

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

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PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 27.08.2018 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.139,192,321&323/2018 & IA No.194/2018 IANo.107,113,114,115,117,122,143,145,167,178,193,203,204,205,206,230,269,273,300,301, 308&322/2018in CP(IB) No. 111/7/HDB/2017
NAME OF THE COMPANY	Lanco Infratech Ltd
NAME OF THE PETITIONER(S)	IDBI Bank Ltd
NAME OF THE RESPONDENT(S)	Lanco Infratech Ltd
UNDER SECTION	7 OF IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
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Amir Bavani. 2 IA 107. [DNR & DNR Associates].	Advocate	9949216962	

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
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CA 139/2018

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CA No. 145/18
R. Chandraben Reddy Advocate .H. Rajesh Kumar

Sl.No.40

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

In the matter of IDBI Bank Limited Vs. Lanco Infratech Limited

Date of order: 27.08.2018

ORDER

Counsel for RP is present.

Orders passed in IAs 321/2018, 323/2018 ,192/2018 and IA 230/2018 vide separate orders.

Actually IA 139/2018 is posted for orders today. However, Counsel in IA 139/2018 on the earlier occasion was directed to restrict the relief covered under (d) of the Application only. Counsel for Applicant has not filed memo to file memo restricting the relief shown in Clause (d) of the Application. Hence list the matter on 12.09.2018.

IA 115/2018 is taken up for hearing. List it on 12.09.2018

IA 193/2018 is also taken up for hearing. List it on 12.09.2018.

IA 269/2018 is listed today. Counsel for Applicant is present. Counsel requested Tribunal to take up this matter for hearing. List it on 12.09.2018

IA 205/2018 is taken up today. List it on 12.09.2018.

IA 178/2018 is taken up today. List it on 12.09.2018.

IA 167/2018 is taken up today. List it on 12.09.2018.

IA 204 & 206 of 2018 are taken up for hearing. List it for hearing on 12.09.2018

IA 300, 301 & 308/2018 are taken up today. Interim directions issued in these IAs are extended till 12.09.2018.

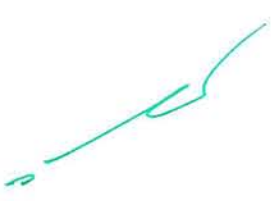
IA 273/2018 is taken up today. List it on 12.09.2018.

IA 145/2018 is taken up today. List it on 12.09.2018.

IA 117/2018 is taken up today. List it on 12.09.2018.

IA 194/2018 is taken up today. List it on 12.09.2018. Interim direction given in this ^{applic}case continues till then.

IA 122/2018 is taken up today. List this IA on 12.09.2018.



IA 227/2018 is taken up today. List this IA on 12.09.2018.

IA 322/2018 is taken up today. List it on 12.09.2018

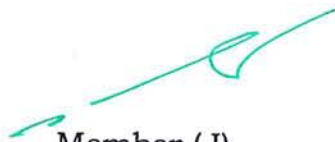
IA 113/2018 is taken up today. List it on 12.09.2018

IA 107/2018 is taken up today. List it on 12.09.2018.

IA 338/2018 is listed today. Issue notice to Corporate Debtor/RP. Applicant to serve notice on the Corporate Debtor. List the matter on 12.09.2018.

IA 336 is taken up today. Issue notice to RP. List the matter on 12.09.2018.

List IAs 113,114, 143, 203, 204, 206, 322 for hearing on 12.09.2018.



Member (J)

BM

For the R.P.: Shri Ameya Gokhle, Shri Vijayanth Paliwal, Ms. Rubaina S. Khatoon, Shri Rusheek Reddy K.V. and Shri L. Aravind Reddy, Advocates

Heard on: 19.06.2018, 06.07.2018, 13.07.2018,
25.07.2018, 27.07.2018, 14.08.2018 &
27.08.2018.

