

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
C.A. 2601(PB) /2019**

IN

Company Petition No. (IB) – 31(PB) /2018

*Under Section 33 of the Insolvency and Bankruptcy Code, 2016 for
liquidation of the corporate debtor*

In the matter of:

Oriental Bank of Commerce

....Financial Creditor

vs.

M/s Lotus Auto Engineering LimitedCorporate Debtor

AND

In the matter of:

Mr. Ashok Kumar Gulla

....Applicant/Resolution Professional

Order Pronounced on:01.06.2020

Coram:

**MR. B.S.V PRAKASH KUMAR
HON'BLE ACTNG PRESIDENT
MR. HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)**

For the Applicant: Mr. S.K Sharma, Advocate
Mr. Abhirup Das Gupta, Advocate
Mr. Ishan Duggal, Advocate

For the Respondent: Mr. Kshitiz Karjee, Advocate
Mr. Abhijit, Advocate
Ms. A. Jain, Advocate
Mr. B. Arora, Advocate

ORDER

HEMANT KUMAR SARANGI, MEMBER (T)

1. This is an application filed by the Resolution Professional under Section 33 (1) (a) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") for issuance of directions for liquidation of the corporate debtor, M/s Lotus Auto Engineering Limited.
2. The facts in brief are that the Financial Creditor, Oriental Bank of Commerce, had filed an application under Section 7 of the Code bearing number IB-31(PB)/2018 for initiation of Corporate Insolvency Resolution Process against the corporate debtor. The said application was admitted by this Tribunal on 07.08.2018 initiating Corporate Insolvency Resolution Process against the corporate debtor and there in appointed Mr. Ashok Kumar Gulla, as the Interim Resolution Professional.
3. Thereafter, in terms of Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) the Interim Resolution

Professional made paper publication inviting claims from the creditors of the corporate debtor. Consequently, in compliance of Section 21 of the Code read with Regulation 17 of the CIRP Regulations, Committee of Creditors was constituted.

4. Thereafter the first meeting of CoC was held on 06.09.2018 and the applicant was appointed as Resolution Professional of the Corporate Debtor. Subsequently, after approval of the CoC the Invitation for Expression of interest was published by the applicant. The applicant received expression of interest from 10 Prospective resolution Applicants.
5. However in third meeting of CoC it was decided that the timeline for submission of expression of interest should be extended, consequently, an amended Form-G was published in the newspapers.
6. That on 20.11.2018, the fourth CoC Meeting was conducted wherein the provisional list of eligible resolution applicants was discussed and finalized. Thereafter the final list was communicated to all eligible resolution

applicants and the timelines for submission of resolution plans was also extended in fifth meeting of CoC.

7. Meantime, since the statutory period of CIRP was coming to an end the applicant filed C.A 123/(PB)/2019 for extension of time. On the basis of the application this tribunal extended the CIRP period from 03.02.2019 to 04.04.2019 vide order dated 24.01.2019.
8. Thereafter, a further extension of 21 days was given to the applicant vide order dated 09.05.2019. However, since no resolution plan was approved by the Committee of Creditors, it was resolved in seventh meeting of CoC that the Corporate Debtor shall be liquidated and application in this regard should be filed.
9. The applicant filed C.A. 1058 (PB)/2019 for liquidation of corporate debtor, and C.A. 1053 (PB)/2019 was also filed by the applicant for issuance of directions to the CoC to consider the resolution plan. On 02.09.2019, in view of the amendment in Code notified on 06.08.2019 as a further period of 90 days was provided for completing the CIRP, the applications were disposed of by this tribunal to

consider the resolution plan filed by Laurel Investments Limited.

10. However, as the resolution plan submitted by the Resolution Applicant i.e. Laurel Investments Limited was not approved by CoC the applicant again published Form-G, inviting expression of interest by 20.10.2019.

11. In 23rd meeting of CoC held on 08.11.2019 it was stated by the applicant that only Laurel Investments Limited has submitted a resolution plan. The resolution applicant was asked to revised its resolution plan by CoC, accordingly a revised financial proposal was also filed by resolution applicant on 11.11.2019.

