

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-VI**

CP (IB)-553/ND/2023

[An application under Section 59 of The Insolvency and Bankruptcy Code, 2016]

IN THE MATTER OF:

M/s. THE LESS PACKAGING COMPANY INDIA PRIVATE LIMITED.

[CIN : U74900DL2012PTC231636]

Having Registered Office at: -

A-5/30, Basement (behind Oriental Bank of Commerce), Paschim Vihar, New Delhi – 11—63

Also having address at: -

204, Vishal Apartment, TPS Road No. 56, Borivali West, Mumbai – 400092

ACTING THROUGH LIQUIDATOR

Mr. Javadsha Kumarpal Vasa
[IBBI/IPA-001/IP-P00296/2017-18/10540]
(Email : jkvasaco@gmail.com)

... APPLICANT/ PETITIONER COMPANY

CORAM:

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)
SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Liquidator: CS Saudhamini Iyengar for Mr. Javadsha Kumarpal Vasa.

For the RoC : Adv. Himanshu Singhal

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

Date: 02.05.2024

1. This application has been filed by the Liquidator under section 59 of the Insolvency and Bankruptcy Code, 2016 ("Code") read with Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 seeking dissolution of M/s The Less Packaging Company India Private Limited (hereinafter referred to as the "Company").
2. Vide order dated 13.10.2023, notice was issued to the RoC, IBBI and The Reserve Bank of India for filing their reply/report.
3. On 28.02.2024, Ld. Counsel for RoC appeared before this Adjudicating Authority and submitted that they have filed their report and have no objection in the matter.
4. It is stated in the application that the aforesaid Company was incorporated on 16.02.2012 under the provisions of the Companies Act, 1956. The Registered office of the Applicant is situated at New Delhi which lies within the territorial jurisdiction of this Bench.
5. The Liquidator has made the following submissions in the present petition: -
 - i. That the company was incorporated with the objects of, inter alia, carrying on the business of manufacturers or dealers in or as stockists, importers, exporters of all types of packaging materials and packaging machines and to manufacture, buy, sell, import and deal in all sorts and types of packaging materials. Further, the company provides consultancy services on reduction of commercial costs and environmental impact through supply change.
 - ii. Considering the fact that the company had ceased business operations in India for a period exceeding 2 years and hence, the Board of Directors had at their meeting convened on 16.06.2021 unanimously decided to recommend to the members of the company to voluntarily liquidate the Company as per provisions of IBC. It is further averred that the Company had filed the

aforesaid Board Resolution with the Registrar of Companies, New Delhi through MGT-14 bearing SRN : T30652713 dated 13/07/2021.

- iii. It is further stated that the approval of members was obtained at the 9th Annual General Meeting dated 30.06.2021 for initiating the liquidation process of the Corporate Person and the applicant herein was appointed as the Liquidator. It is contended that this date has to be construed as the “Liquidation Commencement Date.”
- iv. The applicant liquidator had intimated the IBBI regarding his appointment as the Company’s Liquidator vide email dated 06.07.2021 i.e. within 7 days of his appointment.
- v. As on Liquidation Commencement Date, the Authorized Share Capital of the Applicant is INR 10,00,000 divided into 1,00,000 equity shares of INR 10 each. The Issued, Subscribed and Paid-up Capital of the Applicant as on the Liquidation Commencement Date was INR 5,00,000 divided into 50,000 Equity Shares of INR 10/- each.
- vi. The details of shareholders as on Liquidation Commencement Date stood as follows: -

S. NO	NAME OF MEMBER	NUMBER OF EQUITY SHARES	PERCENTAGE OF SHAREHOLDING
1.	The Less Packaging Company Limited, UK	49,999	99.998%
2.	Brand Compliance Company Limited, UK	1	0.002%
TOTAL		50,000	100%

vii. The details of the Directors of the Applicant are as follows: -

NAME OF DIRECTOR	DESIGNATION	DIN
Mr. Paul Jonathan Brown	Director	08541924
Mr. William Beverly Hicks	Director	07395245
Mr. Atul Talwar	Director	01287619

viii. The Board of the Directors of the Applicant in their meeting held on 2nd May 2022 proposed to liquidate the Applicant and thereafter passed a resolution dated 2nd May 2022 proposing to voluntarily liquidate the Applicant Company.

ix. As required under section 59(3)(a) of the IBC, majority of Directors have filed an affidavit dated 09.06.2023 affirming “declaration of solvency” stating the following: -

- a. The Directors have made a full enquiry into the affairs of the company and are of the view that the company will be able to pay its debts in full from the reserves held by the company and/or from the proceeds of sale of assets.
- b. The Company is not being liquidated to defraud any person.

