

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - V**

CP (IB)/198/MB/2024

Application under Section 59(7) of the
Insolvency and Bankruptcy Code, 2016
readwith the Regulation 38 of the
Insolvency and Bankruptcy Board of
India (Voluntary Liquidation Process)
Regulations, 2017.

In the matter of

**CA Sandeep Jawaharlal Singhal,
Liquidator of ITM FABRICATION
INDUSTRIES LIMITED,
..... Applicant/**

Liquidator AND

In the matter of

**ITM FABRICATION INDUSTRIES
LIMITED,**

CIN: U74210MH1996PLC101863, and
Having its Registered Office at: - 6th
Floor Dhiraj Chambers 9, Hazarimal
Somani Marg Fort, Mumbai –
Maharashtra 400001**Corporate
Person/Applicant Company**

Order Delivered On: 24.07.2024.

Coram:

Hon'ble Reeta Kohli, Member (Judicial)

Hon'ble Madhu Sinha, Member (Technical)

Appearances (Hearing in Physical Mode):

For the Petitioner: CS Nithish Bangera (PH)

ORDER

1. This Company petition is filed by **CA Sandeep Jawaharlal Singhal, Liquidator** of ITM Fabrication Industries Limited, (hereinafter referred to as "the Liquidator") for **dissolution of Corporate Person** namely ITM Fabrication Industries Limited ("the Company") through voluntary liquidation under Section 59 of the Insolvency and Bankruptcy Code, 2016 ("the Code").
2. The Company was incorporated on August 14, 1996 in India under the provisions of the Companies Act, 1956 with Corporate Identification Number (CIN): U74210MH1996PLC101863 having its Registered Office at 6th Floor Dhiraj Chambers 9, Hazarimal Somani Marg Fort, Mumbai City, Mumbai, Maharashtra, India, 400001. The Authorised Share Capital of the Company is Rs. 1,00,00,000/- (Rupees One Crore Only) divided into 10,00,000 Equity Shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Share Capital of the Company is Rs. 77,50,000/- (Rupees Seventy Seven Lakhs and Fifty Thousand Only) divided into 7,75,000 Equity Shares of Rs. 10/- each.
3. The main object of the Company was to carry on in India and abroad the business of manufacturers, designers, engineers, planners, dealers, contractors, consultants and erectors of Storage Tanks, Pressure Vessels, Heat Exchangers petrochemical plants, electro chemical plants, heavy chemical plants and other industrial process plants & machinery/equipments of all kinds and types in the field of organic

and inorganic chemicals, fertilizers, petrochemicals, power i.e. hydro, thermal, solar, nuclear and wind energy, food processing, brewing, water and natural resources, sewerage and waste disposal and all other related and process engineering fields and other associated fields derived therefrom like heat exchangers, reactors, columns, towers, pressure vessels, boilers, evaporators, furnaces, dryers, mixers, distillation equipments and other process equipments including the making of surveys and reports, preparing designs and evaluations, undertaking techno commercial and economic studies, feasibility studies and making estimates thereon and the execution of all types of project work and assignments in respect of the above including the sub-contracting thereof and other activities.

4. Majority of the directors have declared on Affidavit dated May 10, 2023 that they have made full enquiry into the affairs of the Company and formed an opinion that the Company has no debt and further affirmed that the Company is not being liquidated to defraud any person. Audited financial statements and records of business operations of the Company of previous two financial years, viz. year ending 31.03.2023 and 31.03.2022 are also annexed to the application.
5. The members of the Company in the Annual General Meeting held on May 18, 2023 as per provision of the Companies Act, 2013, had passed a Special Resolution to liquidate the Company voluntarily and appointed CA Sandeep Jawaharlal Singhal, an Insolvency Professional, with registration No. IBBI/IPA-001/IP-P00519/2017-2018/10920, to act as Liquidator. Copy of the said Special Resolution is annexed to the Application. The Liquidator had notified the Registrar of Companies, Mumbai, Maharashtra under sub- section (4)

of Section 59 of the IBC about the passing of a Special Resolution to liquidate the Corporate Person and appointment of Liquidator in Form MGT-14 and Form GNL 2.

6. The Liquidator made a public announcement of commencement of liquidation in Form A of Schedule I as per Regulation 14 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 in English, “Financial Express” and in Marathi, “Mumbai Lakshadeep” dated May 22, 2023 i.e. within the period of 4 days of his appointment on May 18, 2023 calling upon the stakeholders/creditors to submit their claims along with the proof within 30 days from the date of commencement of liquidation i.e. on or before June 17, 2023 to the Liquidator and the copy of public announcement was sent to IBBI with request to place it on its website and the same was published on the website of IBBI.
7. The Liquidator has also referred to the IBBI Circular No. IBBI/LIQ/45/2021 dated 15.11.2021 stating that the point 5 of the circular hereby clarified that *“as per the provisions of the Code and the Regulations read with Section 178 of the Income-tax Act, 1961, an Insolvency Professional handling voluntary liquidation process is not required to seek any NOC/NDC from the Income- Tax Department as part of compliance in the said process.”* However, in compliance of the provisions of Section 178 of the Income Tax Act, 1961, the liquidator had served notice of his appointment by email vide letter dated June 12, 2023 to the Income Tax Department and reminder emails on September 18, 2023, October 27, 2023 and on November 22, 2023 informing them about the voluntary liquidation of the

