

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 22.12.2023 AT 10:30 AM**

|                                         |                                                        |
|-----------------------------------------|--------------------------------------------------------|
| <b>TRANSFER PETITION NO.</b>            |                                                        |
| <b>COMPANY PETITION/APPLICATION NO.</b> | <b>IA (IBC)/1585/2023 in CP (IB) No.678/7/HDB/2018</b> |
| <b>NAME OF THE COMPANY</b>              | <b>Lanco Kondapalli Power Ltd</b>                      |
| <b>NAME OF THE PETITIONER(S)</b>        | <b>Axis Bank Ltd</b>                                   |
| <b>NAME OF THE RESPONDENT(S)</b>        | <b>Lanco Kondapalli Power Ltd</b>                      |
| <b>UNDER SECTION</b>                    | <b>7 of IBC</b>                                        |

**ORDER**

**IA No.1585/2023**

Orders pronounced, recorded vide separate sheets. In the result, this petition is allowed.

**SD/-**

**MEMBER (T)**

**SD/-**

**MEMBER (J)**

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

**I.A. (IB) No. 1585/HDB/2023  
IN  
CP (IB) No. 678/7/HDB/2023**

*[Application Under Section 60(5) Of The Insolvency And Bankruptcy  
Code, 2016 Read With Rule 11 Of The National  
Company Law Tribunal Rules, 2016]*

**Between:**

**M/s. MCM Pacific Private Limited**

Having its office at 911 Lorong 1 Toa Payoh,  
#25-01-Oleandder Towers, Singapore

**...Applicant**

**Versus**

**Mr. Pankaj Dhanuka, Liquidator of**

**M/s. Lanco Kondapalli Power Limited**

Having its registered office at FE 328, Sector 3,  
Salt Lake City, Kolkata 700 106,  
West Bengal

**...Respondent**

**In the matter between**

**M/s Axis Bank Limited**

**...Financial Creditor**

**Versus**

**M/s. Lanco Kondapalli Power Limited**

**...Corporate Debtor**

Date of Order: 22.12.2023

**Coram:**

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

**Counsel/Parties present:**

For the Applicant : Mr. Sameer Kumar, Vikram Chandra  
Puttapaga Advocates

For the Respondent : Ms. Shraddha Gupta

Heard on : 08.12.2023

**Per: Sanjay Puri, Member (Technical)**

**ORDER**

1. This is an application filed by the Applicant seeking directions to the Respondent/Resolution Professional for not cancelling the bid of the Applicant till the pending issues regarding GST, interest and reservation costs are finally settled between the parties. It is stated by the Applicant that they have already deposited a sum of Rs.136 Crores, which was the bid amount. The bid amount for the asset parcel No. 4 in category B of the process document<sup>1</sup>.
2. In this case, CIRP of Corporate Debtor<sup>2</sup> was initiated by an order of this Authority on 23.04.2019. In due course, an order for liquidation was passed on 16.04.2021 and a liquidator appointed. In pursuance thereof, public announcement was made on 02.02.2022, and process document dated 08.04.2022 was issued. The Applicant here had offered a bid of Rs.136.11 Crores for parcel no. 4 in category B assets of the Corporate Debtor, which was accepted and the Applicant was declared the successful bidder.

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<sup>1</sup> Page 51-125 of the application.

<sup>2</sup> Lanco Kondapalli Power Limited

3. A letter of intent was issued on 21.06.2022 and as such the Applicant made a payment of Rs. 15.44 Crores. Since, the balance amount was not paid within stipulated time of 90 days as mentioned in the letter of intent, the Respondent vide e-mail dated 20.09.2022 cancelled the sale and the Letter of Intent (LoI) and forfeited the amount Rs 15.44 Crores deposited by the Applicant.
4. In the meantime, however, on 16.09.2022 the applicant filed an IA (IBC) No. 972/2022 before this Authority seeking extension of time for making the balance payment. Vide order dated 12.10.2022, this IA was dismissed. The Applicant approached the Hon'ble NCLAT, where its appeal<sup>3</sup> against the aforesaid order was dismissed on 28.11.2022.
5. Thereafter, on 26.12.2022 the applicant once again approached the liquidator/respondent for reconsidering of cancellation of the bid, as according to the Applicant it had arranged the funds and was ready to deposit the same by 31.03.2023. The proposal of the applicant was considered by the Stakeholders Committee of Creditors (SCC) and the following was offered to the Applicant:
  - a. In view of the orders passed by Hon'ble NCLT dated October 12, 2022 and Hon'ble NCLAT dated November 28, 2022 rejecting your request for an extension of time and

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<sup>3</sup> Company Appeal (AT)(CH)(Ins) No. 416/2022

the forfeiture of the amounts paid (“**Orders**”), M/s.MCM Pacific Private Limited (in short “MCM”) ought to secure necessary orders/permissions from appropriate court (including, but not limited to Hon’ble Supreme Court) to have the Orders set aside and appropriate directions to the Liquidator and consequential directions for payment of balance sale consideration by “MCM” to be issued.

- b. In the interregnum, entire balance sale proceeds (including applicable interest @ 12% per annum, GST @ 18% and other applicable statutory taxes, duties etc., as may be applicable) to be paid by “MCM” within the period of 45 days, which needs to be deposited in a no lien bank account/existing current account of Corporate Debtor as per the direction of the SCC.
- c. Only upon receipt of approval of the appropriate court as mentioned in point (1) such money deposited by “MCM” as sale consideration shall be accepted by the Liquidator. In case of no such approval from appropriate court, entire balance sale proceeds to be paid in point (2) would be refunded back to MCM.