It is averred that the applicant Liquidator has submitted the aforesaid declaration of solvency to the Registrar of Companies, New Delhi in e-form GNL-2 (SRN : T308555308) on 14.07.2023.

- x. It is contended that the company does not have any fixed assets and therefore valuation of the company's assets in terms of Section 59(3)(b)(ii) of The Voluntary Liquidation Regulations was not obtained.
- xi. It is further stated that the consent was obtained from M/s DS Smith Holdings (creditor of the company) on 06.07.2021, as per proviso to Section 59(3) of IBC read with Regulation 3(1)(c) of Voluntary Liquidation Regulations.
- xii. The Liquidator made a public announcement in form A dated 03.07.2021 published in English Newspaper – Financial Express, New Delhi edition and Hindi Newspaper – Jansatta, Delhi edition. Form A was also submitted to the IBBI Website along with email dated 05.07.2021. It is contended that the public announcement in form A was published within 5 days of Liquidator's appointment.
- xiii. The applicant liquidator submitted that as per Section 59(4) of IBC, the company has notified the IBBI vide email dated 13.07.2021 regarding the filing of resolutions passed under Section 59(3)(c) and Regulation 3(1)(c) of Voluntary Liquidation Regulations subsequent to approval of creditors thereto.
- xiv. The resolutions pertaining to commencement of Liquidation and appointment of Liquidator were filed with the office of Registrar of Companies, NCT of Delhi and Haryana in form MGT-14 on 13.07.2021 vide SRN : T30655021.
- xv. The company had notified the concerned Income Tax Department, Delhi vide email dated 24.07.2021 of the initiation of voluntary liquidation process of the corporate person. In addition to the aforesaid email, the liquidator had also sent a letter dated 28.07.2021 to the Income Tax Officer, DEL, AO 1, Range Code – 34.
- xvi. The applicant contended that requirement for obtaining a “NO OBJECTION CERTIFICATE” from the Income Tax Department would not be applicable in the present case as it pertains to Voluntary Liquidation. The same has been

clarified by IBBI Circular No. IBBI/LIQ/45/2021 dated 15.11.2021 read with applicable provisions of the IBC and Voluntary Liquidation Regulations and as per Section 178 of the Income Tax Act 1961 , NOC from Income Tax Department is not required herein.

xvii. It is submitted that the Liquidator had prepared a list of stakeholders within 45 days from 30.07.2021 being the last date of submission as mentioned in the aforesaid public announcement which is as follows: -

A. CLAIMS RECEIVED FROM SHAREHOLDERS: -

S. NO	NAME OF SHAREHOLDER	NO. OF EQUITY SHARES	Face Value per share (in Rs.)	AMOUNT CLAIMED IN FORM F (in Rs.)
1.	The Less Packaging Company Limited, UK	49,999	10/-	4,99,990/-
2.	Brand Compliance Company Limited, UK	1	10/-	10/-
TOTAL		50,000	10/-	5,00,000/-

B. CLAIMS RECEIVED FROM OPERATIONAL CREDITORS OTHER THAN WORKMEN, EMPLOYEES AND GOVERNMENT: -

S. NO	Name of STAKEHOLDER	AMOUNT CLAIMED IN FORM F (in Rs.)
1.	M.K MANDAL & ASSOCIATES	22,000/-
TOTAL		22,000/-

The Liquidator emphasized that he had not received any claim from M/s DS Holdings Limited, the creditor who had initially given a “No Objection Certificate” to initiate Voluntary Liquidation Process of the company herein. Therefore, the same was written back in the books.

xviii. Pursuant to receipt of the aforementioned claims, the liquidator verified them in accordance with Regulation 22 and 29 of the Voluntary Liquidation Regulations and had consequently admitted the following claims: -

