

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-I**

CP (IB) 200/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.

Shri Subodh B Gokhale,

Liquidator,

Diam Circle Private Limited

...Applicant/Liquidator

In the matter of,

Diam Circle Private Limited

[CIN: US1398MH1996PTC096116]

42-43, Bharat Diamond Bourse, Bandra Kurla Complex, Bandra (E) Mumbai, Maharashtra - 400 051

... Corporate Person

Order pronounced on: 09.02.2023

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances (via videoconferencing):

For the Applicant : Mr. Avinash Khanolkar, Advocate

Liquidator (in person) : Mr. Subodh B Gokhale

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 **Diam Circle Private Limited [CIN: US1398MH1996PTC096116]**, (Petitioner/Corporate Person) through Mr. Subodh B Gokhale, 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 10.01.1996 under the Companies Act, 1956, as a Private company with the Registrar of Companies, Maharashtra, Mumbai. The Registered office of the Petitioner/Corporate Person is situated at 42-43, Bharat Diamond Bourse, Bandra Kurla Complex, Bandra (E) Mumbai, Maharashtra - 400 051. Therefore, this Bench has jurisdiction to deal with the present petition.
3. The main objects for which the Petitioner/Corporate Person was incorporated are *inter alia* as follows:

“To carry on the business of preparing, cleaving, sawing, assorting, cutting, polishing, acquiring, buying, selling, disposing of supplying, distributing, dealing. Importing, and Exporting of all kind of rough, cut, polished and semi- polished diamonds including industrial diamonds, emeralds, rubies, pearls, sapphires and other precious, semi-precious and synthetic stones, gold, silver, platinum and other precious metals, jewellery and ornaments of precious metals...”

4. The Authorised Share Capital of the Company is ₹15,00,00,000/- (Rupees Fifteen Crore only) and the issued, subscribed and paid-up share capital of the Petitioner/Corporate Person is 1,46,63,600 (Rupees One Crore Forty Six Lakh Sixty Three Thousand Six Hundred Only) Equity Shares of ₹2/- (Rupees Two Only).

Reasons for voluntary liquidation

5. Due to difficulties in running the business and slow- down in market, the Corporate Applicant has discontinued its business operations and did not provide any services from the year 2015-2016. However, the Company had been meeting its statutory obligations on time.
6. Since there were no prospects of starting the business operations again in the near to mid-term future, the Board of Directors of the Corporate Person thought it advisable to wind up the Corporate Person. Accordingly, the Board of the Directors of the Corporate Person

considered the matter at its Meeting held on 27.04.2020 and formed the opinion that, voluntary liquidation of the Corporate Person would be in the best interest of all the stakeholders and the Corporate Person would be able to pay its debts in full from the proceeds or realizations from its assets in the Voluntary Liquidation.

7. Pursuant to the same, the Board of Directors of the Corporate Person, in pursuance with the provisions of the S. 59 (1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the Code) r/w Regulation 38(3) of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulation 2017 (hereinafter referred as **“the Regulation”**), approved the Resolution to voluntarily liquidate the Corporate Person under provisions of the S. 59 of the Code r/w the Regulation and proposed appointment of the Applicant to act as Liquidator for the Corporate Person in its Meeting held on 27.04.2020. A copy of the audited financial statements and record of business operations of the Company for the previous two years along with the copy of the said Board Resolution are annexed as Annexure 2 (Colly) to the Petition.

8. Along with this Resolution, the directors have also furnished the Solvency Certificate with respect to the Corporate Person in compliance with S. 59 (3) (a) of the Code stating that:

- i. they had made a full inquiry into the affairs of the Company and they had formed an opinion that the company will be able to pay its debts in full, from the proceeds of assets to be sold/realized in the voluntary liquidation; and
- ii. the company is not being liquidated to defraud any person.

The copies of the Solvency Certificates are annexed herewith as Annexure 3 (Colly).

9. The said resolution has been filed with the Registrar of Companies, Mumbai (hereinafter referred as the RoC) in Form MGT 14 on 13.07.2020 The copy of the said form and challan generated are annexed herewith as Annexure 4 (Colly).

10. Further, the said Resolution was recommended to the Members of the Corporate Person for their Approval.

11. Pursuant to the provisions of the S. 59 (3) (c), the Members of the Corporate Persons in their Extra-Ordinary General Meeting held on 02.05.2020 passed Special Resolutions acceding to voluntarily liquidate the Corporate Person under provisions of the S. 59 of the Code r/w the

Regulations and to appoint the Applicant to act as the Liquidator of the Corporate Person.

