

IN THE NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HYDERABAD



IA (IBC) 561 of 2021

IN

CP (IB) No. 111/7/HDB/2017

Application under Section 60(5) of the IBC, 2016 R/w Regulation 32 and 33 of the IBBI (Liquidation Process) Regulations 2016 /or Regulation 38 of the IBBI (Liquidation Process) Regulations 2016 and Sections 54(1) and (2) of IBC, 2016 R/W Regulation 45 of the IBBI (Liquidation Process), Regulations, 2016

IN THE MATTER OF:

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

IDBI BANK LIMITED

...FINANCIAL CREDITOR

Versus

LANCO INFRATECH LIMITED

... CORPORATE DEBTOR

Filed by

Liquidator of Lanco Infratech Limited

... APPLICANT

FREE OF COST COPY

Date of order: 26.09.2022

Coram:

Dr N. Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)

Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

For the Applicant:- Mr. R Sankaranarayanan, Senior Counsel assisted by Mr. Allwin Godwin, Counsel, Mr. Vijayant Palliwal, Counsel and Ms. Niranjana Pandiyan, Counsel



PER: BENCH

ORDER

1. The present application is filed on behalf of the Liquidator of Lanco Infratech Limited (“LITL”) (hereinafter referred to as the “**Liquidator/Applicant**”) under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) read with Regulation 32 and 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 (“**Liquidation Regulations**”), seeking approval of the acquisition plan dated 22 September 2021 (“**Acquisition Plan**”) submitted by KRS Erectors Private Limited (referred to as “**KRSEPL**”) pursuant to their bid for acquiring LITL as a going concern on as is where is basis and as is what is basis in the liquidation process of LITL or in the alternative for passing appropriate directions in relation to the distribution of the assets/properties as set out in **Annexure A** of this Application (“**Unsold Assets**”) amongst the stakeholders of LITL that could not be sold in the liquidation process of LITL and allowing for the dissolution of LITL under Section 54 (1) and (2) of the Code read with Regulation 45 and Regulation 38 of the Liquidation Regulations.

2. To put concisely, this Adjudicating Authority vide its order dated 7 August 2017 admitted an application under Section 7 of the Code filed by IDBI Bank Limited against LITL and appointed the Applicant to act as the interim resolution professional of LITL who continued as the resolution professional of LITL (“**Resolution Professional**”).

3. Since no resolution plan was considered by the committee of creditors of LITL, pursuant to an application filed under Section 33(1) of the Code, this Adjudicating Authority *vide* its order dated 27th August 2018 ordered the initiation of the liquidation process of LITL and appointed the Applicant to act as the liquidator of LITL (“**Liquidator**”).

4. Pursuant to the above order, the Applicant undertook the processes and procedures required as per the Code and the Liquidation Regulations thereunder and accordingly, a public announcement for intimation of the liquidation process of LITL was issued as per Regulation 12 of the Liquidation Regulations on 30 August 2018.

5. It is averred that the Applicant has carried out five rounds of open e-auction processes in relation to the liquidation of LITL and as many as 300 potential bidders were reached out, through marketing campaigns, for participating in the auctions. “iQuippo Services Pvt. Ltd” was appointed as the e-auction agency to provide assistance in carrying out the e-auctions. Further, it is stated that process of e-auction was conducted by the Applicant with due consultation with the secured stakeholders of LITL as recorded in the minutes of the meeting dated 20 March 2019, 24 April 2019 and 10 September 2020. The details of e-auction processes are explained as below:

(a) The First round of the e-auction process was conducted between 27 May 2019 to 3 June 2019 (“**First E-Auction**”) after the public announcement was made on 19 April 2019 and the process document was issued in May, 2019 wherein the auction was conducted for the following categories:

Handwritten signature



- LITL as a going concern;
- Business(es) of LITL as a going concern;
- Investments held by LITL in various entities including its subsidiaries;
- Arts and artefacts;
- Land and Investment property;
- Office Equipment, Building, Furniture & Fixture, and other inventory items;
- Scrap;
- Used cars and other vehicles; and
- Used construction equipment and related machinery.

(b) The second round of the e-auction process was conducted between 28 August to 3 September 2019 (“**Second E-Auction**”) after the public announcement was made on 14 August 2019 and the process document was issued in August 2019 wherein the auction was conducted for the following categories:

- LITL as a going concern;
- Business(es) of LITL as a going concern;
- Investments held by LITL in various entities including its subsidiaries;
- Arts and artefacts;
- Land and Investment property;
- Office Equipment, Building, Furniture & Fixture, and other inventory items;





- Scrap;
- Used cars and other vehicles; and
- Used construction equipment and related machinery.

As may be seen, in discharge of his duties under Section 35 (1) (b) and (f) of the Code read with Regulation 32 of the Liquidation Regulations, the Applicant had conducted e-auction process for the sale of LITL as a going concern in the First e-auction and Second e-auction, however, no bid was received by the Applicant.

(c) The third round of the e-auction process was conducted between 23 October to 24 October 2019 (“**Third E-Auction**”) after the public announcement was made on 4 October 2019 and the process document was issued in October 2019 wherein the auction was conducted for the following categories:

- Investments held by LITL in various entities including its subsidiaries;
- Arts and artefacts;
- Land and Investment property;
- Office Equipment, Building, Furniture & Fixture, and other inventory items;
- Scrap;
- Used cars and other vehicles; and
- Used construction equipment and related machinery.







(d) The fourth round of the e-auction process was conducted between 17 February to 18 February 2020 (“**Fourth E-Auction**”) after the Public announcements was made on 8 February 2020 and the process document was issued in February 2020 wherein the auction was conducted for the following categories:

- Investments held by LITL in various entities including its subsidiaries;
- Arts and artefacts;
- Land and Investment property;
- Office Equipment, Building, Furniture & Fixture, and other inventory items;
- Scrap;
- Used cars and other vehicles; and
- Used construction equipment and related machinery

(e) The fifth round of the e-auction process was conducted between 07 October 2020 to 09 October 2020 (“**Fifth E-Auction**”) after the Public announcements was made on 28 September 2020 and the process document was issued in October 2020 wherein the auction was conducted for the following categories:

- Investments held by LITL in various entities including its subsidiaries;
- Arts and artefacts;
- Land and Investment property;



- Office Equipment, Building, Furniture & Fixture, and other inventory items;
- Scrap;
- Used cars and other vehicles; and
- Used construction equipment and related machinery
- Receivables

6. That apart, from 31 July 2020 to 05 October 2020, the Liquidator has also attempted to sell the assets of LITL which remained unsold in the first four e-auctions having aggregating value of approx. INR 17.51 crores by way of private sale, in accordance with Regulation 33 (2)(c) read with Schedule I of the Liquidation Regulations. Under the private sale, an amount of INR 17.51 crores has been realized by selling a total of 180 number of lots. It is averred the delivery of the sold assets is on-going and may require another 1 to 2 months for conclusion. The unsold assets have been offered again under the Fifth E-Auction, the details of which have been given in paragraph (c).

A summary of the assets offered and sold under the private sale is as follows:

No. of Lots Sold	Reserve Price under last auction (INR Crore)	Bid Value under Private Sale (INR Crore)	Amount Realised (INR Crore)
180	16.74	17.51	17.51

Approval of the Acquisition Plan

7. It is submitted that the Applicant has been able to sell certain assets of LITL and has consequently distributed the proceeds from the sale of such assets in the

[Handwritten Signature]



order of priority as prescribed in Section 53 of the Code and rules and regulations framed thereunder.

