IN THE NATIONAL COMPANY LAW TRIBUNAL NEW DELHI BENCH (COURT-II)

Company Petition No. (IB)-17(ND)/2024

IN THE MATTER OF:

FUJIREBIO INDIA PRIVATE LIMITED

having its Registered Office at
First Floor, The Great Eastern Centre,
70, Nehru Place, Behind IFCI Tower,
New Delhi - 10019

Through Liquidator

Mr. Rajesh Panayanthatta

...Applicant

<u>Under Section</u>: 59(7) of IBC, 2016 read with IBBI (Voluntary Liquidation Process) Regulations, 2017

100000) 1108010110, 1011

Order Delivered on: 09.07.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J) SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Liquidator : Adv. Arpit Dwivedi

<u>ORDER</u>

This present application has been filed by M/s FUJIREBIO INDIA PRIVATE LIMITED (hereinafter referred to as "Company" or "Corporate Debtor") through its Liquidator, Mr. Rajesh Panayanthatta, under Section 59 of the Insolvency and Bankruptcy Code, 2016 (herein referred to as "the Code"), for seeking dissolution of the Company in terms of the Code read with the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

- 2. The Corporate Debtor was incorporated on 16.03.2017. The Master Data and Certificate of Incorporation along with the Memorandum of Association and Articles of Association of the Company have been annexed as Annexures P-2 and P-3 respectively to the application.
- 3. The Company in its meeting of the Board of Directors on 18.01.2021, approved the declaration as stipulated under Section 59(3) of the Code, which was later duly signed and verified by affirmation, and the Board Resolution dated 18.01.2021 to voluntarily liquidate the company in accordance with provisions of Section 59 of IBC, 2016 was passed and the shareholders of the Applicant Company approved the voluntary liquidation of the Company and the appointment of **Mr. Rajesh Panayanthatta**, Insolvency Professional, having Registration No. IBBI/IPA-001/IP-P00479/2017-2018/10867, to act as the liquidator of the company.
- 4. The Company duly filed the copy of the Board Resolution regarding the liquidation of the Company with the Registrar of Companies in compliance with Section 59(4) of the Code in Form MGT-14 on 21.01.2021. The Public

Announcement was made in Form A on 22.01.2021, and was published in two

newspapers, i.e., The Financial Express (English) and Jansatta (Hindi), on

22.01.2021. The Liquidator informed the Registrar of Companies on 25.01.2021,

about his appointment and commencement of voluntary liquidation process.

Further, the last date for submission of claims was 17.02.2021.

5. It is submitted that there were 2 (two) Creditors as on 18.01.2021 and no

objection for liquidation of Corporate Person and appointment of Liquidator was

obtained from the Creditors of the Corporate Person within 7 (seven) days from the

date of Extra Ordinary General meeting. Certified true copies of No Objection

Certificates received from the Creditors of the Corporate Person have been annexed

as Annexure P-10 to the application.

6. The Audited Financial Statements of the Company for the financial years i.e.,

Financial Year 2017-18, Financial Year 2018-19, Financial Year 2019-20, &

Financial Year 2020-21 along with Provisional Financial Statement as on

08.01.2021, are annexed as Annexure- P-6 to the application.

7. The Liquidator prepared a Preliminary Report dated 23.02.2021, under

Regulation 9 of the IBBI (Voluntary Liquidation Process) Regulations, 2017 for the

shareholders of the Company within the stipulated 45 days from the date of

commencement of the Liquidation Process, and the same was submitted to the

Applicant Company.

8. It has been stated that the Corporate Debtor intimated the Income Tax

Department under Section 178 of Income Tax Act, 1961, regarding the

commencement of the Voluntary Liquidation Process and appointment of the

Liquidator vide letter dated 29.01.2021. It is submitted that NOC dated

C.P.(IB)-17(ND)/2024 Fujirebio India Private Limited 30.01.2021 from the Income Tax Department with regard to no outstanding tax demand against the company has been received and annexed as Annexure P-15 to the application.

