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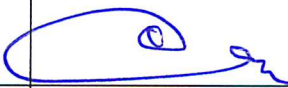
**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL

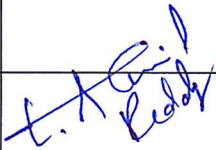
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 12.09.2018 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No : 139,192,321,323/2018 & IA No.194/2018 IA No.107,113,114,115,114,122,143,145,167,178, 193,203,204,205,206,230,269,273,300,301,308,322,336,375 /2018 in CP(IB) No.111/7/HDB/2017
NAME OF THE COMPANY	Lanco Infratech Ltd
NAME OF THE PETITIONER(S)	IDBI Bank Limited
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
T. Ravichandran 204206 Counsel for Petitioner in 167, 175 & 336		989706612	
Amir Bavani. - IA 107. [DNIR & DNIR Associates].	Advocate	9949216962	Amir Bavani

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Ameya Gokhale, Vijay Patil Rubina S Khatoon L. Aravind Reddy Shardul Amarchand Mangaldas	Advocate Advocate for RP/Liquidator	9652887117 aravind@accesslegal.in	

P. Srin Chadda IA 113 996679992 Adv.

D. Narendar Naik Adv. in 9849387366
IA 322 & 336

Y.N. VIVEK ANANDA
Counsel for Petitioner
CA 114, 115, & 193 of 2018 9347290187 vivekananda-ya.
@ yahoo.co.in

(CA. 117)
Counsel for Petitioner/Applicant 9948914088
A. Chakravorty - in 2A CA 117/17.
Advocate

CA- 380/381
KAUSTUBH SIMHA, Adv. Counsel for Applicant (Sh. Narendar Chadda)
(M) 9891068754

IA- 375/2018

Sl.No.42

Date of order: 12.09.2018

ORDER

IA 383/2018 is taken up for hearing. Counsel for Applicant is present. This Application is filed on behalf of Applicant for return of Bank Guarantee given by Applicant and a direction is sought to the RP/Liquidator. Counsel for RP/Liquidator is present. He requested time to verify and submit reply. Counsel for Applicant brought to the notice of the Tribunal that earlier there was a stay granted by Hon'ble Delhi High Court and that Hon'ble Delhi High Court finally directed the Applicant to approach NCLT Hyderabad. Hence, present Application is filed. Counsel reported that stay granted by Hon'ble High Court will expire by 15.09.2018. He requested Tribunal to give interim direction to the Resolution Professional not to invoke the Bank Guarantees covered by this Application, till such time RP to file reply/furnish information. So interim direction is given to RP not to invoke the Bank Guarantees covered by this Application till 27.09.2018, provided if RP had not already invoked the Bank Guarantees covered by this Application.

IA 382/2018 is the main Application filed for return of Bank Guarantees. **IA 383/2018** is filed for passing interim order. So RP to file reply in IA 382/2018 and IA 383/2018.

IA 107/2018, 113/2018, 114/2018, 193/2018, 336/2018, 273/2018, 322/2018, 378/2018 & 379/2019 were taken up for hearing. Counsel for Applicants are present. Counsel for RP/Liquidator is present. Counsel for RP/Liquidator contended that since this Tribunal passed liquidation order against the Corporate Debtor Company, the Applicants herein have to file separate claim before the Liquidator. The Applicants have a right during liquidation to present any claim before the Liquidator. Counsel for Applicants have no objection if such a direction is given to the Applicants to file the claim before the liquidator. It is also brought to my notice that Liquidator had issued public notice calling for claims. It is true that this Tribunal passed Liquidation order against Corporate Debtor. These Applications were filed during CIRP. Since Liquidation order is passed against the Corporate Debtor and Liquidator is appointed, therefore, the Applicants have to file claims before Liquidator as per provisions of Code dealing with liquidation. Therefore these IAs are disposed off by directing the Applicants to file their respective claims before liquidator and it is for the Liquidator to consider the claims afresh according to law. Orders passed vide separate orders.

IA 204/2018 & IA 338 of 2018 are listed today for hearing. List it on 27.09.2018.



IA 380/2018 & IA 381/2018 are listed today for hearing. Counsel for RP/Liquidator reported that he needs instructions and requested time. Hence list IA 380/2018 & IA 381/2018 for furnishing information to the Tribunal on 27.09.2018.

IA 178/2018 & IA 227/2018 are taken up for hearing. RP reported that Bank Guarantee were already returned to the Applicant. Therefore these Applications becomes infructuous as Bank Guarantee were already returned to Applicants. IA 228/2018 is disposed off holding that Applicant becomes infructuous following return of Bank Guarantee to the Applicants by the RP vide separate orders.

IA 167/2018 & IA 206/2018 are taken up for hearing. List for hearing on 27.09.2018.

IA 115/2018, 139/2018 & 192/2018 are taken up for hearing. Counsel for Applicants and Counsel for RP/Liquidator is present. Counsel for Liquidator reported that bank guarantees covered under these IAs will be returned to the Applicants but so far as the claims of the Applicants are concerned, they have to file the same before Liquidator since liquidation order is passed against CD. Hence 115/2018, 139/2018, 192/2018 are listed for orders on 27.09.2018.

IA 375/2018 is taken up for hearing. Counsel for Applicant is present. Counsel for RP/Liquidator is present. He reported that he has no objection to include the claim of Applicant in the CIRP costs. List it for consideration on 27.09.2018. Counsel for Liquidator stated on instructions from the Liquidator he is reporting that Applicant's claim can be included in the CIR Costs.

IA 145/ 2018, IA 300/2018, IA 301/2018 IA 308/2018 & IA 143/2018 are listed for hearing on 27.09.2018. Interim order passed in these IAs are extended till 27.09.2018.

All other pending IAs are listed on 27.09.2018.


MEMBER(j)

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

IA No. 336/HDB/2018
In
CP (IB) No.111/7/HDB/2017
U/c 60(5) of IBC, 2016

In the matter of IDBI Vs Lanco Infratech Limited

Vijay Systems Engineers Private Limited
Plot No.35, Chandivali Village, Off Sakivihar Road
Sakinaka, Andheri East Mumbai – 400072 ...Applicant

VERSUS

1. 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

2. IDBI Bank Pvt. LTd
IDBI Tower, WTC Complex
Cuffe Parade, Colaba
Mumbai – 400005

... Respondent

Date of order: 12.09.2018

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Counsels / Parties present:

For the Applicant: Shri D. Narendar Naik Advocate



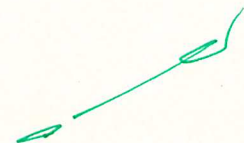
For the R.P: Ms Rubaina S. Khatoon, Shri
Vaijayanth Paliwal and Shri L.
Aravind Reddy, Advocates

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

Heard on: 12.09.2018


ORDER

1. The present Application is filed by Vijay Systems Engineers Private Limited (operational creditor) U/s 60 (5) of Insolvency and Bankruptcy Code, 2016, seeking directions to Resolution Professional for inclusion of the name of the Applicant in the list of Operational Creditors of the Lanco Infratech Limited (Corporate Debtor).
2. Brief averments made in the Application are:
 - (a) The Applicant filed proof of claim in Form B dated 18.08.2017 together with supporting documents on 21.08.2017.
 - (b) It is averred that the Applicant requested the Resolution Professional vide letter dated 10.10.2017 to update the list of Operational Creditors with the name of the Applicant against the operational debt of Rs.59,93,621/-.
 - (c) It is averred by the Applicant that the Resolution Professional has uploaded an updated list of Operational Creditors as of 16.01.2018 but the list did not reflect the name of the Applicant against the claims received by Resolution Professional. It is further alleged that the Resolution Professional has neither included the name of the Applicant in the list of claims received nor the Resolution Professional sought for any claims for verification,



in spite of numerous reminders to the Resolution Professional.

