IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT-IV

ITEM No. 406
IA (Liq.) /43/ND/2024 in IB/2926/ND/2019

IN THE MATTER OF:

Elantas Beck India Ltd	....	Applicant
Vs.		
Agh Wires Pvt Ltd	....	Respondent

Under Section 9 Of IBC 2016

Order delivered on 22.04.2026

CORAM:
SHRI ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (JUDICIAL)
SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

HYBRID HEARING (PHYSICAL & VC)

PRESENT:

For the RP	:	Mr. Vishal Ganda, Advocate and Ms. Riya Palnitkar, Advocate for the Resolution Professional, Mr. Manish Kumar Aggarwal, Resolution Professional in person

ORDER

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1. Our attention is drawn to the minutes of the 4th meeting of the Committee of Creditors where the Resolution that the Corporate Debtor should be liquidated has been passed. The relevant excerpt of the Resolution passed reads thus:

ITEM NO. 5

TO DISCUSS AND APPROVE LIQUIDATION OF CORPORATE DEBTOR

RP team stated that CoC members must be aware that the land and building and machineries of the corporate debtor were already actioned by State Bank of India in December 2021 at a consideration of Rs. 15.29 Crores and Rs. 9.88 Crores respectively.

Further, there are no operations or no employees in the corporate debtor. There has not been any revenue model also in the corporate debtor. The matter was discussed in detail in last meeting of the CoC also. CoC was of the view that revival of the corporate debtor is not possible as the very stratum of the corporate debtor has been lost. The CoC in its last meeting advised resolution professional to place the agenda item of liquidation of the corporate debtor.

Further, RP also wish to place on record that he is not expressing his consent to act as liquidator and Hon'ble NCLT may be requested to appointed liquidator from the panel of the Insolvency Professional as suggested by IBBI.

The matter shall be placed for discussions. RP submitted that: -

1. State Bank of India, secured creditor took possession of factory premises of corporate debtor in February 2019 and later on sold the land & building and plant & machinery in December 2021 at a consideration of Rs. 15.29 Crores and Rs. 9.88 Crores respectively.
2. As confirmed by the suspended director, there has not been any operations in the company for last 2-3 years and corporate debtor is not a going concern.
3. There is no business or employee or revenue model or any tangible assets in the company.
4. There are no financial statements after the financial year are available after the year 2016-2017.

CoC also noted that though, there are debtors amounting to Rs. 21.70 Crores but no party wise details of the same are available. Further, the process of realisation / recovery from the debtors may continue in the liquidation process.

Considering the above, RP suggested that considering the above, resolution of the corporate debtor does not look possible and CoC may consider resolving for the liquidation of corporate debtor. That will also time and cost in the process.

Thereafter, following resolution was placed before the CoC for its approval: -

Resolution:

"RESOLVED THAT consent of the CoC be and is hereby accorded for filing necessary application u/s 33(2) of Insolvency & Bankruptcy Code, 2016 to liquidate M/s. AGH Wires Private Limited."

"Further resolved that Hon'ble National Company Law Tribunal be and is hereby requested to appoint Liquidator from the panel of the insolvency professionals as suggested by IBBI."

In terms of section 33(2), the above resolution is required to be passed by a vote of not less than 66% of voting share of the committee of creditors.

Representative of State Bank of India suggested that matter may be put in e-voting and e-voting may be kept open for about 10 days since they need to obtain approval of their competent authority on this agenda item.

Hence, the voting shall be taken through e-voting. Result of the voting shall be announced after conclusion of voting.

The CoC members stated that matter may be put in e-voting. Hence, the voting on the resolution was taken through e-voting, The E-voting was concluded on 17.08.2024, and the following was the result: -

S No.	Name of CoC Member	Voting Share %	Yes %	No %	Total%
1.	State Bank of India	100%	100%	-	100%
	Total	100%	100%	-	100%

In terms of Section 33 of the Code, the above resolution is required to be passed by a vote of not less than 51% of voting share of members of CoC. Sole member holding voting share of 100% voted in favour of the resolution. Hence, this resolution stood passed.

ITEM NO. 7

TO DISCUSS ON REGULATION 39C OF INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS), 2016

RP placed the relevant provision of Regulation 39C of the IBC (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 as under:

"39C- Assessment of sale as a going concern

(1) While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may recommend that the liquidator may first explore sale of the corporate debtor as a going concern under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or sale of the business of the corporate debtor as a going concern under clause (f) thereof, if an order for liquidation is passed under section 33.

