IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT - II

CP (IB) No. 512/MB/2022

Under section 59 (7) of Insolvency and Bankruptcy Code, 2016 read with Provisions of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

In the matter of

KDD (India) Private Limited

(CIN: U15209MH2008FTC188965)

Having its Registered Office at: Regus Suburb Centre Private Limited, Level 4 Dynasty Business Park, 'A' Wing, Andheri Kurla Road, Andheri East, Mumbai, Maharashtra 400 059.

Represented by its Liquidator,

Mr. Motappa Thimmarrayaswamy

… Corporate Person/ Applicant

Order delivered on: 31.03.2023

Coram:

Hon'ble Member (Judicial)	**Hon'ble Member (Technical)**
Shri Kishore Vemulapalli	**Shri Shyam Babu Gautam**

Appearances:

For the Applicant : Advocate Chethan Kumar K

ORDER

Per: Kishore Vemulapalli, Member Judicial

1. This is a Company Petition filed under Section 59(7) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called the "Code") by a Corporate Person, viz., KDD (India) Private Limited through Mr. Motappa Thimmarrayaswamy, the Liquidator (the Applicant herein), for dissolution of the Corporate Person.

2. The Corporate Person was incorporated on 17th December 2008 under the Companies Act, 1956 with the aim of carrying on business of production and marketing of dairy products and other allied activities. The Corporate Person stopped its operations from 30th September 2020 as the operations became unviable because of existing competition in the Indian market. Considering its bleak future prospects, the Shareholders of the Corporate Person decided to proceed for Voluntary Liquidation.

Procedural Compliances

3. Accordingly, an **Extra-Ordinary General Meeting** was held on **5th October 2020** wherein the Board of Directors of the Corporate Person approved the Special Resolution to voluntarily liquidate the Corporate Person under Section 59 of the Code read with the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (hereinafter called "Regulations") and also appointed Mr. Motappa Thimmarrayaswamy as the Liquidator of the Corporate Person in the same meeting. A copy of the said Board

Resolution has been attached to this Petition and another copy has also been filed with the Registrar of Companies, Mumbai (hereinafter called "RoC") in form MGT- 14 and e-form GNL- 2 along with Challan on 3rd November 2020.

4. Pursuant to Section 59(3) of the Code, the Directors have furnished a **Declaration of Solvency on 7th September 2020** as required in terms of the applicable rules stating that that they have made full inquiry into the affairs of the Corporate Person and are of the opinion that the Corporate Person has no debts and that the Corporate Person is not being liquidated to defraud any person.

5. Further, the Applicant has complied with Regulation 9(1) of Chapter IV of the Regulations and submitted a **Preliminary Report dated 9th November 2020** to the Corporate Person. The Applicant has also intimated the relevant **Income Tax Authority** about the commencement of Liquidation and appointment of Liquidator vide Notice dated 4th November 2020 in compliance with Section 178 of the Income Tax Act, 1961. The copy of intimation to the Income Tax Authority and a copy of the No Objection Certificate dated 23rd September 2021 are attached with this Petition.

6. Pursuant to the provisions of Regulation 14 of the Regulations, the Applicant made a **Public announcement** in Form A on **10th October 2020** about commencement of voluntary liquidation and inviting claims from the stakeholders of the Corporate Person, if any, within 30 days from the date of commencement of the liquidation in "Financial Express" Bangalore Edition (English Newspaper), "Vartha Bharthi" Bangalore Edition (Kannada Regional language), "Business Line"

Mumbai Edition (English Newspaper) and "Tarun Bharath" (Marathi Regional Language), copies of which have been attached to this Petition. The Applicant states that the publication is made both in Mumbai and Bangalore in consideration of the fact that the registered office of the Corporate Person is situated in Mumbai whereas the administration was carried out from Bangalore.

7. Further, pursuant to provisions of Section 59 (4) of the Code, intimation regarding the special resolution to liquidate the Corporate Person has been filed with the RoC and intimation regarding the public announcement was sent to the Insolvency and Bankruptcy Board of India (hereinafter called "**IBBI**") for the purpose of publishing the same on their website on **12th December 2020**.

