

M/s. Adept Real Estate Developers Private Limited Vs Registrar of Companies, NCT of Delhi and Haryana

Court: National Company Law Tribunal, Principal Bench, New Delhi

Date of Decision: Feb. 15, 2024

Acts Referred: Insolvency & Bankruptcy Code, 2016 " Section 53, 59, 59(3)(a), 59(3)(b)(ii), 59(3)(c), 59(7)

Hon'ble Judges: Ramalingam Sudhakar, President Member; Avinash K. Srivastava, Member (T)

Bench: Division Bench

Advocate: Vinod Kumar Chaurasia, Sanjay Aggarwal

Final Decision: Disposed Of

Judgement

1. The present Application has been filed by Mr. Sanjay Aggarwal, who has been appointed as the Liquidator of M/s. Adept Real Estate Developers

Private Limited on 08.08.2023, before this Adjudicating Authority, under Section 59(7) of the Insolvency & Bankruptcy Code, 2016 ("IBC" or

"the Code") r/w Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, ("Voluntary Liquidation

Regulations").

2. The Applicant Company was incorporated on 25.07.2005, as a Private Company having CIN: U70101DL2005PTC139025, having Registered office

at 4th Floor, Gopal Dass Bhawan, 28 Barakhamba Road New Delhi-110001 under the provisions of the Companies Act, 1956 with the Registrar of

Companies, NCT of Delhi. The Authorized Share Capital of the Company is Rs. 55,00,000/- (Rupees Fifty Five Lakhs Only) and its paid-up share

capital is Rs. 55,00,000/-. The Capital structure of the Corporate Person (Company) is given below:

3. The Applicant's Company is involved in Real Estate activities with own or leased property which includes buying, selling, renting, and operating

self-owned or leased real estate such as apartment building and dwellings, non- residential buildings, developing and subdividing real estate into lots

etc. It also includes development and sale of land and cemetery lots, operating of apartment hotels and residential mobile home sites.

4. The Board of Directors of the Corporate Person comprise of the following:

i) Mr. Ajay Prakash Garg (Director) (DIN-00004532)

ii) Mr. Nagarajan Kannan (Director) (DIN 09104075)

REASONS FOR VOLUNTARY LIQUIDATION

5. The Board of Directors (BoD) of the Company, at its meeting held on 02.03.2022 proposed a resolution to liquidate the company by way of

voluntary winding up as per section 59 of the Code read with regulation 3 of Voluntary Liquidation Process Regulations on the ground that company is

not having any business operations for last more than 10 (ten) years and there is no operating revenue except interest income. The corporate person is

also not having any employee. Further there is no tangible asset except Bank Balances including FDRs to the tune of Rs. 37.05 lacs excluding interest

due.

6. Further, as proposed by the BoD, the Members of the Company in Extra Ordinary General Meeting (EGM) held on 11.03.2022, passed a special

resolution as required under section 59 of the Code to liquidate the Corporate Person voluntarily.

7. It is submitted that the majority directors of the Corporate Person have given the Declaration of Solvency by way of affidavit dated 2.03.2022

(annexed as Annexure A-2) deposing therein that the company is not being liquidated to defraud any Creditor, Government, Company, Firm or any

person and resolved to wind up the company under "Voluntary Winding up" at the Board meeting held on 02.03.2022, as per section 59(3)(a) of

the Code. It is further submitted by the liquidator that the Company does not have any moveable or immovable assets, hence no valuation report was

required to be obtained under the provisions of Section 59(3) (b) (ii) of the code.

8. The Directors of the Company have made a declaration that the Corporate Person is not being liquidated to defraud any person and that they have

made a full inquiry into the affairs of the corporate person and they have also formed an opinion that company has no liability to pay. The declaration

is also accompanied by the audited financial statements for the relevant Financial Years (F.Y. 2019-20 & 2020-21) along with provisional Financial

Statements as on 15.02.2022 which are attached with the main report and annexed as Annexure A-3 to A-5.

9. The Members of the Company in their Extraordinary General Meeting held on 11.03.2022 recommended the appointment of the applicant Mr.

Sanjay Aggarwal, Registered Insolvency Professional having Registration No. IBBI/IPA-001/IP- P00494/2017-18/10882 to act as the Liquidator of

the Company and passed a special resolution in the same regard.

10. The Liquidator made a public announcement of the commencement of liquidation in Form A of Schedule I as per regulation 14 of the Voluntary

Liquidation Regulations in FINANCIAL EXPRESS in English and in JANSATTA in HINDI on 15.03.2022 inviting submission of claims due from the

Company by various stakeholders. The aforesaid public announcement was also sent to the Insolvency and Bankruptcy Board of India (IBBI) on

15.03.2022, Further, the notice intimating the commencement of voluntary liquidation and appointment of Liquidator was sent to the Assessing Officer

of Income Tax Department on 28.03.2022.

11. There are no creditors of the Company and the Liquidator has not received any claims from any creditors. Therefore, approval of the creditors is

not required as per the provisions of Section 59 (3) (c) or regulation (3) (1) (c).

12. The Company notified the RoC on 14.03.2022 by filing Form MGT-14 (SRN: T86896875) about the Special Resolution to liquidate the Corporate

Person. The Company has filed GNL-2 vide SRN T88658349 dated 16.03.2022 in respect of Declaration of Solvency, Affidavit of Directors, copy of

special resolution and Appointment of Liquidator, public announcement. The Company has filed GNL-2 vide SRN AA1501250 dated 28.02.2023 by

the liquidator of the Company for filing final report pursuant to regulation 38 of the Voluntary Liquidation Process, Regulations.

