

Sl No. 152

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**I.A. No.37 of 2021
U/s.54(1) of the I&B Code, 2016

&

C.P. (IB) No.121/BB/2020
U/s.10 of IBC, 2016
R/w Rule 7 of I&B (AAA) Rules, 2016**Between:****Mr. Rakesh Chaturvedi,**
Liquidator of
M/s. Alucast Auto Parts Limited
(Under Liquidation)
R/a: RH-5, Prithvi Palace,
Link Road, Kandarpada, Dahisar West,
Mumbai - 560 011.

- Applicant/Liquidator

AndM/s. Alucast Auto Parts Limited
R/Off: B-16, KSSIDC Indl. Estate,
Udyambag, Belgaum,
Karnataka - 590 008 & 12 Ors.

- Respondent No.1

Date of Order: 10th February, 2021**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/Liquidator : Ms. Manjula Devi, Adv.

ORDER**Per: Ashutosh Chandra, Member (Technical)**

1. I.A. No.37 of 2021 in C.P. (IB) No.121/BB/2020 is filed by Mr. Rakesh Chaturvedi, ('Applicant') Liquidator of M/s. Alucast Auto Parts Limited ('the Respondent No.1')



under Section 54(1) of the I&B Code, 2016, by *inter alia* seeking to order dissolution of Corporate Debtor in the manner as laid down under Section 54(1) of Chapter III of IBC, etc.

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

(1) Initially, the Application for initiation of Corporate Insolvency Resolution Process ('CIRP') was filed by the Corporate Debtor under Section 10 of the Insolvency and Bankruptcy Board of India (AAA) Rules, 2016 before the NCLT, Bengaluru Bench. The Application was admitted by this Tribunal vide its order dated 9th June, 2020, wherein Rakesh Chaturvedi having Reg. No:IBBI/IPA-001/IP-P00242/2017-18/10471 was appointed as IRP with a direction to take necessary action in accordance with the relevant provisions of the IBC, 2016 and IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016.

(2) As per provisions of the Insolvency and Bankruptcy Code, 2016 and read with the Regulations issued therein, the Committee of Creditors in the first CoC meeting approved to liquidate the Company and appoint the undersigned as Liquidator. An application I.A. No.272 of 2020 was filed by the Resolution Professional in accordance with provisions of Section 33(2) of the Insolvency and Bankruptcy Code, to seek initiation of Liquidation Proceeding against the Corporate Debtor. Pursuant to this the Adjudicating Authority vide Order dated 02.09.2020 in I.A No.272 of 2020 ordered that M/s. Alucast Auto Parts Limited, Corporate Applicant be liquidated in the manner as laid down in Chapter III of Part II of Code, R/w IBBI (Liquidation Process) Regulations, 2016 and appointed Rakesh Chaturvedi as a Liquidator to follow due process of law as per Regulations. Vide the order for Liquidation, the Liquidator was further directed by the Tribunal to take steps for early dissolution of Corporate Debtor, in terms of Rule 14 of IBBI (Liquidation Process) Regulations.



- (3) Further, the Liquidator in compliance with Section 38 and other applicable sections of the Code issued a public announcement on 10.09.2020 in Indian Express (English) and in Kannada Prabha (Kannad) Edition. As per that, the last date for submission of claim was 02.10.2020. The Public notice of the initiation of the Liquidation Proceeding were also displayed on the website www.ibbi.gov.in of Insolvency and Bankruptcy Board of India.
- (4) The intimation of the initiation of the Liquidation Process was given to the regulatory authorities such as Registrar of Companies in Form INC-28 vide SRN R57483745 dated 22.09.2020. Also such intimation also provided to Bankers and other statutory authorities like Income Tax, GST, PF etc., through email on 11.09.2020. Further the suspended Directors extended their cooperation and provided the information as and when requested for.
- (5) The only employee of the Corporate Debtors who was authorized to retain the Books of accounts and Assets of the Company on behalf of Resolution Professional was intimated about his discharge in accordance with the provisions of the Code with effect from the Liquidation commencement date. However he was retained on honorarium basis on a salary of Rs.20,000/- per month to assist the Liquidator during the process of Liquidation.
- (6) In response to the Public Notice issued, the Liquidator had received claim from 2 financial creditors, 3 statutory authorities, 5 operational creditors and 1 employee and in compliance with Regulation 31(2) of IBBI (Liquidation Process) Regulation 2016, a list of creditors along with amount claimed, claims admitted, security interest in respect of claim complied upto November 30, 2020 was filed with Adjudicating Authority on 07.12.2020. The summary of such claims and complied list of stakeholder are given below:



