

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP (IB) 1530/MB/2018

Under Section 59 of the Insolvency and Bankruptcy Code, 2016 r.w. Regulation 38 (3) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

In the matter of

M/s. Fiona Infosystems Limited through its
Liquidator Mr. Bharat Ramakant Upadhyay
..... Applicant / Liquidator

Order Pronounced on : 30.08.2018

Coram :

Hon'ble M.K. Shrawat, Member (J)

For the Applicant / Liquidator :

Mr. Omkar Deosthale, PCS – Authorised Representative for the Applicant / Liquidator.

*Per: M. K. Shrawat, Member (J)***ORDER**

1. The Applicant / Liquidator viz. Mr. Bharat Ramakant Upadhyay (hereinafter as **Liquidator**) has moved this Application U/s. 59 (7) of the Insolvency and Bankruptcy Code, 2016 (hereinafter as **Code**) r.w. Regulation 38 (3) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (hereinafter as **IBBI Regulations**) for Dissolution of the Corporate Person viz. 'M/s. Fiona Infosystems Limited' (hereinafter as **Corporate Person**) on 23.04.2018 to this Bench.
2. The Corporate Person was incorporated on 17.08.1995 at the Registered Office at Flat No. 1101 / A 15th Floor, EE Heights, S. V. Road, Jogeshwari (W), Mumbai, Maharashtra - 400102. The Corporate Person was incorporated to carry on the business of manufacturer and selling of computer systems, computer peripherals and accessories etc. But since last two-three years the Corporate Person has stopped its business activities and there is any plan of future expansion of the Corporate Person the Management of the Corporate Person felt to voluntary liquidate the Corporate Person which will be in interest of all the stakeholders of the Corporate Person.

3. The Directors of the Corporate Person have furnished a Declaration as per the **S. 59 (3) (a)** of the Code on 06.12.2017 stating therein that, they have made full inquiry into the affairs of the Corporate Person and formed the opinion that the Corporate Person will be able to pay its Debts in full from the proceeds of assets in the voluntary liquidation. It is also stated that, the Corporate Person is not being liquidated to defraud any person.
4. The Liquidator has also annexed the Audited Financial Statements as on 31.03.2015 and 31.03.2016 as per the provisions of **S. 59 (3) (b) (i)** of the Code. These Financials evidences that the Corporate Person was not generating Revenue from its operations during this period. It is also noticed that as per the Balance Sheet as on 31.03.2017 the Corporate Person was only having a 'Other Income' which generated from Interest on Sales Tax amounting to ₹ 40,888/-. Beside this income there is nothing on record which will demonstrate that the Corporate Person is a Revenue generating Company.
5. As per the provision of the **S. 59 (3) (c)** of the Code, the members of the Corporate Person has passed a Special Resolution on 18.12.2017 in the Extra-Ordinary General Meeting to Liquidate the Corporate Person and to appoint Mr. Bharat Ramakant Upadhyay, the Applicant herein, as the Liquidator with a remuneration of ₹ 75,000/- in addition to the Liquidation Cost, charges and out of pocket expenses plus applicable Taxes, for performing the job of Liquidation of the Corporate Person.
6. At the time of passing of the above said resolution the Corporate Person was not having any secured or un-secured Creditor. The Assets of the Corporate Person were consists only the Cash and Bank Balance amounting to ₹ 4,76,043/- and Loans given amounting to ₹ 33,50,000/-. The Liquidator has realised this amount after his appointment.
7. After an appointment the Liquidator had made a public announcement in two newspapers, one in English Language "Free Press Journal, Mumbai Edition" dated 19.12.2017 and one in Marathi Language "Navshakti, Mumbai Edition" dated 19.12.2017 calling upon the stakeholders, if any, to submit their claims as required under **Regulation 14** of the IBBI Regulations.
8. As per the provisions of **S. 59 (4)** of the Code the Corporate Person has also intimated the Registrar of Companies, Mumbai (**RoC**) and the IBBI, New Delhi about its Liquidation and appointment of Liquidator.

