NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH- II

(IB)-389(ND)/2021

IN THE MATTER OF:

M/s NP Earthmovers Private Limited
(In Voluntary Liquidation)
Opp. MGF Mall Saket Khirki Village,
Malviya Nagar, New Delhi - 110017 **...Corporate Applicant**

Versus

1. **Registrar of Companies, Delhi and Haryana**
   4th Floor, IFCI Tower,
   61, Nehru Place, New Delhi- 110019 ...Respondent No. 1

2. **Income Tax Jurisdiction**
   The Deputy Commissioner of Income Tax,
   17(1) Delhi, C.R. Building, I.P. Estate Floor,
   New Delhi ...Respondent No. 2

Order Delivered on : 26.05.2022

Section: **59 of IBC, 2016 read with Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulation, 2017**

CORAM:

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant/Liquidator : Adv. Rakesh Kumar, Adv. Preeti Kashyap, Adv. Ankit Sharma

For the ROC : Ms. Sweety Khattar

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

Under consideration is the CP(IB)-398 (ND)2021 filed by the Applicant/Liquidator under Section 59 of the IBC, 2016 read with Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (for brevity, the **"VLP Regulations"**) with a prayer for dissolution of the Corporate Applicant M/s N P Earthmovers Private Limited (for brevity, **the 'Company'**).

2. That the Company is a Private Limited Company incorporated on 02.08.2002 under the provisions of the Erstwhile Companies Act,1956 with CIN U63090DL2002PTC116405. The registered office of the Company is situated at T-88C, First Floor, Opp – MGF Mall Saket, Khirki Village, Malviya Nagar, New Delhi 110017, which is within the territorial jurisdiction of this Tribunal.

3. That the main objects of the Company as mentioned in the application are :

> "i. *To carry on the work of loading and transportation of coal, sand and silica and other allied materials*
>
> ii. *To take on lease, hire or rent any vehicle for transportation and loading of goods and merchandise in connection with the business of the company as referred to in sub-clause (1) above."*

4. It has been submitted by the applicant that the Company was setup to carry on business of coal transportation and allied materials. However, due to termination of contracts, the Company could not continue the business. Therefore, the Board of Directors of the Company in their General meeting held on 25th June 2017 passed a resolution for filing the Declaration of Solvency for Voluntary Liquidation of the Company.

5. That it has been further submitted that as required under Section 59(3)(a) of IBC, 2016, the Directors of the Company have given the Declaration of Solvency on Affidavits, which are annexed from page 172 to 184 of the Application. The relevant extract of the Declaration of Solvency of Directors is reproduced overleaf :

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ANNEXURE-A5

VOLUNTARY LIQUIDATION

DECLARATION OF SOLVENCY, EMBODYING A STATEMENT OF ASSETS AND LIABILITIES

[Pursuant to section 59 (3) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 3 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulation, 2017

Name of the Company: N.P. EARTHMOVERS PRIVATE LIMITED

CIN : U45200DL2002PTC116405

Regd Office : T-88C, FIRST FLOOR, OPP. MGF MALL, SAKET, KHIRKI VILLAGE, MALVIYA NAGAR, NEW DELHI-110017

DECLARATION OF SOLVENCY

We,

(1) Kedarnath Srivastav son of Motichandra Kashinath Srivastav, Address- Chhat Nag Road, Naika (Near Akelaa Park) Jhansi, Allahabad, UP- 211019

(2) Maninder Singh Makkar son of Mohar Singh Makkar, Address- 70, Hemkunt Colony, New Delhi 110048

(3) Deepak Mehrotra son of Kartar Singh Mehrotra, Address- C/O MAJ. V.NANDA, 6-610, Natasha Golf View Apartments New Ring Road, Domlur Bangalore- 560002

being directors of N.P. Earthmovers Private Limited (hereinafter referred to as "the Company") do solemnly affirm and declare that we have made a full enquiry into the affairs of the Company and that having done so we have formed an opinion that the company will be able to pay its debts in full from the proceeds of assets to be sold/appropriated in the liquidation and we append a statement of the Company's assets and liabilities as at 25th June, 2017 (Annexure-I), being the latest practicable date before the making of this declaration along with a list providing details of each debt of the Company as on 27th July, 2017 (Annexure-II) and we make this solemn declaration believing the same to be true.

Solemnly affirmed and declared at Delhi, India on 27th July, 2017 before me.

