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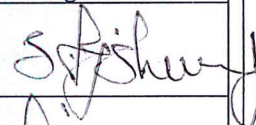
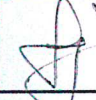
**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH**

**PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL  
HON'BLE SHRI NARENDER KUMAR BHOLA- MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 03.10.2019 AT 10.30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) No.529/7/HDB/2018
NAME OF THE COMPANY	Lanco Vidharbha Thermal Power Pvt Ltd
NAME OF THE PETITIONER(S)	Punjab National Bank
NAME OF THE RESPONDENT(S)	Lanco Vidharbha Thermal Power Pvt Ltd
UNDER SECTION	7 of IBC

**Counsel for Petitioner(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Raja Shyam Rao Salvaji	Adv	90000 80052	
Sanjay Bajaj	Adv		

**Counsel for Respondent(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

**ORDER**

**Petition is admitted vide separate orders.**

  
**Member (T)**

**Binnu**

  
**Member (J)**

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

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

U/s 7 of IBC, 2016

R/w Rule 4 of I & B (AAA) Rules, 2016

**IN THE MATTER OF LANCO VIDARBHA THERMAL POWER LIMITED**

M/s. Punjab National Bank

**Registered Office:**

Plot No.4, Dwarka, Sector 10,  
New Delhi.

... Petitioner/Financial Creditor

**VERSUS**

M/s. Lanco Vidarbha Thermal Power Limited,

**Registered Office:**

Plot No.4, Software Units Layout,  
Hitech City, Madhapur,  
Hyderabad-500081.

... Respondent /Corporate Debtor

**Date of order:03.10.2019**

**Coram:**

Hon'ble Shri Ratakonda Murali, Member (Judicial)


Hon'ble Shri Narender Kumar Bhola, Member (Technical)

**Parties / counsels present:**

For the Petitioner: Sanjay Bajaj, Raja Shekhar Rao Salvaji, Advocates.

For the Respondent: Kailash Nath P.S.S, Advocate.

Heard on: 07.05.2019, 17.05.2019,06.06.2019,27.09.2019.





**PER: HON'BLE SHRI NARENDER KUMAR BHOLA**  
**MEMBER (TECHNICAL)**

**ORDER**

1. This petition is filed by M/s. Punjab National Bank, which is the Financial Creditor stating that M/s. Lanco Vidarbha Thermal Power Limited, Corporate Debtor herein had defaulted in repaying a sum of Rs. **786,74,02,966.00 (Rupees Seven Hundred Eighty Six Crores Seventy Four Lakh Two Thousand Nine Hundred Sixty Six Only)**. This petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016, R/w Rule 4 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.
2. The brief averments made in the petition are as follows:
  - a) It is averred that the Corporate Debtor availed various facilities from time to time from the Financial Creditor along with other consortium members. The facilities availed from the Financial Creditor is as under:

<b><u>Nature of Facility</u></b>	<b><u>Amount (In Crores)</u></b>
Rupee Loan	750.00
Additional Rupee Loan	378.00
Bank Guarantee Limit	212.00
Total	1,340.00

- b) It is averred that the Corporate Debtor was sanctioned credit facility of Rs.5549 crores as Rupee Loan for the project wherein the share of the Financial Creditor was Rs.750 crores. In order to secure the said limit, the Corporate Debtor, Financial Creditor and other consortium of members executed security documents on 01.12.2010. The said facilities were duly secured by securities and accordingly the facilities were disbursed to the Corporate Debtor.





