IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, BENGALURU
(through web-based video conferencing platform)
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)

C.P.(IB)No.26/BB/2023
U/s.59 of the IBC, 2016

In the matter of:

Mr. Vasudevan Gopu
Liquidator of Aerosite Energy Private Limited
'G.V. Enclave', 18/30, Ramani Street,
K.K. Pudur Saibaba Colony,
Coimbatore – 641 038. - Applicant

Order delivered on: 31.10. 2023

CORAM: 1. Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Liquidator: Ms. Vinuta Venkat Rao Undale (PCS) with Ms. Archana

O R D E R

Per: T. Krishnavalli, Member (Judicial)

1. The instant Company Petition is filed on 18.11.2022 by Mr. Vasudevan Gopu, Liquidator of M/s. Aerosite Energy Pvt. Ltd. ('Applicant'), under Section 59 of the Insolvency and Bankruptcy Code, 2016 by *inter alia* seeking a direction for dissolution of the Corporate Person / the Company, namely, M/s. Aerosite Energy Pvt. Ltd. with effect from the date of order by this Adjudicating Authority.

2. **M/s. Aerosite Energy Pvt. Ltd.** (hereinafter referred to as "Corporate Person/the Company") was incorporated on 12.12.2013 under the provisions of the Companies Act, 1956, having CIN: U40102KA2013PTC087142. The registered office of the Company was shifted from State of Telangana to the State of Karnataka in 2016 with the approval of Regional Director, Hyderabad vide order

dated 30.11.2015. The Certificate for Registration of the order of Regional Director, Hyderabad for change of state was issued by the Registrar of Companies, Bengaluru on March 23, 2016. Its Authorized Share Capital is Rs.22,01,00,000/- divided into 2,20,10,000 Equity Shares of Rs.10/- each. The Issued, Subscribed and Paid-up Capital of the Company is Rs.21,68,42,450/- divided into 2,16,84,245 Equity Shares of Rs.10/- each. The main objects of the Company is involved in the business of electricity/power; to receive, purchase, establish, operate, maintain, develop, use, sell, supply, distribute and accumulate electricity at Power station; Solar Power Stations or at any other place and be lines, substations and main transmission lines connected therewith and to transmit, distribute, supply such power through own or leased transmission lines or facilities of the State Electricity Boards as may be assigned to it by the competent Government or Private Sector Organizations etc. The registered office of the Company is presently situated at Tower A, 3rd Floor, the Millenia, No.1 & 2, Murphy Road, Ulsoor, Bangalore, which lies within the territorial jurisdiction of this Bench.

3. The following averments have been made in the Petition:

    a. The Board of Directors of the Company in their meeting held on 12.08.2022 for taking note of **Declaration of Solvency** of the Company as required under Section 59 (3) (a) of the IBC, 2016 by majority of the Directors, decided to wind up the affairs of the Company by voluntary liquidation of corporate person. Further, the Directors have filed Declaration of Solvency dated 18.08.2022 stating that they have made full inquiry into the affairs of the Company, and have formed the opinion that the Company has no debt as on August 12, 2022 and the Company is not being liquidated to defraud any person.

    b. The Company in its Extraordinary General Meeting held on 22.08.2022 passed a **Resolution to voluntarily liquidate the Company** and appointed Mr. Vasudevan Gopu, an Insolvency

Professional having registration number IBBI/IPA-002/IP-N00291/2017-2018/10849 to act as a Liquidator for the same.

c. The audited financial statement of the Company for the years 2020-2021 and 2021-2022 (page nos.92-145 of the Petition) along with the Auditor's Report has been filed by the Petitioner.

d. The commencement of liquidation and appointment of liquidator is intimated to the ROC in form MGT-14 on 22.08.2022 and GNL-2 (for submissions of documents) on 22.08.2022. The Public Announcement was simultaneously submitted to IBBI to place the same on its website on 23.08.2022.

e. **Public Announcement (Regulation 14 of the IBBI (Voluntary Liquidation Process) Regulations, 2017)** - The Liquidator made a Public Announcement of commencement of liquidation in Form A, in 'The Hindu', English Newspaper and 'Udayavani', Kannada Newspaper on 23.08.2022, seeking submission of the claim by the stakeholders, if any, within 30 days from the date of commencement of liquidation i.e. 21.09.2022.

f. **List of stakeholders (Regulation 30 of the IBBI (Voluntary Liquidation Process) Regulations, 2017) –** It is submitted that till the last date for submission of claim (i.e.21.09.2022) and subsequently till the date of preparation of this report there were no claims were received by the Liquidator. As such, M/s. Acciona Energia Global S.L.U. and M/s. Acciona Generacion Renovable, S.A., the Equity Shareholders of the Company were the only stakeholders for final distribution of liquidated assets.

