Sl No.635

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P.No.119/BB/2020
U/s. 59(7) of IBC Code, 2016
R/w IBBI (Voluntary Liquidation Process)
Regulations, 2017

Between:

Fairchild Semiconductor (India) Private Limited
(in Voluntary Liquidation)
Rep. by Shri K. Dushyantha Kumar
Liquidator
No.404/2, 7th Main,
9th Cross, 2nd Block,
Jayanagar,
Bengaluru – 560 011 - Applicant/Petitioner

And

The Registrar of Companies, Karnataka
'E' Wing, 2nd Floor,
Kendriya Sadan,
Koramangala,
Bengaluru – 560 034 - Respondent

Date of Order: 9th September, 2020

Coram: Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
Hon'ble Shri Ashutosh Chandra, Member (Technical)

Counsel/Parties Present, through Video Conference:

For the Applicant : Shri K. Dushyantha Kumar

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P.No.119/BB/2020 is filed by Fairchild Semiconductor (India) Private Limited (in Voluntary Liquidation) ('Applicant'), U/s.59(7) of IBC, 2016 R/w IBBI (Voluntary Liquidation Process) Regulations, 2017, by inter-alia seeking to dissolve the Fairchild Semiconductor (India) Private Limited, under provisions of the Code.

2. Brief facts of the case, which are relevant to the issue in question, as follows:

(1) Fairchild Semiconductor (India) Private Limited (hereinafter referred to as "Company") is a Private Limited Company, was incorporated on 29.11.2006 under the Companies Act, 1956, bearing CIN:U32106KA2006PTC041077. Its Authorized Share Capital is Rs.5,00,000/- (Rupees Five Lakhs only) divided into 50,000 (Fifty Thousand) Equity Shares of Rs.10/- (Rupees Ten only) each and Issued, subscribed and Paid-up Capital is Rs.1,00,000/- (Rupees One Lakhs only) divided into 10,000 (Ten Thousand) Equity Shares of Rs.10/- (Rupees Ten only) each. The main objects of the Company is engaged in the business of design and manufacture of integrated circuits, chips etc. Since last two years Company was not carrying any business as listed in its Memorandum of Association.

(2) The Board of Directors (BODs) of the Company in their Meeting held on 26.09.2018 had approved the draft declaration of solvency which was placed before the BODs meeting and passed a resolution with a proposal to liquidate the Company under Voluntary Liquidation. The declaration of solvency by majority of Directors along with audited Financial Statements and record of business operations of the Company for the previous two years were filed with Registrar of Companies, Bengaluru in Form GNL-2 vide SRN H16748527 on 28.09.2018.

(3) As proposed by the BoDs of the Company, the Members of the Company in their Extra-Ordinary General Meeting (EGM) held on 28.09.2018, passed a Special Resolution to liquidate the Company voluntarily and appointed Mr. Kondisetty Kumar Dushyantha, an Insolvency Professional, having IP Regn. No. IBBI/IPA-002/IP-N00237/2017-18/10688 as Liquidator of the Company. He made a public Announcement of commencement of Voluntary Liquidation in Form – A, in the

Deccan Chronicle (in English) and the Samyuktha Karnataka (in Kannada) newspaper on 01.10.2018, seeking submission of the claim by the stakeholders, if any, within 30 days from the date of commencement of liquidation i.e. on 28.09.2018. It was simultaneously submitted to the IBBI on 05.10.2018, same was published on IBBI website on 05.10.2018. And also submitted to the Registrar of Companies, Bengaluru in e-Form MGT-14 vide SRN H20003299 on 08.10.2018 and e-Form GNL-2 bearing SRN H20445268 dated 01.10.2018 filed by the Liquidator and it has been approved and registered by the Registrar of Companies, Bengaluru.

(4) During the liquidation process, the Liquidator had not received any claims, as required under Regulation, the Liquidator also had submitted his Preliminary Report dated 31.10.2018 to the Company in conformity with Regulation 5 of the IBBI (Voluntary Liquidation) Regulations, 2017.

(5) In compliance with the provisions of Section 178 of the Income Tax Act, 1961, the liquidator intimated the commencement of liquidation and appointment of liquidator to the Income Tax Authority on 08.10.2018 and received No Objection Certificate from the Income Tax Department dated 12.11.2018.

(6) Further, the Voluntary Liquidation process extended beyond the period as stipulated in the Regulation 37 of the IBBI (Voluntary Liquidation Process), Regulation, 2017, and as such the Annual meeting of the Contributories was held on 10.10.2019. Annual Status Report of the Liquidator along with Certificate of Auditor was placed in the meeting and the same was approved in the said meeting. All the dues of the Company have been paid off and there remain no amount to be paid to the shareholders of the Company. Post making various legal, statutory and non-statutory payments, the Liquidator had made Applications for closure of the

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Liquidation Account held in the Bank in the name and style of *"Fairchild Semiconductor (India) Private Limited, Voluntary Liquidation Account"* and also the other Bank Accounts in the name of the Company, to the Banker.

