IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERBAD

IA No.288/2021
In CP(IB) No.420/7/HDB/2018

In the matter of :-
M/s Lanco Amarkantak Power Ltd.

Between:

M/s Star Thermal Private Limited,
Having is Registered Office at
14/43, 1st Floor, Hameedia Centre,
Haddows Road. Nungambakkam,
Chennai – 600006. Tamil Nadu
Represented by its Authorised Signatory
Mr. S. Kamban, Director

...Applicant

AND

1. M/s Lanco Amarkantak Power Limited,
   Having its Registered Office at
   Plot No.4, Software Units Layout,
   Infocity, Madhapur,
   Hyderabad – 500081.
   Represented by its Resolution Professional
   Mr. Saurabh Tikmani

...Respondent No.1

2. Mr. Saurabh Tikmani,
   Resolution Professional – Lanco Amarkantak Power Limited,
   Having Office at KPMG Restructuring Services LLP,
   8th Floor, Building No.10, Lodha Excelus,
   Apollo Mills Compound,
   N.M. Joshi Marg, Mahalaxmi,
   Mumbai – 400011.

...Respondent No.2

3. Axis Bank Limited
   Trishul, 3rd Floor,
   Opp. Samartheshwar Temple,
   Law Garden, Ellis Bridge,
   Ahmedabad – 380006.

...Respondent No.3

4. The Committee of Creditors of
   Lanco Amarkantak,
   Power Finance Corporation Limited,
   Having its registered office at
   Urjanidhi, 1, Barkhamba Lane,
   Connaught Place, New Delhi – 110001.

...Respondent No.4

—Sd/—

Date of Order: 23.09.2021

Coram: Shri Madan B. Gosavi, Member Judicial.
Dr. Binod Kumar Sinha, Member Technical.

Parties/Counsel Present:

For the Applicant	:	Mr. Prem Ayyathurai, Advocate
For the Respondent	:	Mr. S. Niranjan Reddy, Senior Advocate & Mr. Mohit Rohtagi, Advocate.

[Per Bench]

ORDER

1. This Application is filed by M/s Star Thermal Private Limited seeking following reliefs:
   a. Pass an order directing the Respondent No.2 to provide access to the Applicant to the data room and enable the Applicant to submit a resolution plan before the CoC for its necessary consideration and approval under the provisions of the Code.
   b. Grant an extension of time of 4 weeks for the submission of firm resolution plan by the Applicant for the consideration of the CoC under the provisions of the Code.

2. Brief facts as stated by Applicant are as under:
   a. The Applicant has preferred the present application raising an important question of law and fact pertaining to the CIRP process of the Respondent No.1 Company as to whether the Respondent No2 can disentitle the Applicant company from submitting its commercially competitive expression of interest solely on the rationale that the CIRP Process of the Respondent No.1 Company has reached an advanced stage whereas the CoC of the Respondent No.1 Company has not yet commenced consideration of resolution plans as on date.
   b. That this Adjudicating Authority had allowed the application for Corporate Insolvency Resolution Process of the Respondent No.1 Company by way of its order pronounced on 5 September 2019

and also thereby appointed Mr. Saurabh Tikmani, Respondent No.2 as the Resolution Professional in respect of Respondent No.1 company/Corporate Debtor. Pursuant to the same, the Respondent No.2 had by way of invitation for Expression of Interest published vide Form G on 18 November 2019, invited expressions of interest from prospective resolution applicants, wherein the last date of receipt of Expression of Interest was identified as 3 December 2019. The said invitation for Expression of Interest has been modified from time to time by issuance of multiple addenda to the form G, the final being the 12th addendum to Form G published on 31 August 2020 whereby the last date for submission of Expression of Interest from prospective resolution applicants had been extended to 1 March 2020. However, the last date for submission of resolution plans has been extended from time to time and as on date, the same is 30 September, 2020. The aforesaid extensions ae subject to the Adjudicating Authority allowing pending applications in the present Company Petition for exclusion of time in calculation of the 330 day period of the CIRP process for Respondent No.1/Corporate Debtor.

c. As on the date of filing the present application, the CoC of the Respondent No.1 has not commenced voting for the resolution plans submitted before it by the resolution applicants. It is in this context that the Applicant Company communicated with Respondent No.2 vide e-mails dated 7 April 2021 and 13 April 2021 expressing its interest in participating in the CIRP process of Respondent No.1 and submitting resolution plan for the consideration of the CoC.

