

**NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
BENGALURU BENCH, BENGALURU, HELD ON 09.06.2020

**THROUGH VIDEO CONFERENCING**

**CAUSE LIST**

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala  
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 121/BB/2020	For admission	Sec 10 of I&B code 2016	Alucast Auto Parts Ltd	KSR & Co		

ADVOCATE FOR PETITIONER/s:

Dr. K-S. RAVICHANDRAN - PCS

ADVOCATE FOR RESPONDENT/s: —

**ORDER**

1. Heard Dr.K.S. Ravichandran, learned PCS for the Petitioner, through video Conference.
2. C.P (IB) No. 121/BB/2020 is admitted by separate order.
3. Post the case for report of IRP on **30.06.2020**

  
**MEMBER (T)**

  
**MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

C.P (IB) No.121/BB/2020  
U/s 10 of IBC, 2016  
R/w Rule 7 of I&B (AAA) Rules, 2016

**In the matter of:**

M/s. Alucast Auto Parts Limited,  
No.390/A, G.P No. 384/A,  
Khanapur Road, Peeranwadi,  
Belgaum – 590 014

... Petitioner/ Corporate Applicant

**Date of Order: 09<sup>th</sup> June, 2020**

**Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

**Parties/Counsels Present (through Video Conference):**

For the Applicant : Dr.K.S. Ravichandran

**ORDER**

**Per:** Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB)No.121/BB/2020 is filed by M/s. Alucast Auto Parts Limited ('Petitioner/Corporate Applicant') under Section 10 of the IBC, 2016 Read with Rule 7 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of itself (M/s. Alucast Auto Parts Limited), on the ground that it is suffering huge losses in the last few Financial Years and the Company is not possessing any assets.

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

(1) M/s. Alucast Auto Parts Limited (herein after referred to as Petitioner/Corporate Applicant/Company) is a Public Limited



Company was incorporated on 09<sup>th</sup> May 1995, having CIN: U28920KA1995PLC017793 and the registered office is situated at R.S No. 390/3A, GP No. 384/A, Khanapur Road, Peeranwadi, Belgaum 590 014. Its Nominal Share Capital is Rs.28,00,00,000/- (Rupees Twenty Eight Crores Only) divided 1,60,00,000 equity shares of Rs.10/- each amounting to Rs.16,00,00,000/- and 1,20,00,000 preference shares of Rs.10/- each amounting to Rs.12,00,00,000 and Paid-up Share Capital of Rs.15,62,40,790/- (Rupees Fifteen Crore Sixty-Two Lakh Forty Thousand Seven Hundred and Ninety Only) divided into 1,56,24,079 equity shares of Rs.10/- each. The Company is engaged in the business of producing various types of components for automobiles and other components etc.

- (2) The Company had taken various term and working capital loans from State Bank of India and Export-Import Bank of India (now transferred to Edelweiss Asset Reconstruction Company Limited) for the purpose of meeting its business and manufacturing expenses. It was very prompt in repayment of loans, therefore, the Banks had provided additional loans to it. However, due to recession and unforeseen developments in the business, the account of the Applicant with State Bank of India became Non-performing Asset (NPA) on 29<sup>th</sup> December 2012. Accordingly, Edelweiss Asset Restructuring Company Limited (EARCL), vide its letter dated 17<sup>th</sup> March 2016 has restructured the loan of Applicant but subsequently due to non-payment of dues, EARCL had revoked the said restructuring on 13<sup>th</sup> September 2017. Subsequently, the Bank has issued notice under Section 13(2) of the SARFAESI Act. It also sent a notice under Section 13(4) of the SARFAESI Act, which was subsequently withdrawn. The Petitioner Corporate Debtor has