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A. The summary of the claim received is as below

Sr.	Type of Creditors	Claim by Creditors		Claims Admitted		Security Interest
		No	Amount in Rs.	No	Amount Rs.	
1.	Financial Creditors	2	2,53,11,48,285	2	2,53,02,48,285	Yes
2.	Statutory Dues	3	3,94,23,894	2	1,98,03,036	No.
3.	Operational Creditors	5	24,39,688	2	8,88,372	No
4.	Employees	1	1,06,516	0	--	No
	Total	5	257,31,18,383	6	255,09,39,693	

B. List of Stakeholders based on the claims received and accepted are:

Sr.	Type	Name	Amount Rs.
1.	Financial Creditors	State Bank Of India	1,01,12,66,724
2.		Earc Trust Sc-37 (Edelwisse)	1,51,89,81,561
3.	Operational Creditors (Statutory Dues)	Employees' Provident Fund Organization	12,36,220
4.		The Assistant Commissioner of Central Tax and Central Excise	1,85,66,816
5.	Operational Creditor (others)	Bhartia Pulverisers	4,58,087
6.		Swastik Industries	4,30,285
		Total	255,09,39,693

(7) Based on the claims received and accepted by the Liquidator and given the fact that there were no assets with the Corporate Debtor under Liquidation for sale, a Stakeholders Consultation Committee was not



required to be constituted and in compliance with Regulation 31 A of IBBI (Liquidation Process Regulations 2016 a report was filed with the Adjudicating Authority on 07.12.2020.

- (8) The intimation of the compilation of the list of stakeholders and its filing with the Adjudicating Authority was informed to public under regulation 31(2) of IBBI (Liquidation Process) Regulation, 2016 by giving a public notice in Indian Express (English) and in Kannada Prabha (Kannada). In addition to the list of stakeholder complied by liquidator based on the claims received, there are 329 Nos. of Creditors aggregating to Rs.8,00,58,423/- who have not made any claim under Liquidation. Further, the list of pending ligations/assessments as on date of proposed liquidation completion date i.e. 15.01.2020 was complied by the Liquidator.
- (9) A Preliminary report dated 04.12.2020 for the period from the Liquidation commencement date i.e. 02.09.2020 up to 30.11.2020 as required under Regulation 13 of IBBI (Liquidation Process), 2016 was filed with this Adjudicating Authority on 07.12.2020. The said report was filed with the details such as Capital Structure, Shareholders pattern, Estimates of Assets and Liabilities, Liquidation plan and estimation related to Liquidation cost.
- (10) Further the Asset Memorandum dated 04.12.2020 was prepared on formation of liquidation estate in accordance with Section 36 of the IBC, 2016 consisting of details of assets in Liquidation estate and their intended realization plan and filed on 07.12.2020 with this Adjudicating Authority under Regulation 34 of IBBI (Liquidation Process), 2016.
- (11) The progress report consisting of the status of the Liquidation process of Quarter ended September 2020 covering period from September 2, 2020 i.e. the Liquidation commencement date and up to September 30, 2020 filed with this Adjudicating Authority on 15.10.2020 under Regulation 15(1)



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of IBBI (Liquidation Process), 2016. The said report consists of further details related to status of claims, appointment of professional and expenses incurred on Liquidation process and the account of the Liquidator.

