



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 207
IB-1133/ND/2020

IN THE MATTER OF:

M/s Clementia Mining Pvt. Ltd.

... **Applicant/Petitioner**

Under Section: 59 of IBC, 2016

Order delivered on 03.10.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH
HON'BLE MEMBER (T)

PRESENT:

For the Applicant :

For the Liquidator : Adv. R. Gayathri Manasa

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

The present petition has been preferred under Section 59(7) of IBC, 2016. The prayer made in the petition reads thus:-

- “(A) To pass an order of dissolution of Company in Liquidation under section 59(8) of the Insolvency and Bankruptcy Code, 2016.
- (B) Direct the Registrar of Companies to change the status of Company to dissolved.”

2. As can be seen from Section 59(3) of IBC, 2016, the voluntary liquidation proceedings of a Corporate Person registered as a company should meet the following conditions: -

“(a) a declaration from 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 (c) within seven days of such resolution.”

3. The declaration of solvency by way of affidavit under Section 59(3a) & (3b) of IBC, 2016 is on record as Annexure A-3 to petition. The declaration reads thus:



Declaration of Solvency by way of Affidavit under section 59(3)(a) & 59(3)(b) of the Insolvency and Bankruptcy Code, 2016 read with IBBI (Voluntary Liquidation Process) Regulations, 2017

I Prakash Lal Kapur son of late Shri Panna Lal Kapur, resident of C-1/5, Safdarjung Development Area, New Delhi - 110016, aged 68 years do hereby solemnly affirm as under:

1. That I am a Director of Clementia Mining Private Limited, a private limited company registered under the Indian Companies Act, 1956 incorporated on 24th June 2011 vide CIN U13201DL2011PTC221407 (hereinafter 'the Company') and having its Registered Office at Lower Ground Floor, Plot No. 17, Poorvi Marg, Vasant Vihar New Delhi South West Delhi DL 110057.
2. That my Director Identification Number is DIN-00005793 and I am fully aware of the facts and circumstances of the case and hence competent to swear this affidavit.
3. That I have made a full inquiry into the affairs of the Company and formed an opinion that the Company shall be able to pay its debts in full out of the bank balances of the Company; there being no other assets to be sold in the voluntary liquidation.
4. That the current liabilities of the Company as on date are listed herein below.

Parties Name	Amount (INR)
M/s. Uberol Sood & Kapoor	28,320
M/s. J.P. Kapur & Uberal	33,853
Total	Rs. 62,173

ATTESTED
NOTAR



5. That the Company shall pay off the above liabilities out of the bank balances as on date of Rs.84,97,612.90/-(Rupees Eighty Four Lakhs Ninety Seven Thousand Six Hundred Twelve and Ninety Paisa only).
6. That except the current liabilities mentioned hereinabove, the Company does not owe any debt to any other person.
7. That I state that the Company is not being liquidated to defraud any person.
8. That the audited financial statements of the Company for the year ending 31.03.2016 and 31.03.2017 are attached with this Declaration of Insolvency.
9. That the Company had no business operations in the last two years and hence record of business operations as required by section 59(3)(b)(i) of the Insolvency & Bankruptcy Code, 2016 has not been attached.
10. That the assets of the Company consist only of cash and bank balances hence no valuation report has been obtained. The latest bank statement of the Company is attached herewith.

Verify the Executant/Deponent who has Signed in my Presence

ATTESTED TRUE COPY

Deponent

NOTARY PUBLIC

Verified on this 30th day of Nov, 2017 that the statements made herein above are true to the best of my knowledge and belief and no part of it is false or untrue.

- 4 NOV 2017



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4. The declaration/affidavit to the effect filed by another Director Mr. Rajesh Rohit Bhai Mehta is available on record is at page No. 51 & 52 of the petition. The declaration reads thus:

Declaration of Solvency by way of Affidavit under section 59(3)(a) & 59(3)(b) of the Insolvency and Bankruptcy Code, 2016 read with IBBI (Voluntary Liquidation Process) Regulations, 2017

I Rajesh Rohitbhai Mehta son of Shri.Rohit Chinubhai Mehta, resident of 911, Shiromani Complex, Opp. Ocean Park, Satellite Road, Ahmedabad-380015 presently at Delhi aged 56 years do hereby solemnly affirm as under;

1. That I am a Director of Clementia Mining Private Limited, a private limited company registered under the Indian Companies Act, 1956 incorporated on 24th June 2011 vide CIN U13201DL2011PTC221407 (hereinafter 'the Company') and having its Registered Office at Lower Ground Floor, Plot No. 17, Poorvi Marg, Vasant Vihar New Delhi South West Delhi DL 110057.
2. That my Director Identification Number is DIN- 00274345 and I am fully aware of the facts and circumstances of the case and hence competent to swear this affidavit.
3. That I have made a full inquiry into the affairs of the Company and formed an opinion that the Company shall be able to pay its debts in full from the proceeds of assets to be sold in the

Kumar, Advocate
6/2018

Voluntary liquidation.

