

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-1
IB-335/ND/2023

IN THE MATTER OF:

NIIT Institute of Process Excellence Limited { Ms. Nisha Malpani Liquidator }
.....Applicant

SECTION

U/s 59 of IBC

Order delivered on 28.07.2023

CORAM:

SHRI MAHENDRA KHANDELWAL,
HON'BLE MEMBER (JUDICIAL)

SMT. ANU J. SINGH,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

Order pronounced in open Court vide separate sheets.

IB-335/ND/2023 **is allowed.**

Sd/-
(ANU J. SINGH)
MEMBER (T)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT – V**

C.P.(IB)/335/ND/2023

[Under Section 59(7) of the Insolvency & Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017]

In the matter of:

NIIT INSTITUTE OF PROCESS EXCELLENCE LIMITED

CIN: U72300DL2008PLC176254

Through Liquidator Ms. Nisha Malpani

...Applicant

Order Delivered on: 28.07.2023

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SMT. ANU J. SINGH, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Virender Ganda, Sr. Adv. with Mr. Vishal Ganda, Adv. and Ms. Deepika Singla, CS

ORDER

PER: SHRI MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. The instant application has been filed by the Voluntary Liquidator Ms. Nisha Malpani on behalf of M/s NIIT Institute of Process Excellence Limited (Applicant) under Section 59 of the Insolvency & Bankruptcy Code, 2016 ("Code") read with Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 ("Voluntary Liquidation Regulations") seeking the following prayer(s): -
 - a) That the Corporate Person (i.e.) NIIT Institute of Process Excellence Limited may kindly be ordered to be dissolved;

b) To pass such order or further order(s) that this Hon'ble Adjudicating Authority may deem fit, proper and just under the circumstances of the case.

2. The brief facts, giving rise to filing of the instant Application, which are just and necessary for adjudication, are narrated hereunder: -

- i. The Applicant i.e., M/s NIIT Institute of Process Excellence Limited was incorporated on 02.04.2008 under the provisions of the Companies Act, 1956 having CIN: 72300DL2008PLC176254 and registered office situated at 8, Balaji Estate, First Floor Guru Ravi Das Marg, Kalkaji, New Delhi -110019.
- ii. The Applicant submits that since its incorporation it was engaged in the business of assessing human resources requirements of various industries, providing education and training relating to communication skills, soft skills, basic information technology skills, personality development and other related pre-processes as well as process and training in the areas of banking and insurance, finance and accounting, information technology services and other related services.
- iii. That, the Corporate Person had transferred all its contractual obligations along with its assets and liabilities to its 100% shareholder, NIIT Limited, pursuant to the Agreement dated November 1, 2019. Further in terms of the said agreement, the Corporate Person is entitled or obligated to either receive or transfer the amounts in respect of said Assets and Liabilities on behalf of NIIT Limited, for the sake of transactional convenience. Accordingly, the Corporate Person does not have any business operations. In order to conserve the management and administrative costs, the Board of Directors decided to wind up the affairs of the Company, by way of voluntary liquidation in accordance with the provision of Section 59 of the Insolvency and Bankruptcy Code, 2016 read with the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 and the applicable provisions of the Companies Act, 2013 as may be applicable in this regard.
- iv. That, the board of directors of the Corporate Person engaged the services of Mr. Niranjan Kumar, registered valuer with the Insolvency and Bankruptcy Board of India ("IBBI") having registration number IBBI/RV/06/20

18/10137 for conducting valuation of the assets of the Corporate Person. Accordingly, Mr. Niranjana Kumar submitted the asset valuation report on February 14, 2020.