- (12) During the 1st meeting of CoC, the member Edelweiss Asset Reconstruction Company Limited (EARC) raised the issue that they were not convinced with the legality of the sale of properties done under SARFESAI by other member State Bank of India prior to CIRP and that the above law point will still be open for discussion and IRP to mention the same to the competent authority during the liquidation proceedings if approved. It was observed that in respect of properties of Corporate Debtor sold by SBI through e-auction, SBI was having first charge over those immovable property and EARC has second charge. The realization from sale was not sufficient to satisfy the debt due to SBI having 1st Charge and hence, there was nothing left for EARC. It appears that an application filed by EARC with Hon'ble DRT was pending for restraining SBI from Sale. However, no application was filed by EARC for declaring the already concluded sale by SBI as null and void after such sale is made. The matters pending relates to the distribution out of the sale proceed. EARC however agreed for Liquidation keeping in mind, that the above law point will still be open for discussion and IRP to mention the same to the competent authority during the liquidation proceedings. The Liquidator has not received any details of any legal remedy sought or action taken by the EARC or any application challenging liquidation or dissolution.
- (13) It is also stated that there is no immovable or moveable assets left for sale or in liquidation or which can be readily realized. The investments/loans in German Subsidiary EGM Automotive GmbH is also in liquidation since December 2011 and have no chances of realization. The email confirmation of the Liquidator of the German Subsidiary stating that the Corporate Debtor will not receive anything out of the Liquidation process



carried out by him is filed. Also other advances consist of only deposits with taxation authorities against pending assessments/litigation. And in one case, against the rental premises used as office by the Corporate Debtors. Following are the deposits which are not realized and he is of the opinion that the same may not be easily realizable and right of the company to receive the amount shall be deemed to be extinguished.

Deposit	Amount	Recoverability
Balance with SBI	12,747	Under attachment from EPFO. Also SBI being Financial Creditor unwilling to release the funds
TDS with Income Tax	1,31,860	Assessment pending
Excise Appeal Deposit	1,07,994	Appeal decided in favour of CD, refund not given by Excise in because of other pending appeals.
Excise Appeal Deposit	9,61,127	Appeal not decided
Office Deposit	50,000	Adjusted against rent
TOTAL	12,63,728	

The Company practically does not have any assets which could have any meaningful realization and has liabilities in excess of Rs.260 Crores. The Company can straightway be allowed to be dissolved as further liquidation exercise seems be a futile exercise in view of the given facts and likely recoverability as against the cost and time required for realization if at all possible.



- (14) In view of the present status, the mandatory reports and any further steps required under IBBI (Liquidation Process) Regulations, 2016 like issue of Opening a Bank Account, Constitution of Stakeholders Consultation Committee, Sale of Asset by Auction etc., are not required to be carried out by Liquidator and it is just and appropriate to file an application for necessary order for dissolution by the Adjudicating Authority. The audited Balance sheet of the Corporate Debtor for FY 2019-20 is produced. The Income Tax returns as applicable filed for the year ending March 31, 2020 i.e. AY 2020-21 is produced. Further the Statement of Assets and Liabilities of the Company as on Liquidation Commencement Date i.e. September 2, 2020 is also produced.
- (15) The details of the CIRP expenses and Liquidation expenses incurred amounting to Rs.4,96,280/- and Rs.3,33,713/- respectively. The CoC has already ratified amount of Rs.1,77,000/- incurred till the 1st CoC meeting and were appraised of the further likely cost to be incurred during CIRP.
- (16) Final report as required under regulation 45 of IBBI (Liquidation Process), 2016 and Asset sale report as required under regulation 36 are not applicable as no sale of asset is involved in the process. The Final report provides the details of the status of claims settled or distribution made to the stakeholders, appointment of professional, Professional fees to the Liquidator and expenses incurred on Liquidation process and the account of the Liquidator. Also it consists of the Audited statement of Account of the Liquidator showing the receipts and expense account for the entire Liquidation Process.
- (17) It is further stated that the Liquidation process of the Corporate Debtor is completed on 15.01.2021 as there are no realizable assets left with the Company and all the proceeds realized following the prescribed methods were used for approved CIRP and liquidation expenses which enjoy priority and no balances thereof are distributed to the stakeholders in



accordance with the mechanism provided under Section 53 of the IBC, 2016. Hence on completion of Liquidation process on 15.01.2021, this application is moved for dissolution of the Corporate Debtor in accordance with the provisions of Section 54 of the IBC, 2018.

