

Oski Technology Private Limited Vs NA

Court: National Company Law Tribunal, New Delhi Bench

Date of Decision: Jan. 21, 2025

Acts Referred: Insolvency and Bankruptcy Code 2016 " Section 59

Hon'ble Judges: Sanjeev Ranjan, Member (T); Mahendra Khandelwal, Member (J)

Bench: Division Bench

Advocate: Anindita Mitra ,Aakash Sharma

Final Decision: Allowed

Judgement

PER: MAHENDRAKHANDELWAL, MEMBER (JUDICIAL)

1. The instant application has been filed by the Liquidator Mr. Ganesh Panduranga Pai on behalf of M/s OSKI Technology Private Limited

(Applicant) under Section 59 of the Insolvency & Bankruptcy Code, 2016 ("Code") read with Insolvency and Bankruptcy Board of India (Voluntary

Liquidation Process) Regulations, 2017 ("Voluntary Liquidation Regulations") seeking the following prayer(s): -

a) That the applicant, OSKI TECHNOLOGY PRIVATE LIMITED (Involuntary liquidation) may kindly be ordered to be dissolved;

b) To pass such order or further order(s) with this Honourable Tribunal may deem fit, proper and just under the circumstances of the case.

2. The brief facts, giving rise to filing of the instant Application, which are just and necessary for adjudication, are narrated hereunder: -

(i) The Applicant i.e., M/s OSKI Technology Private Limited was incorporated on 06.10.1998 under the provisions of the Companies Act, 1956 having

CIN: U30009DL1998PTC096549 and registered office situated at 18-20, Level 10, Hindustan Times House Building, K.G. Marg, Connaught Place,

New Delhi, -110001.

Ã, (ii) At the time of initiation of Voluntary Liquidation, the Authorized Share Capital of the Company was Rs. 3,00,000/- (Rupees Three Lacs) and

Paid- up Share Capital of the Company was Rs. 1,00,000/- (Rupees One Lac).

(iii) At the time of initiation of the Voluntary Liquidation of the Company, the company had three (3) directors, i.e., Sudha Hooda, Vinit Kumar

Agarwal and Rebecca Peters.

(iv) Under section 59(3)(a) of the Code, majority directors of the Corporate Person have to make a declaration through affidavit that the directors

have made complete inquiry in the affairs of the Corporate Person and no debt is payable by the Corporate Person or the Corporate Person is capable

of paying the debts with the assets realised in voluntary liquidation. Accordingly, the board of directors of the Corporate Person in the board meeting

held on 23.02.2023 had approved the resolution for voluntary liquidation of the Applicant Company. Further, Ms. Rebecca Peters, Ms. Sudha Hooda

and Mr. Vinit Kumar Agarwal, the directors of the company had also signed the declaration of solvency by affidavit dated 15.03.2023, 10.03.2023 and

10.03.2023, respectively, declaring that they have made full inquiry into the affairs of the company and have formed an opinion that the company will

be able to pay its debts in full from proceeds of assets to be sold/ appropriated in the voluntary liquidation and that the Company is not being liquidated

to defraud any person. A true copy of declaration of solvency from all the directors of the Corporate Person along with audited financial statements

and record of business operations of the Corporate Person for the preceding two financial years i.e. 31.03.2021 and 31.03.2022 is placed on record.

The copy of the Board Resolution dated 23.02.2023 is also placed on record.

(v) The particulars of declaration of solvency were prepared based on the last set of management account as at 31.01.2023. A copy of management

accounts as at 31.01.2023 is placed on record.

(vi) In compliance of Section 59(3)(c) of the Code, an extra ordinary general meeting of the members of the Corporate Person was held on

31.03.2023 i.e., Liquidation Commencement Date, whereby, the Company had passed a special resolution for initiating voluntary liquidation

proceedings of the Corporate Person and the consent of the shareholders was also accorded to commence the voluntary liquidation process of the

company. In the Special Resolution dated 31.03.2023, the company had also appointed Mr. Ganesh Panduranga Pai, an Insolvency Professional

bearing registration no. IBBI/IPA-001/IP-P01313/2018-19/12054 to act as the liquidator of the Corporate Person.

