

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO:II
SPECIAL BENCH(Video Conference)**

**CORAM: HON'BLE MADAN BHALCHANDRA GOSAVI – MEMBER JUDICIAL
HON'BLE DR.BINOD KUMAR SINHA-MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 04.08.2021 AT 12:30 PM THROUGH VIDEO CONFERENCE**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.676/2020 in CP(IB) No.20/7/HDB/2019
NAME OF THE COMPANY	Lanco Solar Pvt Ltd
NAME OF THE PETITIONER(S)	Axis Bank Ltd
NAME OF THE RESPONDENT(S)	Lanco Solar Pvt Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

IA 676/2020 in CP 20/7/HDB/2019 is listed for orders. Orders pronounced vide separate Order.


MEMBER (T)

Syamala


MEMBER(J)

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

**MA No.676/2020
In
CP(IB)No.20/7/HDB/2019**

In the matter of: LANCO SOLAR PRIVATE LIMITED

M/s. Lanco Solar Private Limited,
Registered Office: Plot No.4,
Software Units Layout,
HITEC City, Madhapur,
Hyderabad – 500081.
(Rep by its RP, Mr. Huzefa Fakhri Sitabkhan)

...Applicant

Date of Order: 04.08.2021

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

Parties/Counsel(s) Presents:

For the Applicant : Mr. D. Narendar Naik

For the RP : Mr. P. Vikram

[Per Bench]

ORDER

1. The present Application bearing MA No. 676/2020 in CP(IB)No.20/7/HDB/2019 is filed by Resolution Professional inter-alia praying to pass the order of liquidation of the Corporate Debtor U/s.33(2) of the I&B Code, 2016 and to appoint Mr. Huzefa Fakhri Sitabkhan, RP as Liquidator U/s.34(4)(c) and Sec.34(5) of the I&B Code, 2016.
2. Brief facts as stated by the counsel for the Applicant are as follows:-
 - a. That M/s. Axis Bank Limited (Financial Creditor) filed CP(IB)No.20/7/HDB/2019 against M/s. Lanco Solar Private Limited (Corporate Debtor) under Section 7 of the IB Code and vide order dated 17.05.2019, this Adjudicating Authority admitted the said Application



and Mr. Huzefa Fakhri Sitabkhan was appointed as the Interim Resolution Professional. In the 1st CoC meeting, held on 28.06.2019, the Applicant herein was confirmed as Resolution Professional.

- b. That on 29.07.2019, the RP published an invitation for expression of interest, inter alia, calling upon the prospective Resolution Applicants to submit their expression of interest, duly fixing the last date for receipt of claims as 27.09.2019 as recorded in the 4th CoC meeting dated 20.09.2019.
- c. That the statutory CIRP period of one hundred and eighty (180) days, as per Section 12(1) of the Code was to lapse on November 13, 2019.
- d. However, the CoC passed a Resolution in their fifth(5th) meeting dated October 07, 2019, by a 100% vote (unanimously), instructing the Applicant to apply for extension of the CIRP period by another ninety (90) days, i.e., beyond the period of one hundred and eighty (180) days in terms of Section 12 of the Code, read with Regulation 40 of the CIRP Regulations.
- e. Accordingly, the Applicant filed an Application seeking extension of CIRP period as per Section 12 of the code, read with Regulation 40 of the CIRP Regulations. The Applicant submits that in view of the progress made in the CIRP and in view of the 100% voting of the CoC members (in the 5th CoC meeting) in favour of extension of the CIRP Period, this Adjudicating Authority passed an Order on November 08, 2019 granting an extension of a further period of 90 days with effect from November 14, 2019. Thus, the extended period of 90 days was due to expire on February 11, 2020.
- f. The Applicant submits that accordingly the last day to submit the Resolution Plan was extended from November 10, 2019 to November 30, 2019 as recorded in the 6th CoC meeting held on November 08, 2019.



- g. The Applicant submits that no resolution plans were received till the last day for the submission of the Resolution Plan, i.e., November 30, 2019. Thereafter, during the course of the CIRP and pursuant to the various CoC meetings, majority of the CoC members were of the considered opinion that it is in the interest of all the stakeholders, to proceed with the liquidation of the Corporate Debtor as no entity/investor is likely to submit any resolution plan for the Corporate Debtor. It was felt that re-issuance of invitation of expression of interest as per Regulation 36A of the CIRP Regulations, would only result in delaying the process of liquidation of the assets of the Corporate Debtor, which would further lead to deterioration in the value of assets and increase in the CIRP costs.
- h. In the circumstances, in the 10th CoC meeting held on 04.02.2020, the CoC members observed that in the absence of any resolution plan and in the absence of any prospect of resolution, the Corporate Debtor ought to undergo liquidation process. Accordingly, a resolution was passed by 92.07% voting to initiate liquidation process for the Corporate Debtor as extracted below:
- “To approve and direct the Resolution Professional to file the application under section 33(2) of the Code, 2016 read with the relevant regulations before the NCLT to initiate the Liquidation Process of the Corporate Debtor and to take the necessary actions in connect therein including but not limited to file his consent before the NCLT to act as Liquidator of the Corporate Debtor.”***
- i. That in terms of Regulation 39B of the CIRP Regulations, the CoC in consultation with the Applicant was required to ascertain an estimate of the amount required to meet the liquidation costs and the value of the liquid assets to meet those costs. Accordingly, in the 10th CoC meeting

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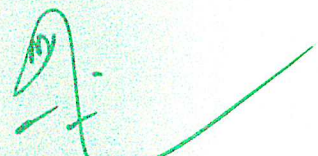
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the CoC members approved by 62.73% voting the estimated net liquidation cost of the Corporate Debtor for the period of one year, aggregating to Rs.3.83 Crore and further approved the contribution plan of the said estimated net liquidation cost to be paid by the members of the CoC, which shall be paid in the ratio of their respective claims admitted in CIRP. Accordingly, the following resolution has been incorporated as an e-voting item:

“To approve the estimated net liquidation cost of the Corporate Debtor for the period of 1 year amounting to Rs.3.83 Crore and the contribution plan of the said estimated net liquidation cost by the CoC members in the ratio of their claims admitted in the CIRP in terms of Regulation 39B of the CIRP Regulations.”

