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

C.P. (IB) NO.111/7/HDB/2017

**U/s 7 of the IBC, 2016 R/W Rule 4 of the I&B
(Application to Adjudicating Authority) Rules, 2016**

In the matter of

IDBI Bank Limited,
having its registered office at
IDBI Tower, WTC Complex,
Cuffe Parade, Colaba, Mumbai – 400005,
Maharashtra represented by its
signatory, Sri V. Vijayadheer, General Manager
s/o. Late Sri Manikyam, aged 51 years,
resident of Mumbai

... APPLICANT

Versus

Lanco Infratech Limited
having its registered office at
Plot No. 4, Software Units Layout,
HITEC City, Madhapur,
Hyderabad – 500081
Telangana represented by its
Managing Director

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

... RESPONDENT

CORAM

**Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)**

Parties present

Counsel for the Petitioner:

Shri Animesh Bisht, Dhanunjay Kumar, Megha
Sharma, Divya Datla, 1/b Cyril Amarchand
Mangaldas.

Counsel for the Respondent:

Shri C.V.Mohan Reddy, Senior Advocate with
Avinash Desai, Pooja Mahajan, Satya Siva
Darshan, Amaljeet Jaiswal.

Order dated: 07.08.2017

**Per: Rajeswara Rao Vittanala, Member (J)
Ravikumar Duraisamy, Member (T)**



ORDER

1. The Company petition bearing C.P (IB) No. 111/7/HDB OF 2017 is filed by IDBI Bank Limited (herein after referred to as Applicant/ Petitioner/Financial Creditor), against Lanco Infratech Limited (herein after referred to as Respondent/Corporate Debtor) under section 7 of Insolvency and Bankruptcy Code 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by seeking to initiate a Corporate Insolvency Resolution Process(CIRP) by admitting the application under Section 7(5)(a) of IBC, 2016; to appoint Sri Vijaykumar V. Iyer as the interim resolution professional in terms of section 16 of the Code; to declare a moratorium in terms of Section 13 and 14 of the Code; to cause public announcement of the Corporate Insolvency Resolution Process be made in terms of Section 13 and 15 of the Code; with other consequential reliefs.

2. Brief facts, which are stated in the application/petition and relevant to adjudicate the issue in question, are as follows.
 - a) IDBI Bank Limited (Financial Creditor) was incorporated on September 2004, and thus it is a Company within meaning of the Companies Act 2013, and also a Banking company within the meaning of Banking Regulation Act, 1949. Its registered office is situated at IDBI Tower, WTC Complex, Cuffe Parade, Colaba, Mumbai-400005, Maharashtra, India.

 - b) Lanco Infratech Limited (Respondent/Corporate Debtor) is an existing Company incorporated on March 26, 1993, and its registered office is situated at Plot No.4, Software Units Layout, Hitech City, Madhapur, Hyderabad - 500081, in the State of Telangana, India. The authorized share capital of the Corporate Debtor is Rs.12000,00,00,000/- (Rupees Twelve Thousand Crores Only), having a paid up share capital of Rs.331,40,63,857/- (Rupees Three Hundred Thirty one Crores Forty Lakhs Sixty Three Thousand Eight Hundred and Fifty Seven Only).

- c) IDBI had granted certain working capital facilities and term loans to the Corporate Debtor from time to time, which were restructured on the terms and conditions as set out under the Master Restructuring Agreement dated December 27, 2013 (“**Original MRA**”) entered into inter alia, the Corporate Debtor, IDBI and certain other lenders (collectively, the “**JLF Lenders**”).
- d) The Original MRA was amended by an Amendment Agreement to the Master Restructuring Agreement dated June 28, 2014 (“**First Amendment Agreement**”) and a Second Amendment Agreement to the Master Restructuring Agreement dated July 29, 2015 (“**Second Amendment Agreement**”, and together with the Original MRA and the First Amendment Agreement, the “**MRA**”).
- e) The Original MRA contemplated the restructuring of various credit facilities granted to the Corporate Debtor by the JLF Lenders (as set out in the MRA), which includes credit facilities granted by IDBI.
- f) Under the MRA, the total financial exposure of IDBI to the Corporate Debtor is as follows:
- i) Working Capital Term Loan I of Rs. 84,85,00,000 (Rupees Eighty Four Crores and Eighty Five Lakhs Only), details of which are set out in Part A of Schedule IIA to the MRA (hereinafter referred to as the “**WCTL I**”);
 - ii) Working Capital Facilities – Fund Based of Rs.90,15,00,000 (Rupees Ninety Crores and Fifteen Lakhs Only), detailed of which are set out in Part A of Schedule IIA to the MRA (hereinafter referred to as the “**WC Fund Based Facility**”);
 - iii) Working Capital Term Loan II of Rs.71,54,00,000 (Rupees Seventy One Crores and Fifty Four Lakhs Only), details of which are set out in Part B of Schedule IIA to the MRA (hereinafter referred to as the “**WCTL II**”)
 - iv) Working Capital Facilities – Non Fund Based of Rs.593,35,00,000 (Rupees Five Hundred Ninety Three Crores Thirty Five Lakhs Only)

comprising of bank guarantee and letter of credit limits and additional working capital facility – non fund based, details of which are set out in Schedule VII to the MRA (hereinafter referred to as the “**WC Non Fund Based Facility**”);

