

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 17.08.2020

THROUGH VIDEO CONFERENCING
CAUSE LIST

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB)No. 66/BB/2017	For pronouncement of orders on IA 199/2020 -Liquidation	Sec 7 of I&B code 2016	Axis Bank Ltd	Cyril Amarchand Mangaldas	Lotus Shopping Centres Pvt. Ltd.	Maneesha Kongovi advocate for Liquidator Sanjay Kumar Mishra, Liquidator, A Murali Associates for IA 199/2020

ADVOCATE FOR PETITIONER/s:

ORDER

ADVOCATE FOR RESPONDENT/s:
I.A No. 199 of 2020 in CP (IB) No. 66/BB/2017 is disposed of by separate order.


MEMBER (T)


MEMBER(J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A. No. 199 of 2020 in
CP (IB) No. 66/BB/2017
U/s 52 & 60 (c) of the I & B Code, 2016
R/w Rule 11 of the NCLT Rules, 2016

**Lingamaneni Landmarks Developers
Private Limited,**

D. No. 386/1, NH-5, Atmakuru Village,
Mangalagiri Mandal, CRDA, Guntur,
Andhra Pradesh – 522 503

Applicant

In the matter of

Axis Bank Limited,

Trishul, 3rd Floor,
Opp. Samarteshwar Temple,
Law Garden, Ellisbridge, Ahmedabad,
Gujarat – 380 006

Financial Creditor

And

Lotus Shopping Centres Private Limited,

Through Liquidator Mr. Sanjay Kumar Mishra,
16th Floor, Tower II,
India Bulls Finance Centre,
S B Marg, Elphinstone (W)
Mumbai – 400 013

Corporate Debtor

Date of pronouncement: 17th August, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (through Video Conference):

For the Applicant : Ms. Aishwarya Anand Kumar,
For Liquidator : Mr. Aditya Sondhi, Senior Counsel
For the Petitioner : Ms. Tanvi Kishore

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A. No.199 of 2020 in CP (IB) No. 66/BB/2017 is filed by
Lingamaneni Landmarks Developers Private Limited (hereinafter

referred to as 'Applicant') Under Sections 52 & 60 (c) of the Code, 2016 r/w Rule 11 of the NCLT, Rules 2016, by inter alia seeking to quash e-auction notice dated 10th June 2020 published by the Liquidator, to direct the Liquidator to accept the claim of the Applicant and include the name of the Applicant in the list of the Financial Creditors of the Corporate Debtor; to direct the Liquidator to sell the Corporate Debtor as a going concern as and when the market conditions become favourable or dispose of the assets of the Corporate Debtor at their guidelines value and direct the Liquidator to reimburse the Applicant for costs of this Application etc.,

2. Briefs facts of the case, which is relevant to the case in question, are as follows:

(1) Initially, C.P.(IB)No.66/BB/2017 was filed by Axis Bank Limited (Petitioner/Financial Creditor) U/s 7 of the IBC, 2016 R/w Rule 4 of the IBC, 2016, by inter-alia seeking to initiate CIRP in respect of Lotus Shopping Centres Private Limited (Respondent/Corporate Debtor). After considering the issue, the Adjudicating Authority admitted the Company Petition vide Order dated 30.08.2018, by initiating CIRP in respect of the Corporate Debtor, imposing moratorium etc., Subsequently, the Company was placed under liquidation process vide order 18.06.2019.

(2) The Applicant is a Corporate Guarantor of the Corporate Debtor by way of payments made on 30.08.2019 and 15.02.2020 to the Financial Creditor. The Applicant discharged the dues of the Corporate Debtor to the extent of the Corporate guarantee/collateral security for Rs. 43, 37,00,000/- (Rupees Forty-Three Crores Thirty-Seven Lakh Rules only). By fulfilling the obligations of a Guarantor, the Applicant now stepped into the shoes of a secured creditor of the Corporate Debtor.

Further the Corporate Debtor was formed with the objective of developing large integrated shopping centres.

