

SL. No.1

**NATIONAL COMPANY LAW TRIBUNAL
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 19.01.2023 AT 02:30 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/66/2023 in CP (IP) 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

ORDER

IA(IBC)/66/2023

This application is allowed, vide separate order.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

IA No.66/2023 in CP(IB) No. 678/7/HDB/2018
U/s. 60(5) of IB Code, 2016

In the matter of:

M/s. MCM Pacific PTE Limited,
911 Lorong 1 Toa Payoh,
#25-01 Oleander Towers,
Singapore

.... Applicant

Vs

Mr. Pankaj Dhanuka,
Liquidator of Lanco Kondapalli Power Limited,
FE 328, Sector 3, Salt Lake City,
Kolkata – 700 106,
West Bengal.

....Respondent

Date of order: 19.01.2023

CORAM:

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

Counsels present:

For the Applicant : Mr. Chandrasen Reddy, Senior Advocate
Mr. Sameer Kumar, Advocate

For the Respondent : Mr. Anupam Prakash, Advocate
Liquidator

Heard on : 18.01.2023

[PER: BENCH]
ORDER

1. This application is filed seeking for the restoration of the bid of the Applicant in view of the changed circumstances and an email dated 30.12.2022 whereby the Respondent and the Stakeholders Consultation Committee (SCC) has accepted the Applicants proposal and to grant a No Objection to the Applicant for depositing the balance amount of the Letter of Intent (LOI) dated 21.06.2022 in terms of the proposal dated 30.12.2022.
2. Briefly, the facts are:
3. The Applicant was the Successful Bidder for Parcel 4 assets of the Corporate Debtor (CD) which was taken into Corporate Insolvency Resolution Process (CIRP) by virtue of the Orders of this Tribunal dated 23.04.2019. Later by virtue of the Order dated 16.04.2021, the Corporate Debtor was taken under liquidation. The liquidator issued public announcement for prospective bidders for participation in the E-auction process for the sale of the Corporate Debtor as a whole on a going concern basis of Phase I along with identified assets as a going concern and sale of assets of Phase II & Phase III as parcel separately and sale of assets of Corporate Debtor collectively.
4. The Applicant submitted a bid and also issued a letter to the liquidator providing the proposed payment plan for purchase of Category B assets of Phase III Parcel 4. It was however mentioned

in the said proposed payment plan that there could be a slight deviation in payment time. Time for payment was fixed as 90 days from the date of receipt of the LOI from the liquidator. The Applicant was declared as successful bidder. The Applicant was required to make payment within 30 days, failing which the unpaid sums would carry the interest @12% p.a.

5. Due to unavoidable circumstances, the Applicant was unable to deposit the entire amount, though a part payment was made. The Applicant filed an application seeking for extension of time for depositing the balance amount. In the meantime, the Respondent vide an email dated 20.09.2022 cancelled the sale and LOI issued to the Applicant and also forfeited the amount already deposited by the Applicant. This Tribunal dismissed IA No.972/2022 by Order dated 12.10.2022. Thereafter, the Applicant approached the NCLAT which conformed the Order of the NCLT. The Applicant now achieved financial stability since United Amara Bank approved the credit facilities of the Applicant. The Applicant requested the Respondent by mail dated 26.12.2022, to reconsider the cancellation of the bid, as the Applicant has arranged for the required funds and was ready to deposit the same by 31.03.2023. By an email dated 30.12.2022, the Respondent informed the Applicant that the afore said proposal was placed before the Stakeholders Committee in the meeting held on 27.12.2022. The Applicant accepted the offer made by the Respondent on behalf of the SCC. On 07.01.2023, the Respondent sent an email acknowledging the email dated 31.12.2022 agreeing to

upfront/immediate payment of 10% of committed funds i.e. purchase consideration of INR 136.11 crores and the balance amount along with the applicable interest @12% p.a., GST @18% and other applicable statutory taxes and duties etc. within 45 days.

6. In view of the changed circumstances, this Application is being filed to reinstate the bid that was cancelled vide email dated 20.09.2022 and to grant No Objection.

7. Heard both the Counsel. Mr. Chandrasen Reddy, Senior Counsel appeared on behalf of the applicant and liquidator was present. Liquidator admitted that by virtue of an email dated 07.01.2023, there was novation of contract agreeing to restore the bid of the Applicant and to receive the remaining amount with 12% interest along with GST and other applicable taxes and duties. By virtue of an email dated 26.12.2022, the Applicant requested the Respondent to restore his bid. The Liquidator consents for allowing this application. The Counsel for the Petitioner however seeks this Tribunal to give time of 45 days from the date of this order, since the foreign exchange transaction would consume considerable time. The Respondent's Counsel does not raise any objection. However, since the Applicant agreed to pay the remaining amount with an interest @12% p.a., there would not be any prejudice caused to the Respondent in granting such time.

8. In view of the facts stated in the Application, this Tribunal allows the Application. The bid of the Applicant stands restored and No Objection is granted to the Applicant for depositing the balance amount of the LOI dated 21.06.2022 within 45 days from the date of this order.
9. With the above directions **IA.No.66/2023 in CP (IB) No.678/7/HDB/2018** is allowed and stands disposed of.

Sd/-

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

Sd/-

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

VL