(vii) A copy of the special resolution for approving the voluntary liquidation of the Corporate Person and appointment of the Applicant to act as the

liquidator of the Corporate Person were filed with Registrar of Companies in e-form MGT-14 vide SRN: AA1852694 dated 21.04.2023. A copy of e-

form MGT-14 is placed on record.

Ã, (viii) The declaration of solvency furnished by majority Directors were filed with Registrar of Companies in e-form GNL-2 vide SRN: AA3299891

dated 04.07.2023. A copy of e-form GNL-2 is placed on record. Further, the last two years audited financial statements were furnished with the

Registrar of Companies in e-form GNL-2. A copy of the last two years audited financial statements are placed on record.

(ix) In compliance of Regulation 14(1) and 14(3)(a) of IBBI (Voluntary Liquidation Process) Regulations, 2017, the Applicant made a public

announcement of initiation of voluntary liquidation of the Corporate Person in Form A, in two newspapers (i.e.) *Financial Express* (English)

and *Jansatta* (Hindi) on 05.04.2023, calling for submission of claims by the stakeholders, if any, as on the liquidation commencement date i.e.

on or before 31.03.2023. The Public Announcement was simultaneously submitted to the Insolvency and IBBI) to place the same on its website. The

same was published on IBBI website on 11.04.2023.

(x) In compliance of Regulation 34 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations 2017, the

applicant opened a separate bank account with HSBC Bank bearing number 073-631350-002 in the name of "OSKI TECHNOLOGY PRIVATE

LIMITED In Voluntary Liquidation" for realisation and payment to the stakeholders on 16.05.2023.

(xi) In compliance of the Section 178 of the Income Tax Act, 1961, the applicant intimated the commencement of liquidation and appointment of

liquidator to the Income Tax authority on 26.04.2023. The copy of intimation letter dated 26.04.2023 is placed on record.

(xii) The applicant intimated the commencement of liquidation and appointment of liquidator to the Shops and Establishments, Employee Provident

Fund Organisation, The Corporate Person had prior to the liquidation, cancelled its GST registration, hence the applicant did not separately intimate the

GST authority.

(xiii) The Corporate Person during the liquidation process did not receive any claims from any government authorities. Accordingly, list of stakeholders

with details of equity shareholders was prepared on 14.05.2023. A Copy of the list of stakeholders is placed on record.

(xiv) In compliance of Regulation 9(1) of the IBBI (Voluntary Liquidation Process) Regulations, 2017, the Liquidator prepared the preliminary report

dated 15.05.2023 and the same was submitted by the Liquidator to the corporate person on 15.05.2023. The copy of the Preliminary Report dated 15.05.2023

is placed on record and marked as Annexure- L.

(xv) After undertaking required statutory payments and payment of liquidation costs during liquidation, there remained a surplus of INR 6,53,09,428 in

the bank account. Out of this, repatriation to the effect of INR 5,52,60,345 was undertaken to Nvidia Corporation and Nvidia India (i.e., the equity

stakeholders) on 04.12.2023. The repatriation was for the entire surplus except to the extent of Rs. 3,18,776 that was lying with ICICI bank. After

Ã, receipt of funds from ICICI bank and closure of that account, balance of Rs. 2,68,047 was remitted to shareholders on 05.03.2024.

(xvi) Upon discharge of all liquidation related expenses and repatriation of funds, there were no funds in the bank account. Accordingly, the liquidation

account held with HSBC Bank was closed on 15.03.2024. A copy of Bank statement evidencing the distribution of funds to the shareholders is placed

on record. Further, the auditors' report along with the receipts and payments account pertaining to liquidation since the liquidation commencement date

till the closure of the bank account is placed on record. A copy of the certificate from the bank confirming that the Liquidation Bank Account opened

in the name of the company has been closed, is placed on record and marked as Annexure- O.

Ã, (xvii) In compliance of the Regulation 38 of IBBI (Voluntary Liquidation Process) Regulations, 2017, the Liquidator prepared the Final Report dated

19.03.2024. A copy of the Final Report dated 19.03.2024 is placed on record and marked as Annexure- P. Further, the Final Report dated 19.03.2024

has also been sent to the Registrar of companies in e-form GNL-2 vide SRN: AA7128673 on 20.03.2024 and was also sent to the IBBI through email

and by hand delivery on 21.03.2024. A copy of e-form GNL-2 is placed on record.