- v) Restructured term loan of Rs.66,68,00,000/- (Rupees Sixty Six Crores and Sixty Eight Lakhs Only), details of which are set out in Part C of Schedule IIA to the MRA (hereinafter referred to as the “**Restructured Term Loan**”);
 - vi) Funded Interest Term Loan Facility of Rs.49,80,00,000/- (Rupees Forty Crores and Eighty Lakhs Only), details of which are set out in Part D of Schedule IIA to the MRA (hereinafter referred to as the “**FITL Facility**”); and
 - vii) Priority Loan of Rs.277,83,00,000/- (Rupees Two Hundred Seventy Seven Crores and Eighty Three Lakhs Only), details of which are set out in Schedule V to the MRA (hereinafter referred to as the “**Priority Loan**”).
- g) The total debt sanctioned by IDBI Bank Limited to the Corporate Debtor under the MRA Facilities is Rs. 1234,20,00,000 (Rupees One Thousand Two Hundred Thirty Four Crores Twenty Lakhs Only) and the total debt disbursed in relation to the MRA Facilities is Rs.1234,13,00,000/- (Rupees One Thousand Two Hundred Thirty Four Crores Thirteen Lakhs Only).
- h) In addition to the aforesaid, IDBI has also granted the Corporate Debtor, a long term working capital term loan of Rs. 170,30,00,000 (Rupees One Hundred Seventy Crores and Thirty Lakhs Only) had vide loan agreement dated November 07, 2015 (“**LTWC Term Loan**”). (The WCTL I, the WC Fund Based Facility, the WCTL II, the WC Non Fund Based Facility, the Restructured Term Loan, the FITL Facility and the Priority Loan will hereinafter be referred to as “**MRA Facilities**”). The MRA Facilities and the LTWC Term Loan will hereinafter be collectively referred to as “**IDBI Facilities**”.
- i) The Financial Creditor has also issued the following guarantees (“**Guarantees**”):

- i. Corporate Guarantee dated September 06, 2010, in relation to the obligations of Lanco Babandh Power Limited, in favor of IDBI Trusteeship Services Limited (the security trustee) on behalf of *inter alia* IDBI;
 - ii. Corporate guarantee dated June 25, 2015, in relation to the obligations of Lanco Babandh Power Limited, in favour of IDBI Trusteeship Services Limited (the security trustee) on behalf of *inter alia* IDBI;
 - iii. Corporate guarantee dated June 30, 2015, in relation to the obligations of Lanco Amarkantak Power Limited, in favour of Power Finance Corporation Limited (the security agent) on behalf of *inter alia* IDBI; and
 - iv. Corporate guarantee dated January 19, 2016, in relation to the obligations of LancoVidarbha Thermal Power Limited, in favour of PNB Investment Services Limited (the security trustee) on behalf of *inter alia* IDBI.
- j) It is stated that in consideration of the financial assistance granted to the Corporate Debtor as mentioned above, the Corporate Debtor has executed several mortgages deeds in respect of several immovable and movable properties by depositing of title deeds, as detailed in the company petition. In addition to the above, the Corporate Debtor has given unconditional, continuing and irrevocable corporate guarantee to pay the amount by the company in the event of the default on part of the company to repay/discharge the amounts payable under MRA facilities dated December 31, 2013. Sri L. Madhusudan Rao and Smt. Ramalaxmamma has also executed unconditional, continuing and irrevocable personal guarantee to repay the amount due with respect of to MRA facilities in the event of failure on the part of Corporate Debtor to pay the amounts due there under vide deed dated 31.12.2013.
- k) The Corporate Debtor has also made the following share pledges of the company ;
- I. Share Pledge**
- a) Pledge over 25,93,35,059 (Twenty Five Crores Ninety Three Lakhs Thirty Five Thousand Fifty Nine) unencumbered equity shares of the

Company/ Corporate Debtor held by Mr. L. Madhusudhan Rao and Lanco Group Limited, created on June 27, 2014;

- b) Pledge over 11,67,81,798 (Eleven Crores Sixty Seven Lakhs Eighty One Thousand Seven Hundred Ninety Eight) unencumbered equity shares of the Diwakar Solar Projects Limited held by the Company/Corporate Debtor, created on November 24, 2014;
- c) Pledge over 3,19,33,200 (Three Crores Nineteen Lakhs Thirty Three Thousand Two Hundred) unencumbered equity shares of Lanco Mandakini Hydro Energy Private Limited held by the Company/ Corporate Debtor and Lanco Hydro Power Limited, created on November 24, 2014;
- d) Pledge over 35,31,00,000 (Thirty Five Crores Thirty One Lakhs) unencumbered preference shares and 42,10,16,000 (Forty Two Crores Ten Lakhs Sixteen Thousand) unencumbered equity shares of Lanco Anpara Power Limited held by Lanco Thermal Power Limited, created on November 24, 2014;
- e) Pledge over 34,53,10,301 (Thirty Four Crores Fifty Three lakhs Ten Thousand Three Hundred and One) unencumbered preference shares and 53,39,124 (Fifty Three Lakhs Thirty Nine Thousand One Hundred and Twenty Four) unencumbered equity shares of Lanco Vidharbha Thermal Power Limited held by Lanco Thermal Power Limited, Charon Trading Private Limited, Phoebe Trading Power Limited and Regulus Power Private Limited, created on November 24, 2014;
- f) Pledge over 9,30,51,500 (Nine Crores Thirty Lakhs Fifty One Thousand and Five Hundred) unencumbered equity shares of Lanco Hoskote Highway Limited held by the Company/ Corporate Debtor and Avior Power Private Limited, created on November 24, 2014;
- g) Pledge over 8,60,24,800 (Eight Crores Sixty Lakhs Twenty Four Thousand and Eight Hundred) unencumbered equity shares of Lanco Devihalli Highway Limited held by the Company/ Corporate Debtor and Avior Power Private Limited, created on November 24, 2014;
- h) Pledge over 2,00,00,000 (Two Crores) unencumbered preference shares and 22,19,99,900 (Twenty Two Crores Nineteen Lakhs Ninety Nine Thousand and Nine Hundred) unencumbered equity shares of Lanco