12. Since the Corporate Person was not having any creditors as on the date of signing the declaration of solvency the question of obtaining consent was not arrived pursuant to the Proviso to the provisions of S. 59 (3) (c) of the Code.
13. As mandated by the provisions of the Companies Act, 2013, the copy of the Special resolutions, passed as afore-stated, have been filed with the RoC through e-form GNL-2 on 28.07.2020 along with copies of the explanatory statements. The copies of the aforementioned Special Resolutions filed with the ROC in the form of E-form GNL - 2 and challan for filing the form, along with the attachments, are annexed as Annexed 5 (Colly) to the Petition.
14. Pursuant to the provisions of the Regulation 14 of the Regulations, the Liquidator made a Public Announcement in Form A on 04.05.2020 about commencement of voluntary liquidation and inviting claims from the Stakeholders of the Corporate Person within 30 days from 02.05.2020 being the date of commencement of voluntary liquidation. The announcement was made in Financial Express, Mumbai Edition (English) and Mumbai Lakshadeep, Mumbai Edition (Marathi). The copies of the said notices are annexed as Annexure 6 (Colly) to the Petition.
15. Further, it may be noted that since the only asset available with the Corporate Debtor was Cash and Bank balance, there was no valuation

conducted in this regard, as prescribed by Section 59 (3) (b) (ii) of the Code.

16. The Applicant did not receive any claims from any Creditor of the Corporate Person in response to the public announcement. Only the shareholders of the Corporate Person filed their claims with the Applicant. The list of stakeholders, in pursuance to the provisions of the Regulation 30, is annexed as Annexure 7 to the Petition.
17. Further, pursuant to the provisions of the Section 59 (4) of the Code, intimation was sent to the RoC and also to the Insolvency and Bankruptcy Board of India (hereinafter referred as the Board) through letter / e-mails dated 06.05.2020 respectively. Accordingly, the Board has displayed name of the Corporate Person over its official Website. The copies of the e-mails and a screenshot from the Board's official website, both, are annexed as Annexure 8 (Colly) to the Petition.
18. Since the Corporate Person already had its running current Bank account with IndusInd Bank, Bandra Kurla Complex Branch, Mumbai with Current Account no. 699102553228 which is a Scheduled Bank, in pursuance of the provisions of Regulation 34 (1) of the Regulations, the Applicant requested the Bank to re-name the existing Bank Accounts to "DIAM CIRCLE MANUFACTURING PRIVATE LIMITED - In Voluntary Liquidation" and also asked the said Bank to make changes in the signatory details of the account.
19. In compliance with the Regulations 8 and 9 of the Regulations, the Applicant prepared the Preliminary Report about the affairs of the Corporate Persons and submitted the same to the Directors (with the

suspended powers) of the Corporate Person on 18.07.2020. The copy Confirm of the same is annexed as Annexure 9 to the Petition.

20. Further, pursuant to the provisions of Section 178 of the Income Tax Act, 1961, the Applicant intimated the concerned Income Tax Authority viz. Circle 5 (1) (2), Mumbai about the commencement of the liquidation of the Corporate Person and the appointment of the Applicant as the liquidator vide letter dated 08.05.2020. The copy of the said E-mail is annexed as Annexure 10 to the Petition.
21. Further that, the competent authority has issued a "No Dues Certificate". The copy of 'No Dues Certificate' as furnished by the Income-Tax Authority is annexed as Annexure 11 to the Petition.
22. The Applicant had also sought cancellation of the registrations of the Corporate Person under various Government Authorities such as GST, VAT and CST. The copy of the cancellation certificate is annexed as Annexure 11A to the Petition.
23. The Applicant, from the Bank balance available with the Bank Account of the Corporate Person, made payments to the Stakeholders of the Corporate Persons in accordance with the estimated statement of assets and liabilities as on the liquidation commencement date. The copy of the Receipts and Payments Statement depicting the transactions carried out by the Applicant during the course of liquidation is annexed as Annexure 12 to the Petition.