ORDER


1. This Application is filed by operational Creditor under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 seeking direction to Resolution Professional to release and return the Bank Guarantee for Rs.64,80,000/- along with renewal and extension of Bank Guarantee Letter.
2. It is averred that the Corporate Debtor M/s Lanco Infratech Limited awarded contract bearing No. LITL/LBPL/SER/MMS/LOA dated 14.01.2011 amounting to Rs. 6,48,00,000/- to the Applicant for providing material management and security services and as per terms of the work order the Applicant had furnished a Bank Guarantee bearing No.039BG00161112 dated 31.10.2011 for Rs. 64,80,000/- to the Respondent. The same were renewed from time to time.
3. It is averred that the contract expired on 14.11.2013 and asked the Corporate Debtor to clear huge outstanding bills and return the Bank Guarantee. However, Corporate Debtor vide mail dated 07.12.2013 informed the Applicant that Corporate is resuming the project and requested the Applicant to send a letter of extension of contract and that payment would be cleared only after reconciliation but Respondents threatened the Applicant that it would invoke the Bank Guarantee. It is averred

under compulsion the Applicant was constrained to extend the Bank Guarantee from time to time and it expired on 09.08.2018. It is further averred by the Applicant that the contract was for 34 months and expired on 14.11.2013.

4. It is also averred Corporate Debtor has confirmed in the meetings held on 27.02.2015 and 02.03.2015 that a sum of Rs. 85,50,718/- is outstanding and payable to the Applicant and also mentioned schedule of payment. It is further averred that when Corporate Debtor failed to pay outstanding amount to the Applicant, then the Applicant initiated Arbitration proceeding vide OMP (I) No. 207 of 2015 before the Hon'ble High Court of Delhi for appointment of Arbitrator. It is averred on 16.11.2017 the Counsel for Respondent / Corporate Debtor mentioned before Hon'ble High Court of Delhi about admitting the petition filed under Section 7 of IBC in this Tribunal and as such the same was disposed of vide order dated 12.07.2018.
5. It is averred that Applicant submitted its claim of Rs. 2,61,47,905/- and IRP admitted Applicant's claim at Rs. 28,78,678/- and Rs. 2,32,69,137/- was amount shown under verification, which was later rejected without giving any reason or explanation which included the Bank Guarantee of Rs.64,80,000/-
6. It is averred that contract between the parties was completed on 14.11.2013 and the validity of the Bank Guarantee also expired on 09.08.2018, thus nothing survives. Further, it is averred that

Resolution Professional himself admitted that the Corporate Debtor is due to pay Rs.28,78,678/- to the Applicant and as such it is unfair to hold on the Bank Guarantee. Hence, prayed this Tribunal to direct the Resolution Professional to return the said original Bank Guarantee.

7. A reply is filed by the Resolution Professional. It is the case of the Resolution Professional that he has verified the claim. As per records available, out of the claim of Rs.2,61,47,905/-, an amount of Rs. 28,78,768/- is admitted.
8. The amount is due by the Corporate Debtor to the Applicant as such the Learned Counsel for the Resolution Professional assured this Tribunal that it would return the original Bank Guarantee bearing No. 039BG00161112 to the Applicant.
9. In the result IA is allowed directing the Resolution Professional to return the said original Bank Guarantee to the Applicant and obtain necessary acknowledgement for record purpose.


(RATAKONDA MURALI)
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

No. IA 230 of 2018
CP(IB) No.111/7/HDB/2017

U/s 60 (5) R/w 5(13) a/w 20 of the IBC, 2016
R/w Rule 11 of the NCLT Rules, 2106

In the matter of
IDBI Bank Limited Vs Lanco Infratech Limited:

M/s Power Mech Projects Limited
R/o Plot No.77, Jubilee Enclave
Opp: Hitex, Madhapur
Hyderabad – 500081

...Applicant

Date of order: 27.08.2018

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Parties / Counsels present:

For the Applicant: Shri S. Chakrapani, Advocate

For the R.P: Ms. Rubaina S. Khatoon along with
Shri L. Aravind Reddy, Advocates.