- (d) Hence, Applicant prayed the Tribunal to direct the Resolution Professional to include the name of the Applicant as Operational Creditor against the debt of Rs. 59,93,621/- due from the Corporate Debtor.
3. I have heard the counsel appearing for Applicant and also the Counsels appearing for the Resolution Professional. Counsel for Resolution Professional/Liquidator contended that since the Tribunal passed liquidation order against the Corporate Debtor Company, the Applicant have to file separate claim before the Liquidator. The Applicant has a right during liquidation to present any claim before the Liquidator. Counsel for Applicants have no objection if such a direction is given to the Applicant to file the claim before the Liquidator. It is also further brought to the notice of the Tribunal that Liquidator had issued public notice calling for claims.
4. It is true that this Tribunal passed liquidation order against the Corporate Debtor. This Application is filed during CIRP. Since liquidation order is passed and Liquidator is appointed, therefore Applicant has to file its claim before Liquidator as per provisions of the Code dealing with Liquidation.
5. In the light of above, this IA is disposed off directing the Applicant to file its claim before the Liquidator for considering the claim afresh according to law.


(RATAKONDA MURALI)
MEMBER (JUDICIAL)

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

IA No. 178/HDB/2018
In
CP (IB) No.111/7/HDB/2017
U/c 60(5) of IBC, 2016

In the matter of IDBI Vs Lanco Infratech Limited

M/s Dynamic S.S. Engineering Co. Pvt. Ltd
76/34. Vinayagam Street
C-4, Amuthini Flats (2nd Floor)
Venkatesh Nagar, Virugambakkam
Chennai – 600092

..Applicant

VERSUS

1. 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

2. IDBI Bank Pvt. LTD
IDBI Tower, WTC Complex
Cuffe Parade, Colaba
Mumbai – 400005

... Respondents

Date of order: 12.09.2018

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Counsels / Parties present:



For the Applicant: Mr T. Ravichandran, Mrs. Bharati
JVL Advocates

For the R.P: Ms Rubaina S. Khaton, Shri
Vaijayanth Paliwal and Shri L.
Aravind Reddy, Advocates

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

Heard on: 12.09.2018

ORDER

- (1) This Application is filed by M/s Dynamic S.S. Engineering Co. Pvt. Ltd (Operational Creditor) under Section 60 (5) of Insolvency & Bankruptcy Code, 2016, seeking directions to Resolution Professional to return the performance bank guarantees No. 80021PEBG150008 and 80021PEBG160003 to the Applicant and further direction to Resolution Professional to restrain from invoking the Bank Guarantees, pending disposal of the petition.
- (2) Brief averments made in the Application are:-
 - (1) The Applicant is involved in heavy fabrication and structural works. The Corporate Debtor vide letter of Intent dated 27.11.2015 entrusted contract work at 1x660 MW Supercritical Ennore Thermal Power Station Expansion project at Ennore to the Applicant.
 - (2) It is averred as per the contract, the Applicant submitted Performance Bank Guarantee bearing No. 80021PEBG150008 for 10% of the total contract price and further as per Letter of Intent dated 15.03.2016, the Applicant submitted


Performance Bank Guarantee bearing No. 80021PEBG160003.

- (3) It is the case of Applicant that as per the LOI, the date of commencement of work was 27.11.2015 and date of completion was 26.05.2017 and mobilized its manpower and machinery at the site on 27.12.2015 but Corporate Debtor did not supply the fabricated materials as per the terms mentioned in LOI.
- (4) It is averred, Applicant also issued a letters/emails to the Corporate Debtor on 20.07.2016, 22.10.2016, 29.12.2016, 27.01.2017, 28.04.2017 and 21.07.2017 bringing to the notice of Respondent that it is not able to start the work due to non-availability of raw materials/fabricated materials and the delay in commencing the work.
- (5) It is the case of the Applicant that it did not fail in its performance of the contractual obligations. Meanwhile, CIRP was initiated against the Corporate Debtor on the petition filed by IDBI Ltd against the Corporate Debtor.
- (6) It is averred that the Applicant filed its claim before the IRP in Form B for a sum of Rs.77,43,195.76 and the status on the website showed the claim as admitted as on 15.10.2017.
- (7) It is averred that Applicant Bankers i.e. Bank of India on 18.05.2018 called on the Applicant and handed over the letter dated 24.04.2018 written by the Resolution Professional invoking the Bank Guarantee. It is the case of Applicant on checking

the website on receipt of the said letter, it was shocked to see its claim in the rejected category.

- (8) The Applicant alleges that having failed to provide the fabricated materials in time as per the terms of contract, it is not proper on the part of Resolution Professional to invoke the Bank Guarantee because as per the terms of contract, it can be invoked only when there is non-performance by the Applicant.
 - (9) It is also the case of the Applicant that the claim submitted to the Resolution Professional is rejected without giving an opportunity to the Applicant.
 - (10) Further contention of the Applicant is that any attempt to invoke the performance bank guarantee when there is breach on the part of Respondent/Corporate Debtor would result in serious loss and hardship to the Applicant.
 - (11) Thus Applicant prayed this Tribunal to direct the Resolution Professional to return the performance Bank Guarantee No. 80021PEBG150008 and 80021PEBG15000860003 to the Applicant.
- (3) The Resolution Professional vide reply Affidavit dated 13.08.2018 stated that the above two Bank Guarantees have already been returned to the Applicant on 16.07.2018 and the same has been acknowledged by the Applicant, which is marked as Annexure A to the reply.
 - (4) I have heard the counsels appearing for the Applicant and the Resolution Professional and perused the material placed in support of the Application.

- (5) Since Resolution Professional filed reply in which he has clearly stated the subject matter of the Application i.e regarding return of two Performance Guarantees bearing Nos. 80021PEBG150008 and 80021PEBG15000860003, have already been returned to the Applicant. The Resolution Professional has also filed copy of the confirmation letter for return of the two Bank Guarantees marked as Annexure-A.
- (6) Therefore, the reliefs prayed by the Applicant becomes infructuous as two Performance Bank Guarantees referred above were already returned to the Applicant.
- (7) In the light of above, this IA is disposed off as infructuous.


(RATAKONDA MURALI)
MEMBER (JUDICIAL)

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

IA No. 193/HDB/2018
In
CP (IB) No.111/7/HDB/2017

U/c 60(5) of IBC, 2016

In the matter of IDBI Vs Lanco Infratech Limited

M/s Bray Controls India Private Limited
14, Alindra, Savli GIDC Industrial Estate
Savli District, Vadodara
Gujarat – 391775

..Applicant

VERSUS

1. 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

2. IDBI Bank Pvt. LTd
IDBI Tower, WTC Complex
Cuffe Parade, Colaba
Mumbai – 400005

...Respondents

Date of order: 12.09.2018

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Counsels / Parties present:

For the Applicant: Shri Y.N. Vivekananda, Advocate




For the R.P: Ms Rubaina S. Khatoon, Shri
Vaijayanth Paliwal and Shri L.
Aravind Reddy, Advocates

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

Heard on: 12.09.2018

ORDER

1. The present Application is filed by Bray Controls India Private Limited U/s 60 (5) of Insolvency and Bankruptcy Code, 2016, by seeking direction to the Resolution Professional to admit the Applicant's claim dated 21.09.2017 in full and to make balance payment and accept the delivery of inspected valves.
2. Brief averments made in the Application are:-
 - (1) It is averred that as per Letter of Award (LOA) was issued to the Applicant for manufacture and supply of butterfly valves on 24.12.2015 for a contract price of Rs.99,96,014/- and the payment terms were also provided in the LOA. In pursuant to the LOA a meeting was held between the Corporate Debtor and Engineering consultant M/s Procon India on 06.05.2016 and in the said meeting the Applicant took note of the specifications as requested by the Corporate Debtor.
 - (2) It is further averred that as per the terms of LOA the Applicant requested Bank of America to furnish advance cum bank guarantee dated 27.01.2016 for INR 29,98,800/- i.e. 30% of the contract price of Rs.99,96,014/-. Consequent to submission of bank guarantee, Corporate Debtor paid a sum of