24. Further, on making all the payments towards the Liquidation Cost the surplus amount available for distribution amongst the shareholders was returned to the shareholders proportionately.
25. Subsequent to the payment as afore-stated, the Applicant closed the liquidation account. Copy of statement confirming closure of the bank account is annexed herewith as Annexure 13.
26. In compliance with the Regulation 38 of the Regulations the Applicant prepared the Final Report on 15.07.2021 along-with the receipt and payment statement duly certified by the auditor. The copy of Final Report 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 enclosed and marked as Annexure 14 (colly).
27. Pursuant to the Regulation 38 (2) of the Regulations, the final report was filed with the RoC through e-form GNL-2 on 26.07.2021 The said report was also submitted to the Board through an e-mail on 26.07.2021. The copies of the E-form and challan, along with copy of the E-mail sent to the Board for submission of the Final Report are annexed herewith as Annexure 15 (Colly).
28. The Registers as required to be maintained under Regulation 10 are also prepared.
29. The Applicant states and submits that there are no amounts lying as unclaimed dividends 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. The Applicant states that the Applicant has complied with the all statutory compliances of the Code r/w the Regulations in regard to this voluntary liquidation.
31. It is further stated and submitted that all the liabilities of the Corporate Person have been extinguished and there are no Assets of the Corporate Person which remained to be realized.
32. It is further stated and submitted that there is no pending litigation by or against Corporate Person neither before any Court of Law and / or Authority and/or Tribunal within the territory of India nor outside the territory of India.
33. Hence, the Applicant submits that the affairs of the Corporate Person are duly and completely wound-up under provisions of the S. 59 Code r/w the Regulations and hence, the Applicant seeks 'Dissolution' of the Corporate Person from the Records of the RoC and all other applicable records pursuant to the provisions of the S. 59 (7) of the Code.
34. The liquidator submits that details of Receipts and Payments depicting the transactions carried out by the Applicant during the course of liquidation, which are as below:

Sr. No.	Date	Details	Details
---------	------	---------	---------

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-I

CP (IB) 200/MB/C-I/2022

1.	02.05.2020	Opening Balance	1,45,559/-
	09.09.2019	Opening Balance FD no.2705040604	3,07,902/-
		Bank of India – Current A/c	29,374/-
	27.04.2020	Opening Balance FC no.300746221494	1,50,00,000/-
	28.04.2020	Opening Balance FC no.300747317622	10,00,000/-
		TOTAL (A)	1,64,82,835/-
2		Receipts	
		Interest on Fixed Deposit	6,26,906/-
		TOTAL (B)	6,26,906/-
		Total Receipts (A+B)	1,71,09,741/-
3.		Payments	
		Liquidator Fees	(2,50,000)/-
		Advertisement Expenses	(24,192)/-

		Professional Fees – Secretarial Services	(8,07,564)/-
		Professional Fees - Others	(1,20,560)-
		GST and Taxes including Income Tax	(33,471)/-
		Misc Expenses	(7,534)/-
		Bank charges	(36,420)/-
		TOTAL (C)	(12,79,741)/-
4.		Capital Distribution to shareholders	
		R V Mehta – Dubai	(77,56,846)/-
		Supergem M E – Dubai	(69,88,536)/-
		Fabula Holding – Mauritius	(10,84,618)/-
		TOTAL (D)	(1,58,30,000)/-
		Total Payments (C+D)	(1,71,09,741)/-
		Closing Balance (A+B+C+D)	0/-

35. The Liquidator did not receive any other except above claims from any creditors, workmen, employees or other stakeholders in response to the

advertisement published in the newspapers except the above claims tabulated in the tabular format.

36. Further, the copy of the final report dated 21.07.2021 is submitted showing how the liquidation process has been conducted, and receipts and payments pertaining to liquidation since the liquidation commencement date. The assets of the Corporate Person are disposed-off. The debt of the corporate person incurred during liquidation has been discharged to the satisfaction of the stakeholders. The said Final report is filed with the Registrar of Companies, Maharashtra, Mumbai in Form GNL-2 and sent to IBBI vide email dated 21.07.2021, in compliance with section 59(6) of the Code read with regulation 32 and 34-38 of IBBI Regulations. (Annexures 14 and 15 Colly to the Petition respectively).
37. 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.
38. On examining the submissions made by the counsel appearing for the Corporate Person and upon perusal of the documents annexed to the petition, it appears that the affairs of the Petitioner/Corporate Person have been completely wound up and its assets have been completely liquidated. 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 the purpose of Liquidation has been closed.

39. 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.
40. The Petitioner/Corporate Person is further directed to serve a copy of this order upon the Registrar of Companies, Maharashtra, Mumbai within fourteen days of receipt of this order. The RoC shall take necessary action upon receipt of a copy of this order.
41. File be consigned to the records.

Sd/-

SHYAM BABU GAUTAM

Member (Technical)

09.02.2023
DSB

Sd/-

JUSTICE P. N. DESHMUKH

Member (Judicial)