

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

SINGLE BENCH (URGENT HEARINGS THROUGH VIDEO CONFERENCE)
PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 12.08.2020 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No. 511 /2020 in CP (IB) No. 133/7/HDB/2019
NAME OF THE COMPANY	Lanco Hoskote Highway Ltd
NAME OF THE PETITIONER(S)	Edelweiss Asset Reconstruction Company Ltd
NAME OF THE RESPONDENT(S)	Lanco Hoskote Highway Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

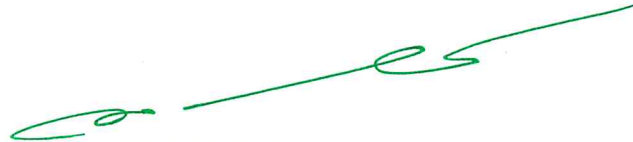
Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

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

ORDER

IA No.511/2020 is listed today for orders. Orders passed vide separate orders.



MEMBER(J)

Syamala

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

IA No. 511/2020
IN

CP (IB) 133/7/HDB/2019
U/S. 60(5) of the I&B Code, 2016
R/w Rule 11 of the NCLT Rules, 2016

In the matter of

Greenergy Wind Corporation Pvt Ltd

..... Applicant

VERSUS

Mr. Raghu Babu Gunturu, Resolution Professional of
LANCO HOSKOTE HIGHWAY LIMITED

AND IN THE MATTER OF

Edelweiss Asset Reconstruciton Company Limited
Acting in its Capacity as Trustee For EARC Trust-SC
217 having its office at Edelweiss House,
Offi.CST Road, Kalina, Mumbai-400 098.

... Petitioner

VERSUS

LANCO HOSKOTE HIGHWAY LIMITED
Registered office at Plat nO.4,
Software Units Layout, Hitech city,
Madhapur, Hyderabad-500 034.

..... Corporate Debtor

Order pronounced on 12.08.2020

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Counsels / parties present:

For the Applicant: Mr.Kailash Nath P.S.S. and other
Counsels.
Resolution Professional: Mr.Raghu Babu Gunturu, .
For the RP: India Law LLP, Advocates for RP.

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)

Heard on 15.07.2020

ORDER

1. This Interlocutory application bearing IA.No. 511/2020 is filed by the applicant, who is a prospective resolution applicant under section 60(5) of the Insolvency and Bankruptcy Code, 2016 Read with Rule 11 of NCLT Rules, 2016 praying the Tribunal to pass an order allowing the applicant to participate in the CIR process of the corporate debtor.
2. Particulars of the Applicant:
 - a. The applicant, Greenergy Wind Corporation Pvt Ltd is a company incorporated under the Companies Act, 1956 and engaged in the business of generation of Renewable Energy and sale of the same under open access. The applicant has been involved in setting up and operating a cumulative 120 MW of installed and operational renewable energy plants spread across Hydro, Solar and wind farms.
 - b. It is averred that CIRP started against corporate debtor on 17.10.2019. It is averred that Expression of Interest inviting the Resolution Applicants vide From G was published on 17.12.2019. The applicant thus

came across the Invitation of Expression of Interest dated February 28, 2020 published inviting prospective resolution applicants to submit their plan for the resolution of the corporate debtor.

- c. It is averred by the applicant that in furtherance of its willingness to submit a Resolution plan, the applicant vide an email dated July 01, 2020 submitted its Expression of interest to the Respondent. However, respondent refused to consider the EOI of the Applicant and informed the same vide email dated July 03, 2020. Copy's of emails are annexed here with as Annexure G&F.
- d. It is averred that the respondent simply denied the request of the applicant on the ground that the time period for the submission for the Resolution plan had already expired and that the COC has already received two resolution plans which were being evaluated.
- e. The applicant avers that they had inadvertently missed the last date of filing resolution plan and since CIRP period has not been concluded and no resolution plan has yet been approved by the COC, therefore, the applicant merely requested an opportunity for its resolution plan to be placed before the COC.
- f. It is averred that CIRP period of 270 days would have been concluded in and around July 13, 2020. However, in view of the global pandemic outbreak of Covid-2019, there is an automatic exclusion of time due to the lockdown under the NCLAT Oder and Regulation 40 C, for the corporate debtor. Therefore it is clear that plenty of time is remaining in the CIRP period of the corporate debtor.
- g. It is averred by the applicant that already financial proposal of the resolution plan was prepared and once




the respondent provides data access to the applicant including providing the request for the Resolution Plan, the applicant will be able to submit a Resolution Plan to comply with the terms of the RFRP and the Applicant undertakes to submit its final Resolution plan within 7 working days of the receipt of the RFRP by the applicant pursuant to the order of this Tribunal permitting the applicant to participate in the CIRP of the corporate debtor.

