



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT – IV
COMPANY APPLICATION NO. IB-849(ND)/2022**

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

IN THE MATTER OF:

SMS PLASTICS TECHNOLOGY PRIVATE LIMITED

...APPLICANT

Order Delivered on: 31.07.2023

CORAM:

**SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)
DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

PRESENT:

**For the Applicant : Mr. Kunal Juneja, Adv. & Mr. S. Abhinav, Adv.
Along with Mr. Hardev Singh, Liquidator
For the ROC : Ms. Shankari Mishra, Adv. & Mr. Himanshu
Singhal, Adv.**

ORDER

PER: SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

1. The Voluntary Liquidation application has been filed by the Liquidator Mr. Hardev Singh on behalf of M/s SMS Plastics Technology Private Limited("Applicant") bearing CIN: U29295DL1995PTC166241 under Section 59 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 seeking the following prayer(s):-
 - A) Pass an order for dissolution of the Company; And/or
 - B) Pass such other order(s) as this Hon'ble Bench of the Tribunal may deem fit and proper in the facts and circumstances of the present case.



2. The brief facts, giving rise to filing of the instant Application, which are just and necessary for adjudication, are narrated hereunder: -

- i. The Applicant i.e., M/s SMS Plastics Technology Private Limited is a private limited company incorporated on 19th June, 1995 under the provisions of the Companies Act, 1956 having CIN: U29295DL1995PTC166241 and registered office situated at 1A-D, Vandhna, 11 Tolstoy Marg, New Delhi-110001.
- ii. It is submitted that the company since its incorporation was carrying on the business of planning, design, engineering, contracting, manufacture, fabrication, assembly, erection commissioning, repair, supervision at site, hire, sub-contract, import export, purchase, sale and otherwise deal and trade in plants, equipment and spares of all kinds especially related to and including in the field of industrial-plastic processing machinery, injection moulding machinery and execution of related turnkey projects; and to undertake the business of providing technical and managerial training and consultancy services, project management relating to machineries, plant, equipments, spares, accessories of all kinds including industrial plastic processing machinery and injection moulding machinery.
- iii. The Liquidator submits that the Board of Directors in their meeting held on 10.01.2019 had passed a resolution for voluntary liquidation of the company in terms of section 59 and for appointing Mr. Hardev Singh as the Liquidator of the Company and also the Board of Directors of the Applicant



Company had signed and verified the Declaration of Solvency by way of affidavits. The same has been filed in e-form GNL-2 vide SRN: H44380509 with the Registrar of Companies, NCT of Delhi and Haryana (“ROC”) on 11.02.2019.

- iv. The Liquidator submits that in the Extra Ordinary General Meeting held on 4th February, 2019 the members of the company had passed the special resolution approving the voluntary liquidation of the company and appointment of Mr. Hardev Singh as the Liquidator of the Company. The same was filed in e-form MGT-14 with the ROC and an intimation to the IBBI was also sent. The same is on record.
- v. The applicant submits that as per Regulation 14(3) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, public announcement was published in the Financial Express (English) and Jansatta (Hindi) on 7th February, 2019, being the newspapers having wide circulation in the NCT of Delhi inviting claims of stakeholders, if any, and to submit their claim within 30 days from the date of commencement of liquidation. The applicant company further submits that the copy of the publication was also sent to the Insolvency and Bankruptcy Board of India for publication on its website.
- vi. The applicant submits that in compliance of the Regulation 9 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulation, 2017, the Liquidator had



prepared and submitted to the Board of Directors of the Company on 18th March, 2019.

- vii. The applicant submits that in terms of Section 178 of the Income-Tax Act, 1961, the Liquidator vide letter dated 6th February 2019 intimated the Income Tax Department regarding his appointment in the company and requested for information regarding pending dues against the Company. The same is on record.
- viii. The applicant submits that the board of directors of the company had provided financial accounts as on 4th February, 2019 to the Liquidator.
- ix. The applicant submits that in compliance of Regulation 34(1) of the IBBI (Voluntary Liquidation Process) Regulations, 2017, the Liquidator had opened a bank account in the name SMS Plastics Technology Private Limited in Voluntary Liquidation with the IDBI Bank, KG Marg Branch on 13th March, 2019.
- x. The applicant in para 17 of the petition submitted that after making payments to all the resident stakeholders, the request was made to IDBI Bank for the list of documents/information required for distribution of proceeds to the non-resident shareholders of the company in terms of Regulation 35(1) of the IBBI Regulations 2017. Thereafter, vide email dated 3rd September, 2019, the IDBI Bank requested for certain documents relating to foreign investment in the Company since the date of its incorporation. Consequently, all relevant documents relating



to foreign investment in the company since the year 1995, which were present in the Company's records, were collated. During this process, it was found that certain documents submitted to/received from the Reserve Bank of India or in connection with foreign investment in equity share capital of the Company were not in the Company's records. Once this issue was taken up with the IDBI Bank, the said bank informed that remittance of liquidation proceeds would not be possible without the said documents. Therefore, between the period July 2019 and September 2022, several correspondences were exchanged between the Liquidator, the IDBI Bank and the RBI (Delhi, Mumbai and Ahmedabad) for approval for remittance of the proceeds from the Liquidation Bank Account. Finally, upon receipt of directions from the RBI to the IDBI Bank, the liquidation proceeds were remitted to the non-resident shareholders of the company by the IDBI Bank from the Liquidation Bank Account on 20th September, 2022.

- xi. The applicant submits that since the delay ensued in completion of liquidation within a period of 12 (twelve) months due to delay in remittance of proceeds to the non-resident shareholders of the Company, the meeting of contributories of the Company in terms of Regulation 37(2) of the IBBI Regulations were held on 12th March, 2020, 18th February, 2021 and 18th February, 2022 respectively.



