**IN THE NATIONAL COMPANY LAW TRIBUNAL**
**PRINCIPAL BENCH, NEW DELHI**
**CP (IB) No. 174/PB/2023**

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

*IN THE MATTER OF:*

**Destination Maternity Apparel Private Limited**
**Through Liquidator**
**Mr. Sekar Ananthanarayan**

**Registered Address:**
G-9, Pratap Bhawan 5
Bahadur Shah Zafar Marg
New Delhi 110002

**CIN No.**: U17301DL2009PTC190031
**E-mail ID**: a.sekar.cs@gmail.com **... Applicant**

**CORAM:**

**CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR**
**HON'BLE PRESIDENT**

**SHRI AVINASH K. SRIVASTAVA**
**HON'BLE MEMBER (TECHNICAL)**

*Appearances:*

**For the Applicant: Mr. Sameer Srivastava, PCS**

**Order pronounced on: 12.03.2024**

**ORDER**

1. This is an application filed under section 59(7) of the Insolvency and Bankruptcy Code, 2016 (**the Code**) by Mr. Sekar Ananthanarayan, Liquidator of M/s Destination Maternity Apparel Private Limited (CIN: U17301DL2009PTC190031) for seeking dissolution of the

Applicant company in terms of Section 59(7) of the Insolvency and Bankruptcy Code of 2016.

2. The Applicant Company was incorporated on 05.05.2009 under the Companies Act, 1956 as a private limited company. The registered office of the Company is situated at G-9, Pratap Bhawan 5 Bahadur Shah Zafar Marg, New Delhi, India 110002. Therefore, this Bench has jurisdiction to deal with the present petition.

3. The main objects for which the Company was incorporated as stated in Memorandum of Association are:

> *1. To carry on the business of manufacturers, fabricators, importers and exporters, wholesale dealers of and in clothing, wearing apparel, hosiery, merchandise, products and goods of every kind, nature and description, including but not limited to maternity and nursing closing for women and related merchandise, products and goods.*
>
> *2. To carry on the business as manufacturers, traders, dealers and exporters of all kinds of fibers and yarn man-made or otherwise, textiles and textile materials natural or otherwise, stitched or semi-stitched garments.*
>
> *3. To carry on the business of preparing, spinning, doubling, weaving, combing, scouring, sizing, mixing, twisting, bleaching, colouring, knitting, dying, printing and finishing whatever fibers or textile substance or any substitute for any of them.*

4. The latest Capital Structure of the Company is as follows:

| **Particulars** | **Amount (in Rupees)** |
|---|---|
| **Authorised Share Capital** | |
| 600,000 equity Shares of Rs. 10/- each | 60,00,000/- |
| **Issued Capital**<br>**(Equity Share Capital)** | |
| 1,61,538 Equity Shares of Rs 10/- each | 16,15,380/- |
| **Subscribed Capital**<br>**(Equity Share Capital)** | |
| 1,61,538 Equity Shares of Rs 10/- each | 16,15,380/- |
| **Paid up Capital**<br>**(Equity Share Capital)** | |
| 1,61,538 Equity Shares of Rs 10/- | 16,15,380/- |

5. The Board of Directors of the Corporate Person comprise of the following:

   A. Vinod Kumar Gupta (Director) (DIN-02587862)

   B. Vikram Yogesh Shah (Nominee Director) (DIN-07512227)

6. The Shareholders of the Corporate Person comprise of the following:

| **S. No.** | **NAME OF SHAREHOLDERS** | **NO. OF EQUITY SHARES OF RS. 10/- EACH** | **AMOUNT (IN RUPEES)** |
|---|---|---|---|
| 1. | Destination Maternity Corporation, USA | 1,61,522 | 16,15,220/- |
| 2. | Mothers Work Canada INC | 16 | 160/- |
| | Total | 1,61,538 | 16,15,380/- |

7. It is submitted that the directors on Board of the Corporate Person have given the Declaration of Solvency as per section 59(3)(a) of the Code and resolved to wind up the company at the Board meeting held on 31.01.2019.

