



SL. No.3

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 19.06.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO	IA(IBC)/1307/2022, IA (IBC)/1888/2023 in CP(IB) No.296/7/HDB/2018
NAME OF THE COMPANY	Lanco Babandh Power Ltd
NAME OF THE PETITIONER(S)	ICICI Bank Ltd
NAME OF THE RESPONDENT(S)	Lanco Babandh Power Ltd
UNDER SECTION	7 of IBC

ORDER

IA(IBC)/1307/2022

Orders pronounced, recorded vide separate sheets. In the result, this application is dismissed with costs.

IA (IBC)/1888/2023

Orders pronounced, recorded vide separate sheets. In the result, this application is dismissed with costs.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)



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

**IA No 1888/2023 in
CP (IB) No. 296/HDB/2018**

*Under Section 60(5) of Insolvency Bankruptcy Code, 2016
read with rule 11 of NCLT Rules, 2016*

In the matter of M/s.Lanco Babandh Power Limited

Between:

M/s.Jindal Steel and Power Limited,
Through Prakhar Garg, Deputy General Manager,
Jindal Steel and Power Limited
Having its address at:
Jindal Center, 12 Bhikaji Cama Place,
New Delhi – 110 066.

..... Applicant

AND

Mr.Sanjay Gupta,
Liquidator, M/s.Lanco Babandh Power Limited,
Having its address at:
E- 10A, Kailash Colony, New Delhi - 110048.

.....Respondent /Liquidator

Date of Order: 19.06.2024

Coram:

Hon'ble Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Hon'ble Sri Sanjay Puri, Hon'ble Member (Technical)

Counsels:

For Petitioner : Ms.Shalya Agarwal, Counsel
For Respondent :

PER: Rajeev Bharadwaj (Judicial Member)



Date of order: 19.06.2024

ORDER

1. The present application has been filed by M/s Jindal Steel and Power Limited (“**Applicant/ Successful Bidder**”) seeking to direct the Liquidator to refund the EMD amounting to INR 2.5 Crore deposited by the Applicant for the auction Block-C assets along with the applicable interest.

2. **Case of Applicant:**

- i. The Corporate Insolvency Resolution Process (“**CIRP**”) under section 7 of IBC was initiated against the Corporate Debtor (“**CD**”) vide order dated 29.08.2018. Subsequently vide order dated 27.11.2019 order for initiation of liquidation proceedings was passed and Mr. Sanjay Gupta was appointed as Liquidator. Thus, the moratorium period declared u/s 14 of the Code ceased to have effect w.e.f 27.11.2019.
- ii. The Liquidator by public announcement dated 29.07.2021 invited bids for e-auction of assets of the CD. The date of e- auction was fixed as 27.08.2021. The Applicant had bid for Block-C assets of the CD as mentioned in the e-auction document and deposited the EMD amounting to INR 2.50 Crores (“**ANNEXURE-1**”).
- iii. On 30.08.2021 the Liquidator informed that the Applicant emerged as successful HI bidder for Block- C assets of the CD and requested the Applicant to deposit 5% of the bid amount by 01.09.2021.
- iv. The Applicant issued an e-mail dated 31.08.2021 to the Liquidator stating that the Block-C assets are under litigation as these are withheld by the Customs Authority and requested the Liquidator to update regarding the status of litigation.



- v. It was also requested by vide e-mail dated 31.08.202 that in the meantime the payment schedule as mentioned in the e-auction document be waived/delayed till an order is passed on the pending application by this Authority. The Liquidator vide e-mail dated 01.09.2021, supplied to the Applicant a copy of the application (IA 939/2020) filed before this Authority.
- vi. It is claimed that after the perusal of the application, the Applicant came to know that the Liquidator exchanged letter/emails dated 17.02.2020, March 09.03.2020 and 13.03.2020 with the Customs Authority, but assets are yet to be released to the Liquidator.
- vii. Thereafter on October 7, 2021 the Applicant filed IA 578/2021 in CP(B) 296 of 2018 seeking deferment of balance sale consideration till an NOC is issued on the Block-C assets by the Customs Authority. Then vide order dated 22.10.2021 in IA 578/ 2021, this Authority directed that that no coercive action be taken till further orders.
- viii. Finally, vide order dated 19.10.2022 in IA 578/2021, the Applicant was directed to deposit the balance sale consideration in a period of 30 days. Then upon the Applicant's filing of IA 1307/2022 seeking to suspend the 30 days period for depositing money till the final disposal of I.A. No. 939 of 2020, this Authority vide its order dated 15.11.2022 directed the Liquidator not to forfeit the EMD deposited by the Applicant. This order was further extended until further order.



