

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-I), CHANDIGARH**

CP (IB) No. 3 (CH) 2024

Withdrawal of Voluntary Liquidation

[Under Section 59 read with the Insolvency & Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 and pursuant to the provisions of Section 60(5) and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 read with NCLT Rules, 2016]

IN THE MATTER OF:

M/s Enel Vayu (Project 2) Private Limited

Between:

M/s. ENEL GREEN POWER INDIA PRIVATE LIMITED

Shareholder of Enel Vayu (Project 2) Private Limited
14th Floor, Tower B, Vatika Towers, DLF Golf Course Road,
Suncity, Sector 54, Gurugram-122 003 (Haryana)
Represented by Authorised Representative

...Applicant

Versus

MR. SUMAN KUMAR VERMA

Voluntary liquidator of Enel Vayu (Project 2) Private Limited
Plot No. WZ-D-9, Kh No.83/14, Gail No.5,
Mahavir Enclave, Palam Colony, New Delhi – 110045

...Respondent

Order delivered on: 01.07.2025

Coram: HON'BLE SH. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

HON'BLE SH. SHISHIR AGARWAL, MEMBER (TECHNICAL)

Present:

For the Applicant : Mr. Mohit Chaurasia, Mr. Ashutosh Gupta,
Mr. Gaurav Rana & Mr. Ajitesh Kumar Advocates

For the Respondent : Mr. Suman Kumar Verma, Liquidator

Per: SH. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

SH. SHISHIR AGARWAL, MEMBER (TECHNICAL)

ORDER

The instant application is filed by the Shareholder of Enel Vayu (Project 2) Private Limited named ENEL Green Power India Private Limited (Applicant) under Section 59, 60(5) and other applicable provisions of the Insolvency and Bankruptcy Code, 2016, read with Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 with a prayer for withdrawal of voluntary liquidation of the Company.

2. Brief facts of the case are as follows:

2.1 The Company was incorporated under the provisions of the Companies Act, 1956 on 26.06.2012 with the object to carry on the business of providing and generating renewable power.

2.2 The authorised, issued, subscribed and paid-up share capital of the Company is as follows:

| Particulars | Amount (in Rs.) |
|--|------------------------|
| Authorised Share Capital | 1,00,000/- |
| Issued Subscribed and Paid –up Share Capital | 1,00,000/- |

The Company is Wholly Owned Subsidiary of M/s. ENEL Green Power India Private Limited. Subsequent to liquidation commencement date i.e., 23.01.2023,

there has been no change in the share capital of the Company till the date of filing of this Application.

(Certified true copy of the audited financial statement for the financial year ended 31st March, 2021 and 31st March, 2022 of the Company are enclosed at Annexure P/3-page Nos. 13-57 of the application).

2.3 The management of the Company decided to wind up the affairs of the Company by passing a resolution for voluntary liquidation of the Company in Board Meeting held on 28.12.2022 to eliminate the operating expenses being incurred by the Company for forthcoming Financial Year(s) and also recommended the appointment of Mr. Suman Kumar [having IBBI Regn. No. IBBI/IPA-003/IPA-N00342/2021-2022/13657] as Liquidator of the Company.

(Certified true copy of the Resolution of the Board meeting is enclosed at Annexure P/4-page Nos. 58-59 of the application).

2.4 At the Extraordinary General Meeting (EGM) held on 23.01.2023, Members of the Company (holding 100% shares) approved the voluntary liquidation of the Company and appointed Mr. Suman Kumar as Liquidator of the Company of the Company.

(Copy of the special resolution along with the explanatory statement is enclosed at Annexure-P/5-page Nos. 60-62 of the application).

2.5 It is submitted that there were no employees and workmen compensation dues against the Company at the time of commencement of liquidation.

2.6 The Liquidator published a public announcement of the commencement of liquidation in Form-A in Newspapers named Financial Express (English Edition) and Janasatta (Hindi Edition) on 26.01.2023. The public announcement was also uploaded on the website vide email dated 03.02.2023.

(Copy of the public announcement in Form A along with its publication in the said newspapers and soft copy of public announcement are enclosed at Annexures-P/7 and P/8page Nos. 70-71 and 72-73 of the application, respectively).

2.7 It is stated that, keeping in view, the dynamic economy and the evolving market conditions and in consideration of the projected growth and impact of power sector business in India in the years to come, the management of the company is confident that the ongoing process of voluntary liquidation should be withdrawn and the Company has potential for growth as it is a wholly owned subsidiary company of M/s. Enel Green Power India Private Limited. The management is of the ardent view that the ongoing process of voluntary liquidation should be withdrawn.