approached the Bank for One Time Settlement (OTS), which the bank sanctioned for Rs.31,00,00,000/- (Rupees Thirty One Crores Only) on 5<sup>th</sup> April, 2016. The Company made its best efforts to pay the OTS. But due to demonetisation and sluggish market conditions, it could raise only Rs.8,56,00,000/- (Rupees Eight Crore Fifty Six Lakhs Only) by disposing of the Promoters personal properties as well as some of the non-crore assets of the Petitioner. The Applicant has approached the SBI for an extension of 12 months to fulfil OTS payments but it was not granted by it. Subsequently, the SBI sent a notice again on 30<sup>th</sup> May, 2017. The Company filed its objections to said notice by filing Reply dated 27<sup>th</sup> July, 2017. However, the SBI vide its letter dated 9<sup>th</sup> August, 2017 stated that the objections raised did not warrant dropping of the action taken under SARFAESI Act. During the meeting held on 8<sup>th</sup> August, 2017, the Company has orally expressed its intent to place certain proposals before State Bank, which was acknowledged by the Bank in its letter dated 23<sup>rd</sup> August, 2017. The Company had wholly owned Subsidiary (WOS) Company in Germany, which went into liquidation during the year 2011, which had a significant impact on the Company as the loans of subsidiary were secured by the assets of Corporate Applicant.

- (3) In the above circumstances, the Petitioner has earlier filed CP (IB) No. 102/BB/2017 before this Adjudicating Authority, for initiating Corporate Insolvency Resolution Process/U/s 10 of the Insolvency and Bankruptcy Code, 2016. However, it was withdrawn, vide order dated 04<sup>th</sup> January, 2018.
- (4) The Company has settled the dues of various Operational Creditors during the years 2017-2019. It was during this period that State Bank of India proceeded its action under



SARFAESI Act and sold the immovable and movable assets of the Company vide certificates of Sale dated 15<sup>th</sup> March 2019 and 18<sup>th</sup> March 2019 executed in favour of Fukoku India Private Limited.

3. Heard Dr.K.S. Ravichandran, learned PCS for the Petitioner **through Video Conference**. We have carefully perused the pleadings of the Party and the extant provisions of the Code and the rules made thereunder.
4. Dr.K.S. Ravichandran, learned PCS for the Petitioner, while reiterating various averments made in the Company Petition, as briefly stated supra, has further submitted that the list of Financial Creditors as available in the books of Company, is enclosed to the instant Petition as Annexure I(1) at page No.17, which contains the following details:

(Amount in lacs)

Sl. No.	Name	Total Debts Raised (Principal Amount)	Amount in Default
1.	<b>State Bank of India</b>		
	Name of the Loan		
	Cash Credit 1530.00		
	WCDL 75.00		
	Term Loan I 2700.00		
	Term Loan II 300.00	6,150.00	4281.30
	Corporate Loan 575.00		
	Bank Guarantee 200.00		
	Letter of Credit 300.00		
2.	<b>Edelweiss Asset RCI</b>		
	Term Loan I 900.00		
	Term Loan II 900.00		
	Tern Loan III 975.00	5630.00	7897.30

	Euro Loan Directly to EGM                      2855.00		
<b>3.</b>	<b>M/s Anshika Investment</b>	100	100
<b>4.</b>	<b>M/s. Alucast Industries</b>	117.38	117.38
<b>Total</b>		<b>11997.38</b>	<b>12395.98</b>

Another list of Operational Creditors is also filed as Annexure II(1) at page No. 81-95 which contains 290 (Two Hundred and Ninety) which also runs into Crores of Rupees. There are other proceedings pending against the Company. Since the net worth Company is drastically eroded as early as in the year, 2014 as recorded in BIFR proceedings dated 30.09.2013 vide Case No. 62 of 2013 filed by the Petitioner and thus resorting to provisions Code by way of initiation of CIRP would be appropriate and just. He has further submitted that the instant Application/Petition is filed in accordance with Law, a qualified Resolution Professional namely Shri Rakesh Chaturvedi, with Registration No. IBBI/IPA-001/IP-P00242/2017-18/10471, is suggested, as IRP, who has also filed written Communication in Form-2 dated 10.02.2020, by *inter-alia* declaring that he is a qualified Resolution Professional; he is currently not serving as IRP/RP /Liquidator in proceedings related to CIRP; there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI. He therefore, urged the Adjudicating Authority, to initiate CIRP as prayed for.