Hills Technology Park Private Limited held by the Company/ Corporate Debtor, created on November 24, 2014;

- i) Pledge over 7,99,17,000 (Seven Crores Ninety Nine Lakhs Seventeen Thousand) unencumbered equity shares of Lanco Amarkantak Power Limited held by the Lanco Thermal Power Limited, created on November 24, 2014;
- j) Pledge over 91,25,000 (Ninety One Lakhs Twenty Five Thousand) unencumbered equity shares of the Company/ Corporate Debtor held by Lanco Group Limited, created on May 05, 2015;
- k) Pledge over 26,51,74,603 (Twenty Six Crores Fifty One Lakhs Seventy Four Thousand Six Hundred and Three) unencumbered equity shares of the Company/ Corporate Debtor held by Lanco Group Limited, created on July 28, 2016;

In addition to the aforesaid, the Restructured Term Loan is also secured by the following:

- (i) Pledge over 1,25,79,000 (One Crore Twenty Five Lakhs Seventy Nine Thousand) unencumbered equity shares of the Company/ Corporate Debtor held by Mr. L. Rajagopal and Lanco Group Limited, created on November 10, 2015; and
- (ii) Pledge over 31,17,000 (Thirty One Lakhs Seventeen Thousand) unencumbered equity shares of Lanco Thermal Power Limited held by Lanco Kondapalli Power Limited, created on November 17, 2015.

The particulars of various securities created for *inter alia* IDBI with respect to the LTWC Term Loan provided by it to the Corporate Debtor have been detailed below:

- (i) First *pari passu* charge by way of hypothecation of the Corporate Debtor's movables except assets under exclusive charge but including movable plant, machinery, machinery spares, tools and accessories, present and future created on November 07, 2015;
- (ii) Pledge over 1,25,79,000 (One Crore Twenty Five Lakhs Seventy Nine Thousand) unencumbered equity shares of the

Company/Corporate Debtor held by Mr. L. Rajagopal and Lanco Group Limited, created on November 10, 2015;

- (iii) Pledge over 31,17,000 (Thirty One Lakhs Seventeen Thousand) unencumbered equity shares of Lanco Thermal Power Limited held by Lanco Kondapalli Power Limited, created on November 17, 2015;
- (iv) Unconditional, absolute and irrevocable corporate guarantee of Lanco Group Limited *inter alia*, to pay the amounts payable by Company, in the event of default on part of Company to repay/ discharge the amounts payable under the LTWC Term Loan, dated November 07, 2015;
- (v) Unconditional, absolute and irrevocable corporate guarantee of Lanco Thermal Power Limited *inter alia*, to pay the amounts payable by Company, in the event of default on part of Company to repay/ discharge the amounts payable under the LTWC Term Loan, created on November 17, 2015;
- (vi) Unconditional, absolute and irrevocable personal guarantee of Mr. L. Madhusudhana Rao and Smt. L. Ramalaksamma to repay the amounts due with respect to LTWC Term Loan in the event of failure on part of Company to pay the amounts due thereunder, dated November 07, 2015.

l) It is stated that the securities mortgaged (except the corporate and personal guarantees) with the applicant as on 31.03.2016 is estimated approximately at Rs.10,504,00,00,000 (Rupees Ten Thousand Five Hundred Four Crores Only). In addition to the aforesaid, 1,25,79,000 (One Crore Twenty Five Lakhs Seventy Nine Thousand) unencumbered equity shares of the Company/ Corporate Debtor held by Mr. L. Rajagopal and Lanco Group Limited, with respect to which pledge has been created on November 10, 2015 have an estimated value of Rs.1,51,00,000 (Rupees One Crore and Fifty One Lakh) and the Ramabainagar Land has an estimated value of Rs. 230,00,00,000 (Rupees Two Hundred Thirty Crores Only).

m) The Corporate Debtor has failed and/or neglected to make payment of amounts due under the Facilities, when such amounts have become due and payable. As on June 15, 2017, there is an amount of Rs. 234,96,12,889 (Rupees Two Hundred Thirty Four Crores Ninety Six Lakhs Twelve Thousand Eight

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Hundred and Eighty Nine Only) which is due and payable by the Corporate Debtor to IDBI, particulars whereof are mentioned herein below:

- a) Working Capital Term Loan I
Principal – Rs.6,36,37,500
Interest – Rs.5,87,82,438
Total Rs.12,24,19,938/-
- b) Working Capital Facilities – Fund Based
Principal –Rs.1,15,51,81,239/-
Interest – Rs. 13,43,31,705/-
Total Rs.1,28,95,12,944/-

It is stated that the devolvement under Working Capital Facilities – Non Fund Based becomes a part of the Working Capital Facilities – Fund Based

- c) Working Capital Term Loan II
Principal –Rs. 5,36,55,000/-
Interest – Rs. 4,95,67,324/-
Total Rs.10,32,22,324/-
- d) Restructured Term Loan
Principal – Rs. 5,00,10,000/-
Interest – Rs. 4,61,47,556/-
Total Rs. 9,61,57,556/-
- e) Funded Interest Term Loan Facility
Principal – Rs.3,73,50,000/-
Interest – Rs.3,44,61,725/-
Total Rs.7,18,11,725/-
- f) Priority Loan
Principal – Rs.36,11,79,000/-
Interest – Rs.17,59,85,297/-
Total Rs.53,71,64,297/-
- g) Long Term Working Capital Term Loan
Principal – Nil
Interest – Rs. 12,93,24,105 /-
Total Rs. 12,93,24,105/-

Grand Total – Rs.2,34,96,12,889/-

n) In the above circumstances, the applicant/financial creditor is praying the Adjudicating Authority to initiate Insolvency resolution process and pass necessary order as prayed for.

