

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 03
(IB)-31(PB)/2018

IN THE MATTER OF:

Oriental Bank of Commerce

... Applicant / Petitioner

Vs

Lotus Auto Engineering Ltd & Ors.

...

Respondent

Under Section 7 of Insolvency & Bankruptcy Code, 2016, CIRP.

Order delivered on 15.12.2020.

CORAM:

SH. B.S.V. PRAKASH KUMAR
HON'BLE ACTG. PRESIDENT

SH. HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

ORDER

IA-5463(PB)/2020:-

It is an application for extension of time on the ground that company could be sold as a going concern if liquidation period is extended for another 90 days, when we asked this counsel as to why the RP failed to get approval of Resolution Plan during CIRP, the liquidator counsel has revealed that during CIRP, several Expressions of Interest came, out of them, two resolution plans were placed before the CoC, but the CoC for its own reasons rejected those two plans.

When we have asked about the value of those plans, he said the value of each plan was around ₹100Core, as against this, now the reserve price set for selling the Corporate Debtor as going concern is only around ₹40Crore, which is not even half to the Resolution Plans came for consideration before the CoC during CIRP period.



When the liquidator is asked as to how the value during liquidation was substantially reduced, the liquidator has answered due to pandemic, value of the property has come down. But he himself said that during CIRP, the value of 20 acres of land belonging to the corporate debtor was valued at ₹50 Crore, the plant and machinery was valued at ₹50 Crore in the Resolutions rejected by the CoC. Assuming the value of the asset has come down owing to Covid Pandemic, would it come down to less than 50% value of the plan that came before the CoC around one year before? It is beyond our comprehension to believe that value of the asset has come down to less than half to the value present one year before.

No doubt, it is in the realm of CoC to approve or reject the plan, it is also in the realm of the liquidator to determine the value of the asset based on the valuations come before him, but when such huge variation has come with regard to the value of the asset, the liquidator should have made an enquiry. We don't think liquidator made any such verification to ascertain the correct value of the asset. Looking at the variation with regard to the value of the asset during the CIRP period and during the liquidation, we have asked circle value and market value of the land, to which the counsel has stated that circle value is more than market value.

By seeing huge variations in the values, and the way in which the CoC failing to approve the plan valued double to the liquidation value, and looking at the liquidator setting up reserve price too low, we are of the view that enquiry is necessary to find out whether or not the RP and the CoC fairly done their duties during the CIRP thereafter whether or not this liquidator has made any effort to ascertain the real value of the asset after the values are shown at abysmally low as against the valuations made during the CIRP.



In view thereof, we request IBBI to enquire into as to why valuation has become so low after liquidation is ordered, and we also request the CMDs of Oriental Bank of Commerce (which is now merged in Punjab National Bank), Central Bank of India and Saraswat Bank to enquire into as to whether the representatives of these Bankers acted so as to maximize the value of the Debtor Company. To ascertain the position, **Registry, NCLT Delhi** is directed to send this order to IBBI as well as CMDs of various Banks mentioned above.

However, the liquidator having sought extension of time of 90 days to complete the liquidation period for sale of the asset of the company as a going concern, the same is hereby extended for another 90 days w.e.f. **10.12.2020**.

In the meanwhile, the liquidator shall not proceed with the sale of the assets until before reports have come from IBBI and from the respective Banks and until before this matter is decided by this Bench. The Authorities mentioned are hereby suggested to enquire into and place their reports within 15 days from hereof.

The next date of hearing earlier given is rescheduled to **04.01.2021**.

- sd -

(B.S.V PRAKASH KUMAR)
ACTG. PRESIDENT

- sd -

(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)