- Rs. 29,98,804/- being 30% advance amount as advance as per the payment terms set out in LOA.
- (3) It is further averred that consequent to pre-merger entity VAAS Automation Private Limited with the Applicant in June 2016, an amended Purchase Order No. 4100114731-3 dated 23.12.2016 was issued to the Applicant for Rs. 4,41,22,250/- and the value of the Butterfly valves package is Rs. 99,96,014/-.
- (4) It is averred that as per the amended purchase order the revised last date of supply was before 30.06.2017 and the amended and consolidated purchase order had the same payment terms from the original LOA.
- (5) It is the case of the Applicant that vide email dated 08.07.2016 requested the Corporate Debtor to carry out the inspection of 260 valves manufactured exclusively for the Applicant and also issued proforma Invoice for the 60% payment as per the contract. The Applicant also informed the Corporate Debtor about the clearance of the valves in the test conducted on 23.08.2016 by Tata Projects Limited.
- (6) It is the case of the Applicant that it issued despatch instructions for delivery of valves but was silent on the 60% payment against the proforma invoices and that Applicant was waiting for payment confirmation to deliver the valves. The same is lying in the Applicant's factory premises since August 2016.
- (7) It is the case of Applicant that Corporate Debtor and Applicant entered into discussions for supply of butterfly valves worth approximately
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Rs.29,98,804/- against the advance received in lieu of return of BG and carrying the obligations under the LOA and the same was confirmed by Corporate Debtor vide email dated 23.05.2017 and subsequently executed letter of undertaking dated 17.06.2017 and the Applicant agreed to despatch valves worth Rs.1,50,04,682/- in lieu of return of Bank Guarantee in GT012451/16 dated 29.01.2016 by the Corporate Debtor. Further it was agreed between the Applicant and Corporate Debtor that the Bank Guarantee will be returned to the Applicant and not invoked.

- (8) It is the case of Applicant that despite numerous reminders no confirmation was received from Corporate Debtor to despatch the Valves and ultimately vide email dated 19.06.2017, the Corporate Debtor informed the Applicant not to deliver the material on account of re-inspection of the material.
- (9) Applicant further avers that in the meantime, Petition filed under Section 7 of IBC, 2016 by IDBI Bank Limited (Financial Creditor) was admitted by this Tribunal on 07.08.2018 and Shri Savan Godiawala, was appointed as IRP/RP.
- (10) The Applicant filed its claim for an amount of Rs. 1,31,24,611/- to the IRP but the same was rejected in total by the Resolution Professional. It is the case of the Applicant that an amount of Rs. 69,97,214/- is legitimately due and payable to the Applicant for valves which were ready for despatch but the delivery could not take place due to non-payment of 60% value. The remaining amount of Rs.61,27,397/- was payable to the Applicant


towards Corporate Debtor's failure to perform the contractual obligations which resulted in the storage charges, interest on the amounts unpaid, etc.

- (11) It is alleged that the action of the Resolution Professional in rejecting the claim of the Applicant in total and not taking delivery of the valves held by the Applicant at its premises is unjust, illegal and violation of the purchase order. It is further alleged that the valves were exclusively manufactures for the Corporate Debtor and is lying since August 2016 for delivery and cannot use/ sell to any third party and denies the contentions of the Corporate Debtor that there is deviation in the manufacturing of values.


3. The Resolution Professional filed reply Affidavit.

- (a) The Resolution Professional would contend that the reasons for rejecting Applicant's claim of Rs.1,31,24,611/- was communicated to the Applicant vide email dated 10.05.2018. It is the case of the Resolution Professional that though the material was kept ready and undergone inspection but due to the fact that the materials were not despatched to the Corporate Debtor as on 07.08.2017, the claim was not admitted.
- (b) Further it is also the case of Resolution Professional that the contract between the Corporate Debtor and Bray controls do not have any reference to interest liability of the Corporate Debtor. The Resolution Professional would contend that he is not aware of any court order awarding payment of interest to Bray Controls by the Corporate Debtor.



- (c) The Resolution Professional would contend that the Corporate Debtor approved drawing for 2 piece construction of valves but the Applicant manufactured 3 way valves.
- (d) Resolution Professional would contend that Applicant was ready during pre-bid of Fugitive emission and radiography test but post awarding the same, started demanding additional cost for FE and RT Test which delayed further engineering approval of drawings. As such, the present Application is not maintainable.
4. The case of Applicant that Resolution Professional had not admitted the claim. The case of Applicant Resolution Professional ought to have admitted its claim. On the other hand the contention of Counsel for Resolution Professional/Liquidator that present Application is not maintainable as Liquidation order was passed against the Corporate Debtor. Hence, the Applicant has to file separate claim before Liquidator during Liquidation proceedings.
5. The Counsel for Resolution Professional/Liquidator referred to the decision of Hon'ble NCLT Delhi in M/s Globe Express Services (Oversees Group) Ltd & Anr Vs M/s M.M. Cargo Container Line Pvt Ltd & ORs, wherein it was held that till such period the Liquidation assets are distributed, non-inclusion of a verified claim should not be summarily rejected. It is only after distribution of assets that no further claim can be entertained. Section 38 of Insolvency & Bankruptcy also provides that Liquidator shall receive or collect claims of Creditors within a period of 30 days from the date of commencement of Liquidation process. Section 39 of the Code provides for verification. Any aggrieved person can file appeal before Adjudicating Authority under 42 of the Code.
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6. I have heard the Counsel appearing for the Applicant and the Counsel appearing for Resolution Professional/Liquidator. Counsel for RP/Liquidator contended that since this Tribunal passed liquidation order against the Corporate Debtor Company, the Applicant has to file separate claim before the Liquidator. The Applicant has a right during liquidation to present any claim before the Liquidator. Counsel for Applicant has no objection if such a direction is given to the Applicant to file the claim before the liquidator. It is also brought to the notice of the Tribunal that Liquidator had issued public notice calling for claims.
7. It is true that this Tribunal passed Liquidation order against Corporate Debtor. This Application is filed during CIRP. Since Liquidation order is passed against the Corporate Debtor and Liquidator is appointed, therefore, the Applicant has to file its claim before Liquidator as per provisions of Code dealing with liquidation.
8. Therefore this IA is disposed off by directing the Applicant to file its claim before liquidator and it is for the Liquidator to consider the claim according to law.


12.9.18
RATAKONDA MURALI
MEMBER JUDICIAL

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

IA No. 379/HDB/2018
In
CP (IB) No.111/7/HDB/2017

U/c 60(5) of IBC, 2016

In the matter of IDBI Vs Lanco Infratech Limited

M/s TLT – Turbo (Sichuan) Co. Ltd
No.15, Wukexisilu, Wuhow District
Chengdu, 610045, Sichuan
People’s Republic of China

... Applicant

VERSUS

1. 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

... Respondents

Date of order: 12.09.2018

Coram:

Hon’ble Shri Ratakonda Murali, Member (Judicial)

Counsels / Parties present:

For the Applicant: Shri G. Bhupesh and Shri Sanjay
Suraneni, Advocates



For the R.P: Ms Rubaina S. Khatoon, Shri
Vaijayanth Paliwal and Shri L.
Aravind Reddy, Advocates

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

Heard on: 12.09.2018

ORDER

1. This Application is filed by M/s TLT- Turbo (Sichuan) Co. Limited U/s 60 (5) of Insolvency and Bankruptcy Code, 2016, seeking direction to Resolution Professional to admit the entire claim of the Applicant.
2. Brief averments made in the Application are:
 - (i) A contract dated 27.07.2015 was executed between the Applicant and Corporate Debtor pursuant to Letter of Intent dated 27.07.2015.
 - (ii) It is the case of Applicant that it proceeded with manufacture of various supplies in terms of its performance obligations under the contract. It is averred that there was delay on the part of the Respondent in performing the contractual obligations which resulted in delay in execution of the Ennore Project.
 - (iii) It is the case of Applicant that Corporate Debtor refused to carry out inspection citing some ground or the other. It is averred that Applicant manufactured customer's specific goods exclusively for the Ennore Project and it completed almost 65% of the work
 - (iv) It is the case of Applicant that it is an Operational Creditor and submitted its claim of USD 3,123,866.74 (Rs.19,91,07,456.34) as on



insolvency commencement date i.e 07.08.2017 to the Resolution Professional on 22.09.2017 along with relevant annexures supporting its claim.