Company and that he has made compliance with Regulation 14 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017. The reply from Income Tax Department was received on November 23, 2023 via email that *“As on date there is no demand outstanding for any assessment years as per the system. As regard to the Income Tax Return filed for the period ending March 31, 2023 for the refund of Rs. 28,590/- the matter may be taken up with CPC.”*

8. The Liquidator/the Petitioner Company had received claims and the same has been discharged. The liquidator submits that after paying the creditor the balance amount was distributed to the equity shareholders. The liquidator had submitted Preliminary Report dated July 2, 2023 to the shareholders of the Corporate Person within a prescribed time limit of 45 days from the liquidation commencement date i.e., May 18, 2023. The liquidator submitted the copy of the Final Report dated February 07, 2024, detailing the liquidation process having been conducted. The Final Report states that there were no fixed assets (except bank balance and balance in fixed deposits) in the Company. Therefore, there was no requirement for any disposal of any fixed assets of the company and the Company has paid all the creditors on the Liquidation Commencement date and the Liquidation expenses have been adequately paid. The Final Report also mentions that no litigation is pending against the Corporate Person. It is seen from the record that pursuant to Regulation 38 of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, the said Final Report of the Liquidator has been submitted to the Registrar of Companies in Form GNL- 2 on February 8, 2024 vide SRN: AA6799534 and to IBBI vide e-mail dated February 7, 2024. Copy of

the said Final Report is annexed to the application. The Applicant/Liquidator has also placed on record the Compliance Certificate vide Form 'H' dated February 7, 2024.

9. As per Regulation 34 of IBBI Regulations, the Liquidator has opened the Corporate Liquidation Account in the name of 'ITM Fabrication Industries Limited (IN VOLUNTARY LIQUIDATION)' with Axis Bank bearing Account No. 923020026705558 situated at Mumbai for realization of all money and for payment to the members. The Corporate Person received claims from creditors and the same has been paid off. Two – Third of the creditors in value have approved the liquidation by passing of resolution dated May 22, 2023. The balance amount has been distributed to the equity shareholders. In compliance with the provisions of Regulation 35 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 and section 53 the Insolvency and Bankruptcy Code, 2016, the appointed Liquidator distributed the proceeds from the realization of assets involved in the process of Voluntary Liquidation to the creditors and stakeholders which were transferred from the above-mentioned Liquidation account. After making payment to the members of the Company, the liquidator has closed the Bank Account on February 24, 2024.
10. We have heard the submissions of the learned counsel for the Liquidator and perused the documents annexed to the Application. On examining the submissions and perusing the records, it is seen that the affairs of the Company have been completely wound up and the assets of the Company have been completely liquidated and therefore, this Application u/s 59 of the Code is as such complete and

it deserves to be allowed. Hence, the Applicant Company i.e., ITM Fabrication Industries Limited is liable to be dissolved u/s 59(8) of the Code.

11. Query raised by NCLT and our reply

Sr. No.	Direction given by Hon'ble Bench	My reply
I.	Copy of Declaration of solvency by the director	Copy of Declaration of solvency by the director is annexed and marked as Exhibit B to additional affidavit dated June 29, 2024
II.	Date of closure of business	Company has closed the business more than 2 year back before the date of filing of this application.
III.	Any other dispute litigation, inquiry, investigation pending against the company	I confirmed that no dispute litigation, inquiry, investigation pending against the company, to the best of my knowledge
IV.	All the amount after clearing liability has been distributed to the shareholder	Please see page 20 and para 24 of the original petition. Amount distributed to member is annexed and marked as Exhibit C to additional affidavit dated June 29, 2024

V.	List of shareholders	The Share holding Pattern of the Company as on liquidation commencement date i.e. May 18, 2023 is already mentioned at page no. 13 of original petition.
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12. After examining the documents and materials placed on record, we are of the considered opinion that as the necessary compliances as per provisions of the Code have been made by the Corporate Person and the Liquidator, therefore, in exercise of the powers conferred under sub-section (8) of Section 59 of the Insolvency and Bankruptcy Code, 2016, **we are allowing the Application** with the following directions:

ORDER

- i. Company Petition (IB) No. 198/MB/C-V/2024 is hereby **allowed**.
- ii. The Corporate Person viz. **ITM Fabrication Industries Limited** (having CIN: U74210MH1996PLC101863) stands **dissolved** from the date of this Order.
- iii. The Liquidator is directed to file this order with the concerned Registrar of Companies, Income Tax Department and IBBI within 14 days from the date of receipt of an authentic copy this order, for information and necessary action.
- iv. The Liquidator is also directed to file this order with all other Statutory Authorities connected with the affairs of the Company.
- v. The Liquidator shall preserve a physical or an electronic copy of

the reports, registers and books of account referred to in Regulations 8 and 10 of IBBI (Voluntary Liquidation Process) Regulations, 2017 for at least eight years after the dissolution of the Corporate Person, either with himself or with an information utility.

- vi. Copy of the order be served to the respective parties.

Sd/-
Madhu Sinha
Member (Technical)

Sd/-
Reeta Kohli
Member (Judicial)