13. The status report on behalf of Registrar of Companies in compliance of order dated 01.05.2023 is also filed. The relevant portion of status report is

also extracted stating that:

“That as per available records, Last Balance Sheet and Annual Return were filed by the company for the financial year 2020-21 in e-form AOC-4 & MGT-7A

vide SRN T36508851 & T36549038 dated 20.08.2021 respectively

Further as per data received from various cell in this office, no enquiry/inspection/complaint/legal action has been pending against the subject company. That

this office has compiled the above factual report based on the records maintained and document filed by the concerned Company on MCA21 portal.

The IBBI is the concerned authority under Insolvency and Bankruptcy Code, 2016. However, present status report about the company based on

information/record as available on MCA21 portal is being filed by this office in compliance of Hon'ble NCLT order dated 20.09.2023.

14. The Liquidator of the Company opened a Bank account on 30.05.2022 (A/c No. 135205001001) in the name of ADEPT REAL ESTATE

DEVELOPERS PRIVATE LIMITED IN VOLUNTARY LIQUIDATION with ICICI Bank Limited for realization and payment to the

contributories. The said bank account has been closed down on 20.02.2023 after the disbursement of the fund to all stake holders. Copy of the Bank

Account Closure Certificate issued by the Bank is filed along with the Application as Annexure A-14.

15. As required under the Regulation 9 of Voluntary Liquidation Regulations, the Liquidator submitted its preliminary report dated 19.04.2022 to the

members of the Company on 20.04.2022. Relevant part of the Preliminary report is extracted below:

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16. In terms of Regulation 30 of the Voluntary Liquidation Regulations, the Liquidator prepared a list of stakeholders based on the claims submitted

and admitted. In compliance of the provisions of Regulation 35 of the Voluntary Liquidation Regulations and section 53 of the code, the liquidator

distributed the proceeds from the realization of assets to the stakeholders in the following manner:

17. Final Report (annexed as Annexure A) as per Regulation 38 of the Voluntary Liquidation Regulations has been submitted by the liquidator on

28.02.2023. In the final report, the liquidator has submitted that the company has no debts. The liabilities of Company towards the provision of Income

Tax, Liquidation cost as on the date of commencement of liquidation have been discharged to the satisfaction and no litigation is pending against the

Corporate Debtor. Relevant portion of audited liquidation account is hereby reproduced:

18. Further, the Liquidator in Compliance with Order dated 9.10.2023 has filed gist of the matter as per checklist, which is extracted below:

ANALYSIS AND FINDINGS:

i. We have heard the submissions made by the Applicant Company and we have also perused the records. From a bare perusal, it is seen that the

Liquidator, after his appointment has duly performed his duties and done the necessary formalities to complete the Voluntary Liquidation process of

the Applicant Company.

ii. Further, no adverse comments have been received from any statutory authority or from public at large against such dissolution of the Company,

despite there being a public announcement by the Voluntary Liquidator and also updation of the same in the website of the Insolvency and Bankruptcy

Board of India (IBBI). It is also evident from the record that the proposed Voluntary Liquidation was duly communicated to the Registrar of

Companies, NCT of Delhi & Haryana as per Form MGT-14 and Form GNL-2 filed with the Registrar of Companies, NCT of Delhi and Haryana and

the same are also reported to have been approved.

iii. Applicant undertook to serve Notice upon Income Tax department on 30.10.2023. In compliance of Order dated 30.10.2023, Applicant issued

notice vide hand/email dated 15.11.2023 to the Assessing Officer, Ward (1), CR Building, New Delhi. However, nobody appeared on behalf of

Income Tax Department. Further, during the proceedings, Applicant produced a circular of IBBI dated 15.11.2021, the operative part of which, reads

as follows:

In terms of the above circular issued by the IBBI, while examining an application filed under Section 59 of IBC, 2016, no NoC from the Income Tax

Department is required. He further submitted that no claim of Income Tax Department is due qua the applicant/company sought to be dissolved.

iv. On hearing the submissions made by the Ld. Counsel for the Liquidator and perusing the documents annexed to the application, it appears that the

affairs of the Corporate Person have been completely wound up and its assets have been completely liquidated. No liabilities have been left

unsatisfied. We are satisfied from the documents on record that the voluntary liquidation is not with the intent to defraud any person.

ORDER

i. In view of the above facts and circumstances, we are inclined to pass orders for dissolution of the Company, M/S Adept Real Estate Developers Private Limited and

it is ordered that the company Adept Real Estate Developers Private Limited stands DISSOLVED.

ii. The Liquidator of the Corporate Person is further directed to serve a copy of this order upon the Registrar of Companies (RoC), Delhi, immediately and, in any case,

within fourteen days of receipt of this order. The RoC shall take further necessary action upon receipt of a copy of this order.

iii. The liquidator is also directed to preserve a physical or electronic copy of the records, reports, registers and books of accounts referred to in Regulation 41 of the

Voluntary Liquidation Process, Regulations for at least 8 years either with himself or with an information utility.

iv. The Company Petition bearing CP (IB) No. 199/PB/2023 is ALLOWED and DISPOSED OF with the above directions.

v. The Registry is directed to send e-mail copies of the order forthwith to the Corporate Person represented by its Liquidator and its Ld. Counsel for taking further

necessary steps.

vi. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

File be consigned to the record storage (final).