

**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
SPECIAL BENCH (COURT-II)**



IB-181/ND/2022

(UNDER SECTION 59(7) OF THE INSOLVENCY & BANKRUPTCY CODE, 2016 R/W THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (VOLUNTARY LIQUIDATION PROCESS) REGULATIONS, 2017.)

IN THE MATTER OF:

PAMBA ENGINEERING & CONSTRUCTION PRIVATE LIMITED

Through Liquidator Mr. Varun Goel,
Registered Office at:
1750, Mahagun Moderence, Sector-78
Noida – 201301

.....PETITIONER/APPLICANT

Order delivered on 17.10.2023

CORAM:

**SHRI BACHU VENKAT BALARAM DAS
HON'BLE MEMBER (JUDICIAL)**

**Dr. BINOD KUMAR SINHA
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Liquidator : Mr. Rishab Jain, Advocate along with Liquidator Mr. Varun Goel
For the ROC : Ms. Sweety Kumar, AROC

ORDER

PER: Dr. BINOD KUMAR SINHA, MEMBER (TECHNICAL)

1. The present application has been filed the Liquidator, on 24.02.2022, before this Adjudicating Authority, under Section 59(7) of the Insolvency & Bankruptcy Code, 2016 r/w Insolvency and Bankruptcy Board of India Regulations, 2017. ("Voluntary Liquidation Regulations")

2. The Applicant Company, PAMBA Engineering & Construction Private Limited is having CIN No. U45201DL1996PTC079150 and having its Registered Office at B11, 2nd Floor, Pamposh Enclave, New Delhi – 110044.

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3. The Board of Directors of the Company on 12.11.2021 passed a special resolution for approval of voluntary liquidation of the company and appointed Mr. Varun Goel, as the Liquidator of the Company to liquidate the company.

4. The declaration of solvency as required under Section 59 of the code was signed by the Directors and accordingly filed with ROC. The copy of e-form GNL-2 along with the Challan for filing of the said form as proof of filing of declaration of solvency signed by directors are filed along with the application.

5. The Public Announcement in Form-A was issued by the Liquidator and was uploaded on the website of IBBI. It is submitted that the Public Announcements were also published in the 'Financial Express' Newspaper in English and 'Jansatta' Newspaper in Hindi on 17.11.2021.

6. The Form MGT-14 was filed with the Registrar of Companies on 17.11.2021 to notify the Member's Voluntary Winding-up of the Company.

7. The intimation to the Income Tax Department regarding the Voluntary Liquidation of the Company was sent on 16.02.2021 requesting to file a claim of any demand, if any, outstanding against the Company.

8. As per Regulation 35 of IBBI (Voluntary Liquidation Process) Regulations, 2017, Liquidator made interim and final distribution among the stakeholders/contributors on 24.01.2022 & 27.01.2022.

9. That pursuant to the provisions of Regulation 38 of IBBI (Voluntary Liquidation Process) Regulations, 2017, Liquidator has filed the final report consisting of: -


a) The details of audited accounts, showing receipts and payments pertaining to liquidation period since the liquidation commencement date.

b) Showing how the winding up has been conducted and the property of the company has been disposed of and debt is discharged.

10. Subsequently, the Liquidator paid all the liabilities of the Company and the surplus/residual amount was also paid to the shareholders of the Company in the following manner: -

Receipt	Estimated Value (Rs.)	Value Realized (Rs.)
Cash at Bank	3,22,572.15	3,22,572.15
Cash in hand	76,043.00	76,043.00
Fixed Deposits in Bank	22,63,861.00	22,63,861.00
Fixed Assets	-	-
Trade Debtors	-	-
Security Deposits	-	-
Loans & Advances	20,00,000.00	20,00,000.00
Interest on Fixed Deposits (Net of TDS)	60,136.00	60,136.00
Total Realization (A)	47,22,612.15	47,22,612.15
Liquidator Fees		2,00,000.15
Publication Expenses		6,000.00
Professional charges paid to auditor		94,400.00
ROC Charges		7,600.00
Bank Charges		53.00
Total Payments (B)		3,08,053.15
Net Realization available for Shareholders		44,14,559.00
Dividend Per Share Rs. 13.038/- per share of Rs. 10/- each.		

Details of distribution among the shareholders



Name of Shareholder	No. of shares	Funds released
Shaju Sainudin	1,35,500	17,66,658
A. T. Sainudin	1,08,290	14,11,892
Shaina Sainudin	68,500	8,93,108
Reshmi	26,300	3,42,901
	3,38,590	44,14,559

11. After the payment of the surplus/residual amount to the shareholders of the Company, the bank account of the Company was also closed, and thus, the liquidation process has been completed.