12. The resolution plan dated 08.11.2019 and revised financial proposal dated 11.11.2019 were put for e-voting on 12.11.2019 and the resolution plan filed by the resolution applicant, laurel Investments Limited was rejected by 51.8% voting share.

13. Thereafter in 24th meeting of CoC it was decided that an application for liquidation of corporate debtor should be filed before the Tribunal. It is also submitted that the CoC

in its 24th meeting has also deliberated regarding sale of corporate debtor as a going concern and also Compromise and Arrangement under Section 230 of the Companies Act, 2013.

14. The ex-management of the corporate debtor has raised objection with the contention that the offer made by the resolution applicant was more than the liquidation value and the object of the code is maximisation of the value of assets of the corporate debtor therefore the resolution plan should have been accepted instead of liquidating the corporate debtor.

15. In this regard the minutes of the CoC shows that the resolution plan could not be approved by CoC with required majority votes. We do not find any infirmity in the reasoned decision of the CoC. In the absence of any approved/viable resolution plan, the Adjudicating Authority has no option but to pass order of liquidation on completion of the insolvency resolution period. Be that as it may even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern.

16. It is also pertinent to note that the word “may’ used in Section 30(4) of the Code is indeed a discretion given to Committee of Creditors either to reject or accept the resolution plan with 66% voting share, despite the plan in all respects is correct. Commercial decision of CoC is not open to judicial review. The Resolution Professional has filed the present application for liquidation of the Corporate Debtor, as statutory period have elapsed from the date of initiation of CIRP and no Resolution Plan has been approved by the Committee of Creditors.
17. It is pertinent to refer to the statutory provisions provided in Section 33 (1) (a) of the Code which mandates that *“where the Adjudicating Authority before the expiry of the maximum period permitted for completion of the corporation insolvency resolution process under Section 12 does not receive a resolution plan under sub-section (6) of Section 30, it shall pass an order requiring the corporate debtor to be liquidated in the manner as laid down in the Chapter.”*

18. Therefore, upon failure of resolution process there being no approved resolution plan and on completion of the statutory CIRP period; Liquidation has to follow. Adherence to statutory requirement has to be in toto. When the language of the Code is clear and explicit the Adjudicating Authority must give effect to it whatever may be the consequences.

19. In the factual background and in the absence of any approved resolution plan and for want of time beyond statutory CIRP period; there is no other alternative left but to order in conformity with the decision of the Committee of Creditors, *for liquidation of the corporate debtor under Section 33 of the Code.*

20. In the result the application is allowed by ordering liquidation of the corporate debtor, namely M/s Lotus Auto Engineering Limited in the manner laid down in the Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 along with following directions:

a. Mr. Sanjay Kumar Jha with Registration No. IBBI/IPA-002/IP-N00684/2018-19/12031, is

appointed as Liquidator in terms of Section 34(1) of the Code.

- b.** Mr. Sanjay Kumar Jha, is directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- c.** The Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- d.** The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- e.** The Liquidator is directed to proceed with the process of liquidation in the manner laid

down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant regulations.

f. The liquidator shall follow up and investigate the financial affairs of the corporate debtor in accordance with provisions of Section 35 (l) of the Code.

g. The liquidator shall also follow up the pending applications including CA 854 (PB)/2019 for its disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.

h. 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.

- i. Copy of this order be sent to the financial creditors, corporate debtor and the Liquidator for taking necessary steps.
- j. C.A. 2601(PB) /2020 filed in IB 31(PB)/2018 is disposed of in the aforesaid terms.


(B.S.V PRAKASH KUMAR)
ACTNG PRESIDENT


(HEMANT KUMAR SARANGI)
MEMBER (T)

SHAMMY

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

C.A. 1066(PB) /2020

IN

Company Petition No. (IB) – 31(PB) /2018

*Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 for
liquidation of the corporate debtor*

In the matter of:

Deccan Value Investors LLP

.....Applicant

AND

In the matter of:

Oriental Bank of Commerce

....Financial Creditor

vs.