That the current liabilities of the Company as on date are

listed herein below.

NOTARY

Parties Name	Amount (INR)
M/s. Uberoi Sood & Kapoor	28,320
M/s. J.P. Kapur & Uberai	33,853
Total	Rs. 62,173



5. That the Company shall pay off the above liabilities out of the bank balances of Rs. 84,97,612.90/- (Rupees Eighty Four Lakhs Ninety Seven Thousand Six Hundred Twelve and Ninety Paisa only) (as per bank statement attached).
6. That except the current liabilities mentioned hereinabove, the Company does not owe any debt to any other person.
7. That I state that the Company is not being liquidated to defraud any person.
8. That the audited financial statements of the Company for the year ending 31.03.2016 and 31.03.2017 are attached with this Declaration of Insolvency.
9. That the Company had no business operations in the last two years and hence record of business operations as required by section 59(3)(b)(i) of the Insolvency & Bankruptcy Code, 2016 has not been attached.
10. That the assets of the Company consist only of cash and bank balances hence no valuation report has been obtained. The latest bank statement of the Company is attached herewith.

Deponent
read in my Presence

ATTESTED TRUE COPY



Deponent

Verified on this 30th day of Nov. 2017

that the statements made herein above are true to the best of my knowledge and belief and no part of it is false or untrue.

5. The copy of notice dated 30.11.2018 along with Annual Status Report and Audited Balance Sheet for the period 01.04.2017 to 31.03.2018 along with Auditor's Report and Audited Receipts and Payments Account for the period 01.04.2018 to 28.11.2018 are enclosed as Annexure A-10 to the



petition. The Valuation Report is enclosed as Annexure A-16 to the petition. The resolution passed in terms of provisions of Section 59(3)(c) is enclosed as Annexure A-2 to the petition. The Liquidator qua the company viz. M/s Clementia Mining Pvt. Ltd. submitted the preliminary report under Rule 9 of IBBI (Voluntary Liquidation Process) Regulations, 2017 to IBBI in terms of the communication dated 12.01.2018. The communication is on record as Annexure A-7 to the petition. The voluntary liquidation report submitted to RoC is enclosed as Annexure A-5 to the petition. The notification/report reads thus:

SOUGAT SINHA, Advocate
MCI Arb (UK), LLM (Lon.), LLB, FCS, ACIS
+91 9212173310, +91 9810383310

LGF B36, Defence Colony
New Delhi-110024
sougat.sinha@artha-legal.com
sougat.sinha@gmail.com
Ph.: +911165153310
+911141617733

1st December 2017

To,
The Registrar of Companies,
NCT of Delhi & Haryana,
IFCI Tower,
Nehru Place,
New Delhi

Sub: Voluntary Liquidation of Clementia Mining Private Limited – Special Resolution passed by the Shareholders dated 30th November 2017

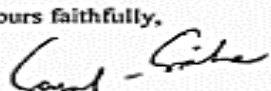
Respected Sir,

The Shareholders of Clementia Mining Private Limited ('the Company) have passed a special resolution dated 30.11.2017 under section 59 of the Insolvency & Bankruptcy Code, 2016 for the Voluntary Liquidation of the Company and have appointed the undersigned as the Liquidator for the said voluntary liquidation process.

Kindly find attached a copy of the said special resolution for your records pursuant to the provisions of Section 59(4) of the Insolvency & Bankruptcy Code, 2016 read with Rule 3(2) of the IBBI (Voluntary Liquidation Process) Regulations, 2017.


Thanking you.

Yours faithfully,


Adv. Sougat Sinha
Liquidator of Clementia Mining Private Limited
IP Registration No. IBBI/PA-002/IP-N00395/2017-2018/11170

Enclosed:

1) Special Resolution dated 30.11.2017 of Clementia Mining Private Limited



6. Ld. Counsel for the Liquidator made a statement at the bar that the company under liquidation had no creditor. The report of the Liquidator enclosed as Annexure A-7 to the petition reads thus:



FINAL REPORT OF THE LIQUIDATOR

(As per Rule 38 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process), Regulations, 2017)

I, Sougat Sinha, liquidator of the Clementia Mining Private Limited (the Company), in pursuance of Rule 38 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process), Regulations, 2017, hereby submit this Final report to the Company.

