



IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-1
IB-481/ND/2022

IN THE MATTER OF:

Shashikant Shravan Dhamne

...Applicant

SECTION

U/s 59 IBC

Order delivered on 12.09.2023

CORAM:

**SHRI MAHENDRA KHANDELWAL,
HON'BLE MEMBER (JUDICIAL)**

**SHRI RAHUL BHATNAGAR,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open Court vide separate sheets. IB-481/ND/2022 is **allowed**.

Sd/-

**(RAHUL BHATNAGAR)
MEMBER (T)**

Sd/-

**(MAHENDRA KHANDELWAL)
MEMBER (J)**



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH – V, NEW DELHI
(IB)-481/ND/2022

An application under section 59 of the Insolvency and Bankruptcy Code, 2016 read with rule 9 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulation, 2017)

In the matter of:

PELICAN PRODUCTS AND SERVICES
INDIA PRIVATE LIMITED

CIN No. U74140DL2011FTC212742.
Address: Level 2, Elegance, Old Mathura
Road, Jasola, New Delhi- 110025
Through Mr Shashikant Shravan
Dhamne ('Liquidator')

...Petitioner/Corporate Person

Versus

REGISTRAR OF COMPANIES,

NCT of Delhi & Haryana,
4th floor, IFCI Tower, Nehru
Place, New Delhi

.....Respondent



Order Pronounced on: 12.09.2023

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Petitioner/Liquidator : Adv. Mr. Iswar Mohapatra
For the Respondent : Adv. Ms. Shankari Mishra

ORDER

PER: SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

1. This application is filed by Mr Shashikant Shravan Dhamne, (Liquidator) on behalf of Pelican Products and Services India Private Limited (for Brevity 'Corporate Person/Applicant Company') under section 59 of the Insolvency and Bankruptcy Code, 2016 ("IBC") read with Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 ('Voluntary Liquidation Regulations') for seeking the following reliefs:-

- i. That the Corporate Person i.e., Pelican Products and Services India Private Limited (in Voluntary Liquidation) may kindly be ordered to be dissolved;



- ii. Liquidator to file the certified copy of the dissolution order with the Registrar of Companies, NCT of Delhi and Haryana;
 - iii. The liberty be reserved to the Petitioner and all other persons interested in this Petition to apply to this Hon'ble Tribunal herein as and when occasion may arise for any direction that may be necessary;
 - iv. To pass such order or further order(s) as this Hon'ble Tribunal may deem fit and proper in the circumstances of the Present matter
- 2.** Brief facts giving rise to the filing of the instant Company Petition, which is just and necessary for adjudication, are narrated hereunder:-
- a) The Corporate Person, i.e. Pelican Products and Services India Private Limited, is a company incorporated on 17.01.2011 under the provisions of the Companies Act, 1956, having CIN No. U74140DL2011FTC212742 and its registered office is situated at Level 2, Elegance, Old Mathura Road, Jasola, New Delhi-110025, India.
 - b) The main object of the company was to engaged in business of providing sales supports to Pelican USA, for their products. The Memorandum of Association and Articles of Association of the Company is attached as Exhibit "A" in the present petition.
 - c) The Board of Directors in their meeting held on 10.02.2021 had proposed the resolution for voluntary liquidation of the Applicant Company and majority of its



directors of the company had signed the declaration of solvency by way of affidavit dated 16.02.2021 in compliance with the provisions of Section 59(3) of the Code, 2016. Copy of which is attached as Ex.B, Ex. C-1 and Ex. C-2 respectively in the present petition.

- d) The Extra-Ordinary General Meeting of the Corporate Person was held on 01.03.2021 wherein a special resolution relating to voluntary liquidation of the company and appointment of Mr Shashikant Shravan Dhamne (erstwhile liquidator), Insolvency Professional [IBBI/IPA-001/IP-P00237/2017-2018/10466] as Liquidator who has given his consent to act as Liquidator was passed and the same has been notified to Registrar of Companies by filing form MGT-14 and GNL-2. Copy of which is attached as Ex. D, E-1 and Ex. E-2 respectively in the present petition.
- e) As per Regulation 14 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, Public Announcement in Form A of Schedule I was published in the English and in Hindi (Regional Language) newspapers on 03.03.2021, being the newspapers having wide circulation at the location of the registered office of the company inviting claims of stakeholders, if any, and to submit their claim within 30 days from the date of commencement of liquidation. Further, the copy of the publication was also forwarded to the Insolvency and Bankruptcy Board of India for publication on its website and to Regional Director (Northern Region), Registrar of



Companies, NCT of Delhi & Haryana on 03.03.2021. Copy of which is attached as (Ex.F, Ex. H-1, Ex, H-2, and Ex. H-3) respectively in the present petition.