- (v) The Applicant states that being a foreign company, it was not aware of the CIRP and addressed a letter of claim duly supported by relevant documents to the Respondent but not in Form-B. Applicant further avers no reply was received for the same. Subsequently, the Applicant filed its claim in Form B in accordance with the provisions of IBC on 17.08.2018.
- (vi) It is also contended that Applicant has never raised any objection regarding the quality of the material produced by the Applicant. The Applicant further avers that it is willing to furnish any additional evidence that the Resolution Professional may require regarding the current state of manufactured goods.
- (vii) The Applicant would contend that Resolution Professional rejected Applicant's claim stating that Manufacturing Quality Plan (MQP) has not been approved either by TANGEDCO or by LITL for which the Applicant cannot be held responsible. Further Applicant states that failure to approve the MQP by Respondent and TANGEDCO has no bearing on the validity of the Applicant's claims.
- (viii) It is averred by the Applicant that delay in issuing the Letter of Credit either by TANGEDCO or LITL is in no way attributable to the Applicant.
- (ix) It is further averred that the delay was caused by the Respondent in confirming and closing all the

open points, and that the necessary procedures for approval and dispatch of goods could not be completed. As such no question of submitting invoices or shipping documents arises and is not a ground to reject the Applicant's claims.

- (x) The Applicant denies the contentions of the Resolution Professional that claim is admissible only if there has been despatch of material along with submission of invoice and that no liability against this contract is booked in the books of account of LITL and rejection of the Applicant's claim solely on this ground is entirely baseless.
- (xi) The Applicant has further denied the observations made by the Resolution Professional that Applicant does not have any reference to interest liability on LITL and that storage costs are not admissible as there is no evidence to show that the equipment was manufactured and ready to be shipped. It is the case of the Applicant that it is entitled to interest by way of compensation for delayed payment due to it from the Respondent and has claimed interest at a reasonable market rate of 12 % p.a. It is the case of Applicant that it has incurred storage costs and maintenance expenses on these goods. The goods cannot be diverted to other projects as they are customised goods made specifically for the Respondent in the Ennore Project.
- (xii) It is averred that Applicant has a valid claim against the Respondent for the storage costs incurred by it on account of Corporate Debtor's prolonged and

unreasonable delay in performing its part of the contract.

3. The case of Applicant that Resolution Professional had not admitted the claim. The case of Applicant Resolution Professional ought to have admitted its claim. On the other hand the contention of Counsel for Resolution Professional/Liquidator that present Application is not maintainable as Liquidation order was passed against the Corporate Debtor. Hence, the Applicant has to file separate claim before Liquidator during Liquidation proceedings.
4. The Counsel for Resolution Professional/Liquidator referred to the decision of Hon'ble NCLT Delhi in M/s Globe Express Services (Oversees Group) Ltd & Anr Vs M/s M.M. Cargo Container Line Pvt Ltd & ORs, wherein it was held that till such period the Liquidation assets are distributed, non-inclusion of a verified claim should not be summarily rejected. It is only after distribution of assets that no further claim can be entertained. Section 38 of Insolvency & Bankruptcy also provides that Liquidator shall receive or collect claims of Creditors within a period of 30 days from the date of commencement of Liquidation process. Section 39 of the Code provides for verification. Any aggrieved person can file appeal before Adjudicating Authority under 42 of the Code.
5. I have heard the Counsel appearing for the Applicant and the Counsel appearing for Resolution Professional/Liquidator. Counsel for RP/Liquidator contended that since this Tribunal passed liquidation order against the Corporate Debtor Company, the Applicant has to file separate claim before the Liquidator.

The Applicant has a right during liquidation to present any claim before the Liquidator. Counsel for Applicant has no objection if such a direction is given to the Applicant to file the claim before the liquidator. It is also brought to the notice of the Tribunal that Liquidator had issued public notice calling for claims.

6. It is true that this Tribunal passed Liquidation order against Corporate Debtor. This Application is filed during CIRP. Since Liquidation order is passed against the Corporate Debtor and Liquidator is appointed, therefore, the Applicant has to file its claim before Liquidator as per provisions of Code dealing with liquidation.
7. Therefore this IA is disposed off by directing the Applicant to file its claim before liquidator and it is for the Liquidator to consider the claim according to law.


12.9.18
RATAKONDA MURALI
MEMBER JUDICIAL

Binnu

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

IA No. 322/2018

In

CP (IA) No. 111/07/HDB/2017

Under Section 60(5) of IBC, 2016

In the matter of:

IDBI Bank Limited vs. M/s. Lanco Infratech Limited

Wipro Limited
R/o: Doddakannelli, Sarjapur Road,
Bangalore 560 035, Karnata , India.
Represented by its authorised representative
Arpitha.R.

Applicant/ Operational Creditor....

VERSUS

Mr. Savan Godiawala
Resolution Professional of Lanco Infratech Limited.
Deloitte Touche Tohmatsu India LLP,
Level 7, Building 10, Tower B,
DLF Cyber City Complex, DLF City Phase- II,
Gurgaon- 122002.

Respondent....

Date of Order: 12.09.2018

Coram:

Hon'ble Shri RatakondaMurali, Member (Judicial)

Parties / Counsels Present

For the Applicant Company: Shri. D. Narender Naik, Advocate

For the Respondent : Shri Ameya Gokhale,
Shri Vaijayanth Palival,
Ms. Rubaina S. Khatoon and
Shri L. Aravind Reddy

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

Heard on: 27.08.2018 and 12.09.2018.



ORDER

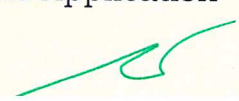
1. The instant application is filed by the M/s Wipro Limited (hereinafter referred to as the Applicant), under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (IBC) praying this tribunal to direct the Resolution Professional of the Corporate Debtor, and bring the Applicant's claim on par with the admitted amount of Applicant's claim as set out in updated list of Operational Creditors as on 31st October, 2017.
2. It is stated that the Applicant is an Operational Creditor of the Corporate Debtor, Lanco Infratech Limited, and is possessed of an Arbitral Award dated 5th August 2016, for the payment of a sum of Rs. 7, 51, 89,897/- (Rupees Seven Crores, fifty one lakhs, eighty nine thousand, eight hundred and ninety seven only) to it by the Corporate Debtor, passed by sole Arbitrator, Mr. Justice Mukul Mudgal (Retd.), at the Delhi International Arbitration Centre in case Ref.No. DAC/ 477/12-13 titled 'Wipro Limited versus Lanco Infratech Limited'.
3. It is stated that the applicant has filed its proof of claim in Form B, together with claim documents, with the Resolution Professional of Lanco Infratech on 7th September, 2017. However the Resolution Professional sought many clarifications with applicant and the same was responded by the applicant.
4. It is stated that on the website of the corporate debtor, in the updated list of operational creditors as on 31st October, 2017, the entire claim of the applicant was showing as admitted, and no amount was stated to be under verification. The Applicant's claim was mentioned at serial No. 1245 in the list titled, 'Updated operational creditors as on 31.10.2017', at page 43 of the updated list; and the amount claimed by the applicant was mentioned as being Rs. 7,51,89,897/-, while the amount reflected as 'Amount

Admitted' was also stated to be Rs. 7,51,89,897/-. The amount stated to be 'Amount under Verification', was nil.

