



THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
Court-I

CP (IB) No.265/Chd/Hry/2023

Under Section 59 of the Insolvency and Bankruptcy Code, 2016 and Regulation 40(2) of IBBI (Voluntary Liquidation Process) Regulations, 2017

In the matter of:

DONGAH GEOLOGICAL ENGINEERING INDIA PRIVATE LIMITED

Registered office at Flat No.003, Upper Ground Floor,
Parvesh Residency, Rajendra Park, Gurgaon,
Haryana-122002

....Corporate Person

-And-

In the matter of:

MR. VIKRAM SINGH RATHORE

Liquidator of Dongah Geological Engineering India Private Limited
Office: B 138 Vinoba Bhave Nagar, Amrapali Marg,
Vaishali, Jaipur 302021

....Applicant

Order delivered on: 25.04.2025

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SHISHIR AGARWAL, MEMBER (TECHNICAL)

Present:-

For the Liquidator :Mr. S.S Shekhawat, Advocate
Ms. Parul Shekhawat, Advocate
For the AROC : Mr. Chetan Kumar, AROC (in-person online)

Per: Harnam Singh Thakur, Member (Judicial)

Shishir Agarwal, Member (Technical)

ORDER

The present petition is being filed by Mr. Vikram Singh Rathore, Liquidator of **Dongah Geological Engineering India Private Limited** (Corporate Person) under section 59 of



Insolvency and Bankruptcy Code, 2016 ('IBC') and Regulation 40(2) of IBBI (Voluntary Liquidation Process) Regulations, 2017 praying, *inter alia*, seeking suspension of voluntary liquidation of the Corporate Person.

2. The brief facts as stated in the petition are as follows:-

2.1. The Corporate Person was incorporated as a subsidiary of Dongah Geological Engineering Company Ltd (the "Dongah Korea" or "Holding Company"), the company established under the law of the Republic of Korea having registered office at Busan. 97.39% share Capital of Corporate Person is held by Dongah Korea and 2.61% share capital is held by individuals, six Korean nationals and one Indian national. The Corporate Person successfully completed two projects as subcontractor; one road tunnel project awarded by Jaipur Development Authority at Jaipur, Rajasthan and one hydro tunnel project awarded by Satlaj Jal Vidyut Nigam Ltd at Rampur, Shimla, Himachal Pradesh. The Jaipur project started in the year 2011 and completed in the year 2012. Rampur Project started in the year 2007 and completed in the year 2014. The Jaipur project was profitable but Rampur project incurred losses. The Corporate Person could not get any business after it finished above stated two projects. The capital investment made by the holding company in Corporate Person eroded due to loss incurred in the Rampur project. The Holding Company provided loan i.e. External Commercial Borrowings (ECB) of USD 8,40,000/ (appx. Rs 6.17 Cr.) in the year 2019 to repay working capital loan granted by Shinhan Bank and the balance amount was utilised to meet working capital requirement of the Corporate Person.



- 2.2. As the Corporate person could not get any business after it finished Jaipur and Rampur projects by the year 2014, the Holding Company decided to voluntarily liquidate and dissolve the Corporate Person u/s 59 of the Insolvency and Bankruptcy Code, 2016 (the "IB Code"). The Holding Company waived off its loan (ECB) and other dues payable by the Corporate Person so that the Corporate Person is able to meet other liabilities from the assets/proceeds of the assets. Thereafter, the Board of Directors of Corporate Person comprising of Directors nominated by Holding Company approved to initiate voluntary liquidation of Corporate Person under Section 59 of IB Code in the meeting of Board of Directors held on 18.01.2022 and provided declaration on affidavit of solvency of the Corporate Person under section 59 (3) (a) of IB Code (attached as Annexure-1 of the petition).
- 2.3. The voluntary liquidation of Corporate Person was approved by the members in an extra-ordinary general meeting held on 31.01.2022 by special resolution. The members also appointed the applicant as Liquidator of the Corporate Person to carry out the process of voluntary liquidation process under Section 59 of the IB Code and IBBI (Voluntary Liquidation Process) Regulations, 2017. The Copy of the special resolution passed by the members in extra-ordinary general meeting with a copy of e-Form GNL-2 and MGT -14 are attached as Annexure-2 of the petition.
- 2.4. Thereafter, the Liquidator initiated the process of voluntary liquidation with public announcement in Form-A for Voluntary Liquidation of Corporate Debtor in two Newspapers on 01.02.2022 (attached as Annexure-3). An intimation of initiation of



