

**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 16.04.2021 AT 10:30 AM THROUGH VIDEO CONFERENCE

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.750/2020 in CP(IB) No.678/7/HDB/2018
NAME OF THE COMPANY	Lanco Kondapalli Power Ltd
NAME OF THE PETITIONER(S)	Axis Bank Ltd
NAME OF THE RESPONDENT(S)	Lanco Kondapalli Power 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**

This matter is listed for pronouncement of orders.

IA No.750/2020 allowed vide separate order.

*Binod*  
MEMBER TECHNICAL

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MEMBER JUDICIAL

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

IA No.750/2020  
In CP(IB)No.678/7/HDB/2018

**In the matter of:  
M/s. LANCO KONDAPALLI POWER LIMITED**

Mr. Pankaj Dhanuka  
Resolution Professional of  
M/s. Lanco Kondapalli Power Limited

...Applicant

**Date of Order: 16.04.2021.**

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

**Parties/Counsel(s) Presents:**

For the Applicant: Ms. Rubaina S Khatoon and  
Mr. K.V. Rusheek Reddy, Counsels

[Per Bench]

**ORDER**

1. The present Application bearing IA No. 750/2020 in CP(IB)No. 678/7/HDB/2018 is filed seeking following prayers:-
  - a. Pass an order for liquidation of the Corporate Debtor in terms of Section 33(2) of the Insolvency & Bankruptcy Code, 2016.
  - b. Pass an order for the distribution of surplus cash flows of the Corporate Debtor, amongst the secured creditors, after setting aside amounts for unpaid insolvency resolution process cost and the estimated liquidation costs of the Corporate Debtor, upon preparation of the liquidation estate in terms of section 36 of the Code.
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.678/7/HDB/2018 against M/s. Lanco Kondapalli Power

Limited (Corporate Debtor) under Section 7 of the IB Code and vide order dated 23.04.2019, this Adjudicating Authority admitted the said Application. The CIRP period of 180 days was due to expire on 20.10.2019.

- b. This Adjudicating Authority vide order dated 03.10.2019 extended the CIRP period by another 90 days which was now set to expire on 18.01.2020.
- c. The RP was constrained to file an Application seeking exclusion of certain time period from the CIRP period and therefore exclusion of 92 days from computation of 270 days period was allowed by this Adjudicating Authority.
- d. That the entire period from 22.03.2020 till 07.06.2020 is required to be excluded from the CIRP. On 25.03.2020 a period of 28 days was left in completion of CIRP. Thus, calculating from 07.06.2020 the CIRP period was set to expire on 05.07.2020.
- e. That the CoC in its 12<sup>th</sup> and 13<sup>th</sup> meeting held on 29.05.2020 and 12.06.2020 respectively, deliberated in detail on various options available before the CoC to decide the way forward for the Corporate Debtor. Finally in the 14<sup>th</sup> CoC meeting held on 22.06.2020, the CoC was of the view that while numerous sincere attempts have been made for the revival of the Corporate Debtor, no commercially acceptable plan has been received or is likely to be received for the Corporate Debtor considering the uncertainty caused in the viability of the business of the Corporate Debtor.
- f. That in the 14<sup>th</sup> CoC meeting, a consensus amongst majority of Financial Creditors emerged that after making all attempts to resolve the multitude of issues faced by the Corporate Debtor, there remains no option but to liquidate the Corporate Debtor. Accordingly, in terms of the mandate of Section 33(2) of the Code, the CoC resolved by a voting share of 98.8% to liquidate the Corporate Debtor and authorized the Resolution Professional to file this application.
- g. That in furtherance of the requirement in terms of Regulation 39C of the CIRP Regulations, the members of the CoC deliberated on sale of

the Corporate Debtor as a going concern and recommended by a voting share of 59.2% that the Liquidator should first explore the sale of the Corporate Debtor in terms of Regulations 32(e) and (f) of the Liquidation Regulations.

- h. That the members of the CoC arrived at the conclusion that there would be excess cash available with the Corporate Debtor as per the estimate and that no plan providing for contribution for meeting the difference between the estimated liquidation cost and liquid assets would be required.
- i. That in the 13<sup>th</sup> and 14<sup>th</sup> CoC meeting, the CoC members expressed concern that with such a large amount of money lent to the Corporate Debtor by the Secured Creditors (including by public sector banks) at stake, and no certain avenue for any recovery being made in the foreseeable future, and there being a possibility of excess cash being available in the Corporate Debtor after taking into account estimated liquidation costs and unpaid insolvency resolution process costs, if a prayer could be made to this Adjudicating Authority seeking direction for the distribution of surplus cash flows of the Corporate Debtor, amongst the Secured Creditors after the preparation of the liquidation estate in terms of Section 36 of the Code- there being no unpaid workmen dues or employee dues owed by the Corporate Debtor.
- j. That the surplus cash to be distributed to the Secured Creditors would also be consistent with the distribution mechanism set out in Section 53 of the Code as the said distribution would be made, if allowed by this Adjudicating Authority, after the preparation of the liquidation estate in terms of Section 36 of the Code and after setting aside the CIRP cost and the estimated liquidation cost. There is no amount due to be paid to the workmen or employees of the Corporate Debtor.
- k. In compliance with Regulation 39D of the CIRP Regulations, in the 14<sup>th</sup> meeting of the CoC, the fee payable to the liquidator as per Regulation 4(2) of the Liquidation Regulations was approved by the CoC by a voting share of 93.3%.

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1. Accordingly, the Resolution Professional has filed the present application seeking liquidation of the Corporate Debtor in terms of Section 33(2) of the Code and at the request of the CoC, seeking the distribution of surplus cash flows of the Corporate Debtor, amongst the Secured Creditors, after setting aside the amount for unpaid CIRP cost and the estimated liquidation costs of the Corporate Debtor. That the Applicant is agreeable to continue as the Liquidator of the Corporate Debtor, subject to the approval of this Adjudicating Authority and is placing on record with this Application the written consent to act as Liquidator.
3. Heard the RP and perused the records.
4. In view of the facts and circumstances as recorded by RP in IA No. 750 of 2020 filed in CP(IB) No. 678/7/HDB/2018, this Adjudicating Authority did not receive any Resolution Plan under Sub-Section (6) of Section 30 of the I&B Code, 2016. Therefore, this Adjudicating Authority deems it proper to allow the Application bearing IA No.750/2020 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 Kondapalli Power 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. Pankaj Dhanuka who has given his consent dated 14.01.2020 to act as Liquidator in the present case. He is further directed to file the 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. Pankaj Dhanuka. 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 Company Liquidator shall be entitled to charge such fee for conducting the Liquidation proceedings in such a proportion to the value of the Liquidation estate assets as specified by the Board under Regulation 4(2) of IBBI (Liquidation Process) Regulations, 2016.

Accordingly, the fees for conducting the Liquidation proceedings shall be paid to the Company Liquidator from the proceeds of the Liquidation estate.

- (xi) As regards the prayer regarding the distribution of surplus cash amongst the financial creditors, we are of the considered view that the surplus cash, if any, shall form integral part of the liquidation estate of the corporate debtor and will be distributed in accordance with the provisions of Section 53 of the Code.
- (xii) 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. Pankaj Dhanuka for information and compliance.
- (xiii) Registry is directed to furnish a copy of this order to IBBI for confirmation of appointment of Liquidator.
5. Accordingly, IA No.750/2020 in CP(IB)No.678/7/HDB/2018 stands disposed of.



**DR. BINOD KUMAR SINHA**  
**MEMBER TECHNICAL**



**MADAN B. GOSAVI**  
**MEMBER JUDICIAL**

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