8. The Applicant has been consistently considering various modes of completion of the beneficial liquidation of LITL. It is stated that despite conducting five rounds of e-auction processes and the aforesaid sale through private sale, various assets of LITL still remained unsold. The Applicant further stated that this Adjudicating Authority vide order dated 02.11.2020 had passed the following orders:

"Time is extended by another three months with effect from today. It is made clear that no further extensions or exclusions will be granted and Liquidator is directed to complete the process within the time allowed."

Therefore, as per the said order of this Adjudicating Authority, the liquidation process of LITL had expired on 02 March 2021.

9. The Applicant further stated that in terms of the provisions of the Code and rules and regulations framed thereunder, the Applicant had taken all steps for the beneficial liquidation of LITL. It is brought to the knowledge of this Tribunal by the Applicant that there are tangible assets and other assets such as investments & receivables having an aggregate reserve price of approximately INR 111 Crores that remain unsold and legal proceedings are pending before various legal forums wherein the gross maximum potential recoveries for LITL aggregate to approx. INR 1500 Crores. In the event LITL is to be dissolved as on date (i) the potential recoveries from the said legal proceedings would become NIL; (ii) the recovery prospects for stakeholders with respect to the said unsold assets would be prejudiced on account of piece-meal distribution of assets amongst the various

Handwritten signature



stakeholders. The aforesaid, could therefore result in huge opportunity cost loss to the stakeholders who have already taken a large hair cut in the present process. As such, the Applicant had reached out to the potential bidders, in addition to the bidders who participated in the said five e-auction processes, in relation to the legal proceedings and sale of assets in the liquidation process. Pursuant to the aforesaid, Eight Capital Advisory Services Pvt. Ltd. ("**Eight Capital**") *vide* email dated July 09, 2020 and through several telephonic conversations had expressed interest in acquiring legal proceedings in the nature of actionable claims of LITL. However, subsequently, Eight Capital did not participate in the process. Further, Payard Investment Pvt. Ltd. ("**Payard**") *vide* email dated 15th October 2020 had initially expressed interest in acquiring actionable claims of LITL. The expression of interest submitted by Payard was deliberated with the stakeholders in the 11th meeting held on 21st October 2020. Pursuant to the said discussions, Payard was requested to submit a detailed proposal. The Applicant provided the necessary details and documents to Payard for their due diligence. Subsequently, as per several discussions with the Applicant and due diligence conducted by Payard, an acquisition plan was submitted by Payard for acquiring LITL as a going concern. Discussions and deliberations with the stakeholders took place on the acquisition plan submitted by Payard *vide* email dated 10th February 2021 in the 13th Stakeholders meeting held on February 12, 2021. Though Payard revised certain terms of the plan twice by way of 1st and 2nd amendments as directed by the stakeholders and the same were discussed in the 16th and 17th Stakeholders meetings but owing to absence of any other comparable proposal, the liquidator was requested to obtain further extension for the liquidation process and explore the possibility of further maximizing the value of LITL from the liquidation process. The Applicant had approached this Adjudicating Authority by means of I.A. No. 162 of 2021 in CP (IB) 111/7/HDB/2017 as the liquidation process of





LITL was going to expire on 02 March 2021. A copy of the Application filed by the Applicant in I.A. No. 162 of 2021 in CP (IB) 111/7/HDB/2017 (without annexures) is annexed and marked as **Annexure E**.

10. It is averred by the Liquidator that in order to run the fresh bidding process, an advertisement was published on 12 July 2021, inviting acquisition plans for the sale of LITL as a going concern. Thereafter, the process document was released to the prospective bidders of LITL. Pursuant to releasing the process document the following parties expressed their.

- (a) Manikaran Power Limited;
- (b) Sreeram Reddy Vanga (Innopark (India) Pvt Limited);
- (c) Equilibrated Venture CFlow Private Limited (“**Equilibrated**”); and
- (d) Payard Investments Private Limited.

11. Out of above parties, Manikaran Power Limited and Sreeram Reddy Vanga (Innopark (India) Pvt Limited) sought time for submission of their respective acquisition plans. Equilibrated submitted its acquisition plan on 24 July 2021. Payard had requested to consider the last acquisition plan which it had submitted and in the alternative, sought for an extension of 2 (two) weeks for re-submission of its acquisition plan.

12. Thereafter, the stakeholders in their 18th meeting held on 26 July 2021, deliberated on the acquisition plan dated 24 July 2021 submitted by Equilibrated. Subsequently Equilibrated expressed its desire to withdraw its acquisition plan dated 24 July 2021 in the meeting of the stakeholders of LITL held on 28 July 2021, and proposed to bid only the tangible assets/ other asset class to be acquired on a standalone basis and for assignment of actionable claims of LITL.



Accordingly, as per the decision taken in the stakeholders of LITL on 30 July 2021, a public announcement was made on 10 August 2021 in Financial Express and Nava Telangana newspapers and on the website of LITL in accordance with Regulation 12 of Liquidation Regulations

(i) inviting bids for the sale of LITL as a going concern consisting of the assets of the (a) assets of the nature of construction equipment, other tangible assets, receivables, investments in shares of subsidiaries, etc. and (b) assignment of the actionable claims of LITL comprising of legal cases; (Or)

(ii) sale of block assets of LITL comprising of (a) the assets of the nature of construction equipment, other tangible assets, receivables, investments in shares of subsidiaries, etc. and (b) assignment of the actionable claims of LITL comprising of legal cases.

13. The process document dated 31 August 2021 was released to the prospective bidders of LITL, and the last date for submission of the acquisition plan, earnest money deposit and the supporting documents by the prospective bidders was fixed as 08 September 2021. Interests were received from 11 (eleven) potential investors. KRS Erectors Private Limited, Aashrika Infra LLP and Mahakram Developers Private Limited submitted their acquisition plans and based on the Evaluation Matrix, the acquisition plan of KRS Erectors Private Limited was rated the highest and consequently KRS Erectors Private Limited had submitted their acquisition plan dated 07 September 2021, for acquisition of LITL on a going concern basis in accordance with the provisions of the Code, which was discussed in the 21st Stakeholders Meeting held on 17 September 2021 and as per the discussions KRS Erectors Private Limited submitted a second





revised plan on 18 September 2021 which was placed before the stakeholders in the continuation of their 21st Stakeholder's Meeting held on 18 September 2021. Following consultations with the stakeholders, KRS Erectors Private Limited submitted a revised plan on 21 September 2021 which was discussed by stakeholders in the continued 21st Stakeholder's Meeting held on 21 September 2021 and several improvements were made to the Acquisition Plan including the provisions relating to the (i) Monitoring committee (Clause 3.9); (ii) Avoidance transactions (Clause 5.11); (iii) Margin money (Clause 1.6); and (iv) Unearned revenue (Clause 5.10). After extensive deliberations in relation to treatment of existing charges and security interests (*Ref*: Clause 1.1 of the Acquisition Plan, the Applicant was asked by the stakeholders to finalise the Acquisition Plan based on the discussions conducted with KRS Erectors Private Limited over various Stakeholder's Meetings.