voluntary liquidation of Corporate Person with resolution passed by members approving voluntary liquidation of Corporate Person as provided under section 59 (4) of IB Code was submitted with IBBI on 07.02.2022 (attached as Annexure-4). After that, the status of Corporate Person was changed by the Registrar of Companies (hereinafter referred to as '**ROC**') from "Active" to Voluntary Liquidation" in master data of Corporate Person on MCA Website (MCA-21) (attached as Annexure-5).

- 2.5. The Liquidator submitted the Preliminary Report dated 14.03.2022 to Corporate Person under regulation 9 of IBBI (Voluntary Liquidation Process) Regulations, 2017 (attached as Annexure-6 of the petition), made part distribution of proceeds to Creditors on 07.06.2022 and sent letter to Himachal Pradesh State Electricity Board for Electricity (HPSEB") for settlement/realisation of advance amount deposited as security. The reply of HPSEB dated 19.09.2022 disclosed that after adjustments of advances, the Corporate Person is liable to pay an amount of Rs. 35,05,011/- (Thirty Five Lakh Five Thousand and Eleven) against the demand on account of use of excess load at Rampur (Shimla) Project. The Corporate Person was in position to pay the said liability at this point. However, the management informed the liquidator that an appeal against the said demand of excess load is pending before Divisional Commissioner, Shimla. The distribution/settlement letter dated 19.09.2022 received from HPSEB is attached as Annexure-7 of the petition.
- 2.6. Further, the liquidator prepared the Annual Report with Audited Receipt and payment Account under Regulation 37(2)(a) of IBBI (Voluntary Liquidation Process) Regulations, 2017 on completion of one year of liquidation and



presented the report to contributors on 09.02.2023 wherein the liquidator stated that the liquidation is pending only for the reason of pendency of appeal before Divisional Commissioner, Shimla against the demand of HPSEB (attached as Annexure-8 of the petition). Moreover, the voluntary liquidation of Corporate Person was initiated on the declaration of Directors stating that they have made a full inquiry into the affairs of the Company and they have formed the opinion that it will be able to pay its debts in full from the proceeds of the assets. Further, the directors estimated the debts, including contingent debts which were part of litigation. One Civil Suit was decided in favour of the Corporate Person during the liquidation process; however, one appeal under Section 127 of the Electricity Act, 2003 against the demand notice dated 27.07.2015 issued by the Assistant Executive Engineer, Elect. Sub Division, Himachal Pradesh State Electricity Board Limited, Jagatkhana, Rampur, Shimla, Himachal Pradesh for an amount of Rs. 62,14,885/ (Rupees Sixty Two Lakh Fourteen Thousand Eight Hundred Eighty Five) was decided during the liquidation process against the Corporate Person on 26.06.2023. The Corporate person deposited Rs. 23,59,000/- with HPSEB at the time of filing of the said Appeal. Now, as per the letter of HPSEB dated 19.09.2022 (Annexure-11) an amount of Rs. 35,05,011/ (after adjusting the amount deposited with appeal and security deposits pending with HPSEB) is payable against the demand notice dated 27.07.2015.

- 2.7 Furthermore, it is submitted that as on 31.08.2023, the funds available with Corporate Person are Rs. 29,10,184.14 in the bank account maintained with Shinhan Bank, New Delhi and Rs. 87,975.86 in HDFC Bank. There is no other



asset with the Corporate Person to meet the demand of HPSEB. Therefore, the funds available with the corporate person are not sufficient to meet the outstanding demand of HPSEB. The Receipt and Payment Account of the Corporate Person as on 31.08.2023 is annexed as Annexure-9. In view of the above facts, the Liquidator is of the opinion that the corporate person will not be able to pay its debts in full from the assets available with the Corporate Person, therefore, the Applicant-Liquidator is making this application to suspend the process of liquidation of the corporate person under regulation 40(2) of the IBBI (Voluntary Liquidation Process) Regulations, 2017.

