

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI
CP / 16/ 2023**

*(Filed under Section 272 of the Companies Act, 2013 read with Rule
3(1) of the Companies (Winding Up) Rules, 2020)*

In the matter of D C Foods India Private Limited

D C FOODS INDIA PRIVATE LIMITED

CIN No. U55101TN2012PTC088748

Represented by its Director - Mrs. Meenakshi,

No.3, Self Help Industrial Estate,

Keelkattalai, Chennai, Tamil Nadu - 600 119.

... Petitioner

Order Pronounced on 28th June 2024

CORAM

Shri. JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)

Shri. RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Present

For Petitioner: Mr. G. Vairava Subramaniam, Mr. B. Raghupathy,

Mr. A. Kandhan, Mr. V. Kaushik Narayanan, Advocates

ORDER

(Hearing Conducted through VC)

1. This Petition under Sec. 272 of the Companies Act, 2013 has been filed by

Mrs. Meenakshi in the capacity of Director of the Petitioner Company namely

'D C FOODS INDIA PRIVATE LIMITED' seeking following reliefs:-

*“(1) That the D C FOODS INDIA PRIVATE LIMITED be wound up by the
Tribunal under the provisions of the Companies Act, 2013, and*

(2) Such other order may be made in the premises as shall be just. Representative of Petitioner”.

2. The Company was incorporated under the provisions of the companies act, 1956 with the Registrar of Companies, Chennai, Tamil Nadu on 03.12.2012. The Registered office of the company is located at No.3, Self Help Industrial Estate, Keelkattalai, Chennai, Tamil Nadu – 600 119. The Main Objects of the company is to setup a chain of cafes, restaurants and eating houses to serve trade and industry in different cities and companies to provide ready food to the customers which may include Indian Food, Continental food, Chinese food and food of different varieties including milk and milk products, ice cream, jelly and jelly products and to act as manufacturers, distributors and dealers of ready to serve food and to provide franchise to the people who are prepared to serve the customers in accordance with the tradition and system of service laid down by the company. The detailed objects is annexed *Annexure 8 of the Company petition.*

3. The Authorized Share Capital of the Company is Rs.1,00,000/- divided into 10,000 shares of Rs.10/- each. The Issued, Subscribed and Paid Up Capital of the Company is Rs.1,00,000/- (Rupees One Lakh only).

4. We have heard the submissions made by the Learned Counsel for the Petitioner and perused the records.

5. It is stated that the Company was founded by one Mr. Pon Karthik along with 2 others in the year 2012 as a small scale innovative startup which made

considerable growth in the following years owing to huge response and support from its clients.

6. It is stated that based on the good response from the customers, the company set up multiple food stalls in cafeteria/ food court located in large IT parks.

7. It is also stated that the company had good sales and made good profits until the sudden demise of its founder Mr. Pon Karthik who was the sole brain behind the entire operations.

8. It is stated that Mrs. Meenakshi W/o. Late Mr. Pon Karthik took charge of the company and its affairs after the sudden demise of her husband. When she was in charge of the company, the company could not make any growth in sales, but able to maintain the average levels what was left by the demised promoter/ her husband.

9. It is also stated that, during those difficult business days, the Covid-19 Pandemic broke out which lead to complete lockdown, closure of all IT Parks and restaurants which made the company to bring its operations to halt.

10. It is stated that the commercial operations of the company ceased in 2021 and currently no employees working in it. Further company without no future prospects, is under serious financial strain making it unable to pay its dues to the creditors.

11. It is stated that the Board of Directors, having made a full and thorough inquiry into the affairs of the company have formed the opinion that the Company, not being a going concern, will not be able to pay off its debts considering the non-availability of cash reserves and negative net worth of the company as is reflected in the latest balance sheet of the company for the financial year ending 31.03.2022.

12. Further it is also stated that, no useful purpose will be served by keeping the Company alive. On the other hand, there is a recurring expenditure for ensuring compliances to keep the company alive. The entire substratum of the company has been eroded for the reasons stated above and the liabilities far exceed the assets of the Company. Therefore, the decision has been made to wind up the Company under Section 271 and 272 of the Companies Act, 2013.