3. Heard Shri Animesh Bisht, Dhanunjay Kumar, Megha Sharma, Divya Datla, 1/b Cyril Amarchand Mangaldas the learned Advocate for the petitioners; and Shri

C. V. Mohan Reddy, Senior Advocate with Avinash Desai, Pooja Mahajan, Satya Siva Darshan, Amaljeet Jaiswal, Counsels for the respondents. We have carefully perused all the pleadings made by both the parties along with material documents filed by the respective parties in support of their contentions.

4. Shri Animesh Bisht learned counsel for the applicant/financial creditor, while reiterating various Contentions/averments made in the application, has submitted that IDBI is eligible to file the present application as it qualifies as a Financial Creditor of the Corporate Debtor under IBC 2016 R/w rule 4 of I&B (application to Adjudicating Authority) Rules 2016.
5. He further stated that default has occurred in respect of IDBI facilities as detailed in the instant application. The application is complete and Shri Vijay Kumar Iyer, is fully qualified to be appointed as an Interim Insolvency Resolution Professional, in accordance with IBC 2016, and other extant rules and regulations made thereunder. And he has furnished a written communication dated 1.07.2017 by furnishing required statement stating that he is not disqualified to act as IRP and is capable of acting as IRP.
6. Shri Bisht has also relied upon the judgment dated 15.05.2017 passed by the Hon'ble NCLAT passed in Company Appeal (AT) (Insolvency) No. 1&2 of 2017, in the case of M/s Innovative Industries Ltd., Vs ICICI Bank & another in support of his case.

The Hon'ble Appellate Tribunal, after adverting to various decisions of the Hon'ble Supreme Court of India, and the extant provisions of IBC, has laid down the ratio to be followed by Adjudicating Authorities. The relevant paragraphs are at para 82 to 84, which are extracted below;

“82. As discussed in the previous paragraphs, for initiation of corporate resolution process by financial creditor under sub-section (4) of section 7 of the Code, 2016, the ‘Adjudicating Authority’ on receipt of application under sub-section (2) is required to ascertain existence of default from the records of information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3). Under Sub-Section 5 of Section 7, the ‘Adjudicating Authority’ is required to satisfy –

- (a) Whether a default has occurred;
- (b) Whether an application is complete ; and
- (c) Whether any disciplinary proceeding is pending against the proposed Insolvency Resolution Professional.

“83. Once it is satisfied it is required to admit the case but in case the application is incomplete application, the financial creditor is to be granted seven days’ time to complete the application. However, in a case where there is no default or defects cannot be rectified, or the record enclosed is misleading, the application has to be rejected.

“84. Beyond the aforesaid practice, the ‘adjudicating authority’ is not required to look into any other factor, including the question whether permission or consent has been obtained from one or other authority, including the JLF.

The learned counsel has also relied upon the common order dated 2nd August, 2017 passed by NCLT, Ahmedabad Bench, in Standard Chartered Bank Ltd. Vs Essar Steels.

7. The learned Counsel for the petitioner has also filed written submissions dated 27th July, 2017, by inter alia contending as follows;
- a) The Reserve Bank of India directed the IDBI to file the instant company petition and it was also authorized by joint lenders forum of LITL (“JLF”), in their meeting held on June 19, 2017.
 - b) In the present case, the Corporate Debtor/ LITL has defaulted in payment of interest in relation to the facilities advanced by IDBI (as detailed in the CIRP Application) on November 30, 2016 as evident from the statement of accounts in relation to these facilities
 - c) As per the Master Circular – Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances issued by the RBI dated July 01, 2015 (bearing number RBI/2015-16/101 DBR.No.BP.BC.2/21.04.048/2015-16, as amended from time to time, “**RBI Master Circular**”), a loan account becomes an NPA where the interest and/ or installment of principal remains overdue for a period of more than 90 days in respect of that loan. Any amount due to a bank under any credit facility is ‘overdue’ if it is not paid on the due date fixed by the bank. Further, cash credit facilities advanced will be classified as NPA if the

outstanding balance remains continuously in excess of the sanctioned limit/drawing power for a period of 90 days. Further, the entire account of the borrower has to be classified as NPA. Banks are required to categorize the NPAs into 'Substandard Assets', 'Doubtful Assets' or 'Loss Assets' on the basis of period for which the asset has remained NPA and realisability of dues.

