IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.301
C.P.(IB)/137(AHM)2023

Proceedings under Section 59 IBC, 2016

IN THE MATTER OF:
Devesh A Pathak Liquidator of Orbit Fabrics Pvt Ltd ....**Applicant**

........**Respondent**

Order delivered on: 05/12/2023

Coram:
Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:
For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of order. The order is pronounced in open Court, vide separate sheet.

-Sd-	**-Sd-**
SAMEER KAKAR	**SHAMMI KHAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

BEFORE THE ADJUDICATING AUTHORITY
THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – I,
AHMEDABAD

CP(IB) No.137/59/(AHM)/2023

[Application under Section 59(7) of the Insolvency and Bankruptcy Code, 2016 read with the 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 **M/s. Orbit Fabrics Private Limited**

M/s. Orbit Fabrics Private Limited

(Under Voluntary Liquidation)
Block No.296, N.H. No.8, Village: Manglej, Taluka: Karjan, District: Vadodara, Gujarat - 391243.
Through its Liquidator, **Mr. Devesh A. Pathak**

… Liquidator / Applicant

Order Pronounced on 05.12.2023

CORAM:

SHAMMI KHAN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

Appearance:

For Applicant: Mr. Devesh A. Pathak, Liquidator
(In person)

O R D E R

[Per: Bench]

1. This is a Company Petition filed by M/s. Orbit Fabrics Private Limited with CIN: U18101GJ1992PTC059095 through its Liquidator **Mr. Devesh A. Pathak** in relation to the voluntary liquidation of, under Section 59(7) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016"), seeking dissolution of the Company.

2. The Applicant has prayed from this Tribunal following reliefs:
   (i) "That the Applicant Company namely, Orbit Fabrics Private Limited (in voluntary liquidation) may kindly be ordered to be dissolved.
   (ii) That such order or further order(s) as this Hon'ble Tribunal may deem fit, proper and just under the circumstances of the case, may kindly be passed."

3. The Applicant Company was originally incorporated on 16.09.1992 vide registration number: 11-68562 in the name and style of "Orbit Fabrics Private Limited" under the provisions of the Companies Act, 1956 on issuance of certificate of incorporation by the Assistant Registrar of Companies, Maharashtra. It was further submitted that the name of the company was changed from "Orbit Fabrics Private Limited" to "Orbit Fabrics Limited" on 02.01.1996

under the Companies Act, 1956 as issued by the Registrar of Companies, Maharashtra, Mumbai.

4. It is further submitted that the Registered Office of the Company was changed from the State of Maharashtra to the State of Gujarat on issuance of certificate of Registration of Company Law Board order for change of State by Assistant Registrar of Companies, Gujarat, Dadra and Nagar Haveli on 05.01.2010 vide CIN: U18101GJ1992PLC059095 in view of confirmation of alteration of Memorandum of Association on issuance of order of the Company Law Board, Mumbai, WR, Mumbai, on 03.12.2009.

5. As submitted, the company was re-converted from the Public Company to Private Company with the change of name from "Orbit Fabrics Limited" to "Orbit Fabrics Private Limited" on issuance of fresh certificate of incorporation by the Assistant Registrar of Companies, Gujarat, Dadra and Nagar Haveli on 17.04.2010.

6. As submitted, the registered office of the company was also further changed within the state from National Highway No.8, Block No.34, Village Manglej, Taluka: Karjan, Baroda-391210 to the present address, i.e. at Block No.296, NH No.8, Village Manglej, Taluka: Karjan, Vadodara, GJ-391243 with effect from 28.06.2022 on filing requisite form no.INC-22.

7. The main object of the Company was to manufacture, process, buy, sell and to act as importers, exporters, dealers in wholesale and retail in Cotton, Cotton Yarn and Cloth Silk Yarn and Cloth, Rayon, Nylon, Cotton Textiles, Synthetic Textiles, Handloom Textiles, Art Silk Textiles, Viscose and Rayon Yarn and Textiles, Hosiery Goods etc.

8. As submitted in the application, for the last two financial years, i.e., 2020-21 and 2021-22, the business of the company was not much remunerative and the outlook of operations was negative. Therefore, the Board of Directors by analyzing the assets and liabilities decided that it was not viable to carry, run and operate the company further and decided to discontinue the operations and to liquidate the company under Section 59 of the I.B. Code, 2016.