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)

Heard on: 23.08.2018.

ORDER


1. This Application is filed under Section 60(5) along with Section 5(13) and Section 30 of IBC, 2016 R/w Rule 11 of the NCLT Rules, 2016, praying this Tribunal to exclude a period of 163 days i.e. from 23.11.2017 to 04.05.2018 from the CIRP period and further direction to Resolution Professional to start the bidding process afresh to enable the Applicant to submit its Resolution Plan.



2. Brief averments made in the Application are as under:-

- (a) The Applicant Company was incorporated in 1999 under the Companies Act, 1956 and is in the business of erection, testing, commissioning of BTG and BOP, renovation and modernization of power plants and civil works and has also undertaken projects of various types and sizes in several, geographical locations within India and abroad.
- (b) It is averred that the turn over of the Applicant's group of Companies is Rs.1,555 cr, EBITDA is Rs.209 cr and the PAT is Rs.80 crores. The company is listed with BSE and NSE and as such it has sufficient potential to undertake any acquisition.
- (c) It is averred that the Corporate Debtor company is a holding company for Lanco group of Companies having a debt of more than Rs.50,000 crores. It is further averred that due to various power sector and infrastructure sector problems, the EPC activities of Corporate Debtor and its subsidiaries got affected resulting in down size of the business.
- (d) It is averred that some of the subsidiaries / SPVs of the Corporate Debtor were classified as Non-performing Assets (NPA) due to various reasons beyond the control of the Management. It is averred that 12 companies including the Corporate Debtor were referred to NCLT by RBI in June 2017. Out of the 12 companies, the Corporate Debtor is the only one out which has more than 25 subsidiaries which are debt-laden.
- (d) It is averred that this Tribunal admitted the Petition filed by IDBI Bank Limited (Financial Creditor) under Section 7 of IBC vide orders passed in CP(IB) No.111/7/HDB/2017 on 07.08.2017 and Shri Savan

Godiawala was appointed as IRP who was subsequently confirmed as Resolution Professional by CoC.

- (e) It is averred that on 18.11.2017, the Resolution Professional published an advertisement in newspapers inviting Expression of Interest from interested parties.
 - (f) Subsequent to above, on 23.11.2017, an ordinance introducing Section 29A of the Code was promulgated and eventually ratified as Amendment Act, 2018. One major restriction set out in Section 29A (c) is the eligibility criteria of the Potential Resolution Applicants.
 - (g) It is averred that CIRP of the Corporate Debtor was further extended beyond 180 days by this Tribunal vide orders dated 16.01.2018 on the request made by the Resolution Professional.
 - (h) It is averred that the Applicant submitted Confidentiality Undertakings and EOI on 28.12.2017, 02.01.2018, 08.01.2018 and 03.02.2018. It is also stated that after the Ordinance 2018 was ratified, the Applicant was given to understand that in case of acquisition of the Corporate Debtor if its resolution plan is approved, it has to acquire all the subsidiaries including those classified as NPA, as a part of resolution plan and that the Applicant would automatically be disqualified from making any future bids for any other companies. It is averred that Corporate Debtor Company has 25 debt laden subsidiaries and all of them are NPA for more than 12 months. In this regard, the Applicant sought clarification from Ministry of Corporate Affairs, the Resolution Professional and the Finance Ministry. As
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no reply was forthcoming, Applicant feared inevitable disqualification and withdrew from the process.


