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IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III (SPECIAL BENCH)
(IB) – 63 (ND)/2024

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

IN THE MATTER OF:

M/s. KAEFER PRIVATE LIMITED

Having its Registered Office at:

No-12, Second Floor, Hargovind Enclave,

Karkardooma, Delhi-110092

Through its Liquidator

Navdeep Gupta

IBBI Registration No.- IBBI/IPA-001/IP-P01/IP-P01791/2019-2020/012814

...Applicant/Petitioner

Order Pronounced On: 13.06.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)
SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Liquidator: Mr. Rajendra Beniwal, Mr. Shivam Raghuvanshi,
Mr. Ashkrit Tiwari, Richa Singh, Advocates

For the IT Dept.: Mr. Anurag Ojha, Sr. Standing Counsel,
Ms. Hemlata Rawat & V K Saxena, Jr. Standing Counsels

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

1. The present Application has been filed by Mr. Navdeep Gupta, who has been appointed as the Liquidator of **M/s. Kaefer Private Limited** on 03.01.2024, under Section 59(7) of the Insolvency & Bankruptcy Code, 2016 ("IBC" or "the Code") r/w Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, ("**Voluntary Liquidation Regulations**").

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Date of Order: 13.06.2024



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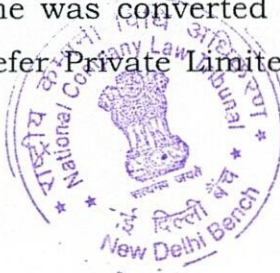
2. The Applicant Company was incorporated on **14.11.1994**, as a Private Company having CIN: U74899DL1994PTC062696 under the provisions of the Companies Act, 2013 with the Registrar of Companies, NCT of Delhi & Haryana, and having Registered office at No-12, Second Floor, Hargovind Enclave Karkardooma, Delhi-110092.
3. The Authorised Share Capital of the Company as on 31.03.2021 is Rs. 11,00,00,000/- (Rupees Eleven Crore only). The Issued, subscribed and paid-up share capital of the Company is Rs. 10,35,80,000/- (Rupees Ten Crore Thirty Five Lakh Eighty Thousand) only.
4. The Applicant Company was having specialisation in insulation, access, surface protection, passive fire protection, as well as interior outfitting.
5. The Board of Directors of the Corporate Person comprise of the following:
 - i. Ms. Francisca Micaela Gorgodian (Director) (DIN 06620227)
 - ii. Mr. Udo Giesen (Director) (DIN 07843286)
 - iii. Mr. Rajesh Datta (Director) (DIN 06958258)
6. The Board of Directors of the Company considered that for the preceding two years, the Applicant Company was not doing any business and not earning any profits and was of the opinion that due to non-availability of business prospect, it was not financially viable to continue and carry on the business activities of the Applicant and proposed to closed down the Applicant Company by way of Voluntary Liquidation and convene an Extra-Ordinary General Meeting on 14.07.2021 to liquidate the Company.
7. The Declaration of Solvency was approved by the Board of Directors on 16.06.2021 and it was executed by way of affidavit dated 16.06.2021 deposing therein that the company is not being liquidated to defraud any Creditor, Government, Company, Firm or any person and resolved to wind up the company under "Voluntary Winding up" at the Board meeting held on 16.06.2021, as per section 59(3)(a) of the Code as per Regulation 3(i)(a) & 3(4) of Voluntary Liquidation Regulations, 2017.
8. The Declaration of the Voluntarily Liquidation of the Applicant Company was intimated to the Registrar of Companies (ROC), Delhi in Form GNL-2 vide SRN T31788094 on 21.07.2021 along with details of the all the existing Directors, Audited financial statements and record of business operations of the Applicant Company.
9. In compliance of Section 59(3)(b) of the Code and Regulation 3(b)(i) of





Voluntary Liquidation Regulations within four weeks of declaration, the shareholders of the corporate person passed the Special Resolution in terms of Section 59(3) of the Code and Regulations 3(c) of the Voluntary Liquidation Regulations on 14.07.2021 inter alia resolving to:

- i. Voluntary Liquidation of the corporate person;
 - ii. Recommended the appointment of the applicant **Mr. Navdeep Gupta**, Registered Insolvency Professional having Registration No. **IBBI/IPA-001/IP-P01/IP-P01791/2019-2020/012814**), under Regulation 5, who is eligible under Regulation 6 of Voluntary Liquidation Regulations to act as the Liquidator of the Company.
10. In compliance of section 117 of the Companies Act, 2013, the Liquidator has filed the Board Resolution passed by the Directors and the Special Resolution passed by the Shareholders dated 14.07.2021 for Voluntary Winding up with the Registrar of Companies vide E-Form MGT-14 SRN T31778343 and SRN T31775414 respectively on 21.07.2021.
11. In compliance of Regulation 14(1) and 14(3)(a) of IBBI (Voluntary Liquidation Process) Regulations, 2017 the Voluntary Liquidator has published the Public Announcement in Form A of the Schedule of the applicable Regulations in the newspaper namely "The Financial Express" in English and in "Jansatta" in Hindi on 19.07.2021, seeking submissions of the claim by the creditors, within the 30 days from the date of commencement of liquidation, i.e., on or before 14.08.2021. The Public Announcement was also submitted to IBBI. The commencement of the voluntary liquidation and appointment of Liquidator were intimated to the RoC, Delhi in Form MGT-14 vide SRN T31778343 and T31775414 on 21.07.2021. The copy of the Public Announcement in Form-A was sent to the IBBI for uploading on the website of the IBBI.
12. It is submitted that as per the regulations the liquidator filed its preliminary report dated 27.08.2021 to the Applicant Company detailing the capital structure of the company, estimation of its assets and liabilities, plan of action for liquidation process and etc.
13. In compliance of Regulation 34 of the IBBI Voluntary Liquidation Regulation, the liquidator retained the existing Bank account held with Duetsche Bank and the same was converted into designated liquidation Account in the name of "Kaefer Private Limited in Voluntary liquidation"



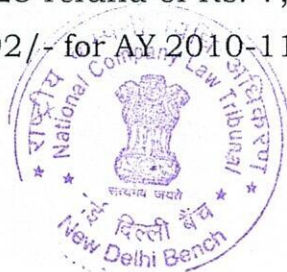


with Deutsche Bank AG. However, during the course of liquidation process when liquidator pursued Income Tax Refund it failed due to technical issue being Non-Integration of the Account with Income Tax Portal.

14. Despite continuous efforts to resolve the matter, the liquidator was constrained to open new bank account in the name of 'Kaefer Private Limited in Voluntary liquidation' with Yes Bank. The details of bank accounts by the Liquidator are mentioned below:

S.No.	Name of the Account Holder	Name of the Bank	Account No.	Address
1.	Kaefer Private Limited in Voluntary Liquidation	Deutsche Bank AG	1524313000	14th Floor, 18-20 HT House, KG Marg, New Delhi
2.	Kaefer Private Limited in Voluntary Liquidation	Yes Bank Limited	072363300003798	G.F., Plot No. 10, Paschim Enclave,, Peera Garhi Chowk, New Delhi

15. In compliance of section 178 of the Income Tax Act, 1961, the liquidator intimated the commencement of liquidation and appointment of the liquidator to the Income Tax Authority. Subsequently, the Liquidator issued a letter dated 12.03.2022 to the Income Tax authority for refund of the Rs. 48,15,483/- for the assessment year 2009-10, 2010-11, 2011-12 & 2012-13. Thereafter, the Income Tax Authority after assessing the ITR filed by the Applicant Company, passed an order dated 18.04.2022 u/s 250/143(3) of the I.T. Act, 1961 for AY 2009-2010, Order dated 18.04.2023 for AY 2010-2011 and 2012-13 passed by the assessing authority, wherein it was assessed that Rs. 43,26,660/- is the refund for AY 2009-2010, Rs. 17,74,092/- is the refund for AY 2010-2011 and Rs. 7,66,943/- is the refund for AY 2012-2013 which is liable to be refunded by the authority and same was processed. Subsequently, the Liquidator received the partial refund of Rs. 43,26,660/- on 06.12.2022 for AY 2009-2010, Rs. 3,40,340/- for AY 2021-2022 and Rs. 1,88,090 for AY 2022-2023 on 15.12.2022. Subsequently, on 09.05.2023 refund of Rs. 7,66,943/-for AY 2012-13 and Final refund of Rs. 17,74,092/- for AY 2010-11 was realised on 19.10.2023.





