

**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 27.09.2018 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.113,114,115,139&107/2018, IA No. 418/2018, IA No.194/2018, IANo.117,122,143,145,167,193,203,204,205,206,230,269,273,300, 301,308,380,381,382&383/2018 in CP(IB) No.111/7/HDB/2017
NAME OF THE COMPANY	Lancho Infratech Ltd
NAME OF THE PETITIONER(S)	IDBI Bank Ltd
NAME OF THE RESPONDENT(S)	Lancho Infratech Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
P. Arun Kumar Reddy CA 117/18 Y.N. Vivekandara.	Advocate Advocate	924651212 9949651119.	
H. Rajesh Kumar. Yohan.	Advocate Advocate	9000292870	

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Ameya Gokhale Vaijayanthi Patilwal	Advocate for RP/liquidator	9652887117	
Rubina S Khatoun L. Aravind Reddy			

M.S. Naro Rangan
for Mr. Y. Suresh Narayana Adv 9868555322
IA 117 & 418.
S. Raja Sekhara Rao Adv 9000080052
IA 269 & 375/18
in I.A. 380/381.

For the Applicant: KAUSTUBH SINHA, Adv.
R. Harish for Applicant in IA 122/18 Adv.

In I.A No. 382/2018 & 383/2018
Arjun Goyal, Adv.
Shreyas Das, Adv
Shradha Gupta, Adv } for the Applicant

In I.A - 300 and 301 / 2018
G. BHUPESH
SULABH REDDAR } For the Applicant

ORDER

IA No. 113/18 , is listed today for clarification.

Counsel for applicant is absent.

Counsel for RP/Liquidator is present.

The counsel for RP/Liquidator reported that applicant can file claim before the liquidator in respect of rejected portion of the claim and act accordingly to law. With this observation this application can be disposed of.

This 113/18 therefore listed for orders on 09.10.2018.

IA No 114/18, is again taken up for hearing for clarification.

Heard the proxy counsel for applicants and counsel for RP/Liquidator .

List if for orders on 09.10.2018.

IA No 115/18, is again taken up for hearing for clarification.

Heard the proxy counsel for applicants and counsel for RP/Liquidator .

List if for orders on 09.10.2018.

IA No 139/18, is again taken up for hearing for clarification.

Heard counsel for applicant and counsel for RP/Liquidator .

RP/Liquidator reported that Bank guarantee concerned in this application will be returned to the applicant and applicant has to approach Liquidator for the rejected claim.

This application can be disposed of with the said observation.

List if for orders on 09.10.2018.

IA No 107/18, is again taken up for hearing for clarification.

Heard counsel for RP/Liquidator .

List it again for orders on 09.10.2018.

IA No 418/18, is again taken up for hearing today.

Heard counsel for RP/Liquidator .

Applicant to serve copy of application on the counsel for RP/Liquidator who has to filed reply by 09.10.2018.

IA No. 420/18 is listed today for hearing.

Heard Counsel for RP.

This application is filed on behalf of RP/Liquidator under section 33(5) of IBC praying the Tribunal to grant permission/leave to the applicant/liquidator to move application under section 9 of arbitration and conciliation Act. For moving Hon'ble Highcourt of

Delhi for seeking stay of invocation of performance bank guarantee, furnished on behalf of applicant by Indian overseas bank for Rs. 50 crores.

Heard the counsel for liquidator/RP persused section 33(5) of IBC counsel for RP/Liquidator who contended that proposed action to be under taken by Liquidator as in the interest of the company.

Considering the submissions of the learned counsel for RP/Liquidator this tribunal grants leave to the applicant to approach Hon'ble Delhi High court on behalf of corporate debtor to initiate proposed vide separate order.

IA No. 269/18, is taken up for hearing.

Counsel for applicant is present.

Counsel for RP/Liquidator is present. Counsel for applicant reported the relief prayed in the application become infructuous and application may be dismissed as infructuous.

Counsel for RP/Liquidator reported application becomes infructuous hence application 269/18 be dismissed as infructuous. Application IA No. 269/18 is dismissed as infructuous vide separate order.

IA No. 380&381, are taken up for hearing.

Counsel for RP/Liquidator requested time for filing reply.

List it on 26.10.2018.

For reply as well disposal.

IA No. 300,301,&308 are taken up today for hearing.

List these IA's for final hearing on 26.10.2018 meanwhile Interim order passed in these IA'S are extended till then.

IA No. 382&383 are taken up today for hearing.

Counsel for RP/Liquidator requested time. Therefore these IA'S are listed for hearing on 26.10.2018.