d. The Respondent No.2 responded positively to the communication of the Applicant Company via e-mail dated 13 April 2021, that is, on the same date, and directed the Applicant Company to furnish detailed documentation to establish that it satisfies the eligibility criteria set out in the Form G published on 18 November 2019, as amended from time to time.

e. The Applicant Company submitted a non-disclosure agreement and affidavit in accordance with Form G published by the Respondent No.2 and later on, furnished the broad contours of its superior commercial offer to the Respondent No.2 vide its letter dated 7 May 2021, wherein it clarified terms on which the proposal of the Applicant company was financially more favourable to all stakeholders including the financial creditors of the Corporate Debtor.

f. By way of email dated 30 May 2021, a communication was received from one Ms. Simran Chaudhary, intimating the applicant Company that the expression of interest submitted by it could not be considered as per Regulation 36(A)(6) of the Insolvency and Bankruptcy Board of India (Insolvency Process for Corporate Persons) Regulations, 2016 (hereinafter "CIRP Regulations, 2016"). That the above communication of rejection of the expression of interest submitted y the Applicant herein was made not by the Respondent No.2 and not from the official e-mail ID of the Respondent No.2/Resolution Professional.

g. That the process of calling for Expression of Interest by publication of Form G was not a rigid process. More particularly, the eligibility criteria forming part of the Form G in the present Company application clearly states that the Resolution Professional and the CoC retain the absolute right to modify the amend the process at any stage of the resolution process without assigning any reasons or without any liability.

h. That the Applicant possesses both the financial ability to turn around the Respondent No.1/Corporate Debtor into a viable

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business as also the technical know-how and expertise to take over the Respondent No.1/Corporate Debtor and convert it into a profit making enterprise.

i. The Applicant understands that the 330 days' statutory period for completion of CIRP of Respondent No.1 has expired as on the date of filing the present Application. However the Applicant submits that it was not a party to the present CIRP until now and therefore the delay in concluding the same should not be construed adversely against the Applicant herein. Moreover the Hon'ble Supreme Court of India has reiterated in Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta (2020) B SCC 531.

j. That allowing the present application of the Applicant is crucial to maximise the value of Respondent No.1/Corporate Debtor's assets and provide a chance for its revival.

3. Counsel for R2 filed counter stating as under:-

a. The RP received resolution plans from 2 resolution applicants on 30.09.2020. In addition to the above, the RP also received a settlement proposal on 30.09.2020 from the erstwhile promoter group for withdrawal of the Corporate Debtor from CIRP under Section 12A of the IBC read with Regulation 30A of the CIRP Regulations. The physical copies of resolution plans and he Settlement Proposal were opened in the 14th CoC meeting of the Corporate Debtor held on 06.10.2020, and scans of the same were uploaded for the CoC's perusal on 07.10.2020.

b. Since then, the CoC and RP has been undertaking negotiations with the resolution applicants in respect of aligning the resolution plan as per the terms of the IBC and request for resolution plan (RFRP) and urging the resolution applicants to increase the

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amounts offered in the resolution plans in order to increase the value for all the concerned stakeholders.

c. Both the resolution applicants submitted several versions of their resolution plans based on multiple rounds of discussions. The final versions of the resolution plan is currently being deliberated by the members of the CoC.

d. In the meanwhile, the Applicant/STPL communicated with RP vide letter dated 07.04.2021 and email dated 13.04.2021 expressing its interest in participating in the CIRP process of the Corporate Debtor and submitting resolution plan. On behalf of RP, a preliminary response was sent vide email dated 13.04.2021, wherein, *inter alia*, the Applicant was duly informed that the Corporate Debtor is in advanced stage of the resolution process and that the last date for submission of EOIs has expired. The Applicant was specifically informed that in view of expiry of last date for submission of EOI, it will be informed if its interest can be accommodated at this stage.

e. In regard to the same, he following extracts of the minutes of the 19th CoC Meting are also relevant:

"The Chairperson apprised the COC that they received EOIs/Letters were unsolicited and not invited by the RP, given the last date for submission of EOIs i.e. 01 March 2020 has expired. It was also highlighted that the said matter was discussed at length in the 9th Core Committee meeting and after detailed deliberation, it was concurred by the Committee members that the resolution process has reached an advanced stage after multiple rounds of negotiation with existing RAs and the fact that 2 of these additional parties have not submitted even the basic document in support of their eligibility. Hence, it would not be prudent to direct the RP to approach Hon'ble NCLT at this stage, considering the risk of inviting

fresh litigation and time involved to re-run of process. If these parties directly approach Hon'ble NCLT and obtain direction for CoC and RP to consider their interests, then a view may be taken. Further, it was highlighted that no such interest in the Corporate Debtor was indicted by any of the three parties at an earlier stage and the CoC discussed that the credentials of the existing RAs seem prima facie stronger than these parties. The CoC took note of the same."