5. It is averred that in updated list of Operational Creditors as on 16.01.2018, the resolution professional of the corporate debtor without any intimation or information to the Applicant and without seeking any further clarification from the Applicant stated at Page 42, Serial No. 1457, with respect to the Applicant's claim against the corporate debtor:-

- a. Total Claim: Rs. 7,51,89,897/-
- b. Amount admitted: Rs. 24,18,486/-
- c. Amount Rejected: Rs. 7,27,71,411/-

The applicant then addressed an urgent communication on 25th June 2018 to the Resolution Professional, seeking a clarification with respect to its claim but the resolution professional did not respond to the Applicant's communication.

6. I have heard Counsels of both the parties. The Counsel for Resolution Professional/ Liquidator contended that since this Tribunal passed liquidation order against the Corporate Debtor Company, the Applicant have to file separate claim before the liquidator. The Applicant has right during liquidation to present any claim before the Liquidator. The Counsel for Applicant also contended that the applicant is having no objection if such a direction is given to the Applicants to file the claim before the Liquidator. It is also brought to my notice that Liquidator had issued public notice calling for claims. It is true that this Tribunal passed Liquidation order against Corporate Debtor. Therefore I am of the considered view that the Present Application was filed during CIRP and since liquidation order is passed against the Corporate Debtor and Liquidator is appointed, therefore, the Applicant has to file its claim before Liquidator as per provisions of code dealing liquidation. Hence, the present Interim Application
- 

IA No. 322 is disposed off by directing the Applicant to file its claim before liquidator and it is for the Liquidator to consider the claims afresh according to Law.


12.9.18

(RATAKONDA MURALI)
MEMBER (JUDICIAL)

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

IA No. 227/HDB/2018
In
CP (IB) No.111/7/HDB/2017

U/c 60(5) of IBC, 2016

In the matter of IDBI Vs Lanco Infratech Limited

M/s Emerson Process Management Chennai Private
Limited
147, Rajiv Gandhi Salai
Karapakkam Village
Chennai – 600097
... Applicant

VERSUS

1. LANCO INFRATECH LIMITED
Plot No.4, Software Units Layout
Hitech City, Madhapur
Hyderabad – 500081
2. CITI Bank N.A.
Having its principal office at
163 Anna Salai
Chennai – 600002
3. Shri Savan Godiawala
(Rep. by its RP)
Deloitte Touche Tohmatsu India LLP
7th Floor, Building 10, Towers B
DLF Cyber City Complex
DLF City Phase-II
Gurgaon – 122002
... Respondents

Date of order: 12.09.2018

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)



Counsels / Parties present:

For the Applicant: Shri U. Ravi, Shri U. Sravan
Kumar Advocates

For the R.P: Ms Rubaina S. Khatoon, Shri
Vaijayanth Paliwal and Shri L.
Aravind Reddy, Advocates

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

ORDER

1. This Application is filed by M/s Emerson Process Management System Limited U/s 60 (5) of Insolvency and Bankruptcy Code, 2016, seeking direction to implead the Applicant as one of the parties in the main company petition and further direction to Respondents 1 & 2 to restrain from encashing the Advance Bank Guarantee (ABG) bearing No. 5550601713 dated 30.05.2016 for an amount of Rs. 26,96,079/- .
2. It is averred that Applicant is operational Creditor. Corporate Debtor placed purchase order bearing No. 4960000743 dated 24.09.2011 to the Applicant for supply of 187 project units and Corporate Debtor agreed to pay an amount of Rs.3,35,00,880/- and special purchase conditions were executed. According to which, Advance Bank Guarantee for a value of Rs.32,84,400/- was issued by Respondent No. 2 in favour of Corporate Debtor. The ABG was

valid up to 30.05.2012 with its claim period valid up to 30.08.2012.

3. It is averred that Applicant procured the material and assemble more than half of the project units required under the purchase order but owing to certain financial and operational problems, Corporate Debtor could not start the project. Further, Corporate Debtor amended the purchase order vide amendment No. 4960000743/01 dated 10.09.2012. It is averred that Respondent No.1 was not in a position to take delivery of the Project Units and agreed to do so by September 2013.
4. It is averred that though the Applicant vide e-mail dated 28.03.2013 confirmed that it would extend the validity of the original ABG, the Applicant later informed the Corporate Debtor that it would not extend the validity of the original ABG as it incurred huge inventory costs due to non-delivery of project units. Since Corporate Debtor was not in a position to start the project, it refused to take delivery of the project units and kept amending the original purchase order from time to time and extended the validity of the original ABG and ultimately amended the original ABG.
5. It is averred when Applicant refused to extend the original ABG, Corporate Debtor with a fraudulent intention, invoked and encashed the bank guarantee vide letter dated 27.06.2017.

6. It is averred that in the month of November 2015, the Corporate Debtor entered in to a Memorandum of Understanding (MOU) with Government of Chhattisgarh in order to develop the project.
7. It is also averred that Corporate Debtor informed the Applicant that it would take delivery of the project units only if the order value is decreased by the Applicant. The Applicant agreed to amend the order value to Rs. 2,75,00,000/- and the delivery schedule was extended up to 15.09.2016.
8. Pursuant to the said amendment, Applicant issued ABG for an amount of Rs.26,96,079/- which was valid up to 30.09.2016 and the claim period valid up to 31.12.2016. Again the Corporate Debtor placed fresh Purchase order bearig No.4100115359 dated 07.06.2016 for an amount of Rs.2,75,00,000/- and delivery to be made in lots on or before 15.09.2016. Further it was agreed between the parties that disputes or differences arising out of or in connection with General Purchase Conditions (GPC), Specific Purchase Conditions (SPC) and the purchase order shall be referred for arbitration..
9. The Applicant also requested Respondent No.1 to immediately release 10% advance payment as agreed in the purchase order.
10. It is alleged by the Applicant that on one hand the Corporate Debtor refused to take delivery of the Project Units and on the other hand kept asking the

Applicant to keep the ABG alive and extend the validity of the same.

11. It is averred by the Applicant that Hon'ble Delhi High Court passed an interim order on 03.07.2017 in OMP (I) (Comm) 243/2017 filed by the Applicant under Section 9 of the Arbitration and Conciliation Act, 1996, and Respondent No.1 was restrained from realizing the amount of the ABG. In the meanwhile, CIRP proceeding was initiated against the Corporate Debtor under IBC, 2016.
12. It is averred that when the matter came up for hearing on 23.05.2018, Hon'ble Delhi High Court was apprised of the fact that the Resolution Professional had moved an application for Liquidation against the Corporate Debtor under Section 33 of the Code. Therefore, Hon'ble Delhi High Court vide order dated 23.05.2018 disposed of the OMP (I) (COMM) 243/2017, with a direction that the interim order passed on 03.07.2017 along with order dated 15.02.2018 shall continue for a period of 8 weeks from 23.05.2018 and with a direction to the Application to file before this Tribunal seeking appropriate orders for extension of stay.
13. It is further prayed by the Applicant that it would suffer irreparable injustice/injury if the interim protection is not continued and the Corporate Debtor is not restrained from encashing the ABG.

14. Resolution Professional has filed his reply. It is stated that ABG was returned to the Applicant on 19.07.2018 and the same has been acknowledged by the Applicant, which is marked as Annexure-A (colly) to the reply.
15. I have heard the counsels appearing for the Applicant and the Resolution Professional and perused the material placed in support of the Application.
16. The Resolution Professional filed reply in which he has clearly stated the subject matter of the Application i.e regarding return of Advance Bank Guarantee bearing No. 5550601713 dated 30.05.2016 for an amount of Rs. 26,96,079/- has already been returned to the Applicant. The Resolution Professional has also filed copy of the confirmation letter for return of the Advance Bank Guarantee marked as Annexure-A.
17. Therefore, the relief prayed by the Applicant becomes infructuous as Advance Bank Guarantee referred above was already returned to the Applicant.
18. In the light of above, this IA is disposed of as infructuous.