12. As per the provisions of Section 59 of the IBC, 2016 read with Regulation 38 of the Voluntary Liquidation Process, 2016 the Liquidator has enclosed his Final Report on the liquidation of the Company.

13. The Registrar of Companies (ROC) filed a report in compliance with the direction given by this Tribunal vide order dated 11.04.2022.

14. The ROC in its report has stated that:

a) As per MCA-21 records, company failed to file Balance Sheet and Annual Return for the Financial Year 2020-21, therefore the company has violated provisions of Companies Act, 2013.

15. The ROC has further stated that as per the data available, no inquiries/inspections/complaints/legal action is pending against the Company. However, the ROC has recorded an observation that as per MCA21 records, the Company failed to file the Balance Sheet and Annual Return for the for the year 2020-21 before MCA and therefore the Company

has violated provisions of Section 137(1) and 92(4) of the Companies Act, 2013.



16. In response to the ROC observations, the Ld. Counsel appearing for the applicant company has placed on record a rejoinder by way of an affidavit and submitted that, in the present matter voluntary winding up was commenced on 12.11.2021, therefore the deponent in the capacity of liquidator filed Balance sheet and Annual Return for the financial year ending on 31.03.2021 by way of attaching e-form No-AoC-4 and MGT-7A in e-form no-GNL-2 vide SRN T83023960 which is duly approved by the ROC, Delhi and Haryana and the same is available on record. The Ld. ROC, Delhi and Haryana has duly acknowledged the filing of e-form No-AoC-4 and MGT-7A in e-form no-GNL-2 vide SRN T83023960 in para no-5(d) at page no-2 of the reply dated 02.06.2022. ROC has no objection to the instant application of Voluntary Liquidation and same has been recorded in Order dated 29.09.2022.

17. We have heard the submissions made by the Ld. Counsel appearing for the Company as well as the ROC and perused the records.

18. This Adjudicating Authority vide Order dated 12.09.2023 directed the Liquidator to file an affidavit clarifying the following issues: -

i) Whether the TDS on dividend was deducted and paid by the Liquidator.

ii) Whether the Form H has been filed or not, if not, Liquidator shall take necessary steps to file the same.

19. In response, the Liquidator has filed additional affidavit dated 22.09.2023 wherein, as regards to the first issue the Liquidator submitted that, the securities premium will not fall within the meaning of accumulated profits as mentioned in explanation to section 2(22) of the Income Tax Act, 1961. Therefore, the aforesaid distribution of Rs.



44,14,559/- to the shareholders/contributories will not fall within the meaning of dividend for the purpose of Income Tax Act, 1961 and for the same reason TDS was not deducted by the Liquidator. Further, with regards to the second issue it is observed from the application that Form H has been filed by the Ld. Liquidator which is annexed as Annexure – A and same is available on record.

20. We further found that the bank account of the Company has been closed, and the Applicant, in compliance with section 179 of the Income Tax Act, 1961 has successfully intimated the Income Tax Department. We further found that the ROC has no objection to the instant application of Voluntary Liquidation.

- 1.** We further observed that the Liquidator has paid all the liabilities of the Companies and the surplus/residual amount also has been paid to the shareholders of the Company. It appears to us that the affairs of the Applicant Company have been completely wound up and its assets have been completely liquidated. No liabilities have been left unsatisfied. We are satisfied from the documents on record that the voluntary liquidation is not with the intent to defraud any person.
- 2.** Considering the facts and circumstances of the case, we pass an order of liquidation of the Company with following conditions: -
 - i)* The Liquidator of the Applicant Company is further directed to serve a copy of this order upon the Registrar of Companies, NCT of Delhi and Haryana, immediately and, in any case, within fourteen days of receipt of this order. The RoC shall take further necessary action upon receipt of a copy of this order. It is further directed to send copy of this order to the IBBI.



ii) The liquidator is also directed to preserve a physical or electronic copy of the reports, registers and books of accounts referred to in Regulation 8 and Regulation 10 of the Voluntary Liquidation Regulations for at least 8 years as per Regulation 41 the Voluntary Liquidation Regulations either with himself or with an information utility.

iii) In light of the above facts and circumstances, the Present Application IB – 181 (ND) 2022 stands ***allowed***

SD/-
(Dr. BINOD KUMAR SINHA)
MEMBER (TECHNICAL)

SD/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)