14. Contour of the Acquisition Plan:-

A. **Settlement under the Acquisition Plan:** The Acquisition Plan provides for an Upfront Payment Amount of INR 4 Crores (Rupees Four Crores) towards the acquisition of the assets of the Corporate Debtor identified in Annexure III-A of the Process Document. An Upfront Commitment Amount of INR 1 Crore (Rupees One Crore) is provided to prosecute actionable claims comprising legal cases identified in Annexure III-B of the process document. Total expenses as a percentage of proceeds to be realized from sale of assets under Annexure III-A and actionable Claims under Annexure III-B of the Process Document are limited to maximum cap of 9.50%, beyond which they will be borne by the Corporate Debtor. A sharing mechanism is provided for recoveries from sale of assets and actionable claims:





S. No.	Particulars	Stakeholder's Share	Bidder Share
a)	Assets under Annexure III - A of the Process Document	50% (Fifty Percent)	50% (Fifty Percent)
b)	Actionable Claims comprising legal cases, as identified more particularly in Annexure III - B of the Process Document		
	Up to 50 Cr	30% (Thirty Percent)	70% (Seventy Percent)
	50 Cr to 150 Cr	60% (Sixty Percent)	40% (Forty Percent)
	> 150 Cr	70% (seventy Percent)	30% (Thirty Percent)

(Ref: Clauses A, B, C and D of the Acquisition Plan)

B. **Effective Date:** The Effective Date identified in the Acquisition Plan is the date of approval of the Acquisition Plan by the Adjudicating Authority (Ref: Clause H of the Acquisition Plan).

C. **Monitoring Mechanism:** The Acquisition Plan provides for the creation of a Monitoring Committee comprising of 2 (two) nominees of the secured financial creditors and 2 (two) nominees of the bidder to perform the roles and responsibilities of the board of LITL until the Board is reconstituted. This Monitoring Committee will be assisted by necessary

Handwritten signature



professionals to enable smooth transfer of LITL. Upon the reconstitution of the board, the monitoring committee will comprise of 2 (two) nominees of secured financial creditors and 2 (two) nominees of the bidder. This monitoring committee will remain in place till the complete monetization of assets and actionable claims of LITL. The monitoring committee shall take decisions with unanimous consent of all members, and the decisions of monitoring committee shall be binding on LITL, bidder and the stakeholders of LITL. The monitoring committee will decide on the litigation strategy of the actionable claims and the process of sale of the assets (**Ref:** Clause 3.9, 3.10 of the Acquisition Plan).

D. **Margin money:** The bidder assumes no liability with respect to any non-fund-based facilities like bank guarantee's or letter of credit / comfort and any margin money on account of such bank guarantees shall pass through from LITL to the stakeholders of LITL, and shall not be available to the bidder. Any such monies, if released to LITL or bidder shall be kept in trust and forthwith deposited into the designated bank account for distribution amongst the stakeholders of LITL as per this Acquisition Plan. (Ref: Clause 1.6 of the Acquisition Plan)

E. **Avoidance Litigation:** Any recovery pursuant to any application filed by the resolution professional or the liquidator in relation to transactions covered under Section 43, 45, 50 and 66 of the Code (as applicable), as more particularly identified in Annexure IV ("**Avoidance Litigation**") of the Acquisition Plan, shall pass through from LITL to the stakeholders of LITL, and shall not be available to the bidder. Any such amounts, if received by LITL or bidder shall be kept in trust and forthwith



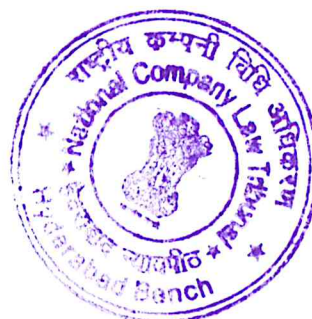
deposited into the designated bank account for distribution amongst the stakeholders of LITL. It is clarified that the Avoidance Litigation shall be continued by the bidder or corporate debtor at cost of secured financial creditors of the corporate debtor, in accordance with any directions issued by the secured financial creditors. (*Ref:* Clause 5.11 of the Acquisition Plan)

F. **Unearned revenue:** Any unearned revenue / receivables of LITL and/or any amount received on account of revenue generated prior to / during CIRP and liquidation other than more clearly specified in Annexure IIIA and Annexure IIIB of the process document shall be shared between the bidder / LITL and the stakeholders of LITL in the ratio of 50%-50% respectively i.e. in the sharing mechanism for the recoveries to be made from assets (defined in the Acquisition Plan) as per the Acquisition Plan. (*Ref:* Clause 5.10 of the Acquisition Plan)

G. **Escrow Mechanism:** The Acquisition Plan provides for an Escrow Bank Account and a Designated Bank Account. Payments of Upfront Payment and Upfront Commitment Amount will be made into the Escrow Bank Account. The Designated Bank Account will be used for the sharing of recoveries from sale of assets and litigation recoveries with stakeholders (*Ref:* Clause 4 of the Acquisition Plan).

H. **Treatment of Third Party Security:** Third party security providers will have no right of subrogation against LITL and cannot claim any amounts from LITL. However, the stakeholders of LITL will have the right to proceed against any third party security provider, and such a right will

Handwritten signature



not be affected by the Acquisition Plan (*Ref:* Clause 5.3 of the Acquisition Plan)

I. **Timeline for implementation of the Acquisition Plan:** The timeline for implementation of the Acquisition Plan is laid down in Annexure I of the Acquisition Plan. According to the timelines provided within the Acquisition Plan, payments of Upfront Payment and Upfront Commitment Amount are to be made to the Escrow Account within 14 days of the order of the Adjudicating Authority approving the Acquisition Plan. Further, delisting of LITL, extinguishment of security of LITL and issuance of fresh equity to the Bidder are to take place within 15 days of the order approving the Acquisition Plan. Appointment of new Board of directors, amendment to constitutional documents and payment of upfront amounts to stakeholders will be executed within 17 days of approval of the Acquisition Plan by the Adjudicating Authority (*Ref:* Annexure I of the Acquisition Plan).

J. **Reliefs, Concessions and Dispensations:** The reliefs, concessions and dispensations sought as a part of the Acquisition Plan are part of the Acquisition Plan which is provided at Annexure-II to the Acquisition Plan. However, the implementation of the Acquisition Plan is not conditional on the grant of these reliefs and concessions (*Ref:* Clause 8.2, Annexure II of the Acquisition Plan)

15. Therefore, the Acquisition Plan provides for acquisition of LITL as a going concern along with the manner in which the same is proposed to be implemented.

16. The Liquidator, in order to give full effect to the objective of the Code i.e to maximize the value for all stakeholders further sought directions that the acquisition



plan if approved, shall be binding on all the stakeholders. The Acquisition Plan is attached herewith as **Annexure J**.

17. It is further stated that In light of the present application, the Applicant shall withdraw I.A. No. 162 of 2021 in CP (IB) 111/7/HBD/2017 pending before this Adjudicating Authority for approval of the acquisition plan submitted by Payard Investments Private Limited.