- i) 'Substandard Asset' - An asset will be classified as a 'Substandard Asset' where it has remained an NPA for a period of less than or equal to 12 months.
 - ii) 'Doubtful Asset'- An asset will be classified as a 'Doubtful Asset' if it has remained in the substandard category for a period of 12 months.
 - iii) 'Loss Asset'- An asset will be classified as a 'Loss Asset' where loss has been identified by the bank or internal or external auditors or the RBI inspection but the amount has not been written off wholly and the asset is considered uncollectible.
 - iv) Classification of loan accounts of LITL by IDBI.The defaulted amounts under the facilities (defaulted on the date as mentioned in paragraph 3 above) advanced by IDBI to LITL have not been repaid till date. Accordingly, these facilities have been classified as doubtful by IDBI. This is evident from the CIBIL report in relation to LITL
 - v) Further, as per the Status Classification Report of LITL/ Corporate Debtor issued by Central Repository of Information on Large Credits, the account of LITL with IDBI has been classified as 'Doubtful Restructured' as on March 30, 2017.
8. The learned counsel for the petitioner, therefore, has strenuously argued that it is a fit case to admit, and pass necessary consequential orders as prayed for.
 9. Shri C.V. Mohan Reddy, the learned Senior Advocate for the respondent, has strongly opposed the instant application/petition by filing an elaborate reply dated 4th August,2017, by inter alia contending as follows;
 - i) The corporate guarantees that have been included in the para 1 of part IV of the application have not been enforced, and thus the liability of the

respondent is only contingent in nature, and has not crystallized into a “debt”, so inclusion of same in the total amount of debt is not correct.

- ii) They have also objected the proposal of the petitioner to appoint Vijay Kumar V. Iyer, as IRP as he is currently engaged in one and subsequently appointed as IRP in two more companies namely: Binani Cement Limited (Bank of Baroda V. Binani Cement Limited, CP (IB) No. 359/KB/2017, Order dated 25 July 2017) and Bhushan Steel Limited (State Bank of India V. Bhushan Steel CP No. (IB) No.-201 (PB)/2017, Order dated 26 July 2017). In support of their contention, they relied upon paragraph 22 of the Code of Conduct for Insolvency Professionals as provided in the First Schedule of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.
- iii) It is disputed the certificate provided by the applicant in respect of entries in its books as same is not in accordance with the Bankers’ Book Evidence Act 1891 (BBE Act.) As per Section 4 of the BBE Act, “Certified Copy” of any entry in a banker’s books shall in all legal proceedings be received as Prima Facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein. Certificate is required to be provided by principal accountant or bank manager of the Bank.
- iv) That LITL (Lanco Infratech Limited) is the flagship company of the Lanco group. Lanco group is in the business of Engineering, Procurement and Construction (EPC), Power, Infrastructure Development, Real Estate and Natural Resources. LITL with more than 25 years of experience is one of the largest private sector players in India in the field of power and infrastructure EPC and has experience in implementing large infrastructure projects in power, transmission, transportation and industrial sector through the EPC route. The Lanco group provides employment to more than 3400 employees and is involved in building large civil and urban infrastructure projects and thermal, hydro and solar power projects of national importance.

- v) The EPC business of LITL has executed orders worth more than Rs. 37,000 Crores till date, including both internal and external projects, LITL's total EPC order book stands at approximately Rs.15,000 Crores of which the internal projects constitute approximately 80%.
- vi) EPC for 3rd Party Developers: LITL has built power plants for third party developers like the 1200 MW Annupur Project of Hindustan Power and a 1980 MW project (BOP) of Mahagenco and is currently executing a 660 MW power project for Tamilnadu's TANGEDCO, adding up to 3840 MW. LITL is also executing some other infrastructure projects in transmission, roads, buildings, etc.
- vii) LITL has so far successfully completed the EPC and Balance plant of its large internal projects namely :
- (i) 2x300 MW coal based project by its SPV Lanco Amarkantak Power Limited (Phase I-Amarkantak) ;
 - (ii) 1200 MW by Udipi Power (which was subsequently sold to Adani Power) ;
 - (iii) 1200 MW coal based project by its SPV Lanco Anpara Power Limited;
 - (iv) 1466 MW gas based plant by Lanco Kondapally Power Limited ;
 - (v) 120 MW gas based plant by Lanco Tanjore Power Limited;
 - (vi) 70 MW hydro plant by Lanco Budhil (which was subsequently sold) ;
 - (vii) 10 MW hydro plant by Lanco Thermal Power Limited;
 - (viii) 10 MW hydro plant by Lanco Hydro Power Limited;
 - (ix) 4 (four) solar projects; and
 - (x) 1 (One) wind project. Therefore, so far, LITL has executed 13 power Projects, totaling a significant 4740 MW, which is only second to BHEL as a contractor in India.
- viii) LITL has 5 (five) under construction projects in the power section ("Under construction Projects").

- (i) 3 (three) large coal based power projects of 1320 MW each, which are being executed by LITL and developed through its SPVs Lanco Babandh Power Limited, Lanco Vidarbha Thermal Power Limited and Lanco Amarkantak Power Limited (Phase II); and
 - (ii) 2 (two) Hydro Power Projects totaling 576 MW, which are being executed by LITL and developed through its SPVs Lanco Teesta Hydro Power Limited (500 MW) and Lanco Mandakini Hydro Energy Private Limited (76 MW);
(Collectively, "Under construction SPVs").
- ix) LITL is therefore essentially a holding company with EPC assets (whose value is very low compared to the value of its holdings and investments in SPVs) and which derives majority of its consolidated revenue from the SPVs and from the contracts given by these SPVs. It is further stated that in order to reserve the issues placed by LITL and SPVs a steering committee of Lanco group considered a re-organization scheme for Lanco group in March 2016. However, there was no considerable progress in implementation of scheme due to various reasons. They have explained various problems being faced by Lanco groups. While the issue was pending consideration, the RBI has issued directions to initiate instant Corporate Insolvency Resolution Process under IBC.
- x) It is contended that Respondent/ Corporate Debtor is only holding company and EPC contractor for SPVs and others. So, Lanco has little value as it derives majority of its value from the investment it holds in the SPVs and EPC work it undertakes for its SPVs. Therefore, it is contended if under constructions SPVs are themselves stressed, the CIRP of LITL (petitioner herein) will not yield insolvency resolution of LITL, and it would lead to liquidation only. The liquidation of the petitioner would not benefit its stakeholders including the applicant itself. It is stated that initiating CIRP of petitioner company alone without simultaneous resolution of under construction SPVs would result in catastrophic impact on the under construction SPVs.
- xi) It is contended that the creditors of Respondent Company would suffer substantial losses if standalone resolution of LITL alone is taken. The

Respondent Company being a public listed company with a public holding of approximately at 30%, the impugned action of initiating insolvency would not only effect the promoter but also public at large. In the JLF meeting Shri L. Madhusudhan Rao, Chairman LITL (petitioner herein) agreed to extend cooperation for CIRP under NCLT.