- (3) Before the liquidation order was passed, the Corporate Debtor partially developed a large shopping mall in a premium location in Mangalore with a built-up area of about 11.21 lakhs square feet/103375.37 square meters. The property is located in a prime area of Mangalore is highly sought after and substantially valued. The guidelines value notified by the Government of Karnataka in the said area of Mangalore is Rs. 40,000/- per square meter computed with the total built up area of the mall which is 103375.37 square meters amount of Rs. 413,00,00,000/- (Rupees Four Hundred and Thirteen Crores only). The Financial Creditor is the largest secured creditor of the Corporate Debtor and exercises complete control over the decision of the Committee of Creditors and also wrongfully exerts influence over the Liquidator. On account of litigation instituted by the Corporate Debtor against the Financial Creditor including two writ petitions bearing No. 37729 and 45041-42 of 2017 before the Hon'ble High Court of Judicature at Bengaluru inter alia praying for cancellation of licence of the Financial Creditor, the Financial Creditor is hostile to the interest of the Corporate Debtor. The Financial Creditor, owing to the control it exercises over the decisions of the COC, is prevailing upon the Liquidator to dispose of the secured assets of the Corporate Debtor immediately, in light of the present pandemic and its effect on economy, will not fetch a price to even satisfy the debts of the Financial Creditor let alone the Operational Creditors and employee/s of the Corporate Debtor.
- (4) The Applicant is one of the Corporate guarantors for the TermLoanFacility of Rs. 150,00,00,000/- (Rupees One Hundred



and Fifty Crores only) sanctioned by the Financial Creditor vide sanction letter No. AXISB/BNG/CB-MC/GK419/2012-13 dated December 4, 2012. Due to defaults in respect of repayment of the said facility by the Corporate Debtor, the Financial Creditor filed the present company petition before this Hon'ble Tribunal. Thereafter also invoked the corporate guarantee issued by the Applicant and initiated action under SARFAESI for liquidation of the collateral security provided by the Applicant. Consequently, the Applicant satisfied its obligations as a corporate guarantor in respect of the Term Loan Facility availed by the Corporate Debtor, to the extent of the said deed of Guarantee/Collateral security provided by the Applicant by paying an amount of Rs.43,37,00,000/-. In this regard the Financial Creditor issued a letter dated 17th February 2020 to the Applicant stating that the Applicant discharged its duty as a corporate guarantor and was not liable for any further dues.

- (5) The Applicant by making payments to the Financial Creditor on behalf of the Corporate Debtor had become a secured creditor of the Corporate Debtor and therefore addressed a letter on 28.02.2020 to the Liquidator requesting that the provisional claim filed by the Applicant on 16.07.2019 may be accepted and its claim be given priority over the second term loan facility of Rs. 55 crores provided by Axis Bank/Financial Creditor to the Corporate Debtor. However, the Liquidation acting at the behest of the Financial Creditor ignored the letter and claim of the Applicant for almost 4 months. The Liquidator instead went ahead issued and the above-mentioned notice seeking to auction the Principal Asset of the Corporate Debtor on a stand-alone basis. The Liquidator responded to the Applicant letter that its claim be accepted only on 14th June 2020 stating that the Applicant is required seek direction from this Hon'ble



Tribunal in this regard and also volunteered to state that according to his interpretation of the deed of guarantee, the Applicant cannot be considered as a Financial Creditor.

- (6) It is alleged that the Liquidator with malafide intentions and ulterior motives is attempting to deny the rightful claims of not only the Applicant but also of the other financial creditors, operational creditors and employee of the Corporate Debtor. In these circumstances, it is necessary to restrain the Liquidator from selling the Principal Asset of the Corporate Debtor.
3. The Liquidator has filed his Statement of objections dated 04.08.2020, by inter alia contending as follows:
- (1) There is no nexus between the two reliefs sought as and are deliberately sought to be linked to delay the auction process. The Application is an abuse of process of court and ought to be dismissed. Further, the application is filed under the wrong provisions of law. The Applicant is determining the value of the property as the guideline value and seeking this Hon'ble Court to decide to be the value of the property in ignorance of the valuation reports which is in utter disregard to the IBC. Further Applicant is seeking to determine the time of sale in complete contradiction to what is prescribed in the IBC. "Favourable market conditions" can never be a criteria or condition precedent for sale of liquidation estate as that cannot be controlled, predicted or ascertained by the Liquidator. The Liquidation commencement Date is 18.06.2019. The determination of whether a creditor is financial or not is first to be done by the Liquidator. The precedence of claims is to be determined by the Liquidator in accordance with section 53 of the IBC. The Applicant cannot bypass the process for determination of claims.