- h.* It is averred that the Tribunal has in various instances allowed for submission of resolution plans at a belated stage in the process. The Hon'ble NCLT, Mumbai Bench in the CIRP of Unimark Remedies Limited (CP NO.197/2018) allowed a similar application by one of the prospective resolution applicant. A copy of the order dated December 21, 2018 of the NCLT Mumbai is annexed and marked here with as Annexure-J.
- i.* It is averred that the applicant was unaware of the CIRP of the corporate debtor and came to know of the same recently, therefore unable to submit the EOI with in the prescribe time period. However, CIRP period has not been concluded and ample time remaining, it is imperative that the applicant be allowed to participate in the CIRP of the corporate debtor and submit its resolution plan.
- j.* Further, no prejudice shall be caused to any party in the event the Applicant is permitted to participate in the CIRP of the corporate debtor as a resolution applicant.

3. Reply on behalf of the Resolution Professional.

- a. Respondent/RP denied the allegations made by the applicant.



- b. Respondent averred that he was appointed as IRP and later confirmed as RP in the first COC meeting which was held on 21st November, 2019.
 - c. Respondent avers that public announcement seeking Expression of Interest in Form G was published on 17th December, 2019. The last date for submission of EOI was 1st January, 2020 and further gave several extensions for submission of resolution plan upto 6th April, 2020, considering the requests from the prospective Resolution Applicants and to maximize the value of the assets of the corporate debtor in compliance with IBC, 2016
 - d. Respondent avers that there were three prospective Resolution Applicants who wanted to submit resolution plan but sought some time for extension because of lockdown due to Covid-19. Thus the last date for submission of Resolution Plan by prospective resolution applicants was 20th May, 2020.
 - e. Respondent avers that IBBI vide its notification dated 29th March, 2020 introduced Regulation 40 C which specified that lockdown period shall not be counted for calculation of CIRP timelines and hence 180 days which was supposed to end on 13th April, 2020 was reconsidered as to end on 29th June, 2020. With regard to this RP/Respondent filed an application with the Tribunal seeking extension of CIRP for 90 days beyond 180 days.
 - f. It is averred that on 20th May, two Prospective Resolution Applicants have submitted their Resolution Plan and in the seventh meeting of COC which was held on 4th June, 2020 the COC had a detailed discussion with the two PRA'S about the resolution plan submitted by them and directed to revise and
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reconsider the resolution amount and to submit the modified plan with revised Resolution amount by 12th June, 2020.

- g. Respondent averred that applicant vide email dated 1st July, 2020 showed interest to acquire corporate debtor and requested to consider EOI and to put it before COC for consideration which was replied by mail stating that last date for submission of EOI was 5th March, 2020 hence, the window of accepting the EOI has been closed.
- h. Further, Respondent averred that in the 8th COC meeting held on 22nd July, 2020 the resolution plan submitted by Kalyan Toll Infrastructure Limited, one of the PRA's were finalized. On analyzing the evaluation matrix COC approved declaration the Kalyan Toll Infrastructure Limited as H1 Bidder. COC was of the opinion that EOI submitted by the Applicant is after the due date, it may not be considered.
- i. Respondent averred that the rejection of EOI after the due date as per the Regulation 36(6) of the IBBI regulation, 2016 is as follows:
" The expression of interest received after the time specified in the invitation under clause(b) of regulation (3) shall be rejected".
Further respondent quoted the case filed in Hon'ble NCLT, Bengaluru Bench in the matter of Bilagi Sugar Mill Limited Vs Mr. M.V.Sudarshan, wherein the submissions made by the applicant was rejected by NCLT by putting special emphasis on the objective of Code. Further in the present case also the applicant has not adhered to one of the main objective of code and regulations i.e to act in a time bound manner. Copy of the said order dated 29th May, 2020 passed



by NCLT Bangalore Bench is annexed and marked as Exhibit-B.