13. It is stated that the Board of Directors of the company convened for a meeting held on 11.01.2023, wherein it was decided to convene an Extraordinary General Meeting (EoGM) of the company to seek consent of the shareholders by way of special resolution for winding up the company under section 271(a) read with section 272 of the Companies Act, 2013. In the same day, board issued a notice of EoGM of the company to be convened at 10.00 AM on 20.01.2023. The Notice of EoGM is annexed as *Annexure 13 of the Petition*.

14. It is stated that on 20.01.2023, a special resolution was passed at the EoGM of the company, as required under Section 271 of the Companies Act, 2013 and same is extracted hereunder,

“RESOLVED THAT pursuant to the provisions laid down under Section 271 (a) read with Section 272 of the Companies Act, 2013 read with the rules of regulations thereunder, as amended, consent of the shareholders be and is hereby accorded to move and file Petition before the National Company Law Tribunal, Chennai under Section 272 of the Companies Act, 2013 for winding up of D.C. FOODS PRIVATE LIMITED.”

13. This Tribunal vide order dated 22.02.2023 directed the Petitioner to take notice to the Registrar of Companies, Chennai and issue Paper Publication in **“Business Standard” (English – All India Edition) and “Makkal Kural” (Tamil – Tamil Nadu Edition).**

14. Pursuant to that, Petitioner caused Paper Publication on 05.04.2023 and filed an affidavit of compliance to that effect on 25.04.2023.

15. The RoC, Chennai has filed its report on 15.09.2023. In Para 9 of the report the RoC has submitted as follows,

- i. The Statutory returns i.e., Balance Sheet & Annual Returns filed up to the financial year 2021-22.*
- ii. E-form MGT- 14 vide SRN F54458914 dated 24.12.2022 with regard to the shareholders’ approval to winding up of the Company by the Tribunal and the same got approved on 24.12.2022.*
- iii. No Complaint is pending against the company.*
- iv. No Technical scrutiny is pending against the company.*
- v. No Inspection/Inquiry Follow-up is pending against the company.*
- vi. No Prosecution is pending against the company.*
- vii. No Adjudication is pending against the company.*

viii. *No charges are present against the company as per the MCA 21 portal. But the petitioner company has stated in the petition that the company is unable to pay the dues to the creditors. The Hon'ble Tribunal may direct the petitioner company to provide the list of creditors before the NCLT, as there are no charges as per the MCA 21 portal."*

16. But in Para 8 of the same RoC report, the regulator has raised an issue of misrepresentation as follows,

"The present petition is filed by M/s. D C Foods India Private Limited represented by Mrs. Meenakshi in the capacity of Director. The petitioner in the instant petition has wrongly stated that an extraordinary general meeting was convened on 20th January 2023 wherein the members of the company passed a special resolution in accordance with section 271(a) of the Companies Act, 2013 for winding up the affairs of the Company. However, as per the information available in E-form MGT-14 submitted by the Petitioner company vide SRN F54458914 dated 24.12.2022, the date of passing of special resolution is 19.12.2022. Therefore, the same has been misrepresented in the petition."

17. The tribunal on hearing dated 29.11.2023 questioned the issue highlighted by the RoC report. The counsel orally submitted to clarify the issue with revised E-form MGT 14. Subsequently Petitioner filed a memo on 31.01.2024 complying the issues raised in RoC report.

18. Further this tribunal vide order dated 20.03.2024 directed the petitioner to furnish the details of creditors, their credit values and primary service of notice.

19. In compliance to the above directions, the petitioner filed a memo on 11.04.2024, providing the details of Creditors and their credit values. The same is extracted as below,

LIST 'E' - UNSECURED CREDITORS

The names to be arranged in alphabetical order and numbered consecutively
Statement of Affairs: List 'E'

Note:- (1) When there is a contra account against the creditor less than his claim against the company, the amount of the creditor's claim and the amount of the contra account should be shown in the third column and the balance only inserted under the heading 'Amount of Debt' thus :-

Total amount of claim	65,79,264	65,79,264
Less: Contra account	NA	NA

No such set-off should be included in Schedule I attached to List 'A'
(2) The particulars of any Bills of Exchange and Promissory Notes held by a creditor should be inserted immediately below the name and address of such creditor.