- (2) Since the secured creditor of the Corporate Debtor i.e. Axis Bank had a security interest over all the assets of the Corporate Debtor, the liquidator could form the liquidation estate only upon the Secured Creditor relinquishing its security interest. Pending relinquishment of security interest by the Secured Creditor, the Liquidator was informed that the promoter of the Corporate Debtor is in discussion with the Secured Creditor for a settlement and the Promoter has proposed a settlement of dues at Rs. 200 crores and he is desirous of filing a scheme under Section 230 of the Companies Act, 2013. Further, the Applicant being a guarantor of the dues owed to the Secured Creditor, was well aware of the resolution process prior to the liquidation order and was also part of the settlement and marked on the communications available with the Liquidator. However, the Liquidator did not receive any proposal for a scheme under section 230 of the Companies Act, 2013. Subsequently, the Secured Creditor by its letter dated 7.2.2020, relinquished its security interest, enabling the Liquidator to form a liquidation estate in terms of section 36 of the IBC and commence the process of selling the assets of the Corporate Debtor by way of an auction in accordance with the Code and Regulations.
- (3) The Applicant executed a corporate guarantee for Lotus in favour of the Secured Creditor, under Deed of Guarantee dated 23.4.2014. The Applicant has relied upon an entirely incorrect document as a guarantee deed in support of its application and on this ground alone the application is liable to be rejected. The Liquidator received a letter dated 17.02.2020 from the Secured Creditor which was addressed to the Applicant stated that the Applicant made payments in August 2019 and February 2020 to Secured Creditor to the tune of Rs. 43,37,00,000/- (Rupees



Forty-Three Crores Thirty-Seven Lakh only) towards guarantee obligations under the Deed of Guarantee and the Applicant was not liable for any further dues recoverable by Secured Creditor from the Corporate Debtor. However, the Liquidator has not taken decision on the Applicant's request to be treated as Financial Creditor. The Liquidator has raised queries in view of certain relevant clauses of the Deed of Guarantee dated 23.04.2014 and asked for an explanation from the Applicant. Instead of responding to the Liquidator with the required explanation, the Applicant has chosen to file the present untenable Application. The list of creditors is completed and submitted to the Tribunal and revised list of stakeholders on 14.01.2020. The Liquidator does not have powers to amend the list of creditors without the prior permission of this Hon'ble Tribunal. The Liquidator therefore requires the permission of this Hon'ble Tribunal to consider a belated claim and this procedure has been consistently adopted by the Liquidator in accordance with law. Belated claims filed by Omega Elevators were also entertained only after the permission of this Hon'ble Tribunal. Further, the Liquidator has to be satisfied that the Applicant is indeed a Financial Creditor in terms of the IBC and accordingly sought for the information from the Applicant. While the Liquidator, by its letter dated 14.06.2020, asked the Applicant to seek permission from this Hon'ble Tribunal to file a claim after the list of creditors has been filed. Hence further information was sought to ascertain the validity of the Applicant's claim. The Application is premature.

- (4) It is stated that Liquidator is empowered to sell the immovable and movable property and actionable claims of a company in liquidation in the manner specified in the IBC. Regulation 32 lists out various modes of sale which may be adopted by a



liquidator, but not limited to the sale of an asset on a standalone basis. After having made an informed decision, and with a view to realize the assets of the Corporate Debtor in a time-bound manner for maximization of value for the stakeholders, the Liquidator decided to proceed with the sale of assets of the Corporate Debtor on a standalone basis. The Applicant, at no point of time, has questioned the same despite being fully aware of the facts. Further, the Applicant now cannot question the sale on a stand-alone basis. Only when the said property was brought to auction, with intent to thwart the sale, the Applicant has approached this Hon'ble Tribunal contending urgency in the matter.