1. Name of the Company: **Clementia Mining Private Limited**
2. Nature of proceeding: **Voluntary Liquidation**
3. Date of Commencement of the Winding Up: 30.11.2017
4. Name and Address of the Liquidator:
Sougat Sinha, Advocate
C/o DBS Business Center, 1st Floor,
World Trade Tower,
Barakhamba Lane,
Connaught Place – 110001

Also at:
Sougat Sinha Advocate,
603, Pavilion Heights-4,
Sector 128, Noida -201304

a) Audited Balance Sheets of the Company for the Period 01.04.2017 to 06.07.2020 along with underlying ledger accounts of the liquidation which have been audited, showing receipts and payments pertaining to liquidation since the liquidation commencement date are annexed herewith as **Annexure A (Colly)**; and

b) I further state that-

- (i) There were no asset in the corporate person on liquidation commencement date other than cash/bank balances and there was no requirement for disposal of assets;
- (ii) the debt of the corporate person has been discharged to the satisfaction of the creditors; and
- (iii) there are no litigations pending against the company.

c) Statement on Sale of Asset –The Company in liquidation did not have any asset on the liquidation commencement date and hence statement on sale of Asset is not applicable under the present facts and circumstances.

Date: 30.08.2020
Place: New Delhi

Liquidator of Clementia Mining Private Limited
Sougat Sinha Advocate
IBBI/PA-002/IP-N00395/2017-2018/11170

7. It is the case of the Liquidator that the report could be submitted to RoC. In terms of the order dated 29.11.2022, this Tribunal had dismissed the petition, as the same was not pursued. The order was challenged before the Hon'ble NCLAT by way of Company Appeal (AT) (Ins.) No. 539 of 2023. The order passed by Hon'ble NCLAT reads thus:



“This Appeal challenges an Order dated 29th November, 2022 as under:-

“Ld. Counsel appearing for the Applicant submits that they have not been able to comply with the order dated 24.05.2022. The ARoC appearing on behalf of the RoC confirms that the objection raised by the RoC regarding filing of Form MGT-14 still holds. This Bench observes that the Ld. Counsel for the Appellant has not been able to comply with the order dated 24.05.2022 even after lapse of six months from the order. We also observe that no one represented the Applicant on 13.09.2021, 23.03.2022 and 06.10.2022. In view of the aforesaid conduct of the Applicant, this Bench is of the view that the Applicant is not serious to pursue the application.

The present (IB)-1133(ND)2020 is Dismissed for noncompliance.”

The learned Counsel appearing on behalf of the Appellant submits Form MGT-14 has since been filed before this Tribunal on 31st January 2024. This being a case of voluntary winding up of the Company, Special Resolution has already been filed with the learned Registrar of Companies of NCT of Delhi in compliance of provisions of IBC and the entire process of liquidation, including distribution of the monies to shareholders has since been completed and final report as per Rule 38 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 has also been filed and the liquidation process thus cannot be reversed at this stage.

The learned AROC appeared for the Respondent and submits the ROC is a proforma party and in fact the actual party is Insolvency Bankruptcy Board of India.

However, the said Board has already filed an Affidavit dated 16th August, 2021 in the proceedings before the learned NCLT wherein it has not raised any objection. Para 3 and 4 of the said Affidavit are reproduced below:

“3. As per section 59(4) of the Code, the liquidator had informed the Board on 30th November 2017 about commencement of the voluntary liquidation of the corporate debtor in the instant case. Further, in terms of regulation 38(2) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process)



Regulations, 2017 the liquidator had sent final report to the Board vide email dated 24th December 2020.

4. That neither any action is contemplated by the Board, nor any action is pending against the liquidator before it. Board has no observation against the dissolution of the corporate debtor.”

In the circumstances, the Order dated 29th November, 2022 is set aside. The matter may be listed now before the learned NCLT for further proceedings on 6th May, 2024.

The Appeal stands disposed of. Pending Applications, if any, also stand disposed of.”

As can be seen from the order of Hon'ble NCLAT, the Ld. ARoC made a submission before it that the RoC is only proforma party and the actual party is Insolvency and Bankruptcy Board of India. It is also noted in the aforementioned order of Hon'ble NCLAT that the IBBI had no objection to the application.

In the totality of the facts and circumstances, the company under liquidation is ordered to be dissolved.

Let a copy of this order be send to IBBI and RoC within 14 days. The Liquidator would preserve the record as per Regulation 41 of IBBI (Voluntary Liquidation Process) Regulations, 2017. It is made clear the if any state it is found that the company has any creditor, whose approval was required to be obtained under Section 59(3) proviso and Section 59(5) of IBC, the present order would turn non-est.

The petition stands disposed of. No cost.

**Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)**

**Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)**