H

NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH, BENGALURU, HELD ON 02.09.2020

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 pronouncement on IA 272/2020 **CIRP**	Sec 10 of I&B code 2016	Alucast Auto Parts Ltd	Ravi Chandran for KSR & Co		Sri Rakesh Chaturvedi, IRP , Manjula Devi for IRP

ADVOCATE FOR PETITIONER/s:

MS. S. MANJULA DEVI - For R.P.

ADVOCATE FOR RESPONDENT/s:

ORDER

I.A No. 272 of 2020 in CP (IB) No. 121/BB/2020 is disposed of by separate order.

Post the case for report of Liquidator on **16.10.2020**

MEMBER (T) MEMBER (J)

Brunda

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

I.A No.272/2020 in
C.P. (IB)No.121/BB/2020
U/s. 33(2) of the IBC, 2016.

In the matter of:

Mr. Rakesh Chaturvedi,
Resolution Professional of
M/s. Alucast Auto Parts Limited,

B-16, KSSIDC Indl. Estate Udyambag,
Belgaum - 590008. - Applicant/RP

Date of Order: 2nd September, 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/RP : Ms. Manjula Devi

For the Corporate Applicant : Dr. K. Ravichandran

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.272/2020 in C.P.(IB)No.121/BB/2020 is filed Mr. Rakesh Chaturvedi, Resolution Professional of M/s. Alucast Auto Parts Limited ('Applicant/Resolution Professional') by inter alia seeking to order liquidation of Corporate Debtor in the manner as laid down under Section 33(2) of Chapter III of Code ; to appoint the present Resolution Professional as Liquidator etc.

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

(1) C.P.(IB)No.121/BB/2020 filed by M/s. Alucast Auto Parts Limited (Petitioner/ Corporate Applicant) U/s. 10 of the Code was admitted by the Adjudicating Authority vide order dated 09.06.2020 by initiating CIRP, appointing Rakesh Chaturvedi, as IRP, imposing moratorium etc. Accordingly the IRP has issued Public Notice as prescribed u/s 15 of the Code on June 13, 2020 in "Indian Express" English Hubli Edition & in "Kannada Prabha" Kannada Edition Belgaum and intimated the regulatory authority, statutory bodies, bankers etc. of initiation of CIRP against the Companies.

(2) In response to public notice issued, the IRP has received claim form 3 (three) financial Creditors and the list of creditors along with amount claimed, claims admitted, security interest in respect of claims was filed with the Hon'ble Adjudicating Authority. Basing on the claims received & accepted by the IRP, a Committee of Creditors was formed consisting of following two financial creditors:

Sl. No.	Financial Creditors	%	Amount claimed by the Creditors (In Rs.)
1	State Bank of India	36.65	72,39,77,682
2	Edelweiss Asset Reconstruction Company Limited	63.35	125,11,60,114
Total		**100.00**	**197,51,37,796**

(3) In compliance with section 22(1) of Insolvency and

Bankruptcy Code, 2016 a notice dated July 6, 2020 was issued to the Members of Committee of Creditors and the directors of the Corporate Debtor and a first meeting of the Committed of Creditors was held on July 10, 2020 and COC has unanimously resolved and approved to appoint the IRP Rakesh Chaturvedi to continue as a RP. The Corporate Debtor had only one employee, who had control of the books of accounts of the Copan was intimated directly to report to the Interim Resolution Professional vide letter dated 22.06.2020. The Suspended Directors are extending their co-operation and providing the information as and when requested for.

(4) 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, 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 realisation 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.

However, EARC agreed the proposal for initiation of Liquidation Proceedings.

(5) During the 1st meeting of COC Members, the possibility of revival of business Corporate Applicant in the light of financial status and found negative for the same due to the following reasons:

(i) There is no immovable or any other assets except bank account and investments/loans in German Subsidiary EGM Automotive GmBH which is also in liquidation since December 2011 where there are no chances of material realisation. Also other advances consist of only deposits with taxation authorities against pending assessments/litigation. The properties owned by Company were already sold by one of the COC member under provisions of SARFESAI.

(ii) The Company practically do not have any assets which could have any meaningful realisation and has liabilities in excess of Rs.200 Crores.

(iii)The Company does not enjoy going concern status and nothing seems to support the revival of the Company. The Company was in manufacturing business and now with no plant, workers and financial resources, revival could not be done.

(iv)The Company can straightway proceed to liquidation since CIRP exercise seems to be a futile exercise in view of the given facts. As there is no or grim chance of revival and what can be done is distribution if any, the same can be taken care of during the liquidation procedure.

(6) Therefore, the COC unanimously approved the resolution to file necessary application for initiation of Liquidation proceedings in respect of Corporate Applicant and also approved the RP to be appointed as Liquidator. Therefore, further steps required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 like issue of information memorandum, appointment of independent valuers for valuation of assets owned by the Company, issue of notice inviting expression of interest from prospective Resolution Applicant are not required to be carried out by RP.

3. Heard Ms. Manjula Devi, learned Counsel for the Resolution Professional and Dr. K. Ravichandran learned Counsel for the Corporate Applicant, **through Video Conference**. We have carefully perused the pleadings of the Party along with extant provisions of the Code and the Rules made thereunder.

4. As detailed supra, the Resolution Professional and the COC of the Corporate Applicant, have made their best assessment of assets Vis-a- Vis liabilities of Corporate Applicant and thus found that there would be no possibility of getting any Resolution Plan and thus it has rightly decided to go for liquidation directly. The Resolution to initiate liquidation was unanimously approved by the COC and the instant Application is filed strictly in accordance with law. The COC has also proposed **Shri Rakesh Chaturvedi** with **Registration No. IBBI/IPA-001/IP-P00242/201718/ 10471** as a Liquidator, for liquidating the Corporate Debtor, who has filed a written consent dated 10th July, 2020 to act as Liquidator of the Corporate Debtor i.e., M/s. Alucast Auto Parts Limited by *inter-alia* declaring that he is not subject to any disciplinary proceedings initiated by the Board or the Insolvency

Professional Agency etc. Hence, he is provisionally eligible to be appointed as Liquidator. Therefore, it is a fit case to initiate Liquidation in respect of Corporate Debtor.

5. In view of the facts and circumstances of the case, the Adjudicating Authority, by exercising powers conferred on it , under Section 33(2) of the IBC, 2016, disposed of **I.A.No.272 of 2020** in C.P.(IB)No.121/BB/2020 with following directions:

a) It is hereby ordered that M/s. Alucast Auto Parts Limited, Corporate Applicant to be liquidated in the manner as laid down in Chapter III of Part II of Code, R/w IBBI (Liquidation process) Regulations, 2016.

b) Shri Rakesh Chaturvedi is hereby appointed as a Liquidator, subject to the terms and conditions to be agreed upon by the parties in the light of extant provisions of the IBBI. He is directed to follow due process of law as per above Chapter and Regulations and to issue public announcement immediately by stating that the Corporate Debtor is in liquidation.

c) The Liquidator is directed to strictly adhere to the extant provisions of the Code and the Rules made thereunder framed by the IBBI from time to time and also directed to take expeditious steps to complete the liquidation process in the light of various orders.

d) He is further directed to take steps for early dissolution of Corporate Debtor, in terms of Rule 14 of IBBI (Liquidation Process) Regulations;

e) The Registry is directed to communicate this order to the Registrar of Companies, Karnataka for information and necessary action and also to the Liquidator.

f) Post the case for report of Liquidator on 16th October, 2020.

(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Brunda