(RATAKONDA MURALI)
MEMBER (JUDICIAL)

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

IA 378 of 2018 in
CP (IB) No.111/7/HDB/2018

U/c 60 (5) of IBC, 2016

In the matter of

M/s Beijing Power Equipment Group Co. Ltd
No.12, Haotian Street
Liangxiang, Fangshan District
Beijing – 102401
People's Republic of China

...Applicant

Versus

1. 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

2. IDBI Bank Pvt. Ltd
IDBI Tower, WTC Complex
Cuffe Parade, Colaba
Mumbai – 400005

... Respondents

Date of Order: 12.09.2018

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)



Parties /Counsels present:

For the Applicant: Shri G. Bhupesh, Advocate
For the R.P: Ms Rubaina S. Khatoon, Shri
Vaijayanth Paliwal and Shri L.
Aravind Reddy, Advocates

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

Heard on: 12.09.2018

ORDER

1. This Application is filed by M/s Beijing Power Equipment Group Co. Ltd, U/s 60 (5) of Insolvency and Bankruptcy Code, 2016, by seeking direction to set aside the decision of the Resolution Professional to reject the claim of the Applicant and further direction to Resolution Professional to admit the claim of the Applicant.
2. Brief averments made in the Application are:
 - (1) The Applicant is an operational creditor of the Corporate Debtor. A Contract Agreement No. 4200000942 dated 22.04.2015 was executed between the Applicant and the Corporate Debtor for designing, manufacture, testing, delivery and supervision of erection and commissioning of Coal Mill and Seal Air Fans Package for the Ennore Project for USD 4,980, pursuant to Letter of Award dated 20.03.2015 which was

issued by Corporate Debtor to Applicant and the effective date of Contract was 20.03.2015.

- (2) It is averred that the work commenced by the Applicant came to a standstill because of the actions of the Corporate Debtor and further because of CIRP started against the Corporate Debtor. It is averred that there were consistent delays on the part of the Corporate Debtor in performing the contractual obligations which affected the Ennore Project. Further there was a considerable delay on the part of Corporate Debtor to open letter of credit at the beginning of the Project, which was informed to the Corporate Debtor by the Applicant vide letter dated 10.10.2015. There was also delay in approving the drawings and inspection of the materials / supplies and equipment.
- (3) It is averred that as per the specifications of the contract and to conform to the Corporate Debtor's own requirements, Applicant executed a contract dated 05.11.2015 with AIA for the purchase of Grinding roller tire and Grinding track liner from AIA for a total contract price of USD 543,042 and Applicant executed the work. The Applicant made payment of USD 321,521 to AIA being 50% of the Contract price and the remaining 50% of the contract price was also due and payable by Applicant to AIA and liable to be compensated by the Corporate Debtor.

- (4) It is averred that on the insistence of Corporate Debtor to adhere to the contract schedule, the Applicant continued manufacturing and adhered to the delivery schedule and completed 90% of the sourcing and manufacturing for the project and thus, incurred significant costs which is due and payable by the Corporate Debtor.
- (5) It is averred that Applicant vide letter dated 19.08.2016 intimated the Corporate Debtor that the Applicant would be compelled to transfer the finished materials independently to other projects. When there was no response from the Corporate Debtor's side, the Applicant, with a view to mitigate its losses owing to breach of contract by Corporate Debtor, transferred certain part of its completed equipment, parts and materials to other projects. though all the goods could not be transferred to other projects owing to the customized and project specific nature of the goods and thus, part of the Applicant's claim included those goods that have been manufactured and transferred to other projects and the Applicant has restricted its claim to costs incurred towards disposal and transfer to other projects and further avers that cost of manufacturing has only been claimed for those goods that remain with the Applicant.
- (6) It is averred that Applicant manufactured the goods exclusively for the use of Corporate

Debtor and a large portion of those goods cannot be diverted to other projects or utilised in any other manner and incurred significant engineering and storage costs which needs to be reimbursed by the Respondent.

- (7) Further it is averred that Applicant has filed Form-B for a sum of USD 2,881,500 (equivalent to Rs.18,36,59,606/-) towards costs incurred on completed equipment, parts and materials of coal mill, engineering costs, procurement costs and storage fees. Further Applicant has specified in Form B that USD 497,990 paid by Corporate Debtor to the Applicant is to be adjusted against the claim.
- (8) However, the Resolution Professional has rejected the total amount claimed by the Applicant in entirety giving reasons for such rejection, vide its email dated 23.08.2018. Further it is averred that Resolution Professional has assumed that operational creditor has no valid claim against the Corporate Debtor unless such claim is supported by invoices.
- (9) Thus Applicant has submitted a claim of USD 2,881,500 (Equivalent to Rs.18,36,59,606/-) as on the date of commencement of CIRP i.e. 07.08.2017.

3. I have heard the counsel appearing for Applicant and also the Counsel appearing for the Resolution Professional. Counsel for Resolution Professional/

Liquidator contended that since the Tribunal passed liquidation order against the Corporate Debtor Company, the Applicant has to file separate claim before the Liquidator. The Applicant has a right during liquidation to present any claim before the Liquidator. Counsel for Applicant has no objection if such a direction is given to the Applicant to file the claim before the Liquidator. It is also further brought to the notice of the Tribunal that Liquidator had issued public notice calling for claims.

4. It is true this Tribunal passed liquidation order against the Corporate Debtor. This Application is filed during CIRP. Since liquidation order is passed and Liquidator is appointed, therefore Applicant has to file its claim before Liquidator as per provisions of the Code dealing with Liquidation.
5. In the light of above, this IA is disposed of directing the Applicant to file its claim before the Liquidator for considering the claim according to law.


(RATAKONDA MURALI)
MEMBER (JUDICIAL)

Binnu

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 12.11.2018 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No. 345/2018 in CP(IB) No.185/9/HDB/2018 & CP(IB) No.185/9/HDB/2018
NAME OF THE COMPANY	Hippocampus Infotech Pvt Ltd
NAME OF THE PETITIONER(S)	Smart Card IT Solutions Ltd
NAME OF THE RESPONDENT(S)	Hippocampus Infotech Pvt Ltd
UNDER SECTION	9 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
A. Venkatesh Sahithi Nomula	Adv.	9676078105	Sahithi

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
P. Janardana Rao	Advocate	reach-pjrao@ yahoo!.co.in 9845739693	PJ

ORDER

Petition admitted vide separate orders.


Member (J)

Binnu

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

CP (IB) No. 185/9/HDB/2018
U/s 9 of IBC, 2016
R/w Rule 6 of I & B (AAA) Rules, 2016

In the matter of:

Smart Card IT Solutions Ltd,
GAT837/2, Pune Nagar Road,
Village Sanaswade Shirur,
Maharashtra- 412 208.

...Applicant

VERSUS

M/s.Hippocampus Infotech Pvt Ltd,
MIG-55, Sector 1,
M V P Colony, Visakhapatnam,
Andhra Pradesh- 530 017.

... Respondent

Date of order: 12.11.2018

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Parties / counsels present:

For the Petitioner: Shri A.Venkatesh , Advocate

For the Respondent: Shri P.Janardana Rao, Advocate

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

Heard on: 09.05.2018, 01.06.2018, 20.06.2018, 13.07.2018,
07.08.2018, 29.08.2018, 14.09.2018, 20.09.2018,
05.10.2018 and 29.10.2018.