- c) It is averred that the Corporate Debtor failed to achieve the COD (Commercial Operation Date) of the project and upon the request of the Corporate Debtor, the COD was extended from 1<sup>st</sup> September,2014 to 1<sup>st</sup> September,2017. That due extension of COD, the project cost was increased and thus corporate debtor approached the Financial Creditor and other consortium members for sanction of Additional Rupee Loan and Bank Guarantee facility. The Corporate Debtor was granted Additional Rupee Loan of Rs.1543 Crores and Bank Guarantee of Rs.621 Crores.
- d) It is averred that the Share of the Financial Creditor in Consortium is Rs. 1340 Crores Comprising of Rupee Loan of Rs. 750 Crores, Additional Rupee Loan of Rs. 378 Crores and Bank Guarantee Limit of Rs.212 Crores.
- e) It is averred that the Corporate Debtor availed and utilized the facilities under the consortium arrangement at different time. The Corporate Debtor did not maintain the financial discipline and its accounts became remained continuously irregular despite repeated requests and reminders given by the Financial Creditor. That due to continuous default on the part of the Corporate Debtor, the account was classified as "Non- Performing Assets" on 31.03.2018 by the Financial Creditor.
- f) It is averred the Financial Creditor issued notice dated 26.04.2018 under Section 13(2) of the SARFESI Act, 2002. The Financial Creditor also issued a Recall Notice through its Counsel to the Corporate Debtor vide notice dated 17.07.2018. The Financial Creditor along with other consortium members have also filed OA for recovery of Rs. 4784,77,12,914.25 wherein the share of the Financial Creditor was Rs. 786,74,02,966.00 along with pendent- lite and further interest with cost which is pending before Debt Recovery Tribunal, New Delhi.

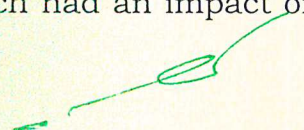
01/02/18



3. The brief averments made in Counter are as follows:

- a) It is averred that a Public Interest Litigation was filed by some villagers before the Hon'ble High Court of Bombay challenging the public hearing conducted by Maharashtra Pollution Control Board (MPCB) for the Project. The Hon'ble High court of Bombay, Nagpur Bench passed a judgment on 18th October, 2011 against the above PIL, directing MPCB to conduct the public hearing again. The Court Order stated that ***"any activity undertaken by Lanco Vidarbha Thermal Power Limited in pursuance of the impugned environment clearance shall be at its own risk and subject to the final outcome of the proceeding"***.
- b) It is averred that delay of around 3 years on account of Force Majeure event resulted in cost and time over run. The project cost increased from Rs. 6936 Crores to Rs. 10433 Crores as appraised by Financial Creditors under additional Rupee Loan Agreement dated 30th March 2015.
- c) It is averred the Promoters of Corporate Debtor maintained required Debt: Equity ratio at all times as per Common Loan Agreements entered from time to time.
- d) It is averred that even after executing the Additional Rupee Loan Agreement in December 2015, disbursements from Lenders were not without hassles and time delays affecting the scheduled Project progress.
- e) It is averred that amount disbursed by Banks after Cost Over Run were mainly utilized for adjustment towards IDC and Finance Charges only, and very little disbursement was made by lenders towards actual project construction activities.
- f) LVTPL's sponsors i.e., Lanco Infratech Limited (LITL) was faced with various industry and macro-economic issues such as frequent change in policies, domestic coal shortage, sudden increase in cost of imported coal, non-availability of Natural Gas for gas based projects which had an impact on





revenues/profits from its operating subsidiaries. This led to LITL being taken into CDR in 2015 and later into NCLT under the IBC in 2017.

- g) It is averred that accumulated, unresolved sectoral issues like frequent change in policies, lack of long term Power Purchase Agreements (PPA), poor financial health of Discoms, domestic coal shortage, sudden increase in cost of imported coal, non-availability of Natural Gas for gas based projects etc not only adversely impacted Corporate Debtor but also resulted into an overall, depressed investment sentiment across the power sector.
- h) It is averred that before the Hon'ble Supreme Court, RBI had filed transfer petitions (Transfer Petitions No. 1399-1404 of 2018) requesting that all the ongoing writ petitions filed against the RBI circular dated 12.2.2018 including the on-going writ petition before Allahabad High Court be transferred to the Hon'ble Supreme Court. Vide order dated 11.09.2018, the Hon'ble Supreme Court allowed the transfer petitions and held that status quo, as of today shall be maintained while directing that the transferred petitions be listed on 14.11.2018 for final disposal.

