## IN THE NATIONAL COMPANY LAW TRIBUNAL

## **NEW DELHI, COURT-III**

# (IB) -112(ND)/2024

Under Section 59(7) of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

## IN THE MATTER OF:

# M/s. MS Merchandisers Private Limited

Having its Registered Office at:

Office No. 305, USMSSL Complex, 120,

Mathura Road, Near Apollo-Jasola Metro Station,

New Delhi —110076.

CIN: U29142DL2004PTC128195

Through its Voluntary Liquidator

Mr. Deepak Kumar Goyal

IBBI Registration No.: IBBI/IPA-001/IP-P02490/2022-2023/14143

..... Applicant

Order Pronounced On: 21.10.2024

## CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

### **APPEARANCES:**

For Voluntary Liquidator : Mr. Sumit Garg, Mr. Prateek Jain, Advs.

For AROC/ROC :

#### ORDER

# PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Application has been filed by Mr. Deepak Kumar Goyal (Voluntary Liquidator of M/s. MS Merchandisers Private Limited) before this Adjudicating Authority under Section 59(7) of the

(IB) -112(ND)/2024

Date of Order: 21.10.2024

Insolvency & Bankruptcy Code, 2016 ("IBC" or "the Code") read with Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, ("Voluntary Liquidation Regulations"). The Applicant seeks the following reliefs:

"(a) Pass an order for dissolution of the Company, and

(b) Pass such other Order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case."

# 2. Brief Background of the Applicant Company:

The Applicant Company was incorporated on 09.08.2004, as a Company Limited by Shares (Non-government Company) having CIN:U29142DL2004PTC128195, under the erstwhile Companies Act, 1956 with the Registrar of Companies, NCT of Delhi and Haryana. The Authorised Share Capital of the Applicant Company as on the Voluntary Liquidation Commencement date was Rs. 10,00,000/-. The Issued and Paid-up Share Capital of the Applicant Company as on the Voluntary Liquidation Commencement date was Rs. 10,00,000/-. The Registered Office Address of the Applicant Company is Office No. 305, USMSSL Complex, 120, Mathura Road, Near Apollo-Jasola Metro Station, New Delhi-110076. Therefore, this Bench has jurisdiction to deal with this application.

3. The main objects of the Applicant Company as set out in the Memorandum of Association ("MoA") are as follows:

"1. To carry on the business of merchandising, marketing, agency and distribution and establishing, trading, chain supply systems, importing & exporting and deals in all kinds of products and commodities, consumers, industrial & commercial goods/worse in India & abroad including importers of metals (Ferrous & non Ferrous) and also Import and Export as well as trade and Merchandiser indigenously in all steels/iron finished and semi finished and iron ore.

- 2. To carry on the business of trading, marketing, importing, exporting & deal in food provisions, kiryana, items, food grains, agro based products.
- 3. To carry on business of trading & deal in all kinds of Chemicals, chemical components, in all forms & kind & by products thereof.
- 4. To trade, deal in and undertake manufacturing, of bricks, tiles, pipes, cement line and building construction requisites and to carry on all or any of the business of builders, contractors, architects, decorators, furnishers and to acquire, hold, mortgage, lease, take on lease exchange or otherwise deal in lands, buildings, house, flats, bungalows, shops, here-dita-ments of any tenure or freehold for residential or business purposes."

A copy of the Memorandum and Articles of Association and extract of Master data from the MCA Website are filed along with the Application.

# 4. Reason of Voluntary Liquidation:

Due to the Company not achieving the goals set by the management and there being no operating business in the Company. There are also no prospects for the business or prospects of opportunity for the business to work as a going concern. In view of the non-continuation or absence of any business opportunity in the coming future, the board and the shareholders of the Company have resolved to liquidate the Company under Section 59 of the Insolvency and Bankruptcy Code, 2016.

5. Subject to obtaining approval of the members of the Company in an Extra Ordinary General Meeting of the Company, the Board of Directors of the Company on 10.04.2023 passed a resolution for carrying out the Voluntary Liquidation of the Company in terms of Section 59 of the Code read with the Regulations, filing of the Declaration of Solvency with the ROC and for appointing Ms. Deepak Kumar Goyal as the Voluntary Liquidator of the Company in terms of Regulation 5 of the Regulations.

- 6. The Special Resolution was passed by all the shareholders of the Company unanimously in the Extra Ordinary General Meeting of the Company held on 27.04.2023. The Company in Voluntary Liquidation was solvent and the Directors have issued the Declaration of Solvency. The same was also filed with the ROC. A certified copy of the Board Resolution and Special Resolution along with the Declaration of Solvency filed with the ROC in Form MGT-14 and its filing receipt are filed along with this Application.
- 7. It is submitted that there are no assets in the Company which are required to be liquidated. Therefore, no valuation report of the assets of the Company was required to be obtained by the Voluntary Liquidator under Section 59(3)(b)(ii) of Insolvency and Bankruptcy Code, 2016. As per Regulation 3(2) of the Regulations, the Applicant has also intimated the ROC, IBBI and the Income Tax Department about the status of the Company of Voluntary Liquidation and appointment of the applicant being the Voluntary Liquidator.
- 8. In terms of Regulation 14(3)(c) of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulation, 2017, the Public Announcement was made by the Voluntary Liquidator on 01.05.2023 in the newspapers namely Jansatta and Financial Express having circulation in Delhi and NCR.
- 9. It is contended that in terms of the Regulation 29 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulation, 2017, the Voluntary Liquidator is required to verify the claims submitted within thirty days from the last date of the receipt of claims and may either admit or reject the claim, in whole or in part. According to law, the last date of submission of claims was 26.05.2023.
- 10. In terms of Regulation 9 of the Voluntary Liquidation Regulations, the Voluntary Liquidator has prepared the preliminary report dated 10.06.2023 along with the list of stakeholders and has submitted the same on 10.06.2023.