3. Vide order dated 31.10.2023 of this Adjudicating Authority, notice of this petition was issued to the concerned Registrar of Companies as well as IBBI. In compliance of the above order, the affidavit of service has been filed vide Diary No. 03151/1 dated 04.12.2023. The copy of the email dated 11.11.2023 sent to IBBI and ROC, NCT Delhi and Haryana alongwith the postal receipts and tracking reports, have been attached as Annexure 1-4 of the affidavit. Further, in compliance of the order dated 16.04.2024, Affidavit of service has been filed vide Diary No. 03151/2 dated 06.05.2024 informing the next date of hearing to ROC. The copy of the email dated 17.04.2024 sent to ROC has been attached as Annexure-1 of the affidavit.
4. The Registrar of Companies, NCT of Delhi & Haryana has filed its report vide Dairy No. 03151/3 dated 11.06.2024 where it is stated as under:-

“1. That as per available records on MCA 21 Portal, the petitioner company, DONGAH GEOLOGICAL ENGINEERING INDIA PRIVATE LIMITED having CIN No. U45208HR2006PTC044649 was incorporated on 19/04/2006 under the provisions of Companies Act, 2013. Registered office of the company, as per available records, was Flat No-003, Uppar Ground Floor, Parvesh Residency, Rajendra Park, Gurgaon, Gurgaon, Haryana, India, 122002. The Authorized Capital of the company was Rs. 16,00,00,000 and Paid-up Capital was Rs.



15,95,56,360. Copy of Master Data of company is enclosed herewith and annexed as Annexure-A.

2. That as per available records on MCA 21 portal last Directors of the Company were as follows: • Anjea Sung, Director, SINHAN VILLA-AI2, 2 PYEONGCHANG, 14 GILL, JONGNO-GU SEOUL METROPOLITAN, SEOUL, 138112 South Korea.

• Kyoungjin Kim, Managing Director, 329-B, 3rdFloor, Spaszedge, Sohna Road, Sector-47, South City-II, Gurgaon, 122018, Haryana, India.

• Ashok Kumar Sharma, Director, House No-112, GH-78, Basera Apartment, Sector-56, Gurgaon, 122011, Haryana, India

3. That as per available records, last Balance Sheet and Annual Return were filed by the company for the financial year 2020-21 in e-form AOC-4 & MGT-7 vide SRN T59766881 & T60368214 dated 23.11.2021 & 26.11.2021 respectively. Further, the company has filed its financial statements for the FY 2021-2022 through GNL-2 vide SRN F-54653316 dated 27.12.2022.

4. Further, as per records on MCA portal, following E-forms has been filed by the petitioner company regarding Voluntary Liquidation and same has been taken on record this office:

a. Company has filed MGT-14 vide SRN T77271526 dated 26.12.2022 in respect of Special Resolution dated 31.01.2022 passed by the shareholder for Voluntary liquidation of the Company under Insolvency and Bankruptcy Code, 2016. Annexure-B

b. Company has filed GNL-2 vide SRN T75139527 dated 31.01.2022 in respect of Declaration of solvency dated 18.01.2022. Annexure-C

c. Company has filed GNL-2 vide SRN T77009421 dated 07.02.2022 in respect to file copy of Resolution passed by Shareholders in EGM held on 31.01.2022 for voluntary liquidation of the Company u/s 59 of IBC 2016 along with list of Creditors and consent of creditors. Annexure-D

d. Company has filed GNL-2 vide SRN AA1906806 dated 12.04.2023 in respect of appointment of Auditor.

e. Company has filed GNL-2 vide SRN AA6714007 dated 29.01.2024 in respect of Liquidator Account: Audited Receipt and Payment. Annexure-F

f. The Company has failed to submit copy of final report in compliance of regulation of 38(2) of IBBI (Voluntary Liquidation Process) Regulation, 2017 before this office in Form GNL-2, due to which this office has no information about completion of Voluntary Liquidation process of the company as prescribed in 37(1) of IBBI (Voluntary Liquidation Process) Regulation, 2017.

5. Further as per data received from various cells in this office, no inquiry / inspection / complaint / legal action has been shown pending against the subject Company. That this office has compiled the above factual report based on the records maintained & documents filed by the concerned Company on MCA21 portal.