5. As stated supra, the Company prima facie proved that it is insolvent Company having so many Financial Creditors and operational Creditors, possessing hardly any assets. BIFR in its proceedings dated 30.09.2013 in Case No. 62 of 2013 filed by the Company, has *inter-alia* recorded that the Company's net worth was fully eroded due to accumulated, which stood at Rs.5435.73 lakhs. When the

Company loses its net worth and its Creditors are resorting to various legal proceedings, the appropriate remedy would be to invoke provision of Code so to put quietus to the issue in accordance with procedure prescribed under the provisions Code

6. In terms of Section 10 of the Code, a Corporate Applicant can file an application if Corporate Debtor has committed a default, for initiating Corporate Insolvency Resolution Process with the Adjudication Authority, in a prescribed form by enclosing the following:
  - a. *The information relating to its books of account and such other documents for such period as may be specified;*
  - b. *The information relating to the resolution professional proposed to be appointed as an interim resolution professional; and*
  - c. *The special resolution passed by shareholders of the Corporate Debtor or the resolution passed by at least three-fourth of the total number of partners of the Corporate Debtor, as the case may be, approving filing of the application.*

As per Section 10(4) the Adjudication Authority, can admit an Application if the Application is complete and no disciplinary proceedings are pending against the proposed Resolution Professional.

7. In the instant case, admittedly, the Corporate Applicant has become insolvent by losing its worth having so many claims against it by Financial Creditors and Operational Creditors, as detailed supra. And the instant Company Petition is filed in accordance with law and also suggested a qualified Resolution Professional namely Shri Rakesh Chaturvedi, who has also filed his written Communication in Form-2 dated 10.02.2020, *inter-alia* declaring that he is a qualified Resolution Professional with Registration Number: IBBI/IPA-001/IP-P00242/2017-18/10471, he is not serving in any



proceedings and there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI. The Shareholders of Applicant Company, in their Extraordinary General Meeting , held on 30.09.2019 passed a Special Resolution by approving to file an Application, U/s 10 of Code by authorising Mr. Sanjay G.Bichu, Managing Director of the Company to take necessary action in the that regard. Accordingly, the instant Application/Petition is filed by seeking to initiate CIRP respect of the Company.

8. In view of the above facts and circumstances of the case, and the settled position of law on the issue; and by exercising powers conferred on this Adjudicating Authority, U/s 10 (4)(a) of the Code, We, do hereby admitted C.P(IB)No.121/BB/2020 by initiating Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Alucast Auto Parts Limited , Petitioner/Corporate Applicant herein, with the following consequential directions:

- 1) **Shri Rakesh Chaturvedi, with Registration No. IBBI/IPA-001/IP-P00242/2017-18/10471**, a Resolution Professional, Office at 103, Namrata CHS Bldg No. 15, Shastri Nagar, Link Road, Goregaon West, Mumbai-400104, hereby appointed as Interim Resolution Professional, in respect of the Petitioner/ Corporate Applicant namely M/s. Alucast Auto Parts Limited to carry out the CIRP as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;
- 2) The following moratorium is declared prohibiting all of the following, namely:
  - a) the institution of suits or continuation of pending suits or proceedings against the Petitioner/Corporate Applicant including execution of any judgment, decree or order in



- any court of law, tribunal, arbitration panel or other authority;
- b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
  - d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor;
  - e) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period;
  - f) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
  - g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;
  - h) The IRP should follow all extant provisions of IBC, 2016 and the rules including fees rules as framed by IBBI. The IRP is hereby directed to file his report in the Tribunal from time to time.
  - i) However, this moratorium would not apply to cases if any, pending against the Applicant Company before the Hon'ble High court(s) and Hon'ble Supreme Court of India.



- 3) The IRP is directed to follow all extant provisions of the IBC, 2016 and all extant rules including fees rules as framed by IBBI from time to time. The IRP is hereby directed to file progress reports to the Tribunal from time to time.
- 4) The Board of Directors and all the staff of Petitioner/ Corporate Applicant are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.
- 5) Post the case for report of IRP on **30.06.2020**.
- 6) The Registry of NCLT is directed to communicate a copy of this order to Shri Rakesh Chaturvedi, IRP, immediately.

**(ASHUTOSH CHANDRA)**  
**MEMBER, TECHNICAL**

**(RAJESWARA RAO VITTANALA)**  
**MEMBER, JUDICIAL**

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