- v. That, in the board meeting dated February 17, 2020, the board of directors of the Corporate Person discussed the aforesaid issue of not carrying on the business by the Corporate Person and the valuation report of Mr. Niranjana Kumar. It is pertinent to mention that the majority opinion of the directors was that due to commercial non-viability of business of the Corporate Person, it was not financially viable and feasible for the Corporate Person to continue the business activities. Accordingly, the directors proposed to wind up the affairs of the Corporate Person through voluntary liquidation process under the Code.
- vi. That, under section 59(3)(a) of the Code, majority directors of the Corporate Person have to make a declaration through affidavit that the directors have made complete inquiry in the affairs of the Corporate Person and no debt is payable by the Corporate Person or the Corporate Person is capable of paying the debts with the assets realised in voluntary liquidation. Accordingly, Mr. Vijay Kumar Thadani, Mr. Parappil Rajenderan, Mr. Amit Roy and Mr. Sapnesh Kumar Lalla (i.e.) all the directors of the Corporate Person have made the declaration of solvency of the Corporate Person. A true copy of declaration from all directors of the Corporate Person along with audited financial statements and record of business operations of the Corporate Person for the preceding two financial years and valuation report of the assets of the Corporate Person by a registered valuer is annexed.
- vii. That, under section 59(3)(c) of the Code, within four (4) weeks of the declaration, a special resolution shall be passed by the members of the Corporate Person for initiating voluntary liquidation and appointment of insolvency professional. Accordingly, an extra ordinary general meeting of the members of the Corporate Person was held on February 19, 2020 i.e. Liquidation Commencement Date, and passed a special resolution for initiating voluntary liquidation proceedings of the Corporate Person and appointed Ms. Nisha Malpani, an insolvency professional bearing

registration no. IBBI/IPA-001/IPP00058/2017-18/10136 to act as the liquidator of the Corporate Person.

viii. That, as per proviso to section 59(3) of the Code, if the Corporate Person owes any debt to any person, the special resolution passed above shall be approved by the creditors representing two-thirds in the value of the debt of the Corporate Person within seven (7) days of such resolution. Consequentially, the creditors representing 98.57 % of the value of the debt of the Corporate Person issued consent letters approving the special resolution. The statement of outstanding amounts as on the liquidation commencement date along with details of their share of debt to the total debt is as follows:

Creditor	Amount	Percentage share	Consent (Yes/No)
SCV & Co. LLP	2,55,150	25.52	Yes
Dhruva & Associates	1,13,400	11.34	Yes
Transaction Square	5,72,832	57.30	Yes
National Securities Depositories Limited	14,250	1.43	No
Niranjan Kumar	44,064	4.41	Yes
TOTAL	9,99,696	100	

A true copy of the consent letters received from creditors representing 98.57% of the value of the total debt of the Corporate Person are annexed.

ix. That, thereafter, as provided in Regulation 14 of the Regulations, the Applicant made a public announcement of initiation of voluntary liquidation of the Corporate Person in Form A in two newspapers (i.e.) Financial Express and Jansatta on February 20, 2020, calling for submission of claims by the stakeholders, if any, within 30 days from the date of commencement of voluntary liquidation of the Corporate Person (i.e.) February 19, 2020. The public announcement was simultaneously submitted to the IBBI for publishing on the website of the IBBI. Accordingly, the public announcement was

published on the website of the IBBI on February 25, 2020. Furthermore, the said public announcement was also published on the website of the Corporate Person on February 29, 2020.

- x. That, the copy of special resolution passed for initiation of voluntary liquidation and consequent appointment of Applicant and the public announcement was submitted to the ROC in e-form MGT-14 on February 25, 2020. The said form has duly approved by the ROC and taken on record.
- xi. That, the intimation of voluntary liquidation along with the declaration by majority of the directors and other annexures was also filed with the Registrar of Companies, Delhi ("ROC") vide e-form GNL-2 bearing SRN R34070995 dated February 26, 2020 and with IBBI vide email dated February 25, 2020.
- xii. That, under Regulation 34(1) of the Regulations, the Applicant is required to open voluntary liquidation account of the Corporate Person and accordingly, the Applicant has opened a bank account bearing number 002905010288 in the name of "NIIT Institute of Process Excellence Limited - In voluntary liquidation" with ICICI Bank, Branch at Greater Kailash, New Delhi ("Bank Account") for realisation of the assets and payment to the creditors and members of the Corporate Person.
- xiii. That, subsequent to the publication of public announcement, the Applicant had received the claims from the creditors, which has been duly admitted and paid. The details of same are mentioned herein below:

S. No.	Name of Creditor	Nature of Debt	Date of submission of claim	Amount of claim submitted (Rs.)	Amount of claim admitted (Rs.)
1.	National Securities Depository Limited	Operational Creditor	March 12, 2020	6,875	6,875
2.	N S Kumar & Co.	Operational Creditor	March 25, 2020	48,144	48,144
3.	Transaction Square LLP	Operational Creditor	March 25, 2020	623,630	623,630
4.	Nityanand Singh and Co.	Operational Creditor	April 8, 2020	3,571	3,571
5.	SCV & Co.	Operational Creditor	March 30, 2020	200,600	200,600
6.	Dhruva & Associates	Operational Creditor	April 2, 2020	118,000	118,000
Total Claims				1,000,820	1,000,820

xiv. That, in addition to the aforesaid, the Applicant received invoices towards charges of the depositories in order to maintain the shares of the Corporate Person till the liquidation process is completed, details of which are as follows:

S.I. No.	Custodian name	Amount*(Rs.)	Remarks
1	National Securities Depository Limited (NSDL)	88,500	Amount paid to NSDL and CDSL are in the nature of annual custodian charges paid by the Company for maintaining the shares of the Company in dematerialized form
2	Central Depository Services India Limited (CDSL)	88,500	
3	Alankit Assignments Ltd	9152	Amount paid to Alankit are in the nature of annual custodian charges paid by the Company for maintaining the shares of the Company in dematerialized form
Total		186,152	

xv. That, under Regulation 9 of the Regulations, the Applicant is required to submit preliminary report to the Corporate Person within a period of 45 days

of commencement of the voluntary liquidation. Accordingly, the Applicant has submitted the preliminary report to the Corporate Person on April 03, 2020.

xvi. That, under Regulation 30 of the Regulations, the Applicant is required to prepare list of stakeholders on the basis of claims submitted to the Applicant. Accordingly, the Applicant had prepared the list of stakeholders on May 04, 2020.

xvii. That, subsequent to verification of books of the Corporate Person, the Applicant made payments to the creditors of the Corporate Person as per the claims received by the Applicant. The details of the payments made to various creditors are mentioned in the table herein below:

S. No.	Name of Creditor	Claim Submitted (Rs.)	Date of Payment
1.	National Securities Depository Limited	6,875	March 30, 2020
2.	N S Kumar & Co.	48,144	March 30, 2020
3.	Transaction Square LLP	6,23,630	March 30, 2020 And February 10, 2021
4.	Nityanand Singh and Co.	3,566	October 27, 2020
5.	SCV & Co.	200,600	April 8, 2020
6.	Dhruva & Associates	118,000	27 October 2020 and December 10, 2020
7.	National Securities Depository Limited (NSDL)	88,500	October 21, 2021
8.	Central Depository Services India Limited (CDSL)	88,500	October 21, 2021
9.	Alankit Assignments Ltd	9152	January 18, 2021
TOTAL		11,86,967	

xviii. That under Section 178 of the Income Tax Act 1961 initiation of liquidation of a company is to be intimated to the income tax authorities. Accordingly, the

Applicant on March 10, 2020, had intimated the commencement of voluntary liquidation of the Corporate Person and appointment of the Applicant as the liquidator of the Corporate Person to the income tax authority.

- xix. That, the Applicant had duly intimated the commencement of voluntary liquidation of the Corporate Person and appointment of the Applicant as the liquidator of the Corporate Person to the other concerned statutory authorities i.e., Employee State Insurance Corporation, Provident Fund, Labour Welfare Board etc. A true copy of intimation letter sent to all the concerned statutory authorities has been attached as Annexure- 14 of the Final Report.
- xx. That, in accordance with the regulation 37 of Regulations, the liquidator shall endeavour to complete the liquidation process within 12 months from the liquidation commencement date. However, since the refund from Income Tax was pending as per the assessment for the Assessment Year 2020-21, the Liquidator was unable to close the bank account of the Corporate Person and accordingly, the liquidation could not be completed within a period of 12 months.
- xxi. That, in terms of regulation 37 (2) of the Regulations, the Applicant convened the meetings of contributories of the Corporate Person on March 5, 2021, February 28, 2022, and February 24, 2023, and presented Annual Status Reports indicating the progress in liquidation, pending the refund from Income Tax Department. That, thereafter, on March 10, 2023, the Corporate Person received the refund amounting to Rs. 70,58,364/- (Seventy Lakhs fifty-eight thousand three hundred and sixty-four only) from the Income Tax Department.
- xxii. That, subsequent to payment of all the expenses under the voluntary liquidation such as liquidation expenses, other statutory payments, demands and payment to creditors for the claims received and liquidator's remuneration, the remaining proceeds received by the Applicant are to be distributed among the members of the Corporate Person, as per the provisions of the Code. Accordingly, the remaining undistributed surplus of the Corporate Person amounting to Rs. 45,18,417/- were paid to members of the Corporate Person on March 27, 2023, as dividend. Furthermore, the investment by members of Corporate Person in share capital of the Corporate Person amounting to Rs. 22,00,00,000/- was already paid to the members of the Corporate Person on

