

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
07-02-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

IA 793 & 571 /2021
CP(IB) No.529/7/HDB/2018
U/s 7 of IBC, 2016

IN THE MATTER OF:

Punjab National Bank

...Financial Creditor

Vs

Lanco Vidarbha Thermal Power Ltd

...Corporate Debtor

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

ORDER

Orders in IA (IBC) 793/2021 in CP (IB) No.529/7/HDB/2018 passed vide separate sheets.

In the result, we hereby set aside the order of the Liquidator and remanded the matter back to the Liquidator for fresh consideration of the same on merits without being influenced by the findings in the order under appeal of the Maharashtra State Electricity Company Distribution Limited, by giving reasonable opportunity to both sides. The process be completed within 2 months from the date of this order.

IA(IBC) 571/2021 in CP(IB) No.529/7/HDB/2018 is also allowed with aforesaid directions.



MEMBER (T)



MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

IA (IBC)/793/2021

In CP (IB) No. 529/7/HDB/2018

Under Section 42 R/w Section 60(5) of the Insolvency and
Bankruptcy Code, 2016.

The Board of Trustees of the Port of Mumbai

Vijay Deep, 6th Floor, S.V.Marg,

Fort, Mumbai-400 001(State of Maharashtra)

Represented by Rajkumar Kishinchand Chandiramani,

(Assistant Traffic Manager(Sales))

... Applicant

VERSUS

Mr.Vijay Kumar Garg,

Liquidator of Lanco Vidarbha Thermal Power Limited

C/o. Sumedha Management Solutions Pvt. Ltd.

B-1/2, 2nd Floor, Safdarjung Enclave, New Delhi- 110029.

... Respondent

In the matter of

Punjab National Bank

...Petitioner

VERSUS

Lanco Vidharbha Thermal Power Limited

...Respondent

SD/

Date of order: 07.02.2022

Coram:

Hon'ble Dr. N.V.Ramakrishna Badarinath, Hon'ble Member (Judicial)
Hon'ble Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

For the Applicant : Shri Sarvani Desiraju, Cousnel.

For the Respondent: Shri P.Ravi Charan, Counsel.

Heard on: 03.01.2022.

[PER BENCH]

1. The instant Application is filed by the operational creditor Under Section 42 read with 60(5) of the Insolvency and Bankruptcy Code, 2016 inter-alia, praying the Tribunal the following reliefs:
 - To set aside the impugned communication dated 10.12.2021 passed by the liquidator in CP (IB) No.521/7/HDB/2018 and to condone the delay of 129 days in filing of the Claim in Form C.
 - To direct the liquidator to accept and verify the claim of the Applicant.
2. **Brief facts of the case:**

- a. The present application is filed by the Applicant challenging the rejection of the claim of the Applicant by the liquidator vide its E-mail dated 10.12.2021.
- b. The Applicant is a statutory body constituted under the Major Port Trusts Act, 1963. The Applicant being a statutory Authority, was owed by the corporate debtor an amount of Rs.300,11,59,000/- as on date of commencement of Liquidation. The debt amount comprises of:
- Rs. 200,27,58,624/- towards deficit in sale account arising out of 9 lots weighing 65,71,452 Kgs of material (such as parts of crane, parts of fabricated power plant, equipment etc.,) lying at docks from 2011 incurring wharfage & demurrage charges, which was sold by the Applicant on 14.05.2019;
 - Rs.18,10,80,037/- towards deficit in sale account arising out of 2 lots weighing 5,78,160 kgs of material(such as parts of crane, parts of fabricated power plant, equipment etc., imported by Debtor) lying at docks from 2011 incurring wharfage & demurrage charges, which was sold by the Applicant on 16.07.2019;
 - Rs.63,95,11,007/- towards claim of interest @ 15 percent per annum on the aforesaid mentioned sum of Rs.200,27,58,624/- till the date of liquidation i.e till 30.06.2021;

- Rs.5,31,33,348/- towards claim of interest @ 15 percent per annum on the aforementioned sum of Rs.18,10,80,037/- till the date of liquidation.
 - Rs.12,46,75,984/- towards GST @18% per annum on the interest claimed above.
- c. It is averred that upon the communication of CIRP, the Applicant had duly intimated the details of the claim to the Resolution Professional vide its letters dated 20.01.2020 and 13.02.2020, which was also acknowledged by the resolution professional. Further due to Covid 19 restrictions in the state of Maharashtra, applicant did not follow up on the status of the same.
- d. Subsequently, liquidation proceedings in respect of the corporate debtor were commenced with effect from June, 30, 2021 and thus liquidator made public announcement to submit their claims on or before 30.07.2021.
- e. It is averred that public announcement of liquidation in Form-B was not made and not received by the Applicant due to which the applicant was not aware of the order of the Tribunal and thus could not immediately reach out to the liquidator.
- f. It is averred that applicant was under the impression that the claim will be duly processed since the details were already submitted to the Resolution Professional and that proportionate dues will be paid.