- xii) The Corporate Debtor (LITL) addressed a letter 27 June 2017 to the Governor Reserve Bank of India by inter alia requesting to make an attempt by the lenders of LITL to simultaneously resolve the issues of LITL and under construction projects, failing which all the six group companies may refer to NCLT so that debt related issue of Lanco group can be resolved expeditiously and the same would be beneficial to the lenders also. Similar letter dated 27 June 2017 was also addressed to the Hon'ble Finance Minister, Govt. Of India, New Delhi.

10. Shri C.V. Mohan Reddy, the Learned Senior Advocate for the respondent, has strongly pleaded that IBC was enacted to facilitate a systematic and time bound resolution process for the companies. The intent of the Code is to push stakeholders towards formulation of a resolution plan that would enable the industry to survive but not push industries into liquidation. He further submits that the Adjudicating Authority should consider granting additional time to enable the lenders to decide whether resolution plan for the resolution of under construction SPVs can be undertaken outside the Code. It is also stated that if the lenders are unable to decide outside the code, the relevant SPVs /lenders may also be constrained to approach concerned adjudicating authorities. This Bench (Adjudicating Authority) is concerned authority for four out of five under construction SPVs. So, the applications/petitions if filed by other SPVs may also be admitted together with the instant petition by adjourning the instant case till other cases are filed

The learned Senior Advocate has also submitted that applicant may be directed to remove the Corporate Guarantees in question under total debt due and to direct to recommend another IRP otherthan the proposed IRP.

11. We have carefully considered all the pleadings of both the parties within the ambit of powers conferred on this Adjudicating Authority under various provisions made under IBC, 2016. As stated supra, the instant Company application/petition is filed

by Financial Creditor under section 7 of IBC 2016 read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016. As per section 7, a financial creditor either by itself or jointly with other financial creditor can file an application for initiation Corporate Insolvency Resolution Process (CIRP) against Corporate Debtor before concerned Adjudicating Authority, whenever a default has occurred. A Financial Creditor shall make an appropriate application in accordance with prescribed form and manner accompanying with prescribed fees. As per section 7 (5) of IBC, Adjudicating Authority may by an order admit an application if a default has occurred, the application made under sub section 2 is complete, and there is no disciplinary proceedings pending against proposed resolution professional. In this instant case, section 7(5)(a) is relevant as the respondent/corporate debtor has committed default and the application filed by the applicant/petitioner IDBI is complete.

As per the above section, there are three ingredients/primary conditions to be fulfilled for an admission of CIRP viz., an application in a prescribed format with prescribed fees is to be filed by a concerned party; such party shall furnish a name of Interim Resolution Professional, who should be free from any disciplinary proceedings; a default of debt in question has occurred.

12. As per Section 3 (12) of IBC 2016, Default means non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be. Whereas debt has been defined under section 3(11) of the Code, which says "Debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt. And the word 'Claim' is defined under Section 3(6), which reads as under: 'Claim' means_ a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, un-disputed, legal, equitable, secured or unsecured; b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, un-matured, disputed, un-disputed, secured or un-secured"
13. As stated supra, the Hon'ble NCLAT in the case of M/s Innoventive Industries Limited has reiterated the above requirements, and held that once default has occurred; application is complete; no disciplinary proceedings are pending against

proposed IRP, Adjudicating Authority, on its satisfactions of above is required to admit the case. Adjudicating Authority for the purposes of Insolvency and resolution liquidation for corporate persons is National Company Law Tribunal, constituted under section 408 of the Companies Act, 2013.

14. The IDBI Bank (the applicant herein) has passed a resolution by Board of Directors on 23rd June 2017, by delegation powers for initiation of action under IBC 2016, in addition to existing delegation of powers, in favor of all the Executive Directors, all Chief General Managers (Grade 'F') , All General Managers (Grade 'E'). The following officers are singly and severally authorized on behalf of IDBI Bank Limited; Shri Mahesh Kumar Jain ; Managing Director & Chief Executive Officer, Shri Gurudeo Madhukar Yadwadkar; Deputy Managing Director, Shri Krishna Prasad Nair ; Deputy Managing Director.

In pursuant of above delegation of powers, Mr. Gurudeo Madhukar Yadwadkar authorized Mr. V. Vijayadheer, General Manager (Legal) to represent the Bank at Hyderabad or any other place in India, and to make statements for and on behalf of the bank ,and in the name of the Bank, before the National Company Law Tribunal, Hyderabad bench, in company petition titled 'IDBI Bank Limited v LancoInfratech Limited' to be filed under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by a letter of Authorization dated 3rd July 2017.

