

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – II, CHENNAI**

CP/IB/268(CHE)2022

(filed under Section 59(7) of the Insolvency and Bankruptcy Code, 2016)

In the matter of **SYSTEMS TECHNOLOGY GROUP (INDIA) PRIVATE
LIMITED**

SASHIKANT SHRAVAN DAMNE

IBBI/IPA-001/IP-P00237/2017-18/10466

LIQUIDATOR OF SYSTEMS TECHNOLOGY GROUP

(INDIA) PRIVATE LIMITED

CIN No: U67120TZ1994PLC005329

Office at:

10, Shreeban, Opp. Police Ground,
F.C. Road, Shivajinagar, Pune – 411 016,
Maharashtra.

... Applicant / Liquidator

Order Pronounced on 01st February, 2023

CORAM:

DR. DEEPTI MUKESH, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant: Anuradha Jayaraman, Chartered Accountant

ORDER

The above application has been preferred by the Applicant / Liquidator under Section 59(7) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'Code') with the following reliefs:

- a. The Corporate Person be dissolved from the date of the order of the Hon'ble Tribunal;*

- b. The Liquidator do file the certified copy of the dissolution order with the Registrar of Companies, Chennai;*
- c. The liberty be reserved to the Petitioner and all other persons interested in this Petition to apply to this Hon'ble Tribunal herein as and when occasion may arise for any direction that may be necessary;*
- d. Such further and other orders be passed as this Hon'ble Tribunal may deem fit and proper.*

2. In compliance of Section 59(3)(c)(iii) of the Code, the Special Resolution was passed by the Shareholders of the Corporate Debtor on 21.03.2022. The notice and resolution are attached at page Nos. 94-98 of the typed set of the Application. In compliance of Section 59(3)(a), the Declaration of Solvency issued by Mr. Anup Kanaiyalal Popat and Mrs. Mona Popat Aggarwal, the directors of the company, dated 14.03.2022 is attached at page Nos. 55-58 & page Nos. 59-62 respectively, of the typed set of the Application.

3. The Corporate Debtor had only one creditor as on the Liquidation Commencement Date, who had issued a no-objection for initiation of Voluntary Liquidation, as required under Section 59(3)(c). The email of no-objection from the creditor, who is one of the directors of the Corporate Debtor, is attached at page 99 of the typed set of the Application.

4. The Applicant was appointed as the Liquidator to the Corporate Debtor based on the above Resolution. The Liquidator



assumed the charge on 21.03.2022 and public announcements were made on Trinity Mirror (English) and Makkal Kural (Tamil) on 24.03.2022. The last date of submission of the claim was 20.04.2022.

5. Heard the submissions of the learned counsel for the Applicant. Perused details of the relevant compliances as mandated under Section 59 of the IBC, 2016 read with the attendant rules and regulations are listed hereunder:-

S.No	COMPLIANCE	AVERMENTS	ANNEXURE/ PAGE NOS IN THE APPLICATION TYPESET
1.	Section 59 (3)	Board Meeting approving voluntary liquidation dated 23.02.2022	46-49
2.	Section 59 (3)	Audited Financial statements for the years 2019-20 and 2020-2021.	63-93
3.	Sec 59 (3) (c) And Reg 3 (1) (c)	EGM dated 21.03.2022 approving the voluntary liquidation	94-95
4.	Section 59 (4) and Reg 3 (2)	Notification of Special Resolution approving voluntary liquidation to the ROC vide Form GNL-2 dated 25.03.2022	104-107
5.	Section 59 (4) and Reg 3	Special Resolution for voluntary liquidation passed by shareholders in EGM vide Form MGT-14 dated 25.03.2022.	100-103
6.	Regulation 14	Form A Public Announcement in Trinity Mirror (English) dated and Makkal Kural (Tamil) and the IBBI Website dated 24.03.2022.	112-114
7.	Section 178 of IT Act, 1961	Intimation to the IT Department and request for NOC dated 28.03.2022 and 31.05.2022	115-120
8.	Reg 9	Date of filing of preliminary report dated 02.05.2022	121-123
9.	Reg 35	Remittance to shareholders "NIL" owing to "No Balance"	131-132
10.		Closure of Liquidation Bank Account -HDFC Bank, ITC Centre, with Account No. 00040330019629 in	143-144

		the name 'Systems Technologies Group (India) Private Limited'	
11.	Reg 38	Filing Final report dated 02.09.2022	129-133
12.	Reg 38	Audit receipts and payments in liquidation dated 02.09.2022	163-165
13.	Reg 38	Final report in GNL-2 filed with the ROC dated 06.09.2022	135-138
14.	Reg 38	Submission of Final Report to IBBI 03.09.2022.	134
15.	Reg 38	Form-H - Compliance certificate dated 10.10.2022	145-150