6. *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 31.10.2023”.*

5. During the course of hearing, vide order dated 01.04.2025, it was recorded that as per ROC report, no inquiry or investigation is pending against the company. However, it was mentioned in Clause-f of the report that the company has to submit the copy of the final report in compliance of Regulation 38(2) of the IBBI (Voluntary Liquidation Process) Regulations, 2017, but this is not an application under Section 59 of the Companies Act, 2013 for voluntary liquidation process rather it is an application for the suspension of liquidation process on the opinion of the liquidator appointed by the shareholders/contributors of the company.

6. We have heard the learned counsel for the liquidator as well as AROC and have perused the records available carefully.

7. It is pertinent to examine Regulation 40(2) of IBBI (Voluntary Liquidation Process) Regulations, 2017, which is stated as under:-

40. Detection of Fraud or Insolvency

(1)

(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.

In the case in hand, it is stated that the corporate person will not be able to pay its debts in full from the proceeds of its assets and has filed this application for the suspension of the liquidation proceedings. This fact is evident from the copy of the Annual Report dated 09.02.2023 and Audited Receipt and Payment Account from 31.01.2022 to 30.01.2023 (attached as Annexure-8 of the petition) as well as the receipt and payment account of the



Corporate Person (attached as Annexure-9 of the petition). It is pertinent to note that the Audited Accounts of liquidation showing receipts and payment are pertaining to liquidation since its commencement date.

It is worthwhile to note that the expected time of closure of liquidation as provided in Para 13 of the Annual Status Report (Under Regulation 37(2) of IBBI (Voluntary Liquidation Process) Regulations, 2017) of the Corporate Person/Company is as under:-

“13. Expected time of Closure of the Liquidation

According to the Regulation 37 (1) of the IBBI (Voluntary Liquidation Process) Regulation 2017, the voluntary liquidation process should be completed within two hundred and seventy days from of the date of commencement of liquidation. However, the voluntary liquidation process for the corporate person (Dongah India) could not be completed within the stipulated time primarily due to pendency of HPSEB case before the Divisional Commissioner.

As all other issues related to liquidation have been closed, the Liquidator will file the dissolution of the corporate person once the Divisional Commissioner decides the pending application for unjustified demand on account of excess load utilization”.

It may be noted that on perusal of order dated 26.06.2023 passed by the Hon'ble Divisional Commissioner, Shimla Divison, Himachal Pradesh (Exercising the powers of Appellate Authority under Section 127 of the Electricity Act, 2003) reveals that the Appeal filed by Corporate Person/Company has been dismissed and in this way there is liability of Rs. 62,14,845/- pending against the Corporate Person/Company. The Corporate person deposited Rs. 23,59,000/- with HPSEB at the time of filing of the said Appeal. Now, as per the letter of HPSEB dated 19.09.2022 (Annexure-11) an amount of Rs. 35,05,011/- (after adjusting the amount deposited with appeal and security deposits pending with HPSEB) is payable against the demand notice dated 27.07.2015. It is evident that on 31.08.2023, the funds available with Corporate Person are Rs. 29,10,184.14 in the bank account maintained with Shinhan Bank, New Delhi and Rs. 87,975.86 in HDFC Bank. There is no other asset with the Corporate



Person to meet the demand of HPSEB. Therefore, the funds available with the corporate person are not sufficient to meet the outstanding demand of HPSEB. The Receipt and Payment Account of the Corporate Person as on 31.08.2023 is annexed as Annexure-9 of the petition. Thus, when Corporate Person/Company (under liquidation) is not in a position to pay its debts and liabilities, then it cannot be liquidated or dissolved. Hence, the liquidator is justified in forming the opinion to suspend the liquidation process of the Corporate Person/Company (under liquidation).

8. In these circumstances, the present application is maintainable and in the backdrop of facts, it will be just, fair and reasonable to suspend the process of liquidation initiated on the basis of the special resolution dated 31.01.2022.

9. Thus, the CP (IB) No. 265/Chd/Hry/2023 is allowed and stands disposed of accordingly.

Sd/-
(Shishir Agarwal)
Member (Technical)

April 25, 2025
Tamanna

Sd/-
(Harnam Singh Thakur)
Member (Judicial)