- (5) As per the ASPM, the E-auction was to be conducted on 17.04.2020. Unfortunately, due to nationwide lockdown imposed from 23.3.2020, the E-auction could not be conducted on 17.04.2020. This was duly notified to the prospective bidders by communication dated 13.04.2020. Once the lockdown was relaxed, the Liquidator diligently recommenced the process of E-auction. The Liquidator is bound to maintain the timelines prescribed under Regulation 47 as far as possible and cannot cease the auction process once commenced without cause. The Liquidator therefore published the E-auction notice on 10.6.2020 in the Business Standard (All India edition) and Kannada Prabha (Bangalore and Mangalore edition) as well as on the website of the Corporate Debtor, proposing to conduct the E-auction of the said Property on 30.06.2020. The Reserve Price for the said E-auction, calculated in accordance with the Regulations, was fixed at Rs.198,22,00,000/- (Rupees One Hundred Ninety Eight Crores Twenty Two Lakhs Only) and the Earnest Money Deposit was fixed at Rs.20,00,00,000/- (Rupees Twenty Crores Only). The last date for receiving the

Earnest Money Deposit for the E-auction was 24.6.2020. However, since the Liquidator did not receive Earnest Money Deposit from any prospective buyer until 24.06.2020, the E-auction could not take place on 30.06.2020. The process for auction of the said Property had commenced well before the lockdown and the revised date for E-auction was merely a continuation of the process under the ASPM. As per the entry in schedule I of the IBBI (liquidation process) Regulations, 2016, if any auction fails at the reserve price the Liquidator may reduce the reserve price to conduct subsequent auction. In accordance with said provisions, the Liquidator may have to revise the reserve price and issue a fresh auction notice to bring the said property to sale” Therefore, the allegations against the Liquidators are baseless .

4. Heard Ms.AishwaryaAnand Kumar, learned Counsel for the Applicant, and Shri. Aditya Sondhi, Learned Senior Counsel for the Liquidator, **through Video Conference**. We have carefully perused the pleadings of the Parties and extant provisions of the Code, and the Rules made thereunder.
5. Ms. AishwarayaAnand Kumar, learned Counsel for the applicant, after arguing the case, has also filed her written submissions dated 11.08.2020 by inter alia contending as follows:

(1) The Applicant filed its claim on 11.09.2018 i.e., within a period of 12 days from the date of commencement of insolvency resolution process and the Claim of the Applicant was taken on record, it was made a part of the CoC. However, the CIRP thereafter informed the Applicant that until it discharges its liability under the deed of guarantee, it would not be considered as a Financial Creditor and till then , the Applicant’s claim will be treated as contingent claim.




- (2) The Adjudicating Authority, vide its order dated 18.06.2019, directed to liquidate the Corporate Debtor by appointing Mr. Sanjay Kumar Mishra as Liquidator. By way of public notice the Liquidator u/s 38 (1) of the Code sought for re-submission of claims and proof in respect of the same. On 16.07.2019, the Corporate Debtor within a period of 25 days, filed its claim indicating that yet it had not discharged its obligation under the deed of guarantee and that its claim should be take on record as a provisional and contingent claim. On 28.08.2019, the Liquidator stated that the claim of the Applicant would be included only when the deed of guarantee is invoked by the secured creditor and the Applicant discharges his liability under the deed of guarantee. However, after the lapse of almost 3 and ½ months, the Liquidator, in a malafide manner issued a Reply dated 14.06.20 to the Applicant stating that Applicant would be required to approached the Hon'ble Tribunal. Surprisingly, in the reply filed by the Liquidator to the present application at para d (iii) at Page No.2 states that "the determination whether a creditor is financial or not is first to be done by the Liquidator. The precedence of claims is to be determined by the Liquidator in accordance with Section 53 of the IBC. The Applicant cannot bypass the process for determination of claim.
- (3) It is clear from the conduct of the Liquidator that he has intentionally tried to keep the present Applicant out of the process of liquidation. This is also apparent from the fact that a copy of the valuation reports not been shared with the present Applicant though it is secured creditor having paid an amount of Rs. 43.37 crores to the Axis Bank Limited. Therefore, it is claimed that the Applicant is legally entitled to



be part of the Consultative Committee of stakeholders which ultimately takes decision with regard to impugned E-auction. .