Distribution of Assets

8. It is submitted that no claim has been received pursuant to the public announcement made including the claim from the Shareholders. Shareholders are not mandatorily required to submit claims as they are already entitled to the liquidation proceeds being a Shareholder. Since no claims have been received by the Liquidator, list of Stakeholders has not been maintained. In pursuance of Regulation 12 of the Regulations, a meeting with the shareholders of the Corporate Person was held on 5th October 2020 via video conferencing, copy of the minutes of which has been attached to this Petition.

9. In pursuance of Regulation 34 of the Regulations, a separate Current Account bearing Account Number 35171139299 was opened in the name of "KDD (India) Private Limited (In Liquidation)" with the

State Bank of India, M.G. Road Bangalore. After due payments were made towards the advertisement and professional charges, the remaining amount has been duly distributed to the shareholders of the Corporate Person as detailed in the Receipts and Payments Account for the period between 5th October 2020 and 30th December 2021 annexed to this Petition. It is submitted that after conclusion of all transactions, the aforesaid bank account has been closed on **29th December 2021**.

10. In pursuance to Chapter XX of the Companies Act, 2013, valuation of the shares of the Corporate Person has been conducted and a report has been obtained from a registered valuer. The **Valuation Report dated 28th September 2021** has been attached to this Petition. Further, in pursuance of Regulation 38, the Accounts of Liquidation have been prepared and the same has been audited by M/s. A.S. Bole & Co. (Chartered Accountant).

11. It is further submitted that in pursuance of Regulation 35 of the Regulations and based on a clarification received from a Chartered Accountant after taking into account the provision for all the liquidation cost(s), the distribution of the balance of proceeds apart from the Share Capital of the Shareholders has been considered as "deemed dividend". A Chartered Accountant was engaged for the purpose of rendering assistance for submission of requisite declarations with regard to remittance outside India and issuance of certificate in FORM 15CA with regard to the remittance to Foreign Body Corporate. Further, the liquidator has sent Letter and representation with the Commissioner of Income Tax for obtaining No Objection Certificate (NOC) for remittance of the funds to the Shareholder. The

NOC was received from the Income Tax Department on 10th March 2021 and subsequently, the remittance to the Shareholders was concluded and the intimation of the same has been sent to both the Shareholders.

12. In compliance with Regulation 38 of the Regulations, the Applicant prepared and submitted **Final Report on 31st December 2021**. It is submitted that since the shareholders are the only contributories/stakeholders of the Corporate Person, the Shareholders Annual Meeting was conducted on 20th October 2022 wherein the Annual Status Report indicating the progress in the liquidation was furnished. Minutes of the same have been attached to this Petition.

13. The Applicant states that all liabilities of the Corporate Person have been extinguished and there are no Assets which remain to be realised. The Applicant further declares that no application, writ petition or suit regarding the matter in respect of this matter has been filed before any Court of law or any other authority or any other Bench and no such proceeding is bending before any of them. Thus, the Applicant has filed this Petition before this Adjudicating Authority under section 59(7) of IBC seeking an order of dissolution of the Corporate Person.

14. On examining the submissions made by the counsel appearing for the Corporate Person and the documents annexed to the Petition, it appears that the affairs of the Corporate Person have been completely wound up and its assets have been completely liquidated. We are also satisfied from the documents on record that the voluntary liquidation is not with intent to defraud any person and that the bank account for the purpose of Liquidation has been closed.

15. In view of the above facts and circumstances and the submissions made by the Applicant, the Corporate Person deserves to be dissolved and it is ordered accordingly. The Applicant is further directed to serve a copy of this order upon the Registrar of Companies, Mumbai, Maharashtra within fourteen days of receipt of this order. The RoC shall take necessary action upon receipt of a copy of this order.

16. File be consigned to the records.

Sd/-	**Sd/-**
SHYAM BABU GAUTAM	**KISHORE VEMULAPALLI**
(MEMBER TECHNICAL)	**(MEMBER JUDICIAL)**

Anusha
31.03.2023