- (h) It is also stated that Ordinance dated 06.06.2018 amended Section 29(c) by inserting Explanation-II and this Ordinance removed the hardship created due to NPA restriction introduced on 23.11.2017. The Resolution Applicants were given relief under Section 29A by giving a period of 3 years in order to resolve any NPA, instead of making the potential Resolution Applicants automatically ineligible on the very first day.
 - (i) It is averred that Applicant is a specialist in power sector related EPC works and would have maximized the value of the Corporate Debtor to all the stakeholders by taking over EPC works from the existing huge order book of the Corporate Debtor and that Applicant ought to have been given a level playing. It is stated the Applicant is capable of giving a better bid than the bid existing at present.
- 3. I have heard the counsels for Applicant and also the Counsel appearing for Resolution Professional who filed written submissions.
 - 4. This Application is filed on behalf of Applicant under Section 60 (5) along with Section 5 (13) and Section 30 of Insolvency & Bankruptcy Code, 2016. The Applicant is seeking relief to exclude a period of 163 days i.e. from 23.11.2017 to 04.05.2018 from CIRP period of the Corporate Debtor and further a direction to Resolution Professional to start with fresh bidding process, so as to enable the Applicant to submit Resolution Plan.
 - 5. The case of Applicant that Corporate Debtor Lanco Infra Tech Limited is a holding Company for Lanco Group of Companies. Further, the case of Applicant that some of

the subsidiaries/SPV/Corporate Debtor were classified as Non-performing Asset (NPA) due to various reasons. It is contended that Corporate Debtor is having more than 25 subsidiaries and they are all debt laden.

6. The contention of the Applicant, the CIRP was started against Corporate Debtor on stand-alone basis in an Application filed by IDBI Bank Limited under Section 7 of IBC. This Tribunal admitted the Petition on 07.08.2017 and appointed Mr. Savan Godiawala as IRP who was later confirmed as Resolution Professional.
7. The case of Applicant that Resolution Professional has advertised calling for Expression of Interest (EOI) from the interested parties.
8. The contention of Applicant, an Ordinance introducing Section 29A in the Code was promulgated on 23.11.2017 (herein after referred to as CODE- 2017) which was later ratified by amendment Act 2018 to the Code. The contention of Learned Counsel for Applicant that the amended Act had imposed certain restrictions on the eligibility on person who are willing to file Resolution Plans. The major restriction is contained in Section 29A© of the Code, which reads as under:-

(c) has an account, or an account of a Corporate Debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 and at least a period of one year has lapsed from the date of such classification till the date of commencement of the Corporate Insolvency Resolution Process of the Corporate Debtor.

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan.




9. The Learned Counsel for Applicant would contend that the CIRP period came to an end on 02.02.2018. However, on the Application of the Resolution Professional, this Tribunal extended the period of CIRP by another 90 days which came to an end on 04.05.2018.
10. The contention of the Learned Counsel as there is restriction on the persons who wanted to submit Resolution Plans by virtue of introduction of Section 29A (c), the Applicant was given to understand that in case any resolution plan is submitted in respect of Corporate Debtor, then the Applicant will automatically be disqualified for making any future bids in respect of other Companies. In other words, the case of Applicant if any resolution plan is submitted for Corporate Debtor Company, which is declared as NPA as per guidelines of RBI, then Applicant will be disqualified to bid for other companies. It is the case of Applicant that it has addressed a letter to the Resolution Professional as well as to the Ministry for clarification but none gave any clarification. So, the contention of the Applicant that the resolution plan could not be given in respect of Corporate Debtor Company solely on the ground that Applicant will be disqualified for future biddings if it acquired Corporate Debtor Company by virtue of submitting Resolution Plan.
11. The contention of the Applicant the Government has made certain further amendment to Section 29A by introducing Explanation-II and thereby gave concession to Resolution Applicant who is acquiring an account of a Company which was declared as NPA under a Resolution Plan which was approved under the provisions of the Code and three years' time is granted to such Resolution Applicant from the date of approval of Resolution plan by the Adjudicating Authority. In other words, Explanation-II which is




introduced by way of Ordinance 2018 dated 06.06.2018 the Resolution Applicant who acquires NPA account of Company by virtue of a resolution plan approved by the Tribunal, yet it is entitled to submit Resolution Plan in a period of 3 years. Thus, there is no disqualification for a period of 3 years for bidding by Resolution Applicant who had acquired NPA Account of the Corporate Debtor in an approval Resolution Plan by the Tribunal under the provisions of the Code.