NOTARY PUBLIC GOVT. OF INDIA

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Name: Kedarnath Srivastav DIN: 02320087 Address: Chhat Nag Road, Naika (Near Akelaa Park) Jhansi, Allahabad, UP- 211019	Name: Maninder Singh Makkar DIN: 02509462 Address: 70, Hemkunt Colony, New Delhi 110048	Name: Deepak Mehrotra DIN: 02539912 Address: C/O MAJ. V.NANDA, 6-610, Natasha Golf View Apartments. New Ring Road, Domlur Bangalore- 560002

NOTARY PUBLIC GOVT. OF INDIA

6. It has been stated by the applicant that copies of Declaration of Solvency signed by Directors along with audited financial statement for the financial years 2015-16 to 2019-20, showing records of business during the previous two years, were filed with the ROC concerned in form GNL-2 dated 11.12.2020 vide SRN: R74613787.

7. It is further stated that the members (constituting 100%) & shareholders of the Company unanimously resolved and approved the liquidation of the Company in their Extra Ordinary General Meeting held on 27th July, 2017 by passing a Special Resolution for the compliance of the provisions of Section 59(3)(c) of IBC 2016. It was further resolved that Mr. Sameer Rastogi, an IP having IBBI Registration No. IBBI/IPA-002/IP-N00226/2017-18/10677 shall act as Liquidator.

8. The relevant extracts of the Special Resolution passed in the Extra Ordinary General Meeting held on 27th July, 2017 are reproduced overleaf :

N.P. EARTHMOVERS PRIVATE LIMITED 252

T-88C, F.F., OPP-MGF MALL, SAKET, KHIRKI VILLAGE, MALVIYA NAGAR, NEW DELHI-110017.

Email ID : npearthpl@rediffmail.com, Cont.No.:8554997721, CIN : U63090DL2002PTC116405.

Ref. ....   Date ....

EXTRACT OF THE MINUTES OF THE EXTRA ORDINARY GENERAL MEETING OF N P EARTHMOVERS PRIVATE LIMITED HELD ON 27TH JULY, 2017 AT 12:00 AT THE REGISTERED OFFICE OF THE COMPANY AT T-88C, F.F., OPP-MGF MALL, SAKET, KHIRKI VILLAGE, MALVIYA NAGAR, NEW DELHI-110017.

"**RESOLVED THAT** pursuant to section 59 of the Insolvency and Bankruptcy Code, 2016 and the applicable rules of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, the consent of the members of the Company be and is hereby accorded to wind up the affairs of the Company as the members voluntary winding-up w.e.f. date of passing of the present resolution by the shareholders.

RESOLVED FURTHER THAT pursuant to rule 5 and 6 of Chapter-III of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, Mr. Sameer Rastogi, registered Insolvency Professional with the Institute of Company Secretaries of India, having registration number IBBI/IPA-002/IP-00107/2016-17/1147, be and is hereby appointed as the Liquidator of the Company for the purpose of the winding up of the affairs of the Company.

RESOLVED FURTHER THAT Mr. Sameer Rastogi, the liquidator be and is hereby authorized to exercise all the powers as per the provisions of the Insolvency and Bankruptcy Code, 2016 and as per rule 8-14 and any other applicable rule of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, to effectively winding up the affairs of the Company.

RESOLVED FURTHER THAT MANINDER SINGH MAKKAR, director of the Company be and is hereby authorized to do all such acts and deeds necessary for the execution of the above mentioned resolution."

Certified True Copy

For and on behalf of
For M/s N P Earthmovers Pvt. Ltd.
For N.P. EARTHMOVERS PVT. LTD

DIRECTOR

MANINDER SINGH MAKKAR
DIRECTOR (DIN: 02509462)

9. That it is submitted by the Applicant that the company has no creditors on the date of commencement of Liquidation i.e., 27th July 2017 hence, the need of securing approval of the creditors confirming the Special Resolution is not applicable to the Company.

10. That it has been submitted that the Applicant has made the public announcement of the Commencement of Liquidation in "Form A" in terms of Regulation 14 of the VLP Regulations 2017 in the newspapers namely, *'Top story'*(English) and 'Awam-e-hind' (Hindi) on 01.08.2017. It is added that the copies of the same were sent to the IBBI for placing the same on their website.

11. It has been averred that the information regarding commencement of liquidation, appointment of Liquidator and public announcement, made in the newspapers was submitted to the ROC, New Delhi and Haryana in Form MGT-14 vide SRN G49647423 (Pg.191-193 of the application).

12. It has been further submitted by the Applicant that no claims were received by the voluntary Liquidator during the period of liquidation.

