

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
29-07-2024 AT 11:15 AM**

CP (IB) No. 27/59/HDB/2024
u/s. 59 of IBC, 2016

IN THE MATTER OF:

Mr. Sailesh Baheti, Liquidator for
M/s. Reconstructive Surgery India

...Petitioner

AND

Registrar of Companies, Telangana

...Respondent

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

O R D E R

Orders pronounced. **In the result, this company is dissolved.** Since the company is dissolved the files may be consigned to records.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL,
BENCH-1, HYDERABAD**

C.P (IB)No. 27/59/HDB/2024

U/s 59(7) OF IBC, 2016 READ WITH IBBI (VOLUNTARY
LIQUIDATION PROCESS) REGULATIONS, 2017 AND THE
NATIONAL COMPANY LAW TRIBUNAL RULES, 2016

**IN THE MATTER OF RECONSTRUCTIVE SURGERY INDIA
(IN VOLUNTARY LIQUIDATION)
CIN: U85100TG2012NPL080017**

Filed by:

SHAILESH BAHETI

Liquidator

M/s RECONSTRUCTIVE SURGERY INDIA

Having his office situated at

20-2-656/A, Hussaini Alam, Bahadurpura,

Hyderabad, Telangana-500064

.....Applicant/
Liquidator

Date of order: 29.07.2024

Coram:

Dr. N. Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)

Shri Charan Singh, Hon'ble Member (Technical)

Appearance:

For Petitioner: Shri Piyush Gandhi, PCS

ORDER

1. This Company Petition under Section 59 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as Code) is filed by the Corporate Person/ **M/s RECONSTRUCTIVE SURGERY INDIA** represented by the Liquidator Mr. **SHAILESH BAHETI**, seeking voluntary liquidation of the Company.
2. **M/s RECONSTRUCTIVE SURGERY INDIA** (referred to as Corporate Person for the sake of brevity) (CIN No. **U85100TG2012NPL080017** was incorporated under the Companies Act, 1956 on 28/05/1987 having its registered office at Plot Nos.188 189 RR Towers West Block 5th Floor Kavuri Hills, Phase-I, Madhapur, Hyderabad, Hyderabad, Telangana, India, 500081. The Authorised share capital of the corporate person is Rs.1,00,000/- (One Lakh only) divided into 10,000 (Ten Thousand) equity shares of Rs.10/- (Ten) each. The issued and subscribed capital of the corporate person is Rs.1,00,000/-(One Lakh only) divided into 10,000 equity shares of Rs.10/- each fully paid and paid-up capital of the corporate person is Nil.
3. It is stated that on 20th day of September 2023 all the Directors of the Corporate person have made a declaration under Section 59(3)(a) of Insolvency and Bankruptcy Code, 2016 read with regulation 3(1)(a) and 3(4) of Insolvency and Bankruptcy Board of India (Voluntary Liquidation process)

Regulations, 2017 (copy of the declaration made by all the Directors of the corporate person is annexed as **Annexure-C)**

4. It is stated that the Board of Directors of the corporate person on 22.09.2023 passed a resolution for voluntarily liquidating corporate person under the provisions of Section 59 of Insolvency and Bankruptcy Code, 2016, as it failed to obtain necessary approval under Foreign Contribution Regulation Act, as such the company is unable to raise foreign funds from foreign entities to carry out the operations more effectively and efficiently for which the company was incorporated. (Copy of the Board resolution authorizing the voluntary liquidation is annexed as **Annexure-B**).
5. On 28.09.2023 the shareholders of Corporate Person passed a special resolution in the Extraordinary General Meeting to liquidate the Company and to appoint Mr. Shailesh Baheti, Insolvency Professional, having IP Registration No. IBBI/IPA-002/IP-N01055/2021-22/13717 as Liquidator of the Company in Liquidation. Accordingly, the liquidation of the Company is deemed to have commenced on 28.09.2023. The Petitioner has notified the Registrar of Companies within 14 days about passing of special resolution and obtaining no objection certificate from the creditors of the company to voluntarily liquidate the company (copy of Form No. MGT-14 along with its

receipt and special resolutions filed with the Registrar of Companies, Hyderabad is enclosed as per **Annexure F**). No objection certificate from the creditors dated 28.09.2023 is annexed as **Annexure-E**.

