



**INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA**

Casebook Issue 39:

**Insolvency Tale of
Lotus sAuto
Engineering Limited**

**INSOLVENCY
UNCOVERED**

Index

1. About Lotus Auto Engineering Limited	2
2. Major Financial Creditors/Bankers.....	3
3. CIRP of Lotus Auto Engineering Limited	3-5
▪ <i>Oriental Bank of Commerce filed an application for initiating CIRP under section 7 of the Insolvency and Bankruptcy Code, 2016</i>	
▪ <i>Order of Moratorium & Public Announcement</i>	
▪ <i>Appointment of RP</i>	
▪ <i>Resolution Professional (“RP”) files application for extension of CIRP</i>	
▪ <i>Exclusion of Time from the period of 270 days</i>	
4. Liquidation of Lotus Auto Engineering Limited	5-6
▪ <i>NCLT passes the Liquidation Order</i>	
▪ <i>Change in Liquidator</i>	
5. Timeline.....	7
6. Bibliography.....	8

About Lotus Auto Engineering Limited

Lotus Auto Engineering Limited is a Public Company incorporated on 25th November 2010. It is classified as Non-govt company and is registered at Registrar of Companies, Delhi. Its authorized share capital is Rs 45,000,000/- and its paid up capital is Rs 43,522,400/-. Lotus Auto Engineering Limited was manufacturing from low to medium weight machined castings and supplying for companies like Maruti Suzuki India Limited, Cummins Inc, BorgWarner, Brakes India, Mushashi, Honda, Multimatic etc.

Directors of Lotus Auto Engineering Limited were Mr.Pankaj Kumar Gupta, Mr.Piyush Gupta and Mr. Mahesh Chand Agrawal.

Lotus Auto Engineering Limited's Corporate Identification Number is (CIN) U74120DL2010PLC210772 and its registration number is 210772. Its Email address is corporatcorp.law@gmail.com and its registered address is 3 & 4 L.S.C Pamposh Enclave Greater Kailash, Part-1 New Delhi New Delhi DL 110048 IN.

The Company was admitted under the Corporate Insolvency Resolution Process as per provisions of the Insolvency & Bankruptcy Code, 2016. Mr. Ashok Kumar Gulla was appointed as Interim Resolution Professional vide order dated 07.08.2018 passed by Principal Bench of Hon'ble National Company Law Tribunal, New Delhi. Appointment of Mr. Ashok Kumar Gulla was confirmed as Resolution Professional in the First Meeting of Committee of Creditors held on 12th September 2019.

The Company is currently undergoing Liquidation Process as per provisions of the Insolvency & Bankruptcy Code, 2016 vide order dated 01.06.2020 passed by Principal Bench of Hon'ble National Company Law Tribunal, New Delhi. Mr. Ashok Kumar Gulla has been appointed as Liquidator for Lotus Auto Engineering Limited vide order of Hon'ble NCLT dated 12.06.2020.

Major Financial Creditors/Bankers

The Major Financial creditors were Oriental Bank of Commerce, Central Bank of India and the Sarawat Co-operative Bank Limited.

CIRP OF LOTUS AUTO ENGINEERING LIMITED

Oriental Bank of Commerce filed an application for initiating CIRP under section 7 of the Insolvency and Bankruptcy Code, 2016 ²

Bank filed Petition under Section 7 of the Insolvency & Bankruptcy Code, 2016 ("IBC") read with Rule 4 of Insolvency & Bankruptcy (AAA) Rules, 2016, by a Financial Creditor, (hereinafter referred as 'the Creditor')namely, Oriental Bank of Commerce, The Corporate Debtor, namely, M/s. Lotus Auto Engineering Limited (hereinafter referred as 'the Debtor'), have committed default as on 30.11.2017 in making payment of Rs. 202,58,88,776/- . The applicant proposed Mr. Ashok Kumar Gulla, as the IRP to carry the functions as mentioned under the Code.

The Promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under section 19 of the code to extend every assistance and cooperation to the IRP as may be required by him in managing day to day affairs of the Corporate Debtors.

Order of Moratorium & Public Announcement³

Moratorium shall have effect from 07th August, 2018, it shall remain effective till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) Section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.

Public announcement of the Corporate Insolvency Resolution Process was made immediately as specified under section 13(2), IBC, 2016

Appointment of RP 4

Financial Creditor filed an application that the CoC in its meeting dated 06th September, 2018, has decided to continue with IRP as being RP i.e. Mr. Ashok Kumar Gulla. The said resolution was passed with 100% voting in the CoC.

Resolution Professional (“RP”) files application for extension of CIRP⁵

Resolution Professional (RP), Mr. Ashok Kumar Gulla, filed an application in NCLT for extension of CIRP under section 12(2) of Code read with Regulation 40(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Corporate Debtor was authorised to file an application before the Hon’ble NCLT, Principal Bench for extending the time limit for completion of Insolvency Resolution Process by another 90 days from 03rd February, 2019. The application is supported by the resolution passed by the CoC in its 06th Meeting dated 15th January, 2019.

