

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT – II

Company Petition IB (IBC)/1095(MB)2022

Application under Section 59(7) of the Insolvency and Bankruptcy Code, 2016 read with the Regulation 38 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

In the matter of

CS Milind B. Kasodekar,

IP Registration No. IBBI/IPA-002/IP-N00116/2017-18/10285,

Liquidator of **M/s Modular Mining Systems**

India Private Limited, CIN:

U72900PN2006FTC129077, Having its

Registered Office at: Office No- 402, 4th

Floor. Pentagon Tower -4. Magarpatta City

Hadapsar Pune, Maharashtra - 411 028.

.... Applicant/Liquidator

Order Delivered on :- 01.05.2024.

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Coram:

Mr. Anil Raj Chellan

Mr. Kuldip Kumar Kareer

Member (Technical)

Member (Judicial)

Appearances:

For the Petitioner: Counsel, Surekha Yadav a/w Avinash Khanolkar
appeared for the Petitioner/Liquidator

ORDER

Per: - Coram.

1. This Company Petition is an application filed by **CS Milind B. Kasodekar** (hereinafter referred to as "the Liquidator") for **dissolution of Corporate Person** namely **M/s Modular Mining Systems India Private Limited** ("the Company") through voluntary liquidation under Section 59(7) of the Insolvency and Bankruptcy Code, 2016 ("the Code") read with the Regulation 38 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

2. The Company was incorporated on 16.09.2006 in India as a private company under the provisions of the Companies Act, 2013 with

Corporate Identification Number (CIN): U72900PN2006FTC129077

having its Registered Office at: Office No- 402, 4th Floor. Pentagon Tower -4. Magarpatta City Hadapsar Pune, Maharashtra - 411028.

The Authorised Share Capital of the Company is Rs. 5,00,000/- (Rupees Five Lakhs Only) divided into 50,000 Equity Shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Share Capital of the Company is Rs. 1,00,000 /- (Rupees One Lakhs Only) divided into 10,000 Equity Shares of Rs. 10/- each.

3. The Company in Liquidation was incorporated for carrying out the objects set out in the Memorandum of Association, which inter alia are as follows:

"To carry on the business in India or Abroad of sales installation, to provide after sales services in computerized mine management systems, including local hardware. consulting services and software services, to provide computer-based systems and support for online data acquisition, data analysis, equipment monitoring. data base management, report generation and process control in process industries, railway industries and for mines and quarries. project analysis. development of customized functional specifications. Component integration. Installation and support and application software development for mining industries "

4. The Company has two Foreign entities who are shareholders in the Company viz. M/s Modular Mining Systems Inc. which is holding 99.9% shares and M/s Modular Mining Systems Pty Limited holding 0.1% shares. The Company is an Indian Subsidiary of Modular Mining Systems Inc. which is holding 99.99% shares in the Applicant Company. In view of the economic circumstances and considering the market conditions in India it has been decided to resort to voluntary winding up of the Company under Chapter V of the Insolvency and Bankruptcy Code, 2016.
5. At the Board Meeting held on 23.08.2021 the Board of Directors of the Company have decided to wind up the Company voluntarily. The Directors of the Company have furnished a Declaration of Solvency on Affidavits affirming that they have made full enquiry into the affairs of the Company and formed an opinion that the Company has no liabilities to pay and if any liabilities are there, the Company will be able to pay off its debts in full from the proceeds of assets to be sold in voluntary liquidation and further affirmed that the Company is not being liquidated to defraud any person. The directors further affirmed that the Company has not committed any default. The Applicant has annexed to the application the audited financial statements of the Company for FY 2019-20 and FY 2020-21. As the only asset available

with the Corporate Debtor was Bank Balance, there was no valuation conducted in that regard.

6. The members of the Company in the Extra-Ordinary General Meeting held on **16th September 2021**, as per provision of the Companies Act, 2013, had passed a **Special Resolution** to liquidate the Company voluntarily and appointed Mr. Milind Kasodekar, an Insolvency Professional, with registration No. IBBI/IPA-002/IP-N00116/2017-18/10285 to act as Liquidator of the Corporate Person. Copy of the said Special Resolution is annexed to the Application. The Liquidator had notified the Registrar of Companies, Mumbai, Maharashtra under sub-section (4) of Section 59 of the IBC about the passing of a Special Resolution to liquidate the Corporate Person and appointment of Liquidator in Form MGT-14 on 18.09.2021. Copy of Form MGT-14 submitted to the ROC is annexed with the Application.
7. The Company did not have Creditors, hence the question of holding meeting of the Creditors does not arise.
8. The Liquidator made a public announcement of commencement of liquidation in Form A of Schedule I as per Regulation 14 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 in Financial Express, Pune edition (English) and Loksatta, Pune edition (Marathi) on 17.09.2021 i.e.

within the period of 5 days of his appointment on 16.09.2021 calling upon the stakeholders to submit their claims along with the proof within 30 days from the date of commencement of liquidation i.e. on or before 15.10.2021 to the Liquidator and the copy of public announcement was sent to IBBI via E-mail with request to place it on its website.