6. The Petitioner on 01.10.2023, issued a public Announcement in Form A to schedule 1 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation process) regulations, 2017, as required under Regulation 14 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation process) regulations, 2017 (copies of the Public Announcement in Financial Express (English daily) and Nava Telangana (Telugu Daily) both dated 01/10/2023 is annexed and marked as **Annexure G**. However, the Liquidator did not receive any claims from the stakeholders. It is further stated that the outstanding amount to the creditors as per the financial statements as on the liquidation commencement date were paid in full.
7. The preliminary report as required under Regulation 9 of Insolvency and bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (Copy of the preliminary report is enclosed as per **Annexure H**).
8. The Liquidator intimated the commencement of the liquidation and appointment of Liquidator to the Income Tax Authority on 23.01.2024.
9. The Petitioner had opened a separate bank account as required under Regulation 34 of Insolvency and Bankruptcy

Board of India (Voluntary Liquidation process) regulations, and distributed the amounts received by the corporate person after adjusting the amounts for expenses of voluntary liquidation, in accordance with the provisions of section 8(9) of the Companies Act, 2013. The Petitioner had further transferred the undistributed amount to Ravindranath Medical Foundation having CIN (U85110TG1997NPL027669), a Section 8 Company registered under Companies Act, 2013

10. The Petitioner submits that, the liquidation is complete after distribution of the proceeds to creditors of the corporate person, and the final report has been filed with the Registrar of Companies and the Insolvency and Bankruptcy Board of India. Copies of the final report and proof of filing the same with the Registrar of Companies and Insolvency and Bankruptcy Board of India and Form H i.e. Compliance certificate as per Regulation 38(3) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 is annexed and marked as **Annexure I**.
11. It is submitted by the Liquidator/ Petitioner herein had; after meeting the expenses and distribution of the assets of the Company, has completely wound up the affairs of the Company and there is no amount in the hands of the Liquidator after distribution, as such sought for dissolution of the Company.

12. The Registrar of Companies (Telangana) filed his report on 30.04.2024. At sl. No.13 of his report, RoC (T) has observed as follows:-

“It is observed from the Memorandum of Association (MOA) of the Company that the Applicant Company is incorporated as per Section 25 of the Companies Act, 1956 (now Section 8 of the Companies Act, 2013).

In view of the above, the applicant company may first seek to revoke/surrender its license by an application to the Central Government as per sub-section (6) of Section 8 of the Companies Act, 2013 and thereafter to covert itself to another form of Company by changing its name by adding the words like “limited” or “private limited” at the end of the changed name.

Since the instant application is not giving certain clarification / comments on the compliance of the above provisions of the Companies Act, 2013, as may deem fit under Section 8 of the Act, the Hon’ble Tribunal is being brought about the above points for its kind consideration and for its compliance, if any.

13. Pursuant to the above, the Petitioner has filed clarificatory memo stating that the present petition for voluntary winding up is being made in accordance with the provisions of section 59 of IBC. The Petitioner submitted that IBC, 2016 is applicable to all the Companies registered under Companies Act, 2013 and that as per Section 8 (9) of the Companies Act, an amount of Rs. 48,664.33 (being the amount left with the company after the satisfaction of its

debts and liabilities) to another Company registered under Section 8 of Companies Act, 2013.

