

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH, COURT-I**

**CP (IB) 728/MB/C-I/2022**

Under section 59 (7) of Insolvency and Bankruptcy Code, 2016 read with Regulation 38(3) of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulation 2017.

*In the matter of*

**Milind B. Kasodekar, Liquidator of**

**KENDRION (PUNE) PRIVATE LIMITED**

**[CIN: U29268PN2011FTC138221]**

Lunkad Sky Cruise, B- Wing, Survey No. 210/3 Viman Nagar, Pune 411014 MH

**... Applicant/ Liquidator Company**

**Order pronounced on: 24.04.2023**

***Coram:***

Hon'ble Member (Judicial) : Mr. H. V. Subba Rao  
Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

***Appearances (via videoconferencing):***

For the Applicant : Adv. Avinash Khanolkar

**ORDER**

***Per: Shyam Babu Gautam, Member (Technical)***

1. This is a Company Petition filed under section 59(7) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called the "Code") by a

Corporate Person, **KENDRION (PUNE) PRIVATE LIMITED** [CIN: **U29268PN2011FTC138221**] (Petitioner/Corporate Person) through Mr. Milind B. Kasodekar, the Liquidator, for voluntary liquidation of the Petitioner/Corporate person.

Corporate history of the Petitioner/Corporate Person

2. The Petitioner/Corporate Person was incorporated on 07.01.2011 under the Companies Act, 2013, as a Private company with the Registrar of Companies, Maharashtra, Pune. The Registered office of the Petitioner/Corporate Person is situated at Lunkad Sky Cruise, B- Wing, Survey No. 210/3 Viman Nagar, Pune 411014 MH. Therefore, this Bench has jurisdiction to deal with the present petition.

3. The Petitioner /Corporate Person has been incorporated to carry on manufacturing and wholesale providing business which is being reproduced hereinbelow:

*“To carry on the business as manufacturers, producers, processors, makers, converters, importers, exporters, buyers, sellers, wholesalers, suppliers, distributors and service providers of engine cooling systems, air conditioning compressor drives vibration damper, switchable clutches for auxiliary units, fire protection technology, clutch and brake systems and gensets.”*

4. The Authorised Share Capital of the Company is ₹10,51,43,700/- (Rupees Ten Crore Fifty-one lakhs Forty-three thousand and Seven hundred only) divided into 10,51,437 (Ten Lakh Fifty-one thousand Four hundred and Thirty-Seven) Equity Shares of ₹100/- (Rupees One hundred), each and the issued, subscribed and paid-up share capital of the Petitioner/Corporate Person is ₹ 10,51,43,700/- (Rupees Ten Crore

Fifty-one lakhs Forty-three thousand and Seven hundred only) divided into 10,51,437 (Ten Lakh Fifty-one thousand Four hundred and Thirty-Seven) Equity Shares of ₹100/- (Rupees One hundred), each.

Reasons for voluntary liquidation

5. It is stated in the petition that there are two shareholders in the Petitioner/Corporate Person Company. The Petitioner/Corporate Person Company was incorporated as a wholly-owned subsidiary of M/s. Kendrion Finance B.V. a foreign entity holding 99.9% shares and M/s. Kendrion Markdorf Gmh holding 0.1% shares. However, in view of the economic circumstances and developments of Indian combination, with results of the Petitioner/ Corporate Person, the Board of Directors advised to terminate the operations of the Petitioner/Corporate Person. Accordingly, the Board of Directors of the Petitioner/Corporate Person considered the matter at its meeting held on 31.08.2020 and formed an opinion to liquidate the Company Voluntarily which would be in the best interest of all the stakeholder and the Corporate Person would be able to pay its debt in full, from the proceeds or realizations from its assets in the Voluntary Liquidation.
6. The composition of the Board of Directors of the Petitioner/ Corporate Person is as follows:

Name	DIN	Address
Rahul Oza	02616625	B-102, Panchshil Towers, Wagholi, Pune, Maharashtra – 412207
Santhosh Philippe Tantzsch	07427349	FL NO.502, Kumar Residency, PH-2, Mira Road, Opposite Jimmyhu, Koregaon Park, Lane No.6, Pune, Maharashtra - 411001

7. Pursuant to the same, the Board of Directors (BOD) of the Corporate Person, in pursuance of provisions of Section 59(1) of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (hereinafter referred to as the Regulations), approved the Resolution to voluntarily liquidate the Corporate Person under provisions of Sec.59 of the Code read with Regulations and proposed the name of the Applicant to act as Liquidator for the Corporate Person in its meeting held on 31.08.2020. Copy of the said Board Resolution is annexed to the Petition as **Annexure – 2 (pg 24)**.

