

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU

*(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)*

C.P. (IB)No.45/BB/2022
U/s. 59 of the IBC, 2016

In the matter of:

M/s. Poseidon Diving Operators Private Limited

Rep. by its Liquidator Shri Vasudevan Gopu

R/o. at No.493/1, 9th Cross, 10th Main,

RMV Extension, Sadhasiva Nagar,

Bengaluru – 560 080

- Applicant/Petitioner Company

Order delivered on: 24th January, 2023

Coram: 1. Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)
2. Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Liquidator : Shri Arjun N.A, PCS

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. This Application has been filed under Section 59 of the Insolvency and Bankruptcy Code (described in short as IBC) 2016, by the Liquidator on 04.08.2021, seeking to order dissolution of the Petitioner Company.
2. The aforesaid Company, M/s. Poseidon Diving Operators Private Limited (hereinafter referred to as "Applicant Company") was incorporated on 08.08.2005 under the provisions of the Companies Act, 1956, having CIN: U63040KA2005PTC036916. Its Authorized Share Capital of the Company Rs.60,00,000/- divided into 6,00,000 Equity Shares of Rs.10/- each. The issued, subscribed and Paid-up Share Capital of the Company is Rs.52,00,000/- consisting of 5,20,000 Equity Shares of Rs.10/- each. The main

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objective of Company is involved in the business as tour operators/ tourist water sports operators, conduct deep sea diving tours, underwater tours, marine tours, scuba diving services, underwater sports and act as consultants in this behalf etc.

3. The registered office of the Company is presently situated at No.493/1, 9th Cross, 10th Main, RMV Extension, Sadhasiva Nagar, Bengaluru-560080 which lies within the territorial jurisdiction of this Bench.
4. The following averments have been made in the Petition:
 - a. The Board of Directors of the Company in their meeting held on 04.12.2018 for taking note of **Declaration of Solvency** of the Company as required under Section 59 of the IBC, 2016 by majority of the Directors, decided to wind up the affairs of the Company by voluntary liquidation of Corporate person, on the date of approval by Members in the General Meeting. Further, the Directors vide Affidavit dated 24.12.2018 have declared that they have made full inquiry into the affairs of the Company and are of the opinion that it will be able to pay its debts in full from the proceeds of its assets during the Voluntary Liquidation of the Company, and accordingly the Declaration enclosed is correct, and that the estimated values as given in the said statement as at 04.12.2018 showing assets at estimated realizable values and liabilities expected to rank are proper estimates of the values and are borne out of the books and records of the Company, and that there are no other debts of or claims against the Company and further stated that the Company is not being liquidated to defraud any person.
 - b. The Company in the Extra-ordinary General Meeting held on 24.12.2018 passed a **Special Resolution to liquidate the Company voluntarily**, and appointed Mr. Vasudevan Gopu to act as Liquidator of the Company. The copy of extract of Minutes of EOGM is annexed at Annexure-6 of the Petition.

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- c. The Audited Financial Statements of the Company as on 31.03.2018 and 31.03.2017 along with Auditor's Report have been filed vide Diary No.3904 dated 13.09.2022.
- d. The commencement of liquidation and appointment of liquidator is intimated to the ROC in form MGT-14 and GNL-2 (for submission of documents) on 11.01.2019. The Public Announcement was simultaneously submitted to Insolvency and Bankruptcy Board of India to place the same on its website on 28.12.2018.
- e. **Public Announcement (Regulation 14 of the IBBI (Voluntary Liquidation Process) Regulations, 2017)** - The Liquidator made a Public Announcement of commencement of liquidation in Form A, in the Financial Express, English Newspaper and Sanjeevani, Kannada Newspaper on 28.12.2018 seeking submission of the claim by the stakeholders, if any, within 30 days from the date of commencement of liquidation i.e. on 24.12.2018.
- f. **List of stakeholders (Regulation 30 of the IBBI (Voluntary Liquidation Process) Regulations, 2017)** - The last date of submission of claims, if any was 23.01.2019. The liquidator has not received any claims from the stakeholder's i.e. Workers, Employees, Creditors or any other third party stakeholders. Final list of stakeholders is annexed as Annexure-8 of the Petition.
- g. **Preliminary Report (Regulation 9 (1) of Chapter IV of the IBBI (Voluntary Liquidation Process) Regulations, 2017)** - The Liquidator submitted the preliminary report to the Company on 07.02.2019.
- h. **Opening of Bank Account (Regulation 34 of the IBBI (Voluntary Liquidation Process) Regulations, 2017)** - The Bank Account was opened with Indian Overseas Bank and the said Account was closed after meeting the liquidation costs of the Company.
- i. **As per provisions of Section 178 of the Income Tax Act, 1961**, the liquidator has intimated the commencement of

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Liquidation and appointment of Liquidator to the Income Tax Authority on 27.06.2019. In this regard, the Income Tax Department provided its' no objection letter on 15.07.2019. A copy of the letter is attached as Annexure-9 of the Petition.