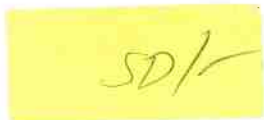
- g. It is averred that due to severity in the state of Maharashtra due to Covid 19 the applicant failed to follow up regularly with the Resolution Professional and as soon as the intimation of the liquidation by the liquidator, the applicant had sent the duly signed Form C along with all the requisite supporting documents to the liquidator. However, the liquidator while email dated 10.12.2021 has rejected the claim on the ground that last date of submission of claim was 30.07.2021.
- h. It is averred that there was a delay of 129 days in submitting the claim by the applicant, the delay was not intentional but due to inadvertent.
- i. It is averred that as per the Regulation 12(2)(b) provides that stakeholder can file their claims or update their claims within 30 days of the announcement of liquidation, which clearly indicates that in cases where the stakeholders have not updated the claims, the claims filed with the resolution professional will be taken into account and the same can be verified and creditors can be asked to submit the proof of the same.
- j. It is averred that the liquidator ought to have issued notice to the applicant to explain the delay before rejecting the claims of the Applicant. It is pertinent to mention that as soon as the applicant got the information about the liquidation process immediately the applicant has taken steps to submit its claim.

- k. It is averred that if the liquidator has not considered or admitted the claim, there would be immense loss to the applicant since the applicant is a statutory authority and the applicant is the major stakeholder to the corporate debtor.
3. In the light of the context as aforesaid, the point that emerges **Whether the rejection of the claim by the liquidator is sustainable under law?**
4. We have heard the learned counsel for both sides. Perused the records.
 - 4.1 The impugned rejection order has been passed by the liquidator on 10.12.2021 on the ground that the same was not submitted before 30.07.2021, which was the last date for submission of claim as fixed by the liquidator. According to the petitioner the public announcement was made calling upon for objections on or before 30.07.2021, however on account of the lock down and other covid restrictions, the petitioner could not submit his claim within time line set by the liquidator and therefore approached the liquidator with their claim along with a petition for condonation delay. However, the relief was refused by the liquidator.
 - 4.2 We have perused the order of the liquidator, the liquidator has simply rejected the claim on a mere ground that the same was not submitted with the time set by him, without going

into the reasons why it was not submitted in time. When the country was reeling under COVID-19 pandemic and restrictions like lockdown, social distancing and home isolation etc., it is natural that things such as filing of the petition in time may not be done in time. Therefore, the reasons pleaded by the petitioner that prevented the petitioner from submitting the claim within time, ought to have been considered by the liquidator while taking decision on whether or not to condone the delay instead of simply rejecting the petition on a mere ground that the same was not submitted within time. We are convinced by the reasons put forth by the petitioner for the delay in filing the claim. We therefore allow the petition and condone the delay.

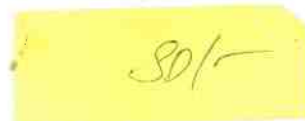
4.3 Since the liquidation of the corporate debtor is pending, we feel it proper to direct the examine the claim by the liquidator on merits. The Liquidator therefore, is hereby directed to receive the claim of the petitioner and examine the same as per the provisions of the IBC.

4.4 Petition is allowed accordingly. No order as to costs.



Veera Brahma Rao Arekapudi
Member Technical

Pavani



Dr. N.V. Ramakrishna Badarinath
Member Judicial

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

IA (IBC)/571/2021

In CP (IB) No. 529/7/HDB/2018

Under Section 42 of the Insolvency and Bankruptcy Code, 2016.

Maharashtra State Electricity Distribution Company Limited

Power Purchase Section, 5th Floor,

Prakashgad, Bandra (East), Mumbai -400 051.

... Applicant

VERSUS

Mr. Vijay Kumar Garg,

Liquidator of Lanco Vidarbha Thermal Power Limited

C/o. Sumedha Management Solutions Pvt. Ltd.

B-1/2, 2nd Floor, Safdarjung Enclave,

New Delhi- 110029.

