

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD**

SPECIAL BENCH - COURT 1 (VEDIO CONFERENCE)

PRESENT: HON'BLE SHRI BHASKARA PANTULA MOHAN – MEMBER JUDICIAL

HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 26.04.2021 AT 10:30 AM

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|----------------------------------|---|
| TRANSFER PETITION NO. | |
| COMPANY PETITION/APPLICATION NO. | IA No. 839/2020 in CP (IB) No. 519/7/HDB/2018 |
| NAME OF THE COMPANY | Lanco Thermal Power Pvt Ltd |
| NAME OF THE PETITIONER(S) | Andhra Bank |
| NAME OF THE RESPONDENT(S) | Lanco Thermal Power Pvt 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 |
|------------------------|-------------|------------------------|-----------|
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ORDER

Orders passed vide separate orders in IA NO.839/2020.


Member(Technical)


Member(Judicial)

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**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, AT HYDERABAD**

I.A. No. 839/2020

IN

C.P. NO. 519/7/HDB/2018

Application under Section 31 (1) of the Insolvency & Bankruptcy Code, 2016, read with Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

In the matter of

Andhra Bank versus M/s Lanco Thermal Power Limited

Filed by:

PARVEEN BANSAL
(Resolution Professional)
Lanco Thermal Power Limited
J-347, Block J, SaritaVihar
New Delhi

...Applicant

Versus

Joint Commissioner of Income Tax
Warangal Range, Station Road
AayakarBhawan, Warangal

... Respondent

Date of judgement: 26.04.2021

Coram:

Hon'ble Shri BhakaraPantula Mohan, Member (Judicial)

Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

Appearance:

For the Applicant: Shri S. Ravi, Senior Advocate assisted by Vimal Varma Vasireddy, Advocate.

For the Respondent: Ms Kiranmayee Senior Standing Counsel for
Income Tax Department assisted by J V Prasad, Advocate.

Heard on: 03.03.2021

**PER: SHRI VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)**

1. The present application has been filed by the Resolution Professional of Lanco Thermal Power Limited under section under Section 31 (1) of the Insolvency & Bankruptcy Code, 2016 ("the Code") read with Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for approval of the resolution plan including scheme of arrangement approved by the committee of creditors in Sixteenth meeting of CoC held on 20.08.2020 with a voting share of 81.60%.

Submissions of Applicant / Resolution Professional:

- 2.1 That Corporate Debtor is a public limited company incorporated on 02.02.2002 under the provisions of Companies Act, 1956 and is in the business of generation and sale of electricity/power supply and investment in shares of subsidiary / associate companies for their investments in power projects. Corporate Debtor has its registered office at plot #4 Software Units layout, HITECH City, Madhapur, Hyderabad- 500081 and has corporate office at 397, UdyogVihar III, Sector 20, Gurugram, Haryana- 122016.
- 2.2 This Tribunal vide order dated 09.05.2019 ordered initiation of Corporate Insolvency Resolution Process (CIRP) of the





u/s 7 of the Insolvency and Bankruptcy Code, 2016. By the same order, the applicant was appointed as Interim resolution professional. Pursuant to his appointment, the IRP made public announcement on 11.05.2019. After collating and verifying the claims, the IRP constituted CoC. In the First meeting of CoC held on 07.06.2019, the Interim Resolution Professional was confirmed as Resolution Professional. The Committee of Creditors (CoC) comprising of the following Financial Creditors, in its 1st meeting had confirmed the Applicant as Resolution Professional (RP). The Applicant in compliance of the provisions of the Code and Rules framed there under conducted the CIRP of the Corporate Debtor.

