
ATTENDENCE - CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 01.07.2020
THROUGH VIDEO CONFERENCING.

NAME OF THE COMPANY :UNION BANK OF INDIA VS. M/S. LAKSHMI
COTSYN LIMITED.

SECTION :33(1) (a) & 60(5) IBC

PRESENT: HON'BLE MR. JUSTICE (RETD.) RAJESH DAYAL KHARE,
MEMBER (J)

COUNSEL FOR RP :SH. ROHIT SEHGAL ALONGWITH SH. SHUBHAM
AGARWAL, ADVOCATE

COUNSEL FOR THE COC : SH. SANDEEP ARORA ALONGWITH SH. K.
DATTA, ADVOCATE

COUNSEL FOR THE SUSPENDED DIRECTORS: SH. R.P. AGARWAL, SR. ADV
ASSISTED BY SH. ABHAY KUMAR SINGH

COUNSEL FOR THE RESPONDENT: SH. UDAI CHANDANI, ADVOCATE

CA NO. 55/2019 IN CP NO. (IB) 142/ALD/2018

The matter was taken up today through Video Conferencing.
Order pronounced through Video Conferencing.
Petition disposed off, vide separate order-sheet.

Dated : 01.07.2020

JUSTICE RAJESH DAYAL KHARE
(MEMBER JUDICIAL)

Typed by :
SHUBHAM KR SINGH
(PS)

**IN THE NATIONAL COMPANY TRIBUNAL
ALLAHABAD BENCH**

**CA NO.55 OF 2019 IN
CP(IB) NO.142/ALD/2018**

**IN THE MATTER OF :
UNION BANK OF INDIA**

.....FINANCIAL CREDITOR

VS.

M/S LAXMI COTSYN LIMITED

.....CORPORATE DEBTOR

ORDER DELIVERED ON : 01.07.2020

CORAM :

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

APPEARANCE:

For the Suspended Board of Management: Mr. R.P. Agarwal, Sr. Advocate
alongwith Mr. Udai Chandani, Adv

For the CoC : Mr.Krishnendu Datta, Adv

For the Resolution Professional : Mr. Shubham Agarwal, Advocate

PER: MR. JUSTICE (RETD.) RAJESH DAYAL KHARE, MEMBER (JUDICIAL)

ORDER

1. The present application is filed under Section 33(1)(a) read with 33(2) of the Insolvency and Bankruptcy Code by the Resolution Professional, through his Counsel seeking order of the liquidation and appointment of liquidator under Section 33 and 34 of the Insolvency & Bankruptcy Code with such prayer, to pass an order for the liquidation of the Corporate Debtor Company i.e. Shri Lakshmi Cotsyn Limited
2. The Adjudicating Authority vide its order dated 30.05.2018 based on a petition filed by the Financial Creditor under Section 7 of the Code, initiated the CIRP in respect of Corporate Debtor Company and appointed Mr. Rohit Sehgal as IRP and subsequently was confirmed as RP in the matter.
3. It is further stated that an application for the extension of CIRP for a further period of 90 days which was admitted by this Tribunal vide order dated 26.11.2018, effective from 26.11.2018. As decided in the second

— Sd —

meeting dated 24.07.2018, Form G was published in The Economic Times in English And Amar Ujala in Hindi dated August 3,2018. Further in the 5th meeting of CoC dated 16.10.2018, the RP mentioned that he has got 3 EOI from three prospective Resolution applicants and they were given 07.11.2018 as the last date for submission of their resolution plans but none of them have submitted their plan.

