

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)

C.P. (IB)No.47/BB/2023
U/ss 59 & 60(5)(A) of the IBC, 2016
R/w Rule 11 of the NCLT, 2016

In the matter of:

M/s. Biocad India Pvt. Ltd.

Represented by Mr. Dinesh Gopal Mundada,

Liquidator of M/s. Biocad India Pvt. Ltd.

No.74, 24th Main, 2nd Cross,

J.P. Nagar, 02nd Phase,

Bangalore - 560 078.

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Corporate Person/ Applicant

VERSUS

The Registrar of Companies, Karnataka

'E' Wing, 2nd Floor,

Kendriya Sadana, 17th Cross,

Koramangala,

Bengaluru - 560 034.

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Respondent

Order delivered on: 20.07.2023

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

Parties/Counsels Present:

For the Applicant

:

Shri Vikram Huligol (Sr. Adv.) with
Shri Gaurav Singh G. & Ms. Shreya Rajat S.

ORDER

Per: T. Krishnavalli, Member (Judicial)

1. The instant Company Petition is filed on 20.02.2023 by M/s. Biocad India Pvt. Ltd. represented by Mr. Dinesh Gopal Mundada, Liquidator of M/s. Biocad India Pvt. Ltd. ('Applicant'), under Section 59 & 60(5)(A) of the Insolvency and

Bankruptcy Code, 2016 , r/w Rule 11 of the NCLT Rules, 2016 by *inter alia* seeking to the following reliefs:

- (a) To stay pending voluntary liquidation proceedings of the Corporate Person/Applicant;
- (b) To pass direction(s) to the ROC/Respondent for permitting withdrawal of the Voluntary Liquidation proceedings of the Corporate Person;
- (c) To pass direction(s) to the Respondent/ROC for reinstating the Board of Directors of the Company and revival of operations of the Corporate Person/Applicant under Section 59, 60(5) of the IBC, 2016 r/w Rule 11 of the NCLT Rules, 2016;
- (d) To pass direction(s) to the ROC/Respondent for making necessary correction in the master data of the Corporate Person/Applicant so as make it active in records.

2. **M/s. Biocad India Pvt. Ltd.** (hereinafter referred to as “Corporate Person/the Company”) is a Company registered under the provisions of the Companies Act 1956, bearing CIN:U74900KA2012PTC063319, having its registered office at No.79, 24th Main, 2nd Cross JP Nagar, 02nd Phase Bangalore-560078. The Corporate Person/Applicant is the subsidiary company of one of the leading innovative biotechnology company JSC “BIOCAD”, having its registered address at Svyazi Str. 34-A, Strelna Sint-Petersburg, 198515 Saint-Petersburg, Russia combining world class research and development center with ultra-modern pharmaceutical and biotechnological manufacturing facilities, as well as preclinical and clinical research infrastructure, compliant with international standards facilities for the production of treatment of oncological, autoimmune and other serious diseases.

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

- i. It is stated that the Company convened a Board Meeting on 05.02.2022 and it was resolved by the Board of Directors of the Corporate Person to voluntarily liquidate the affairs of the Company pursuant to Section 59

and other applicable of the Code. Pursuant to the meeting and resolution dated 05.02.2022, an Extra-Ordinary General meeting was held on 23.02.2022 and a special resolution passed in order to appoint Mr. Dinesh Gopal mundada, Insolvency Professional as the Official Liquidator and to voluntarily liquidate the affairs of the Corporate Person. Under the voluntary liquidation process, the Liquidator has initiated the liquidation process of the Applicant.

- ii. It is stated that due to global geopolitical situation, specifically the military operation of Russia in Ukraine which was started on 24.02.2022 and still continuing, it has caused deterioration of supply chains between Russia and the European Union countries, the UK, the USA, Switzerland, Canada, Japan, and many other countries. Since the headquarters of the parent company, JSC 'BIOCAD' of the Corporate Applicant is located in Russia, it was pertinent to adopt new global science and business strategies for the parent company of the Corporate Person. At this juncture, it is pertinent to submit that due to the global rise in cases because of the outbreak of the COVID-19 coronavirus and it's all new variants, the entire business focus has shifted to restart and develop their strategies in India, considering a better global and geopolitical position of India for ease of doing business. Since India is the market leader for the pharmaceutical industry, the Corporate Person has shifter the business focus and now wishes to restore and restart the business operations in India. It is to be noted that the continuance of the war and outbreak of the COVI-19 new variants had broken down the supply chains irretrievably between Russia and rest of the world, and therefore, in the interest of business, it is pertinent for the Corporate Person to revive its business and supply chains in India for survival of the business itself.
- iii. It is also stated that during this voluntary liquidation process, pending payment (i) to the auditor in charge of the auditing activities of the Company and (ii) to the duly appointed Directors of the Company were made from the bank accounts of the Corporate Person. Furthermore,