List of Financial Creditors

| Financial Creditor | Admitted Claims (Rs. Crores) | % Vote Share |
|------------------------------------|-------------------------------------|---------------------|
| Andhra / Union Bank* | 3,874.68 | 11.6% |
| Axis Bank | 2,122.97 | 6.4% |
| Bank of Baroda | 886.99 | 2.7% |
| Bank of India | 1,699.61 | 5.0% |
| Canara Bank | 2,126.56 | 6.4% |
| Central Bank of India | 262.91 | 0.8% |
| Corporation / Union Bank* | 412.29 | 1.2% |
| ICICI Bank | 2,944.30 | 8.8% |
| IDBI Bank | 4,131.33 | 12.4% |
| IFCI Limited | 18.29 | 0.1% |
| Indian Overseas Bank | 2,585.21 | 7.8% |
| Indian Bank | 46.76 | 0.1% |
| Kotak Mahindra Bank | 124.91 | 0.4% |
| Lakshmi Vilas Bank | 156.02 | 0.5% |
| LIC of India | 1,181.69 | 3.5% |
| Oriental Bank of Commerce/ PNB* | 159.41 | 0.5% |
| Punjab & Sindh Bank | 380.46 | 1.1% |




| | | |
|--|------------------|---------------|
| REC Limited | 6,228.36 | 18.7% |
| Union Bank of India | 397.58 | 1.2% |
| UCO Bank | 904.79 | 2.7% |
| United Bank of India / PNB* | 1,452.49 | 4.4% |
| | 33,331.03 | 100.0% |
| * Denotes the bank, where original bank got merged effective 01-04-2020. | | |

- 2.3. During the period of CIRP two EOIs were received, one from Ilabs Hyderabad technology centre private limited, Hyderabad and another from 50 Hertz Energy private limited, a group company of Manikaran Power limited. The CoC after several rounds of negotiations with the Resolution Applicants evaluated both the Resolution Plans as per the Evaluation Matrix in terms of Section 29 (A) of the Code. As per the decision taken in the 5thCoC said meeting, the Resolution Professional moved an application seeking extension of CIRP period by 90 days beyond 180 days, as CIRP was due for completion on 05-11-2019, which was allowed by this Tribunal vide order dated 07.11.2019.
- 2.3 In the ninth meeting of the COC held on 27.01.2020, the CoC was apprised about submission of Joint Resolution Plan by iLabs technology and 50HERTZ ("**Joint Resolution Applicants**")who apparently offered to pay total resolution amount of Rs. 131 crores with upfront payment of Rs. 14 crores and balance payment was proposed to be a combination of restructured term loan and deferred amount payable over 2 years. However, after due deliberations the CoC requested Joint Resolution





Applicants to improve the offer. In the said meeting it was informed to the CoC that 270 days of CIRP was coming to an end on 02.02.2020 and as such the CoC resolved to seek extension of 60 days, which was granted vide order dated 12.02.2020.

- 2.4 In the fourteenth meeting of CoC held on 21.07.2020, the Joint Resolution Applicants submitted the resolution plan after taking into account the issues and concerns raised by members of CoC and Revised resolution plan was amended to provide for disbursement of restructured term loan of Rs. 54 crores by Axis Bank, which the Axis Bank disagreed and as such the representative of 50HERTZ was requested to provide source of funds for Rs. 54 crores.
- 2.5 In the 15th meeting of the CoC held on 10.08.2020, alternative plan to get term loan sanctioned and disbursed from other banks was deliberated upon, i.e. to source funds from SEBI registered fund, for which letter of commitment to provide Rs. 54 Crore after the approval of Resolution Plan was placed before CoC. After due deliberations, the CoC suggested for inclusion of a clause in the resolution plan to the effect that there will not be any adverse impact on the entitlement of other financial creditor in case Axis Bank decides not to restructure term loan of Rs. 54 crores.
- 2.6 In the 16th meeting of COC convened on 19.08.2020 and 20.08.2020, the Joint Resolution Applicants submitted Final resolution plan dated 12-08-2020. Further at the request of REC, the Joint Resolution Applicants agreed to issue letter of amendment of clause regarding transfer of




shares of LancoAnapara, subject to issuance of NOC and payment of dues of project lenders. The resolutions passed in the CoC are as under:-

“RESOLVE THAT, Committee of Creditors (“COC”) hereby approves for amendment of the clause relating to performance bank guarantee in page 23 of the RFRP to state that performance bank guarantee of Rs. 15 crores along with Earnest money deposit of Rs. 2 crores shall be returned to Resolution Applicants upon payment of upfront amount after approval of the resolution plan by Adjudicating Authority.

