

**THE NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1
MUMBAI BENCH**

**CP No. 93/MB/2022
In IA No. 5744/2023**

**Under Section 33(2) of the Insolvency
& Bankruptcy Code, 2016**

In the matter of

**ARCHISHA STEELS PRIVATE
LIMITED**

**... Financial Creditor
V/s.**

**AJS Impex Private Limited
... Corporate Debtor**

**AND IN THE MATTER OF-
Ankit Goel
Resolution Professional
AJS Impex Private Limited**

Order delivered on 30/04/2024

Coram:

Hon'ble Member (Judicial), SH. Justice V.G. Bisht

Hon'ble Member (Technical) SH. Prabhat Kumar

Appearances :

For the Applicant : Ms. Swechcha Mishra, Advocate

ORDER

1. The present application is filed by the Resolution Professional of AJS Impex Private Limited under Section 33(2) of the Code and Rule 11 of the NCLT Rules, 2016 seeking initiation of liquidation of the Corporate Debtor.
2. The present Company Petition (IB)/93(MB)2022 was filed under Section 7 of the Code and was admitted by this Tribunal vide order dated 15.07.2022 initiating the CIRP of the Corporate Debtor.
3. It is submitted that Mr. Jayesh Mehta, Resolution Applicant submitted the revised final resolution plan on 05.09.2023 which was put forth for approval before the members of the CoC in the 17th meeting of CoC dated 27.09.2023. The Resolution plan was put for voting and last date of voting was 02.12.2023. The CoC with a voting share of 86.96% rejected the Resolution plan. However, the Resolution Applicant in the 20th meeting of CoC dated 0.12.2023 submitted an addendum to the Resolution Plan and requested the members of CoC to reconsider the Resolution Plan, to which the members of CoC enquired with the Resolution Applicant if Resolution Plan amount can be enhanced.
4. The Resolution Applicant replied that he shall require at least 10-15 days to improvise the Resolution Plan.
5. The Applicant submits that in the 20th meeting of CoC dated 05.12.2023, the members of CoC were not inclined to consider the request of

Resolution Applicant and further resolution was passed and approved by the members of CoC to liquidate the Corporate Debtor as a going concern with a voting share of 80.19%.

6. To buttress his argument, the Applicant submits that this Bench is vested with the powers to pass an order of Liquidation of the Corporate Debtor; since, no Resolution Plan could be brought forth and voted for and in the absence of any Resolution Plan on the table, the order of liquidation shall be passed by this Adjudicating Authority under section 33 of the Code, which reads as under:

“(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 creditors to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1)''.

8. Further, it is brought to notice of this Bench that in the 20th CoC meeting it was resolved that current RP will act as the Liquidator and accordingly written consent is also on record. However, this Bench may consider to appoint any Insolvency Professional as the Liquidator of the Corporate Debtor because as per the new circular of Insolvency and Bankruptcy Board of India, incumbent Resolution Professional cannot be continued as the Liquidator of the Corporate Debtor.

9. We have considered the submission of the Applicant and notes that no resolution has taken place, consequently CoC has passed resolution for liquidation of Corporate Debtor. In view of this, we consider it appropriate

to pass an order for liquidation of the Company in the manner laid down in Chapter III of the Code considering the fact there is no Resolution Plan for consideration and CoC does not foresee any possibility of getting Plans in another round also. Hence ordered.

ORDER

- a) The Application be and the same is allowed. The Corporate Debtor, **AJS Impex Private Limited** shall be liquidated in the manner as laid down in Chapter-III of the Code.
- b) **Mr. Birendra Kumar Agrawal** having Registration No. **IBBI/IPA-001/IP-P00564/2017-18/11040** is appointed as Liquidator of **AJS Impex Private Limited**.
- c) That the Liquidator for conduct of the Liquidation proceedings would be entitled to the fees as provided in Regulation 4(2)(b) of the IBBI (Liquidation Process Regulations), 2016.
- d) The Moratorium declared under Section 14 of the IBC 2016 shall cease to operate here from.
- e) Liquidator shall issue public announcement stating that Corporate Debtor is in liquidation.
- f) The Liquidator shall endeavor to sale the Company as a going concern during the liquidation in terms of Regulation 32A of the Liquidation Process Regulations. In case he is not able to do so within a period of 90

days from this date, he shall proceed in accordance with clauses (a) to (d) of Regulation 32 of the Liquidation Process Regulations.

- g) Subject to Section 52 of the Code no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. This shall however 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.
- h) All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.
- i) The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code read with the Liquidation Process Regulations.
- j) Personnel connected with the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as will be required for managing its affairs.
- k) This Order 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.

- l) The Liquidator shall submit progress reports as per Regulation 15 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- m) The Liquidator is hereby Authorized to represent the Corporate Debtor before the Government Authorities, if need be.
- n) Registry shall furnish a copy of this Order to the **Insolvency and Bankruptcy Board of India, New Delhi; Regional Director (Western Region), Ministry of Corporate Affairs; Registrar of Companies & Official Liquidator, Maharashtra; the Registered Office of the Corporate Debtor;** and the Liquidator, **Mr. Birendra Kumar Agrawal,** having E-mail ID bk@bhamaconsulting.com.
10. With the aforesaid observations and directions, the Interlocutory Application bearing **IA No. 5744 of 2023**, stands **disposed of as Allowed**.

11. There would however be no order as to costs. Ordered Accordingly.

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-
JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)