S. No	Name of Stakeholder	Amount Claimed (In Rs.)	Amount admitted (in Rs.)
1.	M.K MANDAL & ASSOCIATES	22,000	22,000
2.	The Less Packaging Company Limited (UK)	4,99,990	4,99,990/-
3.	Brand Compliance Company Limited	10/-	10/-

xix. As required under the Regulations 34 of IBBI (Voluntary Liquidation Process) Regulations, 2017, the Liquidator opened a bank account with ICICI Bank Limited, Kandivali West Branch, Mumbai in the name and style of "THE LESS PACKAGING COMPANY INDIA PRIVATE LIMITED – LIQUIDATION ACCOUNT" bearing account number 120905001267 for purpose of depositing/realization by the applicant and payments as per Section 53 of IBC.

xx. It is further stated that the Company had 2 operational current bank accounts, the details of which are mentioned below: -

Name of the Bank	Address of the Bank	Current Account No.	Amount (in Rs.)
Barclays Bank PLC	1 st Floor, Eros Corporate Tower, Nehru Place, Delhi-110019	000004032266	32,65,533/- (outstanding balance as on 01.04.2021)
HDFC BANK Limited	Plot No.9, Local Shopping Complex, Sector B, Pocket 1, Vasant Kunj, New Delhi	20242320000119	4,15,872.14 (for the period from 01.04.2021 to 30.06.2021)

It is stated that Liquidator had sent applications dated 18.09.2021 via registered post to the aforesaid bank accounts requesting for their permanent closure. These applications were delivered on 21.09.2021. The Liquidator submits that as on date of the present petition, both these accounts stand closed and the amounts due therein were transferred to Liquidation Account maintained with ICICI Bank, Mumbai Branch.

- xxi. The Liquidator in terms of Regulation 35(1) of Voluntary Liquidation Regulations, on the basis on the claims verified and admitted has made the following remittances: -

S. No	Name of stakeholder	Amount remitted (in Rs.)	Date of remittance	Comments
1.	M.K MANDAL &	22,000/-	15.03.2023	

	ASSOCIATES			
2.	The Less Packaging Company Limited (UK)	11,00,000/-	28.03.2023	Price per share for the purpose of remittance determined on the basis of the fair value of Rs. 23.75/- per share ascertained as per Valuation Report dated 19.12.2022 of Chartered Accountant [Membership No. 179115]

With regards to the aforementioned remittance schedule, Liquidator submitted that since the company was a wholly owned subsidiary of “The Less Packaging Company Limited (UK)” (holding company) and since Brand Compliance Company Limited was holding one equity share in the capacity of nominee to the holding company, amount payable towards 50,000/- equity shares in aggregate was paid to the holding company itself.

xxii. **INDULGENCE OF THIS ADJUDICATING AUTHORITY IS SOUGHT SEEKING THE RELIEF to condone/dispense filing of FORM FC-TRS or alternatively issue directions in that regard due to following circumstances: -**

Since, the liquidator has remitted the claim amounts to the holding company located abroad, he is required to file Form FC-TRS on the FIRMS Portal in compliance with the provision of Foreign Exchange Management Act, 1999. For

this purpose, the liquidator is required to create a Business User Account in his name and do the signing along with filing of requisite documents. However, initially due to inadequate information entered at the time of creation of entity master of the company, the liquidator faced technical issues in creating a “Business User” Account in his own name. Eventually somehow the account got created but the petitioner was unable to file Form FC-TRS as the account linked has been closed since the Liquidation Process got completed and undistributed proceeds were transferred to the Corporate Voluntary Liquidation Account under Regulation 39 of the Voluntary Liquidation Regulations. Due to the non-filing of Form FC-TRS, the dissolution of the company remains pending.

- xxiii. It is further stated that Liquidation Costs of Rs. 16,53,273/- was incurred during voluntary liquidation process of the company, bifurcation of which has been presented in the petition and not reproduced herein for the sake of brevity.
- xxiv. The aforementioned liquidation costs have been paid off in the month of April 2023 and the undistributed proceeds amounting to Rs. 4,52,064/- have been transferred to Corporate Voluntary Liquidation Account on 24.04.2023.
- xxv. Thereafter, as per Regulation 39(5) of the Voluntary Liquidation Regulations, statement in Form-G setting forth the nature of amount deposited in the Corporate Voluntary Liquidation Account along-with names and last known addresses of the stakeholders entitled to receive the unclaimed dividends or undistributed proceeds dated 30.04.2023 has been prepared and the same has been intimated to the Roc, Delhi and also the IBBI vide email dated 21.06.2023.
- xxvi. Lastly, Form GNL-2 dated 05.07.2023 bearing SRN : AA330310 containing the final report along with audited financial statements for the year ended 30.06.2023 and also the Compliance Report in Form-H as per Regulation 38(3) has been filed with RoC which is contended to be approved by RoC. The Liquidator has also submitted the final report to IBBI vide email dated 05.07.2023.

