

**HYDERABAD BENCH  
COURT HALL NO: II**

**PHYSICAL HEARING**

**CORAM: JUSTICE TELAPROLU RAJANI – HON’BLE MEMBER (J)  
CORAM: SHRI CHARAN SINGH - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 06.02.2023 AT 02:30 PM**

<b>TRANSFER PETITION NO.</b>	
<b>COMPANY PETITION/APPLICATION NO.</b>	<b>IA No.457/2020 in CP (IB)No.420/7/HDB/2018</b>
<b>NAME OF THE COMPANY</b>	<b>Lanco Amarkantak Power Ltd</b>
<b>NAME OF THE PETITIONER(S)</b>	<b>Axis Bank Ltd</b>
<b>NAME OF THE RESPONDENT(S)</b>	<b>Lanco Amarkantak Power Ltd</b>
<b>UNDER SECTION</b>	<b>7 of IBC</b>

**ORDER**

**IA(IBC)457/2020**

Application is allowed, vide separate orders.

**Sd/-  
MEMBER (T)**

**Sd/-  
MEMBER (J)**

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

**IA No.457/2020 in CP(IB) No. 420/7/HDB/2018**  
**U/s. 60(5) of IB Code, 2016**

**In the matter of:**

M/s. Union Bank of India,  
(Erstwhile Andhra Bank)  
Specialised Asset Recovery Branch,  
First Floor, M-32, Connaught Circus,  
New Delhi – 110 011.

....Petitioner/Secured

Vs

1. M/s. Lanco Amarkantak Power Limited,  
Lanco House, Plot No.4,  
Software Units Lay out,  
Hitech City, Madhapur,  
Hyderabad – 500 081

....Respondent/  
Corporate Debtor

2. Axis Bank Limited,  
Trishul, 3<sup>rd</sup> floor,  
Opp Samratheswar Temple,  
Law Garden, Ellis Bridge,  
Ahmedabad – 380 006.

....Respondents/  
Financial Creditor

**Date of order: 06.02.2023**

**CORAM:**

Justice Telaprolu Rajani, Member (Judicial)  
Shri Charan Singh, Member (Technical)

**Counsels present:**

For the Petitioner : Mr. Sethu Madhava Rao, Advocate

For the RP : Ms. Rubaina S Khatoon, Advocate

Heard on : 02.02.2023

**[PER: BENCH]  
ORDER**

1. This application is filed, seeking to set aside the act of the Resolution Professional in rejecting the claim of Petitioner vide letter dated 03.03.2020 and 27.11.2019 and further act of the Resolution Professional in failing to include the Petitioner in the Committee of Creditors, as arbitrary.
  
2. The facts as stated in the application are, briefly as follows:
  - a. The Corporate Debtor and M/s. Lanco Thermal Power Limited are subsidiary companies of M/s. LITL. The holding Company was enjoying the credit facilities from the Petitioner. As per the Gazette Notification dated 04.03.2020, Andhra Bank and Corporation Bank have amalgamated with Union Bank of India and they now stand vested with Union Bank of India. The debt of the defendants, along with its rights and securities, stand vested with the Union Bank of India.
  
  - b. The Management Committee of the Board of Directors of Respondent No.1, vide its Resolutions dated 21.10.2015 & 07.12.2015, accorded permission to create equitable mortgage with respect to the property in Dhandhani Village, for payment of the amount sanctioned by the Petitioner to M/s. LITL and to M/s. LTPL and delegated powers to its authorized signatory to execute the Deed of mortgage.
  
  - c. The Corporate Debtor, with intent to secure the repayment of the money, deposited the document of title on 12.11.2012. IRP made public announcement. When the Applicant submitted his claim, the

same was rejected on the ground that the debt is not a financial debt and that the financial statement of the Corporate Debtor does not reflect any liability of the Corporate Debtor and also on the ground that the Bank has filed a claim in M/s. Lanco Infratech Limited.