*Procedural compliances*

8. The Directors of the Petitioner company/Corporate Person have as per section 59(3)(a) of the Code have signed the Declaration of Solvency. The Directors have declared that they have made full inquiry into the affairs of the Petitioner Company/ Corporate Person and formed an opinion that the Petitioner company /Corporate Person will be able to pay its debt in full from the proceeds of assets to be sold realized in the voluntary liquidation, as on the date of declaration and the Petitioner/Corporate Person is not being liquidated to defraud any person. The Declaration of Solvency and Affidavit both are annexed to the Petition as **Annexure – 3 (colly) (pgs 25-39)**.
9. The Directors of Corporate Person have also provided the audited financial statements for the financial Years 31.03.2018 and 31.03.2019 prior to commencement of the Liquidation. Copies of audited financial

states of the Company are annexed to the Petition as **Annexure – 4 (colly) (pgs 40-98)**

10. As proposed and recommended by the Board of Directors and in compliance with the provisions of Section 59(3)(c) of the Code, the Members of the Applicant Company in their Extra-Ordinary General Meeting held on 07.09.2020 passed a Special Resolution under section 59(3)(a) of the Code read with the Insolvency and Bankruptcy Board of India (Voluntarily Liquidation Process) Regulations, 2017 (“the Regulations”) to voluntarily liquidate the Corporate Person under Sec.59 of the Code read with the Regulations and appointed Mr. Milind B. Kasodekar, an Insolvency Professional, having IP Registration IBBI/IPA-002/IP-N00116/2017-18/10285, (as the Liquidator of the Corporate Person. Copies of Special Resolutions along with the Explanatory Statements are annexed to the Petition as **Annexure – 5 (colly) (pgs 99-101)**.
11. It is submitted that the Corporate Person was having only one Creditor as on the date of signing the Declaration of Solvency. Hence an Extra-Ordinary General Meeting of the Creditor of the Petitioner Company/Corporate Person was held on 07.09.2022 and pursuant to Section 59(3)(c) of the Code read with the applicable Regulations, consent of the Creditor was obtained to the commencement of voluntary liquidation of the Corporate Person at the said meeting. Copy of the Special Resolution along with the Explanatory Statement thereto are annexed to the Petition as **Annexure – 6 (colly) (pg 102)**.
12. The members of the Petitioner/Corporate Person at their Extra-Ordinary General Meeting (AGM) held on 07.09.2022 passed a Special

Resolution according to section 59(3)(c) of the Code to liquidate the Petitioner/Corporate Person voluntarily and to appoint Mr. Milind B. Kasodekar, an Insolvency Professional having registration no. IBBI/IPA-002/IP-N00116/2017-18/10285 as the Liquidator of the Company.

13. The Liquidator made a public announcement of commencement of voluntary liquidation in Form A of Schedule I as per regulation 14 of Insolvency & Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 in the *Financial Express* in English (Pune edition) and in *Loksatta* in Marathi (Pune edition) on 12.09.2020 inviting the submission of claims due from the Petitioner/Corporate Person by various stakeholders within 30 days from 07.09.2020 being the date of commencement of voluntary liquidation. Copies of the said notices are annexed to the Petition as **Annexure – 8 (colly) (pgs 108-109)**. The aforesaid public announcement was also submitted to Insolvency and Bankruptcy Board of India (IBBI) and was published on IBBI website on 15.09.2020. Copy of screenshot of the official website is annexed to the Petition as **Annexure – 9**.
14. It is submitted by the Petitioner/Corporate Person that the only asset available with them was Cash and Bank balance, there was no valuation conducted in this regard, as prescribed in the Sec.59(3)(b)(ii) of the Code.
15. It is submitted that pursuant to the public notice, the Applicant received one claim by the Operational Creditor of the Corporate Person namely, by Roedl & Partner Consulting Private Limited for an amount of ₹97,572/- on 21.10.2020 and revised claim received from the same

Operational Creditor for an amount of ₹2,36,340/- on 02.11.2020. The claim was admitted for ₹1,38,768/-.

