

**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**CP(IB) No. 20/Chd/Hry/2023**

**Under Section 59 of the Insolvency &  
Bankruptcy Code 2016, read with  
Regulation 38 of Insolvency and  
Bankruptcy Board of India (Voluntary  
Liquidation Process) Regulations, 2017**

**In the matter of :**

**M/s Onyx Hospitality India Private Limited (in liquidation)  
Through Sanjay Khandelwal, Liquidator**

having its registered office at  
J-7057, Devinder Vihar  
Sector-56 Gurgaon HR-122011  
CIN No.U55101HR2010PTC040058

... Petitioner

Versus

**The Registrar of Companies, Delhi**

4th Floor, IFCI Tower, 61,  
Nehru Place, New Delhi-110019

..Respondent

**Judgment delivered on: 11.10.2023**

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

**Present:**

For the Petitioner : Mr. Vishav Bharti Gupta, Advocate  
For the Respondent : None

**Per: Harnam Singh Thakur, Member (Judicial)**

**JUDGMENT**

The present Company Petition has been filed by the Liquidator, Mr Sanjay Khandelwal, on behalf of M/s Onyx Hospitality India Private Limited (in liquidation),

(hereinafter referred to as "Company" or "Corporate Debtor") under Section 59 of Insolvency and Bankruptcy Code, 2016 read with Regulation 38 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, seeking the relief that the Petitioner Company be dissolved as per the provisions of the Code of 2016 and the Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

2. Brief facts giving rise to the filing of the instant Company Petition, which is just and necessary for adjudication, are narrated hereunder:-

2.1 It is submitted that the company was incorporated on 05.02.2010 and the Main Object of the company was to carry on the business of owning, running, conducting, or managing hotels; service apartments, motels; holiday resorts; restaurants; conference centers; boarding and lodging houses; time-shares; leisure centers, holiday camps, cafes, clubs, holiday rentals, and rental management, fast food outlets, malls, multiplexes, golf courses, shopping centers, places of entertainment, amusement, recreation, and sport, and any other tourism or hospitality related business in India or abroad. The Certificate of Incorporation, Memorandum of Association, and Articles of Association of the Company have been attached as "Annexure A" of the application. The list of Shareholders and Directors of the company as of 28.02.2023 is attached as "Annexure B"

2.2 The petitioner company submitted the declaration of solvency made by the Directors of the company along with audited financial statements and records of business operations for years ending on 31.03.2020, 31.03.2021, and 01.04.2021 to 31.01.2022, copy attached as "Annexure C", along with a copy of Form GNL-2 registered vide SRN T83348318 filed on 25.02.2022 with its challan filed for declaration of solvency, as "Annexure D".

2.3 The Authorized Share Capital of the Applicant Company is INR.8,56,00,000/- divided into 85,60,000/-(Eighty-Five Lakh Sixty Thousand) equity shares of INR.10/- each (Rupees ten each). The petitioner company has decided to shut down the corporate person due to the unavailability of business prospects coupled with long-term financial costs required to maintain the status of the Corporate Person that rendered the venture financially not viable, and that the directors of the company felt there was no other alternative but to put the company into liquidation. Accordingly, a resolution to liquidate the company voluntarily as per the provisions of Section 59 of the Insolvency and Bankruptcy Code 2016 was passed in the board meeting dated 01.02.2022.

2.4 The company in their Extraordinary General Meeting (also referred to as "EGM") held on 28.02.2022 passed a special resolution approving the voluntary liquidation of the company and the appointment of Mr. Sanjay Khandelwal, Insolvency Professional, to act as Liquidator of the company. Notice for the said EGM and the certified copy of the above-mentioned resolution is placed and marked as "Annexure E". The certificate copy of the aforesaid special resolution, i.e, the intimation of the Board Resolution of placing the company under liquidation, was filed with the Registrar of Companies through Form MGT-14, filed vide SRN T83348649 on 25.02.2022 which is part of "Annexure-F" of the petition.

2.5 A copy of form GNL-2 was filed along with its challan, and the intimation of appointment of the Liquidator and the liquidator's remuneration was made before the Registrar of Companies vide SRN T83767913 on 01.03.2022 ("Annexure-G").

2.6 The public announcement by Liquidator in Form A of Schedule I was made ("Annexure-I") in newspapers '*Financial Express*' and '*Jansatta*', both dated

02.03.2022, with the last date of submission of claims being declared as 30.03.2022. Proof that the Insolvency and Bankruptcy Board was informed of the mentioned public announcement was uploaded on the website of the Insolvency and Bankruptcy Board of India (hereinafter referred to as the “**IBBI**”) and is placed and marked as “Annexure J”.

2.7 The Preliminary Report of the company was prepared by the Liquidator on 23.03.2022 under Regulation 9 of IBBI (Voluntary Liquidation Process), Regulations, 2017, well within the stipulated 45 days from the date of commencement of the Liquidation process. A copy of the same is placed and marked as “Annexure K”.