18. It is further stated that, except the bid submitted by KRS Erectors Private Limited for acquisition of LITL as a going concern, as on date there is no other comparable bid available that could be considered by the Applicant and that in the event this Adjudicating Authority is not approving the Acquisition Plan, has sought permission to allow the Applicant to distribute the Unsold Assets to the stakeholders in terms of Regulation 38 of the Liquidation Regulations and to provide directions in relation to the mechanism for such distribution and to allow the Applicant to dissolve LITL in terms of Section 54(2) of the Code. In terms of Regulation 38 of the Liquidation Regulations, the Liquidator may with the permission of the Adjudicating Authority distribute amongst the stakeholders such assets which cannot be readily or advantageously sold due to its peculiar nature or other special circumstances. Regulation 38 of the Liquidation Regulation provides as follows:

“38. Distribution of unsold assets.

(1) *The liquidator may, with the permission of the Adjudicating Authority, distribute amongst the stakeholders, an asset that cannot be readily or advantageously sold due to its peculiar nature or other special circumstances.*

(2) *The application seeking permission of the Adjudicating Authority under sub-regulation (1) shall-*

(a) identify the asset;



- (b) provide a value of the asset;
- (c) detail the efforts made to sell the asset, if any; and
- (d) provide reasons for such distribution.”

19. The final report in terms of Regulation 45 (1), 45 (3) and Form H has been annexed as **Annexure K (Colly)**. Thus submitting, prayed Tribunal to approve the Acquisition plan submitted by KRS Erectors Private Limited.

Point.

Whether the Acquisition Plan of M/s. KRS Erectors Private Ltd, dated 22 September 2021 read with amendment dated 16 November 2021 for acquiring the leftover assets of the corporate debtor as a going concern on “as is where is” and “as is what is” basis in the ongoing liquidation process of corporate debtor, which was approved by all the stake holders would enable realisation of all assets of the corporate debtor and results in maximisation of the assets of the corporate debtor? if so, can the same be accorded approval by this Adjudicating Authority? If not, can the order of dissolution of the corporate debtor needs to be passed?

20. We have heard Shri. Shankar Narayanan, Ld. Sr. Counsel and Shri. Vaijayant Palliwal, Ld. Counsel for the Liquidator, perused the record, the written submissions and the case law.

21. The Liquidator of the corporate debtor M/s Lanco Infratech Limited, the for short, ‘LITL’, has filed the present application craving for the approval of the Acquisition Plan of KRS Erectors Private Ltd dated 22 September 2021 read with amendment dated 16 November 2021 for acquiring LITL, as a going concern on an “as is where is” and “as is what is” basis in the liquidation process of LITL, which has been accepted by all the stake holders or *in the alternative* allow

Alleged



dissolution of the Corporate Debtor under section 54 (1) and (2) of the Code, in the backdrop of conducting *five e-auctions* and *two private sales* for the sale of the assets of Corporate Debtor whereby the liquidator could sell only a *part of the assets of the corporate debtor* as there were no offers for the *remaining assets* worth approximately INR 111 Crores and other *actionable* claims.

22. Earlier, this Adjudicating Authority under its order dated 07 August 2017 admitted the application filed under Section 7 of the Code filed by IDBI Bank Limited against LITL for initiation of CIRP, and appointed the Applicant Liquidator to act as the interim resolution professional for conducting corporate insolvency resolution process (CIRP) of LITL who was later confirmed as the resolution professional of LITL. However, as no resolution plan was approved by the committee of creditors of LITL, pursuant to an application filed under Section 33(1) of the Code, this Adjudicating Authority vide its order dated 27 August 2018 ordered initiation of the liquidation process of LITL and appointed the Applicant Liquidator to act as the liquidator of LITL.

23. Subsequently, the Applicant Liquidator in terms of Section 32 of the IBC Liquidation Regulations, conducted five e-auctions; and two private sales, for the sale of the assets of LITL, however could sell only part of the assets of the corporate debtor as there were no offers for the assets worth approximately INR 111 Crores and other actionable claims which are now covered under the Acquisition Plan.

24. Shri. Shankar Narayanan, Ld. Sr. Counsel for the Liquidator would submit that, in the above backdrop, the stakeholders in their endeavour to *maximise the asset value of the unsold assets* thought it fit to sell the Corporate Debtor as a

Abh



going concern with the remaining assets including the actionable claims. Pursuant there to the Applicant Liquidator had reached out to potential bidders, in addition to the bidders who participated in the earlier five e-auction processes, for the sale of LITL on a going concern basis. In response one M/s. Payard Investment Private Limited came forward for acquiring the remaining assets of the corporate debtor hence the Applicant Liquidator filed an application bearing I.A. No. 162 of 2021 in CP (IB) 111/07/HDB/2017 before this Adjudicating Authority for approval of the acquisition plan submitted by M/s. Payard Investment Private Limited, for acquiring the remaining assets of the corporate debtor. However, M/s. Payard Investment Private Limited and the stakeholders of LITL could not agree on the final terms of the acquisition plan and the application filed by the Applicant Liquidator in I.A. No. 162 of 2021 in CP (IB) 111/07/HDB/2017, therefore was withdrawn *vide* order dated 23 September 2021 of this Tribunal.

25. Ld. Sr. Counsel further submitted that, the liquidator on the initiative of the stake holders, issued a public announcement on 10.08.2021 in Financial Express and Nava Telangana newspapers and on the website of LITL in accordance with Regulation 12 of Liquidation Regulations, inviting bids for the sale of LITL as a going concern consisting of the assets of the (a) assets of the nature of construction equipment, other tangible assets, receivables, investments in shares of subsidiaries, etc. and (b) assignment of the actionable claims of LITL comprising of legal cases; (Or) sale of block assets of LITL comprising of (a) assets of the nature of construction equipment, other tangible assets, receivables, investments in shares of subsidiaries, etc. and (b) assignment of the actionable claims of LITL comprising of legal cases. The process document dated 31 August 2021 was released to the prospective bidders of LITL, wherein it is stated that the last date for submission of the acquisition plan, earnest money deposit and the

[Handwritten Signature]



supporting documents by the prospective bidders was 08 September 2021. Interests were received from 11 potential investors wherein acquisition plans were received from KRS Erectors Private Limited, Aashrika Infra LLP and Mahakram Developers Private Limited. Basis the evaluation matrix, the acquisition plan of KRS Erectors Private Limited was rated the highest and consequently M/s. KRS Erectors Private Limited, had submitted its Acquisition Plan dated 07 September 2021 for acquiring LITL, as a going concern on an “as is where is” and “as is what is” basis in the liquidation process of the corporate debtor.

26. Thereafter, the stake holders in the minutes of their 21st meetings held on 17th and 21st September 2021, have enabled the Liquidator to file the Acquisition Plan submitted by KRS Erectors Private Limited before this Tribunal seeking its approval or in the alternative to seek dissolution of the corporate Debtor.

