

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

**CP (IB) No. 981/MB/C-II/2020**

Under section 59 of the Insolvency & Bankruptcy Code, 2016 r/w Regulation 38(3) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

*In the matter of*

**SCA Hygiene Products India Private  
[CIN:U17253MH2012FTC231579]**

Having its registered office at –  
Platina Unit No 901, 9<sup>th</sup> Floor, E  
Wing, Lotus Corporate Park, Laxmi  
Nagar, Goregaon (East), Mumbai-  
400063.

Represented by its Liquidator,  
Mr. Shashikant S Dhamne

... Petitioner/Corporate Person

**Order pronounced on 24.12.2020**

***Coram:***

Mr. Ravikumar Duraisamy  
Hon'ble Member Technical

Mr. H. P. Chaturvedi  
Hon'ble Member Judicial

***Appearances:***

For the Applicant

: Mr. Vikram Nankani, Senior  
Counsel a/w Ms. Prachi  
Wazalwar, Advocate.

**ORDER**

***Per: Ravikumar Duraisamy, Member***

1. This is a Company Petition filed under section 59 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called the "Code") by a Corporate Person, viz., SCA Hygiene Products India Private [CIN: U17253MH2012FTC231579] (Petitioner/Corporate Person) through Mr. Shashikant S Dhamne, the Liquidator, for voluntary liquidation of the Petitioner/Corporate person.

**Corporate history of the Petitioner/Corporate Person**

2. The Petitioner/Corporate Person was incorporated on 28.05.2012 under the Companies Act, 1956, as a private company with the Registrar of Companies, Maharashtra, Mumbai. The Registered office of the Petitioner/Corporate Person is situated at Unit No 901, 9<sup>th</sup> Floor, E Wing, Lotus Corporate Park, Laxmi Nagar, Goregaon (East), Mumbai 400 063 Maharashtra. Therefore, this Bench has jurisdiction to deal with the present petition.
3. The main objects for which the Petitioner/Corporate Person was incorporated are *inter alia* to carry on the business of manufacturing and sale of hygiene and baby care products.
4. The authorised, issued, subscribed and paid-up share capital of the Petitioner/Corporate Person is ₹262,62,19,460/- (Rupees Two Hundred and Sixty-Two Crores Sixty-Two Lakh Nineteen Thousand Four Hundred and Sixty Only) equity shares of ₹10/-

(Rupees ten only) each. The Petitioner/Corporate Person, at present, has two directors Mr. Miroslav Klial [DIN: 07717171], and Mr. Pushaparaj Bommaya Shetty [DIN: 07939990].

Reasons for voluntary liquidation

5. It is stated in the petition that the Petitioner/Corporate Person was struggling for business opportunities as the development has been less successful than anticipated and profitability in the Indian Market cannot be achieved within a reasonable time frame. Hence, the management has proposed to close down the business operations of the Petitioner/ Corporate Person in India. Pursuant to this, the Board of Directors (BoD) of the Corporate Person decided to wind up the affairs of the Company by way of Member's Voluntary Winding up prescribed under the provisions of section 59 of the Insolvency and Bankruptcy Code, 2016 read with regulation 31 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017. The BoD of the Petitioner/Corporate Person, at its extraordinary general meeting held on 04.12.2019, resolved to liquidate the Petitioner/ Corporate Person voluntarily under section 59 of the Code.

Procedural compliances

6. The Directors of the Petitioner/Corporate Person have as per section 59(3)(a) of the Code, at the Board meeting held on 08.11.2019, approved the Declaration of Solvency and resolved to wind up the company under "Members Voluntary Winding

up.” The Directors have declared that they have made full inquiry into the affairs of the Petitioner/ Corporate Person and are of the opinion that the Petitioner/Corporate Person would be able to pay its debts in full from the sale proceeds of voluntary liquidation and the Petitioner/Corporate Person is not being liquidated to defraud any person. The Directors have appended to the above affidavits, the audited financial statements of the Corporate Person for the period of previous two consecutive financial years i.e. FY 2017-2018 and FY 2018-2019.