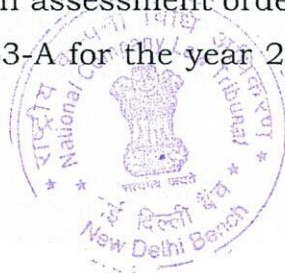
16. During 14.07.2021 to 14.08.2021 no claims were received by the Liquidator. However, few claims were received by the Liquidator after expiry of the prescribed period mentioned in the public announcement.
17. After the expiry of the prescribed period for submitting the claim form, the liquidator had received few claim forms from various authority. The details and actions taken by the liquidator are mentioned below: -

S. No.	Name of the Claimant	Date of Filing of Claim Form	Claim in Rs.	Remarks
1.	Excise & Taxation Officer-Cum-Assessing Authority, Gurugram	28.01.2022	1,72,068	Claim form was withdrawn by the Assessing Authority.
2.	Employee Provident Fund Organisation, Dwarka, Delhi	27.08.2021	1,20,322	Rs. 1,20,322/- was paid on 17.02.2022
3.	Employee State Insurance Corporation, New Delhi (Including Sub Code of Various States)	17.09.2021	2,47,891	Claim accepted for the amount of Rs.2,896/- and same was paid on 08.02.2022.
4.	Employee Provident Fund Organisation, Thane	02.02.2022	34,37,121	Claim Rejected. However, after verification liquidator paid Rs.28,009/- to the EPFO, Thane towards the amount falling short for the month July, 2010 & August, 2010. Out of Total Amount Rs. 2998 was paid on account of shortfall. Rs. 16899 towards damages and Rs. 8112 on account of Interest.





18. On 21.12.2021, the Liquidator filed a compounding application before the RBI for compounding of contraventions of the provisions of the FEMA. The RBI compounded the contraventions of Paragraph 9(1)(A), 9(1)(B), and Paragraph 8 of Schedule 1 to FEMA 20/2000-RB and directed the Applicant Company pay an amount of Rs. 11,86,147. Thereafter, the Liquidator upon receiving the Order dated 06.04.2022 passed by the RBI Foreign Exchange Department, the Liquidator complied with the same and made the payment of Rs. 11,86,147/-. Subsequently, on 13.04.2022, the RBI issued certificate of payment.
19. The Liquidator filed an application before the VAT department, Vadodara for issuance of no due certificate/no objection certificate. Subsequently, VAT Department, Vadodara in its response denied to issue no due certificate as the Applicant company has filed two revision application bearing no. 148 of 2010 and 149 of 2010, before the Gujarat VAT Tribunal at Ahmedabad. Considering the Applicant Company has gone into the voluntary liquidation, the liquidator decided to withdraw both the application. Subsequently, the Liquidator through its counsel had filed the withdrawal application dated 28.01.2022 before the Hon'ble Tribunal. The revision application no. 148 and 149 of 2010 was listed on 15.02.2022 before the Gujarat VAT Tribunal at Ahmedabad, wherein the Learned Tribunal had considered the withdrawal application and was pleased to pass the judgement wherein allowed the liquidator to withdraw the revision application no. 148 and 149 of 2010. Subsequently, the VAT Department, Vadodara issued a no due certificate/ no objection certificate to the Applicant Company.
20. The Liquidator issued a letter to VAT Department, Bhatapara, Chhattisgarh for issuing No Due Certificate/No Objection Certificate. Subsequently, the VAT Department, Bhatapara, Chhattisgarh in its response vide letter dated 24.11.2021 intimated the liquidator regarding the pending due of the two branches of the applicant company. Subsequently, the liquidator cleared the outstanding due by issuing two Demand Draft having DD No. 732685 and DD No. 732684 of Rs. 2000/- and 2240/- respectively.
21. The Liquidator had issued an authorization letter to the office of Assistant Commissioner, Value Added Tax (VAT) in Chennai, for issuance of the no due certificate and to pass an assessment order with reference to the Form WW audit report filed u/s 63-A for the year 2012-13, 2013-14 and 2014-