4. In the 6th meeting dated 12.11.2018, the CoC resolved that the RP shall publish a fresh form G inviting further EOI from prospective applicants but then also no resolution plan was received , then again a fresh Form G was published on 9.01.2019 and in the 8th meeting of the CoC held on 08.02.2019 it was again appraised that no resolution plan was received by the last date, thus on 9th CoC meeting held on 18.02.2019 it was resolved that since the CIRP period is expiring , therefore an application under Sec 33(1)(a) for liquidation be moved to the adjudicating Authority for proposing liquidation of the Corporate Debtor and to appoint Mr. Rohit Sehgal as the liquidator was approved.
5. Further, the matter was taken up for hearing and the Learned Counsel appearing for the suspended management contended that the liquidation value which has been fixed at Rs.500 Crores, it is the amount which the liquidator expects to recover during the liquidation proceedings and there is nothing on record to show on what consideration the resolution proposal of the resolution applicant of Rs.650 Crores, was rejected, even though it was offering Rs.150 Crores in excess of the liquidation amount.
6. It was further argued that the public money is involved in the matter and the wisdom of the CoC in rejecting the offer which is substantially more than the liquidation amount is to be recorded while rejecting the proposal and accepting and passing the resolution for liquidation, for which no reasoning has been given and therefore it is argued that the resolution proposal of the respondent of Rs.650 Crores has been rejected with no

reasonableness and justification and without consideration of mind and even the fees of the liquidator has been exorbitantly fixed, which again amounts to misuse of the public money.

7. It was further contented that it is the intent of the Code that the assets of the company are to be secured to its maximum and business is also to be protected, if it can be done so, but the action of the liquidator in pressing for liquidation and rejecting the offer, which is substantially more than the liquidation amount, is purely against the provisions for which the Code has been enacted and therefore, it is argued that the action of the liquidator and the present application is totally misconceived and is liable to be rejected.

8. In reply to this, the learned counsel appearing for the Resolution Professional contended that inspite of the best efforts of RP; no resolution applicant approached the RP with a resolution plan so application under Sec 33 of IBC for liquidation of the corporate debtor has been filed before the Adjudicating Authority. Further stated that, even after filing of the application to initiate liquidation, the RP has convened five meetings of the members of CoC to consider the proposal of settlement under Section 12A IBC. A tabular representation of the decision of CoC pertaining to settlement proposals in provided herein :

S. No.	No. of CoC meeting	Date of the CoC	Amount of settlement offered by the promoter	Decision of the Committee of Creditors
1.	10 th	05.04.2019	110% of the "liquidation value"(Rs.500 to Rs 550 cr.)	Rejected

— Sd —

2.	11 th	15.05.2019	The promoter sought time to revise the proposal	Given time
3.	12 th	27.06.2019	Rs.500 Cr.	Rejected
4.	13 th	09.07.2019	Rs.550Cr.	Rejected
5.	14 th	09.08.2019	Rs 650 Cr.	Rejected

9. It is further stated that in the 14th and last meeting of CoC held on 09.08.2019, the applicants submitted a revised settlement proposal which after due deliberations was rejected by CoC, the RP further contends that the CoC has decided that any resolution plan less than 1000 Crores will not be considered by the CoC and therefore it is argued that the resolution plan of the proposed resolution applicant offering Rs.650 Crores is not acceptable and further prayed for the hearing of the application for liquidation and for passing of appropriate orders thereon as the CoC in its wisdom has rejected the aforementioned resolution plan.

10. It is further submitted by the Learned Counsel for CoC that the lenders are willing to consider the OTS proposal of the Suspended Management and have imposed four conditions which are as follows:

- i. That a reasonable amount (Approx 50Cr.) must be deposited in an escrow account as refundable earnest money.
- ii. That the OTS Amount offered i.e 650 Cr. must be exclusive of the CIRP Expenses and these expenses have to be separately provided for by the ex- management.
- iii. That the legal proceedings arising out of the findings of the forensic audit conducted by M/s Grant Thornton would continue.
- iv. That the proceedings in the matter of Personal Guarantee would also continue.

— Sd —

The counsel contented that suspended management have not responded to these conditions for which the meeting was held on 28.05.2020 which shows that suspended management is trying to delay the matter.