2.8 It is further stated that, the management has informed/ discussed the same with the liquidator of the said decision of the company vide letter dated 11.08.2023. The Board Meeting held on 28.08.2023 the company has obtained consent of Board of Directors and in the meeting Mr. Suman Kumar Verma, the liquidator has expressed that he has no objection against request for withdrawal of voluntary liquidation and has further updated and confirmed that no sale of assets of the Company has been made and no petition has been filed by him with the Adjudicating Authority till date.

(Copy of the management decision of withdrawal of liquidation and Copy of the Resolution of the Board meeting are enclosed at Annexures-P/9 and P/10-page Nos. 74-75 and 76 of the application, respectively)

2.9 The Company is also stated to have obtained consent of the shareholders of the company vide special resolution duly passed at the Extraordinary

General Meeting held on 28.08.2023 towards withdrawal of the ongoing voluntary liquidation process in the company.

(Copy of the special resolution is enclosed at Annexures-P/11-page Nos.77-79 of the application).

2.10 Mr. Suman Kumar, Liquidator of the Company, vide his letter dated 01.09.2023 communicated to the Directors of the Company that since the management has decided to withdraw the ongoing voluntary liquidation process in the company, he has no further role in managing the affairs of the company and its directors may assume their duties and responsibilities relating to managing and running of the company.

2.11 It is further submitted that there is no pending litigation against Applicant Company.

2.12 The Company hereby undertakes that the statutory fees and expenses as payable to the Liquidator and Auditor(s) or any other legitimate dues, if any incurred during the process, shall be paid in full including any out of pocket expenses.

2.13 In support of this Application, Applicant has relied upon the following judgements in relation to withdrawal of voluntary liquidation:

(i) Shawn Johny Mathew & Anr. V/s Omprakash Joshi C.P. (IB) No.35/BB/2023 (NCLT Bengaluru Bench).

“6. In view of the circumstances, this Tribunal is of the considered opinion that the company is having an opportunity to revive the business of the company and there is no objection from the liquidator. Hence, the voluntary liquidation proceedings of M/s. Valiyaveetil Ventures Private Limited are terminated and directed the liquidator to return the assets and funds belonging to the company after deducting his professional fees and legitimate dues. The petitioner may take steps to communicate this order be filed with the ROC within the fourteen days.”

(ii) *M/s Anil Kumar Dua & Others V/s Gulshan Kumar Gupta (Ikon Real-tech Pvt. Ltd.) (IB)-1179/60(5)/ND/2018.*

“Though the respondent liquidator had initiated the steps he received a letter from the stakeholders expressing their interest to withdraw the voluntary liquidation process. It is stated that there are no dues or any other claims and the entire assets of the company have been kept in the fixed deposit with the bank. On issuance of notice, Mr. Gulshan Kumar Gupta, the voluntary liquidator appointed by the company Ikon Real-Tech Private Limited appeared in court. He has no objection for the present petition being allowed. As there is no legal impediment in allowing the prayer made by the shareholders and directors of the company under liquidation, this petition stands allowed....”

2.14 The resolution passed by Applicant dated 13.10.2023 authorizing the Directors of the Company and Mr. Ashutosh Gupta and Mr. Mohit Chaurasia, Advocates to act on behalf of the Company is enclosed at Annexures-P/14-page No. 97 of the application.

2.15 In compliance of order dated 03.01.2024, the learned counsel for the Applicant has filed a short note on maintainability of the present application vide diary no 03563/01 dated 25.01.2024.

2.16 In compliance of order dated 06.02.2024, the learned counsel for the Applicant has filed the following judgements of relevant cases pronounced by co-ordinate Benches of NCLTs in support of the prayer for withdrawal of voluntary liquidation under Section 59 of IBC Code.

(i) *M/s Nipender Logistics Pvt Ltd. V/s M/s Hemant Sharma (IB)- 1668(ND)2018 (NCLT New Delhi Bench);*

“The petition has been filed for voluntary liquidation of the company. All steps towards the same have been initiated by the liquidator, Mr. Hemant Sharma. However, in a meeting convened on 5th September 2018 a resolution was passed for withdrawing the petition for voluntary liquidation as the opportunity to revive the business of the company. The voluntary liquidator is present in court and confirms the same and has no objection to the prayer being allowed.

Accordingly, this petition for voluntary liquidation is here by being permitted to be withdrawn.

Petition disposed off accordingly.”

(ii) *M/s ENEL Green Power India Private Limited Vs. Suman Kr. Verma [274/59/HDB/2023] (NCLT Hyderabad Bench);*

“Considering the averments made in the application that the Company has an opportunity to revive its business and that there is no objection from the liquidator, the voluntary liquidation process of M/s. Enel Green Power India Private Limited are terminated. The liquidator is directed to return the assets and funds belonging to the company after deducting his professional fees and other legitimate dues. The applicant may take steps to communicate this order to the ROC within two weeks.”

