

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 9
(IB)-174(PB)/2023

IN THE MATTER OF:

Destination Maternity Apparel Private Limited Petitioner/Applicant

Order u/S. 59 of the Insolvency & Bankruptcy Code, 2016

Order delivered on 05.02.2024

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)

(HEARING THROUGH PHYSICAL MODE & VC)

PRESENT:

For Voluntary Liquidator : Mr. Saurabh Srivastava, PCS

ORDER

1. Mr. Saurabh Srivastava, PCS for the Voluntary Liquidator appears physically and makes his submissions with respect to the application for the Voluntary Liquidation. He states that as per our earlier order dated 23.08.2023, he has filed the gist of the matter and in response to the RoC report highlighting the delay in completing the liquidation process, he has given the reasons which are contained in Para-4 of his second Affidavit dated 24.08.2023, which reads as follows:

4. That the liquidator has completely wound up the affairs of the company and completed the Voluntary Liquidation Process of the company on 14.11.2019 which is the date of closure of Bank Account for liquidation. Hence complied with Regulation 37(1) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (as effective as on 14.11.2019) AND THAT the Liquidator has submitted the Final Report to the Contributories on 07.02.2023 and has filed Form GNL-2 vide SKN AA1346324 dated 09.02.2023 in respect of Submission of Final Report to Registrar of Companies, Delhi. There was a delay in submitting and filing Final Report under Regulation 38 was submitted after three years from Voluntary Liquidation Commencement date due to the following reasons:

i. That the only two contributories were following foreign companies and the liquidator could not establish any connection

with them.

a. Destination Maternity Corporation, USA (99.99%)

b. Mothers Work Canada INC (0.01%)

ii. That reason behind such failure to connect, later came to the fact when it was found through search engines like google that the contributories had filed bankruptcy petition in their home country in the month of October, 2019 i.e. one month before the completion of winding up process (Reference articles: [https:// www.cnbc.com / 2019 / 10 / 21 / destination – maternity – plans – bankruptcy – that – could - come -withinweeks.html](https://www.cnbc.com/2019/10/21/destination-maternity-plans-bankruptcy-that-could-come-withinweeks.html) AND [https:// www.usatoday.com / story / money / 2019 / 10 / 21 / destination - maternity- chapter -11-bankruptcy / 4055471002/](https://www.usatoday.com/story/money/2019/10/21/destination-maternity-chapter-11-bankruptcy/4055471002/)).

iii. Thereafter, COVID pandemic also created a delay in effectively searching for the contributories.

iv. That it was finally decided by the liquidator to send the final report through email as available from the claims submitted by the contributories and hence in a position to comply with the requirement of Regulation 38 of the of IBBI (Voluntary Liquidation Process) Regulations, 2017.

v. That the Liquidator has not received any failure mail from the system as on date.

vi. Also, since the Voluntary liquidation Process of the company was completed on 14. 11.2019 as per Regulation 37(1) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (as effective as on 14.11.2019), there was no requirement for conducting meeting of contributories under Regulation 37(2) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (as effective as on 14.11.2019).

2. We are inclined to condone the delay in filing Final Report under Regulation 38 of the Voluntary Liquidation Process Regulation, 2017 for the reasons mentioned above. The delay is condoned.
3. Heard the submissions made by Mr. Saurabh Srivastava, PCS and taken into consideration the Report of the RoC. **Reserved for orders.**

Sd/-
(RAMALINGAM SUDHAKAR)
PRESIDENT

Sd/-
(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)