12. The contention of Learned Counsel for Applicant that Applicant herein was unable to submit the Resolution Plan because of apprehension that Applicant would be disqualified for future biddings. The counsel contended that Applicant had not submitted Resolution plan solely on the ground that it would be disqualified for future biddings in case if Applicant acquires Corporate Debtor Company whose account is treated as NPA. The contention of the Learned Counsel, this hurdle was removed by virtue of ordinance dated 06.06.2018. Therefore, Learned Counsel contended that the Applicant has good net worth and that it is capable to file viable resolution plan for the Corporate Debtor and it is necessary in the interest of various stakeholders. Therefore, Learned Counsel contended the Applicant was not able to file Resolution Plan following the hurdle/impediment which was ultimately modified by way of amendment and the period from the date of introduction of Section 29A i.e. 23.11.2017 to the date of closing of CIRP i.e 04.05.2018 totalling 163 days be excluded from CIRP period and direction to be given to Resolution Professional to start fresh bidding process.
13. On the other hand the Counsel for Resolution Professional filed written submissions. The contentions of Resolution

Professional that the case of Applicant is that it was not clear of the consequence which would ensure on his eligibility under Section 29A of the Code, if he participated in CIRP of the Corporate Debtor. In other words, the case of Resolution Professional the Applicant is seeking exclusion of 163 days only on the assumption that he was not clear regarding consequence that would follow in case he submits the Resolution Plan in view of introduction of section 29A in the Code.

14. The contention of Resolution Professional that there is no bar for the Applicant to file Resolution plan for the Corporate Debtor Company. The contention of Resolution Professional that the Applicant had not submitted any Resolution Plan for consideration by CoC at any stage of CIRP. It is the case of RP that the Applicant who had not submitted any Resolution plan is not in any manner affected by any change in law. The contention of Resolution Professional, CIRP came to an end on 04.05.2018. The contention of Resolution Professional that he made an advertisement calling for EOI and that as many as 7 persons submitted Resolution Plans. The Applicant herein has not submitted any Resolution plan. Therefore, Applicant is not entitled to seek exclusion of 163 days from CIRP period.
 15. The contention of the RP that there is no impediment during CIR process and that several meetings of CoC were conducted and there was no stay granted at any point of time by the Code.
 16. The contention of the learned counsel for Applicant, Hon'ble NCLAT held in the matter of Quinn Logistics India Pvt Ltd Vs Mack Soft Tech Private Limited dated 08.05.2018 that time can be excluded in the following circumstances.
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- (a) If the Corporate Insolvency Resolution Process is stayed by a court of law or the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court.*
- (b) If no "Resolution Professional" is functioning for one or other reason during the corporate insolvency resolution process, such as removal.*
- (c) The period between the date of order of admission/moratorium is passed and the actual date on which the Resolution Professional takes charge for completing the CIRP.*
- (d) On hearing a case, if order is reserved by the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court and finally pass order enabling the Resolution Professional to complete the CIRP.*
- (e) If the CIRP is set aside by the Appellate Tribunal or order of the Appellate Tribunal is reversed by the Hon'ble Supreme Court and CIRP is restored.*
- (f) Any other circumstances which justifies exclusion of certain period.*


17. The Counsel contended, the case of Applicant squarely falls in clause (f) of the directions given by Hon'ble NCLAT. Counsel contended the grounds stated by the Applicant for exclusion of 163 days from CIRP period is justifiable ground. The Applicant was prevented to file resolution plan following introduction of disqualification clause in Section 29A© by way of amendment and later the same was given some concession and that Applicant now is able to file the resolution plan.
18. It is an admitted case that Applicant has not submitted any Resolution Plan to the Resolution Professional. Without filing any resolution plan before RP during CIRP period, it has filed the present application after completion of the CIRP period. Any subsequent change in the law will not enure to the benefit the Applicant for the simple reason the Applicant has not submitted any resolution plan to the Resolution Professional. Section 29A provides for persons who are not eligible to submit resolution plan. Section 29A(c) is relied by the Applicant stating that it was
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prevented to file resolution plan fearing disqualification. On the other hand there is no bar for the Applicant to submit the Resolution Plan. The Applicant is contending, if resolution plan given by the Applicant is accepted, then it would be disqualified. It is purely hypothetical. The reason is, the Applicant had not submitted any resolution plan.

