



SL. No.4

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

COURT HALL NO: II

Hearing Through: VC and Physical (Hybrid) Mode

**CORAM: SHRI. RAJEEV BHARDWAJ – HON'BLE MEMBER (J)
CORAM: SHRI. SANJAY PURI - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 09.04.2025 at 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/1756/2024 in CP (IB)No.518/7/HDB/2018
NAME OF THE COMPANY	Lanco Solar Energy Pvt Ltd
NAME OF THE PETITIONER(S)	Andhra Bank
NAME OF THE RESPONDENT(S)	Lanco Solar Energy Pvt Ltd
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/1756/2024

Orders pronounced, recorded vide separate sheets. In the result, the IA (IBC)/1756/2024 is allowed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II**

IA (IBC) 1756 OF 2024

in

C.P. (IB) NO. 518/7/HDB/2018

[U/s. 60(5) of the Insolvency & Bankruptcy Code, 2016 r/w Rule 11 of the National Company Law Tribunal Rules, 2016]

In the matter of Andhra Bank vs. M/s.Lanco Solar Energy Pvt. Ltd.

In the matter of:

M/s. Lanco Solar Energy Private Limited

CIN: U40109TG2009PTC064018

Plot #4, Software Units Layout,

Hitec City, Madhapur,

Hyderabad, Telangana - 500 081

Email: vijeta.cs@lseplimited.com

...Applicant

Vs.

1. The Deputy/Assistant Commissioner of Income Tax
Circle-5(1) [formerly 16(1),
now got merged with 5(1)], Hyderabad
I.T. Towers, A.C. Guards, Masab Tank, Hyderabad - 500 004
Email id: hyderabad.dcit16.1@incometax.gov.in
2. Mr. Parveen Bansal, Resolution Professional of
M/s. Lanco Solar Energy Private Limited
E-10A, Kailash Colony, Greater Kailash-1,
New Delhi - 110 048
Email: pkbansal00@gmail.com

...Respondents

Date of Order: 09.04.2025

Coram:

Shri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Shri Sanjay Puri, Hon'ble Member (Technical)

Counsels present:

For the Applicant : Mr.Y. Suryanarayana, Advocate

For the Respondent No.1 : Ms.B.Sapna Reddy and Ms.Krishna Priya, Advocates

For the Respondent No.2 : Mr. Parveen Bansal, RP



[PER: RAJEEV BHARDWAJ, MEMBER (JUDICIAL)]

ORDER

I. The present application is filed by M/s. Lanco Solar Energy Private Limited (**Applicant/Corporate Debtor/CD**) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, r/w Rule 11 of the National Company Law Tribunal Rules, 2016, seeking a direction to Respondent No.1 to release the refund amounting to Rs.19,56,17,549/- (Rupees Nineteen Crores Fifty-Six Lakhs Seventeen Thousand Five Hundred and Forty-Nine only), along with applicable interest, which the Applicant/Corporate Debtor is entitled to, for Assessment Years 2014-15 and 2018-19 to 2023-24, and which has been illegally adjusted by Respondent No.1 against certain demands raised.

II. APPLICATION:

1. M/s. Lanco Solar Energy Private Limited was admitted into Corporate Insolvency Resolution Process (**CIRP**) vide Order dated 14.06.2019 (**Admission Order**), passed by this Authority in CP (IB) No. 518/7/HDB/2018, on a petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) by Andhra Bank (**Financial Creditor/FC**).
2. In the 1st Meeting of the Committee of Creditors (**CoC**) held on 15.07.2019, Mr. Parveen Bansal was appointed as Resolution Professional (**RP**) of the CD.



3. The Deputy/Assistant Commissioner of Income Tax (**Respondent No.1/R1**) issued Assessment Orders dated 28.02.2017 and 30.10.2017 for the Assessment Years 2012-13 and 2013-14, respectively, under Section 143(3) read with Section 92 CA(3) and r/w Section 144C(13) of the Income Tax Act, 1961. Aggrieved by the said Assessment Orders, the CD preferred appeals before the Hon'ble Income Tax Appellate Tribunal (**ITAT**).
4. The R1 also submitted its claim in Form B on 26.02.2020 pursuant to the public announcement made by the RP on 21.06.2019. The claim submitted amounted to Rs.110,24,12,086/- towards Income Tax Arrears for the Assessment Years 2012-13, 2013-14, and 2017-18. However, as the Appeals filed by the Corporate Debtor were pending adjudication before the ITAT, the RP refrained from admitting the said claims of R1, considering that such admission would be in contravention of the provisions of the IBC.
5. Subsequently, the ITAT, vide its Common Order dated 20.09.2022, dismissed the appeals filed by the Corporate Debtor for the Assessment Years 2012-13 and 2013-14 on the ground that the Appeals could not proceed while the CIRP was ongoing.
6. Thereafter, the CoC approved the Resolution Plan submitted by the consortium of Mr. Jitendra Vir Singh and M/s. Derit Infrastructure Private Limited (**Successful Resolution Applicant/SRA**), with a voting share of 95.62%. The said Resolution Plan was approved by this Authority vide Order dated 24.04.2024, passed in IA No. 598 of 2021.