(7) The Final Report was submitted to the Registrar of Companies, Bengaluru vide Form GNL-2 bearing SRN R51571693 on 26.08.2020 and was also sent to the IBBI through email, in compliance with Regulation 38(2) of the IBBI (Voluntary Liquidation) Regulations, 2017.

(8) Accordingly, the Liquidator of the Applicant Company has filed a Final Report of the Liquidation (as per Rule 38 of the IBBI (Voluntary Liquidation Process), Regulation, 2017, dated 25.08.2020, by inter-alia stating as follows:

a. <u>Accounts of Liquidation, showing receipts and payments pertaining to liquidation since the liquidation commencement date i.e. from 28th September, 2018 till 25th August, 2020, has been completed in following manner:</u>

Date	Receipts	Value Realized (in Rs.)	Date	Payments	Nature of disbursement	Amount (In Rs.)
28.9.2018	Opening Balance	13,89,555.12	10.10.2018	e-Payment of Tax	Income Tax Payment	1,13,732.00
			15.10.2018	Billing Charges	Income Tax Payment	3,245.00
			24.11.2018	Billing Charges	Income Tax Payment	3,245.00
			3.1.2019	Ernst and Young LLP	Filing of tax return	1,09,890.00
			3.1.2019	Sangeetha Vivek & Associates	Certificate Charges	3800.00
			18.1.2019	e-Payment of Tax	GST Payment	10,480.00
			23.1.2019	e-Payment of Tax	GST Payment	300.00
			11.2.2019	e-Payment of Tax	GST Payment	75.00
			14.2.2019	Ernst and Young LLP	Professional Charges	5,18,184.00
			26.2.2019	K.Dushyantha Kumar	Liquidators Fees (Incl. GST)	3,24,000.00
			7.3.2019	e-Payment of Tax	GST Payment	77,980.00
			15.3.2019	e-Payment of Tax	GST Payment	75.00
			4.4.2019	e-Payment of Tax	GST Payment	75.00
			9.5.2019	e-Payment of Tax	GST Payment	75.00
			21.6.2019	e-Payment of Tax	GST Payment	75.00
			20.8.2019	e-Payment of Tax	GST Payment	150.00
			18.9.2019	e-Payment of Tax	GST Payment	75.00
			14.8.2020	CorpAdv Services	Reimbursement	2,24,174.12

				LLP	of Exp.	
	Total	**13,89,555.12**			**Total**	**13,89,555.12**

It is further stated that the Corporate Person has no Fixed Assets on the date of Commencement of the voluntary liquidation and no amount was realized or deposited into the Liquidation Account; All the payment, statutory and non-statutory as stated in the Certificate issued by the Chartered Account have been discharged to the satisfaction of the liquidator; no litigation of any manner whatsoever is pending against the Corporate Persons.

3. Heard Shri K.Dushyantha Kumar, the Liquidator, **through Video Conference.** We have carefully perused the pleadings of the party and extant provisions of the Code and Rules made thereunder.

4. As per Section 59 of the Code, "A Corporate Person, who intends to liquidate itself voluntarily and has not committed any default, may initiate voluntary liquidation proceedings under the provisions of Chapter V of the Code subject to fulfilment of conditions are prescribed thereunder. As stated supra, the Liquidator has complied with all the conditions and procedural requirements as specified under various provisions of Section 59 of the Insolvency and Bankruptcy Code, 2016 and also Regulation 3 of IBBI (Voluntary Liquidation Process) Regulations, 2017 before initiating Voluntary Liquidation Process of the Corporate Person. As stated supra, Adireddy & Co, Charted Accountants vide their Auditors Report dated 25.08.2020 , has interalia certified that the Liquidation of the Company ie receipts and payments pertaining to Liquidation for the period 28th Day of September, 2018(Liquidation commencement date) till 25th day of August, 2020 has been completed.

5. In view of the above facts and circumstances of the case, we are of the considered opinion that the Liquidator has followed due process of law, and thus affairs of the Company were completely

wound up. Therefore, the instant Petition/ Application deserves to be allowed as prayed for.

6. In the result, by exercising the powers conferred on the Adjudicating Authority, under Section 59(8) of the Code, C.P.No.119/BB/2020 is hereby allowed with the following directions:

   (1) M/s. Fairchild Semiconductor (India) Private Limited, the Company/Corporate Person is hereby dissolved with immediate effect.

   (2) The Registry is directed to forward a copy of this Order to the Registrar of Companies, Karnataka, Bengaluru, within a period of two weeks from today;

   (3) The Liquidator is also directed to forward copy of this Order to all other Statutory Authorities including IBBI, connected with the affairs of the Company.

   (4) This order would not absolve personal liability/guarantees, if any, given by the Director(s)/Promoter(s) of the Company.

(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Shruthi

राष्ट्रीय कम्पनी विधि अधिकरण बेंगलूरु बेन्च
National Company Law Tribunal Bengaluru Bench

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL
10/9/2020
Deputy/Asst. Registrar
National Company Law Tribunal
Bengaluru Bench
Rajeshwari.M