- xii. The applicant company submits that the Liquidator has made all the payments to stakeholders during the liquidation period in due completion of provisions of the Code. The list of stakeholders to whom payment is made during the liquidation is placed on record and same is extracted below:

LIST OF STAKEHOLDERS

[Regulation 30 of the IBBI (Voluntary Liquidation Process) Regulations, 2017]

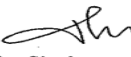

NAME OF THE COMPANY: SMS Plastics Technology Private Limited

CIN: U2929SDL1995PTC166241

LIQUIDATION COMMENCEMENT DATE: February 04, 2019

List of stakeholders on the basis of the proof of claim submitted by the Creditors:

S.No	Details of the Stakeholders	Claim submitted (in Rs)	Claim admitted (in Rs)	Nature of claim (Secured or unsecured)
1.	MPC and CO LLP	4,72,000.00	4,72,000.00	Professional Services



Hardev Singh
Liquidator of SMS Plastics Technology Private Limited
(Registration Number IBBI/IPA-002/IP-N00177/2017-18/10449)
Date: 08.04.2019
Place: Delhi

- xiii. The applicant company submits that the Liquidator had closed the Liquidation Bank Account on 13th October, 2022. The Copy of the request letter dated 7th October, 2022 for closure of Liquidation Bank Account has been placed on record.
- xiv. The applicant company submits that in compliance with the provisions of Regulation 38 of the IBBI (Voluntary Liquidation Process) Regulations, 2017, the Liquidator had prepared his final report as on 28th October, 2022 and the same has been submitted in e-form GNL-2 with the Registrar of Companies, NCT of Delhi & Haryana vide SRN: F34815589 and also submitted to the Insolvency and Bankruptcy Board of India on 28.10.2022.
- xv. The applicant company submits that the Liquidator in compliance of Regulation 38(3) of the the Insolvency and



Bankruptcy Board of India (voluntary Liquidation process) Regulations, 2017 had filed the Compliance Certificate in Form-H annexed as Annexure W at page no. 159-165 of the present application.

3. Notice was issued to the Registrar of Companies (ROC), NCT of Delhi & Haryana (“Respondent”) vide this Adjudicating Authority’s order dated 27.04.2023. In compliance with the above order, ROC had filed its status report dated 24.05.2023, whereby it has stated that as per records, no inquiry/inspection/complaint/legal action has been proceeded/ pending against the Applicant Company.
4. We have heard the submissions made by the Ld. Counsel and perused the documents annexed to the petition. From a perusal of the instant Application and documents annexed therewith, 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 application and, thus, the Liquidator has prayed for an order from this Adjudicating Authority to dissolve the applicant company.
5. The Adjudicating Authority vide order dated 01.12.2022 had directed the Liquidator/applicant to take necessary steps and furnish the following in support of the application:
 - a. Closure letter from the bank concerned regarding the bank account of the corporate entity under voluntary liquidation.
 - b. Last three years Income Tax Returns as filed.



- c. Short affidavit regarding existence or non-existence of any creditors of the company after verification of the books of account.
 - d. Liquidator's verification regarding guarantee/obligation and confirmation regarding existence or non-existence of any guarantee obligation on the company seeking voluntary liquidation.
6. The Liquidator/applicant in compliance of the order dated 01.12.2022 had filed an affidavit dated 14.12.2022 affirming that there are no guarantee obligations on the Applicant Company seeking Voluntary Liquidation. The applicant company placed on record the copies of the Income Tax Returns filed by the Applicant Company for the Financial Years ending 2020, 2021 and 2022 and copy of the closure letter from bank confirming the closure of Bank Account of the Applicant Company is also placed on record.
7. Further, no adverse comments have been received from any statutory authority or from public at large against such dissolution of the Applicant Company, 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 filed with the Registrar of Companies, NCT of Delhi and Haryana and the same are also reported to have been approved. It appears that the affairs of the Applicant Company have been completely wound up and its assets have been completely liquidated and no liabilities have been left unsatisfied. We have also duly considered the merits thereof,



in the light of the statutory provisions of Section 59 of the Code, 2016 read with the relevant regulations.

8. The Liquidator had filed copies of paper publication as well as copy of paper announcement in Form-A. The Liquidator in compliance of Regulation 38(3) of the Insolvency and Bankruptcy Board of India (voluntary Liquidation process) Regulations, 2017 had placed on record the Compliance Certificate in Form-H annexed as Annexure W at page no. 159-165 of the present application.
9. The Liquidator is found to have complied with the statutory provisions to complete the liquidation process by taking necessary steps as it is evident that he had duly opened an account in the name of Corporate Person with 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 of the Applicant Company.
10. Further as per record of the present case, it is seen that the Applicant Company is not found being involved in such kind of business activities, which are detrimental to the interest of the public at large. Furthermore, it is not the case that the proposed dissolution may adversely affect its shareholders/members or is contrary to the provisions of law.
11. By taking into consideration the above stated facts and circumstances, the instant Application (C.P.(IB)/849/ND/2022) stands allowed. 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 Applicant Company i.e., M/s. SMS Plastics Technology Private Limited having CIN: U29295DL1995PTC166241 shall stand dissolved with effect from the date of pronouncement of this order.

12. 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 Applicant 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 certified copy of this order.
13. The Registry is directed to send e-mail copies of the order forthwith to the Applicant Company represented by its Liquidator and its Ld. Counsel for taking further necessary steps.

File be consigned to the records.

Sd/-
DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)

Sd/-
P.S.N. PRASAD
MEMBER (JUDICIAL)