2.8 As per Regulation 34(1) of IBBI (Voluntary Liquidation Process), Regulations, 2017, the liquidator had arranged for the opening of a separate bank account of the company as ‘Onyx Hospitality India Private Limited (In Voluntary Liquidation)’ with Axis Bank, New Delhi, on 23.04.2022, which was utilized for distribution of available funds and thereafter the account was closed. The Current Account/s of the Corporate Person with Axis bank was closed after transferring the balance in liquidation account on 30.04.2022. Copy of the Bank Statement of the Liquidation Account is placed and marked as “Annexure L”.

2.9 The Registrar of Companies ( “ROC”) and the IBBI were both informed of the appointment of the liquidator and the initiation of liquidation proceedings on 01.03.2023, copy attached in “Annexure M”. Letters were submitted to RoC; e-form MGT-14 registered vide SRN T83752972 in respect of Special Resolution favoring voluntary liquidation by shareholders was filed, as well as e-form GNL-2 registered vide SRN T83767913 in respect of CTC of appointment of Liquidator, both were

filed on 01.03.2022, and updated to the IBBI (Screenshot of the said submission on IBBI website also attached separately as “Annexure H”)

2.10 The Corporate Person was not registered with any Government authority except for the Income Tax Department. It is submitted by the liquidator that as per the provisions of Section 178 of the Income Tax Act, 1961, the Liquidator has intimated the commencement of liquidation and the appointment of the liquidator to the Income Tax Department by letters dated 03.03.2022, Reference no.- ED517255771IN, marked as “Annexure N”.

2.11 The Company had no stakeholders. It is further stated that from the date of public announcement, the liquidator has not received any claim/proof of claim from any of the stakeholders concerned with the Corporate Person. All the assets as available as on the liquidation commencement date have been recovered and a copy of audited accounts of the liquidation account showing receipts and payments pertaining to the liquidation period i.e 28.02.2022 to 21.10.2022 is attached as “Annexure- P” of the petition. The Company’s creditor, Firm Manoj Aggarwal and Associates, has submitted a No Objection Certificate to the Voluntary Liquidation Proceedings, dated 02.03.2022 (copy attached in Annexure- R).

2.12 The Final Report of the liquidation process was prepared on 12.11.2022 along with the audit receipt and payment account, from the liquidation period of 28.02.2022 to 21.10.2022, demonstrates that assets and debts of the corporate persons have been disposed and discharged, along with other details as required under Regulation 38 of the IBBI (Voluntary Liquidation Process) Regulations, 2016 and was submitted to the Registrar of Companies, IBBI, and NCLT in e-form GNL 2 filed vide SRN F47552401 on 24.11.2022 in respect of submitting the final report on 21.11.2022 by the company under Regulation No 38 of IBBI (Voluntary Liquidation

Process) Regulation, 2017. Copy of Final Report attached and placed as “Annexure Q”, Copy of GNL-2 can be perused in the RoC report submitted to NCLT vide Diary number 03255/4 dated 22.06.2023, pg 64 under Annexure G of the RoC report.

2.13 It is stated that subsequent to the payment to the creditors and towards liquidation expenses, the account was closed. The Liquidator has received a letter of Closure ( Ref no “AXISB/CBG/221031/01”), dated 31.10.2022, of the Bank Account No. **9220-2002-1274-557** maintained by the Corporate Person, from Axis Bank-Green Park, Branch, New Delhi, stating that the account stands closed as on 21.10.2022. A copy of the mentioned letter is attached as “Annexure-R”.

3. On the basis of the aforementioned grounds and reasons, the company, through the liquidator, has prayed for an order from this Adjudicating Authority for the dissolution of the Petitioner Company and making a declaration to this effect.

4. We have heard the learned counsel appearing on behalf of the Petitioner Company and, with his able assistance, have carefully gone through the contents of the present petition. We have also duly considered the merits thereof in the light of the statutory provisions of Section 59 of the Code read with other relevant Regulations. For the sake of convenience, the relevant provisions of Section 59 of the Code are being reproduced herein below:-

### ***59 Voluntary Liquidation of corporate persons***

1. *A corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of this Chapter.*
2. *The voluntary liquidation of a corporate person under sub-section (1) shall meet such conditions and procedural requirements as may be specified by the Board.*
3. *Without prejudice to sub-section (2), voluntary liquidation proceedings of a corporate person registered as a company shall meet the following conditions, namely:-*

- a. a declaration from the majority of the directors of the company verified by an affidavit stating that-
  - i. they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and
  - ii. the company is not being liquidated to defraud any person;
- b. the declaration under sub-clause (a) shall be accompanied with the following documents, namely;-
  - i. audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;
  - ii. a report of the valuation of the assets of the company, if any prepared by a registered valuer;
- c. within four weeks of a declaration under sub-clause (a), there shall be-
  - i. a special resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily and appointing an insolvency professional to act as the liquidator; or
  - ii. a resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily as a result of expiry of the period of its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, as the case may be and appointing an insolvency professional to act as the liquidator.