8. The directors on Board of the Company viz. Vikram Yogesh Shah and Vinod Kumar Gupta have made a declaration dated 31.01.2019 along with the affidavit dated 31.01.2019 verifying the declaration that they have made full enquiry into the affairs of the Company, and that having done so, they have formed the opinion that company will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation and the Company is not being liquidated to defraud any person. The declaration is also accompanied by the audited financial statements for year ending on 31.03.2018 and 31.03.2017.

9. Further, the Members in their EoGM held on 26.02.2019 passed a Special Resolution as required under section 59(3)(c) of the Code to liquidate the Company voluntarily and to appoint **Mr. Sekar Ananthanarayan, Insolvency Professional having IP Reg. No. IBBI/IPA-003/IP-N00052/2017-18/10492**, with a remuneration

of **Rs 1,00,000/- (Rupees One Lakh Only**) plus applicable GST and actual out of expenses.

10. The Liquidator made a public announcement of the commencement of liquidation in Form A of Schedule I as per regulation 14 of the Voluntary Liquidation Process Regulations in *Top Story* in English and in *Veer Arjun* in Hindi on 28.02.2019 inviting submission of claims due from the Company by various stakeholders within 30 days from the date of commencement of liquidation i.e., till 27.03.2019. The aforesaid public announcement was also submitted to the Insolvency and Bankruptcy Board of India (IBBI) through an email dated 28.02.2019.

11. The Liquidator has prepared list of stakeholders on basis of proof of claims submitted and accepted under regulation 30 of Voluntary Liquidation Regulations within 45 days from the last date of receipt of claim i.e., 10.04.2019. List of Stakeholders comprise of following persons:

    A. Destination Maternity Corporation, USA

    B. Mothers Work Canada INC.

12. Corporate Person does not have any creditor whether secured or unsecured and also no claim has been received in this respect. There are NIL movable and immovable assets in the Corporate Person. There was no litigation pending against or by the Corporate Person. There was no balance of liquidation proceeds left for distribution to shareholders.

13. Further, notice dated 13.03.2019 and 20.03.2019 intimating special resolution and appointment of liquidator for voluntary liquidation was also served upon Income Tax department and GST department respectively and 'No Demand Certificate' dated 16.10.2019 has been received from the Income Tax Officer.

14. The Company filed Special Resolution with Registrar of Companies (**ROC**) by filing Form e-form MGT-14 (SRN: H46067286 dated 01.03.2019). The Company has filed GNL-2 (SRN H46656245 dated

08.03.2019) in respect of Declaration of Solvency dated 31.01.2019.

15. Further Company has also filed GNL-2 (SRN AA1346324 dated 09.02.2023) in respect of Final Report dated 07.02.2023 pursuant to regulation 38 of Voluntary Liquidation Process Regulations, 2017.

16. The Liquidator notified the ROC and status report on behalf of ROC is also filed. The relevant portion of status report is also extracted stating that:

> *3. That as per available records, last Balance Sheet and Annual Return were filed by the company for the for the financial year 2017-18 in e-form MGT-7 & AOC-4 vide SRN H24426850 & H24443020 dated 27.10.2018 respectively. Further, the company has failed to file a financial statement for the period from 01.04.2018 to 25.02.2019 in compliance with section 137(1) of the Companies Act, 2013.*
>
> *5. Further, as per records on MCA portal, following E-forms have been filed by the petitioner company regarding Voluntary Liquidation and same has been taken on record by this office:*
>
> > *c) Company has filed GNL-2 vide SRN AA1346324 dated 09.02.2023 in respect of Final report dated 07.07.2023 by the liquidator of the Company pursuant to regulation 38 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process), Regulations, 2017. However, the Liquidation process of corporate person could not be completed within stipulated time frame, as prescribed under regulation of 37(1) of IBBI (Voluntary Liquidation Process) Regulation, 2017. Annexure-E*
>
> *6. Further as per data received from various cell in this office as per their records, 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 MCA21 portal.*
>
> *7. The IBBI is the concerned authority under Insolvency & Bankruptcy Code, 2016. However, present status report about the company based on information/record as available on MCA21 portal is being filed by this office in compliance of Hon'ble NCLT order dated 19.07.2023.*