- f) The Registrar of Companies ('Respondent') was duly notified about the voluntary liquidation of the company and appointment of Liquidator in form MGT-14 along with the certified copy of the special resolution and the explanatory statement. Further, the Income Tax Department was also notified on 03.03.2021 about the commencement of the Voluntary Liquidation of the Corporate Person.
- g) The liquidator in compliance of the Regulation 8(1)(a) and 9 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, had prepared and submitted preliminary report and submitted to the Corporate Person on 15.04.2021 and List of Stakeholders was submitted to IBBI on 15.04.2021. Copy of which is attached as Ex. J and Ex. K in the present petition.
- h) The applicant company submits that in compliance with the provisions of Regulation 38 of the IBBI (Voluntary Liquidation Process) Regulations, 2017, the Liquidator has prepared his final report consisting of Audited Account and the same has been submitted in form GNL-2 with the Registrar of Companies, NCT of Delhi & Haryana on 25.03.2022 and also at the Insolvency and Bankruptcy Board of India on 24.03.2022. The copy of which is



annexed as Exhibit “O”, “O-1” and “O-2” Respectively in the present petition.

- i) The Petitioner further submitted that, at the commencement of Liquidation, the Company had a bank account with HSBC, Mumbai bearing number 054-601331-001. Post commencement of liquidation, name of the said bank account was duly changed to "Pelican Products and Services India Private Limited” (V L). Further submitted that, all the payments were made from the said bank account in accordance with the section 53(1) of the Code read with regulation 35(3) of the Regulations and on completion of Liquidation the Liquidator made an application to duly close the Bank Account and received Closure Certificate dated 11th March 2022 from the Bank. Copy of the said certificate of closure of Bank Account is annexed at Exhibit "L" in the Petition.
- j) Further the Applicant Company submitted the Declaration of Solvency by way of affidavits dated 16.02.2021, deposing therein that the company is not being liquidated to defraud any person, attached as Exhibit “C-1”
- k) Corporate Person Submitted that the Company has only two shareholders and the List of shareholders is annexed as "Exhibit- M" in the present petition.
- l) Further the Petitioner Company submitted that the corporate person was into the business of "providing sales support services to Pelican USA, for their products" and the Foreign Direct Investment is permitted under the Automatic Route.



m) It is submitted that, in terms of IBBI Circular No. IBBI/LIQ/45/2021; dated: 15th November, 2021 had issued a Clarification stating the Liquidator/Insolvency Professional handling voluntary liquidation process is not required to seek any NOC/NDC from the Income Tax Department as part of compliance in the said process. Copy of the circular is attached as "Exhibit- P" in the present petition.

n) Applicant submitted that no other assets of the Corporate Person were left to be realized.

o) Further Corporate Person submitted that the Compliance Certificate in Form-H under Reg-38(3) of IBBI(Voluntary Liquidation Process Regulation), 2017 is attached as "Exhibit - Q" in the present petition.

3. 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 Petitioner 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.

4. Notice was issued to the Registrar of Companies (RoC), NCT of Delhi & Haryana ('Respondent') and other concerned Statutory Authorities vide this Adjudicating Authority's order dated 01.07.2023. In compliance with the above order, RoC had filed



its status report dated 22.08.2022, whereby the RoC had raised certain objections. The Petitioner Company through its Liquidator had filed reply/response dated 22.09.2022 to the observations raised by the RoC. The details of the same are summarised below :

S. No.	Observations by RoC in Report dated 22.08.2022	Reply of the Liquidator vide its affidavit dated 22.09.2022	Additional Report by the RoC vide affidavit dated 12.01.2023
1.	It is Submitted that, as per MCA records, company failed to file Balance Sheet and Annual Return for the period of 01.04.2020 to 28.02.2021, therefore, the company has violated provisions of section 137(1) & 92(4) of the Companies Act, 2013.	It is submitted that, as far as filing of 'financial statements' under section 137 (1) of the Companies Act, 2013, are concerned, as per clause (40) of the section 2 of the Companies Act, 2013, which required to filed with the ROC within thirty days of the date of annual general meeting. Further the Liquidator referred the definition of 'financial year' which is defined in clause (41) of the	It is submitted that the GNL-2 form vide SRN F24804197 dated 14.09.2022 was filed by the Liquidator enclosing only 2 pages of un-audited financials in place of complete audited Balance Sheet for the period 01.04.2020 to 28.01.2021. Therefore, true compliance of provision of section 137(1) is still pending on part of the Appellant company.



