

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP(IB) No. 13/Chd/Hry/2022

**Under Section 59 of the Insolvency and
Bankruptcy Code, 2016**

In the matter of :

Fenwal India Private Limited

having its registered office at
Echelon Institutional Area, Plot No.-11,
Sector-32 Gurgaon 122001, Haryana India
CIN No. U24305HR2007PTC040846
Income Tax Jurisdiction: Income Tax Officer ward4(2),
2nd Floor HSIIDC Building, Nr, Shankar Chowk, NH-8,
Udyog Vihar, Guguram.

... Petitioner

Judgment delivered on: 12.06.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

For the Petitioner:

Mr Umang Goyal, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present Company Petition has been filed by the Liquidator, Ms Mamta Binani, on behalf of Fenwal India Private Limited under Section 59 of the Insolvency and Bankruptcy Code, 2016 (in short, The Code) seeking the relief that the Petitioner Company be dissolved as per the provisions of the Code and the Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

2. Brief facts giving rise to the filing of the instant Company Petition, which is just and necessary for adjudication, are narrated hereunder:-

2.1 It is submitted that the company was incorporated on 18.01.2007 and the main object of the company was to carry on the business of buying, selling, importing, exporting, marketing, distributing, supplying, manufacturing, producing, processing, formulating, labelling or otherwise treating, packing and repacking, developing all types, descriptions, specifications, strengths and applications of pharmaceuticals products, healthcare products, biotechnological products, medical services, instruments, apparatus, appliances, medical imaging and supplies. The Certificate of Incorporation and Memorandum of Association of the Company are attached as Annexure-A-1 of the petition.

2.2 The Authorized Share Capital of the Applicant Company is Rs.36,95,00,000/- divided into 3,69,50,000/-, equity shares of Rs.10/- each. The petitioner company has decided to shut down the corporate person because there were no operational and activities. As there is cost and time involved in ensuring compliance, a resolution to liquidate the corporate person voluntarily as per the provisions of Section 59 of the Insolvency and Bankruptcy Code 2016 has been passed in the board meeting.

2.3 It is submitted that the declaration of solvency made by the Directors of the company along with audited financial statements and record of business operations was filed with the Registrar of Companies in E-form GNL 2 on 19.02.2020 (Annexure-5). The company in their Extraordinary General Meeting held on 07.02.2020 passed a special resolution approving the voluntary liquidation of the company and the appointment of Ms. Mamta Binani, Insolvency Professional, to act as Liquidator of the company. The certificate true copy of the aforesaid special resolution was filed with the Registrar of Companies in Form MGT-14 on 13.02.2020 which is part of Annexure -5 of the petition. The details of assets, their

realizable value along with outstanding liabilities as on 31.01.2020 has been issued by Anush Kumar Sivaraman, Registered Valuer by report dated 02.02.2020 (Annexure-6). The public announcement was made on 12.02.2020 (Annexure -7) in four newspapers i.e., 'Financial Express' Delhi NCR Edition in English, 'Jansatta, Delhi NCR Edition in Hindi, 'Financial Express, Pune Edition in English and 'Loksatta' Pune Edition in Marathi. The last date for submission of claims was fixed as 08.03.2020. The aforesaid public announcement was also published on the website of the Insolvency and Bankruptcy Board of India which is attached as Annexure-8.

2.4 As per Regulation 34(1) of IBBI (Voluntary Liquidation Process), Regulations, 2017, the liquidator has arranged to re-nomenclate the name of the bank account of the company as 'Fenwal India Private Limited (In Voluntary Liquidation)'. The preliminary report of the company was prepared on 23.03.2020 in terms of Regulation 9 of IBBI (Voluntary Liquidation Process), Regulations, 2017.

