

IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH

IA No.230 of 2020  
IN  
CP (IB) No.142/ALD/2018

IN THE MATTER OF:

ASTRONOMICAL LOGISTICS PARK PRIVATE LIMITED  
.....APPLICANT

In the matter of :

UNION BANK OF INDIA

.....Financial Creditor

VERSUS

Shri Lakshmi Cotsyn Limited

.....Corporate Debtor/Respondent.

ORDER DELIVERED ON :15.10.2020

CORAM:

Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial

For the Applicant: Mr. Rahul Agarwal, Adv  
For the Liquidator: Mr. Shubham Agarwal, Adv

Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)

Order

1. The present application has been filed on behalf of Astronomical Logistics Pvt. Ltd. having its registered office at Survey No. 76, Village Morai, Vapi, Valsad Gujrat-396191 and Corporate Office at 7<sup>th</sup> Floor Welspun House, Kamala Mills Compound, Lower Parcel (W), Mumbai-400 013 CIN: U74990GJ2018PTC103985 with the prayer to extend the time provided for formulating, considering and carrying into effect the scheme of arrangement in respect of the Company under Liquidation by period of 120 days.
2. In absence of any resolution plan, the Adjudicating Authority has passed the liquidation order against the corporate Debtor i.e Sri Laxmi Cotsyn Ltd. by order dated 01.07.2020. It is stated that the applicant is interested in exploring the feasibility of taking over the facilities of Sri Laxmi Cotsyn Ltd. and engaged M/s Systematix Corporate Service Ltd.

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as a consultant to evaluate the facilities of the Company in liquidation, who prepared a presentation in the form of Snapshot highlighting the strength of the Company in liquidation and also pointed out its financials. Thereafter, the entire presentation went through internal review and it was found that the best method for the Applicant to express its interest of the company in liquidation would be through a scheme of arrangement under Section 230-232 of the Companies Act, 2013. Accordingly, the Applicant wrote an e-mail to the liquidator requesting him to consider its proposal and facilitate its visits of the Officials to the plants of the Company in liquidation so that the necessary proposal can be finalized and submitted for consideration.

3. It is further contended that under Regulation 2-B of the IBBI (Liquidation Process ) Regulation, 2016 introduced w.e.f. 06.01.2020 whereby the scheme of compromise for arrangement was to be proposed and completed within 90 days of order of liquidation. It is also stated that the timeline for liquidation to be carried out was specified in Regulation 44, which earlier provided for 2 years time frame for the liquidator to liquidate the Corporate Debtor, but which has been reduced by notification dated 25.07.2019 to a period of 1 year. Regulation 44 as amended reads as under:

**"44. Completion of liquidation.-** [(1) The liquidator shall liquidate the Corporate debtor within a period of one year from the liquidation commencement date, notwithstanding pendency of any application for avoidance of transactions under Chapter III of Part II of the Code, before the Adjudicating Authority or any action thereof:

*Provided that where the sale is attempted under Regulation (1) of Regulation 32A, the liquidation process may take an additional period up to ninety days.]*

*(2) If the liquidator fails to liquidate the Corporate Debtor within [one year], he shall make an application to the Adjudicating Authority to continue such liquidation, along with a report explain why the liquidation has not been completed and specifying the additional time that shall be required for liquidation."*

4. Thereafter, notice was issued to the liquidator and liquidator has filed its reply stating that Regulation 2B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 provides for

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compromise or arrangement under Section 230 of the Companies Act, post liquidation order. The same is quoted as:

**2B. Compromise or arrangement.**

(1) Where a compromise or arrangement is proposed under section 230 of the Companies Act, 2013 (18 of 2013), it shall be completed within ninety days of the order of liquidation under sub-sections (1) and (4) of section 33. [ Provided that a person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor, shall not be a party in any manner to such compromise or arrangement.]

(2) The time taken on compromise or arrangement, not exceeding ninety days, shall not be included in the liquidation period.

(3) Any cost incurred by the liquidator in relation to compromise or arrangement shall be borne by the corporate debtor, where such compromise or arrangement is sanctioned by the Tribunal under sub-section (6) of section 230:

Provided that such cost shall be borne by the parties who proposed compromise or arrangement, where such compromise or arrangement is not sanctioned by the Tribunal under sub-section (6) of section 230.]

5. Further stated in its reply that under Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 the liquidator is not vested with the power to extend any such period, in case it receives the proposal for compromise or arrangement under Section 230 of the Companies Act, 2013 after 90 days or the compromise or arrangement could not get completed within 90 days. The liquidator further submits that the liquidation is time-bound process and is required to be completed within one year from the liquidation commencement date.
6. The liquidator further submits that in case the Hon'ble Tribunal agrees to extent the time, then the applicant must expedite the process on its par and endeavour to give a concrete proposal with an Earnest Money Deposit (equivalent to around 100% of the total proposed settlement amount, to be deposited in an escrow account) so that the same can be seriously considered by the creditors of the corporate debtor.
7. Referring to the judgment of Hon'ble Supreme Court in "**Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. - Writ Petition (Civil) No. 99 of 2018**", which observes as follows;

"11. ....What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last

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resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. **Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern.**

8. Further, in case of **S.C.Sekaran V/s Amit Gupta, 2019 SCC ONLINE NCLAT 517;**

The Appellate Tribunal allowed 90 days' time to take steps under Section 230 of the Companies Act, 2013 but in case, for any reason the liquidation process under Section 230 takes more time, it is open to the Adjudicating Authority to extend the period if there is a chance of approval of arrangement of the scheme.

