IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court – I)
KOLKATA

CP(IB)/77(KB)2023

Section 59(7) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 38(3) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, for dissolution of the Corporate Person

In the matter of:

MF PROCESS & SOLUTIONS PRIVATE LIMITED (In Voluntary Liquidation**), (CIN: U74999WB2008PTC126530),** having its Registered Office at Shyam Plaza, 1st Floor, IB 3, Aswani Nagar, Baguihati Kolkata 700159;

.... Corporate Person

And

In the matter of:

MR. BIRENDRA KUMAR TRIPATHI, Registration No. IBBI/IPA-003/IP-N00229/2019-2020/12679**,** Liquidator of MF PROCESS & SOLUTIONS PRIVATE LIMITED Flat No. 7, 3rd Floor, 60/2/1, Haripada Dutta Lane, Golf View Apartment, Kolkata 700033.

..... Petitioner/Liquidator

Date of Pronouncement: 31/07/2023

Coram:

Shri Rohit Kapoor	:	**Member (Judicial)**
Shri Balraj Joshi	:	**Member (Technical)**

Appearances (through hybrid mode):

For Liquidator	:	Ms. Manju Bhuteria, Adv. Mr. N. Gurumurthy, PCA

Mr. Birendra Kumar Tripathi, Liq. in person

O R D E R

Per: Balraj Joshi, Member (Technical)

1. This Court convened through hybrid mode.

2. This is an application filed, under Section 59(7) of the Insolvency and Bankruptcy Code, 2016, by the Liquidator, **MR. BIRENDRA KUMAR TRIPATHI** on behalf of the corporate person, **MF PROCESS & SOLUTIONS PRIVATE LIMITED**, for dissolution of the corporate person upon voluntary liquidation. This application is duly supported by an affidavit[1] affirmed by Mr. Birendra Kumar Tripathi, Liquidator.

3. The Corporate Person, **MF PROCESS & SOLUTIONS PRIVATE LIMITED (CIN: U74999WB2008PTC126530)**, through its directors filed with the Registrar of Companies a Declaration of Solvency[2] dated 31/12/2021 as required u/s. 59(3)(a) of Insolvency and Bankruptcy Code, 2016 (the "**Code**") declaring that they have made a full inquiry into the affairs of the company and have formed an opinion that the company has no debt as on current date or that it will be able to pay its debts in full, from the proceeds of assets to be sold in the voluntary liquidation or that the company is not being liquidated to defraud any person in terms of section 59(3)(a) of IBC, 2016.

4. The Board of Directors of **MF PROCESS & SOLUTIONS PRIVATE LIMITED** at the Board Meeting[3] held on 06/01/2022 has taken a resolution to call Extra Ordinary General Meeting ("**EOGM**") of the company to be convened on 28/01/2022 for stakeholders' approval and to pass Special Resolution for the Voluntary Liquidation of the Corporate Person and appointment of Liquidator. A

[1] At pages 13 to 14 of the petition
[2] Annexure "A" at pages 15 to 16 of the petition
[3] Annexure "B" at pages 17 to 18 of the petition

copy of MGT 14[4] was filed with the Registrar of Companies (in short "**RoC**") informing the ROC of Board Meeting dated 06/01/2022.

5. The Voluntary Liquidation Process of the Corporate Person was commenced in terms of the Special Resolution[5] passed by the Corporate Person in the Extraordinary General Meeting (in short "**EoGM**") held on 28/01/2022 approving appointment of **Mr. Birendra Kumar Tripathi having Registration No. IBBI/IPA-003/IP-N00229/2019-2020/12679**, as Liquidator. A copy of MGT 14[6] was filed with the RoC informing the ROC of the Extra Ordinary General Meeting dated 28/01/2022.

6. Copies of Audited Financial Statements[7] for Financial Years 2019-20 and 2020-21 along with record of business operations are also annexed. A copy of GNL-2[8] was also filed with the RoC, West Bengal vide SRN T82947599 dated 24/02/2022 submitting Notice of EGM and Extract of minutes of EGM.

7. Public Announcement[9] was made on 01/02/2022 in two newspapers one in **"***Financial Express***"** (English) and one in *"Aajkal"* (Bengali) in accordance with regulation 14 of the IBBI (Voluntary Liquidation Process) Regulations, 2017 inviting claims from the creditors, fixing the last date as 28/02/2022 in addition to uploading the Public Announcement on the Website of IBBI.

8. Pursuant to the said advertisement published, the Voluntary Liquidator received claims from two claimants, i.e., (1) Employees' State Insurance Corporation ("ESIC") and (2) Employees' Provident Fund Organisation ("EPFO"). Claims were verified and payment were made to the stakeholders. Copy of Register of Claims and Payments[10] made has been annexed with the petition.

9. The Liquidator has duly filed a Preliminary Report[11] dated 15/03/2022.

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[4] Annexure "C" at pages 19 to 22 of the petition
[5] Annexure "D" at pages 23 to 33 of the petition
[6] Annexure "E" at pages 34 to 38 of the petition
[7] Annexure "F" at pages 39 to 80 of the petition
[8] Annexure "G" at pages 81 to 85 of the petition
[9] Annexure "H" at pages 86-89 of the petition
[10] Annexure "I" at page 90 of the petition
[11] Annexure "Q" at pages 115 to 117 of the petition

10. Notice,[12] in terms of section 178 of the Income Tax Act, 1961 as amended , dated 19/05/2022 was served on the Assessing Officer enclosing extracts of the minutes of EoGM held on 28/01/2022 along with a copy of advertisement published on 01/02/2022, through hand delivery and duly receipted by the concerned Office of the Assessing Officer.