- j. **Distribution:** Equity Shareholders of the Company was remained as the only class of stakeholders to whom the liquidation funds were to be distributed. The Company has two Indian Shareholders and one foreign shareholder.
- k. **RBI Compounding:** During the process of liquidation, it is noticed that there was non-compliance in the filing of Advanced Foreign Remittance Form for the inward remittance received from the foreign shareholder during 2015 towards share application money for fully paid-up equity shares, and the said non-compliance was due to inadvertence. Hence the RBI reporting forms were resubmitted and the same was taken on record vide registration No.FC2020BGR5006 and as there was delay in filing the Advanced Reporting Form, it had directed the Company to undergo the compounding process. Hence, a Compounding Application dated 05.10.2020 was submitted before the Reserve Bank of India, Bangalore and the Application was accepted and a compounding order was passed on 29.12.2020 with a penalty of Rs.42,500/- and the same was paid by the Company. A copy of the RBI acknowledgment letter and the compounding order is enclosed as Annexure-11 of the Petition. Due to the said RBI compounding process and delay in outward remittance to the foreign equity shareholder, the Petitioner further stated that the liquidation process had continued for more than twelve months
- l. **Final Report - (Regulations 38 of the IBBI (Voluntary Liquidation Process) Regulations, 2017)** - The liquidator had got the Accounts Audited for the liquidation period and submitted his Final Report on 26.07.2021, Financial Statement of the Company as on 31.03.2018 and the Statement of Bank Account of Petitioner have been filed at page 144 of the

Petition. In connection with the Accounts of the liquidation, the CA certificate showing receipts and payment pertaining to liquidation since the liquidation commencement date is being submitted which is given hereunder:

**Accounts of the Liquidation, showing summary of receipts
and payments pertaining to liquidation for the period
27.03.2019 to 16.04.2021**

DATE	RECEIPTS	Rs.	DATE	PAYMENTS	Nature of Payment	Rs.		
27.3.2019	Bank balance realized	45,60,370	27.3.2019	Bank charges	Cheque book issue charges	236		
			30.3.2019	Bank Charges	Ledger folio charges	94		
			4.4.2019	Payment to centigrade brand creative solution Pvt. Ltd.	Expenses incurred for public announcement	15,922		
			8.7.2019	Payment to GV Associates	ROC filing fee reimbursement	5500		
			9.9.2019	Payment to Arjun & Co.	ROC forms preparation and filing fee	5000		
			9.9.2019	Payment to G.Vasudevan	Liquidator's fee	88,500		
			9.9.2019	Payment to SR associates	Certification fee	11,800		
			13.1.2021	Payment to MOJ associates	RBI compounding DD reimbursement	42,500		
			13.1.2021	Payment to SR associates	RBI compounding consultancy charges	11,800		
			29.1.2021	Payment to SR associates	RBI compounding consultancy charges	29,500		
			29.1.2021	Payment to L Bharathi	CS Certification fee (RBI FCGPR)	5000		
					<u>Distribution to Shareholders</u>			
					22.11.2019	Payment to Mr. Parth Dinubhai Amin	Distribution to equity shareholder	2,130,552
					22.11.2019	Payment to Mr. Indu Sheaker	Distribution to equity shareholders	41,707
			16.4.2021	Payment to Mr. Daniel J White	Distribution to equity shareholders	2,172,259		
		45,60,370				45,60,370		

m. The Final Report of the Liquidating Company was submitted with ROC and IBBI on 29.07.2021.

5. Heard Shri Arjun N.A, learned PCS appearing for the Applicant. We have carefully perused the record and extant provisions of the Code, and the Regulations made thereunder.
6. Therefore, the affairs of the Corporate Person have been completely wound up and its assets have been liquidated and nothing remains



to be liquidated. Thus, the compliances of Section 59 and other relevant provisions of the IBC, 2016 r/w. Regulation 37(2) of IBBI (Voluntary Liquidation Process) Regulations, 2017 from the date of commencement of liquidation proceedings is completed. Hence, we are of the considered opinion that the Corporate Person, through its liquidator, has been voluntarily liquidated.

7. In view of the foregoing, **M/s. Poseidon Diving Operators Private Limited**, the Applicant Company is hereby dissolved with effect from the date of the present order. A copy of this order be filed with the ROC within fourteen days.
8. The Petition bearing **C.P.(IB)No.45/BB/2022** is accordingly allowed in the above terms.

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MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)

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T. KRISHNAVALLI
MEMBER (JUDICIAL)