

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

CP (IB)/477/MB/2023

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

Chitra Srinivas,

IP Registration No. IBBI/IPA-002/IP-N00249/2017-18/10734,

Liquidator of **GUARDICORE INDIA PRIVATE LIMITED,** CIN:

U72900PN2020FTC194063, Having its Registered Office at: 03rd Floor, Pro-1 Business Centre, Senapati Bapat Road, Pune-411016.

.....Applicant

Order Delivered on :- 15.04.2024.

Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances (Hearing in Physical Mode):

For the Petitioner: Adv. Avinash Khanolkar a/w Ashwini Gawde and Adv.
Nashra Siddiqui i/b. ASR & Associates.

ORDER

Per: - Coram.

1. This Company Petition is an application filed by **Ms. Chitra Srinivas, Liquidator** of M/s. **Guardicore India Private Limited**, (hereinafter referred to as "the Liquidator") for **dissolution of Corporate Person** namely M/s. **Guardicore 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 15/09/2020 in India as a private company limited by shares under the provisions of the Companies Act, 2013 with Corporate Identification Number (CIN): U72900PN2020FTC194063 having its Registered Office located at 03rd Floor, Pro-1 Business Centre, Senapati Bapat Road, Pune-411016. The Authorised Share Capital of the Company is Rs. 22,50,000/- (Rupees Twenty-Two Lakhs and Fifty Thousand Only) divided into 2,25,000 Equity Shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Share Capital of the Company is Rs. 22,50,000/- (Rupees Twenty-Two Lakhs and Fifty Thousand Only) divided into 2,25,000 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:
 - a. To engage in marketing of the data centre and cloud security products that protect organisation's core assets;
 - b. To engage in pre-sell activities of the data centre and cloud security products that protect organisation's core assets; and
 - c. To provide professional services to the customers.

4. The Company in liquidation is a closely held private limited company and has two shareholders/contributories. The Company was incorporated to conduct the business of marketing and selling of data centre and cloud security products that protect organisation's core assets. The Company is a wholly owned subsidiary of Guardicore Ltd., Israel and as a part of reorganisation and restructuring of the Group, the Company planned to close its business operations. The Board of Directors after detailed deliberations decided to liquidate the Company to realise the share capital invested into the Company. Further, the Company did not have any creditors and no litigation was pending against the Company. Hence, 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 04th May, 2022 the Board of Directors of the Company have decided to wind up the Company voluntarily. Majority of the directors 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 along with records for FY 2020-21. Further, the audited financial statements for FY 2021-22 has been placed on record by the Applicant vide Additional Affidavit dated 14th March, 2024. Thus, audited financial statements and records of business operations of the Company of previous two financial years, viz. year ending on 31.03.2021 and 31.03.2022 have been placed on record.

6. The members of the Company in the Extra-Ordinary General Meeting held on **05th May, 2022**, as per provision of the Companies Act, 2013, had passed a **Special Resolution** to liquidate the Company voluntarily and appointed Mrs. Chitra Srinivas, an Insolvency Professional, with registration No. IBBI/IPA-002/IP-N00249/2017-18/10734 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 and Form GNL-2 on 11/05/2022 and 12/05/2022 respectively. Copies of Form MGT-14 and GNL-2 to the ROC are annexed with the Application.

7. 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 English Newspaper, "Active Times" and in Marathi Newspaper, "Lakshadeep" on 09.05.2022 i.e. within the period of 5 days of his appointment on 05/05/2022 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 04th June, 2022 to the Liquidator and the copy of public announcement was sent to IBBI with request to place it on its website and same was published on the website of IBBI.

8. The Liquidator has also referred to the IBBI Circular No. IBBI/LIQ/45/2021 dated 15.11.2021 stating that the point 5 of the circular hereby clarified that "as per the provisions of the Code and the Regulations read with Section 178 of the Income-tax Act, 1961, an Insolvency Professional handling voluntary liquidation process is not required to seek any NOC/NDC from the Income-Tax Department as part of compliance in the said process." However, in compliance of the provisions of Section 178 of the Income Tax Act, 1961, the liquidator had served notice of his appointment by-hand vide Letter dated 08th November, 2021 to the Income Tax Department on 10th November, 2021 informing them about the voluntary liquidation of the Company and that he has made compliance with the Regulation 14 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017. However, no response was received nor any request for extension was made by the Income Tax Department. The Liquidator also informed

the Profession Tax Department about the voluntary liquidation of the Corporate Person on 18.10.2021.

9. The Liquidator/the Petitioner Company had received no claims from any of the creditors. The Liquidator submitted that they have received no claims as there are no stakeholders other than equity shareholders as on the liquidation commencement date. In pursuance of the paper publication and based on verification of claims as per the books of accounts, the Liquidator made a payment of INR 42,250/- towards the payment of professional tax along with interest upto 31/03/2023. The Liquidator has obtained and annexed the Clearance Certificate dated 22/03/2022 from the Profession Tax Officer, Pune stating that the profession tax has been paid by the Applicant Company upto 31.03.2023. The Liquidator had submitted the Preliminary Report dated November 25, 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., 11.10.2021. The liquidator submitted the copy of Final Report dated 20.09.2022, detailing the liquidation process being conducted. The Final Report states that since there were no assets of the Company as on the Liquidation Commencement Date, the amounts were realised by the Company through its contributories to meet the expenses of liquidation and for payment of tax. The 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 24.09.2022 vide SRN: F26165449 and to IBBI by way of Speed Post, dated 07.10.2022. Copy of the said Final Report and the Compliance Certificate in Form 'H' have been annexed to the application along with audited statement of Receipts and Payments pertaining to the liquidation period from 01-10-2021 to 31-08-2022.

10. 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>Value Realised (INR)</u>	<u>Payments</u>	<u>Payments (INR)</u>
Refund from Income Tax Department: AY 2021-22- INR 83,840.00/- AY 2022-23: INR 1,33,820/-	2,17,660/-	Liquidation Costs	15,39,091.15
Cash and Bank Balances	18,63,459.33	Distribution to Equity Shareholders	15,65,073.70
Remittance from Parent Company on account of Transfer Pricing	10,23,045.52		
TOTAL	31,04,164.85	TOTAL	31,04,164.85

11. As per Regulation 34 of IBBI (Voluntary Liquidation Process) Regulations, 2017, the Liquidator had opened a Bank Account on 30/08/2022 in the name of 'GUARDICORE INDIA PRIVATE LIMITED IN VOLUNTARY LIQUIDATION' with DBS Bank Ltd bearing Current Account No. 830210118538 for realization of all moneys and for payment of liquidation expenses and tax. The Corporate Person did not receive any claims as there are no creditors of Corporate Person as on the liquidation commencement date. 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 14th March, 2023. Copy of Bank Account Closure Certificate from DBS Bank has been annexed to the Application.

12. 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., Guardicore India Private Limited is liable to be dissolved u/s 59(8) of the Code.

13. 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) No. 477/MB/C-II/2023 is hereby **allowed**.
- ii. The Corporate Person viz. **Guardicore India Private Limited** (having CIN: U72900PN2020FTC194063) 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)