

**In the National Company Law Tribunal
Kolkata Bench
Kolkata**

Before Shri Jinan K.R., Hon'ble Member (J)

C.A. (IB) No. 791/KB/2018

In the matter of:

An application under Regulation 40(2) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 framed under the Insolvency and Bankruptcy Code, 2016 and other applicable provisions of law;

-And-

In the matter of:

Central Inland Water Transport Corporation Ltd., a company incorporated under Companies Act, 1956, Corporate Identity Number U71120WB1967GOI027014, having its registered office at 4, Fairlie Place, Kolkata 700001, West Bengal, India;

...

...

Corporate Debtor

-And-

In the matter of:

Mr. Vinod Kumar Kothari, Liquidator of the Corporate Debtor.

...

...

Applicant

Counsels appeared:

1. Mr. Vinod Kumar Kothari] Ld. Liquidator
2. Ms. Richa Saraf, Advocate] For the Ld. Liquidator



Order pronounced on 28.09.2018

ORDER

1. This is an application filed under Regulation 40(2) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 and under Section 59 of the Insolvency and Bankruptcy Code, 2016 (In short **I & B Code, 2016**) filed by Mr. Vinod Kumar Kothari, Liquidator of the corporate debtor, Central Inland Water Transport Corporation Ltd. praying for suspension of the voluntary liquidation process initiated by the company.

2. The corporate debtor, Central Inland Water Transport Corporation Ltd., has initiated voluntary liquidation u/s. 59 of the I & B Code, 2016 by appointing Mr. Vinod Kumar Kothari as the Liquidator. While voluntary liquidation proceedings of the corporate person has been initiated by the Ld. Liquidator, it is observed that the corporate debtor has several pending litigation, and that claims against the corporate debtor exceed the value of its assets. According to the Liquidator the very pre requisite for voluntary liquidation that the company is to be solvent is absent in the instant case and thereby he filed this application praying for suspending voluntary liquidation of the



corporate debtor and to pass an order of winding up proceeding under Section 271 of the Companies Act, 2013. The grounds the applicant raised in the application in brief is the following:-

(a) The corporate debtor was engaged in river services between Calcutta and Assam and Calcutta and Bangladesh and used to undertake movement of oil from Haldia to Budge/Paharpur for the Indian Oil Corporation. Further, it also provided for services such as lighterage, stevedoring operations, ship building, ship repairing and other engineering services.

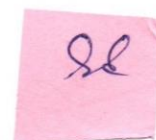
(b) Due to inherent limitation and infrastructure bottlenecks, the operations of the Corporate Debtor could never become viable and had been incurring losses since inception. In line with the decision of the Government to revitalise sick public sector undertakings wherever possible or to wind up irretrievable cases, the dissolution of the corporate debtor was proposed to be initiated after disposal of movable and immovable assets. On 31/08/2016, the Cabinet approved the dissolution of the corporate debtor as part of the Government's move to identify and close down "irretrievable" cases.



(c) Ministry of Shipping, Government of India served a letter WTC-13021/3/2013-CIWTC (Vol.I), dated 06/09/2016 upon the corporate debtor with the subject line "Dissolution of Central Inland Water Transport Corporation Limited" conveying approval of the competent authority on the proposal of dissolution of Central Inland Water Transport Corporation Limited and specified therein the manner of disposal of assets of the corporate debtor.

(d) Thereafter, the Board of Directors of the corporate debtor passed a resolution on 25/11/2017 and approved voluntary liquidation of the corporate debtor in compliance with the provisions of the Code and Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (In short, **Voluntary Liquidation Regulations, 2017**), subject to the receipt of approval of the shareholders of the corporate debtor within 21 days from the said Board Resolution.

(e) On efflux of the said period of 21 days, the consent of the shareholders could not be obtained and



thus, a Board Meeting was again called on 19/12/2017 to ratify the resolution already passed in the previous Board Meeting. An Extra-Ordinary General Meeting was also called for and shareholders of the corporate debtor passed a special resolution, approving the voluntary liquidation of the corporate debtor on 19/12/2017 ("Liquidation Commencement Date") and appointing the Applicant as the Liquidator. The extract of minutes of the Board Meeting and General Meeting is annexed as **Annexure A.**

(f) To satisfy the pre-condition laid down under Section 59(3)(a) of the Code, a declaration of solvency was given by Mr. Chandramani Rout (Director, Engg., Ministry of Shipping), and Mr. Balaji Arun Kumar, being the majority of the directors of the corporate debtor. Copy of the said declaration is annexed as **Annexure B.**

3. Upon appointment of Liquidator, public announcement was issued in the Business Standard and Aajkal. As regards assets and liabilities of the corporate debtor substantial portion of the assets/properties of the corporate debtor, including movable assets such as vessels, pontoons, barges, etc. were already disposed of pursuant to the directions of the

Ministry of Shipping vide letter dated 06/09/2016. Certain land parcels are to be disposed of according to the directions of the Ministry by the Liquidator and the receivables in the books of the corporate debtor amounting to Rs. 12.14 Crores out of which Rs. 11.46 Crores is pending for last 3 years and the same is not considered recoverable. Letters were sent to all the debtors for realisation of dues. However, while some of the debtors did not reply to the same, other responded saying that debt is not recognized by them. A summary of assets are annexed with the application.