... Respondent

In the matter of

Punjab National Bank

...Petitioner

VERSUS

Lanco Vidharbha Thermal Power Limited

...Respondent

SD/-

SD/-

Date of order: 07.02.2022

Coram:

Hon'ble Dr. N.V.Ramakrishna Badarinath, Hon'ble Member (Judicial)
Hon'ble Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

For the Applicant : Shri , Mahadev Tirunagari, Shri Shaik Gouse,
Shri Harinder Toor, Shri Venkatesh Dhond.

For the Respondent: Shri P.Ravi Charan, Counsel.

Heard on: 03.01.2022.

[PER BENCH]

1. The instant Application is filed by the operational creditor Under Section 42 of the Insolvency and Bankruptcy Code, 2016 inter-alia, praying the Tribunal the following reliefs:
 - To set aside the impugned communication dated 08.09.2021 passed by the liquidator in CP (IB) No.521/7/HDB/2018.
 - To direct the liquidator to admit the claim of the Applicant in entirety to the tune of Rs.752.28 crores as submitted in Form C dated 30th July 2021 and to include the Applicant's name in the list of Stakeholders.

2. **Brief facts of the case:**

- a. Applicant is the operational creditor of the Lanco Vidharba Thermal Power Limited, whereas respondent is the liquidator of the corporate debtor.
- b. It is averred that the Applicant's claim of Rs.752.28 Crores has been rejected by the respondent vide communication dated 08.09.2021.
- c. Basically, the Applicant had accepted the offer of corporate debtor for supply of the electricity of 680 MW on the terms and conditions contained in the RFP documents and executed the Power Purchase Agreement dated September, 25th 2008. PPA expressly stipulated that the LVTPL shall obtain all consent required pursuant to the PPA, execute the project in a timely manner and fulfil all the objections undertaken under the PPA. But LVTPL failed to provide copy of the fuel supply agreement as required within the period stipulated in PPA, despite extension of time. Due to default committed by the LVTPL, it requires to provide the additional weekly performance guarantee.
- d. It is averred that LVTPL had failed to obtain economic clearance in time. It attributed the delay to the High Court's order although there was no specific stay on construction of activities of the project by the Hon'ble High Court. Further,

LVTPL has also raised a frivolous defence of force majeure events.

- e. It is averred that LVTPL failed to submit additional bank guarantee and failed to fulfil its obligation, thus the applicant on 12.03.2013 proceeded to encash the bank guarantee of Rs.51 crores and vide its letter dated 9.10.2013 demanded liquidated damages. Thereafter, LVTPL issued termination notice on 20.10.2014, but as per the terms and conditions of the PPA, LVTPL has no right to terminate the PPA and is also not liable for refund of Bank Guarantee amount. Thus the applicant is entitling to recover the liquidated damages. Further, applicant and LVTPL filed its respective petitions before the Maharashtra Electricity Regulatory Commission and thus the Hon'ble Commission passed the common order dated 02.05.2018.
- f. Thereafter, the Applicant preferred an appeal before Hon'ble Appellate Tribunal for Electricity under Section 111 of the Electricity Act, 2013 vide appeal No. 161 of 2018, wherein the Hon'ble APTEL passed interim order dated 26.07.2018. Further it is pertinent to note that the appeal is pending before the Appellate Tribunal.
- g. Meanwhile, the Hon'ble Tribunal has passed the order for liquidation of corporate debtor on 30.06.2021. Thereafter liquidator called upon to submit the claims on or before 30.07.2021. Accordingly, applicant has filed its claim as

operational creditor for Rs.752.28 crores including principal claim and interest thereon.

- h. It is averred that liquidator dismissed the claim without appreciating the provisions of the code and the relevant regulations. The liquidator on one hand rejected the claim on the ground of sub-judice and on the other hand due to appointment of the liquidator, the appeal filed by the applicant before Hon'ble APTEL cannot be proceeded since leave of this Hon'ble Adjudicating Authority is required to continue such proceedings against the corporate debtor through the liquidator.
- i. The applicant submits that the present application is within the period specified in Section 42 of the I&B code, 2016 and is filed within 14 days from the date of the receipt of the copy of the impugned order.
- j. Applicant further submitted that irreparable loss will be caused if the reliefs sought is not granted.

3. **Reply by the liquidator/respondent:**

- a. Liquidator denied the averments made by the operational creditor and stated that the claim for an amount of Rs.752.28 crores was rejected on the ground that Hon'ble Maharashtra Electricity Regulatory Commission (MERC) has

categorically held that the applicant is not entitled to liquidated damages.