This offer was made on 30.12.2022 and was accepted by the Applicant on the same date.

6. An IA (IBC)/66/2023 was then filed by the Applicant on 09.01.2023 before this Authority seeking appropriate directions for reinitiation of their bid without any objection. This application was allowed on 19.01.2023 with the observation:

*“Heard both the Counsel Mr. Chandrasen Reddy Senior Counsel appeared on behalf of the applicant and liquidator was present. Liquidator admitted that by virtue of an email dated 07.01.2023, there was novation of contract agreeing to restore the bid of the Applicant and to receive the remaining amount with 12% interest along with GST and other applicable taxes and duties. By virtue of an email dated 26.12.2022, the applicant requested the Respondent to restore his bid. The Liquidator consents for allowing this application. The Counsel for the Petitioner however seeks this Tribunal to give foreign exchange transaction would consume considerable time. The Respondent’s Counsel does not raise any objection. However, since the applicant agreed to pay the remaining amount with an interest @ 12% p.a. there would not be any prejudice caused to the Respondent in granting such time”.*

7. However, the applicant once again conveyed its inability to pay the balance amount within the time allowed by this Authority and sought for further extension till 30.05.2023. When the Respondent did not agree for further extension of time, yet another IA (IBC) No. 381/HDB/2023 was filed by the applicant, where besides seeking extension of time, interest waiver on the delayed payments was also prayed for.
8. IA (IBC) No. 381/HDB/2023 was disposed of on 20.03.2023. Request for extension of time till 31.05.2023 was allowed, but the prayer for waiver of interest was rejected and the applicant was directed to pay interest @12% p.a. for the period of delay in making payment.

9. This order dated 20.03.2023 of this Authority in IA (IBC) No. 381/HDB/2023 was also contested by the applicant in the Hon'ble NCLAT where its appeal<sup>4</sup> was dismissed on 26.07.2023. The Applicant has appealed against the Hon'ble NCLAT order also in the Hon'ble Supreme Court where the appeal<sup>5</sup> is pending.
10. In the meantime, once again IA (IB) No. 883/HDB/2023 was filed by the Applicant seeking further extension of time to pay the balance amount by 30.07.2023 and the extension was allowed vide order dated 31.05.2023. However, before the period of extension could expire, still another IA (IB) No. 1221/HDB/2023 was filed seeking more extension up to 02.08.2023. This Authority allowed the extension once again, however with the following directions:

*“ in so far as the balance amount is concerned, the affidavit dated 02.08.2023 gives a clear undertaking to settle the amount within the time period specified therein i.e., before 30.09.2023 failing which the default clause will kick in and the amount paid so far will stand forfeited to the Liquidation estate for distribution to the stakeholders. The same stands recorded and confirmed”.*

11. Pursuant to the order dated 02.08.2023 of this Authority, the applicant has made the following payments by 30.09.2023

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<sup>4</sup> Company Appeal 141/CN/2023

<sup>5</sup> CA No. 5631/2023

| <b>S.NO.</b> | <b>PARTICULARS</b>                             | <b>AMOUNT(INR)</b> |
|--------------|------------------------------------------------|--------------------|
| 1            | Reserve price                                  | 136,11,30,698      |
| 2            | Interest on delayed payment at the rate of 12% | 12,95,88,987       |

However, as reported by the Liquidator GST amount of Rs. 26,83,29,543, as below, is yet to be paid

| <b>Particulars</b>          | <b>Amount INR</b>   |
|-----------------------------|---------------------|
| GST of 18% on reserve price | 24,50,03,526        |
| GST on Interest 8%          | 2,33,26,018         |
| <b>Total outstanding</b>    | <b>26,83,29,543</b> |

12. It is reported by the Respondent/Liquidator that so far as the preservation cost and interest are concerned, there is no issue or dispute pending. On the issue of GST on the reserve price and the interest thereon, apparently, the applicant is in the process of obtaining advanced ruling.
13. Further, as per the counter filed by the Respondent, it has been reported that the Applicant is willing to furnish Bank Guarantee Rs. 26,83,29,543 i.e., to the extent of GST component on the reserve price and interest thereon till the issue of GST is finally resolved. The Respondent/liquidator has also conveyed that he has no objection to the Applicant

furnishing the said bank guarantee, it is however proposed that the same may be done within 2 weeks as opposed to 3 months sought by the Applicant.

14. In order to complete the sale process in a timely and expeditious manner, the Respondent has also pleaded for the prayer of the applicant for dismantling of the assets can also be allowed after a valid bank guarantee to the extent of GST component is provided. In his counter, the Respondent has sought directions about the distribution of the amount paid by the Applicant to the Stakeholders of the Corporate Debtor.
15. Considering all the facts and circumstances of the matter, the Prayers of the applicant is allowed, subject to the applicant furnishing within 2 weeks a valid irrecoverable bank guarantee of the amount representing the GST component of reserve price and interest thereon and keeping it in force till the issue of GST is finally resolved.
16. Respondent is also directed to distribute the amount thus far paid by the Applicant to the Stakeholders of the Corporate Debtor.

With the above directions, this IA is allowed.

**Sd/-**  
**SANJAY PURI**  
**MEMBER (TECHNICAL)**  
Vamsi

**Sd/-**  
**RAJEEV BHARDWAJ**  
**MEMBER (JUDICIAL)**