- ix. The IA 939/2020 was also disposed of vide order On 29.03.2023 with directions to the Customs and Port Authorities to release the assets of the CD without insisting for filing the Installation Certificate, reconciliation statement, final payment certificate etc. or a payment of customs duty within 30 days from the date of the order. The Customs Authority was also directed to issue NOC for sale of goods so that the Liquidator can subsequently conduct sale of the assets in accordance with the provisions of the IBC.
- x. On 24.07.2023 Customs Authority, Paradip Port issued 'No Objection Letter' ("NOC") to Paradip Port Trust (Custodian) to release the assets of the of the CD. When the Customs and Port Authorities did not release the assets, the Liquidator filed Contempt Petition (IB) 16 of 2023 on 26.07.2023 against Customs/Port Authorities for not complying with order dated 29.03.2023. The Contempt Petition filed by the Liquidator is pending adjudication before this Authority.
- xi. Therefore, Block C assets of the CD as mentioned in the e-auction document are still in custody and possession of the Customs / Port Authorities despite the order dated March 29, 2023 passed by this Authority in IA 939/2020 and it has been over two years since auction and the Liquidator has completely failed in making the goods available to the Applicant.
- xii. The auctioned assets in question being plant and machinery whose value is more susceptible to change in technology and therefore the possession of such assets should have been transferred expeditiously



by the Custom / Port Authorities. Further, in light of the fact, that significant period of time has elapsed since the deposit of the EMD by the Applicant, there is no clarity regarding the working condition of the said machinery.

- xiii. It is claimed that the Applicant having deposited the EMD under a reasonable belief that the possession of the said assets will be given in a fair, just and reasonable period of time. Further, it is claimed that the Applicant has been put in an unjust and disadvantageous position as the Applicant neither has access to the assets nor the amount deposited by them which violates the commercial interest of the Applicant as it impairs them from using the money deposited elsewhere as the same is stuck with the Liquidator since August 2021.

3. **Case of Respondent:**

- i. It is submitted that it is a matter of fact and record the Liquidator has made several efforts through emails and face-to-face meetings to secure the release of assets held by the Port and Customs Authority prior to the sale of Block C assets. Since no positive response was received, the Liquidator filed application bearing IA No. 939/2020 before this Authority seeking release of assets, which was eventually allowed in favor of the Liquidator and the said authorities were directed to release the assets to the Liquidator. However, as the said authorities despite knowledge of same failed to comply with the said order, the Liquidator filed a contempt petition.



- ii. It is further submitted that the Paradip Port Authority, challenging the order dated 29.03.2023 in IA No. 939/2020 preferred an Appeal before the Hon'ble NCLAT, Chennai Bench bearing Company Appeal (AT) (CH) (Ins) No. 345 of 2023 and the same was dismissed as withdrawn by the Hon'ble NCLAT vide its order dated 22.11.2023.
- iii. Despite these legal proceedings, the said Authorities have failed to release the assets to the Liquidator. The Liquidator in good faith, has exhaustively pursued all available remedies and the inability to physically hand over the assets is solely attributable to the actions of the Port and Customs Authorities. Furthermore, in case the EMD of Rs. 2.5 Crores is refunded and the Applicant fails to make the remaining sale consideration payment as directed by this Authority vide order dated 19.10.2022 in IA No. 578 of 2022, the entire auction process shall stand terminated after more than 2 years.
- iv. It is submitted that that while bidding for the Block-C assets of the CD, the Applicant had unconditionally accepted the terms of E-auction process document and deposited the requisite EMD amount of Rs.2.50 Crores. The e-auction Document clearly stated that "*The custody of plant and machinery with respect to Block C and Block D shall only be given to the successful bidder after release of assets by the port authorities, for which; proceedings are ongoing before Hon'ble NCLT, Hyderabad Bench.*" Hence, the Applicant had complete knowledge of the pending legal proceedings against the Block C assets and that a reasonable time may be taken for securing its possession.