19. CIRP is initiated against Corporate Debtor as a stand alone basis. However, Applicant is contending that there are subsidiaries for Corporate Debtor Company and that in case any action is initiated against the subsidiaries, then it will be disqualified for bidding. The Tribunal has to see whether Applicant was prevented by any justifiable ground from presenting resolution plan. The account of the Applicant is not treated as NPA. Therefore, Applicant is eligible to file resolution plan. So, there is no bar for Resolution Applicant to submit resolution plan even by virtue of introduction of Section 29A. The mere contention of the Applicant without filing any resolution plan that it will be disqualified in case its resolution plan is approved by CoC, is by itself not a sufficient ground for exclusion of 163 days as contended by Applicant. Secondly, there is no bar under Section 29A for the Applicant to submit Resolution Plan within the CIRP period. Having not submitted any resolution plan to the Resolution Professional, the Applicant cannot seek any protection under amended provisions of 29A by virtue of ordinance dated 06.06.2018. Section 30 of the Code was also amended by virtue of ordinance dated 06.06.2018 proviso to sub-section (4) was introduced by Ordinance 2018 that eligibility criteria under Section 29A as amended by Ordinance 2018 shall apply to Resolution Applicant which has not submitted the Resolution plan as on the date of

commencement of the ordinance. In this case CIRP period was already completed when ordinance was promulgated on 06.06.2018. Therefore, Applicant cannot take any aid by virtue amendment to Section 29A of the Code through Ordinance 2018. Therefore, the relief prayed by the Applicant for exclusion of 163 days from CIRP period cannot be granted and Application is liable to be dismissed.

20. In the result, Application is dismissed.


(RATAKONDA MURALI)
MEMBER (JUDICIAL)

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**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

IA No.321 of 2018
CP(IB) No.111/7/HDB/2017

U/s 33 (1) (a) of IBC, 2016

In the matter of IDBI Bank Vs Lanco Infratech Limited

Shri Savan Godiavala
Resolution Professional
For M/s Lanco Infratech Limited
Lanco House, Plot No.4, Software Units Layout
HITEC City, Madhapur
Hyderabad – 500081

...Applicant /
Resolution Professional

Date of Order: 27.08.2018

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Counsels/Parties present:

For the Applicant: Shri Rusheek Reddy K.V. along
with Shri L. Aravind Reddy

Heard on: 14.08.2018

ORDER

1. This Application is filed by Resolution Professional under Section 33(1) (a) of the Insolvency & Bankruptcy Code, 2016 praying this Tribunal to pass an order of liquidation in respect of Lanco Infratech Limited (Corporate Debtor) on account of non-approval of the Resolution Plan by the Committee of Creditors.



2. It is averred that petition bearing CP (IB) 111/7/HDB/2017 was filed under Section 7 of IBC, 2016 by IDBI Bank Limited (Financial creditor) and it was admitted by an order of this Tribunal dated 07.08.2018 and appointed Mr. Savan Godiawala as Interim Resolution Professional and subsequently confirmed as Resolution Professional by Committee of Creditors.
3. It is averred that this Tribunal also extended the Corporate Insolvency Resolution Process period for a further period of 90 days on 16.01.2018 based on the Application filed by the Resolution Professional. The Date of expiry of CIRP was on 04.05.2018.
4. It is averred that as per Section 25(2)(h) and (i) of the IBC, 2016, the Resolution Professional received expression of interest from seven Applicants. It is also averred that a transparent and uniform process and criteria for receipt and evaluation of Resolution Plans was adopted by the CoC. Thereafter, the plans were examined to verify whether they meet the mandatory requirements as prescribed under the Code and Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
5. It is averred that plans submitted by the following Applicants herein contemplated acquisition of identified asset and did not provide for insolvency resolution of the Corporate Debtor as a going concern in accordance with Part-II of the Code. They did not



meet the mandatory provisions of the Code and CIR Regulations. The Applicants are:

