IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**Coram: MR. AJAY KUMAR VATSAVAYI,
HON'BLE JUDICIAL MEMBER**

**MR. RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER**

**IA No. 131/JPR/2020
in
CP No. 205/7/JPR/2019**

UNDER SECTION 33 and 34 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

IN THE MATTER OF

Punjab National Bank

...Financial Creditor

VERSUS

Atlas Alloy (India) Pvt. Ltd.

...Corporate Debtor

AND IN THE MATTER OF

IA No. 131/JPR/2020

Satyendra Prasad Khorania,
Resolution Professional of Atlas Alloy (India) Pvt. Ltd.
Office at: 402, 4th Floor, OK Plus DP Metro,
Opp. Pillar No. 94, New Sanganer Road,
Jaipur-302019, Rajasthan

...Applicant

Versus

1. **Girish Baduni S/o Mr. Gopal Dut Baduni**
   (i) D-37, Mahesh Nagar, 80 Feet Road, Jaipur- 302015

Sd/-

(ii) 310-B 'Kashi Vishwanath' Adarsh Nagar, Ajmer Road, Beawar- 305901

2. **Kumud Baduni D/0 Mr. Heera Lal Pradhan**
310-B 'Kashi Vishwanath' Adarsh Nagar, Ajmer Road, Beawar- 305901

...Respondents

For the Applicant: Mr. Amol Vyas, Adv.

Order Pronounced On: 02.03.2021

ORDER

Per: Mr. Raghu Nayyar, Technical Member

1. This Application bearing IA No. 131/JPR/2020 is filed by the Resolution Professional ('Applicant' / 'RP') for Atlas Alloy (India) Pvt. Ltd. under Section 33 and 34 of the Insolvency and Bankruptcy Code ('IBC'/ 'Code'), 2016 for initiation of liquidation proceedings against Atlas Alloy (India) Pvt. Ltd. ('Corporate Debtor'). It is seen that the Applicant had impleaded the directors of the Corporate Debtor as parties in the instant IA. As the Company was under CIRP, the said directors have no role to play and their inclusion in the array of parties is irrelevant and inconsequential. During the hearing of this matter on 03.12.2020, this Adjudicating Authority observed the same. The instant IA is considered accordingly.

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2. The Adjudicating Authority vide order dated 20.09.2019 had admitted the application filed by Punjab National Bank ('Financial Creditor'/ 'PNB') under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of Corporate Debtor and as a consequence thereof appointed Mr. Satyendra Prasad Khorania as Interim Resolution Professional ('IRP').

3. In compliance with provisions of the Code, the IRP constituted the Committee of Creditors ('CoC'). The 1st meeting of the CoC was held on 17.10.2019, wherein the CoC unanimously resolved to appoint the IRP i.e., Mr. Satyendra Prasad Khorania as Resolution Professional ('RP') of the Corporate Debtor. Copy of Minutes of the 1st CoC meeting is enclosed as Annexure-2 of the Application.

4. It is submitted that in compliance with Section 15 of the Code, the RP had initially effected publication of Form G on 01.11.2019 and invited Expression of Interest ('EOI') for submission of resolution plan for the Corporate Debtor and thereafter, since no resolution plan was received, it again effected publication of Form G on 21.12.2019 for inviting EOI. However, no resolution plan was received till the last date of accepting the EOI. Copy of Form G dated 21.12.2019 is enclosed as Annexure-3 of the Application.

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5. It is submitted that in the 4th CoC meeting held on 07.03.2020, the erstwhile director of the Corporate Debtor proposed for a One Time Settlement ('OTS'), amounting to Rs. 7,30,00,000/- wherein Rs. 80,00,000/- would be given upfront to the Financial Creditor, assuring that the OTS proposal would be sent to the Financial Creditor before 13.03.2020. The CoC stated that on receiving the proposal before the committed date, the same would be presented to the competent authority of the Financial Creditor (PNB) for further consideration. Copy of Minutes of the 4th CoC Meeting are enclosed as Annexure-4.

6. It is submitted that the RP convened 5th meeting of CoC on 17.03.2020, wherein it was informed by the CoC that they had neither received any OTS proposal nor any upfront amount before 13.03.2020 as assured by the erstwhile director of the Corporate Debtor. Further, it is stated that the statutory time limit of 180 days for CIRP was going to expire on 18.03.2020 and no resolution plan was received till then for resolution / revival of the Corporate Debtor as well as no viable proposal was submitted by the erstwhile director of the Corporate Debtor for settlement of the account. Hence, the CoC had decided to proceed for liquidation of the Corporate Debtor in the 5th meeting. Copy of the minutes of 5th CoC meeting dated 17.03.2020 are enclosed as Annexure-5.