(2) Where the committee recommends sale as a going concern, it shall identify and group the assets and liabilities, which according to its commercial considerations, ought to be sold as a going concern under clause (e) or clause (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(3) The resolution professional shall submit the recommendation of the committee under sub-regulations (1) and (2) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.".

RP further apprised that CoC must be aware that at present corporate debtor is not doing any business and there are presently business or employees or revenue of corporate debtor. Hence, there are no possibilities that corporate debtor can be sold as going concern. The matter was placed for discussion and thereafter following resolution was placed for approval of committee of creditors for its consideration: -

"Resolved that consent of the committee of creditors of AGH Wires Private Limited be and is hereby accorded for not to sell the corporate debtor as going concern."

In terms of Section 21(8), the above resolution required voting of not less than 51% percent in favour of the resolution.

As discussed above, voting on above resolution shall be taken through e-voting. Result of the voting shall be announced after conclusion of e-voting.

The E-voting was concluded on 17.08.2024, and the following was the result: -

S No.	Name of CoC Member	Voting Share %	Yes %	No %	Total%
1.	State Bank of India	100%	100%	-	100%

	Total	100%	100%	-	100%

In terms of Section 21(8) of the Code, the above resolution is required to be passed by a vote of not less than 51% of voting share of members of CoC. Sole member holding voting share of 100% voted in favour of the resolution. Hence, this resolution stood passed.

ITEM NO. 8

TO DISCUSS ON REGULATION 39D OF INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) ,2016

RP stated that the relevant provision of Regulation 39D of the IBC (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, is reproduced hereunder

"39D. Fee of the liquidator

While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may, in consultation with the resolution professional, fix the fee payable to the liquidator, if an order for liquidation is passed under section 33, for –

(a) the period, if any, used for compromise or arrangement under section 230 of the Companies Act, 2013;

(b) the period, if any, used for sale under clauses (e) and (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016; and

(c) the balance period of liquidation."

Resolution Professional proposed a fee as per Regulation 4(2) of Liquidation Process Regulations, 2016 for liquidation process of AGH Wires Private Limited and requested Committee of creditors to approve the same.

The matter was placed for discussion and thereafter following resolution was placed for approval of committee of creditors: -

"Resolved that Liquidator's fee as per Regulation 4(2) of Liquidation Process Regulations, 2016 be and is hereby approved for liquidation process of AGH Wires Private Limited."

In terms of Section 21(8), the above resolution required voting of not less than 51% percent in favour of the resolution.

As discussed above, voting on above resolution shall be taken through e-voting. Result of the voting shall be announced after conclusion of e-voting.

The E-voting was concluded on 17.08.2024, and the following was the result: -

S No.	Name of CoC Member	Voting Share %	Yes %	No %	Total%
1.	State Bank of India	100%	100%	-	100%
	Total	100%	100%	-	100%

In terms of Section 21(8) of the Code, the above resolution is required to be passed by a vote of not less than 51% of voting share of members of CoC. Sole member holding voting share of 100% voted in favour of the resolution. Hence, this resolution stood passed.

2. The Resolution also contains the provision regarding the meeting of the liquidation cost. The decision to the effect taken by the CoC in the aforementioned meeting by way of resolution passed reads thus:

ITEM NO. 6

TO DISCUSS ON REGULATION 39B OF INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) , 2016

RP apprised that the relevant provision of Regulation 39B of the IBC (Insolvency Resolution Process For Corporate Persons) Regulations, 2016, is reproduced hereunder:

"Regulation 39 B. Meeting Liquidation Cost-

(1) While approving a resolution plan under sub-section (4) of section 30 or deciding to liquidate the corporate debtor under sub-section (2) of section 33, the committee may make a best estimate of the amount required to meet liquidation costs, in consultation with the resolution professional, in the event an order for liquidation is passed under section 33.

(2) The committee shall make a best estimate of the value of the liquid assets available to meet the liquidation costs, as estimated in sub-regulation (1).

(3) Where the estimated value of the liquid assets under sub-regulation (2) is less than the estimated liquidation costs under sub-regulation (1), the committee shall approve a plan providing for contribution for meeting the difference between the two.

(4) The resolution professional shall submit the plan approved under sub-regulation (3) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.

Explanation. - For the purposes of this regulation, 'liquidation costs' shall have the same meaning as assigned to it in clause (ea) of sub-regulation (1) of regulation (2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016."