2.5 The petitioner company has also filed audited financial statements for the year ending on 31.03.2016, 31.03.2017 and 31.03.2018

2.6 It is submitted by the liquidator that as per the provisions of Section 178 of the Income Tax Act, 1961, the Liquidator has intimated the commencement of liquidation and the appointment of the liquidator to the Income Tax Department by letters dated 14.02.2020. The Income Tax Department has issued No Dues Certificate dated 05.10.2020 stating which is attached as Annexure-14 of the petition. The Liquidator has sent the letter towards surrendering the Employee Provident Fund Registration, Import Export Code and Punjab Shops and Commercial Establishment Registration with the concerned authorities on 24.08.2020 which are attached as Annexure -15 to 17 respectively of the petition.

2.7 It is further stated that from the date of public announcement, the liquidator has not received any claim/proof of claim from any of the stakeholders concerned with the Corporate Person. All the assets as available as on the liquidation commencement date have been recovered and a copy of audited accounts of the liquidation dated 11.11.2021 showing receipts and payments pertaining to the liquidation period i.e. 07.02.2020 to 11.11.2021 and the same is attached as Annexure-18 of the petition

2.8 It is mentioned that all the assets as available as on the liquidation commencement date have been recovered, except DVAT refund. Liquidator faced challenges to realize an amount of INR 5,15,633 which is pending as refund from the DVAT department. It is further stated that the liquidator took various steps to get back the refund from Delhi Value Tax Department, but no fruitful result has come out. It is mentioned that there are three fixed deposit accounts in the name of Fenwal India Private Limited, which is under lien by Delhi Value Tax Department.

2.9 It is further stated that as per the information received from the Corporate Person, all the assessments are complete and the Corporate Person had nil business transactions since 2014, there could not be any demand coming in from the DVAT department.

2.10 The matter was earlier reserved on 20.02.2023 and it was re-listed on 22.02.2023 to sought clarifications on the point of non-closure of the bank account and to show documents evidencing that all proceedings with the Delhi VAT department are complete. In compliance of the same, the liquidator has filed a compliance affidavit by Diary No. 01485/10, dated 30.05.2023 wherein assessment orders pertaining to the DVAT Department till march, 2014 are attached as Anenxure-A of the aforesaid affidavit. It is submitted that there is no record after

2014 on the website of DVAT portal of corporate person and the copy of the screenshots from the portal of DVAT Department is attached as Annexure-B. It is also submitted that there was no business of the corporate person since 2014 and they filed Nil return till 2017-18. Moreover, the company has applied for the cancellation of DVAT registration by application dated 12.04.2018 (Annexure-C of Diary No. 01485/10, dated 30.05.2023). The certificate issued by DVAT Department is attached as Annexure-21 of the main application.

2.11 The liquidator and the stakeholders has decided to relinquish the refund of Rs. 5,15,633/- in due deliberation with the stakeholders. In this regard, the liquidator has called a meeting of contributors and has intimated the same to the contributors.

2.12 The liquidator in pursuance with Regulation 37(2)(b) of IBBI (Voluntary Liquidation Process) Regulation, 2017 conducted the First Annual Contributory meeting of Corporate Person and presented the Annual Status Report and the copy of minutes of meeting is enclosed as Annexure-20 of the application.

2.13 The Liquidator has received an email along with the letter of Closure of the Bank Account from HSBC Bank on 30.05.2023, that the Bank Account No. 052-863412-001 maintained by the Corporate Person with HSBC Bank, 5th Floor, Amar Avinash Corporate Plaza, Bund Garden Road, Pune Branch has been closed. The copy of the email along with the Account Closure letter sent by HSBC Bank is attached with the affidavit as Annexure-D

2.14 The final report of the liquidation process was prepared on 12.11.2021 along with the audit receipt and payment account from 07.02.2020 to 11.11.2021 demonstrating that assets and debts of the corporate persons has been disposed and discharged and other details as required under Regulation 38 of the IBBI (Voluntary Liquidation Process) Regulations, 2016 (Annexure 23) and was

submitted to the Registrar of Companies in e-form GNL 2 on 18.11.2021 and also to IBBI Board on 18.11.2021.