15. Smt. Sushma R (DGM-IT, Division, and Corporate Centre) is authorized to issue a required certificate, under Bankers' Books Evidence Act, 1891 for filing cases before Courts/DRTs/NCLT/ any other legal forum, by way of certificate dated 01 August 2017 issued by Mr. K.R. Murali Mohan, Chief Information Officer & Chief General Manager, IT & MIS.
16. So the instant application/petition is properly instituted by duly authorized officer of IDBI and submitted application in a prescribed form with required fee along with all the relevant documents duly certified by the competent officer.
17. It is not in dispute that various working capital term loans/working capital facilities/Restructured term loans/funded interest term loans/Priority Loans/Long

Term working capital term loans, granted by the IDBI and availed by the respondent-LITL. The total overdue as on June 15th,2017 is Rs.2,34,96,12,889/- The default of the loans in question are also not in dispute as date of defaults in all the loans happens to be 28th /30th November 2016 with 197/199 days of default in each case, as detailed supra and as per exhibit-4.

18. Shri C.V. Mohan Reddy, has also not disputed the various loans/facilities in question availed by respondent but only raised a contention that Corporate guarantees in question are not crystallized into a "debt" and it cannot be added in the total amount of debt in question. As stated supra, the instant petition is not opposed by the respondent in general, however, except on the question of hardship that would likely cause to respondent in initiating the instant CIRP that too in isolation leaving other SPVs connected with the Respondent Company.
19. The other questions whether Mr. Vijaykumar V Iyer is competent to act as an Interim Resolution Professional for the applicant company. The Respondents by reply dated 04.08.2017 submitted that Mr. Vijay Kumar V. Iyer has been appointed as Interim Resolution Professional for two more companies viz Binani Cement Limited (Bank of Baroda Vs. Binani Cement Limited, CP(IB)No.359/KB/2017, Order dated 25th July 2017) and Bhushan Steel Limited (State Bank of India Vs. Bhushan Steel Limited CP No.(IB)No.201(PB)/2017, Order dated 26.07.2017). Therefore, not only does this vitiate Form 2 filed by him but the Respondent Company has serious concerns on the availability of the interim resolution professional to effectively perform his functions, verify numerous claims, prepare information memorandum, run LITL as a going concern etc. especially in context of the Respondent Company, whose debt structure and operations are very complicated and complex. In this regard, attention of this Hon'ble Tribunal is drawn to Paragraph 22 of the Code of Conduct for Insolvency Professionals as provided in the First Schedule of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, which reads as under:-

"22. An insolvency professional must refrain from accepting too many assignments, if he is unlikely to be able to devote adequate time to each of his assignments".

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We have also verified from the website and confirmed that the said IRP has been very recently appointed as IRP to the aforesaid two large companies only in the last week of July, 2017. Therefore, we agreed with the submissions of the respondents considering his previous three assignments to large companies and the current corporate debtor itself is a large company we are of the prima facie view that the proposed IRP would not find sufficient time to act as IRP for the respondent Company. Most of the activities prescribed in the IBC code are time bound. Therefore, we had suggested to change the aforesaid IRP, accordingly the Financial Creditor viz. IDBI proposed another IRP viz. Shri Savan Godiawala an insolvency professional registered with Insolvency Professional of ICAI having registration No. is IBBI.IPA-001/IP-P00239/2017-18/10468. The newly proposed IRP has also confirmed that no disciplinary proceedings pending against him, he does not currently serve as an IRP for any company and he is eligible to be appointed as IRP to the Corporate Debtor. We are satisfied with the above disclosures made by the IRP viz Savan Godiawala and accordingly we appointed him as an IRP for the Corporate Debtor.

20. The other contentions raised by the senior counsel for the respondent, with regard to the certificate dated 23rd June 2017 issued by Sushma Ramaraju, Deputy General Manager, IT-Division, IDBI Bank, (Exhibit -27, Page 1072) is concerned, as stated supra, Sushma Ramarajuis duly Authorized Officer of the IDBI, and this certificate is issued under Bankers Book Evidence Act 1891 which pertains to Lanco Infratech Limited (Respondent). We are satisfied that the certificate is validly issued under the act and the same is legally valid, and the contentions raised contrary by the respondent are not at all tenable and thus rejected.
21. Another contention raised by Mr. C.V. Mohan Reddy, the learned senior counsel for the respondents, with regard to inclusion of Corporate Guarantees in question in total amount of debt in question is concerned, it is to be mentioned here that after appointing IRP by this Adjudicating Authority, the respondent Company apart from other claimants against it, can submit their respective claims with supporting documents before the appointed Interim Resolution Professional, in pursuant to a public notification given by IRP. So the respondent is having every right to plead the same before IRP to consider its contentions.

22. The other contention made by Mr. C.V. Mohan Reddy, the learned senior counsel for respondent with regard to granting further time is concerned, it is to be stated that the instant case is filed by IDBI against Lanco Infratech Limited, in the Registry of NCLT, in the first week of July 2017, after duly serving copy of application along with all material papers to respondent Company. However, the case was listed for admission before the Bench on 25th July, 2017 for admission, after scrutiny of case papers by the Registry of NCLT, and after hearing the case, the Bench was of prima facie opinion that it is a fit case for admission. However, Shri Avinash Desai representing respondents has requested two days time to get instruction from his client, after accepting notice for the respondents. Accordingly, the case was again listed on 27th July 2017, and on this day, Shri C.V. Mohan Reddy, learned senior Advocate requested a week's time further to get necessary instructions/papers. Accordingly, the Bench has accommodated by granting time till 4th August 2017. The respondent, therefore have availed sufficient time to put forward their defense/contentions. Hence, we are not inclined to grant any further time, and moreover no purpose would be served by granting any further time. As stated supra, the respondents have placed their version the case in detail and every case has to be decided independently basing on the records available and the Adjudicating Authority cannot give any direction to file any case in respect of other group companies of LITL. Accordingly, we have decided be exercise of powers conferred on the Adjudicating Authority, under section 7(5)(a) 13,14,15 and 16 of the IBC Code simultaneously.
23. Shri C.V. Mohan Reddy, the learned Senior Advocate for the respondent has relied upon the order dated 31st July 2017 passed by the Hon'ble High Court of Gujarat at Ahmedabad, in Special Civil Application No. 12434 of 2017 (C/SCA/12434/2017) filed by Essar Steel India Limited Versus RBI and others. He, therefore submit that the Adjudicating Authority is under obligation to consider the observations of Hon'ble High court made under para 40 of order, and it cannot simply brush aside his contentions and pragmatic view is required to be taken by the Bench. The Learned Counsel also pleaded that admitting a case of this nature would amount to civil death having wide repercussions not only on the Company and public at large