17. Applicant has also filed a reply dated 27.10.2023 to the aforesaid ROC report, disclosing the following reasons for delay in submitting and filing Final Report under Regulation 38:

i. *That the only two contributories were following foreign companies and the liquidator could not establish any connection with them. a. Destination Maternity Corporation, USA (99.99%) b. Mothers Work Canada INC (0.01 %)*

ii. *That reason behind such failure to connect, later came to the fact when it was found through search engines like google that the contributories had filed bankruptcy petition in their home country in the month of October, 2019 i.e. one month before the completion of winding up process (Reference articles: https://www.cnbc.com/2019/10/21/destinationmaternity-plans-bankruptcy-that-could-come-within-weeks.html AND https ://www.usatoday.com/story/money/2019/ 10/21 I destinationmatemity-chapter-11-bankruptcy/ 4055471002D.*

iii. *Thereafter, COVID pandemic also created a delay m effectively searching for the contributories*

iv. *That it was finally decided by the liquidator to send the final report through email as available from the claims submitted by the contributories and hence in a position to comply with the requirement of Regulation 38 of the of IBBI (Voluntary Liquidation Process) Regulations, 2017.*

v. *That the Liquidator has not received any failure mail from the system as on date.*

vi. *Also, since the Voluntary Liquidation Process of the company was completed on 14.11.2019 as per Regulation 37(1) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (as effective as on 14.11.2019), there was no requirement for conducting meeting of contributories under Regulation 37(2) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (as effective as on 14.11.2019).*

18. In compliance with regulation 34 of the Voluntary Liquidation Process Regulations, the Liquidator had opened a separate current Bank Account with IDBI Bank having branch at Borivali, bearing account no. A/c No. 0571102000017727 in the name of "Destination Maternity Apparel Private Limited – In Voluntary Liquidation" on 19.03.2019. The said account has been closed on 14.11.2019.

19. The Liquidator has filed a Preliminary Report on 04.04.2019. The Corporate Person is possessing Balance at Bank, the only asset as on 31.01.2019 to the tune of INR 2,01,539.33/- as against liability

to the tune of INR 1,90,000/-.

20. Final Report for period from 26.02.2019 to 14.11.2019 has also been submitted by the liquidator on 07.02.2023. In the final report, the liquidator has submitted that the proceeds of liquidation and cash have been distributed in the manner extracted below:

...2...

Statement of accounts showing the Receipts and Payments pertaining to the Liquidation from **26.02.2019 (Date of Commencement of liquidation) to 14.11.2019 (Date of Closure of Bank Account)** in respect of Members' Voluntary Liquidation of **Destination Maternity Apparel Private Limited**:

| Receipts | Estimated Value Rs. | Value Realised Rs. | Payments | Estimated Value Rs. | Payment made Rs. |
|---|---|---|---|---|---|
| 1. Balance at Bank (Opening bal.) | 3,48,230 - | 3,48,230 | 1. Secured on specific assets | - | - |
| 2. Cash in Hand | - | - | 2. Secured by floating charge(s) | - | - |
| 3. Marketable Securities | - | - | | | |
| 4. Bills Receivable | - | - | 3. Estimated cost of liquidation and other expense including interest accruing until payment of debts in full ** | 3,48,112 | 3,48,112 |
| 5. Trade Debtors | - | - | | | |
| 6. Loans & Advances | - | - | | | |
| 7. Unpaid Cells | - | - | | | |
| 8. Stock-in-trade | - | - | | | |
| 9. Work in progress | - | - | | | |
| 10.Freehold Property | - | - | | | - |
| 11.Leasehold Property | - | - | 4. Unsecured creditors (amounts estimated to rank for payment) | - | -- |
| 12.Plant and machinery | - | - | | - | - |
| 13.Furniture, fittings, utensils etc | - | - | | - | - |
| 14.Patents, trademark etc | - | - | (a) Trade accounts | - | - |
| 15.Investments other than marketable securities | | - | (b) Bills payable | - | - |
| | | | (c) Accrued expense | | |
| 16.Other Assets * | - | - | (d) Short Term provisions | - | - |
| | | | (e) Other Liabilities | | |
| | | | (f) Contingent Liabilities | | |
| | | | Bank Charges | 118 | 118 |
| | | | Surplus balance with bank (Closing bal.) | | |
| | | | Bank balance in the Liquidation account | - | - |
| | | | Bank balance (with the existing bank) | - | - |
| Total | 3,48,230 | 3,48,230 | Total | 3,48,230 | 3.48,230 |