- 9. The Liquidator closed the previous bank account of the company maintained at Kotak Mahindra Bank Limited and opened a separate bank account in the name of "Fujirebio India Private Limited in VOLUNTARY LIQUIDATION" with Kotak Mahindra Bank Limited, New Delhi, bearing A/c No. 7045080370 in terms of Regulation 34 of the IBBI (Voluntary Liquidation Process) Regulations, 2017.
- Further, the Liquidation Accounts were duly audited on 08.01.2021. The final report prepared by the Applicant in compliance with the Regulations has been annexed as Annexure P-27 to the application, and the same has been sent to IBBI and RoC in Form GNL 2 on 11.12.2023.
- 11. The Registrar of Companies has filed its report in compliance of our order dated 18.03.2024 and the same is extracted below:
 - "1. That as per available records on MCA 21 Portal, the petitioner company, FUJIREBIO INDIA PRIVATE LIMITED having CIN No. U51909DL2017FTC314589 was incorporated on 16.03.2017 under the provisions of Companies Act, 2013. Registered office of the company, as per available records, was situated at Shop at First Floor, The Great Eastern Centre, 70 Nehru Place, Behind IFCI Tower, New Delhi, New Delhi, 110019, India. Copy of Master Data of company is enclosed herewith and annexed as Annexure-A.
 - 2. That as per available records on MCA 21 portal last Directors of the Company were as follows:
 - Mitalee Kausha, Director, H. No- 194, Phase II, Jaggi Colony, Ambala City, Ambala, 134007, Haryana, India.
 - Goki Ishikawa, Director, 31, Nishikujyo Nanden-Cho, Minami-Ku, Kyoto-Shi, Kyoto, Tokyo, 6018441, Japan.

- Takeshi Fujita, Director, The Jingumae Residence, 10113-37-1 Jingumae Shibuya-Ku, Tokyo, 1500001, Japan.
- 3. That as per available records, Last Balance Sheet and Annual Return were filed by the company for the financial year 2019-20 in e-form AOC-4 & MGT-7 vide SRN R78256500 & R76583913 dated 28.12.2020 & 23.12.2020 respectively.
- 4. The details of e-form filed by company as on date in tabular as available on MCA portal are attached herewith as **Annexure-B.**
- 5. Further, as per records on MCA portal, following E-forms has been filed by the petitioner company regarding Voluntary Liquidation and same has been taken on record by this office:
 - a) Company has filed MGT-14 vide SRN R86835600 dated 21.01.2021 in respect of Board Resolution passed by the directors dated 18.01.2021 for voluntary winding up. **Annexure-C.**
 - b) Company has filed MGT-14 vide SRN R86855384 dated 21.01.2021 in respect of Special Resolution passed by the shareholder dated 18.01.2021 for voluntary winding up. **Annexure-D.**
 - c) Company has filed GNL-2 vide SRN R88341763 dated 25.01.2021 in respect of Public Announcement in Form A of Schedule I of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017. **Annexure-E.**
 - d) Company has filed GNL-2 vide SRN R88593314 dated 25.01.2021 in respect of Declaration of Solvency by the directors under section 59 of IBC and financials for the period from 01.04.2020 to 08.01.2021.

 Annexure-F
 - e) Company has filed GNL-2 vide SRN T62317409 dated 07.12.2021 in respect of place of keeping the books of accounts has been changed from Unit Nos P-806 & P-807, 8 Floor JMD Megapolis, Sector 48, Gurgaon to registered office of the Company. **Annexure-G**
 - f) Company has filed GNL-2 vide SRN AA6360385 dated 11.12.2023 in respect of submit final report dated 11.12.2023 under Regulation No. 38 of IBBI (Voluntary Liquidation Process) Regulation, 2017. **Annexure-H**"
- 6. Further as per data received from various cell of this office, no inquiry /inspection/complaint/legal action is pending against the subject -3 company. That this office has compiled the above factual report based on the records maintained & documents filed by the concerned Company on MCA21 portal.
- 7. The IBBI is the concerned authority under Insolvency & Bankruptcy Code, 2016. However, the present status report about the company based on information/record as available on MCA21 portal is being filed by this office in compliance of Hon'ble NCLT order dated 18.03.2024."

- 12. On the basis of the aforementioned grounds and reasons, the Company, through the liquidator, has prayed for an order from this Adjudicating Authority for the dissolution of the Company.
- 13. We have heard the learned counsel appearing on behalf of the Applicant Company and have carefully gone through the contents of the present petition. We have also duly considered the merits thereof in light of the statutory provisions of Section 59 of the Code, read with other relevant Regulations. For the sake of convenience, the relevant provisions of Section 59 of the Code are being reproduced hereinbelow:-

"59 Voluntary liquidation of corporate persons

- 1. A corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of this Chapter.
- 2. The voluntary liquidation of a corporate person under sub-section (1) shall meet such conditions and procedural requirements as may be specified by the Board.
- 3. Without prejudice to sub-section (2), voluntary liquidation proceedings of a corporate person registered as a company shall meet the following conditions, namely:-
 - a. a declaration from majority of the directors of the company verified by an affidavit stating that
 - i. they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and
 - ii. the company is not being liquidated to defraud any person;
 - b. the declaration under sub-clause (a) shall be accompanied with the following documents, namely;
 - i. audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;
 - ii. a report of the valuation of the assets of the company, if any prepared by a registered valuer;
 - c. within four weeks of a declaration under sub-clause (a), there shall be-

- i. a special resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily and appointing an insolvency professional to act as the liquidator; or
- ii. a resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily as a result of expiry of the period of its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, as the case may be and appointing an insolvency professional to act as the liquidator.