16. It is further submitted that in compliance with the Regulations 8 & 9 of the Regulations, the Applicant prepared the Preliminary Report about the affairs of the Corporate Person and submitted the same to the Directors (with the suspended powers) of the Corporate Person on 20.10.2020. Copy of Preliminary Report is annexed to the Petition as **Annexure – 10 (pg.112-146)**
17. It is further stated that pursuant to the provisions of Section 178 of the Income-tax Act, 1961, the Applicant intimated the concerned Income-tax Authority viz. Asst. Commissioner of Income Tax, Circle 1, M.G. Road, Pune about the commencement of the liquidation of the Corporate Person and the appointment of the Applicant as the Liquidator vide letter dated 28.09.2020. Accordingly, on 09.03.2021 the Applicant received a 'No Objection' of the Income Tax Department. A copy of the letter of intimation along with copy of NOC received, are annexed to the Petition as **Annexure – 11 (colly) (pg 147-154).**
18. It is submitted that during the Liquidation process the Applicant came to know there is certain refund pending from the Customs Department to the Corporate Person. Applicant made a request to the Deputy Commissioner of Customs, Refund Section, informing Bank details for disbursement of refund claims through the letter dated 05.01.2021. The Corporate Person received refund amounting to Rs.4,83,320/- from the Customs Department on 07.01.2021 showing receipt of refund amount is annexed to the Petition as **Annexure – 12 (Colly) (pg 155-158).**

19. Further, during the Liquidation process, the Applicant received Final Assessment Order by the Sales Tax Department on 12.03.2021 bearing No.0003597381. By the said Order it was intimated that the Corporate Person is required to pay an amount of Rs.15,46,760/- to the Department. Accordingly, the Applicant paid the same on 15.03.2021 from the balance available with the Liquidation Account. A copy of the notice along with the copy of payment challan in Form MTR-Form No.6 annexed to this Petition as **Annexure – 13 (colly)**.
20. The Applicant further states that during the process he received demand notices from the Income Tax Authorities on TRACES portal for total outstanding amount of Rs.57,770/-. The Liquidator verified the demands and accordingly the said amount has been paid on 03.03.2022. Copy of the Bank statement showing payment of outstanding TDS dues of Rs.57,800/- in total on TRACES portal is annexed to this Petition as **Annexure – 14 (pg 168-170)**
21. It is stated that the Corporate Person sought cancellation of GST Registration before the commencement of Voluntary Liquidation. Hence, the GST Registration has been cancelled effective from 03.03.2020 before the commencement of Voluntary Liquidation. Copy of the cancellation letter issued by the GST Department is annexed to the Petition as **Annexure – 15 (pg 171)**.
22. The Applicant, from the Bank balance available with the Bank Account, has made the payments to the Stakeholders of the Corporate Persons as per the estimated statement of assets and liabilities as on the Liquidation commencement date. Copy of the Receipts and Payments

of the transactions carried out during liquidation along with Auditor's Report is annexed as **Annexure – 16 (pgs 172-174).**