9. Hence, it is stated in the Petition that the Company in its Board of Directors meeting held on 15.11.2022 passed a proposal to liquidate the company voluntarily. Accordingly, as proposed by the Board, the Members of the Company in their Extra-Ordinary General Meeting held on 08.12.2022, passed a special resolution to liquidate the company voluntarily and also appointed Mr. Devesh A. Pathak, as an Insolvency Professional, having I.P. Registration No. IBBI/IPA- 002/IP-N00234/ 2017-18/10685 to act as the Liquidator of the Company.

10. As submitted, the Special Resolution for commencement of liquidation and appointment of liquidator was filed with the Registrar of Companies, Gujarat in Form No.MGT-14 vide F53405593 on 16.12.2022. As submitted, the same was approved and taken on record. The relevant documents along with Form No.MGT-14 are annexed with the present application as Annexure D.

11. It is submitted that as per the requirements under Section 59 of the Insolvency and Bankruptcy Code, 2016, copies of required documents such as: declaration of solvency and affidavit, record of Business Operations, latest financial position as on 15.11.2022, Auditors Report and financial statements for the year ended on 31.03.2021 and 31.03.2022 as well as EGM Resolution and Explanatory Statement were filed along with form no. GNL-2 vide SRN F53402582 dated 16.12.2022. The Applicant has annexed the copies of such documents with the present application as Annexure-B.

12. It is submitted that the Liquidator made a public announcement of commencement of liquidation in Form A, in Business Standard, Ahmedabad edition, English Newspaper and Vadodara Samachar, Vadodara edition, Gujarati Newspaper on 09.12.2022, seeking submission of the claim by the stakeholders, if any, on or before 07.01.2023 (within 30 days from the date of

commencement of liquidation i.e., 08.12.2022). The public announcement was simultaneously submitted to the Insolvency and Bankruptcy Board of India (IBBI) to place the same on its website. The same was published on IBBI website on 10.12.2022. A copy of the public announcement as published in Newspapers and placed on IBBI Website are enclosed and marked as Annexure-E with the present application.

13. It is submitted that, as per provisions of Section 178 of the Income Tax Act, 1961, the liquidator intimated to the Income Tax Authority in respect of commencement of liquidation and appointment of liquidator as also requested for issue of NOC vide our letter dated 10.12.2022. A copy of the letter as received by them on 20.12.2022 is enclosed as per Annexure-F.

14. It is submitted that the Office of the Assistant Commissioner of Income Tax- 3(2)(1), Mumbai- 400020 vide Letter no. ACIT-3(2)(1)/Mercator/2022-23 dated 21.12.2022 intimated the Applicant that there was no outstanding as per the available records and information on ITBA portal as on 21.12.2022. A copy of the latter is annexed as Annexure-G to the present application.

15. As required under regulations, the Liquidator opened a Bank Account in the name of '**Orbit Fabrics Private Limited in Voluntary Liquidation Account**' with Indian

Overseas Bank, Ellora park, Baroda on 20.12.2022 bearing Account No.208002000003928 for realization of proceeds and payment.

16. As submitted, an amount of Rs. 5,92,20,912.21 lying in the Account no. 0573020000402 of the Company with Bank of Baroda, SSI Makarpura Branch was transferred to the aforesaid Liquidation account on 06.01.2023 and the said Bank of Baroda was closed on 07.01.2023.

17. It is submitted that consequent to the public announcement, Deputy Commissioner of Customs NS-II, JNCH, Nhava-Sheva had lodged claim of Rs. 33,61,524/- (duty forgone Rs.9,42,415+ Interest Rs.24,19,109) vide Form B dated 04.01.2023. They were replied vide letter dated 17.01.2023 that mainly in view of cancellation of bonds and in view of fulfillment of export obligation, their claim was not payable. Moreover, the claim was also received belated i.e. on 13.01.2023 after the last date for admission of claim of 07.01.2023 and hence was time barred. Thereafter, the Applicant received no communication from them in this regard. A copy of reply of the Applicant is enclosed as Annexure-H to the present application.