f. The following resolution was put to vote and passed by members representing almost 100% of the voting share of the CoC:

"***RESOLVED THAT*** *pursuant to Section 12(2) and second proviso to Section 12(3) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 40 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations,2016, the committee of creditors of Lanco Amarkantak Power Limited hereby directs the resolution professional to file appropriate application before the Adjudicating Authority for seeking extension of time for completion of the corporate insolvency resolution process of Lanco Amarkantak Power Limited and exclusion of time on account of recent directions of the Hon'ble Supreme Cout, and lockdown restrictions in the state of Maharashtra owing to COVID-19, for the purpose of counting the period specified under Section 12 of the Insolvency and Bankruptcy Code, 2016, collectively for a period of 45 days from the date of the order or 13 May 2021, being currently the last date for completion of Lanco Amarkantak Power Limited's corporate insolvency resolution process, whichever is later.*

RESOLVED FURTHER THAT *the resolution professional is further authorized to finalize and execute necessary documents and take* *all such actions, as may be required, from time to time, to give effect to this resolution".*

g. In view of the above and the subsequent letters issued by the Applicant/STPL on 27.04.2021 and 07.05.2021, a response was sent on behalf of the RP vide email dated 30.05.2021, wherein it was noted that as per Regulation 36A(6) of the CIRP Regulations, EOI received after the last date for submission of EOIs shall be rejected. It was stated that as per the revised invitation of EOI in the CIRP, the last date for submission of EOI was 1st March 2020 and since STPL's EOI is submitted after the prescribed date, its EOI cannot be considered in the CIRP. It was further stated that considering the last date of submission of EOI has expired and that the resolution process has reached the advance stage of completion, EOI submitted by STPL cannot be considered in the CIRP.

h. As per the revised invitation of EOI in the CIRP, the last date for submission of EOI was 1st March 2020 i.e. about a year ago and STPL's EOI is submitted after the prescribed date. As per Regulation 36(A)(6) of the CIRP Regulations *'expression of interest received after the time specified in the invitation under clause (b) of sub-regulation (3) shall be rejected.'* Thus, the RP is mandated under Regulation 36A(6) of the CIRP Regulations to reject EOI received after the expiry of the last date for submission of EOIs.

i. There is no provision in IBC or CIRP Regulation which provides to consider the Resolution Plan of a person who has not been part of CIRP.

j. One of the objectives of the IBC is timely completion of the CIRP.

k. Pertinently, Applicant has yet to show/prove his eligibility to be a prospective resolution applicant as per the eligibility criteria set out in the detailed invitation to EoI approved by the CoC. It is to

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be noted that one criteria to adjudge the eligibility of a corporate entity is to have net worth of INR 1000 Crores. However, the documents shared by the Applicant prima facie fail to satisfy said criterion.

l. If the instant application is permitted, substantial part of Corporate Debtor's CIRP would be required to be re-run, including time required for STPL to review the information in the data room, submission of the resolution plan, negotiations with members of the CoC and thereafter revision of its plan. All of this could potentially delay the CIRP by several months.

4. Counsel for the Applicant filed rejoinder reiterating the submissions made in the Application, denying the allegations made in the counter and further prayed to allow the Application as prayed for. Same has been perused.
5. Heard both sides and perused the record.
6. It is seen from the record that the RP has already called upon certain details in relation to the Applicant herein and it appears to us that CIRP period is going to be over soon, but since plans are pending and since there is likelihood of Resolution of Insolvency of Corporate Debtor, we could give a consideration of the present Application. However, as brought to our attention by the Respondent/RP that the Applicant herein has not fulfilled the eligibility criteria of having net worth of Rs.1,000 Crores to become a prospective Resolution Applicant as set out in the EOI as approved by CoC. Since the Applicant has failed to fulfil this basic eligibility criteria for becoming a PRA in the CIRP of the Corporate Debtor and even after such plea in the counter affidavit filed by the RP, the Applicant has not been able to place any evidence of its net worth as required in RFRP, we are of the considered view that this Application is not maintainable.
7. With the above, IA No. 288/2021 stands disposed of. Interim order if any shall stand merged with this order.

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Dr. BINOD KUMAR SINHA
MEMBER TECHNICAL

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MADAN B. GOSAVI
MEMBER JUDICIAL

Santi/SKRathi