27. Ld. Sr. Counsel has narrated the salient features of the Acquisition Plan, stating that the Acquisition Plan *inter alia*, provides for an upfront payment amount of INR 4_Crores (Rupees Four Crores) towards the acquisition of the Corporate Debtor, including its assets as identified in Annexure III-A of the Process Document. An upfront commitment amount of INR 1 Crore (Rupees One Crore) is provided to prosecute actionable claims comprising legal cases identified in Annexure III-B of the process document. Total expenses as a percentage of proceeds to be realized from sale of assets under Annexure III-A and actionable Claims under Annexure III-B of the Process Document are limited to maximum cap of 9.50%, beyond which they will be borne by the Corporate Debtor. A sharing mechanism is provided for and recoveries from sale of assets and actionable claims as below;





S. No.	Particulars	Stakeholder's Share	Bidder Share
a)	Assets under Annexure III - A of the Process Document	50% (Fifty Percent)	50% (Fifty Percent)
b)	Actionable Claims comprising legal cases, as identified more particularly in Annexure III - B of the Process Document		
	Up to 50 Cr	30% (Thirty Percent)	70% (Seventy Percent)
	50 Cr to 150 Cr	60% (Sixty Percent)	40% (Forty Percent)
	> 150 Cr	70% (seventy Percent)	30% (Thirty Percent)

(Ref: Clauses A, B, C and D of the Acquisition Plan)

Some of the salient Feature of the Acquisition Plan.

A. **Effective Date:** The Effective Date identified in the Acquisition Plan is the date of approval of the Acquisition Plan by the Adjudicating Authority as per Clause H of the Acquisition Plan.

B. **Monitoring Mechanism:** As per Clause 3.9, 3.10 of the Acquisition Plan, the Plan provides for the creation of a Monitoring Committee comprising of 2 (two) nominees of the secured financial creditors and 2 (two) nominees of the bidder to perform the roles and

Handwritten signature



responsibilities of the board of LITL until the Board is reconstituted. This Monitoring Committee will be assisted by necessary professionals to enable smooth transfer of LITL. Upon the reconstitution of the board, the monitoring committee will comprise of 2 (two) nominees of secured financial creditors and 2 (two) nominees of the corporate debtor. This monitoring committee will remain in place till the complete monetization of assets and actionable claims of LITL. The monitoring committee shall take decisions with unanimous consent of all members, and the decisions of monitoring committee shall be binding on LITL, bidder and the stakeholders of LITL. The monitoring committee will decide on the litigation strategy of the actionable claims and the process of sale of the assets

C. **Margin money:** The bidder assumes no liability with respect to any non-fund-based facilities like bank guarantees or letter of credit / comfort and any margin money on account of such bank guarantees shall pass through from LITL to the stakeholders of LITL, and shall not be available to the bidder. Any such monies, if released to LITL or bidder shall be kept in trust and forthwith deposited into the designated bank account for distribution amongst the stakeholders of LITL as per this Acquisition Plan. (Ref: Clause 1.6 of the Acquisition Plan)

D. **Avoidance Litigation:** Any recovery pursuant to any application filed by the resolution professional or the liquidator in relation to transactions covered under Section 43, 45, 50 and 66 of the Code (as applicable), as more particularly identified in Annexure IV (“**Avoidance Litigation**”) of the Acquisition Plan, shall pass through from LITL to the

AB



stakeholders of LITL, and shall not be available to the bidder. Any such amounts, if received by LITL or bidder shall be kept in trust and forthwith deposited into the designated bank account for distribution amongst the stakeholders of LITL. It is clarified that the Avoidance Litigation shall be continued by the bidder or corporate debtor at cost of secured financial creditors of the corporate debtor, in accordance with any directions issued by the secured financial creditors. (*Ref:* Clause 5.11 of the Acquisition Plan)

E. **Unearned revenue:** Any unearned revenue / receivables of LITL and/or any amount received on account of revenue generated prior to / during CIRP and liquidation other than more clearly specified in Annexure IIIA and Annexure IIIB of the process document shall be shared between the bidder / LITL and the stakeholders of LITL in the ratio of 50%-50% respectively i.e. in the sharing mechanism for the recoveries to be made from assets (defined in the Acquisition Plan) as per the Acquisition Plan. (*Ref:* Clause 5.10 of the Acquisition Plan)

F. **Escrow Mechanism:** The Acquisition Plan provides for an Escrow Bank Account and a Designated Bank Account. Payments of Upfront Payment and Upfront Commitment Amount will be made into the Escrow Bank Account. The Designated Bank Account will be used for the sharing of recoveries from sale of assets and litigation recoveries with stakeholders (*Ref:* Clause 4 of the Acquisition Plan).

G. **Treatment of Third-Party Security:** Third party security providers will have no right of subrogation against LITL and cannot claim any





amounts from LITL. However, the stakeholders of LITL will have the right to proceed against any third-party security provider, and such a right will not be affected by the Acquisition Plan (**Ref:** Clause 5.3 of the Acquisition Plan)

H. **Timeline for implementation of the Acquisition Plan:** The timeline for implementation of the Acquisition Plan is laid down in Annexure I of the Acquisition Plan. According to the timelines provided within the Acquisition Plan, payments of Upfront Payment and Upfront Commitment Amount are to be made to the Escrow Account within 14 days of the order of the Adjudicating Authority approving the Acquisition Plan. Further, delisting of LITL, extinguishment of security of LITL and issuance of fresh equity to the Bidder are to take place within 15 days of the order approving the Acquisition Plan. Appointment of new Board of directors, amendment to constitutional documents and payment of upfront amounts to stakeholders will be executed within 17 days of approval of the Acquisition Plan by the Adjudicating Authority (**Ref:** Annexure I of the Acquisition Plan).

I. **Reliefs, Concessions and Dispensations:** The reliefs, concessions and dispensations sought as a part of the Acquisition Plan are part of the Acquisition Plan which is provided at Annexure-II to the Acquisition Plan. However, the implementation of the Acquisition Plan is not conditional on the grant of these reliefs and concessions (**Ref:** Clause 8.2, Annexure II of the Acquisition Plan)







28. According to the Ld. Sr. Counsel, the Acquisition Plan submitted by KRS Erectors Private Limited is a value proposition for the Corporate Debtor due to the following reasons:

- a) An upfront commitment amount of INR 1,00,00,000 (Indian Rupees One Crores) will be paid by KRS Erectors Private Limited to prosecute actionable claims comprising of legal cases (as identified in Annexure III-B of the Acquisition Plan) will be paid within 14 (fourteen) days from the Effective Date into the designated escrow account, subject to the satisfaction of charge from the corporate debtor/ secured financial creditors, as applicable, if any required;
 - b) An upfront payment of INR 4,00,00,000 (Indian Rupees Four Crores) will be paid by KRS Erectors Private Limited within 14 (fourteen) days from the Effective Date into the designated escrow account. The said amount shall be paid to the stakeholders in accordance with Section 53 of the Code, subject to the satisfaction of charge from the corporate debtor/ secured financial creditors, as applicable, if any required; and
 - c) Amounts realised from sale of assets and from the actionable claims will be deposited into the designated bank account which will be used for settlement to the bidder/ corporate debtor and stakeholders in compliance with the terms specified in the Acquisition Plan and in accordance with Section 53 of the Code.
1. It is submitted by the Applicant Liquidator that as on date, there are:
- a) tangible assets and other assets such as investments, receivables having an aggregate reserve price of approximately INR 111 Cr (Indian Rupees One Hundred and Eleven Crores) which form part of the liquidation estate of the corporate debtor, that remain unsold; and
 - b) other legal proceedings initiated by LITL against various counter-parties (which are in the nature of claims made by LITL against such counter-parties, and hence, unaffected by the moratorium under the Code which protects LITL and not such counter-parties), pending before various legal forums wherein the gross maximum

Handwritten signature



potential recoveries for LITL aggregate to approximately INR 1500 Cr (Indian Rupees One Thousand Five Hundred Crores).