18. As required under regulations, the Liquidator submitted its **Preliminary Report** to the Company on 20.01.2023. A

copy of preliminary report is enclosed and marked as Annexure-I with the present application.

19. As on Liquidation commencement date (08.12.2022), short term loans and advances i.e. advance tax was Rs. 29,53,449/- as appearing in the statement of Accounts as at 15.11.2022 as per Annexure-B.

20. It is submitted that the company made payments of Income-Tax as per the following details:-

Sr. No.	Date of Deposit	Particulars	Amount (Rs.)
1	01.07.2022	TDS Deposited	28,61,000
2	13.12.2022	Advance Tax	90,70,172
3	20.02.2023	Advance Tax (Self-Assessment income tax on interest income)	1,02,500
Total			**1,20,33,672**

21. As submitted that based on the verification of books of accounts and keeping in view demand of Deputy Commissioner of Customs as detailed in foregoing paragraph-8 of the application, though not payable, by abundant precaution, the Liquidator made payment (net of TDS) to the sole/first shareholders of the Company by returning Capital of Rs.5,85,09,120+dividend net off TDS of Rs. 2,62,880 aggregating to Rs.5,87,72,000 in two tranches i.e., on 23.01.2023 and 03.02.2023 in the following manner in

proportion of their shareholding:

S. No.	Name of Shareholder	No. of Shares held	First Tranche on 23.01.2023 (Rs.)	Second Tranche on 03.02.2023 (Rs.)	Total (Rs.)
1	Mr. Anuj Navnitlal Muchhala Jointly with Mrs. Kashmira Anuj Muchhala	20,59,898	1,94,66,036	12,25,495	2,06,91,531
2	Mr. Atul Hiralal Shah jointly with Mrs. Bhavana Atul Shah	5,15,800	48,74,310	3,06,865	51,81,175
3	Mr. Bakul Hiralal Shah jointly with Mrs. Jyoti Bakul Shah	5,15,800	48,74,310	3,06,865	51,81,175
4	Mrs. Shantaben Hiralal Shah	1,78,200	16,83,990	1,06,017	17,90,007
5	Mrs. Jyoti Bakul Shah jointly with Mr. Bakul Hiralal Shah	3,70,304	34,99,373	2,20,305	37,19,007
6	Mrs. Bhavana Atul Shah	1,65,000	15,59,250	98,163	16,57,413
7	Mrs. Shantaben Hiralal Shah jointly with Mr. Atul Hiralal Shah	1,40,000	13,23,000	83,290	14,06,290
8	Mr. Atman Atul Shah	1,50,000	14,17,500	89,239	15,06739
9	Mr. Dhaval Bakul Shah	3,00,000	28,35,000	1,78,479	30,13,479
10	Ms. Chaitali Dhaval Shah	2,17,651	20,56,802	1,29,487	21,86,289
11	Ms. Sukanya Atman Shah	2,17,652	20,56,811	1,29,488	21,86,299
12	Mr. Mahir Anuj Muchhala	4,84,474	45,78,279	2,88,228	48,66,507
13	Ms. Kashmira Anuj Muchhala	3,86,133	36,48,957	2,29,722	38,78,679
14	Ms. Kanan Atul Shah	1,50,000	14,17,500	89,239	15,06,739
Total		**58,50,912**	**5,52,91,118**	**34,80,882**	**5,87,72,000**

22. In addition to the above come out of Rs.5,87,72,000/-, the Liquidator has deposited an amount of Rs.29,209/- as TDS on dividend. As such, a total amount of Rs.5,88,01,209/- paid for and on behalf of the shareholders.

23. ost payment of the liquidation cost and the aforementioned payment to the member, the assets of the Company were fully liquidated. A copy of proof of such payment to Members is as per Bank Statement of Voluntary Liquidation Account at Indian Overseas Bank, Ellora park, Baroda enclosed and marked as Annexure-J.

24. The Auditors Certificate dated 23.02.2023 on the liquidation, showing receipts and payments as on 14.02.2023 pertaining to liquidation since the liquidation commencement date, is enclosed and marked as Annexure-K.

25. A copy of Final Report dated 07.03.2023 along with Form-H containing the details as required under Regulation 38 of the Regulations is enclosed and marked as Annexure-L.