Further, Regulation 2(1) (ea) of the IBC Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, is reproduced hereunder:

"Liquidation cost means: -

(i) fee payable to the liquidator under regulation 4;

(ii) remuneration payable by the liquidator under sub-regulation (1) of regulation 7;

(iii) costs incurred by the liquidator under sub-regulation (2) of regulation 24;

(iv) costs incurred by the liquidator for preserving and protecting the assets, properties, effects and actionable claims, including secured assets, of the corporate debtor;

(v) costs incurred by the liquidator in carrying on the business of the corporate debtor as a going concern;

(vi) interest on interim finance for a period of twelve months or for the period from the liquidation commencement date till repayment of interim finance, whichever is lower;

(vii) the amount repayable [***] under sub-regulation (3) of regulation 2A;

(viii) any other cost incurred by the liquidator which is essential for completing the liquidation process:

Provided that the cost, if any, incurred by the liquidator in relation to compromise or arrangement under section 230 of the Companies Act, 2013 (18 of 2013), if any, shall not form part of liquidation cost.]"

Hence, in compliance of above, CoC needs to make best estimate of liquidation cost. Further, it also needs to make best estimate of liquid assets and approve a plan for providing the contribution in case estimated liquidation cost exceed the liquid assets available. RP proposed the following estimated liquidation cost before the CoC for its consideration: -

Estimate of liquidation cost: -

S No.	***Item of Liquidation Cost***	***Amount Estimated (Rs.)***	***Remarks***
(1)	*fee payable to the liquidator under regulation 4;*	*As per Regulation 4(2) of Liquidation Process Regulations, 2016*	
(2)	*remuneration payable by the liquidator under sub-regulation (1) of regulation 7;*	*1,50,000*	*For Legal Professional*

(3)	*costs incurred by the liquidator under sub-regulation (2) of regulation 24*	-	
(4)	*costs incurred by the liquidator for preserving and protecting the assets, properties, effects and actionable claims, including secured assets, of the corporate debtor;*	-	
(5)	*costs incurred by the liquidator in carrying on the business of the corporate debtor as a going concern;*	-	
(6)	*interest on interim finance for a period of twelve months or for the period from the liquidation commencement date till repayment of interim finance, whichever is lower;*	-	
(7)	*the amount repayable to contributories under sub-regulation (3) of regulation 2A;*	-	
(8)	*any other cost incurred by the liquidator which is essential for completing the liquidation process:*	*1,50,000*	*Audit of Receipts & Payments Account, Public Announcement, Filing Fee and other misc. charges*
	Total	***3,00,000 plus GST plus Liquidator Remuneration***	

Further since the corporate debtor does not have any liquid assets available, State Bank of India, sole member of CoC is requested to contribute towards the same.

The matter was placed for discussions and thereafter following resolution was placed before CoC for its approval: -

"Resolved that estimated liquidation cost of 3,00,000 plus GST (Except Liquidator Remuneration) be and is hereby approved in the matter of AGH Wires Private Limited."

"Further Resolved that same shall be contributed by State Bank of India, being the sole member of committee of creditors."

In terms of section 21(8), the above resolution is required to be passed by a vote of not less than 51% of voting share of the committee of creditors.

The E-voting was concluded on 17.08.2024, and the following was the result: -

S No.	Name of CoC Member	Voting Share %	Yes %	No %	Total%
1.	State Bank of India	100%	100%	-	100%
	Total	100%	100%	-	100%

In terms of Section 21(8) of the Code, the above resolution is required to be passed by a vote of not less than 51% of voting share of members of CoC. Sole member holding voting share of 100% voted in favour of the resolution. Hence, this resolution stood passed.

3. Having analyzed the factual position, we passed the order dated 02.06.2025 expressing our concern that when the Corporate Debtor has no assets how the Liquidation cost would be met. The order dated 02.06.2025 reads thus:-

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Mr. Vishal Ganda, Ld. Counsel for the Resolution Professional is present through VC.

This Application has been filed under Section 33(1)(b)(1) of the IBC, 2016, seeking liquidation of the Corporate Debtor.

As submitted by Ld. Counsel appearing on behalf of the Resolution Professional all the land, building and assets of the corporate debtor have already been sold by the financial creditor and there is no assets of the corporate debtor and no land and building and assets are with the corporate debtor.