- v. The Applicant had undertaken to abide by the terms of the e-auction document and Letter of Intent unconditionally. It is submitted that the present application has been filed only to delay the auction proceedings and gain more time to pay the pending amount without any basis. However, as the said assets of CD remained in custody of the Port and Customs Authority, the Applicant till date has refrained from making balance sale consideration to the Liquidator. Evidently due to the non-payment of the Rs. 58,87,48,000/- (**“Balance Sale Consideration”**) the stakeholders of the CD have remained aggrieved.
 - vi. In nutshell, it is submitted that as per the terms and conditions of the e-auction, the custody of the assets sold was supposed to be given to the Applicant, subject to the release of assets by said Authorities and the final adjudication of the application bearing I.A. No. 939 of 2020.
- 4. Heard both the counsels and perused the records submitted
 - 5. The Applicant is seeking to inter alia direct the Liquidator to refund the EMD amount of INR 2.5 Crore deposited by the Applicant in accordance with the e-auction document for the auction Block-C assets along with the applicable interest.
 - 6. It is an admitted fact that the Liquidator has conducted an e-auction on 27.08.2021 pursuant to which the Applicant has deposited Rs. 2.5 Crore as EMD and it emerged as successful highest bidder for Block-C Assets. It is



pertinent to note that the e-auction document clearly mentioned that the possession of plant and machinery with respect to Block C and Block D shall only be given to the successful bidder after release of assets by the port authorities, for which proceedings are ongoing before this Authority. The relevant part is extracted below:

“The custody of plant and machinery with respect to Block C and Block D shall only be given to the successful bidder after release of assets by the port authorities, for which; proceedings are ongoing before Hon'ble NCLT, Hyderabad Bench”

7. Perusal of the aforesaid condition makes it clear that before giving the bid the Applicant was aware about the pending litigations. For avoiding immediate payment, the Applicant filed IA 578/2021, but vide order dated 19.10.2022 the Applicant was directed to make entire payment within 30 days and in default, the Liquidator was given the right to forfeit the EMD.
8. The I.A No. 939/2020 for getting the possession of the assets was also allowed vide order dated 29.03.2023 and when the Customs/Port Authorities failed to release the assets, contempt petition was filed, wherein the officers of the Customs/Port Authority have been convicted.
9. Our aforesaid discussion makes it abundantly clear that the Applicant is making one excuse after another not to make payment. Number of applications have been filed to stall the liquidation process. In IA 578/2021, the Applicant was directed to deposit the remaining sale consideration within 30 days. Not to speak of paying the remaining sale consideration and challenging the said order, the Applicant has taken contradictory pleas by pleading in IA 1307 to extend the period for payment till the disposal of the IA No. 939/2020 or in the alternative to allow deposit of the amount in the



Date of order: 19.06.2024

escrow account, but in the present IA, the Applicant wants return of the EMD. This shows that the Applicant has taken this Authority for granted by filing frivolous applications to delay the process of liquidation. Hence, this application is dismissed with costs of Rs. 5 lakhs to be deposited in the Bharat Kosh Fund.

Sd/-
(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-
(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)



SL. No.7

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 19.06.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/1255/2024 in CP(IB) No.296/7/HDB/2018
NAME OF THE COMPANY	Lanco Babandh Power Ltd
NAME OF THE PETITIONER(S)	ICICI Bank Ltd
NAME OF THE RESPONDENT(S)	Lanco Babandh Power Ltd
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/1255/2024

Present: Ld. Counsel Ms. Shalya Agarwal for the Liquidator.

This application has been moved for the extension of liquidation period by another six months w.e.f., 05.06.2024. Keeping in view the submissions made in the application, the liquidation period is extended by 6 months. Accordingly, this application is allowed and disposed of.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)