15. The assessing authority after scrutinization of the Form WW audit report filed u/s 63-A for the year 2012-13, 2013-14 and 2014-15 had passed an assessment order dated 05.07.2022 for the year 2012-2013, 2013-2014 and 2014-2015, wherein there was no pending arrears or due. Subsequently, after passing an assessment order dated 05.07.2022 passed by the assessing authority, Chennai. The VAT Department, Chennai issued No Due Certificates dated 11.07.2022 and 14.07.2022 to the Applicant Company.
22. The Liquidator filed Final Report, along with the Auditors Certificates on the liquidation, showing receipts and payments pertaining to voluntary liquidation with Registrar of Companies and IBBI on 21.12.2023. The copy of the Final Report submitted to the Registrar of Companies (ROC) Delhi in Form No. GNL-2 vide SRN No. AA6429928 on 21.12.2023.
23. Subsequent to the payments of the Creditors, the liquidator has closed the liquidation account and further the Banks namely Yes Bank and Deutsche Bank issued Certificates for closure of the respective Bank Accounts on 20.11.2023 and 07.12.2023 respectively which are attached with the present application and marked as **Annexure- A/24**.
24. In compliance with the Regulation 37(2) of Voluntary Liquidation Regulations, since the Voluntary Liquidation process could not be completed within 12 months because of delay in receipt of statutory refunds. Therefore, the meeting of Contributories was held on 27.07.2022 and subsequently on 26.07.2023 where the Liquidator presented the Annual Status Report enclosed with an audited account of the Voluntary Liquidation showing the receipts and payments pertaining to liquidation since the liquidation commencement date.
25. In compliance with Order dated **12.02.2024**, the Registrar of Companies, NCT of Delhi & Haryana filed its report dated 03.05.2024, whereby it has stated that as per their records, no inquiry/inspection/complaint/legal action has been proceeded/pending against the Applicant Company.
26. In compliance with Order dated **12.02.2024**, The Income Tax Department filed its report dated 30.04.2024 wherein it stated that no outstanding demand is pending against the Applicant Company and hence, No Objection Certificate had been granted to the Applicant Company.





27. Further, the Liquidator in Compliance with Order dated **01.05.2024** has filed gist of the matter as per checklist, which is extracted below:

S No. (1)	Compliance (2)	(Yes/No) (3)	Reference
1.	(Sec. 59(3)(a) read with Regulation 3(4)) <i>Declaration by way of an Affidavit from majority of the Directors to be filed.</i>	Yes	Annexure A/2 Pages 34-41
2.	(Sec. 59(3)(b)(i)) <i>Audited Financial Statements and record of business operations for the previous two years to be filed.</i>	Yes	Annexure A/26 (Filed along with Additional Affidavit) Pages 5-70
3.	(Sec. 59(3)(b)(ii)) <i>Valuation Report to be filed.</i>	No	There was no fixed assets of the Applicant Company
4.	(Sec. 59(3)(c)(i)) <i>Special Resolution requiring the Company to be liquidated voluntarily and appointing an insolvency professional within 4 weeks from the Declaration made under Section 59(3)(a).</i>	Yes	Special Resolution dated 14.07.2021 at Annexure A/4 (Pages 46-47)
5.	(Proviso to Sec. 59(3)(c)) <i>Approval of Resolution passed under Section 59(3)(c) by creditors (2/3rd in value) if any, within 7 days from the date of Resolution.</i>	No	Not applicable- As there were no creditors
6.	(Sec. 59(4)) <i>Intimation to RoC and IBBI within 7 days from the date of the Resolution under 59(3)(c) or after approval of the creditors.</i>	Yes	G.A.R. 7 was filed on 21.07.2021 (Page No. 45) and Intimation to IBBI dated 17.07.2021 (Page No. 71 to 73 of the Additional Affidavit)
7.	(Regulation 14) <i>Proof of Public Announcement made in 'Form- A' within 5 days from the date of appointment.</i>	Yes	Annexure A/5 (Pages 48-49)
8.	(Regulation 30) <i>List of Stakeholders in case of claims under Chapter V of the Regulations</i>	No	(Pages 74 to 83 of Additional Affidavit)
9.	(Regulation 9)	Yes	Preliminary Report