xxvii. The Liquidator had raised a few clarifications addressed to the Reserve Bank of India vide email dated 30.08.2023 to which the Reserve Bank of India have responded vide email dated 08.12.2023 raising the broad observation that an authorised dealer may do outward remittance from assets of an Indian Company subject to auditors report on various parameters which are discussed below . Further, the liquidator via affidavit dated 12.12.2023 has made the following submissions capturing the essence of communication with The Reserve Bank of India as follows: -

- a. Based on the information available from the audited Financial Statements as on 30.06.2021, all liabilities of the company in India have either been fully paid or adequately provided for.
- b. Auditor's certificate from M/s Urvi Gala and Associates [Firm Registration Number : 145822W] has been obtained certifying that there is no legal proceeding pending adjudication in India against the Liquidator or the company herein. Further, it certifies that vide Special Resolution passed at the extra-ordinary general meeting of the shareholders of the company held on 30.06.2021, the company is under the Voluntary Winding up Process as per relevant provisions of the IBC read with Companies Act. The Net-Worth of the company as on 30.06.2021 is described as Rs. 11,87,655/-
- c. It is emphasized that the Reserve Bank of India has clarified that the provisions relating to Liquidation of companies and remittance pursuant to it are governed by FEMA 13R- Foreign Exchange Management (Remittance of Assets) Regulations, 2016. RBI has expressly stated that **no filing of FCTRS** is prescribed for the remittances made to the foreign shareholders, in lieu of full and final settlement of its claim, post voluntary liquidation.

Accordingly, the liquidator has prayed for allowing the present application.

ANALYSIS AND FINDINGS

6. We have gone through the application filed by the applicant/ Liquidator seeking dissolution in terms of section 59(7) of the Code and have heard the arguments of the Ld. Counsel for the applicant. Consequently, upon perusal of the petition and the documents attached therein we are satisfied that all the statutory requirements have been complied by the applicant in terms of Section 59 of the IBC, 2016 read with the corresponding regulations under IBBI (Voluntary Liquidation Process) Regulations, 2017.
7. That since the affairs of the Corporate Person have been completely wound up, and its assets completely liquidated the Liquidator has presented this Petition to this Adjudicating Authority for dissolution of the Corporate Person in terms of section 59(7) of the Insolvency & Bankruptcy Code, 2016.
8. With regard to prayer seeking dispensation/condonation of filing of Form FC-TRS or to issue alternate directions in that respect, this Adjudicating Authority cites reference to Reserve Bank of India's aforesaid clarification stating that no filing of Form-FCTRS is prescribed for the remittances made to the foreign shareholders, in lieu of full and final settlement of its claim, post voluntary liquidation. Accordingly, there does not arise any need for filing Form-FCTRS and no directions are required to be issued in that regard by this bench.
9. In view of the foregoing steps taken and the satisfaction accorded by the Liquidator by way of the present application, there is no legal impediment in allowing the prayer of the applicant. Accordingly, we hereby **allow** the prayer of Liquidator to dissolve the company U/S 59(7) of the Code and the said company is hereby dissolved with effect from the date of the present order. Under Regulation 41 IBBI (Voluntary Liquidation Process), the Liquidator is directed to preserve a physical or electronic copy of the reports, registers, books of account including Bank's statement evidencing closure of the Bank Account maintained at **ICICI BANK, Mumbai Branch** and other documents referred to in Regulation 8 and 10 for at least eight years for electronic copy and at least three years for physical copy after the dissolution of the company at a secure place.

10. The Registry is directed to forward a copy of this order to the RoC, Delhi within 14 days from date of pronouncement of this order.

11. Let a copy of this order be served to the parties concerned. File be consigned to the Record Room.

-SD/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

-SD/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)