9. The Liquidator intimated the concerned Income Tax Officer, Pune about the commencement of the Liquidation of the Corporate Person and the appointment of the Applicant as Liquidator vide letter dated 28.09.2021.
10. The Liquidator submitted that they have received no claims as there are no stakeholders other than equity shareholders as on the liquidation commencement date. The Applicant observed outstanding dues on TRACES portal amounting to Rs. 10,000 /-, which has been paid on 14.03.2022. The Liquidator, from the Available Bank balance made payments towards the Liquidation costs of the Corporate Person in accordance with the estimated statement of assets and Liabilities as on Liquidation commencement date. After the payments towards Liquidation Cost the surplus amount of Rs. 13,23,680 /- which was available for distribution amongst the shareholders was returned to them in their proportionate shareholdings. The remaining surplus of

Rs.12,23,680 /- was paid in form of Equity Dividend to the shareholders in their proportionate shareholdings. Further, as this amount has been transferred beyond the territory of India, the relevant Notification issued by Reserve Bank of India is also annexed.

11. The Liquidator had submitted the Preliminary Report dated 29.10.2021 to the directors and shareholders of the Corporate Person within a prescribed time limit of 45 days from the liquidation commencement date i.e., 16.09.2021. The liquidator submitted the copy of Final Report dated 29.08.2022, detailing the liquidation process being conducted. Final Report states that the Company was not having any creditors on the Liquidation Commencement Date and the liquidation expenses have been adequately paid. The Final Report also mentions that no litigation is pending against the Corporate Person. It is seen from the record that pursuant to Regulation 38 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, the said Final Report of the Liquidator has been submitted to the Registrar of Companies in Form GNL-2 on 30.08.2022 vide SRN: F23185168 and to IBBI by way of E-mail, dated 30.08.2022. Copy of the said Final Report and the Compliance Certificate in Form 'H' have been annexed to the application along

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with audited statement of Receipts and Payments pertaining to the liquidation period from 16-09-2021 to 12-08-2022.

12. The Receipts and Payment Account of the Corporate Person is summarily encapsulated below to show how the liquidation estate of the Corporate Person have been disposed of: -

<u>Receipts</u>	<u>Amount Rs.</u>	<u>Payments</u>	<u>Amount Rs.</u>
To Bank Balance (Transferred)	22,64,039.33	<u>By Liquidation Expenses</u> Advertisement Expenses Bank Charges Miscellaneous Expenses	12,799.00 9,037.00 7,123.33
		By Liquidators Fees (Gross of TDS)	4,13,000.00
		By Other Professional Fees (Gross of TDS)	4,88,400.00
		By Interest of TDS	10,000.00
		<u>By Share Capital Repaid</u> Modular Mining Systems Inc. Modular Mining Systems Pty Limited	99,990.00 10.00
		<u>By Equity Dividend Paid (Gross of TDS)</u> Modular Mining Systems Inc. Modular Mining Systems Pty Limited	12,23,558.00 122.00
TOTAL	22,64,039.33	TOTAL	22,64,039.33

13. As per Regulation 34 of IBBI (Voluntary Liquidation Process) Regulations, 2017, the Liquidator had opened a Bank Account on 08.10.2021 in the name of 'Modular Mining Systems India Private Limited – in Voluntary Liquidation' with Canara Bank, Bibwewadi branch having Current account no. 120000374419 for realization of all moneys and for payment of liquidation expenses and tax. In compliance with the provisions of Regulation 35 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 and section 53 of the Code, the appointed Liquidator distributed the proceeds from the contributories involved in the process of Voluntary Liquidation to the stakeholders which were transferred from the above-mentioned Liquidation account. After making payments towards the liquidation expenses of the Company and distributing the surplus among its shareholders, the liquidator has closed the Bank Account on 12.08.2022. Copy of statement confirming Bank Account Closure has been submitted through an additional affidavit.
14. The Liquidator noted that Distribution of proceeds to the stakeholders was delayed as the bank processing took more time than expected considering there were four foreign remittances. Also, the Submission

of Final Report could not be on time because of resignation of a key employee.

15. We have heard the submissions of the learned counsel for the Liquidator and perused the documents annexed to the Application. On examining the submissions and perusing the records, it is seen that the affairs of the Company have been completely wound up and the assets of the Company have been completely liquidated and therefore, this Application u/s 59(7) of the Code is as such complete and it deserves to be allowed. Hence, the Applicant Company i.e., M/s Modular Mining Systems India Private Limited is liable to be dissolved u/s 59(8) of the Code.
16. After examining the documents and materials placed on record, we are of the considered opinion that the necessary compliances as per provisions of the Code have been made by the Corporate Person and the Liquidator. Therefore, in exercise of the powers conferred under sub-section (8) of Section 59 of the Insolvency and Bankruptcy Code, 2016, **we are allowing the Application** with the following directions:

ORDER

- i. Company Petition IB (IBC)/1095(MB)2022 is hereby **allowed**.

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- ii. The Corporate Person Viz. M/s Modular Mining Systems India Private Limited (having CIN: U72900PN2006FTC129077) stands **dissolved** from the date of this Order.
- iii. The Liquidator is directed to file this order with the concerned Registrar of Companies, Income Tax Department and IBBI within 14 days from the date of receipt of an authentic copy this order, for information and necessary action.
- iv. The Liquidator is also directed to file this order with all other Statutory Authorities connected with the affairs of the Company.
- v. The Liquidator shall preserve a physical or an electronic copy of the reports, registers and books of account referred to in Regulations 8 and 10 of IBBI (Voluntary Liquidation Process) Regulations, 2017 for at least eight years after the dissolution of the Corporate Person, either with himself or with an information utility.
- vi. Copy of the order be served to the respective parties.
- vii. Let the File be consigned to records.

Sd/-

ANIL RAJ CHELLAN

(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER

(MEMBER JUDICIAL)