M/s Lotus Auto Engineering LimitedCorporate Debtor

Order Pronounced On: 01.06.2020

Coram:

**MR. B.S.V PRAKASH KUMAR
HON'BLE ACTNG PRESIDENT**

**MR. HEMANT KUMAR SARANGI
MEMBER (TECHNICAL)**

For the Applicant: Mr. S.K Sharma, Advocate
Mr. Abhirup Das Gupta, Advocate
Mr. Ishan Duggal, Advocate

For the Respondent: Mr. Kshitiz Karjee, Advocate
Mr. Abhijit, Advocate
Ms. A. Jain, Advocate
Mr. B. Arora, Advocate

ORDER

HEMANT KUMAR SARANGI, MEMBER (T)

1. This is an application filed by the applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") with following prayer:

i) allow the applicant to intervene in the present petition bearing C.P. IB 31/PB/2018;

ii) Extend the corporate insolvency resolution process of the Corporate Debtor for a period for 60 days;

iii) Allow the Applicant to submit its resolution plan and direct the Committee of Creditors and the Resolution Professional of the Corporate Debtor to consider the resolution plan;

2. The facts in brief are, the financial creditor, Oriental Bank of Commerce, had filed an application under Section 7 of the Code bearing number IB-31(PB)/2018 for initiation of Corporate Insolvency Resolution Process

against the corporate debtor. The said application was admitted by this Tribunal on 07.08.2018, initiating Corporate Insolvency Resolution Process (CIRP), against the corporate debtor. Thereafter, after completion of the CIRP period, as there was no approved resolution plan the resolution professional has filed an application for liquidation of the corporate debtor.

3. It is the case of the applicant, that the Corporate Debtor is an Amtek Group Company. The Flagship Company of Amtek Group, i.e., Amtek Auto Limited and one another group company Castex Technologies Limited, are also undergoing Corporate Insolvency Resolution Process, wherein, the Applicant has been declared as the highest bidder and in final negotiations/discussions with the respective Committee of Creditors.

4. It is also stated that the Corporate Debtor has major procurement of inputs from Castex Technologies Limited which is another Amtek Group Company. In the Amtek supply chain, the Corporate Debtor is entirely dependent upon Castex Technologies Limited for procurement and

dependent upon Amtek Auto Limited for selling and distribution. This mechanism gave synergy to Amtek Group and whoever will be a successful resolution applicant of Amtek Auto Limited, Castex Technologies Limited will definitely be needing the control/ownership of this Corporate Debtor to maintain business synergy.

5. The applicant further asserted that it will have serious interest to acquire control/ownership of the Corporate Debtor, once the applicant is declared as a successful resolution applicant in both Amtek Auto Limited and Castex Technologies Limited, by the respective committee of creditors in terms of applicable law.

6. Heard the parties and perused the case records.

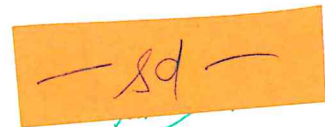
a. It is an admitted fact that the CIRP period of the corporate debtor was extended thrice by this Tribunal. The applicant had sufficient time to file its resolution plan before the Committee of Creditors but the applicant failed to do that within a specified period of time. The Corporate Insolvency Resolution Process under the Code is a time bound process and

admittedly no steps were taken by the applicant in respect of submitting its resolution plan before CoC.

- b. The applicant has not submitted its expression of interest before the Committee of Creditors during the specified period of time. No reasonable ground for non-filing of expression of interest as well as resolution plan before CoC on time has been given by the applicant. Since the CIR Process is a time bound process such prayer of applicant cannot be allowed at this belated stage in absence of sufficient ground for the same.

7. In view of the above, the application filed by the applicant is dismissed.

8. C.A. 1066 (PB)/2020 in IB 31 (PB)/2018 is disposed of in aforesaid terms.



(B.S.V PRAKASH KUMAR)
ACTING PRESIDENT



(HEMANT KUMAR SARANGI)
MEMBER (T)