2. Therefore, in the event LITL is to be dissolved, (i) the potential recoveries from the said legal proceedings could become NIL; and (ii) the recovery prospects for stakeholders with respect to the unsold assets could be prejudiced on account of piece-meal distribution of assets amongst the various stakeholders. Thus, the same could result in huge opportunity cost loss to the stakeholders.

3. Further, Section 54 of the Code provides that a corporate debtor can be dissolved only pursuant to all the assets of a corporate debtor being completely liquidated. In the present case, dissolution of LITL cannot ideally take place until actionable claims amounting to a value of INR 1500 Crores are also assigned to potential assignees. The employment of the phrase 'have been completely liquidated' occurring in Section 54(1) of the Code indicates that the balance sheet of the corporate debtor at the time of dissolution has to nil assets and liabilities on the balance sheet (where all assets of the corporate debtor forming part of the liquidation estate stand distributed amongst the stakeholders as per Section 53 of the Code). This cannot be done as until the amounts are recovered and distributed amongst the stakeholders, the liquidation process has to continue. Section 481 of the Companies Act, 1956 (now Section 302 of the Companies Act, 2013) uses the word 'completely wound up' which is equivalent to 'completely liquidated'. Hence, the object is to ensure that the corporate debtor should be left with nothing undistributed before it is dissolved. The object of liquidation is either to handover the company to another person or to dissolve the same.

29. Having thus, taken us through various provisions in the acquisition plan, Ld. Sr. Counsel submitted that, unlike in matters of approval of Resolution plan submitted by the resolution applicant during the Corporate Insolvency Resolution Process (CIRP) of a Corporate Debtor by the Adjudicating Authority, there is no express provision in the IB Code, for approval of an acquisition plan submitted

[Handwritten signature]



by the Liquidator during the Liquidation of the corporate debtor, however, as per the recent orders of various Adjudicating Authorities, the approval of acquisition plans for acquisition of companies in liquidation on a going concern basis has been well recognized and accepted. Therefore, according to the Ld. Sr. Counsel, in order to give full effect to the objective of the Code, *namely*, maximization of the value, it is imperative that the Acquisition Plan and the settlement of liabilities owed to stakeholders proposed thereunder (in compliance with the mandate of Section 53 of the Code), needs to be approved by the Adjudicating Authority, by directing that the same is binding on all the stakeholders, so that the Acquisition Plan would be effectively implemented for the benefit of the stakeholders.

30. Referring to Section 35(1)(f) of the IB Code, Ld. Sr Counsel submitted that, the liquidator has the power and duty to sell movable and immovable assets besides actionable claims of the corporate debtor, subject to the conditions prescribed therein, and in so far as *sub-clauses* (a) to (f)) in Regulation 32 of IBBI (liquidation Process) Regulation, is concerned Ld. Sr. Counsel contended that, each of the *sub clauses* are mutually exclusive of the other and therefore, there is no legal impediment as per the Code and the Liquidation Regulations of IBBI, preventing the sale of corporate debtor/LITL as a going concern at this stage.

31. Ld. Sr. Counsel further contends that Regulation 32, *supra*, does not postulate that the liquidation process should be in the order mentioned in the regulation and it is open to the stakeholders to request the liquidator to adopt any one of the modes mentioned in the regulation that would be beneficial to the stakeholders. According to the Ld. Sr. Counsel, Regulation 32A (1) of IBBI





(Liquidation Process) Regulation, require that the sale of the corporate debtor as a going concern as the first step if the committee of creditors have recommended the same, Regulation 32A (2) read with Regulation 39C of the CIRP Regulations, enables the committee of creditors to identify the group of assets and liabilities to be sold as a going concern, Regulation 32A (3) applies when the committee of creditors have not identified the assets and liabilities and in such case the liquidator shall identify the group of assets and liabilities to be sold as a going concern and Regulation 32A (4) applies when the liquidator is not able to sell the corporate debtor as a going concern within the prescribed period and in such case, he shall sell the assets in the manner prescribed in Regulations 32(a) to (d) of the Liquidation Regulations.

32. According to the Ld. Sr. Counsel, a combined reading of IBBI (liquidation Process) Regulations 32 and 32A, *supra*, though indicates that the first endeavour should be to sell the corporate debtor as a going concern, there is no embargo or legal prohibition from resorting to sale as a going concern even after substantial assets were sold and liabilities were discharged. Ld. Sr Counsel submits that Regulation 32 of the IBBI (liquidation Process) Regulation, does not contemplate a restriction on the ability of the liquidator to undertake sale in any of the modes as prescribed in Regulation 32 in any order or even simultaneously, which the liquidator (in consultation with the stakeholders) is empowered to decide in the interest of value maximisation under the Code.

33. In so far as the time limit of 90 days' time limit prescribed under *sub clause* 4 of Regulation 32A, *supra*, which provides for 90 (ninety) days for the sale of a corporate debtor as a going concern, according to the Ld. Sr. Counsel, the same

Handwritten signature



is not applicable to the present case since the said provision was inserted *vide* Notification No. IBBI/2019-20/GN/REG 057, dated 25 July 2019 *w.e.f.* 25 July 2019 i.e., in matters where the liquidation process of a corporate debtor commences on or after 25 July 2019. In the present case, the liquidation process commencement date of LITL being 27 August 2018, the time limit set in Regulation 32A(4) of the Liquidation Regulations cannot be retrospectively applied to the present case. In any case, according to the Ld. Sr. Counsel, the time limits specified in the Regulation 32A (4) should be held to be *directory*, keeping in view the larger objective of the Code which is value maximization. Nevertheless, the Applicant Liquidator has filed the present application within the prescribed time-limit and has ensured all necessary compliances. Ld. Sr. Counsel reiterated that Regulation 32 of the Liquidation Regulations is still applicable to the present case, which, taken on a standalone basis, also allows the Applicant Liquidator to make the present application for sale of LITL as a going concern under liquidation.

34. Ld. Sr. Counsel further submitted that the Applicant Liquidator has in terms of Regulation 45 (1) of the Liquidation Regulations, annexed its final report showing how the liquidation process was conducted and also compliance certificate under Form H, as required in terms of Regulation 45 (3) of the Liquidation Regulations. (Annexure K (Colly) @ page no. 264, Volume II and III of the Application). According to the Ld. Sr. Counsel, despite various efforts of the Applicant (as detailed in paragraph nos. 6 to 19 @ page nos. 4 to 13 of the Application), except the bid submitted by KRS Erectors Private Limited for acquisition of LITL as a going concern, as on date there is no other comparable bid available that could be considered by the Applicant Liquidator

Ad

J



35. Therefore, according to the Ld. Sr. Counsel, the scheme of the legislation clearly indicates that assets can be sold at the first place as a whole and when there any assets of the corporate debtor remain unsold, the same also can be sold as a going concern during liquidation. As such the Acquisition Plan submitted by KRS Erectors Private Limited, needs to be approved by this Adjudicating Authority in the interest of maximisation of value of the corporate debtor and for reviving the corporate debtor, which is the prime objective of the Code.