11. In terms of regulation 37of the IBBI (Voluntary Liquidation Process) Regulations, 2017, the Liquidator convened a meeting of the contributories for seeking extension of time as the Voluntary Liquidation could not be concluded within one year from the date of commencement of the same. A copy of the minutes of the meeting[13] of the contributories held on 19/01/2023 has been annexed with the petition.

12. The Liquidator obtained the final statement of Receipt and Payments[14] duly audited by the auditor commencing from 28/01/2022 till 22/02/2023, a copy whereof has been annexed with the petition.

13. The Liquidator has also drawn Final Report[15] and submits that the same has ben filed with the Registrar of Companies, West Bengal, through GNL-2[16] and also forwarded a copy of the said report together with evidence of submission to the Registrar of Companies and IBBI by e-mail.

14. In terms of regulation 39 of the IBBI (Voluntary Liquidation Process) Regulations, 2017 after making various legal, statutory and non-statutory payments and after distribution of Funds to the shareholders of the of the company, the Liquidator applied to the ICICI Bank, for closure of the Liquidation Bank Account. A copy of letter of confirmation[17] dated 27/02/2023, issued by the ICICI Bank, 31, Hall & Anderson Building, Ground Floor, Chowringhee Road, Kolkata 700016 stating closure of Bank Account No.000605024906 on 24/02/2023 maintained in the name of MF Process and

[12] Annexure “J” at pages 91-94 of the petition
[13] Annexure “K” at pages 95-98 of the petition
[14] Annexure “L” at pages 99-100 of the petition
[15] Annexure “M” at pages 101-108 of the petition
[16] Annexure “N” at pages 109-112 of the petition
[17] Annexure “O” at page 113 of the petition

Solutions Private Limited (in voluntary liquidation), has been annexed with the petition.

15. It is submitted by the Liquidator that the Liquidator had received an amount of Rs.54,60,941/- from the Income Tax Department as refund of Income Tax and that post making various payments including Liquidation cost paid in full as per provisions of section 53(1) of IBC and regulation 35 of IBBI (Voluntary Liquidation Process) Regulations, 2017, has distributed the proceeds among the shareholders. A statement[18] showing distribution to shareholders has been annexed with the petition.

16. This matter was listed on 13/06/2023 for certain clarifications. The Liquidator vide his letter dated 13/06/2023 duly clarified the points raised at the time of hearing on 13/06/2023 and submitted the following documents in response thereto:

    (a) Original Declaration of Solvency along with Statement of Assets and Liabilities as at 31st December, 2021; and
    (b) Statement of Account maintained by the ICICI Bank in the name of the Corporate Applicant (Corporate Debtor) in liquidation.

17. It is submitted by the Learned Liquidator that –

    a) the assets of the Corporate Person have been disposed of;

    b) the debts of the Corporate Person have been discharged to the satisfactions of the creditors,

    c) no litigation is pending against the Corporate Person;

    d) In terms of Regulation 34 of IBBI (Voluntary Liquidation Process), 2017 the liquidator opened separate account in the name of MF PROCESS & SOLUTIONS PRIVATE LIMITED – In Voluntary Liquidation for realisation and payment to members.

    e) Cash in hand amounting to Rs. 3800/- is kept in hand, after closure of Bank Account for meeting expenses of filing fee with Registrar of Companies and

[18] Annexure "P" at page 114 of the petition

this Adjudicating Authority and other miscellaneous expenses and hence no sums are available for transfer to Companies Liquidation Account.

18. It is further submitted that there was no occasion for sale of assets since the Corporate Person did not have any assets other than advances that have been realised in full and other non-current assets are not recoverable. Incidentally, there is no occasion for any valuation report for the same reason since the assets include only Bank Account.

19. Final Report dated 26/02/2023 was made after completion of the voluntary liquidation process and the same was duly sent to IBBI and the Registrar of Companies as per requirement under regulation 38(2) of the IBBI (Voluntary Liquidation Process) Regulations, 2017. Copies of Preliminary Report dated 15/02/2022, Final Report dated 26/02/2022 together with audited receipts and payments and report thereon are annexed to the petition.

20. The Liquidator has also annexed to the petition audited statements of accounts showing receipts and payments of the Winding Up (Members Voluntary) from 28/01/2022 to 22/02/2023 of the Corporate Person (MF PROCESS & SOLUTIONS PRIVATE LIMITED – In Voluntary Liquidation).

21. We have heard the Learned Counsel for the Liquidator and perused the documents annexed to the Company Petition. It appears that the Corporate Person did not have any assets other than bank balance. We notice that the affairs of the Corporate Person have been completely wound up and its assets are liquidated. The Liquidator has published notice of liquidation in two newspapers inviting claims from stakeholders and in response two claims were received and payments were made. We are satisfied from the documents on record that the voluntary liquidation is not with the intent to defraud any person. There appears to be no impediment in sanctioning the dissolution of the Corporate Person. Consequently, sanction is hereby granted to dissolve the Corporate Petitioner. The records of the company shall be preserved/disposed as required by law.

22. The Liquidator of the Corporate Petitioner is further directed to serve a copy of this order upon the Registrar of Companies, West Bengal, immediately and, in

any case, within fourteen days of receipt of this order. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.

23. CP(IB)/77(KB)2023 shall stand disposed of in accordance with the above directions.

24. The Registry is directed to send e-mail copies of the order forthwith to all the parties and the Liquidator for information and for taking necessary steps.

25. Certified copy of the order may be issued to all the concerned parties, if applied for, subject to compliance with all requisite formalities.

26. File be consigned to records.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, the 31st day of July, 2023

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