		<p>section 2 of the said Act as "financial year, <i>in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up...</i>".</p> <p>and submitted that, from reading of the foregoing provision, it is clear that the provision of the Companies Act, 2013 only envisage preparation of 'financial statement' in relation to financial year' i.e. ending on 31st March</p>	
--	--	--	--



		<p>of each year and does not envisage preparation of the financial statement for the interregnum period i.e. from 01.04.2020 to 28.02.2021.</p> <p>It further submitted that, the liquidator has prepared the unaudited account made up to liquidation commencement date i.e. 01.03.2021 and filed the same with the RoC in Form GNL-2 vide SRN F24804197 on 14 September, 2022. The copy of Form GNL-2 is annexed as Exhibit B in this reply</p>	
--	--	---	--

- 5.** In view of the reply filed by the Liquidator on the observation 1 of the RoC, the RoC filed its Additional Affidavit dated 12.01.2023 whereby submitted that the Corporate Person had not made the true compliance of Section 137(1) of the Companies Act, 2013.



- 6.** It is the submission of the Petitioner that Voluntary Liquidation Process of the Corporate Person was commenced on 01.03.2021 and therefore, immediately on commencement of Voluntary Liquidation, a separate accounting has to be done by the Liquidator as prescribed under Voluntary Liquidation Regulations. Therefore, there is no occasion or requirement for the Liquidator to prepare the Financial Statements or Annual Returns pertaining to the Financial Year 2020-21 under Section 137 of the Companies Act, 2013.
- 7.** To support its contention, the Petitioner had relied on the Hon'ble NCLAT Judgement in *Om Prakash Agarwal, Liquidator-S. Kumars Nationwide Limited (C.A(AT)(Ins) No. 624 of 2020* wherein it was held that the provision of the Code and Regulations does not assign a duty on the Liquidator to prepare Financial Statements."
- 8.** 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 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.
- 9.** From the records, this Adjudicating Authority observes that the Applicant had filed the Unaudited Balance Sheet along



with the notes from 1.04.2020 till the liquidation commencement date i.e 1.03.2021 to the RoC in GNL-2. Considering the fact that now the management of the Corporate Person rests in the hands of the Liquidator and no decisions are to be taken by the shareholders with respect to the company or for approval of accounts, we are of the view that the filing of the Unaudited Account of the Corporate Person for the period 1.04.2020 to 01.03.2021 in Form GNL-2 would suffice the requirement and therefore, compliance of provision of section 137(1) seems no impediment in the approval of the present application.

- 10.** Further, this Adjudicating Authority vide order dated 18.05.2023 had directed the Liquidator to give clarification through affidavit that how the petitioner company can be treated as a solvent company so as to be eligible for voluntary liquidation under Section 59, if the profit and loss account shows a negative balance of Rs. 63 lacs and more.
- 11.** The Liquidator in compliance of the order dated 18.05.2023, had filed affidavit dated 05.06.2023 and submitted that the negative balance appearing in the Profit and Loss Account pertains to the period from 1st April 2020 to liquidation commencement date i.e. 1st March 2021. Further submitted that, the Corporate Person was having INR 1,24,52,891/- as an opening positive balance in reserves and surplus. Hence, after adjusting loss of INR 63,90,965/- for the period there from the Corporate Person is left with the surplus of INR 60,61,926/- in its reserves and surplus account as on



the liquidation commencement date. Further, the Corporate Person has no liabilities as on liquidation commencement date. Further, as on liquidation commencement date the Corporate Person has INR 64,68,926/-in its bank account. The copy of said financial statement is annexed as Annexure B with the affidavit.

- 12.** The Corporate Person vide affidavit dated 13.01.2023 had placed on record the acknowledgement of filing of Income tax Return for last 3 years 2019-20, 2020- 21 & 2021-22.
- 13.** 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 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 Corporate Person 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.



- 14.** From a perusal of the instant Application and documents annexed therewith, it is seen that the Liquidator has 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. 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 Ex.Q at page no. 157-162 of the present application.
- 15.** Further as per record of the present case, it is seen that the Applicant Company is not found 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 liquidation may adversely affect its shareholders/members or is contrary to the provisions of law.
- 16.** By taking into consideration the above stated facts and circumstances, the instant Application (C.P.(IB)/481/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 Corporate Person i.e Pelican Products and Services India Private Limited, having CIN No. U74140DL2011FTC212742 shall stand dissolved with effect from the date of pronouncement of this order.



- 17.** 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.
- 18.** 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.
- 19.** File be consigned to the Record Room.

Sd/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)