7. In accordance with the terms of the approved Resolution Plan, the SRA has provided an amount of Rs. 20,00,000/- towards full and final settlement of the claims raised by the Operational Creditors and for any claims not admitted. Further, the RP has made a payment of Rs.4,35,435/- to the Income Tax Department on 15.06.2023 in compliance with the approved Resolution Plan.
8. Despite the approval of the Resolution Plan and the payments made in accordance therewith, Respondent No.1 has illegally adjusted the demands raised for the Assessment Year 2012-13, as per the revised Assessment Order dated 22.06.2018, against the refunds lawfully due and payable to the Corporate Debtor for subsequent Assessment Years, namely, Assessment Years 2014-15, 2018-19, 2019-20, 2021-22, 2022-23, and 2023-24.
9. The details of the refund adjustments made by the Respondent No.1 against the outstanding demand of Rs.103,62,58,160/- pertaining to A.Y. 2012-13 are tabulated herein below for ready reference:

Assessment Year	Amount of Refund during the Assessment Year	Adjusted against the Assessment Year	Date of Order	Date of Deposit
2014-15	15,88,14,524	2012-13	31.10.2018	26.07.2019
2018-19	1,56,43,935	2012-13	18.11.2019	10.06.2020
2019-20	83,38,370	2012-13	07.07.2020	09.07.2020
2021-22	38,36,010	2012-13	26.07.2022	14.10.2022
2022-23	48,47,490	2012-13	02.03.2023	04.03.2023
2023-24	41,37,220	2012-13	09.01.2024	17.02.2024
Total	19,56,17,549	.		



10. The Respondent No.1 has proceeded to adjust the outstanding tax demand pertaining to A.Y. 2012-13 during the moratorium period, by unilaterally setting off the same against the refunds legitimately due to the Corporate Debtor for subsequent assessment years. Such action on the part of Respondent No.1 is in clear violation of the express bar provided under Section 14(1)(c) of IBC, which prohibits any action to recover or enforce any security interest or recover any property of the Corporate Debtor during the moratorium period.
11. The Applicants placed reliance on the judgment of the Hon'ble NCLAT, Principal Bench in *Mr. Devarajan Raman, Liquidator of Kotak Urja Pvt. Ltd. vs. Principal Commissioner Income Tax and Ors.*, [2024 SCC OnLine NCLAT 690], wherein it has been categorically held that any set-off or adjustment of tax demands against refunds during the CIRP or the intervening period till liquidation constitutes a violation of the moratorium under Section 14 of the IBC.
12. The Respondent No.1 ought not to have undertaken any adjustment of its claims against the refunds due to the Corporate Debtor during the currency of the moratorium period imposed under Section 14 of the IBC.
13. It is further submitted that any adjustment carried out by Respondent No.1 even after the approval of the Resolution Plan is impermissible in law. All claims of operational creditors, including statutory authorities such as the Income Tax Department, are governed strictly by the terms of the approved Resolution Plan. Any dues not forming part of the approved Resolution Plan stand extinguished by operation of law and are not recoverable subsequently.



14. It is reiterated that the Respondent No.1 had submitted its claim in Form B on 26.02.2020, which was rejected by the RP. Pursuant to the terms of the approved Resolution Plan, a sum of Rs. 20,00,000/- was earmarked towards Operational Creditors whose claims were not admitted, out of which a payment of Rs.4,35,435/- was made to the Income Tax Department on 15.06.2023 towards its alleged dues, thereby discharging the liability in terms of the Resolution Plan.