FURTHER RESOLVE THAT, COC hereby approves the Resolution Plan dated 12-08-2020 along with letter of amendment dated 21-08-2020 submitted jointly by iLabs Hyderabad Technology Centre Private Limited and 50 Hertz Energy Private Limited (“Joint Resolution Applicants”) for resolution of Lanco Thermal Power Limited (“Corporate Debtor”) after considering its feasibility and viability in accordance with section 30(4) of Insolvency and Bankruptcy Code, 2016 (“IBC Code, 2016”), provisions in compliance of section 30(2) of IBC Code, 2016 and regulation 37, 38 and 39(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) regulations, 2016 and confirms that it has provisions for effective implementation.

FURTHER RESOLVE THAT, the resolution amount allocated by Joint Resolution Applicants for distribution shall be allocated among financial creditors taking into the order of priority amongst creditors as laid down in section 53 (1) of IBC Code, 2016, including the priority and value of the security interest of a secured creditor.

FURTHER RESOLVE THAT, CA Parveen Bansal, Resolution Professional of the Corporate Debtor is authorized for submission of application before Hon’ble National Company Law Tribunal, Hyderabad for approval of the resolution plan approved by COC along with manner of distribution by Adjudicating Authority in accordance with section 31(1) of IBC Code, 2016.”



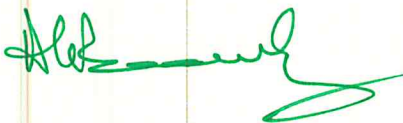
- 2.7 That this Tribunal at the instance of CoC, excluded 160 days of covid induced lockdown period from 25-03-2020 and 31-08-2020 vide order passed in IA No. 840/2020 dated 01.10.2020.
- 2.8 It is averred Haribhakti& Co., LLP (Members of Baker Tily International) was engaged as transaction cum forensic auditor for review of books of accounts and related documents and determination of avoidable transactions u/s 43,45,50 & 66 of the Code. The auditor has submitted signed transaction audit report providing 6 observations under different heads of avoidable transaction under the Code. The final report along with additional information collected by Resolution Professional was deliberated in the 16th meeting of CoC.
- 2.9 The CoC have approved the resolution plan with 81.6% votes in favour and 17.4% votes against the approval of resolution plan. Copy of minutes of the 16th meeting of CoC along with results for e voting is annexed and marked as **Annexure A-8 (Colly.)**. Copy of resolution plan dated 12-08-2020 and letter of amendment dated 21-08-2020 is annexed and marked as **Annexure A-9 (colly.)**.

3. CONTOUR OF THE RESOLUTION PLAN:

The Resolution Plan approved by CoC in favour of Ilabs Hyderabad Technology Centre Private Limited and 50Hertz Energy Private Limited (Joint Resolution Applicants) in a nutshell is as follows:-



- 3.1 The Resolution Professional had engaged Registered Valuers for determination of fair market value and liquidation value in accordance with Regulation 35 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2018. Average fair market value and liquidation value of assets of the Corporate Debtor has been assessed at Rs. 196.92 Crores and Rs. 131.85 Crore respectively. Copy of summary of such valuation is annexed and marked as **Annexure A-10**.
- 3.2 That resolution plan provides for payment of Rs. 136 crores ("**Total Resolution Amount**") for resolution of all the assets of the Corporate Debtor. The resolution plan also provides for allocation of Rs. 135 crores for distribution among financial creditors ("**Financial Creditors' Allocated Amount**") and allocation of Rs. 1 crore ("**Non-Financial Creditors' Allocated Amount**") for distribution among operational creditors.
- 3.3 Total Resolution Amount comprises of :
- i) Restructured Term Loan of Rupees 54 crores. Existing Term Loan of Axis Bank will be restructured and shall be payable over a period of 5 years in equal quarterly instalments along with interest at the rate of 10% per annum payable monthly from the Effective Date.
 - ii) Balance amount of Rs. 82 crores to be deposited in the escrow account by Joint Resolution Applicants. Upfront payment of Rs. 21 crores shall be payable on the Effective Date. Effective Date will be the date on which Upfront Payment will be deposited in the



escrow account and the same will not be later than 90 days after the date for approval of the Resolution Plan by the Adjudicating Authority. Balance amount of Rs. 61 crores to be payable in two equal annual instalments ("**Deferred Payment**"). Deferred Payment shall be payable along with interest at the rate of 10% per annum commencing from the Effective Date.

