

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

CP (IB) No.518/7/HDB/2019

Under Section 7 of the I B Code, 2016,  
Read with Rule 4 of the Insolvency and  
Bankruptcy (Application to Adjudicating Authority)  
Rules, 2016.

In the matter of:-

**M/S.LANCO SOLAR ENERGY PRIVATE LIMITED.**

M/s. Andhra Bank.  
M - 35, Connaught Circus,  
New Delhi - 110 001.  
Having its Regd. Office at  
5-9-11, Dr. Pattabhi Bhavan,  
Secretariat Road, Saifabad,  
Hyderabad - 500004.

...Petitioner/  
Financial Creditor

**Vs**

M/s. Lanco Solar Energy Private Limited,  
Plot No.4, Software Units Layout,  
Hitech City, Madhapur,  
Hyderabad, Telangana - 500 081.

...Respondent/  
Respondent/  
Corporate Debtor

**Order delivered on: 14.06.2019.**

**Parties/Counsel Present:**

For the Petitioner/Financial Creditor:

Mr.K.Lakshmi Narasimha, Counsel.  
Mr.M.Anil Kumar, Counsel.

For the Respondent/Corporate Debtor:

Mr.D.V.A.S.Ravi Prasad, Counsel.  
Ms.D.Sarvani, Counsel.

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**PER: K.ANANTHA PADMANABHA SWAMY,**  
**MEMBER JUDICIAL**

**O R D E R**

1. The present Petition is filed by 'Andhra Bank' (hereinafter referred to as '**Financial Creditor**') under section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as '**IB Code**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against M/s. Lanco Solar Energy Private Limited (hereinafter referred to as '**Corporate Debtor**').
2. Before proceeding with this matter, it would be appropriate to make a note of background facts for the purpose of determination of this petition.
3. The Petitioner/Financial Creditor, is a Public Sector Bank incorporated under the Companies Act, 1956, having its Registered Office at Hyderabad, whereas the Respondent/Corporate Debtor is a Company incorporated under the Companies Act, 1956 and having its registered office at Madhapur, Hyderabad, Telangana.
4. It is stated that on approach by the Corporate Debtor vide letter dated 26.05.2011 requesting the Financial Creditor to extend certain credit facilities to the Corporate Debtor. The FC vide Sanction Letter No. 084/01/S-39 dated 28.08.2014 has decided to extend certain Credit Facilities.

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Later, The Financial Creditor vide its letter dated 19.02.2016 granted renewal of working capital limits to the tune of Rs.175 Crores as under:

- i. Facility: Open Cash Credit (Renewal): Rs.75 Crores.
- ii. Facility: Bank Guarantee Inland/Foreign (Renewal): Rs.50 Crores.
- iii. Facility: Letter of Credit Inland/Foreign (Renewal): Rs.25 Crores.
- iv. Facility: Forward Contract Limit (Renewal): Rs.25 Crores.

5. All the above said limits were utilized by the CD while so, it was observed by the FC that the CD was not operating the account as per the sanction letters. Accordingly, a letter dated 24.02.2016 was sent to the CD by the FC requesting them to immediately fill this gap.

6. It is also averred that M/s. Lanco Infratech Limited vide Board Resolution dated 04.03.2016, approved for execution of documents in respect of financial assistance sanctioned to CD, which is a subsidiary company of M/s. Lanco Infratech Limited, which is a holding company of the CD, has executed General Form of Guarantee dated 04.03.2016, guaranteeing the above said facilities given to the CD. A Composite Agreement dated 04.03.2016 for a total of Rs.150,56,00,000/- (Rupees One Hundred Fifty Crore and Fifty Lakhs Only) was entered between the FC and the CD.

7. The Respondent/CD vide its letter dated 04.03.2016 has given their undertaking accepting all the terms and conditions as per the sanction letter of FC dated.

19.02.2016. While the matters stood thus, the Respondent/CD has defaulted in their payments.

8. It is further stated that, when the Respondent/CD did not repay the loan, the Petitioner/FC has given notice Under Section 13(2) of the SARFAESI Act vide notice dated.23.11.2016. The Respondent/CD vide their letter dated.15.02.2018 has requested the Petitioner/FC herein to withhold their Notice of Recalling the Facilities. The Respondent/CD has completely failed in repaying any of its dues/loans to the Bank in spite of repeated reminders. It is further stated that the CD is unable to repay its loans/Credit Facilities granted to it totalling to Rs. 150.57 Crores, Occ to the tune of Rs. 131.82 Crores and BG to the amount of Rs. 18.74 Crores. Hence, the present Petition is being filed Under the IB Code, 2016 to initiate Insolvency Proceedings against the Corporate Debtor.