14. In the above backdrop, we heard the Ld. Counsel for the Liquidator Shri Piyush Gandhi and perused the record.
15. On perusal of the ROC (T) report, we find that at Sl. No.13 of their report, they have raised objection that Petitioner may first seek to revoke/surrender its license by an application to the Central Government as per Section 8 (6) of the Companies Act, 2013 and thereafter to convert itself to another form of Company by changing its name by adding the words like “Limited” or “Private Limited” at the end of the changed name.
16. The Company has clarified on this point and submits that the provision of sub-section 6 of Section 8 of the Companies Act, 2013 operates independently and empowers the Central Government to revoke the license granted under Section 8, if the Company contravenes any of the requirements of this section or any of the conditions subject to which a license is issued or the affairs of the company are conducted fraudulently or in a manner violative of the objects of the Company or prejudicial to the public interest. However, this Section is not applicable to the present Petition as this petition is for winding up of the Company under Section 59 of IBC, 2016.
17. Further the Company has clarified that in accordance with the provisions of sub-section 9 of Section 8, has transferred

an amount of Rs. 48,664.33 (being the amount left with the company after the satisfaction of its debts and liabilities) to another Company registered under Section 8 of Companies Act, 2013. The Company has further clarified that sub-section (9) of section 8 of Companies Act, 2013 is applicable to the present petition and in accordance with the provisions of Section 8 (9), the Company has already transferred an amount of Rs. 48,664.33 (being the amount left with the company after clearing its debts and liabilities).

18. Before we decide on the issue, we would like to reproduce Section 8 (9) of the Companies Act, 2013 and Section 59 of IBC, 2016

Section 8 of the Companies Act, 2013: Formulation of companies with charitable objects, etc.—

(9) If on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to the Rehabilitation and Insolvency Fund formed under section 269.

Section 59 of IBC:

- (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.*

19. On perusal of the Sections, *supra*, and also keeping in view the explanation submitted by the Company to the objections raised by ROC(T), we are of the view that Section 8(6) of the Companies Act, 2013 is not applicable to the present petition, as it is not a case of revocation of license granted to the Company by the Central Government, on contravention of any of the requirements of the said Section or any of the conditions, subject to which licenses was issued or the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest. Since, this is a petition for voluntary winding up of the Company, Section 8 (9) of the Companies Act, 2013 and Section 59 of IBC, 2016 will be applicable to the case on hand.
20. We further observe that the Petitioner has complied with the provisions as laid down in the Sections, *supra*, and therefore we hold that the objections raised by ROC (T) is not applicable to the present case. Further, we find that the affairs of the Corporate Person have been completely wound up as there is no assets in the Company and as such had voluntarily liquidated itself so as to get dissolved.

21. As a sequel to the above, by exercising the powers conferred on the Adjudicating Authority under Section 59 of the Code, we hereby allow the Company Petition with following directions: -

- (i) The Corporate Person, **M/s. Reconstructive Surgery India** is hereby dissolved with immediate effect.
- (ii) The Liquidator shall preserve a physical copy of the records for a period of 3 years and electronic copy of the reports, registers and books of account referred to in Regulations 41 of IBBI (Voluntary Liquidation) Regulations, 2017, for at least eight years after the dissolution of the corporate person, either with himself or with an information utility.
- (iii) The Liquidator is directed to hand over records of the Company to IBBI as per IBBI (Voluntary Liquidation) Regulations.
- (iv) Upon dissolution of the Company, the Liquidator is directed to file necessary e-form INC-28 to ROC (Hyderabad).
- (v) The Registry is directed to forward a copy of this order within a period of 14 days from the date of this order to

the Registrar of Companies, Hyderabad for marking appropriate remarks for the Company on MCA website as well as to the IBBI.

- (vi) The Liquidator is also directed to forward copies of this order to all the statutory authorities connected with the affairs of the Company.

Sd/-
(CHARAN SINGH)
MEMBER (TECHNICAL)

SD/-
(DR. N.VENKATA RAMAKRISHNA BADARINATH)
MEMBER (JUDICIAL)

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