15. The Applicant craves leave to refer to Clause L(c) of the Approved Resolution Plan, Section 31, and Section 238 of the IBC, which explicitly provide for the extinguishment of all claims pertaining to the period prior to the approval of the Resolution Plan, except to the extent provided therein. The relevant clause of the Resolution Plan is reproduced herein below:

*Clause L(c) of the Approved Resolution Plan:
"...except as provided in this Resolution Plan, all Claims (whether present or arising in future) of all Governmental Authorities (including in relation to Taxes, and all other dues and statutory payments to any Governmental Authority) relating to the period prior to the Closing Date, shall be deemed to be permanently extinguished and/or settled at NIL value on the NCLT Approval Date, by virtue of the NCLT Approval Order."*

16. In view of the above, it is respectfully submitted that all dues of the Respondent No.1 forming part of the approved Resolution Plan have been fully discharged, and any other dues not forming part of the Plan stand extinguished ipso facto by operation of law.



17. It is submitted that Section 238 of the IBC has an overriding effect over any other law, including the provisions of the Income Tax Act, 1961, to the extent of any inconsistency therewith. Thus, the impugned adjustments carried out by Respondent No.1 are non-est in the eyes of law.

III. COUNTER OF RESPONDENT NO.1:

1. Respondent No.1 vide letter dated 26.02.2020 has submitted its claim to the Interim Resolution Professional (**IRP**), specifying the outstanding demands and arrears along with the proof of claim, which has been attached as follows:

S.No.	Nature of Demand	A.Y.	Amount
1.	u/s.143(3) r.w.s. 92CA(3) & 144C(13) of the IT Act vide Order dt.28.02.2017 (Subsequently reduced vide Order u/s 154 dt.22.06.2018)	2012-13	Rs.87,74,43,636/-
2.	u/s.143(3) r.w.s. 92CA(3) & 144C(13) of the IT Act vide Order dt.30.10.2017 (Subsequently reduced vide Order u/s 154 dt.27.06.2018)	2013-14	Rs.21,96,18,430/-
3.	u/s 143(1)(a) of the IT Act, dt.29.03.2019	2017-18	Rs.53,50,020/-
	Total		Rs.110,24,12,086/-

2. In response to the said claim, the RP has provided the particulars of the refund adjustments that were made against the outstanding demand for AY 2012-13. These were made during the moratorium and also after the approval of the Resolution Plan.

A.Y.	Amount of Refund adjusted (Rs.)
2014-15	15,88,14,524
2018-19	1,56,43,935
2019-20	83,38,370
2021-22	38,36,010
2022-23	48,47,490
2023-24	41,37,220
Total	19,56,17,549



3. The total demand of Rs.104,90,64,370/- was raised for AY 2012-13 via order dated 28.02.2017 vide Section 143(3) r.w.s. 92 CA(3) & Section 144C(13) of the Income Tax Act. The said demand was later reduced to Rs.103,62,58,160/- by an Order u/s 154 dated 22.06.2018.
4. After adjusting the refund for AY 2014-15, the net outstanding demand for A.Y. 2012-13, as of the submission date was Rs.87,74,43,636/-. This outstanding demand was submitted as a claim in Form-B to the Resolution Professional. However, the Resolution Professional did not consider these facts when filing the Resolution Plan for approval before the Hon'ble NCLT.
5. Further, it is also submitted that during the CIRP proceedings, the Resolution Professional was aware of the fact that demand for AY 2012-13 was more after adjusting the refund of AY 2014-15 and based on that only, the final Resolution Plan was submitted to NCLT and the same was approved.
6. Demand of Rs. 110,24,12,086/- was outstanding for three Assessment Years as on the date of submission of claim by the R1 before the Resolution Professional. Further, it is also submitted that the refunds due to the Applicant for various Assessment Years were adjusted against the outstanding demands, which were raised prior to the commencement of CIRP.

IV. FINDINGS:

1. Upon perusal of the Application and the documents placed on record, it is clear that the CIRP was initiated against the Corporate Debtor on 14.06.2019, and a moratorium was simultaneously declared in terms of Section 14 of the



IBC. It is further noted that the Respondent No.1 had passed Assessment Orders dated 28.02.2017 and 30.10.2017, raising demands for the Assessment Year (AY) 2012-13 and AY 2013-14 respectively.