consultation and mutual consensus by and between the Corporate Person and the Liquidator prior to the filing of this Petition before this Adjudicating Authority, the auditor of the Corporate Person & the Directors have duly reversed the amount into the Corporate Person's bank account dated 25th of November 2022 & 27th and 28th November 2022 without prejudice to the Liquidator or his position as the professional in charge of the voluntary liquidation process. The Payment transactions dated 03.03.2022 towards an amount of Rs.4,73,120/- & 18.03.2022 towards Rs.7,00,350/- were released to the duly appointed Director of the Corporate Person, post deduction of the tax component of Rs.50,000/-, which is clearly evidenced as difference in the payments released as against the payments reversed. The Applicant has relied upon the following judgments:

- *V.B. Purohit v. Gadag, Jambukeshwara & Anr.* [(1984) 56 CC 360 (Kar)];
- *Dhankari Investment Ltd. vs. Official Liquidator* [(2006) 132 CC 749 (Allahabad)];
- *Central Inland Water Transport Corporation Ltd.* [CP(IB)No.791/KB/2018];
- *Ashish Shah Liquidator of E-Comm. Opportunities Pvt. Ltd.* [CP (IB)/238(AHM)2021];
- *SSG Construction Services Pvt. Ltd. vs. ROC NCT of Delhi & Anr.* [2021 SSC Online Del 4787].

iv. It is further stated that the Corporate Person has followed the due process for withdrawal of voluntary liquidation process. An Extra-Ordinary General meeting of the members of the Corporate Person held on 28.05.2022 and a resolution was passed in order to withdraw the voluntary liquidation process. The payments to the Liquidator have been settled as per consensus between the Corporate Person and the Liquidator. This

withdrawal process has not been initiated to defraud any person and that the Corporate Person/Applicant is solvent.

4. Heard the learned Counsels for the Applicant. We have carefully perused the pleadings of the party and extant provisions of the Code, and the Regulations made thereunder.
5. As stated supra the Corporate Person/Applicant intends to withdraw the voluntary liquidation process due to the global geopolitical situation, specifically the military operation of Russia in Ukraine which was started on 24.02.2022 and still continuing and since, the headquarters of the parent company- JSC 'BIOCAD' of the Corporate Applicant is located in Russia, it was pertinent to adopt new global science and business strategies for the parent Company of the Corporate Person. The continuance of the war and outbreak of the COVID-19 new variants had broken down the supply chains irretrievably between Russia a rest of the world and therefore, in the interest of business, it is pertinent for the Corporate Person to revive its business and supply chains in India for survival of the business itself. In view of the abovementioned reasons, the Applicant seeks to withdraw the Corporate Person/Applicant from the voluntary liquidation process initiated by it. In this context, a Resolution was passed in order to withdraw the voluntary liquidation process in the Extra-Ordinary General meeting of the Members of the Corporate Person held on 28.05.2022 and the same is hereby annexed as Annexure G of the Petition.
6. In view of the circumstances and foregoing reasons, this Adjudicating Authority is of the considered opinion that since the Company intends to revive the business of the Company and also as there is no objection from the Liquidator, the voluntary liquidation proceedings of M/s. Biocad India Pvt. Ltd. initiated by Liquidator is hereby terminated. As a consequence, the ROC, Karnataka/Respondent is directed to reinstate the Board of Directors of the Company so as to enable them to revive the operations of the Corporate Person, and it is also directed to make necessary corrections in the Master Data of the Corporate Person so as make it 'Active' in its records. A copy of this order be

filed with the ROC, Karnataka and IBBI within the fourteen days, from the date of receipt of copy of this order.

7. The Petition **C.P. (IB) No.47/BB/2023** is accordingly disposed of as withdrawn in the above terms.

Sd/-

**(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)**

Sd/-

**(T. KRISHNAVALLI)
MEMBER (JUDICIAL)**