Accordingly, the period of 180 days is extended by another 90 days which shall now expire on 04th May, 2019.

Exclusion of Time from the period of 270 days 6

Application is made with a prayer for excluding some period from the statutory period of 270 days from the CIRP. Resolution is passed by the CoC in respect of the same on 04th May, 2019.

The first period sought to be excluded is from 07.08.2018 to 13.08.2018 (6 days) on account of date of order of admission and the actual date on which Resolution Profession takes charge.

The second period sought to be excluded is from 26.04.2019 to 17.05.2019 on account of bank accounts of Corporate Debtor frozen by VAT department.

The above mentioned period is excluded from the statutory period of 270 days.

In view of the amendment in code notified on 06th August, 2019, in the order dated 02nd September, 2019, it was ordered to Mr. Das Gupta, Learned Counsel for the RP to convene CoC and apprise the CoC that CIRP can now go up to 90 days from 16th August, 2019. The CoC may consider the Resolution Plan by Laural Investments Limited by putting conditions in accordance with law.

NCLT passes the Liquidation Order 7

In the 24th CoC Meeting it was decided that an application for liquidation of Corporate Debtor should be filed before the tribunal. The CoC also deliberated regarding sale of CD as going concern and also Compromise and Arrangement under section 230 of the Companies Act, 2013.

The 330 days of the resolution period had expired. No resolution plan was approved by CoC. Accordingly, the Resolution Professional filed this application for liquidation of the Company as provided u/s 33 of the Insolvency & Bankruptcy Code, 2016 (Code).

Mr. Sanjay Kumar Jha , to act as liquidator under section 34(1) of the IBC, 2016. was appointed as Liquidator. The liquidator to issue public announcement stating that the Corporate Debtor is in Liquidation in terms of Regulation 12 of the IBBI(Liquidation Process) Regulations , 2016.

Registry was directed to communicate this order to the Registrar of Companies, NCT of Delhi & Haryana and to the IBBI.


Fresh Moratorium under section 33(5) to commence. The Liquidator shall follow up and investigate the financial affairs of the Corporate Debtor. The Liquidator to submit Preliminary Report to the Adjudicating Authority within 75 days from the Liquidation Commencement Date.


Change in Liquidator⁸


The Bench appointed the liquidator from Panel as there was no direction from the CoC to appoint the RP as Liquidator.


The RP filed an application for modification of the earlier order, to appoint RP as the Liquidator. The Bench modified the order earlier passed and appointed Mr. Ashok Kumar Gulla as the Liquidator and directed the CoC to pay Rs. 20,000/- within a week to Mr. Sanjay Kumar Jha for the expenses incurred by him soon after he was appointed as Liquidator.


Timeline


- 
- 07.08.2018
 - NCLT admitted application for CIRP.

- 
- 07.08.2018
 - Order of Moratorium & Public Announcement

- 
- 25.09.2018
 - Appointment of Resolution Professional

- 
- 24.01.2019
 - Application for Extension of CIRP period

- 
- 01.06.2020
 - Liquidation Order passed by NCLT

- 
- 12.06.2020
 - Application for Change of Liquidator

Bibliography

1<http://lotus-auto.in/>

2https://nclt.gov.in/sites/default/files/Interim-order-pdf/Oriental%20Bank%20of%20Commerce%20Vs.%20Lotus%20Auto%20Engineering%20Ltd%20%20%26%20Ors._8.pdf

3https://nclt.gov.in/sites/default/files/Interim-order-pdf/Oriental%20Bank%20of%20Commerce%20Vs.%20Lotus%20Auto%20Engineering%20Ltd%20%20%26%20Ors._8.pdf

4https://nclt.gov.in/sites/default/files/Interim-order-pdf/Oriental%20Bank%20of%20Commerce%20Vs.%20Lotus%20Auto%20Engineering%20Ltd%20%20%26%20Ors._10.pdf

5https://nclt.gov.in/sites/default/files/Interim-order-pdf/Oriental%20Bank%20of%20Commerce%20Vs.%20Lotus%20Auto%20Engineering%20Ltd%20%20%26%20Ors.%20_0.pdf

6https://nclt.gov.in/sites/default/files/Interim-order-pdf/Oriental%20Bank%20of%20Commerce%20Vs.%20Lotus%20Auto%20Engineering%20Ltd%20%20%26%20Ors.%20_4.pdf

6https://nclt.gov.in/sites/default/files/Interim-order-pdf/Oriental%20Bank%20of%20Commerce%20Vs.%20Lotus%20Auto%20Engineering%20Ltd%20%20%26%20Ors.%20_12.pdf

7<https://nclt.gov.in/sites/default/files/feb-Interim-Order-pdf/Oriental%20Bank%20of%20Commerce%20Vs.%20Ms%20Lotus%20Auto%20Engineering%20Ltd%20%26%20Ors..pdf>

8https://nclt.gov.in/sites/default/files/feb-Interim-Order-pdf/Oriental%20Bank%20of%20Commerce%20Vs.%20Lotus%20Auto%20Engineering%20Ltd%20%20%26%20Ors.%20_2.pdf