No purpose would be served by directing liquidation process in this case. Ld. Counsel appearing on behalf of the Resolution Professional was asked for clarification on this issue for which he said he needs some instructions from his client regarding the same. Since there are no clarity on the issue, we direct the sole member of CoC (State Bank of India) to appear through responsible officer to make submission with reference to the purpose of liquidation process in this matter.

List it on **02.07.2025.**

4. In terms of the order dated 16.02.2026, we noted that the representative of the State Bank of India submitted that the Liquidation Process would be beneficial. The order dated 16.02.2026 reads thus:

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Proxy Counsel for the applicant has submitted that main counsel is not available and seeks adjournment. In terms of the order dated 02.06.2025, an official from the sole member of CoC-State Bank of India was present virtually and made submission regarding usefulness of liquidation process for the Bank (sole member of CoC). In view of the oral submission made regarding purpose, State Bank of India is directed to file an affidavit concerning purpose of liquidation and the details of debtors and the mechanism by which they are contemplating recovery in the liquidation process along with timeline and the commitment to pay the entire liquidation costs.

List this matter before the Regular Bench on 20.03.2026.

In the affidavit filed by it, the SBI espoused that the Corporate Debtor is entitled to recover that to the extent of INR 21.70 Crores owed to it by its sundry debtors. The Para No. 6 of the affidavit is extracted below:

> *6. Given that the available financial records of the Corporate Debtor are of the year 2017, it appears that the recovery of Corporate Debtor's debt to the tune of INR 21.70 Crore (owed to it by its sundry debtors) seems unlikely.*

A perusal of affidavit revealed that the recovery of aforementioned amount i.e. INR Rs. 21.70 Crores seems unlikely. If such is a situation, we are unable to appreciate that how and why the SBI is keen to pursue the liquidation process. Nevertheless if a public Bank is of the view that the Liquidation process would be useful and the CoC with 100% voting share, in terms of provisions of Section 33(2) of the Code resolved for Liquidation of the Corporate Debtor, it would be appropriate to liquidate the Corporate Debtor.

However, it is made clear that the since the State Bank of India (sole member of CoC) is of the view that the recovery from the sundry debtors is unlikely, the Liquidator may resort to the provisions of Regulation 37A of the IBBI (Liquidation Process) Regulations, 2016 and ensure that the liquidation process is completed within three months.

5. As can be seen from Section 33(2) of IBC, 2016, where the RP, at any time during the CIRP, but before confirmation of resolution plan intimate the Adjudicating Authority of the decision of CoC taken with not less than 66% vote share to liquidate the CD, this Adjudicating Authority need to pass order as per sub clauses (i), (ii) & (iii) of sub-section I of Section 33.

6.

6. Ms. Shruti Gupta having Reg. No: IBBI/IPA-001/IP-P00303/2017-2018/10567 and e-mail ID: guptashrutica@gmail.com is appointed as Liquidator qua the Corporate Debtor to carry out the liquidation process inter alia in terms of the following directions:-

a) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 (viz. Sections 35, 36, 38, 39 and 41 thereof) and other relevant rules and Regulations including the IBBI (Liquidation Process) Regulations, 2016 as amended up to date, enjoined upon him.

b) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.

c) The Liquidator shall investigate the financial affairs of the Corporate Debtor particularly, in relation to preferential transactions/ undervalued transactions and such other like transactions including fraudulent preferences and file a suitable application before this Adjudicating Authority.

d) In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. In relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation.

e) The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under section 33(5) of the Insolvency and Bankruptcy Code shall commence.

f) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section - 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company applications during the process of liquidation.

g) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further, such other or further reports as required are to be filed under the relevant Regulations shall also be duly filed by him with this Adjudicating Authority.

h) Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary cooperation in relation to the Liquidation process of the Corporate Debtor, viz., company-in-liquidation.

i) The Registry is directed to communicate this order to the Registrar of Companies, having jurisdiction over the Corporate Debtor and the Insolvency and Bankruptcy Board of India.

j) It goes without saying that fee of the Liquidator would be payable in terms of the provisions of Section 34(7) of the IBC, 2016 read with Regulation 4 of IBBI (Liquidation Process) Regulation 2016.

The present I.A. bearing I.A. (IBC)(LIQ.)43 (ND) 2024 stands disposed of in the aforesaid terms.

-Sd-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

-Sd-
(ASHOK KUMAR BHARDWAJ)
MEMBER (JUDICIAL)

Mamta/Amisha