

**IN THE NATIONAL COMPANY LAW**  
**TRIBUNAL KOLKATA BENCH (Court-II)**  
**KOLKATA**

**CP No. 12/KB/2023**

***A Petition under Section 271 and 272 of the Companies  
Act, 2013***

*In the Matter of:*

**ASHOK KUMAR JAIN**, contributory/Shareholder of RLJ Ferro Alloys Private Limited, presently residing at Silver Spring Apartments, Flat No. 10C, Block – 4, 5, J.B.S. Halden Avenue, Kolkata – 700105, West Bengal.

.... Petitioner

*Versus*

**RLJ FERRO ALLOYS PRIVATE LIMITED**, having CIN: U27102WB2004PTC098309, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at B/52 Ramdashati Badamtala, LP-7/18/1 Kolkata - 700024.

.....Respondent

**Date of Pronouncing the order on 23.04.2024**

**CORAM:**

**Smt. Bidisha Banerjee, Member (Judicial)**

**Shri D. Arvind, Member (Technical)**

**Appearances (via video conference/physically):**

Mr. Dharendra Nath Sharma, Adv. ] For the petitioners

Mr. Shailendra Jain, Adv. ]

Mr. A. Gole, Adv. ]

**ORDER**

**Per: Bidisha Banerjee, Member (Judicial)**

1. This Court convened through Hybrid mode.
2. The instant Petition has been filed by **Ashok Kumar Jain** (“petitioner”) to initiate winding up proceedings under sections 271 and 272 of the Companies Act 2013 against **RLJ Ferro Alloys Pvt. Ltd.**, a Company incorporated under the provisions of the Companies Act, 1956 bearing CIN No. U27102WB2004PTC098309. The petition has been filed under section 271 (d) and 271(e) on the ground that it is just and equitable that the respondent company should be wound up.
3. It is stated in the Petition that the Respondent is a company in which 12.17% of the paid-up share capital is owned and controlled by the Petitioner. The Petition has been filed by the Petitioner as a contributory of the Company.
4. It is stated that the Company should be wound up since the Company has not been doing business and is defunct since 2015 and revenue from the operations therein has been ‘Nil’. The operations in the Company have been closed since November, 2015.
5. The Company has suffered continuous losses since the last few financial years. The company does not have any fixed assets nor any employees or any operations. It has become unviable to keep the company alive in the records of the Registrar of Companies, West Bengal.
6. In view of the continuous losses being suffered by the Company and operations being closed since November, 2015 making the company defunct, the Company is to be restructured by way of winding up.
7. The petitioners is a Contributory/ Shareholder and Promoter Director

of the Company owns 12.17% shares of the Company. The Company was incorporated on April 13, 2004 with three directors. Out of the three directors, Mrs. Mamta Jain resigned on May 19, 2010 and Mr. Ratan Lal Jain expired on November 23, 2018, as such, presently, the company only has one sole director Mr. Ashok Kumar Jain, being the petitioner herein. The last audited annual report as well as financial report of the Company is of 2010 which is annexed to the petition. Thereafter, due to economic downturn and slowdown in the demand for the products of the respondent, the revenue of the company declined immensely and the company suffered tremendous losses due to which the account of the company became NPA in the books of its secured creditor, namely Union Bank of India. However, pursuant to One Time Settlement offered by the petitioner vide letter dated August 9, 2017 the account of the bank was fully settled which is annexed to the petition. There is practically no possibility of reviving the business of the company and it is a perfect case that the company should be wound up on just and equitable ground.

- 8.** The petitioner submitted that the Company has no secured creditors as on date.
- 9.** Hence, in the above facts and circumstances the Petitioner has approached this Hon'ble Tribunal to seek winding up of the respondent Company on the ground that it is just and equitable that the Company should be wound up.
- 10.** The Petitioner states that it has explored all other opportunities which may be viable to revive the business of the Company and to ensure that the value of the Company is not totally eroded. Hence, according to the Petitioner apart from approaching this Tribunal under the provisions of Section 271 to 275 of the Companies Act, 2013 the Petitioner has no other remedy which can be pursued.

- 11.** It is submitted that unless orders as passed as prayed for herein, the interest of the Petitioner will be severely prejudiced and compromised. Accordingly, to the Petitioner it is no longer viable to allow the Company to exist and survive only for the Petitioner to do more paperwork which will prove cumbersome and expensive for it. According to the petitioner, as the company is defunct since 2015 and there is only one director in the company as well as the business of the Company has been unsuccessful in reviving the business of the Company and the Company has stopped all operations from November, 2015 after suffering tremendous losses. Hence, it is necessary, just, fit and proper that appropriate orders be passed as prayed for in the instant Petition including the order of winding up of the Company.
- 12.** Notice along with a copy of the Petition had been duly served to the Registrar of Companies.
- 13.** At this juncture it is relevant to refer to Section 272 of the Companies Act, 2013, in which the present applicant is filed.