g. **Preliminary Report (Regulation 9 (1) of Chapter IV of the IBBI (Voluntary Liquidation Process) Regulations, 2017)** – The Liquidator submitted the preliminary report to the Company on 01.10.2022.

h. **Opening of Bank Account (Regulation 34 of the IBBI (Voluntary Liquidation Process) Regulations, 2017)** – As required under Regulations, the Liquidator opened a separate

Bank Account in the name of the Company with HSBC Bank, Bengaluru Branch, for Liquidation purposes.

i. **As per provisions of Section 178 of the Income Tax Act, 1961-** The Liquidator has intimated the commencement of Liquidation and appointment of Liquidator to the Income Tax Authority on 25.08.2022. In this regard, it is stated that the Company has filed Income tax return till the Assessment Year 2022-23 and also paid the advance tax assessed for the Assessment year 2023-24.

j. Further, the Liquidator had also sent notice to the GST Authorities U/s.88 of Central Goods and Services Tax Act, 2017 and Karnataka Goods and Services Tax Act, 2017, communicating on the commencement of voluntary liquidation process of the Company. It is stated that there were no unclaimed dividends and undistributed proceeds in the liquidation process, the assets of the Company were completely liquidated and distributed to the concerned stakeholders of the Company.

k. **Distribution of Liquidation Proceedings** – It is submitted that Liquidation funds were distributed to the concerned stakeholders as per the distribution mechanism prescribed U/s.53 of the IBC, 2016.

l. **Bank Account Closure** – It is submitted that subsequent to the payment to shareholders, the Liquidator has closed the Bank Account on 10.11.2022.

m. **Final Report – Regulation 38 of the IBBI (Voluntary Liquidation Process) Regulations, 2017) –** The Liquidator had the accounts audited for the liquidation period and submitted his final report on 05.11.2022. In connection with the accounts of the liquidation, the CA Certificate showing the receipts and payments of the liquidation account during the liquidation period and the same has been completed in following manner:

Liquidator's Final Statement of Accounts – Receipts and Payments:

Receipts			Payments			
Date	**Particulars**	**Amount (in INR)**	**Date**	**Particulars**	**Nature of Payment**	**Amount (in INR)**
	Assets realised			**Payments made:**		
28.09.2022	Bank Balance Realised	32,100,689				
				Liquidation expenses		
			14.10.2022	Fee towards liquidation accounts audit certificate	Liquidation expenses	2,000
			14.10.2022	Liquidator fee paid (after deducting TDS)	Liquidation expenses	1,18,800
			17.10.2022	TDS deducted and paid on Liquidator fee	TDS - as per section 194J of Income Tax Act 1961	11,000
			25.10.2022	HSBc Bank charges	Bank charges	11,801
				Distribution to Stakeholders		
			25.10.2022	Payment to Acciona Energia Global S.L.U., Spain	Distribution to equity shareholder	3,19,57,086
			25.10.2022	Payment to Acciona Generacion Renovable, S.A. Spain	Distribution to equity shareholder	2
		3,21,00,689				**3,21,00,689**

n. The Final Report dated 05.11.2022 of the Liquidating Company was submitted with ROC and IBBI on 11.11.2022.

4. The ROC, Karnataka has filed its report vide Diary No.2287 dated 25.04.2023; and also IBBI has filed its report vide Diary No.2265 dated 24.04.2023. The same are taken on record.

5. Heard Ms. Vinuta Venkat Rao Undale, learned PCS for the Liquidator. We have carefully perused the record and extant provisions of the Code, and the Regulations made thereunder.

6. On 04.07.2023, this Adjudicating Authority directed the Petitioner to file a one page memo with regard to the TDS under Section 195 of the Income Tax Act, 1969 made against distribution to equity shareholders. In this regard a memo vide diary no.3550 of the Liquidator has been filed stating that liquidation funds were

remitted to foreign shareholders without deduction of any tax as the amount remitted is less than the face value/cost of acquisition of shares which resulted in a capital loss to the equity shareholders. Hence, the amount was not chargeable under the provision of the Income Tax, Act, 1961.

7. Therefore, the affairs of the Corporate Person have been completely wound up and its assets have been liquidated and nothing remains to be liquidated. Thus, the compliances of Section 59 and other relevant provisions of the IBC, 2016 r/w. Regulation 37(2) of IBBI (Voluntary Liquidation Process) Regulations, 2017 from the date of commencement of the liquidation proceedings is completed. Hence, we are of the considered opinion that the Corporate Person, through its liquidator, has been voluntarily liquidated.

8. In view of the foregoing, **M/s. Aerosite Energy Private Limited**, the Applicant Company is hereby dissolved with effect from the date of the present order. A copy of this order be filed with the ROC within fourteen days.

9. The Petition bearing C.P.(IB)No.26/BB/2023 is accordingly allowed in the above terms.

Sd/-	**Sd/-**
(MANOJ KUMAR DUBEY)	**(T. KRISHNAVALLI)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**