- j. That in terms of Regulation 39C and on taking into account the nature and status of the assets of the Corporate Debtor, the members of CoC recommended by 92.07% voting that the assets or group of assets of the Corporate Debtor be sold as a going concern / slump sale basis or on an individual basis rather than selling the Corporate Debtor only as a going concern, during the liquidation process of the Corporate Debtor. Accordingly, the following resolution has been incorporated as an e-voting item:

“In terms of Regulation 39C, and taking into account the discussion that took place and considering the nature and stage of the assets of the Corporate Debtor, the CoC recommends that the assets or group of assets of the Corporate Debtor can be sold on a going concern / slump sale basis or an individual basis rather than selling the Corporate Debtor as a going concern during the liquidation process of the Corporate Debtor.”



k. That the Applicant further submits that, at the 10th CoC meeting, in terms of Regulation 39D of the CIRP Regulations, the CoC members by a 73.85% voting, fixed the fees of the liquidator at the rate of 1.00% of the total amount realised from liquidation of the assets of the Corporate Debtor during the first year from the liquidation commencement date and thereafter at 0.90% of the total amount realised during the balance period of liquidation. Accordingly, the following resolution has been incorporated as an e-voting item:

“To fix the fees of the Liquidator of the Corporate Debtor at he rate of 1.00% of the total amount realized during the first year from the liquidation commencement date and thereafter at 0.90% of the total amount realized during the balance period of liquidation.”

3. Heard the RP and perused the records.
4. In view of the facts and circumstances as recorded by RP in MA No. 676 of 2020 filed in CP(IB) No. 20/7/HDB/2019, since this Adjudicating Authority did not receive any Resolution Plan under Sub-Section (6) of Section 30 of the I&B Code, 2016, this Adjudicating Authority deems it proper to allow the Application bearing MA No. 676/2020 as prayed for. Accordingly, in exercise of powers conferred under Sub-Clauses (i), (ii) and (iii) of Clause (b) of Sub-Section (1) of Section 33 of the I&B Code, 2016, we proceed to pass Order as follows:—

- (i) This Adjudicating Authority hereby order for Liquidation of M/s. Lanco Solar Private Limited which shall be conducted in the manner as laid down in Chapter III of part II of the I&B Code, 2016;
- (ii) This Adjudicating Authority hereby appoint Mr. Huzefa Fakhri Sitabkhan, as proposed by CoC. He is directed to file his consent to act as Liquidator in the present case along with valid Authorisation for



Assignment (AoA) within 7 days from date of this order. He shall issue a public announcement stating therein that the Corporate Debtor is in Liquidation;

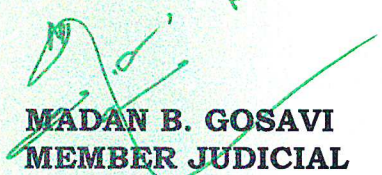
- (iii) The moratorium declared under Section 14 of the I&B Code, 2016, shall cease to have effect from the date of the order of Liquidation;
- (iv) Subject to Section 52 of the I&B Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.
- (v) We make it clear that para (iv) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.
- (vi) This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the Liquidation process by the Liquidator.
- (vii) All the powers of the Board of Directors, Key Managerial Personnel and the Partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested in the Company Liquidator viz., Mr. Mr. Huzefa Fakhri Sitabkhan. In addition to this, the Company Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the I&B Code, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- (viii) The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Company Liquidator as may be required by him in managing the affairs of the Corporate Debtor.



- (ix) The Liquidator shall keep in view the provisions of Regulation 32A of Insolvency and Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 and shall endeavour to first sell the Corporate Debtor or its business as going concern. However, if he is unable to sell the Corporate Debtor or its business within 90 days from liquidation commencement date, Liquidator shall proceed to sell the assets of the Corporate Debtor under clauses (a) to (d) of Regulation 32 of Insolvency and Bankruptcy Board Of India (Liquidation Process) Regulations, 2016.
- (x) The Liquidator shall be entitled to charge such fee for conducting the Liquidation proceedings in accordance with the decision taken by the CoC under Regulation 39D of IBBI (Insolvency Resolution Process Corporate Persons) Rules, 2016 read with Regulation 4(1) of IBBI (Liquidation Process) Regulations, 2016.
- (xi) Copy of this Order shall be sent to the concerned Registrar of Companies, RD, OL, Registered Office of the Corporate Debtor and Company Liquidator viz., Mr. Huzefa Fakhri Sitabkhan for information and compliance.
- (xii) Registry is directed to furnish a copy of this order to IBBI for confirmation of appointment of Liquidator.

5. Accordingly, Application bearing IA No. 676/2020 stands disposed off.


Dr. BINOD KUMAR SINHA
MEMBER TECHNICAL


MADAN B. GOSAVI
MEMBER JUDICIAL

Santi/SKRathi