

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

**CA No. 196 of 2017 in  
CP (IB) No. 111/7/HDB/2017**  
U/s 60 (5) R/w Section 14 of IBC, 2016

**In the matter of**

Mr. Savan Godiawala  
Resolution Professional of Lanco Infratech Ltd  
Deloitte Tohmatsu India LLP  
19<sup>th</sup> Floor, Shapath – V  
S.G. Road, Ahmedabad-380015 ...Applicant /RP

**Versus**

IDBI Bank Limited  
Chaturvedi Mansion  
26 Old Palasia A B Road  
Indore Madhya Pradesh - 452001 ...Respondent/  
Financial Creditor

**Date of order: 16.11.2017**

**Coram:**

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

**Parties / Counsels present**

For the Applicant / RP : Mr Savan Godiawala, RP  
along with Shri Manik Dogra,  
Senior Advocate, Mr.  
Vaijayanth, Ms. Misha, Shri L.  
Aravind Reddy, Advocates.  
For the Respondent/FC : Ms. Divya Datla, Advocate

**Per: Rajeswara Rao Vittanala, Member (Judicial)**

**ORDER**

1. The present Company Application bearing CA No.196 of 2017 in CP (IB) No. 111/7/HDB/2017 is filed by Resolution Professional of Lanco Infratech Limited (Corporate Debtor) under Section 60 (5) R/w



Section 14 of the Insolvency and Bankruptcy Code, 2016, by inter-alia, seeking to clarify, declare and confirm that the Corporate Guarantees issued by the Corporate Debtor and submitted by the Creditors along with Corporate Debtor which are invoked during the Corporate Insolvency Resolution Process period would be required to be verified and admitted, etc.

2. Brief facts, leading to filing of the present Company Application, are as follows:-

(a) The Corporate Debtor is under the CIRP which was initiated by this Tribunal order dated 7<sup>th</sup> August, 2017 and Shri Savan Godiawala was appointed as Interim Resolution Professional with direction to take all necessary action (s) under the provisions of the Code and later was confirmed as Resolution Professional (RP) in terms of Section 22 of the Code.

(b) The Resolution Professional (RP) has received several numerous claims from various Creditors of the Corporate Debtor since the initiation of CIRP and the RP has proceeded to verify such claims in accordance with the provisions of the Code. Several beneficiaries of corporate guarantees issued by the Corporate Debtor (CG Beneficiaries) have also filed their claims with the RP.

(c) The RP has verified claims submitted by the CG Beneficiaries and admitted the valid claims after due verification. In many cases where the claims are filed by the CG Beneficiaries against the Corporate Debtor, but no letter of invocation had been issued till the Insolvency



Commencement date, the CG Beneficiaries have issued to the Resolution Professional certificates specifically stating that the amounts with respect to underlying obligations have become due and payable from the Corporate Debtor. Such certificates have been taken as valid invocation under the Corporate Guarantee, and such claims have been admitted, even when such certificates have been issued subsequent to insolvency commencement date.

- (d) During the CIRP, one of the financial creditors of the Corporate Debtor has raised a specific objection regarding the approach adopted by the RP on the ground that the claims made by some of the CG Beneficiaries had not been invoked as on the Insolvency Commencement date. It has been claimed that the inclusion of such a claim renders the entire CIRP invalid as the inclusion of some of these CG Beneficiaries affects the rights of other financial creditors whose debt had accrued prior to initiation of the CIRP period. The financial Creditor also claims that the inclusion of the CG Beneficiaries renders the entire CIRP open to challenge. Thus, the RP was constrained to approach this Tribunal for clarification and directions in this regard so as to enable him for effective resolution of the affairs of the Corporate Debtor in accordance with the provisions of the Code. The Learned Resolution Professional further submits that as per Section 5(7) and 5(8) any liability with respect to a





guarantee given for securing a loan facility would fall within the definition of a "financial debt".

- (e) The Learned Resolution Professional submits that he has followed Section 18 (1) (b) of the Code which deals with filing, verification and updating of claims.
- (f) He further contents that the last date of filing of the claims is only for the purposes of ensuring timely constitution of the CoC, and not a cut-off date for the verification, acceptance and verification of the claims. He states that Regulation 13 provides for the updating of the claims subsequent to the Insolvency Commencement date upon submission of additional documents beyond the Insolvency Commencement date and Regulation 12 of the CIR Regulations provides for the inclusion of a financial creditor within the Committee of Creditors at any stage during the CIRP. He further contents that the initiation of the CIRP and the declaration of the moratorium does not suspend the underlying contracts entered into by a Corporate Debtor and the Corporate Debtor is required to continue operations as a going concern under the supervision and management of Resolution Professional. Thus, clearly, the Code cannot provide for and envisage a position where only the liabilities of the Corporate Debtor as on the Insolvency Commencement Date are taken into account.
- (g) He has further stated the intent behind the moratorium provision under the Code is to



ensure that the assets of the Corporate Debtor are protected against any action of distress and status quo is maintained so as to allow the creditors to take an informed choice about the future of the Corporate Debtor. Invocation of a guarantee does not in any manner violate such purpose and process.

- (h) The Corporate guarantees are valid, binding and subsisting obligations of the Corporate Debtor, and if the same are not accounted for during the CIRP, the same would seriously hinder the effective resolution of the Insolvency and Corporate Debtor. If the resolution plan is passed without taking into account these obligations under the Corporate Guarantees, the moratorium as provided under the Code is lifted and the Corporate Debtor would again find itself under immediate financial stress on account of invocation of these Corporate Guarantees which would have been artificially kept in abeyance for the limited period of the CIRP period, although not envisaged under Section 14 of the Code and therefore seeks clarification for verification and admission of the claims of CG Beneficiaries.

3. Heard, Mr Manik Dogra, Ms. Misha and Mr. L. Aravind Reddy, Learned counsels for Mr. Savan Godiawala, Learned Resolution Professional.
4. IBC 2016 provides duties of IRP/RP for conducting CIRP and they have to discharge their duties in accordance with Code and rules made by IBBI. For instance, section 25 enumerates duties of Resolution Professional. After hearing the case at length, the



learned counsel prayed the Tribunal to permit him to withdraw the present Company Application by contending that he would follow duties as prescribed under the Code in conducting CIRP in question.

5. In view of the fact and circumstances of the case, the Company Application bearing CA No. 196 of 2017 in CP (IB) No.111/7/HDB/2017 is disposed of as withdrawn. No order as to costs.



*Sd/-*  
**RAVIKUMAR DURAISAMY**  
MEMBER (TECHNICAL)

*Sd/-*  
**RAJESWARA RAO VITTANALA**  
MEMBER (JUDICIAL)

*G. Anantha Nageswarar*  
for Dy. Regr./Asst. Regr./Court Officer/  
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रती  
**CERTIFIED TRUE COPY**  
केस संख्या  
CASE NUMBER *CA No. 196 of 2017 in CP (IB) No. 111/7/HDB/2017*  
निर्णय का तारीख  
DATE OF JUDGEMENT *16.11.2017*  
प्रति तैयार किया गया तारीख  
COPY MADE READY ON *18.2.2018*