13. It has been submitted by the applicant that the liquidation process has been continuing for more than 12 twelve months, therefore in terms of the Regulation 37(2) of the regulation, the liquidator had convened a meeting of contributories of the corporate person within 15 days from the end of twelve months from the liquidation commencement date. The applicant has also placed on record the Annual Status Report indicating the complete progress made in the liquidation process.

14. It has been further submitted by the Applicant that the intimation was sent to Manager of State Bank of India, vide letter dated 15.12.2017 for change in the nomenclature of the Company's Bank Account No. 11212045204 maintained with State Bank of India, Tagore Chowk, Jarta Road, Wani Maharashtra – 445304 for realization from and payment of money to stakeholders of the Company.

15. It has been also submitted by the applicant that in terms of Section 178 of Income Tax Act 1961, the Liquidator has intimated about commencement of Liquidation and appointment of Liquidator to the IT Authority on 12th December 2017 (Pg.191-193 of the application).

16. It is further submitted by the Liquidator that as per Regulation 9 of the IBBI (Voluntary Liquidation) Regulations 2017, it has submitted a Preliminary Report dated 30.08.2017 (Pg.194-202 of the application).

17. That in compliance of Regulation 38 of the IBBI (Voluntary Liquidation) Regulations 2017, the Applicant has submitted its Final Report dated 02.09.2020 (Pg.241-248 of the application). As per the Final Report, it is stated that *'There are no existing liabilities or debt on part of the company (N P Earthmovers Private Limited)'*. That the Applicant has submitted that the copy of the Final Report was sent to the Registrar of Companies (ROC) in form GNL-2 vide SRN T076552373 dated 06.03.2021 and IBBI through e-mail.

18. That in the course of hearing on 03.08.2021, it was observed that the said final report was neither signed nor dated. Therefore, the applicant was directed to rectify the defect. Accordingly, the applicant has filed an affidavit dated 08.09.2021 and submitted the signed copy of Final Report in Form GNL-2 vide SRN: T41145541dated 07.09.2021, which is reproduced overleaf :

FINAL REPORT OF THE LIQUIDATOR

[Pursuant to Regulation 38 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017]

Name of the Company: N P Earthmovers Private Limited

CIN: U63090DL2002PTC116405

Registered Address: T-88C, First Floor, Opp.-MGF Mall Saket Khirki Village, Malviya Nagar, New Delhi, South Delhi – 110017, India.

Nature of Proceedings: Voluntary Liquidation

Date of Commencement of Voluntary Liquidation: 27th July, 2017

Name and Address of the Liquidator: Mr. Sameer Rastogi, F-116, Lajpat Nagar-1, New Delhi-110024.

The audited accounts of the liquidation, showing receipts and payments pertaining to liquidation since the liquidation commencement date i.e. 27.07.2017 is annexed herewith.

1. Since, the Company has no tangible assets on the liquidation commencement date i.e. 27.07.2017, the provision enumerated under Regulation 31 of The Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 regarding manner of sale is not applicable.

   Sale Statement in respect of all assets containing-
   - i. The realized value – Nil
   - ii. Cost of realization – Nil
   - iii. The manner and mode of sale – **Not Applicable**
   - iv. An explanation for the shortfall, if the value realized is less than valuation of assets under Section 59(3)(b)(ii) or Regulation 3(1)(b)(ii), as the case may be – **Not Applicable**
   - v. The person to whom the sale is made – **Not Applicable as no sale has been made**
   - vi. Any other relevant details of the sale – **Not Applicable**

SAMEER RASTOGI
Liquidator
Reg. No. IBBI/IPA-002/IP-N00326/2017-18/10877
F-116, LAJPAT NAGAR-1, NEW DELHI-110024
Ph.: 011-[illegible]4816
E: [illegible]

2. The Company does not have any secured creditor, unpaid dues towards employees, outstanding government dues, and preference shareholders.

3. All the bank accounts of the company were closed and the amounts were transferred to the Liquidation account opened on 27.08.2020 with Axis Bank and the all liquidation expenses were made from the Axis Bank, after the successful final payment no amount was left for distribution among the equity shareholders.