- 3.4 The Resolution Plan provides for payment of Corporate Insolvency Resolution Process cost ("**CIRP Costs**") in priority over the payments to be made to any other creditors in terms of Section 30(2)(a) of Insolvency and Bankruptcy Code, 2016 ("**IBC Code, 2016**") and Regulation 38(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 ("**CIRP Regulations**"). Unpaid CIRP Costs are proposed to be paid within seven days of approval of the Resolution Plan by the Adjudicating Authority out of balance available in the bank account of the Company.
- 3.5 That Resolution Plan provides for allocation and distribution of Rs. 135 crores among financial creditors taking into the order of priority amongst creditors as laid down in section 53 (1) of IBC Code, 2016, including the priority and value of the security interest of a secured creditor.
- 3.6 That Resolution Plan provides for nil payment to financial creditors, who are related parties under section 29A of



IBC, 2016.

- 3.7 The Resolution Plan also provides that financial creditors, who do not vote in favour of the Resolution Plan ("**Dissenting Financial Creditors**") shall be paid equivalent to liquidation value computed in accordance with section 53(1) of IBC Code, 2016. Amount payable to financial creditors will be first utilised for payment among Dissenting Financial Creditors. The table showing entitlement for the amount and payment of Dissenting Creditors and Assenting Creditors has been annexed and marked as **Annexure A-11**.
- 3.8 The Resolution Plan further provides for deposit of Rs. 1 crore in escrow account for payment to operational creditors equivalent to liquidation value due to them out of Non-Financial Creditors' Allocated Amount. Operational Creditors include amount due to government authorities, workmen and employees and other creditors. Non-Financial Creditors' Allocated Amount will also be utilised for payment of legal costs which may arise in connection with corporate insolvency resolution process ("**CIRP**"). The balance amount, if any, left at the end of 24 months or for an extended period, as may be approved by Monitoring Committee to be distributed among financial creditors.
- 3.9 The Resolution Plan provides for payment of Rs. 82 crores required to be funded by Joint Resolution Applicants. Resolution Plan also provides for upfront payment of Rs. 21 crores on Effective Date. Corporate Debtor will issue shares and debentures to JRAs' on deposit of Upfront Payment in the escrow account:



| Investment Amount (Rs. Cr) | Resolution Applicant | Class AA Equity Shares | Redeemable Preference Shares | Optionally convertible debentures |
|----------------------------|----------------------|------------------------|------------------------------|-----------------------------------|
| 1.00 | 50HERTZ | | 4,44,444 | |
| | iLAB Technology | 5,55,556 | | |
| 13.50 | 50HERTZ | | 60,00,000 | |
| | iLAB Technology | 75,00,000 | | |
| 6.50 | iLAB Technology | | | 65,00,000 |
| 21.00 | | 80,55,556 | 64,44,444 | 65,00,000 |

- 3.10 Post approval of the Resolution Plan, a Steering Committee to be appointed which shall comprise of two representatives from financial creditors, two representatives from resolution applicant and resolution professional. All the decisions of Board of Directors shall be taken by Steering Committee, which will be responsible for management of affairs of the Corporate Debtor. Expenses of Steering Committee shall be paid out of internal accruals and if there will be any shortfall, it shall be infused by iLab Technology.
- 3.11 Post approval of the Resolution Plan, the constitutional documents of the Corporate Debtor shall stand amended. Steering Committee to submit the application to the Central Government for conversion of the Corporate Debtor / Demerged Corporate Debtor from public limited company to private limited company. Resolution Applicant shall obtain the required approval within one year from the date of approval of resolution plan by this Tribunal.
- 3.12 The Resolution Plan provides for tax-compliant demerger of Corporate Debtor on the Effective Date. There will be release of charge of financial creditors of Corporate Debtor




on 10MW hydro plants and movable assets related to hydro business. 10MW hydro plants and movable assets, hydro business and term loan of Rs. 54 crores restructured by Axis Bank will be demerged to Resulting Company and remaining assets comprises of investment in shares of downstream companies will continue to vest with Demerged Corporate Debtor. On the Effective Date, Resulting Company will issue shares to shareholders of Demerged Corporate Debtor as follows:

| Resolution Applicant | Class AA Equity Shares | Redeemable Preference Shares |
|----------------------|------------------------|------------------------------|
| 50HERTZ | 26,66,667 | |
| iLAB Technology | | 33,33,333 |
| | 26,66,667 | 33,33,333 |