2. The Applicant seeks a direction to the Respondent No.1 to refund the amounts for the AYs 2014-15 and AY 2018-19 to AY 2023-24, which were adjusted against the demand raised for AY 2012-13, during the subsistence of the moratorium.
3. It is observed that the Respondent No.1 had filed a claim of Rs.110.24 Crores in the CIRP proceedings. However, the same was not admitted owing to the pendency of Appeals before the Income Tax Appellate Tribunal (ITAT). Subsequently, the said Appeals came to be dismissed on 20.09.2022 owing to the moratorium restrictions. Thereafter, the CoC approved the Resolution Plan, which was duly approved by this Authority on 24.04.2024. The said Plan provided for a settlement amount of Rs.20 Lakhs towards the claims of Operational Creditors and other claimants whose claims were not admitted. It is further noted that an amount of Rs.4.35 Lakhs was paid to the Income Tax Department on 15.06.2023 in terms of the approved Resolution Plan.
4. It is pertinent to note that the Assessment Orders passed by Respondent No.1 relate to the pre-CIRP period (AY 2012-13 to AY 2017-18). Therefore, it is evident that Respondent No.1 has attempted to recover its pre-CIRP dues during the moratorium period, which is impermissible under the IBC.



5. Section 14 of the IBC not only prohibits the institution or continuation of any legal proceedings against the Corporate Debtor but also expressly bars any action to recover or enforce any security interest or recover any property by a creditor during the moratorium.
6. The moratorium declared under Section 14 of the IBC remains in force until the approval of a Resolution Plan by the Adjudicating Authority or until an order for liquidation is passed. The moratorium is intended to preserve the assets of the Corporate Debtor and facilitate a collective resolution mechanism under the IBC framework. In the present case, a Resolution Plan has already been approved by the CoC and by this Authority on 24.04.2024.
7. In this regard, reliance is placed on the Judgment of the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors. [Civil Appeal Nos. 8766-67 of 2019]*, wherein it was held that:

“A successful resolution applicant cannot suddenly be faced with ‘undecided’ claims after the resolution plan submitted by him has been accepted. This would throw into uncertainty amounts payable by a prospective resolution applicant who successfully takes over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate.”

[own emphasis]



8. Further, reliance is placed on the ruling of the Hon'ble Supreme Court in *S.V. Kondaskar vs. V.M. Deshpande [(1972) 1 SCC 438]*, wherein it was categorically held that:

“46. Therefore, this Court held that the authorities can only take steps to determine the tax, interest, fines or any penalty which is due. **However, the authority cannot enforce a claim for recovery or levy of interest on the tax due during the period of moratorium.** We are of the opinion that the above ratio squarely applies to the interplay between the IBC and the Customs Act in this context.

47. From the above discussion, we hold that the respondent could only initiate assessment or reassessment of the duties and other levies. They cannot transgress such boundary and proceed to initiate recovery in violation of Section 14 or 33(5) of the IBC. The interim resolution professional, resolution profession or the liquidator, as the case may be, has an obligation to ensure that assessment is legal and he has been provided with sufficient power to question any assessment, if he finds the same to be excessive.”

[own emphasis]

9. Additionally, we also draw support from the Judgment of the Hon'ble High Court of Karnataka in *Union of India & Ors. vs. Ruchi Soya Industries Ltd. [Writ Appeal No. 2757/2018 (T-TAR); (2021) ibclaw.in 12 HC]*, wherein it was observed that:

“77. The provisions of Section 238 of “IBC” states that the provisions of “IBC” shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. Further, it is noted that crown debts do not take precedence even over



secured creditors, who are private persons. This is clear on a reading of Section 238 of “IBC” which provides for the overriding effect of “IBC” notwithstanding anything inconsistent contained in other law for the time being in force or effect by any such law. **Therefore, if the departments of Central or State Governments do not file an application or participate in the resolution process, their claims automatically get extinguished having regard to the judgment of the Hon’ble Supreme Court in the case of Ghanashym Mishra.”**

[own emphasis]

10. In view of the above discussion, we are of the considered view that realisation of demand arising from the Assessment Orders passed by Respondent No.1 pertaining to the pre-CIRP period during moratorium is untenable in law, and no set-off or adjustment of demands against tax refunds is permissible during this period. Consequently, the amounts of income tax refunds, which were adjusted by the Respondent No.1 during the moratorium, are liable to be refunded forthwith to the Corporate Debtor.
11. Accordingly, IA No. 1756 of 2024 is allowed on the above terms and the Respondent No.1 is directed to refund the said amount.

Sd/-

**SANJAY PURI
MEMBER (TECHNICAL)**

Sd/-

**RAJEEV BHARDWAJ
MEMBER (JUDICIAL)**