ANALYSIS & FINDINGS

3. We have heard the learned Counsel for the Applicant and the Liquidator in person and carefully perused the records of the case

4. Admittedly, there is no specific provision under the IBC, 2016 or the Voluntary Liquidation Regulations which expressly permits recall or withdrawal of the voluntary liquidation process, once initiated. However, it is important to note that the initiation of the voluntary liquidation in the present case was not a result of financial distress or statutory compulsion, but a voluntary commercial decision taken by the shareholders. It is equally open to the shareholders, where no prejudice is caused to any stakeholder and all consents have been obtained, to reconsider and reverse their decision, particularly when the process has not proceeded to an irreversible stage, such as distribution of assets.

5. Further, NCLT Bengaluru Bench in the matter of **Biocad India Pvt. Ltd CP. 47/BB/2023** has also terminated voluntary Liquidation Process midway where there was no objection of the Liquidator to revive the Company. The relevant excerpts of the Judgement reads as under:

“6. In view of the circumstances and foregoing reasons, this Adjudicating Authority is of the considered opinion that since the Company intends to revive the business of the Company and also as there is no objection from the Liquidator, the voluntary liquidation proceedings of M/s. Biocad India Pvt. Ltd. initiated by Liquidator is hereby terminated. As a consequence, the ROC, Karnataka/Respondent is directed to reinstate the Board of Directors of the Company so as to enable them to revive the operations of the Corporate Person, and it is also directed to make necessary corrections in the Master Data of the Corporate Person so as to make it ‘Active’ in its records....”

6. It is noteworthy that:

- (i) The corporate person is a **wholly owned subsidiary**;
- (ii) **No claims from creditors or workmen** have arisen;
- (iii) **No assets have been sold or distributed**;
- (iv) The **liquidator has given his unequivocal no objection**;
- (v) The **shareholders have unanimously resolved** to withdraw the liquidation process on 28th August 2023;
- (vi) And the Applicant has **undertaken to pay all dues and expenses** incurred during the process.

7. This Tribunal notes that the Board of Directors of the Corporate Person, in their meeting held on 28.08.2023, have unanimously resolved to withdraw the ongoing voluntary liquidation proceedings, which was thereafter duly ratified by the Members through a Special Resolution passed at the Extraordinary General Meeting held on the same date. Both resolutions clearly express the corporate decision to terminate the liquidation process, in accordance with Section 59(6) of the Code, read with Regulation 4A of the Voluntary Liquidation Regulations, 2017, and draw reference to the IBBI Discussion Paper dated 24.11.2020 and precedents laid down by various Benches of the NCLT permitting such withdrawal. These resolutions also authorize specific representatives to take necessary steps for withdrawal, thus evidencing a clear, informed, and unanimous intention of the stakeholders to revive the company and resume its

business operations. The copies of the Board Resolution and the Special Resolution are reproduced thus:

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED BY THE BOARD OF DIRECTORS OF ENEL VAYU (PROJECT 2) PRIVATE LIMITED HELD ON MONDAY, AUGUST 28, 2023

TO CONSIDER WITHDRAWAL OF ONGOING VOLUNTARY LIQUIDATION PROCESS

“**RESOLVED THAT** pursuant to Section(s) 59, 60 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 read with the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (‘Regulations’) made thereunder (including any statutory modifications or re-enactment thereof for the time being in force) and the provisions of Companies Act, 2013, as may be applicable, and with due consent and confirmation made by Mr. Suman Kumar, Liquidator of the Company [having IBBI Registration No. IBBI/PA-003/PA-N00342/2021-2022/13657] appointed vide resolution passed at the Extra-Ordinary General Meeting held on January 23, 2023, the consent of the Directors of the Company, be and is hereby accorded to withdraw the ongoing voluntary liquidation process subject to approval of the Members of the Company.

FURTHER RESOLVED THAT pursuant to Chapter II Regulation 4A and other applicable provisions of Insolvency and Bankruptcy Code, 2016 read with the Discussion Paper on Voluntary Liquidation dated November 24, 2020 as issued by Insolvency and Bankruptcy Board of India and in due precedents of various cases of withdrawal of voluntary liquidation, subject to consent of members, an application for withdrawal shall be filed/submitted with Hon’ble National Company Law Tribunal towards withdrawal of ongoing voluntary liquidation process of the Company along with relevant papers/documents or any other information, as required to be submitted/filed in this regard.