- 3.13 The Steering Committee shall be replaced by Monitoring Committee on the Effective Date. There shall be a separate Monitoring Committee for Resulting Company. Monitoring Committee will comprise of one representative from Axis Bank, one representative from resolution applicant and resolution professional. Monitoring Committee will be responsible for coordination amongst stakeholders, representation to authorities in respect of challenges arising from implementation of resolution plan, ensuring compliance with resolution plan. Existing Board of Directors will be replaced by new Board of Directors. JRAs' will have a right to appoint key managerial personnel and change auditors. Expenses of Monitoring Committee shall be paid out of internal accruals and if there will be any




shortfall, it shall be infused by Resolution Applicants. The term of Monitoring Committee of Demerged Corporate Debtor will be 2 years from the Effective Date. The term of Monitoring Committee of Resulting Company will be 5 years from the Effective Date.

- 3.14 That Joint Resolution Applicants have declared that (i) Resolution plan does not contravene any of the provisions of the law for the time being in force (ii) Resolution plan has a statement describing the manner in which it has dealt with interests of all stakeholders (iii) They or any of its related parties have not failed to implement or have not contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.
- 3.15 The resolution plan provides that accumulated losses as well as unabsorbed depreciation shall migrate from the Corporate Debtor to the resulting company carrying hydro Business pursuant to the tax compliant demerger. Section 79(2) of Income Tax Act, 1961 provides that provisions of section 79(1) will not apply in case change in the shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016 after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.
- 3.16 The COC has complied with requirement of Regulation 39B and 39C of CIRP Regulations and is of the following view:
- (i) Value of liquid assets available are much more than best estimate of liquidation costs. Hence, there is no



money upon deposit of upfront amount of Rs. 21 crores in the escrow account by Joint Resolution Applicants.

- 3.20. In the light of above facts, the Applicant prayed this Tribunal to approve the Resolution Plan under Section 31 of the Code which has been approved by the CoC.

4. **REPLY BY RESPONDENT/IT DEPARTMENT**

It is stated by the IT Department / Respondent herein that the Department was unaware of the CIRP proceedings against the Corporate Debtor and on gaining knowledge of CIRP/liquidation, the Department filed its claim in Form-B vide letter dated 21.02.2020 followed by a revised claim vide letter dated 21.05.2020. It is stated that the Corporate Debtor owe a sum of Rs. 11,31,19,598/- towards tax arrears. The Respondent further contended that allocation of Rs. 1 crore towards discharge of all the operational creditors including CIRP costs in the Resolution Plan is very meagre and insufficient to meet the ends of justice and sought directions to Resolution Professional to take into account the tax arrears payable to the Department by the Corporate Debtor, while approving the Resolution Plan. Except for the above, the Respondent has no other objection to the reliefs sought by the Resolution Professional.

5. **FINDINGS**

- 5.1 We have heard the Counsel for Resolution Professional. This Application is filed under Section 31 (1) of Insolvency & Bankruptcy Code, 2016 (herein after referred to as "CODE") read with Regulation 39(4) of CIRP Regulations, for approval of the Resolution Plan submitted by Joint

need to consider the plan providing for contribution for meeting liquidation cost.

(ii) The sale of Corporate Debtor along with hydro generation business as a going concern will fetch better price and should be sold accordingly. The balance assets, which are relating to the investment business should be sold in piecemeal.

3.17 The COC has complied with requirement of Regulation 39D of CIRP Regulations and has approved the following resolution through e voting with 75.2% votes in favour:

*“**RESOLVE THAT**, in the event an order for liquidation of the Corporate Debtor under section 33 is passed by Hon’ble National Company Law Tribunal, Liquidator will be entitled to a fee at the same rate as the resolution professional was entitled to during the corporate insolvency resolution process, for the period of compromise or arrangement under section 230 of the Companies Act, 2013 and for a fee equivalent to 80% of chart rates provided under Regulation 4(2)(b) for the balance period.”*

3.18 That Compliance Certificate of the Resolution Professional as prescribed under Regulation 39(4) of CIRP Regulations in Form-H has been annexed and marked as **Annexure A-12**.