11. Later the counsel for suspended management informed that vide letter dated 05.06.2020 sent to RP and CoC members gave favourable response to the conditions imposed by the CoC in the meeting held on 25.05.2020 for acceptance of OTS proposal.
12. Further, when the matter was taken up on 04.06.2020, a query was made by this Court with regard to the acceptance of all the conditions by the respondents for considering the OTS and further that the offer of the respondent is more than the liquidation amount and during this period of Pandemic, if the company goes into liquidation, whether the Liquidator will be able to get the liquidation amount to this Sh. Krishnendu Datta, Ld. Counsel for CoC very fairly stated that he shall get back to the CoC and seek further instructions.
13. The learned counsel for the suspended management brought to the notice of this Tribunal that the respondents have stated that they have to borrow money from the foreign investors, which is to be done in consonance with the RBI guidelines and after getting approval from the RBI, the amount as indicated, shall be deposited and thus the OTS proposal may be considered and provisional approval to the same be given, so that the loan can be applied for, from the foreign investors.
14. Ld. Counsel appearing for CoC contended that the matter was discussed in detail before the CoC and a commercial call has been taken and it is pointed out that the ex management has been giving OTS proposals, ever since the application for liquidation was filed in February, 2019, however the investors supposedly giving the funds to the

ex-management have been changing. While giving the first proposal dated 08.02.2019, there was no name of any investor, ; in the second proposal dated 23.03.2019, the ex management said they were discussing with ARCIL, Centrum Finance, M/s Kanchanshobha Finance and Sancord Business and Financial Consultants. In the third proposal dated 21.05.2019, the ex mangement gave the name of M/s Invest in US Today LLP as investor. Thus in next two proposals dated 05.07.2019 and 26.07.2019 the name of the investor was not revealed. Then there was no communication till 18.05.2020, when the ex management gave it's another OTS proposal and the investor reffered to was Goldsun Holdings Limited, New York, USA. and even now they have not deposited any amount upfront much less than the amount, which was indicated to be deposited by them i.e. Rs.50 Crores and therefore the CoC is not considering any proposal at all.

15. Upon hearing the submissions made by the parties and going through the contents of the present Liquidation application and pursuing the documents annexed therewith this Adjudicating Authority is of the view that the liquidation order can be passed in respect of Corporate Debtor i.e. Shri Laxmi Cotsyn Limited, as the Members of the COC are in favour for liquidation of the Company and further RP has complied with the provision laid down under Insolvency and Bankruptcy Code and the conduct of suspended management seems to be nothing but to delay the process of liquidation as the change in name of investors and not providing any upfront payment to show their bonafides shows that it is very difficult for the company going under CIRP to raise funds for OTS proposal.
16. Therefore, by exercising the power under Section 33(1) it is hereby directed that the Corporate Debtor i.e Shri Laxmi Cotsyn Limited shall go into Liquidation and the moratorium declared for the Corporate Debtor

— Sd —

under Liquidation shall cease to have effect from pronouncement of this Order.

17. This Adjudicating Authority hereby appoint the Resolution Professional Mr. Rohit Sehgal, having Registration Number as IBBI/IPA-001/ IP-P00528/2017-18/10953, as 'Liquidator' under Section 34(1) of the Code as he is not disqualified as per Section 34(4) of the IBC. The Liquidator shall send an intimation to the ROC, Kanpur, U.P with which the Corporate Debtor Company is registered. The liquidator shall cause public announcement in newspaper by declaring that the Corporate Debtor has gone under liquidation.
18. The Liquidator shall act as per section 35 of the Insolvency and Bankruptcy Code, 2016 (hereinabove referred as "IBC") subject to direction time to time as may be issued by this Adjudicating Authority.
19. The liquidator shall file progress report of every three months.
20. With the aforesaid observations, the present **CA No. 55/2019** is **allowed** and accordingly stands **disposed of**.

— Sd —
JUSTICE RAJESH DAYAL KHARE
MEMBER (J)

Date: 01.07.2020

Swati Gupta
(LRA)