RESOLVED FURTHER THAT the Directors of the Company and/or liquidator be and are hereby severally/jointly authorized to sign, prepare, arrange/amend, file/submit the application towards withdrawal of ongoing process of Voluntary Liquidation of the Company and to represent on behalf of the Company, thereof and to do all such deeds, acts and things as may be required to do in this regard including filing of necessary forms/ returns with Registrar of Companies & other authorities and take all necessary steps which may be deemed fit to give effect to this resolution.”

CERTIFIED TRUE COPY

For and on behalf of Enel Vayu (Project 2) Private Limited

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 Date: 2023.08.30
 15:02:26 +05'30'



Ms. Namrata Arora

Director

DIN: 09164283

Address: Flat no. 0503, Tower 03, Fresco, Nirvana Country,
 Sector 50, South City II, Gurgaon, Haryana-122018

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 Certified True Copy

CERTIFIED TRUE COPY OF THE SPECIAL RESOLUTION PASSED BY THE MEMBERS OF ENEL VAYU (PROJECT 2) PRIVATE LIMITED IN THE EXTRA ORDINARY GENERAL MEETING HELD ON MONDAY, AUGUST 28, 2023

WITHDRAWAL OF ONGOING VOLUNTARY LIQUIDATION PROCESS

“**RESOLVED THAT** pursuant to Section(s) 59, 60 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 read with the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 ('Regulations') made thereunder (including any statutory modifications or re-enactment thereof for the time being in force) and the provisions of Companies Act, 2013, as may be applicable and based on the recommendation of the Directors and with due consent and confirmation made by Mr. Suman Kumar, Liquidator of the Company [having IBBI Registration No. IBBI/IPA-003/IPA-N00342/2021-2022/13657] appointed vide resolution passed at the Extra-Ordinary General Meeting held on January 23, 2023, the consent of the Members of the Company, be and is hereby accorded to withdraw the ongoing voluntary liquidation process.

FURTHER RESOLVED THAT based on the recommendation of the Directors and pursuant to Chapter II Regulation 4A and other applicable provisions of Insolvency and Bankruptcy Code, 2016 read with the Discussion Paper on Voluntary Liquidation dated November 24, 2020 as issued by Insolvency and Bankruptcy Board of India and in due precedents of various cases of withdrawal of voluntary liquidation, an application for withdrawal shall be filed/submitted with Hon'ble National Company Law Board Tribunal towards withdrawal of ongoing voluntary liquidation process of the Company before the Adjudicating Authority along with relevant papers/documents or any other information, as required to be submitted/filed in this regard.

RESOLVED FURTHER THAT the Directors of the Company and/or liquidator be and are hereby severally/jointly authorized to sign, prepare, arrange/amend, file/submit the application towards withdrawal of ongoing process of Voluntary Liquidation of the Company and to represent on behalf of the Company before Hon'ble National Company Law Board Tribunal, thereof and to do all such deeds, acts and things as may be required to do in this regard including filing of necessary forms/ returns with Registrar of Companies & other authorities and take all necessary steps which maybe deemed fit to give effect to this resolution.”

CERTIFIED TRUE COPY

For and on behalf of Enel Vayu (Project 2) Private Limited

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by NAMRATA
ARORA
Date: 2023.08.30
15:03:53 +05'30'

Ms. Namrata Arora

Director

DIN: 09164283

Address: Flat no. 0503, Tower 03, Fresco, Nirvana Country,
Sector 50, South City II, Gurgaon, Haryana-122018

(Signature)
CERTIFIED TRUE COPY

8. Furthermore, vide order dated 28.05.2025, it was recorded that the learned counsel for the Liquidator, Mr. Suman Kumar Verma, has submitted that he has no objection for withdrawal of the liquidation proceedings.

9. In such an exceptional case, where the liquidation was initiated voluntarily and is now sought to be withdrawn by the same consenting stakeholders, and no third-party rights are affected, this Tribunal is of the view that **the inherent powers of the Tribunal under Rule 11 of the NCLT Rules, 2016 can be invoked to meet the ends of justice.**

10. Therefore, considering the peculiar facts and the revival prospects of the Company, we are inclined to exercise our inherent jurisdiction under Rule 11 of the NCLT Rules, 2016, and allow the withdrawal of the voluntary liquidation process.

11. Accordingly, the voluntary liquidation process of *M/s Enel Vayu (Project 2) Private Limited* is hereby terminated, and the Liquidator is directed to hand over the assets and management of the Company back to the Board of Directors, after settling his legitimate fees and dues.

12. The Applicant shall also communicate this order to the concerned statutory authorities, including the Registrar of Companies, within two weeks from the date of this order.

13. The Application, therefore, stands **allowed and disposed of accordingly**.

-Sd-

(SHISHIR AGARWAL)
MEMBER (T)

July 01, 2025

Japneet

-Sd-

(HARNAM SINGH THAKUR)
MEMBER (J)