

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

IA-1621/2023

In

IB –192(ND)/2021

Order under Section 33(2) of the Insolvency and Bankruptcy Code,
2016.

IN THE MATTER OF IB –192(ND)/2021:

Mr. RAM RATAN JAGATI

Sole Proprietor of JJ Trading FZE

..... Operational Creditor

VERSUS

M/s. ALSTRONG ACP MANUFACTURING INDIA PRIVATE LIMITED

..... Corporate Debtor

AND IN THE MATTER OF IA-1621/2023:

Mr. Alok Kumar Agarwal,

Resolution Professional of the Corporate Debtor

..... Applicant

Order Pronounced On: 04.07.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Aadil Khan, Adv.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This Application has been filed by Mr. Alok Kumar Agarwal, the Resolution Professional of the Corporate Debtor before this Adjudicating Authority under Section 33(2) of the Insolvency and

IA-1621/2023 In IB – 192(ND)/2021

Date of Order: 04.07.2024

Bankruptcy Code, 2016 ("IBC" or "Code") seeking initiation of liquidation proceedings of the Corporate Debtor. The Applicant seeks the following relief:

- "i. Allow the present Application;*
- ii. Pass necessary order(s) under Section 33 of the Code for commencement of liquidation process of the Corporate Debtor;*
- iii. Such other/further order(s) may be passed as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case."*

2. **Brief Background of the Case**

An Application was filed by Mr. Ram Ratan Jagati, Sole Proprietor of JJ Trading FZE ("Operational Creditor") to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s. ALSTRONG ACP MANUFACTURING INDIA PRIVATE LIMITED ("Corporate Debtor") under Section 9 of the Code filed before this Adjudicating Authority. This Adjudicating Authority vide order dated 18.04.2022 ("Admission Order") admitted the application and declared a moratorium and appointed Mr. Alok Kumar Agarwal as an Interim Resolution Professional. Subsequently, Mr. Alok Kumar Agarwal was confirmed as the Resolution Professional by the CoC.

3. The IRP in compliance of Section 13 of the Code read with Regulation 6 of IBBI (CIRP) Regulations, 2016, made the public announcement in the prescribed Form A within the specified time i.e. on 20.04.2022, and called upon the creditors to submit their claims as on the Insolvency Commencement Date on or before 02.05.2022, in two newspapers in Delhi. The Applicant received the claim from one Operational Creditor namely, Ram Ratan Jagati (Sole Proprietor of JJ Trading FZE).
4. The Applicant received claim from M/s. Mangalam Apartments Limited (Related Party) on June 01, 2022 for the amount of Rs. 2,00,79,846.66/-, which was duly verified. Another claim was received from the State Bank of India ("SBI") on July 27, 2022 for an

amount of Rs. 21,27,85,600/-. After verification of the said claim, SBI was confirmed to be part of the CoC as the Financial Creditor. Accordingly, the CoC was reconstituted with SBI being the sole Financial Creditor.

5. The Invitation to submit an Expression of Interest ("EOI") for submission of the resolution plan was published by the Resolution Professional in the prescribed Form G in two newspapers in Delhi/NCR on 01.07.2024. Pursuant to such publication, though emails and queries were received from several parties who expressed their interest in submitting EOI, however, none of them submitted the details under EOI or the submission of EMD.
6. The RP issued the fresh Form G on September 24, 2022, and in pursuance of the same, two EOIs were received. Accordingly, the RP issued the provisional and final list of prospective resolution applicants ("PRAs") to the CoC and the last date of submission of the Resolution Plans was fixed on November 19, 2022.
7. The RP received one resolution plan from the PRA, M/s Dickey Alternative Investment Trust ("RA"), which was opened by the RP in the presence of the CoC on December 07, 2022. The RP convened the ninth meeting of the CoC on January 23, 2023 whereby it was declared that the CoC had rejected the resolution plan of the RA by 75.77% votes. Further, it was also declared that the CoC has resolved not to explore the sale of the Corporate Debtor as a going concern under Regulation 32(e) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("Liquidation Regulations") if an order for liquidation is passed under Section 33 of the Code.
8. It is submitted by the Resolution Professional that the present Application is being filed in the interest of justice and the same is bona fide in nature.
9. We have heard the arguments of the Ld. Counsel appearing for the Applicant and perused the records carefully.

10. This Adjudicating Authority vide order dated 26.10.2023 passed the following order which is extracted below:

“Ld. Counsel appearing for the Resolution Professional has submitted that the CoC has become defunct as the liquidation process w.r.t. present Corporate Debtor has been filed. However, the required affidavit is to be filed by the Ld. Counsel appearing for the Resolution Professional regarding requirements under Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Ld. Counsel for the Resolution Professional sought time to file the required affidavit under the said Regulation. One week's time granted.”

11. In compliance of the order dated 26.10.202, the Applicant/RP filed an affidavit stating that as per the Audited Financial Statements of the Corporate Debtor for the year ended 31st March 2022 and 31st March 2021, the Corporate Debtor has assets only in the category of Security and Financial Assets and there are no movable assets or immovable assets in the Company. The details are extracted below for ready reference:

S. No.	Particulars	Amount outstanding as on 31.03.2022 (INR in Lakhs)	Amount outstanding as on 31.03.2021 (INR in Lakhs)
1.	Investment in Subsidiary – Alstrong Enterprises India Pvt Ltd – 19,09,092 Equity Shares of Rs 10/- each Unsecured Loan to M/s. Alstrong ACP Manufacturing India Pvt. Ltd. (The said Company is undergoing Corporate Insolvency Resolution Process vide order dated 18 th April, 2022 passed by the Hon’ble NCLT, New Delhi Bench-III)	4,150.00	4,150.00
2.	Investment in Partnership Firm – Alstrong International LLP (Fixed Capital and credit balance in current account)	575.22	563.27
3.	Cash and Bank Balance	4.42	9.18
4.	Loans to subsidiaries	2,587.16	2,605.73

