IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

BENCH-V

CP (IB) NO. 178/ND/2022

Under section 59 of the Insolvency and Bankruptcy Code, 2016 read with regulation 9 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

IN THE MATTER OF:

COMMONWEALTH POWER (INDIA) PRIVATE LIMITED

CIN NO.: U29299DL1997PTC091122

Registered Office: P-24, Green Park Extension, New Delhi-110016

Liquidator: Mr. Manish Kumar Sharma

.....Applicant

Order Delivered On: 17.02.2023

Coram:

JUSTICE TELAPROLU RAJANI, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

Present-

For the Applicant: Mr. Ankit Jain, Mr. Yamandeep Kumar Advocates for Liquidator

ORDER

Per: JUSTICE TELAPROLU RAJANI, HON'BLE MEMBER (JUDICIAL)

1. This application is filed by Mr. Manish Kumar Sharma ('Voluntary Liquidator'/applicant) of Commonwealth Power (India) Private Limited under section 59 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (IBBI Regulations) seeking dissolution of M/s. Commonwealth Power (India) Private Limited ('Company').
2. It is submitted that the company was incorporated on 12th December, 1997 under the provisions of Companies Act, 1956 with the objective to design and construct industrial chimneys and related power plant equipments and responsible for all operational activities related to such construction including without installation, sales and estimating, subcontracting to other Indian companies for various components and providing site supervision. The registered office of the Company is presently situated at P-24, Green Park Extension, New Delhi-110016 which lies within the territorial jurisdiction of this Bench.
3. The brief facts, giving rise to filing of the instant Application, which are just and necessary for adjudication, are narrated hereunder: -

a) The Board of Directors of the company with the consent of the shareholders of the company at their Extraordinary General Meeting held on 14.06.2019 passed special resolution to voluntarily liquidate the Company as under the provisions of Section 59 of the Insolvency and Bankruptcy Code, 2016 and appointed Mr. Manish Kumar Sharma, an Insolvency Professional, having IP Registration No. IBBI/IPA-002/IP-N00671/2018-2019/12143 to act as the liquidator of the Company to carry on the Voluntary Liquidation of the Company.

b) It is submitted that as per the requirement of Regulation 14 of the IBBI (Voluntary Liquidation Process) Regulations, 2017, the voluntary liquidator published a notification in the newspaper, namely, "Financial Express" in English and "Jansatta" (Hindi) dated 18th June, 2019 inviting claims from the public within the period of 30 days from the commencement of Voluntary Liquidation of the Company. Further, in compliance of Section 59(4) of the Insolvency and Bankruptcy Code, 2016, the Registrar of Companies of NCT of Delhi and Haryana and the Insolvency and Bankruptcy Board of India were notified within the prescribed time of seven (7) days of passing of the said Resolution.

c. It is submitted that pursuant to Section 59(3)(a) and (b) of the Code, 2016, the Board of the Directors of the company had duly prepared and filed Declaration of Solvency along with audited financial statements and record of business operations of the company for the previous two years with the Registrar of Companies, NCT of Delhi and Haryana, in Form GNL-2 dated 14.06.2019, which was duly approved by the said Authority.

d. In terms of Regulation 9 of the IBBI Voluntary Liquidation Regulations, the voluntary liquidator submitted a preliminary report to the company on 25th July, 2019.

e. It is submitted that as on the Liquidation Commencement date i.e. 14th June, 2019, there were no creditors in the Company and till the last date for submission of claims i.e. 13.07.2019, no claims were received from any stakeholders and regulatory departments.

f. The Liquidator had opened a bank account with Banking IDFC First Bank, Birla Tower, Ground Floor, Barakhamba Road, New Delhi-110001. The Bank Account after distribution of proceeds was closed. The acknowledgement for the closure of the account has been placed on record.

g. The Liquidator has also sent necessary intimations regarding the initiation of voluntary liquidation of the company to all statutory authorities i.e., Income Tax Authority on 05.07.20219 and the Goods & Services Tax Department on 05.07.20219. The Income Tax Department had given a no-dues letter on 1st July, 2021 and the Goods & Services Tax Department, cancelled the registration effective from 5th October 2020.

h. It is submitted that the affairs of the Company have been completely wound up and its assets have been completely liquidated.

i. Pursuant to Regulation 38 of the IBBI (Voluntary Liquidation Process) Regulations, 2017, Liquidator had prepared a Final Report consisting of details showing the receipts and payments pertaining to the liquidation since the Liquidation Commencement Date and submitted the same to the Registrar of Companies, NCT of Delhi and Haryana in the e-form GNL-2 and the Insolvency and Bankruptcy Board of India since the liquidation commencement date.