9. In support of its claim, the FC has filed the following Documents :

- Copy of Power of Attorney
- Affidavit in support of the Application in accordance with the I&B (Application to Adjudicating Authority)
- Copy of the Incorporation Certificate of the CD.
- Memorandum of Association of the CD.
- Request letter of the CD for obtaining certain credit facilities.
- Sanction letter by the FC to CD.
- Application for renewal of limits by the CD.
- Renewal sanction letter by FC.



- The CD vide their letter dated 22-8-15 has submitted certain information as requested by the FC.
- Renewal sanction letter by FC.
- Utilization of the said credit facilities by the CD.
- Letter sent by the FC to CD to immediately the gap.
- Board Resolution of the CD.
- General form of Guarantee executed by the Holding Company M/s.Lanco Infratech Limited.
- Copy of Composite Agreement.
- Undertaking given by the CD.
- Copy of Letter of FC to CD intimating the default.
- Reminder letters given the FC to CD on various dates.
- Copy of letter from Central Bank of India ceiding pari passu charge.
- Acceptance of the said letter by the FC.
- Notice Under Section 13(2) of the SARFAESI Act sent by FC to CD.
- Copy of the request letter of CD to FC to withhold the Notice of Recalling facilities.
- CRILC Report.

10. The Respondent/CD has filed its Counter and stated that the Corporate Debtor has been a profitable Company since its inception until 2012-13. It is also stated that the Corporate Debtor has also made profit during the financial year 2015-2016 and 2016-2017. It is further stated that the Petitioner/FC is Andhra Bank, who has extended Credit Facility to the Corporate Debtor by sanctioning a Working Capital Loan of INR.175,00,00,000/-(Rupees One Hundred and Seventy-Five Crore Only) in the year 2011 and later renewed in the year 2016 for a total limit i.e., Working Capital Loan of INR.175,00,00,000/-(Rupees One Hundred and Seventy-Five Crore Only). It is further stated



that the Petitioner/FC alleges default of the said Working Capital Loan and by way of the present petition the Financial Creditor is demanded a sum of INR.150,56,00,000/- as the loan default amount; Overdraft Cash Credit (Fund Based Limit) of INR.131,82,00,000/- (Rupees One Hundred and Thirty-One Crore Eighty -Two Lakh Only) along with interest; and Bank Guarantee for INR.18,74,00,000/- (Rupees Eighteen Crore Seventy-Four Lakh Only) along with interest.

11. It is also stated that the Respondent/CD has made profits during the Financial Years 2015-16 & 2016-17. Thereafter, the business operations of the Respondent/CD suffered hugely for reasons beyond the control of the Corporate Debtor. During the period of 2011 to 2017, the Respondent/CD Company has undertaken various prestigious projects including 75 MW Solar PV Project in Dhule, Maharashtra, awarded by Maharashtra State Power Generation Co. Limited ('MAHAGENCO'), Project in Ramagundam, Andhra Pradesh, Project in Ananthapur, Andhra Pradesh and a Project in Mandasour, Madhya Pradesh, all the above projects were awarded by NTPC Limited. The Corporate Debtor has also undertaken EPC works for 2 (two) Solar Thermal Projects of 100 MW each, in the state of Rajasthan, which could not be completed due to some technical issues in the projects.



12. The details of the events leading to the decline in the business operations of the Corporate Debtor are as stated hereunder:

- a) Dis-continuation of 2 X100MW (200MW) Solar Thermal Projects.
- b) Issues due to delay in payments by MAHAGENCO.
- c) Delay in payments by other customers – Government Companies.
- d) Sale of Investments & Change of Management.
- e) Joint sale of investment through liquidator of parent company under Liquidation Proceeding. i.e., M/s Lanco Infratech Limited.

13. It is further stated that the Corporate Debtor is taking steps towards repayment of the overdue amount of the Financial Creditor, by revamping the business operations and carrying out a change in the management of the Corporate Debtor and considering the joint sale of its investment along with liquidator of parent company M/s Lanco Infratech Limited to maximise value of its assets.

14. The Respondent/CD has filed an additional affidavit stating that the circular passed by the Reserve Bank of India dated.12.02.2018, which was the subject matter of the Petitions and was under challenge before the Apex Court, has been quashed by the Hon'ble Supreme Court vide Order dated 02.04.2019 being ultra vires as a whole,

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and has been declared to be no effect in Law. Further, the Hon'ble Court has directed that all the actions taken under the said circular, including actions by which the Insolvency Code has been triggered against the defaults, be declared as *non-est*.

15. It is further stated that, the Hon'ble Supreme Court has categorically directed that 'As a result, all cases in which debtors have been proceeded against by financial creditors under Section 7 of the Insolvency Code, only because of the operation of the impugned circular will be proceedings which, being faulted at the very inception, are declared to be *non-est*.