IA-1621/2023 In IB – 192(ND)/2021
Date of Order: 04.07.2024

5.	Other Current Assets	0.06	0.06
Total Loans and Advances and Other Current Assets		7,316.86	7,328.24

That it is further submitted that the Registered Valuers appointed for valuation of the assets of the company in the category of Security and Financial Assets have valued the assets for an amount of INR 4,42,100/- as on the Insolvency Commencement Date of 18 April 2022. The details of the valuations are mentioned herein below:

Asset Type	Fair Value (In INR) Crest Valuations	Liquidation Value (In INR) Crest Valuations	Fair Value (In INR) Amandeep Kaur	Liquidation Value (In INR) Amandeep Kaur	Average Fair Value (In INR)	Average Liquidati on Value (In INR)
Securities or Financial Assets	4,42,100	4,42,100	4,42,100	4,42,100	4,42,100	4,42,100

The Cash and Bank Balance as on Insolvency Commencement Date (18th April, 2022) is INR 4,42,100.

12. The Hon'ble Supreme Court in the matter of **K. Sashidhar Versus Indian Overseas Bank & Ors.** in Civil Appeal No. 10673 of 2018 has held that the commercial decision of CoC is non-justiciable. In this case, it is seen that CoC with 100% majority has passed the resolution seeking liquidation of the Corporate Debtor.
13. The above-quoted judgement, makes it clear that the "Commercial wisdom of CoC" is to be given paramount status. This Adjudicating Authority is not endowed with the powers of jurisdiction or authority to analyse or evaluate the commercial decision of the CoC. The members of the CoC are the best judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by this Adjudicating Authority for the reason that it is not a part of the judicial function to examine their commercial decisions.

14. Considering the fact that the Corporate Debtor does not have any assets or property and books of the Corporate Debtor show no fixed asset apart from few financial assets which does not bear much realizable value. Hence, we are of the view that the Liquidation process ought to be initiated against the Corporate debtor.
15. In light of the above facts and circumstances, it is hereby ordered as follows:
- i.** The **IA-1621/2023** filed by Mr. Alok Kumar Agarwal, the Resolution Professional of the Corporate Debtor is **allowed** and the Corporate Debtor is ordered to be liquidated in terms of Section 33(2) of the Code read with sub-clause (i) of clause (b) thereof;
 - ii.** The Insolvency and Bankruptcy Board of India (“IBBI”) vide its circular number Liq-12011/214/2023-IBBI/840 dated 18/07/2023 in the exercise of its powers conferred under Section 34(4)(b) of the Code had recommended that an IP other than the RP/IRP may be appointed as Liquidator in all the cases where Liquidation order is passed henceforth and the Liquidator can be appointed from the panel list of the IBBI.
 - iii.** Therefore, this Adjudicating Authority appoints Mr. Gulshan Kumar Gupta as the Liquidator of the Corporate Debtor from the available list of panel of Resolution Professionals/Liquidators as maintained by the IBBI. The Registration number of the Liquidator is IBBI/IPA-001/IP-P00021/2016-2017/10046, the address of the Liquidator is 202, Kumar House, Central Market, Prashant Vihar, New Delhi-110085 and the e-mail id of the Liquidator is ipgulshan@gmail.com and the contact no. of the Liquidator is +919810510390 .
Therefore, the Liquidator shall file a valid Authorization for Assignment along with Written Consent in Form-2 and

Registration Certificate within 3 days of the pronouncement of this order.

- iv.** Mr. Alok Kumar Agarwal, the Resolution Professional of the Corporate Debtor is relieved from the present assignment as the Resolution Professional. The present Resolution Professional is directed to hand over the relevant documents and control of the Corporate Debtor to the newly appointed Liquidator forthwith.
- v.** The Liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the Liquidation estate as specified by the IBBI and the same shall be paid to the Liquidator from the proceed of the Liquidation estate under Section 53 of the Code.
- vi.** The Liquidator shall initiate the Liquidation process as envisaged under Chapter-III of the Code and the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- vii.** The Liquidator will also serve a copy of this order to the various Government Departments such as Income Tax, GST, VAT, etc., who are likely to have any claim upon the Corporate Debtor so that the authorities concerned are informed of the Liquidation order timely.
- viii.** All the powers of the Board of Directors, and key managerial personnel, shall cease to exist in accordance with Section 34(2) of the Code. All these powers shall henceforth vest in the Liquidator.
- ix.** The personnel of the Corporate Debtor are directed to extend all assistance and cooperation to the Liquidator as required by him in managing the Liquidation process of the Corporate Debtor.
- x.** The Order of Moratorium passed under Section 14 of the Code shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Code shall commence. On

initiation of the Liquidation process but subject to Section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor save and except the liberty to the liquidator to institute the suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in Section 33(5) of the Code read with its proviso.

- xi.** The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.
- xii.** The Liquidator shall also follow up on the pending applications for disposal during the process of Liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- xiii.** The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the Liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
- xiv.** The Liquidator and the Registry are hereby directed to send a copy of this order within 3 days from the date of this order to the Registrar of Companies, NCT of Delhi & Haryana. The Registrar of Companies shall take further necessary action upon receipt of a copy of this order.
- xv.** The Registry is directed to send a copy of this order to the IBBI for their record.
- xvi.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

No order as to costs.

Sd/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**