

NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

ITEM NO :5

CP NO.(IB)85/ALD/2020

ATTENDENCE - CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 11.06.2020 at 11:00 AM THROUGH VIDEO CONFERENCING.

NAME OF THE COMPANY : AXIS BANK LTD. V/S LANCO MANDAKINI HYDRO ENERGY PVT. LTD.

SECTION OF IBC : 7 OF IBC

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

COUNSEL FOR PETITIONER : MS. GUNJAN JADWANI, ADVOCATE

COUNSEL FOR RESPONDENT : SH. ADITYA SINGH, ADVOCATE

CP NO.(IB)85/ALD/2020

The matter was taken up today through Video Conferencing at 11:25AM.

Order pronounced through Video Conferencing. Petition admitted. Moratorium granted. IRP appointed, vide separate ordersheet.

Put up on 8th July, 2020 for filing progress report before Regular Court/ through Video Conferencing.

Dated : 11.06.2020

JUSTICE RAJESH DAYAL KHARE
(MEMBER JUDICIAL)

Typed by :
Kavya Prakash Srivastava
(Stenographer)

FREE OF COST

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OF THE ORIGINAL

12/06/2020
S. A. MEHDI
DESIGNATED REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD U.P.



compared by me
Bharat Mishra
12/06/2020

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

Company Petition (IB)No.85/ALD/2020
(Under Section 7 of Insolvency and Bankruptcy Code, 2016 read with Rule 4 of
the Insolvency and Bankruptcy (Application to Adjudicating Authority)
Rule, 2016)

IN THE MATTER OF

Axis Bank Ltd

.....Applicant/Financial Creditor

VERSUS

Lanco Mandakini Hydro Energy Pvt. Ltd

.....Respondent/Corporate Debtor

ORDER RESERVED ON : 08.06.2020
ORDER DELIVERED ON : 11.06.2020

CORAM:

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

For the Applicant/ Financial Creditor: Ms Gunjan Jadhvani, Adv
For the Respondent/ Corporate Debtor: Mr. Aditya Singh, Adv

Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)

Order

1. The present petition has been filed by the financial creditor (herein referred as "petitioner") i.e. "**Axis Bank. Ltd**" under Section 7 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency Resolution Process of the Corporate debtor i.e. "**Lanco Mandakini Hydro Energy Pvt.Ltd.**" on grounds of its inability to liquidate its financial debt.

2. As per averments made in the petition, on the request of the corporate debtor, the financial creditor has sanctioned financial assistance in the form term loans to the tune of Rs. 138.24 Cr. under the term loans 1, 2, 3 and 4 from July 17, 2009 till the filing of the application and the corporate debtor have agreed to repay the principal amount of the facility together with interest in accordance with the Financing documents and within agreed timelines.



— 80 —

3. Further submitted that the corporate debtor failed to the terms and conditions of agreements resulting into the account becoming irregular and as per the RBI guidelines applicable, the account of the corporate debtor was declared as NPA on 30th September, 2017, therefore, on 04.01.2016 the account was declared as NPA.
4. It was contended by counsel for applicant that the total amount of default outstanding and as claimed by the financial creditor is Rs.149,88,18,088 and the total amount of default outstanding of the consortium of Banks, which have lent money to the respondent is to the tune of Rs.819.92 Crores. It was further contended that the respondent is a Hydro Electric Generation Company engaged in the construction of 76 MW hydro Electric Power Plant on the river Mandakani, which project is still not completed.
5. The corporate Debtor has been duly served and the counsel appeared on behalf of the corporate debtor and filed the counter affidavit in which at page 2 para 1.4 the corporate debtor has submitted the tabular representation of the details of debt in which they have admitted the debt of the financial creditor. Thus, oral arguments were heard and order was reserved.
6. Mere plain reading of the provision shows that in order to make an application under Section 7 (1) the financial creditor / petitioner is required to establish:
 - i.) Whether there is duly established financial debt.
 - ii.) Whether there is default in payment by the corporate debtor.
 - iii.) Whether the documents attached with the applicant shows that there is default in payment of debt and name of resolution professional is proposed to act as IRP and no disciplinary proceedings are pending against the proposed resolution professional.



— 8d —

6. Referring to the decision of Hon'ble Supreme court in Innoventive Industries Ltd. v. ICICI Bank, (2017)205 Comp Cas 57(SC) it was held that

"..... The moment the Adjudicating Authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete....."

Further in the matter of Karan Goel v. M/s Pashupati Jewellers & Anr. Company Appeal (AT) (Insolvency) No. 1021 of 2019 dated 01.10.2019 stated:

"..... it is clear that once the Adjudicating Authority is satisfied on the basis of records that the debt is payable and there is default, the Adjudicating Authority is required to admit the application."

7. Hence, the application filed on behalf of financial creditor/Applicant under Section 7 of IBC is found complete. The present petition being filed in 04.02.2020 is well within limitation and the date of default is 31st August, 2017 is much prior to the amendment made in Insolvency and Bankruptcy Code on 05th of June, 2020 whereby Sec 10A was inserted which states as follows:

"Suspension of initiation of Corporate Insolvency Resolution Process"

"10A. Notwithstanding anything contained in Sections 7, 9 and 10, no application for initiation of corporate Insolvency Resolution Process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for the period of six months or such months or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of Corporate Insolvency Resolution Process of a corporate debtor for the said default occurring during the said period.



— Sd —

Explanation- For the removal of doubt, it is hereby clarified that the provisions of this Section shall not apply to any default for the said sections before 25th March, 2020."

8. Therefore, in the present application the date of default in the present application is 31st August, 2019, thus the amendment made will not be applicable in the present petition.

9. Considering the facts and circumstances of the case, this adjudicating Authority is inclined to admit this petition and initiate CIRP of the Respondent Company. Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith stating:

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.



—Sd—

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period.]

2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.]

(3) The provisions of sub-section (1) shall not apply to —

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

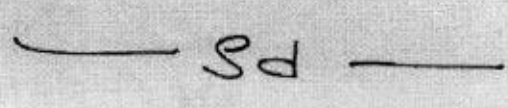
(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the



resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

10. The Financial Creditor has proposed the name of **Mr. Bhruvish Amin, Registration Number IBBI/TPA-002/IP-N00353/2017-18/11003** for appointment as Interim Resolution Professional (IRP). Further IRP has filed a declaration in form 2 affirming that he is registered insolvency professional and no disciplinary proceedings are pending against him. We accordingly confirm his appointment as the IRP. He shall take such other and further steps as are required under the statute, more specifically in terms of Sec 15,17 and 18 of the Code and file his report.
11. The registry is directed to communicate this order to Financial Creditor, as well as to Corporate Debtor and to IRP.
12. Urgent Photostat certified copies of this order, if applied for, be supplied to parties upon compliance of requisite formalities.
13. List on **08.07.2020** for the filing of the progress report.


JUSTICE RAJESH DAYAL KHARE
 MEMBER (J)

Date: 11.06.2020

Swati Gupta
(LRA)

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FREE OF COST


 12/06/2020
S. A. MEHDI
 DESIGNATED REGISTRAR
 NATIONAL COMPANY LAW TRIBUNAL
 ALLAHABAD U.P.

Complied by me
Bhruvish Amin
 12/06/2020