16. It is further stated that the Respondent/CD believes that the, present petition has been initiated by the Financial Creditor pursuant to the passing of the Circular dated 12.02.2018 by the Reserve Bank of India.

17. It is also submitted that in the event of present petition is initiated by the Financial Creditor only because of the operation of the said Circular, and as the said Circular is quashed by the Hon'ble Supreme Court of India, so the Financial Creditor should give a chance to Corporate Debtor to restructure its loan before initiating the Corporate Insolvency Resolution Process against the Corporate Debtor.

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18. It is further stated that the Respondent/CD is certain that by undertaking the process of re-structuring the Company i.e., by sale of assets., the Corporate Debtor will be in a position to pay-off the loans advanced under the Facility Agreements from the Petitioner/FC. However, in the event, this Tribunal grants an opportunity to the Respondent/CD to re-structure the Company, the Corporate Debtor will be able to clear the outstanding dues of the Financial Creditor and to run the operations of the Company effectively and smoothly.


19. The Petitioner/FC has filed rejoinder and reiterated the contents of the main Company Petition and also stated that Respondent/CD is a defaulter who failed to pay the debt to the Petitioner/FC in terms of the Financing Agreements and there being a debt due from the Corporate Debtor, the provisions of IBC are applicable and thus, the Financial Creditor has rightly initiated the action as envisaged under the law.

20. Counsel for the Respondent on 01.05.2019, filed an Application, filing Additional Affidavit stating that the Corporate Debtor has its joint investments in Equity Shareholding, preference Shareholding (along with Debt receivable) etc., in 7 Solar Power Projects and further stated that the Corporate Debtor is in process of sale of its stake in these Solar Projects and it shall take 8 weeks time to complete the same and the same will be utilized for

making payments to the Creditors of the Corporate Debtor, including the Financial Creditor herein. Further the Corporate Debtor sought extension of time by 12 weeks.

21. Heard both sides and perused the record.

22. It is the case of the Financial Creditor that it has provided Loan facilities, Fund Based Limit (OCC) and Bank Guarantee facilities to the Corporate Debtor for which the Corporate Debtor was liable to repay and has defaulted in repayment of the same. The Corporate Debtor in its counter nowhere denied the debt amount in default but has stated various reasons which are untenable grounds for rejection of instant Petition. Even on perusal of the Additional Affidavit, even in the Additional ~~Affidavit~~ filed by the Corporate Debtor dated 01.05.2019, the Corporate Debtor has sought time on pretext of sale of its Assets and Stakes in other Companies, this Adjudicating Authority has observed that the Corporate Debtor even in Additional Affidavit has not denied the default in repayment of debt amount. Further, the Petitioner has proved its case by placing documentary evidence viz., Copies of Sanction Letter, renewable Sanction Letter, Composite Agreement, date and details of all disbursement of the facilities and renewable facilities etc., and copies of entries in Bankers Book in accordance with the Bankers Books Evidence Act, 1891 (18 of 1891) which proves that the default has been occurred for which the present Corporate Debtor was liable





to pay. In these circumstances, this Adjudicating Authority is satisfied with the submissions put forth by the Petitioner/Financial Creditor. Further, the Financial Creditor has fulfilled all the requirements as contemplated under IB Code, in the present Company Petition and has also proposed the name of IRP after obtaining the written consent in Form-2. In view of the above, I am inclined to admit the petition.

23. The instant petition is hereby admitted and this Adjudicating Authority order the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed within 180 days, reckoning from the day this order is passed.

24. I hereby appoint Mr. Praveen Bansal as the name proposed by the Financial Creditor and his name is reflected in IBBI website. He has also filed his written consent in Form - 2. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

25. I declare the moratorium which shall have effect from the date of this Order till the completion of Corporate Insolvency Resolution Process (CIRP) for the purposes

referred to in Section 14 of the I&B Code, 2016. I order to prohibit all of the following, namely:

- i. *The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- ii. *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- iii. *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);*
- iv. *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

26. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

27. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The directors, Promoters or any other person associated with the management of Corporate



Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016. Accordingly, the application is admitted.

28. The Petitioner/FC as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.

29. The Registry is also directed to communicate this Order to the Financial Creditor and the Corporate Debtor.

30. The address details of the IRP are as follows:-

Mr. Praveen Bansal  
Address : E-10A, Kailash Colony,  
Greater Kailash- I ,  
New Delhi – 110048.  
Email: praveenbansal@aaainsolvency.com  
Reg. No: IBBI/IPE/2016-17/002.

24. The present Petition is hereby admitted.

  
**K. ANANTHA PADMANABHA SWAMY**  
**MEMBER JUDICIAL**