21. Further the Liquidator in compliance with order dated 23.08.2023 has filed gist of the matter as per checklist, which provides as follows:

a. Declaration of Solvency by way of affidavit dated 31.01.2019 under section 59(3)(a) along with copy of Audited Financial Statements for FY 2016-17 and 2017-18 under section

59(3)(b)(i) have been annexed with the Application as Annexure F;

b. Special Resolution under section 59(3)(C)(i) has been annexed with the Application as Annexure I;
c. Intimation to ROC and IBBI within 7 days from the date of Resolution under section 59(3)(c) has been annexed with the Application as Annexure J & K;
d. Public Announcement in Form A within 5 days from the date of appointment has been annexed with the Application as Annexure L & M;
e. List of Stakeholders under Regulation 30 has been has been annexed with the Application as Annexure R;
f. Preliminary Report dated 28.03.2019 under Regulation 9 has been annexed with the Application as Annexure S;
g. Bank closure certificate dated 14.11.2019 has been annexed with the Application as Annexure Q;
h. Final Report dated 07.02.2023 under regulation 38 has been annexed with the Application as Annexure U and Final report via e-form GNL-2 dated 10.02.2023 submitted to ROC and Email dated 11.02.2023 to IBBI has been annexed with the Application as Annexure V & W;
i. Voluntary Liquidation Process completed on 14.11.2019;
j. Total Realized amount is INR 3,48,348/- from Cash / Bank Balance; and
k. Distribution has been made the tune of INR 3,19,492/- towards Liquidation Cost and in addition INR 28,856/- towards TDS deducted on payment of professional fee.

***Findings and Orders***

22. On 05.02.2024 after hearing the Liquidator, we have condoned the delay in filing Final Report under Regulation 38 of the Voluntary Liquidation Regulations for the reasons contained in para 17 *supra.*

23. On hearing the submissions made by the liquidator and perusing the documents annexed to the application, it appears that the affairs

of the Corporate Person have been completely wound up and its assets have been completely liquidated. No liabilities have been left unsatisfied.

24. As regards non filing of Financial Statement for period from 01.04.2018 to 25.02.2019, as stated in Report filed by ROC, we are find that the Statement of Affairs viz. Statement of Assets and Liabilities as on 31.01.2019 has been duly placed before us (@ page 98 of the Application). Even otherwise the Corporate Person has filed the audited financial statements for previous two years i.e., for the year ending on 31.03.2017 and 31.03.2018. Therefore, the requirement of the case, more particularly section 59(b)(ii) is met in full. Hence, non-filing of Financial Statement for period from 01.04.2018 to 25.02.2019, as stated in Report filed by ROC, does not create an embargo for voluntary liquidation of the Corporate Person in terms of section 59 of the Code.

25. We are satisfied that requisites of section 59 of the Code are met in the present case and from perusal of documents on record we are convinced that the voluntary liquidation is not with the intent to defraud any person.

26. In view of the above facts and circumstances, we are inclined to pass orders for dissolution of the Company**, M/s Destination Maternity Apparel Private Limited**, and **CP (IB) No. 174/PB/2023 is ALLOWED** accordingly.

27. The Liquidator of the Corporate Person is further directed to serve a copy of this order upon the Registrar of Companies (hereinafter referred as RoC), Delhi, 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.

28. The liquidator is also directed to preserve a physical or electronic copy of the reports, registers and books of accounts for at least 8 years as per Regulation 41 of the Insolvency and Bankruptcy Board

of India (Voluntary Liquidation Process Regulations) 2017 either with himself or with an information utility.

29. The Company Petition bearing CP (IB) No. 174/PB/2023 is disposed of with the above directions.

30. File be consigned to the record storage (current).

The Registry is directed to serve copy of order upon the parties.

**Sd/-**
**(RAMALINGAM SUDHAKAR)**
**PRESIDENT**

**Sd/-**
**(AVINASH KUMAR SRIVASTAVA)**
**MEMBER (TECHNICAL)**