36. In support of the afore stated submission that even during the liquidation process, the Liquidator may sell a corporate debtor on a going concern basis, Ld. Sr. Counsel placed reliance on the following rulings;

Arcelor Mittal (India) (P) Ltd. v. Satish Kumar Gupta, MANU/SC/1123/2018, where in Hon'ble Supreme Court observed that observed that

"It is therefore obvious that, maximisation of value of a corporate debtor, so that the same could inure to the benefit of stakeholders, is the fulcrum of the Code. **Sale of the corporate debtor at any stage of the liquidation proceedings, as a going concern would be within the ambit of law if it results in realisation of all assets of the corporate debtor in some form or another**".

Arun Kumar Jagatramka vs. Jindal Steel and Power Ltd. and Ors., MANU/SC/ 0182/2021, Hon'ble Supreme Court observed that;

"the three modes of revival of a corporate debtor are: (i) Revival as elucidated in Chapter II of the Code (during CIRP); (ii) Sale of a corporate debtor as a going concern or sale of the business of a corporate debtor on a going concern basis (during liquidation); and (iii) A scheme of compromise or arrangement as per Section 230 of the Companies Act, 2013". The sale of a corporate debtor undergoing liquidation as per the provisions of the Code, entails that there will only be a transfer of assets and the liabilities will be distributed as per Section 53 of the Code: The Hon'ble NCLT, Mumbai has observed in

Shiv Shakthi Inter Globe Exports Private Limited vs. KTC Foods Private Limited & Anr., Company Appeal (AT) (Insolvency) No. 650 of 2020, held that,

[Handwritten signature]



while approving a 'Corporate Debtor' sale as a 'going concern' in Liquidation Proceedings without its dissolution in terms of Regulation 32(e) of the Liquidation Process Regulations, 2016, it is essential to see that the 'Corporate Debtor' is not burdened by any past or remaining unpaid outstanding liabilities prior to the sale of the Company as a 'going concern' and after payment of the sale proceeds distributed in accordance with Section 53 of the Code. Further, it was observed that the scope and objective of the Code is to extinguish all claims specifically the ones which were not even made during the CIRP or in the Liquidation stage, to aid the purchaser of the Company as a 'going concern' to start on a 'clean slate'. (Ref: - para nos. 21, 22 @ page nos. 111, 112, 113 of this Written Submissions)

37. In so far as the alternative prayer for distribution of the corporate in the is concerned, Ld. Sr. Counsel submitted that, the assets that are to be sold includes actionable claims to the tune of INR 1500 Crores. These actionable claims are in the form of arbitration claims (wherein counter claims have also been made by the counter-parties). The counter parties would have, at best filed contingent claims with the RP/ Liquidator of LITL and their rights would be determined only after the arbitrations conclude. These litigations cannot ideally be split in any manner or bisected or trisected to be distributed amongst the stakeholders. The practical difficulty in dealing with assignment of actionable claims is therefore to be weighed.

38. Ld. Sr. Counsel, as an alternative relief prayed this Adjudicating Authority to allow the Applicant/Liquidator to distribute the unsold assets (as defined in the Acquisition Plan) to the stakeholders in terms of Regulation 38 of the Liquidation Regulations and to provide directions in relation to the mechanism for such distribution and to allow the Applicant to dissolve the corporate debtor in terms of Section 54(2) of the Code.

Handwritten signature



39. Having heard the Ld. Sr. Counsel at length, it may be sated that this petition, perhaps is the *first of its kind* wherein the Liquidator at the first place having successfully sold a part of the assets of the corporate debtor /LITL during liquidation, has approached this Tribunal craving for approval of sale of the remaining assets including receivables of the corporate debtor as a going concern in terms of Acquisition Plan of M/s KRS Erectors Private Limited, which has been approved by the stake holders. Likewise, unlike Section 31 of the IB Code, which mandates submission of the resolution plan of the corporate debtor undergoing Corporate Insolvency Resolution Process (CIRP) accepted by the members of the committee of creditors before the Adjudicating Authority for approval, there is no express provision in the IB Code, providing for approval of the acquisition plant accepted by the Share Holders Committee by the Adjudicating Authority.

40. It may be stated that the Indian Bankruptcy and Insolvency *regime*, at its *genesis*, did not even *prima facie*, conceive the idea of sale of a corporate debtor on a going concern basis in liquidation. But section 5(26) of the Code which defines Resolution Plan, recognises the concept of 'going concern' in categorical terms. However, the ruling *in re, M/s Gujarat NRE Coke Limited's*, wherein, despite *absence of any express provision in the IB Code for sale of the corporate debtor on a 'going concern' basis during liquidation, the liquidator was allowed to dispose of the corporate debtor as a 'going concern'* has paved the way for bringing in the Regulation 32(e) of IBBI (liquidation Process) Regulations, for sale of the corporate debtor as a going concern by the liquidator.





41. Hon'ble Supreme Court of India, in an attempt to highlight the underlying intent of the Code, namely, *maximisation of the value of the assets of the corporate debtor, in re, Swiss Ribbons, supra*, held that, *sale of the corporate debtor at any stage of the liquidation proceedings, as a going concern would be within the ambit of law, if it results in realisation of all assets of the corporate debtor in some form or another.*

42. Therefore, sale of all the assets of the corporate debtor as going concern during the liquidation process though desirable, in the event if sale of all the assets of the corporate debtor does not fructify despite diligent effort by the liquidator, *realisation of all the assets of the corporate debtor* being the object of IBC, as long as sale of the remaining unsold assets of the corporate debtor as a going concern results in *realising the full potential of the Corporate Debtor* and in value maximisation, in our considered view should be promoted. Such sale also will prevent the 'death' of the corporate debtor besides its liquidation. Having carefully examined various provisions in the acquisition plan, in the backdrop of the fact that five public and two private sales earlier held did not fructify in we are fully convinced that the sale of all the remaining assets of the corporate debtor mentioned in the acquisition plan *results in realisation of all assets of the corporate debtor in some form or another.*

43. Here it is pertinent to state that is pertinent to state herein that the liquidator had filed IA No. 745/2019 under section 35(1)(b) of the Code, for a direction to the Group Companies of the Corporate Debtor viz. Lanco Amarkantak Power Ltd (LAPL), Lanco Vidarbha Thermal Power Ltd (LVTPL), Lanco Mandakini Hydro Energy Private Limited (LMHEPL) and Lanco Babandh Power Limited (LBPL) to handover the custody and control of the assets/ properties of the

AdP



Corporate Debtor in terms of which are in their possession as on the date of filing the application. Therefore, this Tribunal on 11.04.2022 directed the liquidators representing the above four group companies to identify and mark out assets to the extent possible, upon inspection and verification to be carried out at the sites where these assets were located which form part of the liquidation estate on 'as is where is basis and 'as is what is basis' and to file a report.

44. Pursuant there to, the Liquidators representing the group companies of the corporate debtor, have filed their reports in relation to the joint inspection carried out for the assets being claimed by the Corporate Debtor, along with Memorandum of Understanding (MoU) as stated below.