Other IA'S if any are to be listed on 26.10.2018.


Member(Judl)

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

IA No. 420 of 2018
In
CP (IB) No.111/7/HDB/2017

U/c 33 (5) of IBC, 2016

In the matter of IDBI Vs Lanco Infratech Limited

Shri Savan Godiawala
LANCO INFRATECH LIMITED
Plot No.4, Software Units Layout
Hitech City, Madhapur
Hyderabad – 500081

(Rep. by its IRP Shri Savan Godiawala)
IRP, Deloitte Touche Tohmatsu India LLP
7th Floor, Building 10, Towers B
DLF Cyber City Complex
DLF City Phase-II
Gurgaon – 122002

...Applicant

Date of order: 27.09.2018

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Parties/Counsels present:

For the Applicant: Shri Ameya Gokhle, Ms Rubaina S.
Khatoun, Shri Vaijayanth Paliwal and
Shri L. Aravind Reddy, Advocates

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

Heard on: 27.09.2018

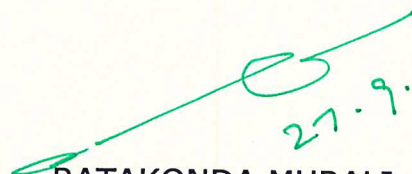
ORDER

1. This Application is filed under Section 33 (5) of Insolvency & Bankruptcy Code, 2016 on behalf of the Liquidator seeking leave of this Tribunal to the Liquidator to file necessary Application before the Hon'ble High Court of Delhi under Section 9 of the Arbitration and Conciliation Act, 1996, seeking stay of invocation of Bank Guarantee issued by Indian Overseas Bank for Rs. 50 crores.
2. The Learned Counsel for Liquidator would contend that this Tribunal passed an order of Liquidation against M/s Lanco Infratech Limited (Corporate Debtor) on 27.08.2018. The Liquidator has to file an Application under Section 9 of the Arbitration and Conciliation Act, 1996, before Delhi High Court for appropriate relief. The Application is to be filed before Hon'ble Delhi High Court seeking restrain order against Steel Authority of India Limited (SAIL) questioning the impugned termination notice of SAIL dated 24.09.2018 under which SAIL intended to terminate Coal Mining Services Agreement. It is dated 23.09.2013 and thereby to invoke Bank Guarantee of Rs.50 Crores. In this connection Application to be filed on behalf of Corporate

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Debtor before Hon'ble Delhi High Court as Hon'ble High court has jurisdiction over the matter.

3. I heard the Counsel for Liquidator and I have perused Section 33 (5) of Insolvency & Bankruptcy Code, 2016. Considering the grounds stated in the Application, leave is granted to the Liquidator to move Hon'ble Delhi High Court for seeking appropriate reliefs against SAIL by filing an Application under Section 9 of the Arbitration and Conciliation Act, 1996.
4. The Application is accordingly disposed off.


27.9.18
RATAKONDA MURALI
MEMBER (JUDICIAL)

*Place: Hyderabad
Date: 27.09.2018
Time: 1300 hrs*

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

IA No. 375/2018
In
CP (IB) No. 111/7/HDB/2018
U/s 60 (5) a/w Section 5(13) & 30 of IBC, 2016

In the matter of

IDBI Bank Limited Vs M/s.Lanco Infratech Limited

Lanco Infratech Employees Welfare Association
R/o Plot No.397, Udyog Vihar Phase-3`
Gurgaon, Haryana – 122016

...Applicant

VERSUS

1. Lanco Infratech Limited
R/o. Plot No. 4,
Software Units layout,
HITEC City, Madhapur,
Hyderabad- 500 081, Telangana
(Represented by Resolution Professional)
...Corporate Debtor
2. IDBI Bank Limited
IDBI Tower, WTC Complex, Cuffe Parade
Colaba, Mumbai – 400005
...Financial Creditor

Order pronounced on 27th September, 2018

Coram

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Counsels / parties present:

For the Applicant: Shri Raja Shekar Rao Salvaji,
Advocate

For the Resolution Professional: Shri Rusheek Reddy K.V. along
with Shri L. Aravind Reddy,
Advocates