2.15 It is stated that subsequent to the payment to the creditors and towards liquidations expenses, the balance amount becomes nil. A copy of the email dated 30.05.2023 from HSBC Bank for the closure of the bank account is attached as Annexure-D of Diary No. 01485/10, dated 30.05.2023. The final receipt and payment account of the liquidation account was audited on 11.11.2021 (Annexure 18).

3. On the basis of the aforementioned grounds and reasons, the company, through the liquidator, has prayed for an order from this Adjudicating Authority for the dissolution of the Petitioner Company and making a declaration to this effect.

4. Notice was issued to the concerned Registrar of Companies (RoC). The affidavit of service was filed vide Diary Nos.01485/3 dated 10.02.2022. In compliance with the above order, RoC filed its report vide Diary No.01485/4 dated 26.04.2022, whereby it has stated that no inquiry/inspection/complaint/legal action has been proceeded/pending against the concerned company. It is further stated that the company has failed to file balance sheets and annual returns for the period from 01.04.2020 to 06.02.2020 which results in the violation of Section 137(1) and 92(4) of the Companies Act, 2013. The Insolvency and Bankruptcy Board has stated that they have no observations against the dissolution of the Company.

5. The liquidator has replied to the report of ROC by Diary No. 01485/07 dated 23.06.2022 stating that the said provision of Section 137(1) and 92(4) of the Companies Act, 2013 deals with filing of the financial statements. However, the liquidator is required to maintain *Records and Books of Accounts* as per Regulation 10 of IBBI (Voluntary Liquidation Process) Regulations, 2017. It is replied that provisional balance sheets of

Corporate Person till 31.01.2020 were filed with ROC in e-form GNL 2 vide SRN R33472499 dated 19.02.2020 and the receipts and payments account from 07.02.2020 to 11.11.2021 is filed with ROC along with the final report. In view of the reply filed by the Liquidator, the observations raise by the ROC stand clarified.

6. We have heard the learned counsel appearing on behalf of the Petitioner Company and, with his able assistance, have carefully gone through the contents of the present petition. We have also duly considered the merits thereof in the light of the statutory provisions of Section 59 of the Code read with other relevant Regulations. For the sake of convenience, the relevant provisions of Section 59 of the Code are being reproduced hereinbelow:-

59 Voluntary Liquidation of corporate persons

1. *A corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of this Chapter.*
2. *The voluntary liquidation of a corporate person under sub-section (1) shall meet such conditions and procedural requirements as may be specified by the Board.*
3. *Without prejudice to sub-section (2), voluntary liquidation proceedings of a corporate person registered as a company shall meet the following conditions, namely:-*
 - a. *a declaration from majority of the directors of the company verified by an affidavit stating that-*
 - i. *they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and*
 - ii. *the company is not being liquidated to defraud any person;*
 - b. *the declaration under sub-clause (a) shall be accompanied with the following documents, namely;-*
 - i. *audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;*
 - ii. *a report of the valuation of the assets of the company, if any prepared by a registered valuer;*
 - c. *within four weeks of a declaration under sub-clause (a), there shall be-*

- i. a special resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily and appointing an insolvency professional to act as the liquidator; or*
- ii. a resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily as a result of expiry of the period of its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, as the case may be and appointing an insolvency professional to act as the liquidator.*

Provided that the company owes any debt to any person, creditors representing two-thirds in value of the debt of the company shall approve the resolution passed under sub-clause © within seven days of such resolution

- 4. The company shall notify the Registrar of Companies and the Board about the resolution under sub-section (3) to liquidate the company within seven days of such resolution or the subsequent approval by the creditors, as the case may be.*
- 5. Subject to approval of the creditors under sub-section (3), the voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution under sub-clause © of sub-section (3).*
- 6. The provisions of sections 35 to 53 of Chapter III and Chapter VII shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.*
- 7. Where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate person.*
- 8. The Adjudicating Authority shall on an application filed by the liquidator under sub-section (7), pass an order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.*
- 9. A copy of an order under sub-section (8) shall, within fourteen days from the date of such order, be forwarded to the authority with which the corporate person is registered.*

7. A bare perusal of the material available on record shows that the Board of Directors of the Company has taken a conscious decision to close down the company. Thus, the Board of Directors of the company have unanimously proposed to liquidate the company by invoking the provisions of voluntary liquidation under Section 59 of the Code.