26. A copy of Final Report dated 07.03.2023 was sent to the IBBI and ROC through email on 07.03.2023, which is enclosed as Annexure-M.

27. It is submitted that, in view of system constraints on V3 portal of MCA, the applicant could not e-file GNL-2 along-with Final Report of the Company dated 07.03.2023. However, the Copy of Final Report was physically submitted to the Registrar of Companies in form GNL-2 and its receipt on 06.04.2023 was acknowledged by office of Registrar of Companies, Gujarat. The Copy of letter to ROC for physical submission of GNL-2 is enclosed as per Annexure-N.

28. Subsequent to the payment to the Members & other costs of liquidation of the Company, the Liquidator has closed the liquidation Account on 14.02.2023. A copy of the Bank Account closure Certificate is enclosed as Annexure-O.

29. It was submitted that the Applicant herein has conducted the Voluntary Liquidation process in respect of the Company in Liquidation in accordance with the IBBI (Voluntary Liquidation Process) Regulations, 2017. The details of the relevant compliances as mandated under Section 59 of the IBC, 2016 read with the IBBI (Voluntary Liquidation Process) Regulations, 2017.

30. The Applicant, Liquidator, in compliance of this Bench's Order dated 20.09.2023 has submitted a fresh synopsis on 03.10.2023 vide Diary No: 3781 which is as under.

...../2023 dated 20th September, 2023. ... their Interim Order No.

Compliance [1]	[Yes / No] [2]	Reference [3]
(Sec. 59(3)(a) read with Regulation 3(4)) *Declaration by way of an Affidavit from majority of the Directors tobe filed.*	Yes	Annexure- B (page no. 64-65) Paragraph no. IV (2) (page no. 18)
(Sec. 59(3)(b)(i)) *Audited Financial Statements and record of business operations for the previous two years to be filed.*	(i) Yes (ii) Yes	(i) Audited Financial Statement Annexure- C (page no. 71-96) Paragraph 3 (page no. 19) (ii) Record of Business Operations Annexure- B (page no. 66) Paragraph- IV (2) (page no. 19)
(Sec. 59(3)(b)(ii)) *Valuation Report to be filed.*	No	Paragraph no. 2(4) read with 3 (1) of Annexure L (page no. 186)
(Sec. 59(3)(c)(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).*	Yes	Annexure- D (page no. 102-103) Paragraph no. IV (4) (page no. 19)
(Proviso to Sec. 59(3)(c)) *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.*	No	Third Line, First paragraph of Annexure- D (page no. 103) (No Creditor)
(Sec. 59(4)) *Intimation to RoC & IBBI within 7 days from the date of the Resolution under 59(3)(c) or after approval of the creditors*	(i)Yes (ii) Yes	(i) ROC Annexure- D (page no. 98-103) Paragraph no. IV (4) (page no. 20) Annexure- E (page no. 109) Paragraph no. IV (4) (page no. 20-21)
(Regulation 14) *Proof of Public Announcement made in 'Form - A' within 5 days from the date of appointment*	Yes	Annexure- E (page no. 107-108) Paragraph no. IV (5) (page no. 20)
(Regulation 30) *List of Stakeholders in case of claims under Chapter V of the Regulations*	No	Paragraph 2(5) of Annexure- L (page no. 186)
(Regulation 9) *'Preliminary Report' along with proof of submission of the same to the Company within 45 days from the LCD*	Yes	Annexure- I (page no. 123-166) Paragraph IV (9) (page no. 23)