Provided that the company owes any debt to any person, creditors representing two-thirds in value of the debt of the company shall approve the resolution passed under sub-clause © within seven days of such resolution

4. The company shall notify the Registrar of Companies and the Board about the resolution under sub-section (3) to liquidate the company within seven days of such resolution or the subsequent approval by the creditors, as the case may be.
5. Subject to approval of the creditors under sub-section (3), the voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution under sub-clause © of sub-section (3).
6. The provisions of sections 35 to 53 of Chapter III and Chapter VII shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.
7. Where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate person.
8. The Adjudicating Authority shall on an application filed by the liquidator under sub-section (7), pass an order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.
9. A copy of an order under sub-section (8) shall, within fourteen days from the date of such order, be forwarded to the authority with which the corporate person is registered.

5. A bare perusal of the material available on record shows that the Board of Directors of the Company has made a conscious decision to close down the company. Thus, the Board of Directors of the company has unanimously proposed to liquidate the company by invoking the provisions of voluntary liquidation under Section 59 of the Code.

6. It has been mentioned in the petition that the Board of Directors in its meeting and the shareholders of the petitioner company by a special resolution approved the voluntary liquidation of the company and the appointment of Mr Sanjay Khandelwal, Insolvency Professional, to act as Liquidator of the company on 01.02.2022. On 28.02.2022, the above resolution was approved by creditors representing two-thirds in the value of the debt of the company.

7. From the perusal of the record of the case, it is seen that the Liquidator, after his appointment, has duly performed his duties and completed the necessary formalities to complete the liquidation process of the Petitioner Company, which has been averred in the present petition and, thus, the liquidator has prayed for an order from this Tribunal to dissolve the Petitioner Company.

8. Since there is no objection received from any angle opposing the proposed voluntary liquidation/dissolution of the company either from the side of the shareholders or from creditors, nor any adverse comment, have been received from the public at large against such liquidation/dissolution, despite there being a public announcement by the liquidator and also updation of the same in the website of the Insolvency and Bankruptcy Board of India (IBBI). It is also evident from the record that the proposed liquidation was duly communicated to the concerned Registrar of Companies, as per Form MGT-14 and Form GNL-2.

9. Notice was issued to the concerned Registrar of Companies (“RoC”). The Registrar of Companies filed its report before the NCLT (Diary no 03255/4 dated 22.06.23), whereby it has stated that no inquiry/ inspection/ complaint/ legal action has been processed/pending against the subject company and that the present status report of the company has been filed in compliance with the NCLT order dated 20.01.2023. The Insolvency and Bankruptcy Board has, via affidavit dated 12.04.2023, stated that neither any action is contemplated by the Board, nor any action is pending against the liquidator before it. The Board has no observation against the dissolution of the Company.

10. As per the record of the present case, it is seen that the company is not found involved in such kind of business activities, which are detrimental to the interest of the public at large. Further, it is not the case that the proposed liquidation may adversely affect its shareholders/members or is contrary to the provisions of the law.

11. The Liquidator had filed copies of the paper publication as well as copies of the paper announcement in Form-A. The Liquidator is found to have complied with the statutory provision to complete the liquidation process by taking the necessary steps. The ‘in voluntary liquidation’ account of the company was also closed which is evident from the letter issued by Axis Bank dated 31.10.2022 “Annexure R”. The Liquidator had further intimated to the Income Tax Department regarding the voluntary liquidation of the company as well as his appointment as the liquidator. It is also submitted that an NOC from the Income Tax Department was not required, as the Corporate Person was registered under the department itself. The liquidator has completed the final distribution of assets as of 21.10.2023 as per the date of liquidation account closure. Thereafter, the liquidation accounts were audited on 12.11.2022, and the said information was submitted in the Final Report to the IBBI, the ROC, and the Hon’ble NCLT on 24.11.2022 by the Liquidator on 24.11.2022 ( “Annexure Q”).

12. The Liquidator has also annexed a copy of the preliminary report, (“Annexure K”) a copy of the Final Report with accompanying Form GNL-2 (SRN F47552401 of 24.11.2022), Copy attached and placed as “Annexure Q”, along with a copy of the tracking report and postal receipts with the present application filed with the Hon’ble NCLT vide Diary no 03255/01 dated 22.02.2023.

13. Considering the above-stated facts and circumstances, the present application deserves to be allowed for the proposed Liquidation/Dissolution of the Corporate Person.

14. Consequently, this Adjudicating Authority, in the exercise of the power conferred to it under Section 59 (8) of the Insolvency and Bankruptcy Code, 2016, orders that the Corporate Person (Petitioner Company) M/s Onyx Hospitality India Private Limited shall stand dissolved with immediate effect from the date of this order.

15. The Liquidator is directed to communicate a copy of this order to the respondent, i.e. concerned Registrar of Companies, wherein the registered office of the company is situated. Further, a copy of this order should also be communicated to the IBBI for information. Such communication should be made within the stipulated period of fourteen (14) days from the date of receipt of an authentic copy of this order.

16. The Registry is directed to communicate a copy of this order to the concerned Registrar of Companies, as well as to the Insolvency and Bankruptcy Board of India (IBBI).

17. Thus, the present Company Petition is allowed and stands disposed of.

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**(Subrata Kumar Dash)**  
**Member (Technical)**

October 11, 2023  
RHD, SKD

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**(Harnam Singh Thakur)**  
**Member (Judicial)**