- a) Memorandum of Understanding dated 27.04.2022 between Lanco Infratech Ltd and Lanco Amarkantak Power Ltd (LAPL)
- (b) Memorandum of Understanding dated 12.02.2022 between Lanco Infratech Ltd and Lanco Vidarbha Therma Power Ltd (LVTPL).
- (c) Memorandum of Understanding dated 23.04.2022 between Lanco Infratech Ltd and Lanco Mandakini Hydro Energy Private Limited (LMHEPL).
- (d) Memorandum of Understanding dated 29.04.2022 between Lanco Infratech Ltd and Lanco Babandh Power Limited (LBPL).

45. In the above backdrop, we examined, the value proposition of the Acquisition Plan submitted by KRS Erectors Private Limited and found that the Acquisition Plan provides for the upfront commitment amount of INR 1,00,00,000 (Indian Rupees One Crores) by KRS Erectors Private Limited to prosecute actionable claims comprising of legal cases (as identified in Annexure III-B of the Acquisition Plan) to be paid within 14 (fourteen) days from the Effective Date into the designated escrow account, subject to the satisfaction of charge from the corporate debtor/ secured financial creditors, as applicable, if any

Handwritten signature



required. The said plan also provides for the upfront payment of INR 4,00,00,000 (Indian Rupees Four Crores) will be paid by KRS Erectors Private Limited within 14 (fourteen) days from the Effective Date into the designated escrow account, which will intern will be paid to the stakeholders in accordance with Section 53 of the Code, subject to the satisfaction of charge from the corporate debtor/ secured financial creditors, as applicable, if any required. The plan also contains a provision for deposit of the amounts realised from the sale of assets and actionable claims into the designated bank account which will be used for settlement to the bidder/ corporate debtor and stakeholders in compliance with the terms specified in the Acquisition Plan and in accordance with Section 53 of the Code.

46. According to the Applicant/Liquidator as on date of filing this application, there are tangible and other assets such as investments, receivables having an aggregate reserve price of approximately INR 111 Cr (Indian Rupees One Hundred and Eleven Crores) which form part of the liquidation estate of the corporate debtor, that remained unsold; and other legal proceedings initiated by LITL against various counter-parties (which are in the nature of claims made by LITL against such counter-parties, and hence, unaffected by the moratorium under the Code which protects the corporate debtor and not such counter-parties), pending before various legal forums wherein the gross maximum potential recoveries for corporate debtor aggregate to approximately INR 1500 Cr (Indian Rupees One Thousand Five Hundred Crores).

47. Therefore, we find force in the contention of the Ld. Sr. Counsel that in the event LITL is to be dissolved, (i) the potential recoveries from the said legal proceedings could become NIL; and (ii) the recovery prospects for stakeholders

[Handwritten signature]



with respect to the unsold assets could be prejudiced on account of piece-meal distribution of assets amongst the various stakeholders, besides the same could result in huge opportunity cost loss to the stakeholders.

48. More over as rightly argued by the Ld. Sr. Counsel, liquidation of all the assets of the corporate debtor, being the *sine qua non*, for dissolution in terms of section 54 of the Code, since in the case on hand until complete realisation of the actionable claims amounting to a value of INR 1500 Crores dissolution of the corporate debtor cannot take place. In this regard reference to the phrase 'have been completely liquidated' occurring in Section 54(1) of the Code indicates that the balance sheet of the corporate debtor at the time of dissolution has to nil assets and liabilities on the balance sheet (where all assets of the corporate debtor forming part of the liquidation estate stand distributed amongst the stakeholders as per Section 53 of the Code). This cannot be done as until the amounts are recovered and distributed amongst the stakeholders, the liquidation process has to continue. Section 481 of the Companies Act, 1956 (now Section 302 of the Companies Act, 2013) uses the word 'completely wound up' which is equivalent to 'completely liquidated'. Hence, the corporate debtor to be dissolved should be left with nothing undistributed before it is dissolved. Therefore, having regard to the fact that until and unless the potential intended recoveries of the huge receivables through the legal proceedings are distributed amongst the stakeholders, the liquidation process has to continue lest complete liquidation of the corporate debtor cannot take place and in the meanwhile the recovery prospects for stakeholders with respect to the unsold assets could be prejudiced on account of delay defeating the objective of the Code, namely, maximization of the value, , and the settlement of liabilities owed to stakeholders proposed thereunder subject to compliance with the mandate of Section 53 of the Code,





we are of the considered view that the Acquisition Plan of M/s. KRS Erectors Private Limited, which was approved by the stake holders committee, can be approved by this Adjudicating Authority by directing that the same is binding on all the stakeholders, for its effective implementation. We further state that we have taken note of the fact the committee of stake holders in their commercial wisdom have accepted the Acquisition plan will serve the best interests of all the stake holders, besides the same results in *complete realisation of all the assets of the corporate debtor*. We also found that that the subject plan does not offend the provisions or the object of I B Code.

49. During the pendency of this application, the liquidator Mr. Sawan Godiawala on 19.09.2022 filed an application to discharge him as liquidator for the reasons mentioned therein, hence this Adjudicating Authority, vide order dated 19.09.2022 discharged Mr. Sawan Godiawala and appointed Shri. Vijay Kumar Garg as liquidator. However, Mr. Vijay Kumar Garg declined the appointment citing health grounds. Hence, Mr. Papaiah Sastry Chundury is hereby appointed as Liquidator, who shall hence forth continue the process.

50. For effective, proper and timely implementation of the Acquisition Plan, we direct the Monitoring Committee to be formed as per clause 3.9 & 3.10 of the acquisition plan, to ensure that the timeline for implementation of the acquisition plan as laid down in Annexure 1 of the acquisition plan shall be strictly adhered to by M/s. KRS Erectors Private Limited, and in the event of any deviation/default or breach of any of the terms of the acquisition plan by M/s. KRS Erectors Private Limited, the Chairman of the Monitoring Committee shall bring the same to the notice of the Adjudicating Authority and shall take steps for *forfeiture* of the margin money or any other or all other amounts deposited by or entitled to under



the plan by M/s. KRS Erectors Private Limited, besides shall take steps for liquidation of the corporate debtor.

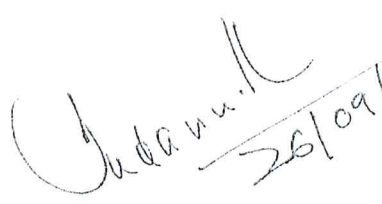
51. We hereby make it clear that in so far as the relief of granting the concessions and reliefs mentioned in Annexure-2 of the acquisition plan is concerned, we hereby direct M/s. KRS Erectors Private Limited, to approach the Authorities concerned as per the procedure and the concerned Authorities concerned may consider the same as per the provisions of the relevant law.

52. As we have accorded approval for the sale of the assets of the corporate debtor as a going concern, the alternative relief of dissolution of the corporate debtor and distribution of its remaining assets as prayed, shall fail. We therefore dismiss the said relief.

53. In the result, this Application is allowed accordingly, however without costs.




VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)


DR. N. V. RAMAKRISHNA BADARINATH
MEMBER (JUDICIAL)

Binnu

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER... CP (IB) No. 111/7/HDB/2017
निर्णय का तारीख
DATE OF JUDGEMENT... 26/9/2022
प्रति तैयार किया गया तारीख
COPY MADE READY ON... 30/9/2022


30/09/22
Deputy Registrar / Assistant Registrar / Court Officer
National Company Law Tribunal, Hyderabad Bench