4. The brief averments made in the Rejoinder are as follows:

- a) It is averred that the Promoters of the Corporate Debtor failed to maintain Debt Equity ratio. There had been regular delays in bringing equity from the promoters as per envisaged financial plan, the project got delayed.
- b) It is averred that the Hon'ble Supreme Court not barred any financial creditor to initiate proceedings under Section 7 of the I & B Code, 2016.
- c) It is averred that there are certain irregularities on the part of the Corporate Debtor due to which they failed to maintain the financial discipline and consequently the

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account of the Corporate Debtor was declared as Non Performing Asset.

5. We have heard the Counsel for Financial Creditor and also the Counsel for Corporate Debtor.
6. The present petition is filed under Section 7 of the Code by the Financial Creditor stating that the corporate debtor had defaulted in payment of Rs. **786,74,02,966.00 (Rupees Seven Hundred Eighty Six Crores Seventy Four Lakh Two Thousand Nine Hundered Sixty Six Only).**
7. The Learned Counsel for Financial Creditor contended that Financial Creditor granted various Financial Facilities to the Corporate Debtor from time to time. The Counsel contended the Corporate Debtor committed default of Rs. **786,74,02,966.00.**
8. Mr. Rotash Saini, Authorized Representative of the Financial Creditor and working as Senior Manager has preferred the present application on behalf of the Financial Creditor for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor in terms of provisions of the Code.
9. The Financial Creditor has relied upon the following loan documents executed between the parties in respect to the financial facility sanctioned to the Corporate Debtor:
  - a) Sanction Letter dated 31.03.2010 for Rupee Term Loan of Rs.750 Crores.
  - b) Security Trustee Appointment Agreement Dated 01.12.2010.
  - c) Deed of Hypothecation dated 12.01.2011.
  - d) Sanction letter dated 20.03.2015.
  - e) Additional Rupee Loan Agreement dated 30.03.2015.
  - f) Notices Under Section 13(2) of the Securitization and Reconstruction of Financial; Assets and Enforcement of Security Interest, 2002 dated 26.04.2018 issued by Financial Creditor
  - g) Recall notice dated 17.07.2018 issued by the Financial Creditor.





h) Corporate Guarantee dated 12.01.2011 furnished by LancoInfratech Limited.

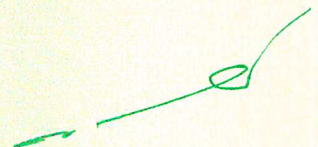
i) Certificate under Section 2-A of the Bankers Books Evidence Act

10. The Financial Creditor submitted that the Corporate Debtor failed to clear the outstanding dues and did not adhere to the terms and conditions of the loan agreements. Consequently, the Financial Creditor along with other consortium members has also filed OA for recovery of Rs. 47847712914.25 wherein the share of the Financial Creditor was Rs. 786,74,02,966.00. The Financial Creditor issued Recall notice Dated 17.07.2018 demanding repayment of the outstanding dues from the Corporate Debtor. However the Corporate Debtor failed to pay the amount despite of the demand notice.

11. The contention of Learned Counsel for Corporate Debtor is that the Financial Creditor failed to infuse required funds as per terms and due to Force Majeure events resulted in cost and time over run. Further contended that due to accumulated, unresolved sectoral issues like frequent change in policies, lack of long term Power Purchase Agreements (PPA), poor financial health of Discoms, domestic coal shortage, sudden increase in cost of imported coal, non-availability of Natural Gas for gas based projects etc not only adversely impacted Corporate Debtor but also resulted into an overall, depressed investment sentiment across the power sector.

12. The Financial Creditor is no way responsible for happening of certain events which causes delay in implementation of the Project. Thus, there is no valid objection raised for admission of the Petition. The Contention of the Corporate Debtor is that the company is likely to revive its business. This is not a ground on which the petition can be rejected. Further the corporate debtor admitted default.