March 30, 2020 as return of equity share capital. It is pertinent to mention that with the aforesaid payments; the assets of the Corporate Person were fully liquidated.

xxiii. That, the independent auditor had issued a certificate dated March 31, 2023 for the Corporate Person showing the receipts and payments in the Bank Account of the Corporate Person since the initiation of voluntary liquidation. It further certifies that there is no litigation pending involving the company, for which there may be any foreseeable losses.

xxiv. That, subsequent to liquidation of all the assets of the Corporate Person, the Applicant has prepared the final report in accordance with Regulation 38 of the Regulations. The final report consists of audited accounts of the voluntary liquidation, sale statement and other statement demonstrating the disposal of assets, discharge of liabilities and no pendency of any litigation against the Corporate Person. The copy of final report has been submitted by the Applicant to the ROC vide e-form GNL-2, SRN: AA2382197, on May 10, 2023, and sent to IBBI through email on May 8, 2023. Furthermore, a copy of final report along with the compliance certificate in Form-H has been filed before the Adjudicating Authority through the present Application.

xxv. That, with the liquidation of all the assets of the Corporate Person and payment to all the stakeholders of the Corporate Person, the bank has issued certificate to the Applicant for closure of the Bank Account on April 27, 2023. Accordingly, the liquidator has closed the Bank Account.

3. We have heard the submissions made by the Ld. Counsel and perused the documents annexed to the petition. From a perusal of the instant Application and documents annexed therewith, it is seen that the Liquidator, after his appointment has duly performed his duties and completed necessary formalities to complete the liquidation process of the Applicant Company, which has been averred in the present application and, thus, the Liquidator has prayed for an order from this Adjudicating Authority to dissolve the applicant company.

4. Further, no adverse comments have been received from any statutory authority or from public at large against such dissolution of the Applicant Company, despite there being a public announcement by the liquidator and also updating

of the same in the website of the Insolvency and Bankruptcy Board of India (IBBI). It is also evident from the record that the proposed liquidation was duly communicated to the Registrar of Companies, NCT of Delhi & Haryana as per Form MGT-14 and Form GNL-2 filed with the Registrar of Companies, NCT of Delhi and Haryana. It appears that the affairs of the Applicant Company have been completely wound up and its assets have been completely liquidated and no liabilities have been left unsatisfied. We have also duly considered the merits thereof, in the light of the statutory provisions of Section 59 of the Code, 2016 read with the relevant regulations.

5. The Liquidator had filed copies of paper publication as well as copy of paper announcement in Form-A. The Liquidator in compliance of Regulation 38(3) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 had placed on record the Compliance Certificate in Form-H annexed as Annexure A-V at page no. 620-630 of the present application.
6. The Liquidator is found to have complied with the statutory provisions to complete the liquidation process by taking necessary steps as it is evident that he had duly opened an account in the name of Corporate Person with Bank for realization and payment to the members.
7. Further as per record of the present case, it is seen that the Applicant Company is not found being involved in such kind of business activities, which are detrimental to the interest of the public at large. Furthermore, it is not the case that the proposed dissolution may adversely affect its shareholders/members or is contrary to the provisions of law.
8. By taking into consideration the above stated facts and circumstances, the instant Application **C.P.(IB)335/ND/2023** 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., M/s. NIIT Institute of Process Excellence Limited having CIN: 72300DL2008PLC176254 shall stand dissolved with effect from the date of pronouncement of this order.
9. 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.

10. 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/-
ANU J. SINGH
MEMBER (T)

Sd/-
MAHENDRA KHANDELWAL
MEMBER (J)