4. As per Section 59(3)(c) a consent letter obtained from Kolkata Port Trust and Garden Reach Shipbuilders and Engineers Ltd. with the conditions that their claims to the tune of Rs. 99.16 Crores and Rs. 24.29 Crores respectively payable to them. The Voluntary Liquidation Regulations require a resolution for voluntary liquidation to have a consent of at least 66% in value of the creditors, while the creditors of the company include several employees who have filed claims against the company in addition to various other creditors, the company went ahead to take the consent of Kolkata Port Trust and Garden Reach Shipbuilders and Engineers Ltd. to satisfy the requirement of 66% of the creditors.



5. In addition to the above said ground the applicant has submitted that the right course of action in the instant case would be to make an application u/s. 271 of the Companies Act, 2013 to the Adjudicating Authority since the corporate person is not at all solvent which is a mandatory requirement for enabling it to have a voluntary liquidation. Since the liquidator realised that the debt due to the creditors could not be discharged in total and the declaration of the Directors as if the company is solvent found not true as per the balance sheet and profit and loss account as on 19/12/2017, he suggested by way of an e-mail to the Ministry of Shipping informing that initiation of voluntary liquidation cannot be continued since he could not prepare a final report as per Regulation 38(1) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

6. It is submitted that despite repeated reminders so as to do what next he was not given any reply from the Ministry of Shipping and therefore, he has no other alternative other than to file this application under Regulation 40(2) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017. He prays for suspension of liquidation

proceedings which was initiated as per special resolution passed in the EOGM dated 12/12/2017 and in the alternative prays for conversion of this application under Section 271 of the Companies Act, 2013 for enabling the company to have voluntary winding up.

7. Heard the Ld. Liquidator at length. Perused the records and written submission.

8. This is a case in which Central Inland Water Transport Corporation Limited initiated voluntary liquidation of the company u/s. 59 of the Insolvency and Bankruptcy Code, 2016 by appointing Mr. Vinod Kumar Kothari as the Liquidator. However, on commencement of the liquidation process in the capacity of a Liquidator, he observed that the corporate debtor has several pending litigation and that the claim against the corporate debtor exceed the value of its assets and according to him the very pre-requisite for voluntary liquidation in the instant case, that is the status of solvency was doubtful and dubious. He failed to prepare a final report because he could not dispose of the assets of the corporate debtor to the satisfaction of the creditors and because of the pending litigation against the corporate debtor as per Regulation 38(1) of the Insolvency and Bankruptcy Board of India (Voluntary



Liquidation Process) Regulations, 2017. A voluntary liquidation can only be done in a case the corporate person discharged its debts to the satisfaction of the creditors and if there is no litigation is pending against the corporate debtor. Both these ingredients are to to be satisfied under Regulation 38 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 are not be satisfied in the instant liquidation process, thereby he filed this application under Regulation 40(2) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

9. It is submitted by the Ld. Liquidator that since voluntary liquidation could not be proceeded further he could not continue the liquidation process. The entire process is to be suspended and in the alternative sought compulsory liquidation u/s. 271(1)(a) of the Companies Act, 2013. What is provided under section 271 (a) of the Companies Act is not compulsory liquidation but winding up. It appears to me that in the given set of facts of the case in hand compulsory liquidation or winding up order cannot be passed. Both proceedings are different and the requirements to be meted out are also different. The resolution passed by the members

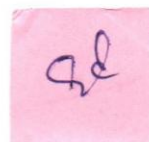
in the EOGM produced is for passing voluntary liquidation. Being satisfied that voluntary liquidation cannot be passed in this case the prayer for suspension of voluntary liquidation can be allowed so that the Company can take steps to have recourse's under section 271 of the companies Act, 2013 or can take steps for compulsory liquidation by filing an application under section 10 of I & B Code. This application cannot be converted as prayed for. In view of the above said discussion the application is liable to be allowed limiting the prayer for suspension of the voluntary liquidation.

10. In the result the application is allowed as follows:-

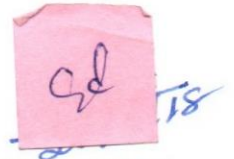
(i) The voluntary liquidation of the Applicant Company namely Central Inland Water Transport Corporation Ltd. is hereby suspended as per Reg.40(2) of Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

(ii) The prayer for conversion to an application under section 271 of the Companies Act, 2013 for winding up and for compulsory Liquidation is rejected.

11. CA is disposed of as above.



Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



(Jinan K.R.)
Member (J)

Signed on this, the 28th day of September, 2018.

hb.