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7. We have carefully heard and considered the arguments of the learned counsel for the RP and have also perused the records. Taking into consideration the above facts in relation to the affairs of the Corporate Debtor, the provisions of Section 33 of IBC, 2016 are as follows: -

"33. Initiation of liquidation. –
(1) Where the Adjudicating Authority, -
(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast-track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30;
or
(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein,
it shall -
(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;
(ii) issue a public announcement stating that the corporate debtor is in liquidation;
and
(iii) require such order to be sent to the authority with which the corporate debtor is registered.
(2) where the resolution professional at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the adjudicating authority of the decision of the committee of creditor approved by not less than sixty-six percent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clause (i), (ii) and (iii) of clause (b) of Sub-Section (1)"

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8. The Hon'ble National Company Law Appellate Tribunal ('NCLAT'), in *Praveen Kumar Nanda Kumar Vs. VSL Securities Pvt. Ltd.* in CA No. 1/2020 in CA No. 308/2000, dated 09.06.2020, observed as under: -

> *"Likewise, the decision of the COC recommending liquidation of the corporate debtor after proper evaluation of the assets and liabilities of corporate debtor with no Resolution Plan forthcoming would be a business decision falling within the domain of commercial wisdom of the COC which is not amenable to judicial review."*

However, it is to be seen whether the relevant application is filed within stipulated time lines and as per applicable procedure.

9. **Prescribed period for filing application** - In the present case, the application under Section 7 of the Code was admitted on 20.09.2019 and the present application was filed by the RP on 19.05.2020. Accordingly, the date for completion of CIRP was 18.03.2020. It is noted that the CoC with 100% voting resolved to liquidate the Corporate Debtor in the 5th meeting of CoC dated 17.03.2020.

10. In view of emerging situation of COVID-19 pandemic, the Hon'ble Supreme Court of India in *Suo Motu Writ Petition (Civil) No(s). 3/2020 in Re: cognizance for extension of Limitation*, vide order dated 23.03.2020, passed the following order: -

> *"This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their*

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petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).
To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.
We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.
This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.
Issue notice to all the Registrars General of the High Courts, returnable in four weeks."

11. The Insolvency and Bankruptcy Board of India ('IBBI') vide Notification No. IBBI/2020-21/GN/REG059 dated 20.04.2020, inserted Regulation 47A to the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 to exclude the period of lockdown and the said regulation reads as under: -

"Exclusion of period of lockdown,
47A. Subject to the provisions of the Code, the period of lockdown imposed by the Central Government in the wake of Covid-19 outbreak shall not be counted for the purpose of computation of the timeline for any task that could not be completed due to such lockdown, in relation to any liquidation process."

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12. As per Notification No. IBBI/2020-21/GN/REG059 dated 20.04.2020, the period of Lockdown is excluded for the purpose of calculating the timelines in CIR Process. Hence, after considering exclusion of lockdown period till 31.05.2020, the present application is filed within the prescribed period. In view thereof the Application under consideration is taken up under Section 33(2).

13. **Appointment of Liquidator and fee to be paid–** Section 34(1) of the Code provides that where the Adjudicating Authority passes an order for liquidation of the Corporate Debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process shall, subject to submission of written consent, act as the Liquidator for the purpose of liquidation. The relevant provisions of Section 34(1) of the Code are as follows: -

> *"(1) Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under Section 33, the resolution professional appointed for the corporate insolvency resolution process under Chapter II shall, subject to submission of written consent by the resolution professional to the Adjudicating Authority in specified form, shall act as the liquidator for the purpose of liquidation unless replaced by the Adjudicating Authority under sub-section (4)."*

14. The present RP Mr. Satyendra Prasad Khorania is eligible to be appointed as Liquidator. The CoC had also resolved to appoint the RP as Liquidator in the 5th meeting of CoC. Mr. Satyendra Prasad Khorania, Resolution

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Professional with IBBI Registration No. IBBI/IPA-002/IP-N00002/2016-17/10002 has filed his written consent dated 17.03.2020 in the format / Form AA along with registration certificate as Annexure-6 of Application. The credentials of the proposed Liquidator have been checked from IBBI website (www.ibbi.gov.in) and nothing adverse is found on record. Therefore, Mr. Satyendra Prasad Khorania is appointed as Liquidator.

15. It is seen that Regulation 39B, 39C and 39D in the CIRP Regulations, 2016 have been inserted by Notification No. IBBI/2019-20/GN/REG/048 dated 25.07.2019. Relevant aspects in this respect are examined hereunder.

16. **Liquidation Cost (Regulation 39B of CIRP Regulations, 2016)** – It is noted that the CoC in its 5th meeting has not decided the estimated liquidation cost and discussed that the liquidation cost will be taken on actual basis which will be approved by the Stakeholders committee formed during the liquidation of the Corporate Debtor. The Liquidator is, therefore, directed to take necessary action under Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016 regarding contributions to liquidation costs.