	<i>'Preliminary Report' along with proof a/submission of the same to the Company within 45 days from the LCD</i>		dated 27.08.2021 Annexure A/7 (Pages 60 – 66)
10.	(Regulation 34) <i>Opening of Bank Account in the name of the Company followed by the words 'in liquidation' in a Scheduled Bank</i>	Yes	Existing Bank Account with the Deutsche Bank was converted in name of Kaefer Private Limited in Voluntary Liquidation. Thereafter, due to technical issue a new account was opened with the Yes Bank in the name of Kaefer Private Limited in Voluntary Liquidation
11.	<i>Proof of Closure of the above Bank Account and any other account in the name of the Company</i>	Yes	Annexure A/24 (Pages 187-188)
12.	(Regulation 35) <i>Proof of distribution within six months from the receipt of realization</i>	Yes	Annexure A/30 (Pages 85-109 of the Additional Affidavit)
13.	(Regulation 38) <i>'Final Report' along with proof of submission of the same to RoC & IBBI</i>	Yes	Final Report is Annexure A/22 (Page 177-180) and Annexure A/23 (Page No. 181-186) is proof of submission with RoC and IBBI
14.	(Regulation 37) <i>Completion of liquidation process within twelve months from LCD</i>	No	The process could not be completed within 12 months because of delay in receipt of statutory refunds.
15.	(Regulation 37) <i>Annual Status prepared (If any)</i>	Yes	Page No. 110 to 113 of the Additional Affidavit

REALISATION:

S. No.	Particulars	Amount
(1)	(2)	(3)
1	Sale of Assets	N.A.
2	Refund from Statutory Authorities	1,04,03,703/-
3	Cash / Bank balance	8,64,72,576/-
4	Realization of uncalled/unpaid capital contribution	N.A.
5	Distribution of unsold asset	N.A.
6	Any other (Please specify)	5,26,308/-
Total		Rs. 9,74,02,587/-



**DISTRIBUTION:****(Amount in Rs. Lakhs)**

S.No.	Stakeholders under Section 52 and 53 (1)	Amount Claimed	Amount Admitted	Amount Distributed	Amount Distributed to the Amount Claimed (%)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	Realization Of Security Interest	N.A.	N.A.	N.A.	N.A.	
2.	Liquidation Cost [Sec.53(1)(a)]	113.56	113.56	113.56	100%	
3.	Workmen's Dues [Sec. 53(1)(b)(i)]	N.A.	N.A.	N.A.	N.A.	
4.	Debts of Secured Creditors [Sec.53(1)(b)(ii)]	N.A.	N.A.	N.A.	N.A.	
5.	Wages and Unpaid Dues to Employees [Sec. 53(1)(c)]	N.A.	N.A.	N.A.	N.A.	
6.	Debts of Unsecured Financial Creditors [Sec. 53(1)(d)]	N.A.	N.A.	N.A.	N.A.	
7.	Government Dues+ Amount Unpaid Following Enforcement of Security Interest [Sec.53(1)(e)]	ESIC- 2.47 EPFO- 34.84	ESIC- 0.03 EPFO- 0.28	ESIC- 0.03 EPFO- 0.28	1.17% 0.08%	
8.	Any remaining Debts and Dues [Sec.53(1)(f)]	i. VAT (Bhatapara) NIL ii. VAT (Gujarat) NIL iii. VAT (Delhi) NIL iv. RBI (Compounding Fee) NIL	NIL NIL NIL	0.04 0.91 3.22 11.86	N.A. N.A. N.A. N.A.	As per Demand by VAT Department when OC was sought Tax payment on Appeal Withdrawal As per inspection of records for the Period from Oct 2011 to Aug 2015 and from Sep 2015 to July 2021. Payment of Compounding Fee of FC-GPR Paid.
9.	Preference Shareholder [Sec. 53(1)(g)]	N.A.	N.A.	N.A.	N.A.	
10	Equity Shareholders [Sec.53(1)(h)]	844.12	844.12	844.12	100%	
Total		994.99	957.99	974.02	97.91%	



