

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**

C .P. (IB) No. 269/ KB /2022

An application under section 59(7) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 38(3) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, for dissolution of the Corporate Person;

In the Matter of:

MASTERMIND COMMODEAL PRIVATE LIMITED (In Member's Voluntary Liquidation), CIN: U51909WB2008PTC131583, having its Registered Office at 34A, Metcalfe Street Kolkata - 700013, West Bengal, represented by its Liquidator, Mr. Amit Choraria;

..... Petitioner/Corporate Person

Date of Hearing: 02.01.2023

Date of pronouncing the order: 18.01.2023

Coram:

Shri Rohit Kapoor : **Member (Judicial)**

Shri Balraj Joshi : **Member (Technical)**

Appearances :

Ms. Neha Somani, Practising Company Secretary - For the Petitioners

ORDER

Per: Balraj Joshi, Member (Technical)

1. This is a Company Petition filed under section 59 of the Insolvency and Bankruptcy Code, 2016 (*hereinafter called the "Code"*) by a Corporate Person, viz., Mastermind Commodeal Private Limited [CIN: U51909WB2008PTC131583] through Mr. Amit Choraria, Liquidator, for voluntary liquidation of the Petitioner/Corporate person.

Corporate history of the Petitioner/Corporate Person

2. The Petitioner/Corporate Person was incorporated on 30.12.2008 under the Companies Act, 1956, as a private company with the Registrar of Companies, West Bengal. The Registered office of the Petitioner/Corporate Person is situated at 34A, Metcalfe Street Kolkata - 700013, within the State of West Bengal. Therefore, this Bench has jurisdiction to deal with the present petition.
3. The main objects for which the Petitioner/Corporate Person was incorporated with the object of carrying on the business of dealing in investments and thereby earning income in the form of sale of investments and interest and dividend.
4. The Authorised, share capital of the Petitioner/Corporate Person is Rs. 39,00,000/- (Rupees Thirty-nine Lakh only) divided into 3,25,000 Equity Shares of Rs. 10/- each and 65,000- 7.5% Non-Cumulative Non-Convertible preference shares of Rs. 10/- each and the Issued, Subscribed and Paid-up Capital is Rs. 16,59,360 /- (Rupees Sixteen lakh fifty-nine thousand three hundred sixty Only) divided into 1,65,936 Equity Shares of Rs. 10/- each. The Petitioner/Corporate Person, at present, has two directors Mr. Biswajit Chakraborty [DIN: 00078180] and Mr. Debashis Mukherjee [DIN: 05333977].

Reasons for voluntary liquidation

5. It is stated in the petition that the Petitioner/Corporate Person was not carrying on any business and not earning any profits except the income from Interest Income on Business trust, Dividend from Non-Current Investments and from sale of Investments. Hence, in view of paucity of business opportunities and the high cost involved in maintaining the operations of the Company, the Board of Directors (BOD) of the Corporate Person decided to wind up the affairs of the Company by way of Member's Voluntary Winding up prescribed under the provisions of section 59 of the Insolvency and Bankruptcy Code, 2016 read with regulation 3 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017. The BOD of the Petitioner/Corporate Person, at its meeting held on 02.11.2020, resolved to liquidate the Petitioner/ Corporate Person voluntarily under section 59 of the Code.

Procedural compliances

6. The Directors of the Petitioner/Corporate Person have as per section 59(3)(a) of the Code, approved the Declaration of Solvency and resolved to wind up the company under “Members Voluntary Winding up” at the Board meeting held on 02.11.2020. The Directors have filed an affidavit affirmed on 02.11.2020 where they have declared that they have made full inquiry into the affairs of the Petitioner/Corporate Person and are of the opinion that the Petitioner/Corporate Person would be able to pay its debts in full from the sale proceeds of voluntary liquidation and the Petitioner/Corporate Person is not being liquidated to defraud any person. The affidavit has been annexed with the petition and marked as Annexure “C” at pp. 49-81. The Directors have appended to the above affidavit, Balance Sheet and Statement of the Petitioner/Corporate Person’s Profit and Loss Account of the Petitioner/Corporate Person as on financial years 2019-20 and 2018-2019. **(Annexure C- Pg. 49-81)**
7. The members of the Petitioner/Corporate Person in their Extraordinary General Meeting (EGM) held on 27.11.2020 passed a Special Resolution as required under section 59(3)(c) of the Code, to liquidate the Petitioner/Corporate Person voluntarily and to appoint Shri Hanuman Mal Choraria, Insolvency Professional [Reg. No. IBBI/IPA-002/IP-N00079/2017-18/10210] as Liquidator with a remuneration of ₹1,80,000/- (Rupees One Lakh Eighty thousand only) per annum in addition to the actual out of pocket expenses was mutually agreed upon, of the Petitioner/ Corporate Person. **(Annexure E- Pg. 85-90)**
8. The Liquidator made a public announcement of commencement of liquidation in Form A of Schedule I as per regulation 14 of Insolvency & Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 in Business Standard (Kolkata Edition) in English and in Aajkal (Kolkata Edition) in Bengali on 30.11.2020 inviting the submission of claims due from the Petitioner/Corporate Person by various stakeholders. The aforesaid public announcement was also submitted to the Insolvency and Bankruptcy Board of India (IBBI) and was published on IBBI website on 1.12.2020. **(Annexure G- Pg. 92-95)**