7. The members of the Petitioner/Corporate Person in their Extraordinary General Meeting (EGM) held on 04.12.2019 passed a Special Resolution according to section 59(3)(c) of the Code to liquidate the Petitioner/Corporate Person voluntarily and to appoint Mr. Shashikant S Dhamne, Insolvency Professional [Reg. No. IBBI/IPA-001/IP-P00237/2017-2018/10466] as Liquidator of the Petitioner/ Corporate Person.
8. The Liquidator made a public announcement of commencement of liquidation in Form A of Schedule I as per regulation 14 of Insolvency & Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 in the *Financial Express* in English and in *Navshakti* (Mumbai Edition) in Marathi on 07.12.2019 inviting the submission of claims due from the Petitioner/Corporate Person by various stakeholders. The aforesaid public announcement was also submitted to Insolvency and Bankruptcy

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Board of India (IBBI) and was published on IBBI website on 10.12.2019.

9. The Petitioner/Corporate Person has submitted the resolution for the commencement of liquidation, the appointment of a liquidator and a public announcement made in the newspaper to the Registrar of Companies, Maharashtra, Mumbai, on 09.12.2019 in Form MGT-14 and Form GNL-2.
10. The Petitioner/Corporate Person notified the commencement of voluntary liquidation along with Public Announcement to the Income Tax Department in terms of Section 178 of the Income Tax Act, 1961 and to the relevant Indirect Income Tax Department where the assessment of the Corporate Person was pending.
11. The Liquidator received claims from the income tax department and respective indirect tax departments in response to notice served on them. On 15.02.2020 the List of stakeholders, on the basis of claims received, was prepared and duly submitted to board.
12. The Liquidator submits that the total potential liability in abovementioned pending proceedings, if it arises, aggregates to Rs.8,00,25,545/- (Rupees Eight Crore Twenty-Five Lakh Five Hundred and Forty-Five Only). Rs.1,04,37,203/- (One Crore Four Lakh Thirty-Seven Thousand Two Hundred and Three Only) have been deposited with these authorities against the said

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demand. Therefore, the net claim of demand aggregates to Rs.6,95,88,342/. The liquidator submits that provision is being made against aforesaid pending proceedings.

**The details of pending litigations are as follows:**

<b>Sr. No.</b>	<b>Amount of demand (INR)</b>	<b>Authority before which issue is pending</b>	<b>Remark</b>
1	3,78,01,350/-	CIT (Appeals), Mumbai, Income Tax	The Company has submitted an application under VSV Scheme as introduced by Govt. of India, to settle this pending tax dispute and the amount of deposit made at the time of appeal and refund claim aggregating to INR 79,86,070/-, will be adjusted while making payment under the VSV Scheme. Further, in terms of the VSV Scheme an amount of INR 1,18,45,347/- being interest will be

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			waived. Therefore, the Company would be required to pay the net amount of INR 1,79,69,930/- to settle this pending dispute once the Tax Department processes the application under VSV Scheme.
2	2,93,66,637/-	Jt. Commissioner of sales tax, Mumbai, Dept. of Goods & Service Tax, Maharashtra	Matter is before appellate authority and will be decided on merits. The Company has submitted substantial information and records as required by the Appellate authority. The Company has made deposits of INR 10,40,803/- while making the appeal.
3	51,93,103/-	Excise & Taxation Officer cum Assessing Authority,	The Company is in the process of filing an appeal before the appellate authority

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		Sonepat, Haryana	and the case will be decided on merits.
4	72,58,940/-	Excise & Taxation Officer cum Designated Officer, Mohali, Punjab	Ex-parte order was passed by assessing officer. Hence, the Company has filed an appeal before appellate authority and the matter would be decided on merits as the Company has all the required information and records as required in support of its appeal. The Company has made deposits of INR 18,14,800/- while making the appeal.
5	1,68,546/-	Commercial Tax Officer, Panjim Ward, Goa Commercial Tax Department	Demand will be paid, however, direction is awaited from the department to make payment. Due to COVID-19 pandemic, administrative issues are not being attended

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			regularly at department level.
6	1,60,573/-	Appellate Dy. Commissioner, Vijayawada, Andhra Pradesh	Demand will be considerably reduced and representation before authority is in process but due to COVID-19 pandemic coordination is not happening with the department. The Company has made deposits of INR 20,100/- with the Authority.
7	76,396/-	Office of Inspector, Asst. Commissioner of Commercial Taxes, Ernakulam, Kerala	Details of demand have not been provided by the department and representation with the department is being made. However due to COVID-19 pandemic effective representation is not happening.