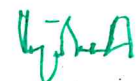
6. Shri. Aditya Sondhi, Learned Senior Counsel for the Liquidator, while pointing out various contentions raised in Liquidator's as briefly stated supra, has further submitted that the last date for receiving the Earnest Money Deposit for the e-auction was 24.06.2020. Since the Liquidator did not receive any prospective buyer until 24.06.2020 the e-auction could not take place on 30.06.2020 As per the entry in schedule I of the IBBI (liquidation process) Regulations, 2016, if any auction fails at the reserve price, the Liquidator may reduce the reserve price to conduct subsequent auction. In accordance with said provisions, the Liquidator may have to revise the reserve price and issue a fresh auction notice to bring the said property to sale" Therefore, the instant Application is premature and it has become infructuous.
7. The main point for consideration is whether the Applicant has a right to interfere in the impugned E-auction process initiated in accordance with law by the Liquidator, without determining its right to be part of Committee of Creditors and then to be stakeholders Consultation Committee.
8. In order to adjudicate the issue, the Parties have not placed all relevant documents before the Adjudicating Authority. For instance, even provisions of Code are not correctly quoted, apart from seeking multiple reliefs, not filed even relevant documents like Deed of Guarantee executed between the Parties, the Applicant has filed Deed of Guarantee dated 20th February, 2013(Page No. 45-51) which is between M/s G.Corp'n Lotus Mali Private Ltd and Axis Bank and Corporate Debtor. As per averments of Applicant, their Deed of Guarantee is dated 23rd April, 2014. However, it is relevant to point out redemption of Corporate Guarantee of Applicant in question to the extent of it liability is not in dispute. Axis Bank's letter dated



17th February, 2020, enclosed to the Application, declared that the Applicant has discharged their guaranteed liability for total amount of Rs.43.37 Cr (Rs. 25 Cr paid on 30th August, 2019 & Rs. 18.37 was paid on 15th February, 2020). Therefore, the Liquidator has to consider the claim of Applicant in terms of his email letter dated 28th August, 2019 addressed to D.Srinivasa Rao, Authorised Representative of the Applicant herein, wherein, it is interalia stated that the Claim of Applicant can be considered once it has discharged its guarantee obligations to Axis Bank. Since, the Applicant has discharged its guarantee obligations, the Liquidator should consider the claim of Applicant, and he cannot change his versions time and again. He has to discharge his statutory functions judiciously, without giving any scope for any sort of allegation for smooth functioning of Liquidation process in question. Since the Applicant is making its claim from date of inception of CIRP, question of delay do not arise.

9. Since Insolvency Process is to be concluded in a time bound manner, the Adjudicating Authority can mould the relief, in the interest of justice, by condoning technical defects as noticed in the instant Application. Since the impugned Auction could not take place, it is premature to examine it now.
10. For the aforesaid reasons and circumstances, and in view of prima facie case made out by the Applicant to consider its claim, it would be just and reasonable to direct the Liquidator to consider the claim of the Applicant basing on the evidence already submitted by it.
11. In the result, **I.A No. 199 of 2020** in C.P (IB) No. 66/BB/ 2017 is hereby disposed of with the following directions:

- (1) The Liquidator is directed to consider the claim of the Applicant in terms of his email letter, addressed to the Applicant by keeping in view the letter of Axis Bank, vide No.



AXISB/SAB/KC/2019-20/652 dated 17th February, 2020,
within a period of three weeks from the date of receipt of copy of
this order and take consequential action(s) ;

- (2) The Applicant is also permitted to submit further documents, if
any, in support of its claim to the Liquidator;
- (3) The other reliefs as asked for are not meritorious, and thus
they are hereby rejected.
- (4) No order as to costs.


ASHUTOSH CHANDRA
MEMBER, TECHNICAL


RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL