were no Creditors of the corporate person as on the commencement of voluntary liquidation.

iii) The Balances of the corporate person has been distributed to the satisfaction and details of payment made to the stakeholders are given Annexure A: and

iv) No litigation is pending against the Corporate Person."

It is also stated that as per distribution statement, the company has disposed all its assets from 24.02.2018 (commencement of winding up) to 23.11.2018 (closure of winding up) (Page 119 of Final Report of Paper book).

20. **Therefore, it is stated that the Applicant/ Petitioner/ Liquidator has completed all the statutory procedures as envisaged by the IBC to be completed for the process of Voluntary Liquidation and thus filed this application for final dissolution of the company.**

21. Hence, the present petition filed **under Section 59(7) of the Insolvency and Bankruptcy Code, before this Tribunal, seeking for an order of dissolution of the Applicant/Liquidator/Petitioner's Company**.

22. We heard the submission of the Applicant/Liquidator, Mr. Rakesh Chaturvedi and by perusing the documents annexed therewith, it is evident that the affairs of the company have been **completely wound up,** and its assets have been **completely liquidated**.

23. We took into consideration of the above given facts and circumstances of the present case and duly examined the relevant provisions of Section 59 of the I.B. Code, 2016 which reads as under:

Section 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 (c) 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 (c) 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.

24. By following the above stated statutory provision and the procedure prescribed for a Voluntary Liquidation, we find that the Applicant (Liquidator) has duly complied with the above stated statutory provision and prescribed procedure, to seek voluntary liquidation and dissolution of the petitioner company.

25. A perusal of the material available on record in the present case, it is evident that, **the affairs of the company are completely closed down and the assets of the company are fully liquidated**. **Thus, the petitioner company**

stands wound-up. Hence, the Petitioner Company **is required to be dissolved**. Accordingly, this Adjudicating Authority hereby order that **the company shall stand dissolved with effect from the date of this order.**

26. The Applicant/Liquidator is further directed to serve an authentic copy of this order to the concerned Registrar of Companies, within fourteen (14) days from the date of receipt of this order. The Registrar of Company is directed to take necessary action in respect of dissolved company as per law upon receipt of a copy of this order.

27. Accordingly, the present petition is allowed and stands disposed of.

(Prasanta Kumar Mohanty)
Adjudicating Authority &
Member (Technical)

(Harihar Prakash Chaturvedi)
Adjudicating Authority &
Member (Judicial)

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