13. As per regulation 34 of IBBI (Voluntary Liquidation Process) Regulations, 2017, the Liquidator has duly opened a Bank Account in the name and style of '*SCA Hygiene Products India Private Limited In Vol Liquidation*' with Deutsche Bank AG, Mumbai bearing Account No.0663179000. The said Account was also closed on 30.09.2020. The Liquidator has filed audited accounts up to liquidation.
14. The liquidator submits that in accordance with Regulation 38(1)(b)(iii) Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 requires Liquidator to make a statement demonstrating that no litigation is pending against the Corporate Person or sufficient provision has been made to meet the obligations arising from any pending litigations.
15. The liquidator submits that in order to provide for the sufficient provisions against aforesaid pending litigations, a special designated account is opened with Deutsche Bank, Mumbai bearing account number 0136374000 wherein total amount of Rs.7,86,69,584/- (Rupees Seven Crore Eighty-Six Lakh Sixty-

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Nine Thousand Five Hundred and Eighty-Four Only) is deposited to meet any demand arising out of any such litigation. The said account is solely for the purpose of meeting any demand that may be arising on account of pending proceedings. Further, the operations of the said account are strictly in terms of the agreement governing that. The Liquidator further submits that as soon as demand is crystalized the payment will be made to the concerned authority. In the event of if the pending litigations are decided in favor of the Corporate Person then amount held in the said account will be distributed to the shareholders as they are entitled to the same. Details of Assets, realization and distribution of Assets are as below:

**Details of Assets:**

S. No.	Asset Type	Book Value (In INR)
1.	Bank balance	64,88,969
2.	Security deposits	10,63,090
3.	Balance with Govt. authorities*	1,25,05,583
4.	Balance with income tax authorities*	1,49,18,305
5.	Accrued interest on fixed deposits	18,267

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6.	Receivable of retention money and electricity & water deposit under an agreement*	8,36,29,857
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**Realization of Assets:**

S. No.	Asset Type	Nature of Realization
1.	Bank balance	Bank balance realized in full by crediting the same to liquidation account.
2.	Security deposits	INR 4,00,000/- worth of the security deposit for taking warehouse on rent for keeping physical books and records of the Company was realized by adjusting it against rent payable. Rest of the deposits were kept with indirect tax authorities at the time of obtaining registrations and they are unlikely to be realized in near future hence it is written-off in consultation with the shareholders and the management of the Corporate Person.
3.	Balance with Govt. authorities	INR 97,45,397/- worth were realized as refund from customs authority. However, remaining assets are in the form of various input tax credit balances with Indirect tax authorities and they lapsed since there were no corresponding output tax credit to avail against the same.

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4.	Deposit with income tax authorities	This amount represents deposit made with the income tax department and refund claims of the Company. Out of this, INR 1,03,000/- was received as refund. The Company has submitted an application under Direct Tax Vivad Se Vishwas Act, 2020 as introduced by Govt. of India, to settle the pending tax dispute with the income tax department. The balance amount of deposit and refund claims amounting to INR 79,86,070/-, will be adjusted while making payment under the said scheme. Any balance amount of refund claims shall stand written off in consultation with stakeholders since it will not be received in near future.
5.	Accrued interest on fixed deposits	This amount represents interest accrued on deposits kept with indirect tax authorities and it is unlikely that it will be realized in near future hence the same is written-off in consultation with the shareholders and management of the Corporate Person.
6.	Receivable of retention money and electricity & water deposit	The asset represents receivable from Novatis Hygiene Products India Private Limited under the Restated Agreement for Assignment and Sale. Since this amount could not be readily and advantageously realizable due to its peculiar nature and

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	under an agreement	specific conditions attached to it, in consultation with the shareholders and management of the Corporate Person, the said asset distributed to the stakeholder in terms of regulation 35(3) of the Regulations which enables the Liquidator to do so.
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**Distribution of Assets:**