9. The Petitioner/Corporate Person has submitted the declaration of solvency by all the directors of the company along with audited financial statements and record of business operations of the company for the previous two years to the Registrar of Companies, West Bengal in Form GNL-2. **(Annexure D- Pg. 82-84)**
10. The Petitioner/Corporate Person notified the Registrar of Companies, West Bengal, on 02.12.2020 by filing Form MGT-14 about the passing of a Special Resolution to liquidate the Petitioner/Corporate Person. **(Annexure H- Pg. 96-101)**
11. It is stated that as the erstwhile Liquidator expired on April 26, 2021, the members passed a special resolution for the replacement of the Liquidator and appointment of Mr. Amit Choraria on May 28, 2021. **(Annexure J- Pg. 110-119)**
12. As per regulation 34 of IBBI (Voluntary Liquidation Process) Regulations, 2017, the Liquidator has duly opened a Bank Account in the name and style of “Mastermind Commodial P L in Liquidation” with the HDFC Bank Limited (Stephen house, 4 B.B.B. Bag – East, Kolkata) having Account No. 50200056070371, in proof whereof he has enclosed the Statement of Accounts from 01.02.2021 till 30.06.2022. A copy of the bank statement wherein it has been reflected that the said bank account has been closed has been annexed with the Petition and marked as **Annexure “Q” at Pg. 166**. The Liquidator has filed an audited statement in accordance with regulation 38 of the IBBI (Voluntary Liquidation Process) Regulations, 2017.
13. The Liquidator received no claims from the creditors, workmen, employees or any other stakeholders in response to the advertisement published in the newspapers and it is certified by the Auditor Certificate that there are nil creditors.
14. The Liquidator has intimated the Income Tax Authority on 07.06.2022 about the commencement of liquidation and appointment of the liquidator as per section 178 of Income Tax Act, 1961. **(Annexure K- Pg. 120-121)**
15. The Liquidator has also intimated that he has taken into custody and control all assets, property, effects and actionable claims of the Petitioner/Corporate Person and will be operating the Bank accounts for and on behalf of the Petitioner/Corporate Person.

16. The Liquidator has annexed in the petition his Preliminary Report dated 11.01.2021. In the report, the Liquidator has stated that the Petitioner/Corporate Person is not doing any business and its books of accounts reflect that the Petitioner/Corporate Person has assets amounting to ₹9,26,22,022/- and liabilities amounting to ₹ 1,000/- as estimated by the directors. **(Annexure I - Pg. 102-109)**
17. The Liquidator has further submitted that as the Audited Financial Statements of the Petitioner/Corporate Person reflect a true and fair picture of the affairs of the Petitioner/Corporate Person and that he does not intend to make any further inquiry in any manner relating to promotion, formation or failure of the Petitioner/Corporate Person or conduct of its business.
18. The Certificate dated 28.4.2022 from the Statutory Auditor of the Petitioner/Corporate Person on the liquidation accounts of the Petitioner/Corporate Person, shows receipts and payments pertaining to liquidation, i.e., from 27.11.2020 to 28.04.2022. **(Annexure N- Pg. 137-138)**
19. The copy of final report dated 05.07.2022 of the Liquidator is annexed to the petition and marked as **Annexure O at pgs. 139-146** stating how the liquidation process has been conducted. It has been submitted that the affairs of the Corporate Person were completely liquidated after realizing the assets and distributing the amount to the stakeholders. The said Final report has been sent to the Registrar of Companies, West Bengal and IBBI, in compliance with section 59(6) of the Code read with regulations 32 and 34-38 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.
20. On hearing the submissions made by the Ld. Authorized Representative appearing for the Petitioner/Corporate Person and perusing the documents annexed to the petition, it appears that the affairs of the Petitioner/Corporate Person have been completely wound up and its assets have been completely liquidated. The bank account has also been closed and the Petitioner/ Corporate Person has no liabilities left unsatisfied. We are satisfied from the documents on record that the voluntary liquidation is not with intent to defraud any person.

21. In view of the above facts and circumstances, the Petitioner/ Corporate Person deserves to be dissolved and it is ordered accordingly.
22. **C.P.(IB) No. 269/KB/2022 shall stand disposed of** in accordance with the above directions.
23. The Liquidator of the Petitioner/Corporate Person is further directed to serve a copy of this order upon the Registrar of Companies, West Bengal, immediately and, in any case, within fourteen days of receipt of this order. The ROC shall take further necessary action upon receipt of a copy of this order.
24. The Liquidator shall stand discharged of his responsibilities, subject to procedural compliances, such as filing copies of this order with ROC, preservation of a physical or an electronic copy of the reports, registers and books of accounts as provided under regulation 41 of the Liquidation Process Regulations.
25. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Authorised Representative for information and for taking necessary steps.
26. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities
27. File be consigned to the record.

(Balraj Joshi)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Signed on this, the 18th day of January, 2023

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