- J. In view of the aforesaid facts it is humbly submitted that the respondent rejected the EOI of the applicant because COC was already in the process of detailed discussion with regards to resolution plans submitted by two prospective resolution applicants individually and time line had already expired for submission of EOI and Regulation 36(6) clearly permits the respondent to reject the EOI submitted beyond the timeframe. Thus the Tribunal be pleased to dismiss the application with exemplary costs and all consequential directions as provided under the code.
4. Learned counsel for applicant would contend that present application is filed seeking an order from the Tribunal to permit the applicant to participate in the CIRP of corporate debtor and to submit the resolution plan upon receiving RFRP issued by Resolution professional.
5. Learned counsel contended that CIRP was commenced on 17.10.2019. Invitation seeking EOI in Form-G was first published on 17.12.2019. The last date for receiving EOI is 01.01.2020. It was extended till 13.01.2020. On 29.01.2020 RFRP was issued. The last date for submission of Resolution Plan was 27.02.2020 and it was extended from time to time till May, 2020.
6. Learned counsel contended that applicant sent email to Resolution professional showing interest in acquiring corporate debtor dated 01.07.2020 and in turn Resolution professional sent reply mail stating that time for EOI was expired and on 22.07.2020 H1 bidder was declared.



7. The learned counsel for applicant relied on the decision of Hon'ble NCLT, Mumbai bench in the matter of Unimark Remedies Limited CP No. 197/2018 and contended if there is a "conflict between the Regulations and the Code, the object of the Code is paramount and not the Regulations which are formed only for the just implementation of the Code. Rejecting the Resolution plan purely on the technicalities even with out looking into its merits is certainly an act which will go against the very spirit of the Code and may result heavy loss to the Company and consequently Mumbai Bench directed the Resolution Plan to be examined.
8. Learned Counsel would contend that the participation of applicant will serve the object of the code that is the maximization of value of assets. Counsel would contend if RFRP is issued Applicant would submit Resolution Plan with in shortest period. So Learned counsel contended no prejudice will be caused if applicant is allowed to participate in the CIRP by submitting EOI and also resolution plan.
9. On the other hand learned counsel for RP strongly opposed the application. Learned counsel contended EOI in FORM-G was published on 17.12.2019. The deadline for submitting EOI was finally extended till 13.01.2020 and RFRP was issued on 29.01.2020 and the last date for submission of resolution plan was 27.02.2020. The same was extended till 06.04.2020 considering the request of the Prospective Resolution Applicants.
10. Learned counsel contended that three prospective resolution applicants further sought time to submit



resolution plan. The same was extended from time to time till 20.05.2020.

11. Counsel contended two prospective resolution applicants submitted their plans on the last date i.e 20.05.2020 and there was negotiation with the prospective resolution applicants.
12. Learned counsel contended at this stage applicant sent mail on 01.07.2020 showing interest to acquire corporate debtor. Then Resolution Plan reported that time line for submission of EOI was expired by 20.05.2020.
13. In the 8th COC meeting one resolution plan was finalized. Learned counsel has relied on Regulation 36(A)(6) of I&B Code, 2016. Learned counsel also relied on decision of Hon'ble NCLT, Bangalore Bench and contended EOI received after cut of date can't be entertained.
14. It is interesting to note that original date fixed for submission of EOI was on 01.01.2020 and later it was extended from time to time and last date for submission of EOI was 06.03.2020. The last date for submission of Resolution Plan was 06.04.2020 which was extended till 20.05.2020. It is interesting to note that applicant has not submitted any EOI though the period was extended till 06.03.2020. Even the time for filing resolution plan was extended from time to time and last date was 20.05.2020 for filing resolution plan.
15. The applicant has not submitted either EOI or resolution plan in the extended period. The applicant claimed to have submitted the EOI long after the date fixed for EOI. Regulation 36(A)(6) provides if EOI received



after due date shall be rejected. No resolution plan to be received by RP after the due date.

Hon'ble NCLAT has held in the decision reported in Company Application (AT) (Insolvency) 344 & 345 dated 05.08.2020 that Resolution Plans received after due date can't be placed before COC by the RP and COC can't consider the same. The applicant is simply asking for direction for participation of applicant in the CIRP and to submit resolution plan. Such a request can't be granted in favour of applicant because the time line prescribed for EOI and for receiving resolution plan was expired.

16. The Application therefore deserves to be dismissed.
17. In the result application is dismissed.


RATAKONDA MURALI
MEMBER (JUDICIAL)

12.8.2020

Pavani