3.19 The Joint Resolution Applicants have submitted performance bank guarantee of Rs. 15 crores in the form of bank guarantees. Copy of the bank guarantee has been annexed and marked as **Annexure A-13 (colly)**. The said performance bank guarantee is in addition to earnest money deposited at the time of submission of resolution plan and further insisted to release the PBG and earnest

Applicants **iLabs Hyderabad Technology Centre Private Limited (IHTC) and 50 Hertz Energy Private Limited (50HEPL) /Resolution Applicant”**).

- 5.2 The Learned Counsel for Applicant stated that, two Registered Valuers were appointed on 20.06.2019 to determine the fair value and liquidation value of the Corporate Debtor. The Fair value was fixed at Rs.196.92 crores and the Liquidation value at Rs.131.85 crores. In all, the Applicant conducted 16 CoC meetings. After granting extension of 90 days and exclusion of lockdown period during to Covid-19, the CIRP came to an end on 09.09.2020.
- 5.3 The Resolution Plan submitted by iLabs Hyderabad Technology Centre Private Limited (IHTC) and 50 Hertz Energy Private Limited (50HEPL) (“Resolution Applicant”) was approved by CoC with 81.6% voting in favour of it. The minutes of the 16th meeting of the COC held on 19.08.2020 is filed as Annexure-A-8 (colly).
- 5.4 The list of financial creditors of the Corporate Debtor, Lanco Thermal Power Limited, being members of the CoC and distribution of voting share among them is as under:

| Financial Creditor | Admitted Claims (Rs. Crores) | % Vote Share | Voting for Resolution Plan (Voted for / Dissented / Abstained) |
|---------------------------|-------------------------------------|---------------------|---|
| Andhra / Union Bank* | 3,874.68 | 11.6% | For |
| Axis Bank | 2,122.97 | 6.4% | for |
| Bank of Baroda | 886.99 | 2.7% | for |
| Bank of India | 1,699.61 | 5.0% | against |
| Canara Bank | 2,126.56 | 6.4% | for |
| Central Bank of India | 262.91 | 0.8% | for |
| Corporation / Union Bank* | 412.29 | 1.2% | for |
| ICICI Bank | 2,944.30 | 8.8% | for |




| | | | |
|--|------------------|---------------|-------------|
| IDBI Bank | 4,131.33 | 12.4% | against |
| IFCI Limited | 18.29 | 0.1% | abstained |
| Indian Overseas Bank | 2,585.21 | 7.8% | for |
| Indian Bank | 46.76 | 0.1% | abstained |
| Kotak Mahindra Bank | 124.91 | 0.4% | abstained |
| Lakshmi Vilas Bank | 156.02 | 0.5% | abstained |
| LIC of India | 1,181.69 | 3.5% | for |
| Oriental Bank of Commerce/ PNB* | 159.41 | 0.5% | for |
| Punjab & Sindh Bank | 380.46 | 1.1% | for |
| REC Limited | 6,228.36 | 18.7% | for |
| Union Bank of India | 397.58 | 1.2% | for |
| UCO Bank | 904.79 | 2.7% | for |
| United Bank of India / PNB* | 1,452.49 | 4.4% | for |
| | 33,331.03 | 100.0% | 81.6 |
| * Denotes the bank, where original bank got merged effective 01-04-2020. | | | |

5.5 The amounts provided for the stakeholders under the Resolution Plan is as under:

| Sl. No | Category of Stakeholder* | Amount in Rs. Crores | | | Amount Provided to Amount Claimed (%) |
|---|-------------------------------|----------------------|-----------------|---------------------------------|---------------------------------------|
| | | Amount Claimed | Amount Admitted | Amount Provided under the Plan# | |
| 1 | Secured Financial Creditors | 221.68 | 221.68 | 90.70 | 40.73% |
| 2 | Unsecured Financial Creditors | 33,236.48 | 33,109.35 | 44.30 | 0.13% |
| 3 | Operational Creditors* | | | 1.00 | |
| | Government | | | 0.00 | 0.00% |
| | Workmen | 0.00 | 0.00 | 0.00 | 0.00% |
| | Employees | 0.10 | 0.10 | 0.00 | 0.00% |
| | Suppliers** | 0.00 | 0.00 | 0.00 | 0.00% |
| | Related parties*** | 0.00 | 0.00 | 0.00 | 0.00% |
| 4 | Other debts and dues | 0.00 | 0.00 | 0.00 | 0.00% |
| Total Amount**** | | | | 136.00 | |
| * Rs. 1 crore has been allocated for payment to Non-financial creditors and for payment of litigation costs to be incurred by resolution professional post approval of resolution plan. | | | | | |