9. Further referring to Section 230 of the Companies Act, 2013 which is as follows;

**230. Power to compromise or make arrangements with creditors and members.—**

(1) Where a compromise or arrangement is proposed—

- (a) between a company and its creditors or any class of them; or  
 (b) between a company and its members or any class of them, the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

*Explanation.—*For the purposes of this sub-section, arrangement includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

(2) The company or any other person, by whom an application is made under subsection (1), shall disclose to the Tribunal by affidavit—

- (a) all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company and the pendency of any investigation or proceedings against the company;

(b) reduction of share capital of the company, if any, included in the compromise or arrangement;

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(c) any scheme of corporate debt restructuring consented to by not less than seventy-five per cent. of the secured creditors in value, including—

- (i) a creditor's responsibility statement in the prescribed form;
- (ii) safeguards for the protection of other secured and unsecured creditors;
- (iii) report by the auditor that the fund requirements of the company after the corporate debt restructuring as approved shall conform to the liquidity test based upon the estimates provided to them by the Board;
- (iv) where the company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect; and (v) a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.

(3) Where a meeting is proposed to be called in pursuance of an order of the Tribunal under subsection (1), a notice of such meeting shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company, individually at the address registered with the company which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed:

Provided that such notice and other documents shall also be placed on the website of the company, if any, and in case of a listed company, these documents shall be sent to the Securities and Exchange Board and stock exchange where the securities of the companies are listed, for placing on their website and shall also be published in newspapers in such manner as may be prescribed:

Provided further that where the notice for the meeting is also issued by way of an advertisement, it shall indicate the time within which copies of the compromise or arrangement shall be made available to the concerned persons free of charge from the registered office of the company.

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(4) A notice under sub-section (3) shall provide that the persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot to the adoption of the compromise or arrangement within one month from the date of receipt of such notice: Provided that any objection to the compromise or arrangement shall be made only by persons holding not less than ten per cent. of the shareholding or having outstanding debt amounting to not less than five per cent. of the total outstanding debt as per the latest audited financial statement.

(5) A notice under sub-section (3) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India established under sub-section (1) of section 7 of the Competition Act, 142 2002 (12 of 2003), if necessary, and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.

(6) Where, at a meeting held in pursuance of sub-section (1), majority of persons representing threefourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company being wound up, on the liquidator and the contributories of the company.

(7) An order made by the Tribunal under sub-section (6) shall provide for all or any of the following matters, namely:—

(a) where the compromise or arrangement provides for conversion of preference shares into equity shares, such preference shareholders shall be given an option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable;

(b) the protection of any class of creditors;

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(c) if the compromise or arrangement results in the variation of the shareholders' rights, it shall be given effect to under the provisions of section 48;

(d) if the compromise or arrangement is agreed to by the creditors under sub-section (6), any proceedings pending before the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) shall abate;

(e) such other matters including exit offer to dissenting shareholders, if any, as are in the opinion of the Tribunal necessary to effectively implement the terms of the compromise or arrangement:

Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.

(8) The order of the Tribunal shall be filed with the Registrar by the company within a period of thirty days of the receipt of the order.

(9) The Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety per cent. value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement.

(10) No compromise or arrangement in respect of any buy-back of securities under this section shall be sanctioned by the Tribunal unless such buy-back is in accordance with the provisions of section 68.

(11) Any compromise or arrangement may include takeover offer made in such manner as may be prescribed: Provided that in case of listed companies, takeover offer shall be as per the regulations framed by the Securities and Exchange Board.

(12) An aggrieved party may make an application to the Tribunal in the event of any grievances with respect to the takeover offer of companies other than listed companies in such manner as may be prescribed and the Tribunal may, on application, pass such order as it may deem fit.

Explanation.—For the removal of doubts, it is hereby declared that the provisions of section 66 shall not apply to the reduction of share

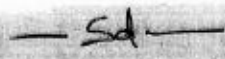
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*capital effected in pursuance of the order of the Tribunal under this section.*

10. In view of the judgements referred and the provisions mentioned above, this Adjudicating Authority is of the view that the primary focus of the legislation is to ensure revival and continuance of the Corporate Debtor by protecting the Corporate Debtor from its own management and from the Corporate death by liquidation. The Code is thus, a beneficial legislation, which puts the Corporate Debtor back on its feet, not being a mere recovery legislation for creditors.

11. Thus, this Adjudicating Authority direct the liquidator to act in accordance with the law by following the procedure of Section 230 & 232 of the Companies Act, 2013 and further extend the time for considering and carrying into effect the scheme of arrangement in respect of the Company under liquidation i.e. Sri Laxmi Cotsyn Pvt. Ltd. by a period of 120 days as it is of the view that time line for one year provided for liquidation can be extended in order to avoid the death of the Corporate Debtor by liquidation.

12. Accordingly, IA No. 230/2020 is hereby **allowed** and **disposed of**.

  
**JUSTICE RAJESH DAYAL KHARE**  
**MEMBER (J)**

**Date: 15.10.2020**

Swati Gupta  
(LRA)