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

Heard on: 27.09.2018

ORDER

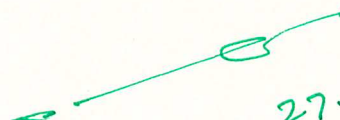
1. This application is filed on behalf of applicant under Section 60(5) of IBC, 2016, seeking direction of this Tribunal to declare the Corporate debtor Employees costs / Employees dues as CIRP cost.
2. The Petition bearing CP (IB) No.111/7/HDB/2017 filed under Section 7 of Insolvency & Bankruptcy Code, 2016, by IDBI Bank Limited (Financial Creditor) was admitted by this Tribunal on 07.08.2017 and appointed Mr. Savan Godiawala as Interim Resolution Professional who was 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 which comes to an end on 4th May, 2018. Further this Tribunal vide its order dated 13.07.2018 granted 16 days' time to CoC to consider the revised resolution plan of M/s Thriveni Earthmovers Private Limited.
4. It is averred that after the revised resolution plan was rejected by the CoC, this Tribunal passed order of Liquidation on 27.08.2018 against the Corporate Debtor under Section 33 (i) of the Code.

5. It is averred that the Applicant comprises of the employees of the Corporate Debtor and majority of them have been employed for a long period of time in specialised areas of expertise with the Corporate Debtor. The members of the Applicant Organization despite not receiving salaries worked during CIRP of Corporate Debtor under the guidance of Resolution Professional period and problems faced by the employees due to delayed payment of employee dues.
6. It is the case of Applicant that there is no dispute regarding the work done by the Employees of the Corporate Debtor during CIRP to keep the Corporate Debtor as a going concern and that Resolution Professional vide e-mail dated 18.04.2018 confirmed that all the Employees dues will be paid upon approval by the CoC as part of CIRP cost.
7. It is the case of Applicant that Resolution Professional had already submitted a statement of CIRP cost which includes the Employee dues to the CoC.
8. I heard the counsels appearing for the Applicant as well as for the Resolution Professional. This Application is filed by an organization named as Lanco Infratech Employees Welfare Association, which is represented by authorized signatory.
9. This Application is filed on 07.09.2018. The case of Applicant is that a direction to be given to Liquidator to declare the Corporate Debtor Employees costs / dues as CIRP cost and to further direct the Liquidator to pay all Employee dues as pending CIRP cost under Section 53(1)

(a) of the Code and also issue Form 16 after payments of Employees dues.

10. The Learned Counsel for Resolution Professional/ Liquidator reported that he has no objection to include the claim of Applicant in the CIRP costs. Counsel for Liquidator stated this on the instructions from the Liquidator that Applicant's claim can be included in the CIRP Costs.
11. In the result, Application is allowed by directing the Resolution Professional / Liquidator to include the claim of Applicant in the CIRP costs and issue Form-16 after payment of employees dues after due verification with Book of Accounts and those who are found eligible those dues alone be considered in CIRP costs.

This IA is disposed off accordingly.


27.9.18
RATAKONDA MURALI
MEMBER (JUDICIAL)

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

IA No. 269/2018
In
CP(IB) No. 111/7/HDB/2018

In the matter of M/s.Lanco Infratech Limited

Mr.Badarapu Manohar,
Chief Operational Officer of Corporate debtor,
R/o. GH4, 10B,
Gurgaon One RWA Sector-22,
Mulahera, Old Gurgaon, Delhi Road,
Gurgaon, Haryana- 122 016. ...Applicant

AND

1. Lanco Infratech Limited
R/o. Plot No. 4,
Software Units layout,
HITEC City, Madhapur,
Hyderabad- 500 081,
Telangana. ...Respondent/
Corporate Debtor
2. IDBI Bank Limited
R/o. IDBI Towers,
WTC Complex Cuffe Parada,
Colaba, Mumbai- 400 005. ...Respondent/
Financial Creditor

Order pronounced on 27.09.2018

Coram

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Counsels / parties present:

For the Applicant: Raja shekar Rao Salvaji, Advocate.

For RP: Savan Godiawala, RP.

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



ORDER

1. This application is filed by the applicant Mr. Badarapu Manohar, Chief Operating Officer of Corporate Debtor, under Rule 11 of the NCLT Rules, Under Section 60 Read with Section 5(13), 30 Of the Insolvency and Bankruptcy Code, 2016, praying the Tribunal to direct the Resolution Professional to clear dues in respect of salary, TDS and PF for the financial years 2017-18 and to issue Form 16 for the Financial Year 2017-18.
2. Averments in the application in brief:
 - a. It is averred that after the introduction of Insolvency and Bankruptcy Code in the year 2016, on the directions of the RBI, the IDBI bank limited(Financial Creditor) had filed the petition bearing CP(IB) 111/07/HDB/2017 before the Tribunal under section 7 of IBC, 2018. In pursuance to the application Hon'ble Tribunal dated 07.08.2018 admitted the application and appointed Mr. Savan Godiawala as Interim Resolution Professional and Mr. Savan Godiawala was subsequently confirmed as Resolution Professional by committee of creditors and took over the management of Lanco Infra Tech Limited.
 - b. It is averred that after the commencement of CIRP different projects of corporate debtor were active in various stages. During this process, to arrive at Resolution Plan, all employees from different functions worked as part of CIRP team. The existing employees of corporate debtor were performing their duties assigned to them during the CIRP period.
 - c. It is averred that during the CIRP period of 270 days i.e from 7th August, 2017 to 28 the July, 2018, and it falls in two financial years 2017-18 to 2018-19. It is averred that against 12 month salary for the financial years 2017-18, the applicant was paid only 9 months' salary, and so far