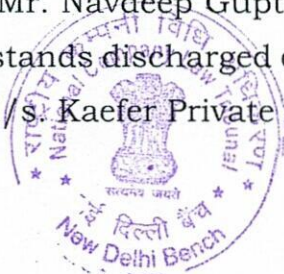


28. Analysis and Findings:

- i. We have heard the submissions made by the Applicant Company and we have also perused the records. From a bare perusal, it is seen that the Voluntary Liquidator, after his appointment has duly performed his duties and completed necessary formalities to complete the Voluntary Liquidation process of the Applicant Company, which has been averred in the present application and, thus, the Voluntary Liquidator has prayed for an order from this Adjudicating Authority to dissolve the applicant company.
- ii. Further, no adverse comments have been received from any statutory authority or from public at large against such dissolution of the Applicant Company, despite there being a public announcement by the Voluntary Liquidator and also updating the same on the website of the Insolvency and Bankruptcy Board of India (IBBI).
- iii. It is also evident from the record that the proposed Voluntary Liquidation was duly communicated to the Registrar of Companies, NCT of Delhi & Haryana as per Form MGT-14 and Form GNL-2 filed with the Registrar of Companies, NCT of Delhi and Haryana and the same are also reported to have been approved vide Report dated 03.05.2024.
- iv. It appears that the affairs of the Applicant Company have been completely wound up and its assets have been completely liquidated. No liabilities have been left unsatisfied.
- v. We are satisfied from the documents on record that the Voluntary Liquidation is not with the intent to defraud any person.

29. Order

- i. In light of the above facts and circumstances, the Present Application **CP (IB)-63(ND)/2024 stands allowed and disposed of.**
- ii. Consequently, this Adjudicating Authority in exercise of power conferred to it under Section 59(8) of the Insolvency and Bankruptcy Code, 2016, orders that the Applicant Company i.e., M/s. Kaefer Private Limited having CIN: U74899DL1994PTC062696 shall stand dissolved with effect from the date of pronouncement of this order. Mr. Navdeep Gupta, the Voluntary Liquidator of M/s. Kaefer Private Limited stands discharged of his duties and obligations as a Voluntary Liquidator of M/s. Kaefer Private Limited.





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- iii. The Registry is directed to send the copies of the order forthwith to the Applicant Company represented by its Voluntary Liquidator and its Ld. Counsel for taking further necessary steps.
- iv. The Voluntary Liquidator of the Applicant Company is further directed to serve a copy of this order upon the Registrar of Companies, NCT of Delhi and Haryana, immediately and, in any case, within fourteen days of receipt of this order. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.
- v. The Voluntary liquidator is also directed to preserve a physical or electronic copy of the reports, registers and books of accounts referred to in Regulation 8 and Regulation 10 of the Voluntary Liquidation Regulations for at least 8 years as per Regulation 41 of the Voluntary Liquidation Regulations either with himself or with an information utility.
- vi. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
- vii. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

-Sd-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

-Sd-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)



Rashant
puma
14.6.2024
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003