Suppliers – Rs. 17,400; *Related parties – Rs. 35,454

**** Total Amount includes deferred payment of Rs. 61 crores. Deferred Amount is payable in two equal annual instalments along with interest @ 10% per annum from Effective Date.

5.6 **Implementation of the Resolution Plan:-**

The implementation of the Resolution Plan is stated at Annexure-1 of the Resolution Plan. Term for implementation of the Resolution Plan is two years from the Effective Date for demerged Corporate Debtor and 5 years for the demerged resultant Company. It is at the discretion of the Monitoring Committee to extend the term of the Resolution Plan for effective implementation of the Resolution Plan.

5.7 The resolution plan which is submitted jointly by iLabs Hyderabad Technology Centre Private Limited (IHTC) and 50 Hertz Energy Private Limited (50HEPL) had met the eligibility criteria approved by the CoC. It is observed that IHTC shall hold 100% of the common equity shares and 50HEPL shall hold 100% of redeemable preference shares. Joint Resolution Applicants proposes to make payment for total amount of Rs. 136 crores. Out of Rs. 136 crores, Rs. 1 crore is earmarked for payment to Non-Financial Creditors and balance Rs. 135 crores for payment to Financial Creditors. It is further stated in the resolution plan that Rs. 1 crore shall be earmarked for payment of the CIRP costs and Operational creditors and that unpaid CIRP costs are proposed to be paid immediately after approval of the Resolution Plan by this Tribunal.

5.8 The Resolution Applicants proposes source of funds and payment to financial creditors as under:-



- (i) Upfront cash recovery of Rs. 13.5 crores. IHTC shall infuse Rs. 7.5 crores in the form of 75,00,000 Class AA shares and 50HEPL shall infuse Rs. 6 crores in the form of 60,00,000 Series AA RPS.
- (ii) IHTC shall infuse additional Rs. 6.5 crores upfront and the balance of Rs. 61 crores shall be paid in two annual instalments from the effective date with an interest rate of 10% per annum. This amount of Rs, 67.5 crores shall be infused by IHTC as Optionally Convertible Debentures (OCD).
- (iii) Axis Bank will restructure existing term loan of Rs. 54 crores on or before the Effective Date in the Resulting Company owned by 50HEPL or any nominated Company and 50HEPL shall make payment of Restructured Term Loan over a period of 5 years in equal quarterly instalments and with an interest rate of 10% per annum payable. 50HEPL would ensure that restructuring of the existing term loan of Rs. 54 crores is done by any other financial institutions in case Axis Bank decides not to restructure the existing term loan.

5.9 The Resolution Plan submitted by the Joint Resolution Applicants envisages the demerger of Hydro Business into the Resulting Company which means the Hydro Business will be carved out into a separate entity / Resulting Company which shall be controlled by 50HEPL. Subsequent to the Demerger of Hydro Business, existing term loan of Axis Bank will be replaced with Restructured



Term Loan and Rs. 54 crores to be paid to the Financial Creditors and 50HEPL to ensure Resultant Company makes timely repayment of the loan. The detailed Scheme of arrangement envisaging the demerger of Hydro Business of the Corporate Debtor is annexed as Annexure-5 to the Resolution Plan. The benefits of such Scheme of arrangement is mentioned at par (C) of Scheme of Arrangement. The term for implementation of the Resolution Plan would be two years from the effective date for demerged Corporate Debtor and 5 years for the demerged resultant company. The resolution plan has a provision for conversion of the Corporate Debtor / demerged Corporate Debtor from Public Limited to Private Limited Company and Resolution Applicants to obtain such approval from the Central Government within one year from the date of approval of the Resolution plan by this Tribunal.