8. It has been mentioned in the petition that the Board of Directors in its meeting and the shareholders of the petitioner company by a special resolution approved the

voluntary liquidation of the company and the appointment of Ms. Mamta Binani, Insolvency Professional, to act as Liquidator of the company on 07.02.2020. On 07.02.2020, the above resolution was approved by creditors representing two third in value of debt of the company.

9. From the perusal of the record of the case, it is seen that the Liquidator, after his appointment, has duly performed his duties and completed the necessary formalities to complete the liquidation process of the Petitioner Company, which has been averred in the present petition and, thus, the liquidator has prayed for an order from this Tribunal to dissolve the Petitioner Company.

10. Since there is no objection received from any angle opposing the proposed voluntary liquidation/dissolution of the company either from the side of the shareholders or from creditors, nor any adverse comment, have been received from the public at large against such liquidation/dissolution, 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 the record that the proposed liquidation was duly communicated to the concerned Registrar of Companies, as per Form MGT-14 and Form GNL-2.

11. The Registrar of Companies filed its report whereby it has stated that no inquiry/inspection/complaint/legal action has been proceeded/pending against the subject company. The IBBI report is filed wherein it is stated that neither any action is contemplated by the Board, nor any action is pending against the liquidator before it. The Board has no observation against the dissolution of the Company.

12. Apart as per record of the present case, it is seen that the company is not found involved in such kind of business activities, which are detrimental to the interest of the

public at large. Further, it is not the case that the proposed liquidation may adversely affect its shareholders/members or is contrary to the provisions of the law.

13. The Liquidator had filed copies of the paper publication as well as copies of the paper announcement in Form-A. The Liquidator is found to have complied with the statutory provision to complete the liquidation process by taking the necessary steps. The 'in voluntary liquidation' account of the company was also closed which is evident from the email issued by HSBC bank dated 30.05.2023. The Liquidator had further intimated to the Income Tax Department regarding the voluntary liquidation of the company as well as his appointment as the liquidator. It is also submitted that NOC has been received from Income Tax Department on 05.10.2020. The liquidator has made final distribution of assets and the liquidation process was completed on 11.11.2021. Thereafter, the liquidation account were prepared and were audited on 11.11.2021. The final report has been submitted to IBBI and ROC on 18.11.2021.

14. The Liquidator has also annexed a copy of the preliminary report, a copy of the Final Report, Form GNL-2, along with a copy of the tracking report and postal receipts with the present application.

15. By taking into consideration the above-stated facts and circumstances, the present application deserves to be allowed for the proposed Liquidation/Dissolution of the Corporate Person.

16. Consequently, this Adjudicating Authority, in the exercise of the power conferred to it under Section 59 (8) of the Insolvency and Bankruptcy Code, 2016, orders that the Corporate Person (Petitioner Company) Fenwal India Limited shall stand dissolved with effect from the date of this order.

17. The Liquidator is directed to communicate a copy of this order to the respondent, i.e. concerned Registrar of Companies, wherein the registered office of the company is

situated. Further, a copy of this order should also be communicated to the IBBI for information. Such communication should be made within the stipulated period of fourteen (14) days from the date of receipt of an authentic copy of this order.

18. The Registry is directed to communicate a copy of this order to the concerned Registrar of Companies, as well as to the Insolvency and Bankruptcy Board of India (IBBI).

19. Thus, the present Company Petition is allowed and stands disposed of.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

June 12, 2023
SA/PKA