9. Pursuant to the said Advertisements no claims from any stakeholder had been received by the Liquidator.
10. The Corporate Person has also informed about the appointment of the Liquidator to the Income Tax Department, within whose jurisdiction assessment of the Corporate Person is made i.e. The Income Tax Officer, Circle 9 (3) (1), Mumbai. The concerned Income Tax Office has also furnished 'No Objection Certificate' on 12.02.2018 to the Corporate Person.
11. Out of the realised amount the Liquidator has adjusted an amount of ₹ 1,32,485/- towards Liquidation Expenses and the remaining amount of ₹ 36,91,081/- being the surplus amount has been distributed among the shareholders of the Corporate Person pursuant to their shares. This distribution has been done in accordance with the **Regulation 35** of the IBBI Regulations.
12. After completion of all the formalities provided under S. 59 of the Code and under IBBI Regulations the Liquidator has furnished a Final Report to this Bench and also to the IBBI as provided under Regulation 38 of the IBBI Regulations along with the Application U/s. **59 (7)** of the Code.

Findings :

13. I have gone through the Application and the Final Report of the Liquidator. I have also perused the provisions of the S. 59 of the Code which envisages the "Voluntary Liquidation of Corporate Persons" and also perused the IBBI Regulations.
14. This Application has been filed U/s. 59 of the Code, which is notified w.e.f. 01.04.2017. The Code, after enactment of the Code, has duly acknowledged the changes happened in Companies Act, 2013 in S. 255 titled as 'Amendments of Act 18 of 2013' in the manner specified therein in Eleventh Schedule. The Eleventh Schedule contains the modified provisions of S. 271 and S. 272 of the Companies Act, 2013. It is necessary to bring on record the changes in the Companies Act, 2013 so as to remove the confusion that, in a situation when "winding-up of a Company is already provided under Companies Act, 2013 as per S. 271 and S. 272 of the said Act then whether this Application U/s. 59 of the Code is eligible and maintainable". To remove the confusion, if any, it is hereby clarified that the S. 271 and S. 272 are stood substituted w.e.f. the notified date i.e. 15.11.2016. As a consequence, due to substitution, clause (a) of S. 271 (1) i.e. provision for winding-up if the company is unable to pay its Debts is no more in existence and this provision is to be adjudicated now under provisions of the Code. S. 59 of the Code provides the provisions if a

Corporate Person intend to Liquidate itself on a declaration from majority of Directors of the Company. As a sequel this Application being moved U/s. 59 of the Code is eligible for Adjudication by the Tribunal.

15. While perusing the Application and the Final Report of the Liquidator it is noticed that the Corporate Person has duly complied with the provisions of the Code as well as with the IBBI Regulations.
16. That, the Liquidator has duly realised the Assets of the Corporate Person and has duly distributed the money came from realisation among the stakeholders. It is also noticed that the Liquidation Expenses were also met.
17. That, as on date the Corporate Person does not having any Assets or Liabilities in its Books. The affairs of the Corporate Person are totally wound-up and Assets are Liquidated.
18. That, there is not any statutory liability upon the Corporate Person. And also there is no representation by any of the Statutory Authority opposing this Application.
19. Hence, it is my conscientious view that, the Corporate Person has Voluntarily Liquidated itself as per the provisions laid down by the Code and by the IBBI Regulations.
20. Accordingly, this Bench, as per the provision laid down U/s. 59 (8), hereby orders to **Dissolve** the Corporate Person directing the Liquidator to file copy of this Order with the Registrar of Companies, Mumbai and Insolvency and Bankruptcy Board of India (IBBI), New Delhi within 14 days of receipt of Certified Copy of this Order.
21. **The Corporate Person is Dissolved Accordingly.** Application bearing no. CP (IB) 1530/MB/2018 U/s. 59 (7) is Allowed. To be consigned to Records.

Dated : 30.08.2018

SD/-

M. K. SHRAWAT
MEMBER (JUDICIAL)