4. Statement showing receipts and payments pertaining to liquidation since the liquidation commencement date i.e 27.07.2017 to 02.09.2020 is annexed herein as **Annexure - A.**

5. There are no existing liabilities or debt on part of the Company (N P Earthmovers Private Limited).

6. No litigation is pending against the Company.

7. The Company has no assets and liabilities as on date.

LIST OF SHAREHOLDERS AS ON 27.07.2017

Shareholders	No. of shares	% of Shareholding	Amount Distributed
Lt. Col A.K Sakhri(Retd.)	3,000	30.00	0
Maninder Singh Makkar	3,000	30.00	0
Deepak Mehrotra	3,000	30.00	0
Kedarnath Srivastva	3,000	10.00	0
Total	10,000	100.00	0

SAMEER RASTOGI
Liquidator
Reg. No. IBBI/IPA-002/IP-N00218/2017-18/10677
F-116, LAJPAT NAGAR-1, NEW DELHI-110 024
Ph.: 011-29814516
E: [illegible] | [illegible]@gmail.com

FUTURE PLAN OF ACTION

S. No.	Activity	Statutory Timelines
1.	To serve advance copy of Application on ROC and IBBI.	When the affairs of the Company have been completely wound up and the assets are completely liquidated.
2.	To draft the Application and file the same with the Adjudicating Authority for dissolution of the Company.	When the affairs of the Company have been completely wound up and the assets are completely liquidated.
3.	To file copy of the Order with ROC and IBBI.	Within 14 days from the date of Order

Sameer Rastogi
(Liquidator)

For N P Earthmovers Private Limited
Reg. No.: IBBI/IPA-002/IP-N00226/2017-18/10677

Date: 02.09.2020

SAMEER RASTOGI
Liquidator
Reg. No. IBBI/IPA-002/IP-N00226/2017-18/10677
F-118, LAJPAT NAGAR-I, NEW DELHI-110 024
Ph.: 011-22814828
E: [illegible]

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NP Earthmovers Private Limited
Statement showing flow of funds
Period:- 25.06.2017 to 02.09.2020

Receipts	Amount	Payments	Amount
Balance as on 25/06/2017	1,133,491	Bank Charges	35,752
Realisation of Investments	1,084,812	Audit fees	128,400
		Liquidator Fees	50,000
		Salary & wages	515,350
		Staff Welfare	51,044
		Travelling & Conveyance	40,401
		General expenses	34,356
		Professional Charges	1,363,000
		Balance as on 02.09.2020	-
	2,218,303		2,218,303

For MCNM & Associates
Chartered Accountants
Registration No.- [illegible]

CA [illegible]
[illegible]
[illegible]

For & on behalf of the Board

02-09-2020
Sameer Rastogi
Liquidator

SAMEER RASTOGI
Liquidator
Reg. No. IBBI/IPA-002/IP-N00[illegible]/2017-18/[illegible]
E-1[illegible], LAJPAT NAGAR-I, NEW DELHI-110 024

19. The IBBI has not filed any report.

20. The ROC has filed its report dated 03.12.2021 and averred the following:

> *"6. Further as per data available and maintained no inquiry /inspection/complaint/legal action has been proceeded/ pending against the subject Company. That this office has compiled the above factual report based on the records maintained & document filed by the concerned Company on MCA 21 portal and information available in office.*
>
> *7. Further the Liquidation process of the corporate person could not be completed within the time period of one year as prescribed under Regulation of 37(1) of IBBI (VLP) Regulations, 2017".*

21. In response to the objection raised by ROC, the applicant has submitted that in compliance of Regulation 37(1) and 37(2), they have filed the minutes of the meeting of contributories of the Corporate person as well as the annual status reports for both the years.

22. That during the course of hearing, as recorded vide order dated 18.04.2022, the Ld. Counsel for AROC was satisfied and raised no further objections.

23. In its written submissions dated 14.01.2022, the Applicant has averred that :

> 5. That it is stated that all the affairs of the company have been wound up with no employees, assets, directors or any sort of affairs, the Bank account of the companies have been closed, all the statutory departments have been settled and no objection have been received from any of the department.

24. On examining the Application, documents annexed therewith and the submissions made by the Applicant/Liquidator, it emerges that affairs of the Company have been entirely wound up, its assets have been completely liquidated and there is no litigation pending against the Company.

25. In view of the facts placed on record, averments and the submissions made by the Liquidator, the Company deserves to be dissolved.

26. **Accordingly, the Application is allowed. The Company is, therefore, dissolved with immediate effect.**

27. The Applicant is further directed to serve a copy of this Order on the Registrar of Companies (ROC), with whom the Company is registered, within fourteen days of receipt of this Order. The ROC shall take necessary action upon receipt of a copy of this Order.

28. In terms of Regulation 41 of IBBI (Voluntary Liquidation Process) Regulation 2016, the Liquidator is directed to preserve physical or an electronic copy of the reports, registers and books of account referred to as in the Regulation 8 and 9 for at least eight years after the dissolution of corporate person, either with himself or with an Information Utility.

-Sd-

(L. N. Gupta)
Member (T)

-Sd-

(Abni Ranjan Kumar Sinha)
Member (J)