Provided that the company owes any debt to any person, creditors representing two-thirds in value of the debt of the company shall approve the resolution passed under sub-clause $\ \ \ \ \$ within seven days of such resolution

- 4. The company shall notify the Registrar of Companies and the Board about the resolution under sub-section (3) to liquidate the company within seven days of such resolution or the subsequent approval by the creditors, as the case may be.
- 5. Subject to approval of the creditors under sub-section (3), the voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution under sub-clause © of sub-section (3).
- 6. The provisions of sections 35 to 53 of Chapter III and Chapter VII shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.
- 7. Where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate person.
- 8. The Adjudicating Authority shall, on an application filed by the liquidator under sub-section (7), pass an order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.
- 9. A copy of an order under sub-section (8) shall, within fourteen days from the date of such order, be forwarded to the authority with which the corporate person is registered."
- 14. A bare perusal of the material available on record shows that the Board of Directors of the Company has taken a conscious decision to close down the company. Thus, the Board of Directors of the company has unanimously

proposed to liquidate the company by invoking the provisions of voluntary

liquidation under Section 59 of the Code.

15. From a perusal of the records, it is seen that the Liquidator, after his

appointment, has duly performed his duties and completed the necessary

formalities to complete the liquidation process of the Applicant Company.

16. The Registrar of Companies in its report dated 25.04.2024, clarified that no

inquiry/inspection/complaint/legal action has been proceeded/ is pending

against the company. Since there is no objection received from any quarter

opposing the proposed voluntary liquidation/dissolution of the company, either

from the side of the shareholders or from creditors, nor any adverse comments,

have been received from the public at large against such liquidation/dissolution,

despite there being a public announcement by the liquidator and also updation of

the same on the website of the Insolvency and Bankruptcy Board of India (IBBI).

It is also evident from the records that the proposed liquidation was duly

communicated to the concerned Registrar of Companies, as per Form MGT-14 and

Form GNL-2.

17. As per the records of the present case, it is seen that the company is not

found involved in such kinds of business activities, which are detrimental to the

interests of the public at large. Further, it is not the case that the proposed

liquidation may adversely affect its shareholders/members or is contrary to the

provisions of the law.

18. The Liquidator had filed copies of the paper publication as well as copies of

the paper announcement in Form-A. The Liquidator is found to have complied with

the statutory provision to complete the liquidation process by taking the

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necessary steps. The 'voluntary liquidation' account was opened with Kotak Bank,

New Delhi, bearing Account No. 7045080370 for realization and payment to the

members, which was closed on 08.12.2023. The Liquidator had further intimated

the Income Tax Department regarding the voluntary liquidation of the company as

well as his appointment as the liquidator.

19. The Liquidator has also annexed a copy of the Preliminary Report as well

as a copy of the Final Report and Form GNL-2 as Annexure-P-27 & Annexure-P-

28 to the application respectively.

20. By taking into consideration the above-stated facts and circumstances, the

present application deserves to be allowed for the proposed

Liquidation/Dissolution of the Corporate Person.

21. Consequently, this Adjudicating Authority, in the exercise of the power

conferred to it under Section 59(7) of the Insolvency and Bankruptcy Code, 2016,

orders that the Corporate Person (Petitioner Company) FUJIREBIO INDIA

PRIVATE LIMITED shall stand dissolved with effect from the date of this order.

22. The Liquidator is directed to communicate a copy of this order to the

concerned Registrar of Companies wherein the registered office of the company is

situated. Further, a copy of this order should also be communicated to the IBBI

for information within the stipulated period of fourteen (14) days from the date of

receipt of an authentic copy of this order.

23. Further, the Liquidator is also directed to preserve a physical copy of the

reports, registers and books of accounts mentioned in Regulation 8 and 10 in

terms of the provisions of Regulation 41 of the IBBI (Voluntary Liquidation Process)

Regulations, 2017.

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- 24. The Registry is directed to send a copy of this order to the Registrar of Companies, as well as to the Insolvency and Bankruptcy Board of India (IBBI).
- 25. Thus, **C.P.(IB) 17/ND/2024** stands allowed and disposed of with the above directions.

Sd/-(SUBRATA KUMAR DASH) MEMBER (T) Sd/-(ASHOK KUMAR BHARDWAJ) MEMBER (J)