ORDER

1. This petition is filed by Smart Card IT Solutions Limited which is the Operational Creditor stating that, Hippocampus Infotech Private Limited, Corporate Debtor herein had defaulted in repaying a sum of Rs. 44,11,272/-including interest at the rate of 18% per annum, and hence this petition is filed under Section 9 of Insolvency and Bankruptcy



Code, 2016, R/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

2. Averments made by the operational creditor in brief:
 - a. The Petitioner Company is involved in supply of 3,00,000 numbers of 64 K Scosta Smart Cards to the Corporate Debtor/ Respondent. The Petitioner supplied the said goods for a value of Rs.91,11,272.00/- on credit basis to Hippocampus Infotech Pvt Ltd dated 31.01.2014.
 - b. It is averred that the invoice amount of Rs. 91,11,272,00/- was payable within 30days from the date of Invoice. The due date of payment of Invoice amount was on 02-03-2014. However, the Corporate Debtor/Respondent Company failed to repay the amount on the due date in spite of repeated reminders. Subsequently, part payments at various stages beginning from 12.05.2014 were received from the Corporate Debtor/Respondent and last payment was received by the petitioner herein on 11.04.2017.
 - c. The balance of principal amount due was Rs. 44,11,272/- . It is averred that despite repeated reminders from the petitioner company till date no payment made out of the remaining amount. It is averred that several requests were made by Petitioner Company for payment of dues. The Respondent issued cheques in favour of Petitioner Company. However to the shock and dismay of the petitioner company all the cheques were returned by the bank with an endorsement on the memo as either "insufficient funds" or that the "account was closed".
 - d. It is averred that for the payment of due the petitioner gave respondent company 10 days' notice eitherto pay the due amount or to raise the dispute. The Registered Post Acknowledgement Due (RPAD) was returned with

acknowledgement of "Door Locked". Subsequently the demand notice was sent on 19.12.2017 through courier which was duly received by the Respondent Company on 21.12.2017.

- e. It is averred that the respondent company has not replied to the said notice despite the lapse of the statutory period of 10 days and there has been no payment and in the general enquiry it is observed by the petitioner that the business of the Respondent company went into losses and that it is not financially solvent as on date to make payment to its creditor.

3. The corporate debtor filed 3 counters:

- a. It is alleged in its counter dated 30.06.2018 that the respondent company is doing government projects. There were extraordinary delays with the insurance monies to be received from the Government departments.
- b. It is averred that the respondent company received SLA and work order from Keltron to execute AMC project at Asansol, west Bengal. The value of the order was for 35 crores for supply of manpower and their ward offices for five years. The project is on and the revenue will commence to flow and thus requested time of six months and after that the respondent company will pay the remaining operational debt in four monthly installments.
- c. It is averred that the company directors are requesting this Tribunal to give sufficient time of six months and for making four monthly installments.
- d. In the counter filed on 13.07.2018, the Corporate Debtor alleged in the demand notice dated 14.07.2017 that Operational Creditor claimed only the balance amount of invoice and did not claim interest @ 18%. The Corporate Debtor further alleged in the Second Demand Notice that Operational Creditor claimed interest also. The Corporate Debtor further alleged that there is no provision in the

invoice for charging interest on delayed payment. Further, Corporate Debtor pleaded that debt is barred by limitation. The Corporate Debtor further alleged that Limitation Act applies for the proceeding initiated under IBC relying on the decision of the Hon'ble Apex Court.

- e. Further in third counter dated 08.08.2018 the Corporate Debtor reiterated the same contentions made in the earlier counter regarding debt barred by time and misrepresentation made with regard to interest part in the demand notice.
 - f. The Corporate Debtor also alleged that the operational creditor purposefully waited for a long time and put the date on the cheques for encashment in which all the cheques were bounced. This is done with an ulterior motive to approach this Tribunal. Since the Corporate Debtor Company is a solvent company as per the IT Returns and as per the financials filed with the ROC for the preceding three financial years no Corporate Insolvency Process need to be initiated against it.
4. The Petitioner / Operational Creditor filed rejoinder to the reply/objections pleaded by Corporate Debtor:
- a. The Operational Creditor states demand notice which was sent on 29.11.2017 through RPAD to the registered office of the corporate debtor and branch office as well were returned with the acknowledgement as "Door Locked" subsequently demand notice sent on 19.12.2017 through courier, was received by the corporate debtor.
 - b. The operational creditor further denied the allegation of corporate debtor regarding the interest details in the demand notice and contended that the petition is within the limitation period.
5. I have heard the counsels for Operational Creditor and Corporate Debtor. The Petitioner is operational creditor. Petitioner filed this Petition to initiate Corporate Insolvency

Resolution Process against Corporate Debtor on the ground that Corporate Debtor committed default of Principal amount of Rs. 44,11,272/- (Forty four Lakhs, eleven thousand, two hundred and seventy two Rupees).

6. The undisputed facts of the case are that the Corporate Debtor through its branch office at Bangalore placed a purchase order HIPL/PO/SCIT/024 dated 30.01.2014 for supply of 3,00,000 (Three Lakhs) 64K Scosta Smart Card. It is also an undisputed fact that the goods were delivered/ supplied to the Corporate Debtor worth Rs. 91,11,272 (Ninety One Lakhs, Eleven Thousand, Two Hundred and Seventy Two Rupees) on credit basis to the Corporate Debtor vide invoice dated 31.01.2014. The Corporate Debtor admitted placing order for supply of smart cards with Operational Creditor and the supply on credit basis. Purchase order is marked as Annexure E. Credit invoice is marked as Annexure F.
7. The next contention of Operational Creditor is the invoice amount was payable within 30 Days from the date of invoice i.e. 31.01.2014. In other words Corporate Debtor should have paid the invoice amount on or before 02.03.2014.
8. The Corporate Debtor had not cleared the amount due under the invoice. It is the case of Operational Creditor that the part payments were received from Corporate Debtor and the last payment was received on 11.04.2017. The principal balance amount was Rs. 44,11,272/- .
9. It is the case of Operational Creditor that Corporate Debtor admitted the liability of Rs. 91,11,272/- in a letter addressed to the Chartered Accountant of the Operational Creditor Company. Thus, Corporate Debtor accepted the liability. The letter is shown as Annexure G at Page No. 73 and 74 of the Petition. I have seen the Annexure G. The Operational Creditor directed the Corporate Debtor to confirm to the auditors of Operational Creditor Company with regard to the amount payable by Corporate Debtor to the Operational Creditor. The Corporate

Debtor addressed a letter to the Auditor of Operational Creditor confirming the liability as on 31.03.2014 at Rs. 91,11,272/-.

10. The Operational Creditor further relied upon emails sent to Corporate Debtor from time to time for payment. The Emails are shown as Annexure H: I have gone through the emails addressed to Corporate Debtor to pay the amount due under the invoice.
11. It is the case of the Operational Creditor that Corporate Debtor issued Nine Cheques. All the Cheques on presentation are dishonored either due to "insufficient funds" or "accounts were closed". The dishonoured Cheques along with bank memos are shown as Annexure I: I have seen the dishonored Cheques.
12. The Operational Creditor relied on demand notice issued in prescribed form to the Corporate Debtor demanding principal amount due and payment of interest at 18% p.a. The demand notice was duly served on 21.12.2017, which is marked as Annexure J and K. The courier track delivery report is shown as Annexure L.
13. It is the case of the Operational Creditor that there is no reply to the demand notice. The last payment was on 11.04.2017 and the petition is filed on 26.02.2018. The Bank Statements are shown as Annexure O. The Operational Creditor is thus able to establish that Corporate Debtor was liable to pay the Balance of invoice amount and that Corporate Debtor committed default.
14. The Corporate Debtor filed counter on 22.06.2018. In this counter, Corporate Debtor clearly admitted the liability. Therefore in the first counter Corporate Debtor admitted liability as well as default.
15. The Corporate Debtor filed second counter alleging that there are defects in Petition. In this second counter Corporate Debtor claimed that debt is barred by limitation. The last part payment was on 11.04.2017. The petition was filed on 26.02.2018. Thus

the petition is within limitation and the claim is not barred by limitation.