- d. Being aggrieved by the said action, this application is filed with the above mentioned reliefs.
3. Counter is filed by the Resolution Professional, contending that the claim submitted by the Applicant is in relation to the credit facilities that are extended by the Applicant Bank to the Group Companies of the Corporate Debtor LITL & LTPL. The Applicant Bank extended two long term working capital loan facilities to the holding company of the Corporate Debtor LITL. The Corporate Debtor executed an equitable mortgage by creating a charge on immovable property. The Applicant extended an open cash credit facility for LTPL. The facility was also secured by creating an equitable mortgage by the Corporate Debtor.
4. The LTPL also went into CIRP and the claim of the Applicant was admitted therein. Based on the legal advice, the Resolution Professional rejected the claim. The credit facilities extended by the Applicant Bank to LITL cannot be termed as a financial debt under the provisions of IB Code, 2016. The admission of the non-admitted claim would amount to duplicity of admission of claims, since the Applicant Bank has already filed a claim in that regard in LITL's ongoing liquidation proceedings. Hence, the application is liable to be dismissed.

5. Heard both the Counsel. At the hearing, the Counsel appearing for Resolution Professional placed reliance on the judgement of the *Hon'ble Supreme Court reported in 2020 (8 Supreme Court Cases 401 : 2020 SCC Online SC 237) between Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited Vs. Axis Bank Limited in Civil Appeals Nos. 8512-27 of 2019 with Nos.6777-97 of 2019 and 9357-77 of 2019* which on facts, is similar to this case.
6. The Hon'ble Supreme Court in the above said judgement at Paragraph No.211 held that;

*“keeping the objectives of the Code in view, the position and role of a person having only security interest over the assets of the Corporate Debtor could easily be contrasted with the role of a Financial Creditor because the former shall have only the interest of realising the value of its security (there being no other stakes involved and least any stake in the Corporate Debtor’s growth or equitable liquidation) while the latter would, apart from looking at safeguards of its own interests, would also and simultaneously be interested in rejuvenation, revival and growth of the Corporate Debtor. Further, held that it is clear that if the former i.e., a person having only security interest over the assets of the Corporate Debtor is also included as a Financial Creditor and thereby allowed to have its say in the processes contemplated by Part II of the Code, the growth and revival of the Corporate Debtor may be the casualty. Such result would defeat the very objective and purpose of the Code, particularly of the provisions aimed at Corporate Insolvency Resolution.*

*It further held that a person having only security interest over the assets of the Corporate Debtor even if falling within the discretion of `secured creditor` by virtue of collateral security extended by the Corporate Debtor, would nevertheless stand outside the sect of `Financial Creditors` as per the definitions contained in Subsections (7) and (8) of Section 5 of the Code. Differently put, if the Corporate Debtor has given its property in mortgage to secure the debts of a third party, it may lead to a mortgage debt and, therefore, it may fall within the definition of `debt` under Section 3 Clause 10 of the Code. However, it would remain a debt alone and cannot partake the character of a `financial debt` within the meaning of Section 5 Clause 8 of the Code.*

7. After going through the judgement referred above, the Applicant's Counsel agrees for his debt to be treated as a simple debt and not a financial debt and the Counsel for the Respondent also agrees for accepting the claim of the Petitioner under the category of a debt and not as a financial debt.
8. However, the Counsel for the Respondent seeks the Tribunal to direct the Applicant to make a fresh claim mentioning his debt as a debt and not as a financial debt.
9. Hence, recording the above submissions made by both the Counsel, we partly allow this application holding that the debt due to the Applicant would qualify only for a debt and not a financial debt. The Applicant is at liberty to submit a fresh claim to the Resolution Professional within a period of 15 days, on which the Resolution

Professional shall consider and collate the claim in accordance with Law.

10. With the above directions **IA.No.457/2020 in CP(IB) No. 420/7/HDB/2018** is partly allowed and stands disposed of.

**Sd/-**

**(CHARAN SINGH)  
MEMBER (TECHNICAL)**

**Sd/-**

**JUSTICE TELAPROLU RAJANI)  
MEMBER (JUDICIAL)**

**VL**