17. **Assessment of Sale as a going concern (Regulation 39C of CIRP Regulations, 2016)** – The CoC in its 5th meeting has unanimously resolved to sell the Corporate Debtor as a going concern, as first option, or sell the business(s) of the Corporate Debtor as a going concern, as second option,

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before exploring other options as per Regulations 32 & 32A of IBBI (Liquidation Process) Regulations, 2016 and Regulation 39C of CIRP Regulations, if an order of liquidation is passed by the Adjudicating Authority.

18. **Fees of the Liquidator (Regulation 39D of CIRP Regulations, 2016)** – In the 5th meeting of the CoC while passing a resolution for the fees of the Liquidator as per Regulation 39D of CIRP Regulations, the CoC unanimously resolved that the fee of the Liquidator shall, for-

    a. the period, if any, used for compromise or arrangement under Section 230 of the Companies Act, 2013; and

    b. the period, if any, used for sale under clauses (e) and (f) of Regulation 32 of IBBI (Liquidation Process) Regulations, 2016;

    be same as the fee of RP and for the period thereafter, as per Regulation 4(2)(b) of IBBI (Liquidation Process) Regulations, 2016. Further, the CoC also resolved while deciding upon the matter of the fee of the Liquidator that if the security interest is not relinquished by the secured financial creditor and it chooses to exercise its right under Section 52(1)(b) of the Code, then the remuneration of the Liquidator would be fixed to be Rs. 50,000 per month until winding up of the Corporate Debtor.

19. In view of the satisfaction of the conditions provided under Section 33(2) of the Code, the Corporate Debtor, Atlas Alloy (India) Pvt. Ltd. is directed

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to be liquidated in the manner as laid down in Chapter III of the Code. The contextual directions inter-alia include: -

(i) As per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Debtor;

Provided that a suit or other legal proceedings may be instituted by the Liquidator on behalf of the Corporate Debtor, with the prior approval of the Adjudicating Authority; and

(ii) The provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator; and

(iii) This order of liquidation under Section 33 of the Code shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator; and

(iv) All the powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested in the Liquidator; and

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(v) The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor and provisions of Section 19 of the Code shall apply in relation to liquidation process as they apply in relation to CIR process with the substitution of references to the Interim Resolution Professional for references to the Liquidator; and

(vi) The Liquidator shall publish public announcement in accordance with Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016 and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stake holders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date; and

(vii) In accordance with Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016, the Liquidator shall file his preliminary report within 75 days and shall file regular progress reports as per Regulation 15.

20. **Pending Applications, if any, and its / their effect-** It is seen that following IA filed by RP before the Adjudicating Authority is pending:

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S. No.	IA No.	Section	Prayer
1.	IA No. 424/JPR/2019	Under Section 19(2) of Code	To direct the Suspended Directors of the Corporate Debtor and Statutory Auditor of the Corporate Debtor to provide all the documents and records and also to cooperate with the RP.

Since the above stated pending **IA No. 424/JPR/2019** has bearing on the issues in liquidation proceedings, it is directed to be listed along with the CP No. 205/7/JPR/2019 when the matter is next placed before this Adjudicating Authority. If so advised, the Liquidator may move appropriate applications for prosecution of the said application by a suitable person / entity instead of the RP and the Liquidator is not precluded from carrying on the said proceedings.

21. It is seen that IA No. 93/JPR/2020 was filed by the erstwhile director of the Corporate Debtor under Section 60(5) of the Code stating that the erstwhile director has challenged the CIRP order dated 20.09.2019 before the Hon'ble NCLAT on the ground that he was not served any notice or information about initiation of CIRP of the Corporate Debtor. The erstwhile director had prayed to direct the RP to withhold the operation and proceeding of CIRP subject to the outcome of the said appeal. This IA was listed on 18.03.2020 but could not be taken up further and is pending. It is seen that the Hon'ble

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NCLAT vide order dated 27.08.2020 dismissed the appeal. In view of this, IA 93/JPR/2020 has become infructuous. Accordingly, IA 93/JPR/2020 is disposed of along with this order in IA 131/JPR/2020.

22. Further, the RP has filed IA Nos. 112/JPR/2020, 120/JPR/2020 and 141/JPR/2020 to report the minutes of 3rd, 4th and 5th meetings of the CoC, respectively. Relevant items of the said meetings of CoC and aspects related thereto have been considered in these proceedings. The same are not required for any further reference. Thus, IA Nos. 112/JPR/2020, 120/JPR/2020 and 141/JPR/2020 are also disposed of along with this order in IA No. 131/JPR/2020.

23. In view of the foregoing, IA No. 131/JPR/2020 is disposed of. Copy of this order be supplied to the counsel for the Liquidator as well as to the Registrar of Companies, Jaipur forthwith. The Registry is also directed to send a copy of this order to the Liquidator at his e-mail address.

Sd-

Mr. RAGHU NAYYAR,
TECHNICAL MEMBER

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Mr. AJAY KUMAR VATSAVAYI,
JUDICIAL MEMBER