4. Notice was issued to the Insolvency and Bankruptcy Board of India ('IBBI') and the notice to ROC was accepted by AROC on behalf of Registrar of Companies (RoC), NCT of Delhi & Haryana vide this Adjudicating Authority's order dated 08.03.2022.

5. In compliance with the order dated 25.07.2022 passed by the Adjudicating Authority, the liquidator has filed the affidavit that IBBI report dated 05.08.2022 has been received, the IBBI have no objection in this matter.

6. The ROC vide its report dated 22.06.2022 has made two observations which are as follows:

a. As per MCA21 records, the company failed to file Balance Sheet and Annual Return for the financial year 2018-19 as EGM was conducted on 14.06.2019. The company has therefore violated provisions of sections 137(1) & 92(4) of Companies Act, 2013.

b. The Liquidation process of corporate persons could not be completed within the time period of one year as prescribed under Regulation 37(1) of IBBI (Voluntary Liquidation Process) Regulation, 2017.

7. In compliance with the order dated 02.09.2022 passed by the Adjudicating Authority, the liquidator has filed his response to the observation made by the ROC in the report dated 22.06.2022 which are as follows:

   a) The liquidation of the company commenced before the AGM convened in 2019 and as such, no AGM was convened in 2019 and the audited financial statements could not be adopted by the shareholders. Therefore, there was no violation of the provisions of section 137(1) & 92(4) of the Companies Act, 2013 by the company.

b) Reason for delay in completing the voluntary liquidation as provided in Regulation 37(1) of IBBI (Voluntary Liquidation Process) Regulation, 2017 are as follows:

(i) Delay in closure of the Bank Account of the Corporate Applicant/Debtor and transfer of funds to the liquidation account:

The Liquidator had issued a letter dated 05.07.2019 to Indian Overseas Bank for the closure of the existing bank account of the Corporate Applicant/Debtor however, despite the receipt of such letter coupled with the copy of the Board Resolution passed by the Directors of the Corporate Applicant/Debtor for closure of the bank account and transfer of funds into the liquidation account, the bank refused to carry out the closing process on the basis of documents alone. The bank requested for the physical presence of the authorised signatory as the board resolution did not match with the records of the bank. At that time, Mr. Vivek Singh was residing outside India and was unable to travel to India due to certain personal reasons and thereafter due to travel restrictions imposed on account of the covid-19 pandemic. As such, the entire process came to a standstill. Upon constant follow-ups with the bank, the account was finally closed on 06.10.2020.

(ii) Delay in opening of the liquidation account:

Opening of the liquidation account with IDFC First Bank was delayed due to late submission of the original signed documents relating to KYC clearances of both the directors of the Company, Mr. Guillermo Alvarez and Mr. Vivek Singh. As both directors were outside India, the submission of the original signed copies of the documents was delayed and further, the board resolution regarding the opening of the liquidation account was also delayed.

(iii) Delay in getting the No dues letter from the Income Tax Department:

There was some delay in obtaining the no dues letter from the Income Tax Department. While the notice under Section 178 of the Income Tax Act had been issued on 05.07.2019, the no dues letter was received from the Income Tax Department only on 01.07.2021.

8. The Tribunal vide order dated 13.10.2022 directed ROC to file their satisfaction with respect to the response of the Liquidator in the matter. However, no additional report has been filed by ROC.
9. Further, the liquidator submitted the Declaration of Solvency along with audited financial statements for the previous two years with the ROC in Form GNL-2 dated 14.06.2019.
10. Hence, we are satisfied that there is no violation of the provision of Section 137(1) and 92(4) of the Companies Act, 2013.
11. In view of the foregoing steps taken and the satisfaction accorded by the liquidator by way of the present application, we find no legal impediment in allowing the prayer of the applicant. Furthermore, it is not the case that the proposed liquidation may adversely affect its shareholders/members or is contrary to the provisions of law.
12. By taking into consideration the above stated facts and circumstances, the instant Application **(C.P.(IB)/178/ND/2022) stands allowed.** 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., Commonwealth Power (India) Private Limited having CIN No.:** U29299DL1997PTC091122 **shall stands dissolved** with effect from the date of pronouncement this order.
13. The Liquidator is directed to communicate a copy of this order to the respondent i.e., Registrar of Companies, NCT of Delhi & Haryana, wherein the registered office of the applicant company is situated. Further, a copy of this order should also be communicated to the IBBI, New Delhi, for information. Such communication should be made

within the stipulated period of fourteen (14) days from the date of receipt of certified copy of this order.

14. The Registry is directed to send e-mail copies of the order forthwith to the applicant company represented by its Liquidator and its Ld. Counsel for taking further necessary steps.

File be consigned to the records.

Sd/-	**Sd/-**
(SHRI RAHUL BHATNAGAR)	**(JUSTICE TELAPROLU RAJANI)**
MEMBER (T)	**MEMBER (J)**