- (i) Cube Highways and Infrastructure Pvt LTd
- (ii) Metro Asset Services Private Limited
- (iii) Penn Energy International Renewables Limited
- (iv) Rohan Solar Power Private Limited
- (v) Solarland (Wuxi) Electric Power Technology Limited

6. It is also averred that the Resolution Plans submitted by the following provided the corporate Debtor as a going concern, but the resolution plans lacked certain mandatory requirements prescribed under the Code. The Applicants are:-


- (i) Ingen Capital Group, LLC
- (ii) Thriveni Earthmovers Private Limited

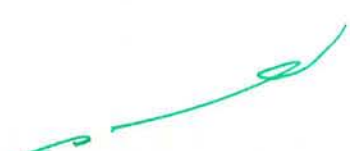
7. It is the case of the Resolution Professional that he provided adequate opportunity to each of the Resolution Applicants to remove deficiencies in their plans. The Resolution professional also sought clarifications to establish that the plans submitted were legally compliant and requested to submit addendums /revisions to their respective resolution plans


8. It is averred that pursuant to review by the Resolution Professional, Thriveni Earthmovers Private Limited (herein after referred to as TEPL) submitted resolution plan on 20.03.2018 along with addendum dated 17.04.2018 and it was found to be the only resolution plan complying the mandatory requirements of the Code and the Regulations. The same was informed to

the CoC by the Resolution Professional in the meeting of the CoC held on 23.04.2018. In the said meeting of CoC , SBI Capital Markets Limited, Evaluator and Cyril Amarchand Mangaldas, Legal Advisors appointed by the CoC considered key legal and commercial terms of TEPL Resolution Plan and made certain suggestions on the TEPL Resolution Plan and advised the Resolution Professional to communicate the same to TEPL.

9. In pursuant to the above, TEPL submitted another addendum to the TEPL Resolution plan dated 24.04.2018 (herein after referred to as the TEPL Revised Resolution Plan)
10. It is averred that the TEPL Revised Resolution Plan was placed before the CoC on 25.04.2018 for approval under Section 30 (2) of the Code and after e-voting was carried out, only 15.12% of the Financial creditors approved the Revised Plan, which was informed to TEPL by Resolution Professional vide e-mail dated 01.05.2018.
11. It is averred that in response to the above mail, TEPL further revised its resolution plan and submitted the same to the Resolution Professional on the same day i.e 01.05.2018, which was placed before the CoC on 02.05.2018. It is the case of RP that since the plan was received only two days prior to completion of CIRP, CoC did not have adequate time to deliberate the plan. As such IA 138 of 2018 was moved before this Tribunal seeking further directions in this regard.