16. The Corporate Debtor filed one more counter on 08.08.2018. The Corporate Debtor started filing counters one after another. The allegations in third counter do not require any consideration since Corporate Debtor admitted the liability and default in the very first counter dated 22.06.2018.
17. The Operational Creditor relied on the following decisions:-
 - I. In the matter of Mr. Brajesh Kumar Agarwal Vs. Punjab National Bank and another reported in 2018 SCC Online NCLAT 305.
 - II. In the matter of Hotel Diplomat Vs. Folio Holdings (India) Pvt Ltd and another reported in 2012 SCC Online Del 4436: (2012) 192 DLT 771: (2012) 4 BC 699.
 - III. In the matter of M/s ISMT Limited Vs. Fieldspares Sales & Services Private Limited reported in 2017 SCC Online NCLT 11337.
 - IV. In the matter of M/s Sai Trading Company Vs. M/s Padmavati Wire and Cables Private Limited reported in 2017 SCC Online NCLT 11500.
 - V. In the matter of M/s Vertex Chemicals Vs. M/s Arient Scientific Private Limited reported in 2017 SCC Online NCLT 12130.
 - VI. In the matter of Agarwal Coal Corporation Private Limited Vs. Impex Ferro Tech Limited reported in 2017 SCC Online NCLT 2583.
18. From reading of the above decisions and relying on the evidence and also admission made by Corporate Debtor, the Operational Creditor is able to establish the liability of Corporate Debtor to discharge debt who has committed default.

19. The Operational Creditor has suggested the name of IRP who has given consent in FORM 2 and there is no disciplinary proceedings pending against present IRP.
20. Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:-
 - (a) The Bench hereby prohibits 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; Transferring , encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor.
 - (b) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
 - (c) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 - (d) That the order of moratorium shall have effect from 12.11.2018 till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.

- (e) That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.
- (f) That this Bench hereby appoints Mr. S.V. Satyanarayana having registration number IBBI/IPA-003/IP-N00063/2017-2018/10549 residing at Flat No. 201, Pearl Block, Sri Sairam Manor Apartments, Yousufguda, Hyderabad- 500045, as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

Accordingly, this Petition is admitted.


12.11.18
(RATAKONDA MURALI)
MEMBER (JUDICIAL)

Niharika

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

IA No. 273/2018

In

CP (IA) No. 111/07/HDB/2017

Under Section 60(5) of IBC, 2016

In the matter of:

Panalpina World Transport (I) Pvt. Ltd.
Corporate office: 5th Floor,
Orchid Business Park,
Sec- 48, Sohana Road,
Gurgaon- 122018,
Haryana.

...Applicant

VERSUS

Lanco Infratech Limited
Through its Resolution Professional,
Mr. Savan Godiawala
397, Udyog Vihar III, Sector 20,
Gurugram,
Haryana 122 016.
Office at:
Deloitte, Touche Tohmatsu India LLP,
Level 7, Building 10,
Tower B, DLF Cyber,
City Complex, DLF City Phase-II,
Gurgaon- 122 002.

...Respondent

Date of Order: 12.09.2018**Coram:**

Hon'ble Shri RatakondaMurali, Member (Judicial)

Parties / Counsels Present

For the Applicant Company: Shri. J.Govardhan Reddy, Advocate

For the Respondent : Shri Shardul Amarchand Mangaldas
&Co, Mr. Rusheek Reddy K.V
Ms. Rubaina S. Khatoon and
Shri L. Aravind Reddy


Per: Hon'ble Shri RatakondaMurali, Member (Judicial)

Heard on: 27.08.2018 and 12.09.2018.


ORDER

1. The instant application is filed by the M/s. Panalpina World Transport (I) Pvt Ltd (hereinafter referred to as the Applicant), under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (IBC) by seeking direction to set aside the decision of the Resolution Professional to reject the claim of the Applicant and further direction to Resolution Professional to admit the whole claim of the Applicant.
2. Brief averments made in the Application are:
 - a. It is stated that the applicant is one of the operational creditor for the corporate debtor. The applicant claimed a total amount of Rs. 9,67,86,885.78/- by filing Form-B. However, the Resolution Professional vide the list published on the web-site of the corporate debtor has only admitted an amount of Rs. 4,29,63,268/- and has rejected an amount of Rs. 5,38,23,617/-. The list released by the Resolution Professional is annexed herewith as **Annexure-A1**.
 - b. It is averred that the claims of the applicant have been wrongly rejected without any reason and no information or communication whatsoever have been provided to the Applicant. The claim amount includes the principle amount of Rs. 4, 83, 27,241.19 and interest @ 24% per annum as agreed between the parties. Thus a total of Rs. 9, 67,86,885.78 was claimed from the corporate debtor.
 - c. It is averred that to recover the claim amount the operational creditor has instituted a suit for recovery


under order 37 of CPC bearing suit No. C.S.37/1 of 2013 , titled as M/s. Panalpina World Transport Vs Lanco Infratech Limited, which is pending before Ld.ADJ Court, Gurugram, Haryana. In the meantime, the parties entered into a settlement dated 28.01.2016 for an amount of Rs. 4,29,63,268/- . However, not a single rupee was made to honour the said settlement amount and the same was not complied by the corporate debtor.

- d. It is averred that the Resolution Professional has taken the said settlement amount of Rs. 4,29,63,268/- as an admitted operational debt by ignoring the principal amount and the interest accrued as per the documentary proof submitted by the operational creditor.
 - e. It is averred that the RP while collating the claims of the operational creditor herein wrongly reduced the Principal amount outstanding against the corporate debtor and rejected the claim on the agreed interest part also.
3. Reply/counter filed by the Respondent:
- a. The respondent has denied the present application as false and misconceived. It is averred that the applicant has been communicated the reasons for rejection of part of its claim in detail vide an email dated 23.08.2018, which is annexed here with as Annexure-A.
 - b. It is averred that the applicant had entered into a full and final settlement with corporate debtor on 28.01.2016 for an amount of Rs. 4,29,63,268. A copy of settlement agreement is also annexed here with as Annexure -B.
 - c. It is averred that the applicant's claim is not only the amount which was agreed as per the settlement but also
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the interest calculated at 24% which is neither payable as per the terms of the settlement agreement.

- d. It is averred that the present application is not maintainable as the Respondent has acted in accordance with the provisions of IBBI and has duly verified the claim of the Applicant based on the information available.
 - e. It is further averred that the CIRP is a time bound process and the proceedings do not envisage a process by which the Resolution Professional takes time to communicate the reason whether the claim is to be accepted or rejected.
 - f. It is also averred that in the light of the above facts the application is liable to be dismissed.
4. I have heard the counsel appearing for Applicant and also the Counsel appearing for the Resolution Professional. Counsel for Resolution Professional/ Liquidator contended that since the Tribunal passed liquidation order against the Corporate Debtor Company, the Applicant has to file separate claim before the Liquidator. The Applicant has a right during liquidation to present any claim before the Liquidator. Counsel for Applicant has no objection if such a direction is given to the Applicant to file the claim before the Liquidator. It is also further brought to the notice of the Tribunal that Liquidator had issued public notice calling for claims.
5. It is true this Tribunal passed liquidation order against the Corporate Debtor. This Application is filed during CIRP. Since liquidation order is passed and Liquidator is appointed, therefore Applicant has to file its claim before Liquidator as per provisions of the Code dealing with Liquidation.
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6. In the light of above, this IA is disposed of directing the Applicant to file its claim before the Liquidator for considering the claim according to law.


12.9.18
(RATAKONDA MURALI)
MEMBER (JUDICIAL)

Pavani