No	Name and Address	Amount of debt Rs.	Date when contacted	Folio of ledger or other books where particulars to be found	Consideration
	Deutsche Bank Chennai Branch Acc. No. 350039197770019	29,20,653	22-08-2019	Long term borrowings	
	ICICI Bank Ekkatuthangal Branch	4,24,284		Long term borrowings	
	HDFC Bank Madipakkam Branch Ac. No. 68596781	19,37,678	26-06-2019	Long term borrowings	
	Sundry Creditors	12,96,649		Trade Payables	
	Total	65,79,264			

Further, instead of providing the details of service of notice, the counsel for petitioner has effected a fresh private service to 3 banks above referred (Unsecured creditors). No information as to the service of notice to the Sundry Creditors is furnished.

20. It would be Pertinent to mention the relevant provision related to the application hereunder,

"272. Petition for winding up.

(1) Subject to the provisions of this section, a petition to the Tribunal for the winding up of a company shall be presented by—

- (a) the company;*
- (b) any contributory or contributories;*
- (c) all or any of the persons specified in clauses (a) and (b);*
- (d) the Registrar;*
- (e) any person authorized by the Central Government in that behalf; or*
- (f) in a case falling under clause (b) of section 271, by the Central Government or a State Government.*

(2) A contributory shall be entitled to present a petition for the winding up of a company, notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities, and shares in respect of which he is a contributory or some of them were either originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder.

(3) The Registrar shall be entitled to present a petition for winding up under section 271, except on the grounds specified in clause (a) [of that section]:

Provided that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition:

Provided further that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.

(4) A petition presented by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and in such manner as may be prescribed.

(5) A copy of the petition made under this section shall also be filed with the Registrar and the Registrar shall, without prejudice to any other provisions, submit his views to the Tribunal within sixty days of receipt of such petition.

It is noted that the Ministry of Corporate Affairs, vide notification dated 24.01.2020 in G.S.R.46(E) has issued the Companies (Winding Up) Rules, 2020 which came into force with effect from 01.01.2020.

21. It is observed that the petitioner has submitted the Statement of Affairs of the company as on 11.01.2023 which is annexed at **Page 19 – 40 of the Petition**. The Statement of Affairs infers that Company has the Assets worth of Rs.25,42,988/- (Rupees Twenty five lakhs forty two thousand nine hundred and eighty eight only) and Liabilities towards unsecured creditors worth Rs.65,79,294/- (Rupees Sixty five lakh seventy nine thousand two hundred and ninety four only).

22. From the facts and circumstances of the present case, it is clear that the operations of the company has been ceased and there is no possibility of continuing business as going concern. The only option available to the company is to windup the company by selling its assets and distributing the same to the stakeholders/ contributories.

22. Therefore in exercise of powers conferred upon this Tribunal under Section 273 of the Companies Act, 2013 we hereby pass the following order;

- (i) The Present Company Petition stands admitted
- (ii) We appoint *Mr. Asokan Nagarajan* with *Reg. No. IBBI/IPA-001/IP-P01403/2018-2019/12160*, having *e-mail Id. fcsasokan@gmail.com* and *Contact No. 72990 96695* as Provisional Liquidator for the Company viz. D C Foods India Private Limited

- (iii) We hereby direct the Provisional Liquidator of the Company to cause a public advertisement in any daily newspaper in English and vernacular, regarding the admission of the Present Company Petition under section 271 – 272 of the Companies Act, 2013 in Form WIN 6 of Companies (Winding Up) Rules, 2020
- (iv) The Provisional Liquidator is permitted to initiate appropriate action in accordance with the provisions of the Companies Act, 2013 and to take control of the subject Company.
- (v) Post this matter for hearing on **01.10.2024**.
- (vi) The Registry of this Tribunal is directed to communicate this order to the parties concerned.

-Sd/-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-Sd/-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)