- b. It is averred that applicant as well respondent filed two petitions bearing case No.136/2015 and case no.85/2016 before Hon'ble MERC, wherein Hon'ble MERC vide its order dated 02.05.2018 was pleased to held that the termination of the power purchase agreement by the corporate debtor was valid and further held that the Applicant was not entitled to liquidated damages. Hon'ble MERC, further directed the Applicant to return the encashed amount of the bank guarantee of Rs.51 crores to the corporate debtor within a month. Being aggrieved by the said order, Applicant, filed an appeal before Hon'ble Appellate Tribunal for Electricity vide appeal No.161 of 2018, which is pending for adjudication. Based on these facts, respondent denied the contentions made by the applicant with regard to termination and liable for refund of bank guarantee and thus rejected the claim as inadmissible.
- c. It is averred that the Applicant's claim is uncrystallised and has not attained finality and subject to adjudication by the Hon'ble APTEL. Further submitted that Hon'ble APTEL has not granted any stay or suspended the order of the Hon'ble MERC. Therefore, the liquidator has rejected the claim of the applicant, who is seeking for liquidated

damages as the same is inadmissible and not established before any forum as on date.

- d. It is averred that liquidator has rejected the claim of the Applicant regarding liquidated damages placing reliance on the order passed by the Hon'ble MERC order dated 02.05.2018.
 - e. Further submitted that the alleged claim of the Applicant is also barred by limitation as evidence from FORM-C filed by the Applicant.
 - f. In the light of the facts stated above, liquidator prayed the Tribunal to dismiss the appeal in the interest of Justice.
4. In the light of the context as afore stated, the point that emerges for consideration by this Tribunal is:

Point.

Whether the petitioner is entitled for the reliefs prayed in this Petition?

5. We have heard both sides and also perused the record.
 - 5.1 Learned Counsel for the petitioner submitted that the Liquidator without considering the material placed by the petitioner in support of its prayer, in a mechanical manner dismissed the petition. Learned Counsel for the petitioner further submitted that the order dated 02/05/2018 passed by

the Maharashtra Electricity Regulatory Commission, since erroneous the same has been challenged before the Appellate Authority, by the petitioner, as such the impugned order has not attained finality. Therefore, when an appeal against the order passed by Maharashtra Electricity Regulatory Commission is pending, the liquidator, by relying on the said order cannot conclusively state that there is no merit in the claim of the petitioner. In that view of the matter the impugned order is not sustainable.

5.2 Per contra, the learned counsel for the respondent submitted that the claim of the petitioner since rejected by the Maharashtra Electricity Regulatory Commission holding *inter-alia*, that petitioner is not entitled for liquidated damages, the petitioner is not entitled for any relief. It is stated that the Maharashtra Electricity Regulatory Commission, also upheld the termination of the power purchase agreement by the corporate debtor, as such the application filed by the petitioner is wholly unsustainable and untenable hence rightly dismissed. It is further stated that when Appellate Authority since not stayed the order of Maharashtra Electricity Regulatory Commission, the petitioner can't derive any relief in this petition.

5.3 Having heard the learned counsels for the both sides and on perusal of the impugned order it may be stated that while it is true the Maharashtra Electricity Regulatory Commission

vide its order dated 02/05/18 had up held the termination of the power purchase agreement by the corporate debtor and directed the Maharashtra State Electricity Distribution Company Limited to return the encashed Bank Guarantee of Rs.51 Crores and further held that the petitioner is not entitled for liquidated damages on the ground that same is not permissible, the fact that an appeal challenging the same is admittedly pending before Appellate Authority. Merely because the order under appeal has not been stayed it is not proper for the liquidator to conclusively hold that that the order under appeal has attained finality and in that view of the matter the petitioner has no case.

- 5.4 Therefore, it is clear that the Liquidator has dismissed the claim merely on the basis of the fact that Maharashtra Electricity Regulatory Commission had upheld the termination of power purchase agreement and rejected the claim for liquidated damages notwithstanding the fact that an Appeal against the said order is pending. Therefore, the order of the Liquidator suffers from non-application of mind hence the order is not sustainable. It would be proper for the Liquidator to consider the same on merits of the petition rather than dismissal the petition on the grounds stated above.
6. We, therefore, hereby set aside the order of the Liquidator dated 08.09.2021 and remand the matter back to the Liquidator for

fresh consideration of the same on merits without being influenced by the findings in the order under appeal of Maharashtra Electricity Regulatory Commission, by giving reasonable opportunity to both parties. Within two months from the date of receipt of the order of this petition.

7. Petition is allowed accordingly. No order as to costs.



Veera Brahma Rao Arekapudi
Member Technical



Dr. N.V. Ramakrishna Badarinath
Member Judicial

Pavani