(xviii) The Liquidator has prepared Compliance Certificate in Form-H as per Regulation 38(3) of the Insolvency and Bankruptcy Board of India

(Voluntary Liquidation Process) Regulations, 2017.

(xix) Upon scrutiny of record submitted with him, the Liquidator is satisfied that the affairs of the company have not been conducted in a manner

prejudicial to the interest of its members and thus the company may be dissolved.

3. Notice was issued to the Registrar of Companies (ROC), NCT of Delhi & Haryana (Ã¢â,¬Ä“RespondentÃ¢â,¬) and IBBI vide this Adjudicating

AuthorityÃ¢â,¬â„¢s order dated 11.06.2024. The RoC has filed its report dated 13.09.2024 before this Adjudicating Authority, whereby it is stated that as

per records, no inquiry/ inspection /complaint/legal action has been pending against the subject Company. Further, the Ld. counsel for the RoC has

stated that they have no the Order dated 02.01.2025.

4. This Adjudicating Authority vide its order dated 11.06.2024 directed the Applicant/ Liquidator to file the (a) record of the liquidation of the company

as showing in the MCA data and (b) extract of the IBBI website reflecting that the Company is under liquidation. In compliance of the order dated

11.06.2024, the Liquidator has filed an Interlocutory Application bearing IA No. 3860/ND/2024 and has placed on record the MCA data of the

Company reflecting that the Applicant Company is Ã¢â,¬ËœUnder LiquidationÃ¢â,¬â„¢ and also the Extract of the IBBI website reflecting that the Applicant

Company is under Liquidation. The same is taken on record vide our Order dated 12.08.2024.

5. We have heard the submissions made by the Ld. Counsel and perused the documents annexed to the petition. From a perusal of the instant

Application and documents annexed therewith, it is seen that the Liquidator, after his appointment has duly performed his duties and completed

necessary formalities to complete the liquidation process of the Applicant Company, which has been averred in the present application. Further, it is

also evident that the Liquidator had duly opened an account in the name of Corporate Person with Bank for realization and payment to the members.

Thus, the Liquidator has prayed for an order from this Adjudicating Authority to dissolve the applicant company.

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

Company, despite there being a public announcement by the liquidator and also updating 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 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. It appears that the

affairs of the Applicant Company have been completely wound up and its assets have been completely liquidated and no liabilities have been left

unsatisfied. We have also duly considered the merits thereof, in the light of the statutory provisions of Section 59 of the Code, 2016 read with the

relevant regulations.

7. The Liquidator had filed copies of paper publication as well as copy of paper announcement in Form-A. The Liquidator in compliance of Regulation

38(3) of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 had placed on record the Compliance

Certificate in Form-H at page no. 28-44 of the present application.

8. Further as per available documents on record of the present case, it is seen that the Applicant Company is not found being involved in such kind of

business activities, which are detrimental to the interest of the public at large. Furthermore, it is not the case that the proposed dissolution may

adversely affect its shareholders/members or is contrary to the provisions of law.

9. By taking into consideration the above stated facts and circumstances, the instant Application C.P. (IB) 240/ND/2024 stands allowed.

Consequently, this Adjudicating Authority in exercise of power conferred to it under Section 59 (8) of the Insolvency and Bankruptcy Code, 2016,

orders that the Applicant Company i.e., M/s OSKI Technology Private Limited having CIN: U30009DL1998PTC096549 shall stand dissolved with

effect from the date of pronouncement of this order.

10. The Liquidator is directed to communicate a copy of this order to the respondent i.e., Registrar of Companies, NCT of Delhi & Haryana, wherein

the registered office of the Applicant Company is situated. Further, a copy of this order should also be communicated to the IBBI, New Delhi, for

information. Such communication should be made within the stipulated period of fourteen (14) days from the date of receipt of certified copy of this

order.

11. The Registry is directed to send e-mail copies of the order forthwith to the Applicant Company represented by its Liquidator and its Ld. Counsel

for taking further necessary steps.

File be consigned to the records.