12. This Tribunal passed orders in IA 138 of 2018 on 13.07.2018 excluding a period of 16 days from the CIRP period and directed the RP to place the Revised resolution plan of TEPL before the CoC.
 13. The revised Resolution Plan submitted by TEPL was deliberated at length by the CoC in its meeting held on 23.07.2018 and put the plan for e-voting. It is stated that the voting of the Resolution Plan was closed on 26.07.2018 and only 15.53% of the Financial Creditors approved the Revised plan of TEPL.
 14. It is further averred that extended period of 270 days for the CIRP expires on 04.05.2018 and further period of 16 days which has been excluded from the CIR process also expires on 28.07.2018 and that since no resolution plan was approved by the CoC, the Resolution Professional prays this Tribunal to pass order under Section 33(1)(a) of the Code for liquidation of the Corporate Debtor Company.
 15. It is also averred that as per Section 34(1) of the Code, the Applicant / Resolution Professional is willing to continue as Liquidator of the Corporate Debtor subject to approval by this Tribunal.
 16. I have heard the Counsel for Resolution Professional. The RP has filed this Application under Section 33 of Insolvency & Bankruptcy Code, 2016 (herein after referred to as Code) for an order of liquidation of the Corporate Debtor Company on the ground that no Resolution Plan was approved by the CoC and the next course is to pass an order of liquidation.
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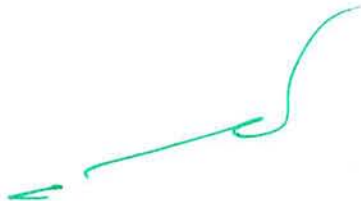
17. The Resolution Professional has given all details of the CIRP in the Application. It is the case of Resolution Professional only one Resolution Plan was found to be in conformity with mandatory requirements and that the same was placed before the CoC. This resolution plan was submitted by TEPL. This resolution plan was subject matter of consideration of CoC several times and finally on the orders passed by this Tribunal in IA 138/2018 dated 13.07.2018, the resolution plan of TEPL was again submitted to the CoC and e-voting was held in the meeting held on 23.07.2018. The case of Resolution Professional, the resolution plan was approved by only 15.53% of voting share of the Financial Creditors. Thus, the Resolution Plan of TEPL was not approved by required voting share of Financial Creditors, which shall be 66%. Thus, only Resolution Plan of TEPL was not approved by the majority of the members of the CoC. E-voting result dated 26.07.2018 including minutes of the meeting dated 23.07.2018 is enclosed. Since no resolution plan was approved by the CoC, then Tribunal to pass an order under Section 33 of the Code. The Adjudicating Authority has not received any resolution plan from the Resolution Professional. No resolution plan was submitted to this Adjudicating Authority under Section 30(6) of the Code.
18. Section 33 (1) reads as under:-
33. (1) Where the Adjudicating Authority, —
- (a) before the expiry of the insolvency resolution process period or the maximum period permitted for
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completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall —

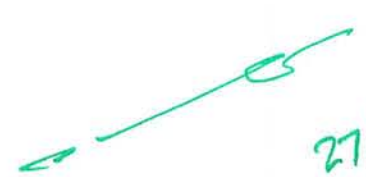
- (i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;
- (ii) issue a public announcement stating that the corporate debtor is in liquidation; and
- (iii) require such order to be sent to the authority with which the corporate debtor is registered.

Thus, the Tribunal has to pass order of liquidation against Corporate Debtor Company under Section 33(i) of the Code.

19. The Resolution Professional has stated in his application that he is willing to continue as Liquidator. The Resolution Professional was appointed for CIRP. Section 34 of the Code provides Resolution Professional appointed during CIRP to act as the Liquidator.
 20. Shri Savan Godiawala was appointed as Resolution Professional during CIRP. He has expressed willingness to act as Liquidator. Therefore, the Resolution Professional can be appointed as Liquidator subject to submission of written consent in the prescribed form.
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21. In the result, this Application is allowed. Shri Savan Godiavala is appointed as Liquidator and is directed to submit his written consent in prescribed form to this Tribunal within a week. He is further directed to initiate liquidation process as envisaged under Chapter-III of IBC, 2016 by following the liquidation process stated in IBBI (Liquidation Process), Regulations, 2013.
 22. All powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested in the Liquidator.
 23. I hereby direct the personnel of the corporate Debtor to extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
 24. I hereby direct that the fee shall be paid to the Liquidator as envisaged under Regulation 4 of IBBI (Liquidation process) Regulations, which forms part of the liquidation cost.
 25. The Liquidator appointed herein is directed to issue public announcement stating that the Corporate Debtor is in liquidation and also required to send the copy of this order to the concerned Registrar of Companies as required under Section 33 (1) of the Code.
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26. As per Regulation 13 the liquidator shall submit a preliminary report to the Adjudicating Authority within 75 days from the liquidation commencement date providing various details/information as mentioned in the said regulation.


(RATAKONDA MURALI)
MEMBER (JUDICIAL)

27/8/18

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