23. Further, the Applicant submits that on making all the payments towards dues to the Stakeholders and towards the Liquidation Cost, the surplus amount of Rs.5,56,82,682.12 which was available for distribution amongst the shareholders was returned to the shareholder.
24. The Applicant submits that subsequent to the aforesaid payments, the Liquidation Account has been closed on 27.04.2022. A copy of the statement confirming the closure of the Liquidation Account is annexed as **Annexure – 17 (pg. 175-176).**
25. Further, as contemplated under the Regulation 37(2)(b) of the Regulations since the Liquidation process of the Corporate Person carried out for more than a year the Applicant prepared and presented the Annual Status Report to the contributories on 14.09.2021 for the period from 07.09.2020 till 06.09.2021. Copy of the same is annexed as **Annexure – 18 (pg.177-183).**
26. The Applicant prepared the Final Report on 11.05.2022 in compliance with the Regulation 38 of the Regulations along-with the receipt and payment statement duly certified by the Auditor. Copy of the Final Report along with Form H (Compliance Certificate) showing the realization and payment to the members of the Corporate Person, containing the other details as required under Regulation 38 of the Regulations is annexed to the Petition as **Annexure – 19 (pg. 184-202)**
27. Pursuant to the Regulations 38(2) of the Regulations, the Final Report was filed with the Registrar of Companies, Pune, Maharashtra through

e-form GNL-2 on 12.05.2022. Copies of E-form and challan are annexed as **Annexure – 20 (colly) (pg.203-206)**. Pursuant to the Regulations 38(2) of the Regulations, the Final Report has also been submitted to the Insolvency and Bankruptcy Board of India through email dated 09.06.2022. Copy of the said email is annexed to the Petition as **Annexure – 21 (pg 207)**

28. Further it is stated and submitted that the Registers as required to be maintained under Regulation 10 are also prepared and the Applicant hereby undertakes to provide copies of the same as and when required by this Tribunal.
29. The Applicant further states and submits that there are no amounts lying as unclaimed dividend and there is no amount that has remained as undistributed proceeds in the voluntary liquidation process of the Corporate Person. Consequently, provisions of Regulation 39 of the Regulations are not attracted, and no compliance is required under the said Regulation.
30. It is further stated and submitted that all the liabilities of the Corporate Person have been extinguished and there are no Assets remained to be realized. Also, there is no pending litigation by or against Corporate Person neither before any Court of Law or Authority or Tribunal within the territory of India nor outside the territory of India.

**Affidavit filed by the Liquidator placing the relevant documents on record in support of the Petition:**

31. The Liquidator has placed relevant documents on record through an Affidavit stating that during the Voluntary Liquidation Process of the

Corporate Person the Petitioner has remitted an amount of Rs.5,56,78,444.51 (Rupees Five crore Fifty-six lakhs Seventy-eight thousand Four hundred and forty-four and Paise Fifty-one only) to the shareholder of Corporate Person namely Kendrion Finance B.V. and Rs.4,236.61 (Rupees Four thousand two hundred thirty-six and paise sixty-one only) to another shareholder namely Kendrion (Markdorf) GmbH. It is further stated and submitted that the said remittance has been made to the Shareholders who are foreign entities in consonance with the Master Circular of the Reserve Bank of India *RBI/FED/2015-16/8 FED Master Direction No.13/2015-16 dated January 1, 2016. Copy of the same is annexed to the Affidavit as Annexure – 1*

32. On examining the submissions made by the counsel appearing for the Petitioner/Corporate Person and the documents annexed to the petition and as directed by this Tribunal vide its Order dated 01.07.2022, the Liquidator placed the relevant documents on record through an Affidavit, and copies of which are annexed to the Affidavit in support of the Petition, it appears that the affairs of the Petitioner/Corporate Person have been completely wound-up under provisions of Section 59 of the I&B Code, 2016 read with the Regulations and the Liquidator has filed this petition before this Adjudicating Authority under section 59(7) of IBC seeking an order of dissolution of the Petitioner/ Corporate Person. We are also satisfied from the documents on record that the voluntary liquidation is not with intent to defraud any person. The bank account for Liquidation has been closed.

33. In view of the above facts and circumstances and the submissions made by the Liquidator, the Petitioner/Corporate Person deserves to be dissolved and it is ordered accordingly.
34. The Petitioner/Corporate Person is further directed to serve a copy of this order upon the Registrar of Companies, Maharashtra, Pune within fourteen days of receipt of this order. The RoC shall take necessary action upon receipt of a copy of this order.
35. File be consigned to the records.

**Sd/-**

**SHYAM BABU GAUTAM**

**Member (Technical)**

24.04.2023

SAM/JENNY

**Sd/-**

**H.V. SUBBA RAO**

**Member (Judicial)**