DEVESH PATHAK Regn. No. IBBI/IPA-002/IP-N00234/2017-18/10685 REGISTERED PROFESSIONAL

6

(Regulation 34) *Opening of Bank Account in the name of the Company followed bythe words 'in liquidation' in a Scheduled Bank*	Yes	Annexure- J (page no. 168) Paragraph no. IV (7) (page no. 22)
Proof of Closure of the above Bank Account and any other account in the name of the Company	Yes	Annexure- O (page no. 200) Paragraph no. IV (18) (page no. 27)
(Regulation 35) *Proof of distribution within six months from the receipt of realization*	Yes	Annexure- J (page no. 168-169) Paragraph no. IV (12) (page no. 24-26)
(Regulation 38) *'Final Report' along with proof of submission of the same to RoC & IBBI*	(i) Yes (ii) Yes (iii) Yes	(i) Final Report Annexure- K (page no. 173-183) Paragraph no. IV (15) (page no. 27) (ii) ROC Annexure- M& N (page no. 196 & 198) Paragraph no. IV (16 & 17) (page no. 27) (iii) IBBI Annexure- M (page no. 195) Paragraph no. IV (16) (page no. 27)
(Regulation 37) *Completion of liquidation process within twelve months from LCD*	Yes	Annexure- O (page no. 200) Paragraph no. IV (18) (page no. 27)
(Regulation 37) *Annual Status Report prepared (if any)*	N.A.	N.A.

31. The Applicant, Liquidator has further submitted the details of realization as under:-

16 REALISATION:

Sl. No.	Particulars	Amount (Rs)
(1)	(2)	(3)
1	Sale of Assets	N.A.
2	Refund from Statutory Authorities	N.A.
3	Cash / Bank balance	6,82,91,084
4	Realization of uncalled/unpaid capital contribution	N.A.
5	Distribution of unsold asset	N.A.
6	Any other (Please specify)	
	Total	6,82,91,084

32. The details of distribution of funds as submitted by the Applicant/Liquidator is as under:

17. DISTRIBUTION:

Sl. No. (1)	Stakeholders* under section 52 and 53 (1) (2)	Amount Claimed (3)	Amount Admitted (4)	Amount Distributed (5)	Amount Distributed to the Amount Claimed (%) (6)	Remarks (7)
1	Realization of Security Interest	Nil	Nil	Nil	Nil	N.A
2	Liquidation Cost[Sec. 53(1)(a)]	3,17,202	3,17,202	3,17,202	100%	
3	Workmen's Dues[Sec. 53(1)(b)(i)]	Nil	Nil	Nil	Nil	N.A.
4	Debts of Secured Creditors [Sec. 53(1)(b)(ii)]	Nil	Nil	Nil	Nil	N.A.
5	Wages and UnpaidDues to Employees [Sec. 53(1)(c)]	Nil	Nil	Nil	Nil	N.A.
6	Debts of Unsecured Financial Creditors [Sec. 53(1)(d)]	Nil	Nil	Nil	Nil	N.A.
7	Government Dues +Amount Unpaid following Enforcement of Security Interest [Sec.53(1)(e)] [Income Tax]	91,72,672	91,72,672	91,72,672	100%	
8	Any remaining Debts and Dues [Sec. 53(1)(f)]	Nil	Nil	Nil	Nil	N.A.
9	Preference Shareholders [Sec.53(1)(g)]	Nil	Nil	Nil	Nil	N.A.
10	Equity Shareholders [Sec.53(1)(h)]	5,88,01,210	5,88,01,210	5,88,01,210	100%	
	Total	6,82,91,084	6,82,91,084	6,82,91,084	100%	

10. Thus, on examining the submissions made by the Applicant and after perusing the documents annexed to the Petition it appears that the affairs of the Company have been completely wound up and the assets of the Applicant Company have been completely liquidated and as such the Applicant Company deserves to be dissolved. Accordingly, in exercise of the powers conferred under Section 59(8) of IBC, 2016. Hence, we pass the following order: -

i). This Adjudicating Authority in exercise of powers conferred to it under Section 59(8) of the IBC, 2016 orders that the Corporate Person (Applicant Company) **M/s. Orbit Fabrics Private Limited having CIN: U18101GJ1992PTC059095** shall stand dissolved from the date of this order.

ii). Consequently, the liquidator Mr. Devesh A. Pathak is discharged from his duties and responsibilities as the liquidator.

iii). The Registry of this Bench and the Liquidator are directed to serve a copy of this order upon the Registrar of Companies, Gujarat, Income Tax Department and also to IBBI, within 14 days from the date of this Order for information and necessary action.

iv). 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 Regulations for at least eight years after the dissolution of the Corporate Person, either with himself or with an information utility.

13. Accordingly, the present application i.e., **CP(IB)/137/59/(AHM)/2023** stands allowed and stands disposed of.

-Sd-	-Sd-
SAMEER KAKAR	**SHAMMI KHAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

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