- 11. The Voluntary Liquidator has disbursed the Voluntary Liquidation cost and other expenses incurred and paid to stakeholders from the available cash and bank balance of the Company. A copy of audited statements of account showing receipts & payments during the Voluntary Liquidation is filed along with the Application.
- 12. Since there were no Financial Creditors against the Company as on the Voluntary Liquidation Commencement Date, no claims were received except for a claim from GSTO (W-90) Deptt. of Trade & Taxes, GNCTD on 24.05.2023. Initially no proof of claim was submitted by the said Deptt. of Trade & Taxes, GNCTD, however, later on the said Deptt. of Trade & Taxes, GNCTD submitted its proof of claim on 06.06.2023 without supporting documents and the claim could be assessed on 04.09.2023 and the same was paid to the claimant department by the Voluntary Liquidator on 28.09.2023.
- 13. In furtherance to the invitation of the claim from the creditors of the Company, the claim(s) received by the Voluntary Liquidator have been verified and paid and the balance amount has been distributed among the stakeholders in the ratio of their shareholding. The same has been considered and taken on record by the stakeholders of the Company in its meeting held on 11.09.2023.
- 14. Further, in terms of Regulation 38 of the Voluntary Liquidation Regulations, upon completion of the Voluntary Liquidation process, the Voluntary Liquidator is required to prepare a Final Report consisting of details showing the receipts and payments pertaining to the Voluntary Liquidation since the Voluntary Liquidation Commencement Date. The Voluntary Liquidator has prepared the Final Report dated 19.12.2023 in compliance with the Voluntary Liquidation Regulations.
- 15. Upon the scrutiny of records, the Voluntary Liquidator is satisfied that the necessary compliances of Section 59 of the Code and other relevant Regulations of the Voluntary Liquidation Regulations, as applicable thereto have been made and the affairs of the Company

have not been conducted in a manner prejudicial to the interest of its members or to the public interest and thus the company may be deemed to have been dissolved from the date of submission of this report to this Adjudicating Authority.

16. All the Compliances as per the Code and as per the Voluntary Liquidation Regulations have been complied with. The Affidavit showing compliance with the Code and compliance of the Voluntary Liquidation Regulation (Form-H) has been filed along with the application.

# 17. Report of the Registrar of Companies, NCT of Delhi and Haryana Dated 20.05.2024:

The report has been filed in compliance with the order of this Adjudicating Authority dated 28.02.2024 on behalf of the Registrar of Companies, Delhi and the same are as follows:

"5. Further as per data received from various cell of this office, no inquiry / inspection / complaint / legal action is pending against the subject company. That this office has compiled the above factual report based on the records maintained & documents filed by the concerned Company on MCA21 portal.

6. 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 28.02.2024.

Thus, it is humbly submitted that the Hon'ble Tribunal may pass such order as it deem fit as per merits of the case."

# 18. Analysis and Findings:

i. We have considered the submissions made by the Applicant Company and have also perused the material on record. It appears that the affairs of the Applicant Company have been completely wound up and its assets have been completely

(IB) - 112(ND)/2024 Date of Order: 21.10.2024 liquidated. No liabilities have been left unsatisfied. We are satisfied from the documents on record that the Voluntary Liquidation is not with the intent to defraud any person.

- ii. The Final Report under Regulation 38 of the Voluntary Liquidation Regulations read with Section 59 of the Code stated that:
  - "5. There are no existing liabilities or debt on part of the Company (MS Merchandisers Private Limited).
  - 6. No litigation is pending against the Company.

Liquidator has distributed the remaining amount among the shareholders of the Company after paying off the unsecured creditors. Consequently, the Company has no assets and liabilities as on date."

## 19. **Order**

- i. In light of the above facts and circumstances, the Applicant Company is ordered to be dissolved. IB-112(ND)/2024 shall stand disposed of in accordance with the above directions.
- **ii.** The Registry is directed to send the copies of the order forthwith to the Applicant Company represented by its Voluntary Liquidator and its Ld. Counsel for taking further necessary steps.
- **iii.** The Voluntary Liquidator of the Applicant Company is further directed to serve a copy of this order upon the Registrar of Companies, NCT of Delhi and Haryana, immediately and, in any case, within fourteen days of receipt of this order.

The RoC shall take further necessary action upon receipt of a copy of this order.

iv. The Voluntary Liquidator is also directed to preserve a physical or electronic copy of the reports, registers and books of accounts referred to in Regulation 8 and Regulation 10 of the Voluntary Liquidation Regulations for at least 8 years as per Regulation 41 of the Voluntary Liquidation Regulations either with himself or with an information utility.

- **v.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
- **vi.** The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

Sd/-(ATUL CHATURVEDI) MEMBER (TECHNICAL) Sd/-(BACHU VENKAT BALARAM DAS) MEMBER (JUDICIAL)