- 5.10 The Resolution Professional filed Form-H, which is annexed and marked as Anneuxre-A-12 and further certified that the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016, the Insolvency and Bankruptcy Board of India)Insolvency Resolution Process for Corporate Persons (Regulations, 2016)and does not contravene any of the provisions of the law for the timebeing in force.
- 5.11 We perused the Performance Bank Guarantee of Rs. 15 crores obtained from the Joint Resolution Applicants. Copy of which is annexed and marked as ANNEXURE-13




(colly). The same is to be renewed from time to time to the satisfaction of the monitoring / steering committee.

5.12 It is mentioned in Form-H that the Resolution Applicant submitted an affidavit in terms of section 30 [1] of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are stated to be in order.

5.13 The Resolution Applicant proposes to appoint steering Committee for management of the affairs of the Corporate Debtor in terms of Section 30 (2) (d). The Plan also provides for the implementation and supervision of the Resolution Plan. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force. The Resolution Plan is in compliance of Regulation 38 of the Regulations.

- a) The payment due to operational creditors will be made in priority over Financial Creditors (Regulation 38 (1))
- b) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38(1A)).
- c) Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of his related party has either failed or contributed to the failure of the implementation of any other approved Resolution Plan (Regulation 38(1B)).





5.14. For better appreciation we refer to para 67 of the Judgement of Hon'ble Supreme Court in the matter of ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors (MANU/SC/1577/2019)***, which is as under:-

“. 67: A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by the successful resolution applicant.

5.15. In view of the above ruling of Hon'ble Apex Court, the Resolution Applicant takes over the Corporate Debtor with all its assets and liabilities as specified in the Resolution Plan subject to orders passed herein. The Resolution Plan has been approved by the CoC 07.09.2020 with 81.6% in favour of it and

5.16. ***In K. Sashidhar v. Indian Overseas Bank & Others (in Civil Appeal No. 10673/2018)*** the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per Section 30 (6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority. On receipt of such proposal, the Adjudicating Authority (NCLT) is required to satisfy itself that the resolution plan as approved by CoC meets the requirements specified in Section 30(2).

5.17. Further, the Hon'ble Court has further held at para 35 of the said judgement that ***the discretion of the***



adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements.

- 5.18. As held by Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta &Ors*** "the limited judicial review available to AA has to be within the four corners of section 30(2) of the Code. Such review can in no circumstance trespass upon a business decision of the majority of the CoC. As such the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved as held in para 42 of the said judgement.
- 5.19 In the light of above and settled position of law, the instant Resolution Plan meets the requirements of Section 30 (2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same deserves favourable consideration and accordingly IA No. 839/2020 is allowed with the following directions.
- 5.20. The Applicant/Resolution Professional has submitted that, the Resolution Applicant has sought certain reliefs and



concessions in the Resolution Plan as are mentioned in Annexure-2 (other considerations) of the Resolution Plan annexed to the application. We are however, not inclined to grant such concessions or waivers. The Resolution Applicant needs to approach the authorities concerned for any reliefs/ waivers and permits, if required, and the same will be considered by the concerned authorities in accordance with law.

ORDER

6. As a sequel to the above, the, Resolution plan dated 12.08.2020 and letter of amendment dated 21.08.2020 with Scheme of arrangement as submitted by iLabs Hyderabad Technology Centre Private Limited (IHTC) and 50 Hertz Energy Private Limited (50HEPL) ("Joint Resolution Applicant") which is approved by members of CoC with 81.60% votes stands approved as per Section 31 (1) of the Code.
7. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned. The Corporate Debtor has to approach the authorities concerned for such reliefs and we trust the authorities concerned will do the needful.
8. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed



with the Registrar of Companies (RoC) Hyderabad for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.

9. Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to in para 3 (B) supra.
10. The moratorium under Section 14 of the Code shall cease to have effect from this date.
11. The Applicant and Monitoring Committee shall supervise the implementation of the Resolution Plan
12. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this order for information.
13. The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.
14. The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and to IBBI.


(VEERA BRAHMA RAO AREKAPUDI)
MEMBER (TECHNICAL)


(BHASKARA PANTULA MOHAN)
MEMBER (JUDICIAL)

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