not paid salary for the months of June, 2017, February 2018 and March 2018. Similarly the TDS deducted for 9 months salaries but Form 26AS reflects remittance to TDS only for 7 months.

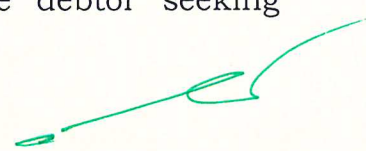
- d. It is averred that the unpaid salary along with the statutory dues such as TDS, PF for the financial years 2017-18 has been long outstanding due to least preference given by the Resolution Professional. Though it is brought to the notice of the Resolution professional but there was no proper response from the Resolution professional and he made it clear that it will be paid as and when money is available. Apart from non-payment of salaries and statutory dues, there was a clear discrimination done by the resolution professional between various service providers.
- e. It is averred that RP is taking external services by appointing external agencies like Valuears, Legal advisors etc for a specific sum and also assured of the timely payment either by appropriation and allocation of funds that are generated or alternatively considered as CIRP cost. It is averred that RP is ignoring the dues of the employees and giving preference to the consultants appointed by him.
- f. It is averred that this discrimination and inequality in treatment between employees and others should be avoided and it is responsibility of the RP to plan and arrange funds for timely payment of salaries and statutory dues to the employees to avoid complications to the employees.
- g. It is averred that the applicant need to file income tax returns by 31st July, 2018 to avoid penalties, despite many oral representations the applicant didn't get any response which caused hardship and on other hand may be subjected to penalties from Income Tax Department. Apart from the legal aspects of the above submission, Section



234C Income Tax Act, 1961 provides interest on delay in filing of returns.


- h. It is also averred that the IBBI vide its circular No. IP/002/2018 dated Jan3, 2018 had prescribed that the Resolution Professional shall exercise reasonable care and diligence and take all necessary steps to ensure that the corporate person undergoing any process under the code, complies with the applicable law.
3. Reply filed on behalf of Respondent No.1:
- a. Respondent No.1 (Lanco Infratech Limited) denied the contents in the application filed by the applicant.
- b. Respondent denied the applicant's chief contention that his salary for 3 months has not been paid and the TDS deducted is not deposited. It is humbly submitted that the salary has been paid and promptly deducted TDS as per the law. Form 16A issued to the Applicant duly reflecting the TDS deposited is annexed herewith as Annexure-A.
- c. It is averred that the non-payment of the salary dues to the employees is that the corporate debtor is facing financial constraints. The salary due to the employees is as follows:

Period	Payment status
7th August 2017 till January 2018	Paid to all retained employees, except for CEO-EPC and Managing director
Feb-18	paid to all employees up to Senior General Manager Designation
Mar-18	unpaid
Apr-18	paid to all employees up to senior manager designation
May-18	unpaid

- d. It is also averred that the Hon'ble Bench passed orders in IA No. 118,119,140,141 of 2018 filed by the employees or employee association of the corporate debtor seeking
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payment of their salary dues and deposit of statutory dues. The Hon'ble Bench disposed of the interlocutory applications stating that the dues of the employees shall be paid as and when funds are available with the corporate debtor.

- e. Respondent No.1 also denied that he has given preference to the advisors appointed and they have not paid any amount till date. In fact RP himself has not been paid from November 2017. It is only the valuers who are statutorily required to be appointed by the RP under Regulation 27 of the IBBI Regulations were paid in full.
 - f. It is averred that the RP recognize the support and assistance rendered by the employees of Lanco Infratech and also the applicant and is committed to pay their dues as and when sufficient funds are available with corporate debtor.
4. I have heard counsel for applicant and counsel for RP. It is represented to the Tribunal the relief claimed in the application becomes infructuous. Hence requested the Tribunal to dismiss the application as infructuous.
 5. Petition is therefore dismissed as infructuous.



RATAKONDA MURALI
MEMBER (JUDICIAL)