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We have carefully perused the order of Hon'ble Gujarat High Court. The petitioner therein, has inter alia questioned the decision of the Reserve Bank of India contained in press release dated 13th June 2017 directing the lenders to initiate proceedings under IBC 2016 in relation to the petitioner; to set aside the decision of SBI to initiate proceedings under IBC; to restrain Adjudicating Authority, Ahmadabad under IBC 2016 from proceeding further the petition filed therein etc.

The Hon'ble High Court, disposed of the petition by making several observations under para 40, by inter alia pointing out that it is for Adjudicating Authority, constituted, under IBC to consider core issues raised on behalf of the petitioner; there should not be undue pressure on the Adjudicating Authority by the administration, and finally left the issue to Adjudicating Authority to consider and determine all issues raised in according with law.

As detailed in this order, we have duly considered all the pleadings of both the parties in a dispassionate manner and strictly in four corners of law. We have also afforded reasonable opportunity, by duly following principles of natural justice, to the respondent to put forth their views of the matter,

24. It is relevant to mention here that it is not the case of respondent that they have paid substantial amount of debt in question, while the case is pending. In the normal course, whenever an un-disputed debt remains to be paid to lender, borrowers are supposed to come forward to pay some amount, and then negotiate for some type of installment(s) with lender(s). In the instant case, as detailed supra, the respondent is pleading several issues, which are hardly have any relevancy to the issue in question as the IDBI has extended Loans and facilities in question independently to the respondent and they would not depend on other projects of Respondent Company. The circumstances in the case indicate that all remedies available to the Respondent stated to have been exhausted. Any way, we are not concerned with other issues of Respondent, and it is for the Concerned Authorities and Financial Creditors to take a call on those issues.
25. In the aforesaid facts and circumstances as available in the instant case, we, being Competent Adjudicating Authority, as defined under Section 5(1) of IBC, 2016, are satisfied that there is a default occurred, the instant application is complete and

the IRP is to be appointed in accordance with law. Therefore, by exercising powers conferred on this Adjudicating Authority/NCLT, under section 7(5)(a) of IBC 2016, we hereby admitted the company application/petition bearing CP(IB)No.111/7/HDB/2017 with the following consequential directions:

- (i) We direct the Registry of NCLT to communicate this order to the applicant Company and the respondent Company immediately and in any case not later than seven days from today.
- (ii) We hereby appointed Sri Savan Godiawala as Interim Resolution Professional.
- (iii) Declared moratorium prohibiting the following under section 14 namely:
 - (a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including executing of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
 - (d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor;
 - (e) The moratorium shall not apply to the supply of essential goods or services to the corporate debtor, which are to be decided by the IRP basing on the essentiality of goods and services, and it will also not effect such transactions as may be notified by the Central Government from time to time, in consultation with any financial sector regulator.
 - (f) This order of moratorium shall have effect from today till completion of Corporate Insolvency Resolution Process (CIRP) or till pass an order for liquidation of Corporate Debtor under section 33 of IBC, whichever is earlier.

- (g) Direct to cause a public announcement immediately as per prescribed mode of communication, by duly taking all guidelines and instructions issued from time to time by IBBI for the initiation of Corporate Insolvency Resolution Process call for submission of claims under section 15 of IBC;
- (h) The IRP is directed to follow all extant rules of IBC and all the rules and regulations framed by Insolvency and Bankruptcy Board of India (IBBI)(Insolvency Professionals) Regulations, 2016. Afford full opportunity to all parties to the issue by duly following principles of natural justice :
- (i) The IRP shall perform all his functions religiously, strictly which are contemplated inter-alia, by Sections 15, 17, 18, 19, 20 and 21 of IBC. It is further made clear that all the personnel connected to the corporate debtor, its promoters and any other person associated with the management of the corporate debtor are under legal obligation under Section 19 of IBC to extend every assistance and cooperation to the IRP as may be required by him in managing the affairs of the Corporate Debtor.
- (j) The IRP shall be under duty to protect and preserve the value of the property of the corporate debtor as a part of its obligation imposed by Section 20 of IBC and perform all his functions strictly in accordance with the provisions of IBC.
- (k) Post the case on 31st August 2017 with a direction to the applicant/IDBI and IRP to apprise this Tribunal about compliance of the directions passed in this case.

Sd/=

(RAVIKUMAR DURAISAMY)
MEMBER (T)

Sd/=

(RAJESWARA RAO VITTANALA)
MEMBER (J)

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

V. Annapoorna
V. ANNAPOORNA
Asst. DIRECTOR
NCLT, HYDERABAD.

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER CP (IB) No. 111/7/HDB/2017
निर्णय का तारीख
DATE OF JUDGEMENT 7/8/2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON 8/8/2017