*272. Petition for winding up – (1) Subject to the provisions of this section, a petition to the Tribunal for the winding up of a company shall be presented by-*

*(a) the company;*

*(b) any creditor or creditors, including any contingent or prospective creditor or creditors;*

*(c) any contributory or contributories;*

*(d) all or any of the persons specified in clauses (a), (b) and (c) together;*

*(e) the Registrar;*

*(f) any person authorised by the Central Government in that behalf;*  
*or*

*(g) in a case falling under clause (c) of sub-Section (1) of Section 271,*

*by the Central Government or a State Government.*

*(2) A secured creditor, the holder of any debentures, whether or not any trustee or trustees have been appointed in respect of such and other like debentures, and the trustee for the holders of debentures shall be deemed to be creditors within the meaning of clause (b) of sub-Section (1).*

*(3) A contributory shall be entitled to present a petition for winding up of a company, notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities, and shares in respect of which he is a contributory or some of them were either originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder.*

*(4) The Registrar shall be entitled to present a petition for winding up under sub-Section (1) or any of the grounds specified in sub-Section (1) of Section 271, except on the grounds specified in clause (b), clause (d) or clause (g) of that sub-section: Provided that the Registrar shall not present a petition on the ground that the company is unable to pay its debts unless it appears to him either from the financial condition of the company as disclosed in its balance sheet or from the report of an inspector appointed under Section 210 that the company is unable to pay its debts: Provided further that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition: Provided also that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.*

*(5) A petition presented by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of*

*affairs in such form and in such manner as may be prescribed. 165*

*(6) Before a petition for winding up of a company presented by a contingent or prospective creditor is admitted, the leave of the Tribunal shall be obtained for the admission of a the petition and such leave shall not be granted, unless in the opinion of the Tribunal there is a prima facie case for the winding up of the company and until such security for costs has been given as the Tribunal thinks reasonable.*

*(7) A copy of the petition made under this section shall also be filed with the Registrar and the Registrar shall, without prejudice to any other provisions, submit his views to the Tribunal within sixty days of receipt of such petition.*

**14.** By order dated October 16, 2023 direction was given to cause a publication of an advertisement of the petition. Newspaper advertisement, in terms of Rule 5 of the Companies (Winding Up) Rules, 2020, read with Rule 7 thereof, has been made in **Business Standard** (English) and **Aajkaal** (Bengali), on 1<sup>st</sup> December, 2023.

**15.** Despite such publication and service of notice, no one has come forward to object or oppose the present company petition before the Tribunal.

**16.** Upon the application of the petitioner and upon hearing the learned Counsel appearing for the petitioner, and upon reading the petition and the affidavit filed, this Tribunal hence passes the following order;

**(a)** The present company petition stands admitted. The respondent company being **RLJ Ferro Alloys Private Limited** is to be wound up by this Tribunal under the provisions of Companies Act, 2013.

**(b)** The **Official Liquidator** attached with the High Court of Calcutta

is appointed as a Company Liquidator of the respondent company as provided under Section 275(1) of the Companies Act, 2013.

- (c) In terms of Section 277 (1) and 277(2) of the Act, the registry is directed to cause intimation to the liquidator and the Registrar of Companies, West Bengal. On receipt of the copy of such Order, the Registrar shall make an endorsement to that effect and notify in the Official Gazette that such an order has been made.
- (d) In accordance with Section 277(3) of the Act, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the company, except when the business of the company is continued.
- (e) The Provisional liquidator is permitted to initiate appropriate action in accordance with the provisions of the Companies Act, 2013, and to take custody and control of all properties, effects and actionable claims to which the Company is or appears to be entitled to and take such steps and measures, as may be necessary, to protect and preserve the properties of the Company.
- (f) As envisaged under Section 279 (1) of the Act, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose.
- (g) The liquidator shall also file its report with the Tribunal as per section 281 of the Act.
- (h) List the **Company Petition 12/KB/2023** on 10.06.2024 for filing periodical reports.

- (i) Copy of the order be sent to the parties, the Company Liquidator, Registrar of Companies, West Bengal and the Authorised Representative for the Petitioner, within seven days through email and registered post.
- (j) Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**D. Arvind**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

Signed on the 23rd day of April, 2024.