S. No.	Particulars	Amount (In INR)
1.	Liquidation cost in full <i>[section 53(1)(a)]</i>	1,70,79,846
2.	(a) Workmen's dues; and (b) Secured creditor <i>[section 53(1)(b)]</i>	There was no workmen or secured creditor
3.	Wages and any unpaid dues to employees <i>[section 53(1)(c)]</i>	There were no wages and unpaid dues owed to the employees
4.	Financial dues to unsecured creditors <i>[section 53(1)(d)]</i>	There were no unsecured financial creditors
5.	Full provision towards pending tax proceedings by depositing the potential liability in special designated account <i>[section 53(1)(e)]</i>	7,86,69,584

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S. No.	Particulars	Amount (In INR)
6.	Any remaining debts and dues <i>[section 53(1)(f)]</i>	There were no other debts and dues owed to any other person
7.	Distribution of asset to stakeholders (in pursuance of regulation 35(3) of the Regulations since the asset could not be readily and advantageously realizable due to its peculiar nature and specific conditions attached to it) <i>[section 53(1)(h)]</i>	8,36,29,857

It is submitted that no dividend distribution tax is payable in respect of asset distributed to the shareholders as the Corporate Person did not possess accumulated profits. Further, no capital gain tax is payable by the shareholders as they did not make any gain on investment made by them in the Corporate Person.

16. The Liquidator did not receive any other except above claims from any creditors, workmen, employees or other stakeholders in response to the advertisement published in the newspapers.
17. The Liquidator has also intimated that he has taken into custody and control all assets, property, effects and actionable claims of the Petitioner/Corporate Person and will be operating the Bank accounts for and on behalf of the Petitioner/Corporate Person.

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18. The Liquidator has annexed in the petition his Preliminary Report dated 06.01.2020. The copy of the final report of the Liquidator dated 18.09.2020 is also annexed to the petition as “Exhibit-L” at page nos. 362-380 stating how the liquidation process has been conducted, and consists of audited accounts of liquidation, showing receipts and payments pertaining to liquidation since the liquidation commencement date. The assets of the Corporate Person are disposed-off. The debt of the corporate person incurred during liquidation has been discharged to the satisfaction of the creditors. Further sufficient provisions have been made against pending litigation and that no sale of assets was involved in the liquidation process. The said Final report is filed with the Registrar of Companies, Maharashtra, Mumbai in Form GNL-2 on 18.09.2020 and sent to IBBI dated 18.09.2019, in compliance with section 59(6) of the Code read with regulation 32 and 34-38 of IBBI Regulations.
19. The Liquidator has filed this petition before this Adjudicating Authority under section 59(7) of IBC seeking an order of dissolution of the Petitioner/ Corporate Person.
20. On examining the submissions made by the counsel appearing for the Petitioner/Corporate Person and the documents annexed to the petition, it appears that the affairs of the Petitioner/Corporate Person have been completely wound up and its assets have been completely liquidated. We are also satisfied from the documents on record that the voluntary

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liquidation is not with intent to defraud any person. The bank account for the purpose of Liquidation has been closed and another a special designated account is opened with Deutsche Bank, Mumbai bearing account number 0136374000 wherein total amount of Rs.7,86,69,584/- (Rupees Seven Crore Eighty-Six Lakh Sixty-Nine Thousand Five Hundred and Eighty-Four Only) is deposited to meet any demand arising out of any such litigation. The said account is solely for the purpose of meeting any demand that may be arising on account of pending proceedings.

21. In view of the above facts and circumstances and the submissions made by the Liquidator, the Petitioner/Corporate Person deserves to be dissolved and it is ordered accordingly.
22. The Petitioner/Corporate Person is further directed to serve a copy of this order upon the Registrar of Companies, Maharashtra, Mumbai within fourteen days of receipt of this order. The RoC shall take necessary action upon receipt of a copy of this order.
23. File be consigned to the records.

Sd/-

**RAVIKUMAR DURAISAMY**  
Member (Technical)

24.12.2020  
SAM

Sd/-

**H. P. CHATURVEDI**  
Member (Judicial)