6. A perusal of Form - H reveals that the receipts and payments under the liquidation process are as under:

S. No.	Particulars	Amount (In Lakhs)
A	Assets as on the LCD	NIL
B	Net Worth as on LCD	NIL
C	Amount realised during the liquidation	NIL
D	Amount Distributed during liquidation process:	
	(i) Liquidation Cost (1.50)	1.50

7. During the hearing of the matter on 23.12.2022, this Tribunal had observed that certain amount were due to the creditor of the Company. It was further clarified that the said dues are against the Director of the Company. Vide order dated 23.12.2022, the Ld. Counsel for the Liquidator was directed to submit necessary additional documents justifying the dues to the creditors of the Corporate Debtor as on the Liquidation Commencement Date.

8. In compliance of the Order dated 23.12.2022, the Ld. Counsel for the Liquidator has filed the Extract of the Unaudited Balance Sheet as on the Liquidation Commencement Date and the affidavit from the creditor of the Corporate Debtor.

9. It is observed from the Unaudited Balance Sheet as on Liquidation Commencement date, i.e. 21 March, 2022 that the Creditor was liable to be paid a sum of Rs. 99,96,870/- as on Liquidation Commencement Date. The Corporate Debtor was unable to repay the same and the said amount is written off during the period post commencement of Voluntary Liquidation. The same is confirmed vide the affidavit dated 28.12.2022 submitted by the Creditor / Director.

10. The Unaudited Balance Sheet as on Liquidation Commencement date and the Affidavit from the Creditor / Director was filed before this Tribunal under SR No. 164 dated 11.01.2023. Although the Affidavit of the Creditor writing off his receivables are placed on record, as on the Liquidation Commencement Date, the Liabilities was more than the assets of the Corporate Debtor, thereby making the company not solvent, which is the primary condition for initiation of Voluntary Liquidation Process. Thus, the declaration of solvency by its directors as submitted along with the present Application is clearly contrary to admitted position as to the Company's liability.

11. Further, attention is drawn to Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, more particularly to Regulation 40(2), which is reproduced below:

"40. Detection of Fraud or Insolvency

(2) Where the liquidator is of the opinion that the corporate person will not be able to pay its debts in full from the proceeds of assets to be sold in the liquidation, he shall make an application to the Adjudicating Authority to suspend the process of liquidation and pass any such orders as it deems fit."

The Liquidator ought to have reported to this Adjudicating Authority by way of an Application as per the above regulation for the detection of Fraud or Insolvency. We find that the Applicant / Liquidator ought not to have proceeded with the liquidation process for the reason that the declaration as contemplated under the provision is not valid.

12. Therefore, as on the date of the 'Declaration of Solvency', the Company must necessarily be able to pay off its debts as reflected in the books on the Company. The exercise of 'writing off' debts in the books of the Company must have been carried out prior to the declaration stipulated under the provision. The liquidation process contemplated under Chapter – V of the Code read with IBBI (Voluntary Liquidation Process) Regulations, 2017 is to summarily dissolve a Company where in the opinion of the majority of its

Directors, the Company has no debt or it will be able to pay its debts in full from liquidating its assets.

13. Based on the above observations, we reject the application for the Voluntary Liquidation and Dissolution filed by the Ld. Liquidator on grounds that the Corporate Debtor was not solvent as on Liquidation Commencement Date.

14. The Voluntary Liquidation of Systems Technology Group (India) Private Limited shall stand terminated, accordingly, **CP(IB)/268(CHE)/2022** stands **dismissed** and disposed of. Registry is directed to serve a copy of this order to IBBI.



SAMEER KAKAR
MEMBER (TECHNICAL)



DR. DEEPTI MUKESH
MEMBER (JUDICIAL)