3. Heard Ms. Manjula Devi, learned Counsel for the Liquidator, **through Video Conference**. We have carefully considered the materials placed on record and the extant provisions of the Code and the rules made thereunder.
4. While deciding I.A No.272/2020 filed by the Liquidator under section 33(2) of the Code, 2016, we had directed the Liquidator to take steps for early dissolution of the Corporate Debtor as per Regulation 14 of the IBBI (Liquidation) Regulation 2016.
5. In these proceedings, while reiterating the submissions made in the Application, as briefly stated supra, she has intimated the appointment of Liquidator and manner of submission of the respective claims of the Financial Creditors, Operational Creditors, Employees and Statutory Authorities and also from other Stakeholders. It is seen that the Liquidator received claims from creditors and stakeholders for Rs.257,31,18,383/- and Rs.255,09,39,693/- respectively.
6. In terms of Regulation 14 of the IBBI (Liquidation Process) Regulations, 2016, if it appears to the Liquidator that-
 - (1) the realizable properties of the corporate debtor are insufficient to cover the cost of the liquidation process; and
 - (2) the affairs of the Corporate Debtor do not require any further investigation;he may apply to the Adjudicating Authority for early dissolution of the corporate debtor and for necessary directions in respect of such dissolution.
7. On perusal of Final Report and duly audited Liquidation Account filed along with this Application seeking early dissolution as required under section 45(3)b of the IBBI (Liquidation Process) Regulations, 2016, it is seen that the Company did not



have any fixed assets on the date of commencement of liquidation. Cash & Bank Balances including realizable advances and deposits were deposited in the Bank Account used as liquidation account. The Balance of the Corporate Person has been used for meeting out the CIRP and liquidation Expenses and nothing was available for distribution. There are no realizable assets left with the company.

8. On perusal of the Balance Sheet of the Corporate Debtor for the year ended 31st March, 2020, it is seen that the Company is having loss of Rs.19,37,00,044/- and there has been Rs.1,57,76,980/- revenue from operations against which total expenses of Rs.04,07,68,742/- were incurred, which included charge of material consumed, charges in inventory, employee benefit expense, financial costs, depreciation cost etc. Further, earnings per share have been diluted to (-17.50). There is a total deficit of Rs.172,21,41,632.19/-. The admitted claims amount to Rs.255,09,39,693/- and there are no realizable assets left with the company and all the proceeds realized following the prescribed methods were used for approved CIRP and liquidation expenses which enjoy priority and no balances thereof are distributed to the stakeholders in accordance with the mechanism provided under Section 53 of the IBC, 2016.
9. Further, as per the requirement Regulation 45(3)b of the IBBI (Liquidation Process) Regulations, 2016, it is seen that the Liquidator has submitted final report along with the Liquidation Account duly audited with the application for dissolution of the Corporate Debtor.
10. In view of the above facts and circumstances, we are of the considered view that this is a fit case and hence it would be just and proper for this Adjudicating Authority to exercise its discretionary powers to dissolve the Company.
11. In the result, by exercising the powers conferred on this Adjudicating Authority under Section 54(2) of the Insolvency and Bankruptcy Code, 2016 R/w Regulation 14 of the IBBI (Liquidation Process) Regulations, 2016, both **I.A. No.37 of 2021 & C.P. (IB) No.121/BB/2020** are disposed of with the following directions:

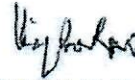


- (1) The Applicant is permitted to assign absolute rights over Unsold Intangible Assets - Intellectual Property, if any, available with the Corporate Debtor, immediately after receipt of a copy of this order and complete the remaining liquidation process;
- (2) Subject to above distribution, the Corporate Debtor, namely M/s. Alucast Auto Parts Limited is hereby dissolved with immediate effect;
- (3) The Registry is directed to forward a copy of this Order to the Registrar of Companies, Karnataka, Bangalore, within a period of two weeks from today;
- (4) The Liquidator is also directed to forward copies of this order to all Authorities connected with the affairs of the Company.
- (5) It is made clear that this order will not absolve the Directors of the Company of personal legal liability, if any.




**ASHUTOSH CHANDRA
MEMBER, TECHNICAL**

Amar



**RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL**

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for 
Deputy/Asst. Registrar
National Company Law Tribunal
Bengaluru Bench
Rajeshwari M