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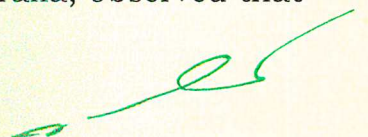


13. The Learned Counsel for Financial Creditor filed written submissions. Wherein in Para No: 12 it is stated as follows :

*“That no where in the petition filed by the Financial Creditor, there is any reference to the RBI circular dated 12.2.2018 nor the action has been initiated in terms thereof. It would be pertinent to mention that Corporate Debtor was not party to proceedings before Hon’ble Supreme court as no petition in its own capacity was filed by Corporate Debtor challenging the proceedings and therefore this Hon’ble Tribunal never stayed the proceedings pending before it at any stage. Even otherwise, as the present [proceedings have not been initiating upon directions of RBI, there is no impact of Supreme Court judgment referred above and same bench had upheld the provisions of Insolvency and Bankruptcy Code, 2016 and nothing stops the Financial Creditor to initiate the process under code when already when most of the lenders have jointly filed OA for recovery against Corporate Debtor pending before DRT -1 Delhi which has reached the stage of evidence.”*

14. During hearing the Learned Counsel for Financial Creditor has also relied upon Hon’ble NCLAT Judgment Dated 20<sup>th</sup> September,2019 in Company Appeal No. 671 of 2019 in the matter of State Bank of India Vs. Rohit Ferro Tech Limited Vide said judgment while setting aside the impugned order dated 28.06.2019 passed by the NCLT, Kolkata Bench in CP(IB) No.1214/KB/2018, Hon’ble NCLAT has, interalia, observed that “

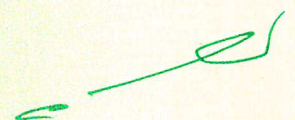




"Petition under Section 7 of the I & B Code is to be considered by the Adjudicating Authority on its own merits taking in to consideration the records and in absence of any evidence to show that the SBI filed the application only because of the 'Circular' issued by the Reserve Bank of India, it was not open to the Adjudicating Authority to reject the Application." Accordingly the Learned Counsel for Financial Creditor has prayed for admitting the present Application.

15. A perusal of the petition shows that it has not been filed only on the basis of RBI Circular dated 12.02.2018. In fact this has been filed entirely independent of the said circular and there is no mention of the same anywhere in the petition.
16. Before admitting the Petition filed under Section 7 of IBC, this Tribunal has to see whether there is a debt due and if it is in default. *Hon'ble Apex Court held in "Innoventive Industries Ltd Vs. ICICI Bank and Ors (2018) 1 SCC 407 that "The moment the Adjudicating Authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the Applicant to rectify the defect within 7 days of receipt of notice from the Adjudicating Authority"*
17. The Corporate Debtor admitted the default. The present petition is well within the Limitation. The Petition is in order. The petition is complete and therefore deserves to be admitted.
18. The Financial Creditor has suggested the name of IRP who has given his consent in Form-2 and there is no disciplinary action pending against present IRP. The account of Corporate Debtor is treated as NPA and there are grounds to admit the petition.


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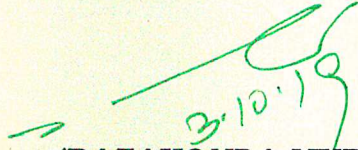




- e) That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.
- f) That this Bench hereby appoints Mr. Vijay Kumar Garg as IRP having registration number IBBI/IPA-002/IP-N00359/2017-18/11060 residing at Flat No. 802, Tower-6, Unitech Escape, Nirvana Country, Sector- 50, Golf Course Road Extension, Gurugram- 122018.

**Accordingly, this Petition is admitted.**

  
3.10.19  
**(NARENDER KUMAR BHOLA)**  
*(Member Technical)*

  
3.10.19  
**(RATAKONDA MURALI)**  
*(Member Judicial)*

VISWARAJ  
(LAW RESEARCH ASSOCIATE)