

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
28-03-2024 AT 10:30 AM**

**CP(IB) No. 189/9/HDB/2021
AND
IA(IBC) 1989/2023 in CP(IB) No. 189/9/HDB/2021
u/s. 9 of IBC, 2016**

IN THE MATTER OF:

Arvensis Energy Private Limited

...Operational Creditor

AND

Lakshmi Transcon Private Limited

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

IA(IBC) 1989/2023

Mr Venkat Narsinga Rao, Monitoring Agent present through Video Conference.
Orders pronounced. In the result, **this application is partly allowed** to the extent indicated in the order.

**Sd/-
MEMBER (T)**

**Sd/-
MEMBER (J)**

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

IA (IBC) 1989/2023 in CP (IB) No. 189/9//HDB/2021

*Under Section 60(5) and 33 of the Insolvency and Bankruptcy Code, 2016, R/W
Regulation 39(9) of IBBI Regulations, 2016 and Rule 11 of NCLT Rules*

**IN THE MATTER OF M/S LAKSHMI TRANSCON PRIVATE LIMITED
COMPANY UNDER CIRP**

IN THE MATTER OF

Arvensis Energy Private Limited

... Petitioner/Operational Creditor

Versus

Lakshmi Transcon Private Limited

... Corporate Debtor/Respondent

Filed by:

Mr Venkat Narsinga Rao Kalvakota
IBBI Reg No: IBBI/IPA-001/IP/P-01361/2018-19/12130
Monitoring Agent of M/s Lakshmi Transcon Private Limited
Address: Flat No 103, Balaji Vishwam Vihar Apartment,
Maduranager, Ramanthapur, Hyderabad, Telangana 500013

... Monitoring Agent/Applicant

Filed against

Owk Madhu Manohara Rao
SRA/Member of Suspended Board of Lakshmi Transcon Pvt Ltd
1LH, Flat 1504, Lanco Hills, Manikonda
Hyderabad 500089.

...SRA/Respondent

Date of Order: 28.03.2024

Coram:-

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)

Shri. Charan Singh, Hon'ble Member (Technical)

Appearance:-

For the Applicant: - Smt. Mano Ranjani, Counsel.

Mr Venkat Narsinga Rao Kalvakota : Monitoring Agent/Resolution Professional

PER: BENCH

1. This is an application filed by the Resolution Professional (hereinafter referred to as "RP") under Section 60(5) and 33 of the Insolvency and Bankruptcy Code, 2016 R/w Regulations 39(9) of IBBI Regulations, 2016 and Rule 11 of NCLT Rules, praying this Adjudicating Authority to order liquidation of M/s. Lakshmi Transcon Private Limited (hereinafter referred to as "Corporate Debtor").

2. To be precise, this Tribunal vide order dated 07.07.2023 approved the Resolution plan vide IANo.411/2023 submitted by Mr.OWK Madhu Manohara Rao. After the Approval of the Plan by this Tribunal, the Monitoring Committee was promptly established in accordance with its terms. This committee included 2 representatives from Financial Creditors, 2 representatives from SRA, and the Resolution Professional (RP) serving as the monitoring agent.

3. The bid amount offered by SRA which has to be paid in four instalments are as follows:

Instalment	Time Schedule from effective date	Amount in Rs.
1	Within 15 days	8,80,716/-
2	Within 30 days	81,26,294/-
3	Within 60 days	20,52,034/-
4	Within 90 days	189,61,354/-
Total		4,42,92,310/-

4. It is averred that the entire amount should be paid within 90 days from the effective date i.e 12.07.2023. However, despite of undertaking by SRA, failed to make the payment as per the approved Resolution plan. Subsequently, SRA filed an Application i.e IA No.1653/2023, praying to condone the delay in making payment of instalment and sought 6 weeks' time for making the payment. Wherein, this Tribunal dismissed the application stating that the relief claimed in the application is devoid of any merit or bonafide and thus becomes infructuous and also directed the Monitoring Committee to take necessary steps immediately under law within a week.
5. Accordingly, Monitoring Agent(formerly RP) scheduled a meeting with the financial creditors on 05.12.2023 in which the following were resolved and approved with 91.40%.
- a. The time allowed to the SRA/Respondent to pay the outstanding balance resolution amount of Rs.4,02,92,310/- on or before 13.12.2023, along with the one year MCLR of the lead bank for the delayed period. This time would be after the expiry of 90 day from the effective date (12.07.2023), ending on 11.10.2023, as well as the shortfall of Rs.15 lakhs towards PBG. This amount can be returned to SRA after the

distribution of the entire plan to all creditors, as per the plan approved by the Hon'ble Adjudicating Authority.

- b. That in the event SRA fails to pay the balance resolution plan amount on 13th December, 2023, the monitoring agent shall file an application before the Hon'ble NCLT to liquidate the CD u/s 33 of I&B Code.

6. It is averred that a sum of Rs.73,58,462/- has been remitted by the SRA/Respondent through DDs for the Performance Bank Guarantee, and an additional amount of Rs.40,00,000/- constitutes the bid amount. As per Part V, Point 5 on Page 33 of the RFRP, this sum is subject to forfeiture.
7. We have heard the Learned Counsel for the RP and Learned RP and perused the record.
8. In terms of section 33 of the Code, which is as below liquidation of the corporate debtor can be ordered when the circumstances mentioned in the said section are present.

Section 33 :

Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors (approved by not less than sixty-six per cent. of the voting share) to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

9. Admittedly resolution plan has been received with in maximum time allowed for completion of CIRP of the corporate debtor. The COC members has approved with 91.40% voting the estimated liquidation expenses including liquidator’s fees, and the RP has given her written consent dated 26.02.2022 to act as Liquidator and the same was approved by the COC members.
10. Hence, this Adjudicating Authority hereby orders liquidation of M/s. Lakshmi Transcom Private Limited, the Corporate Debtor herein, which shall be conducted in the manner as laid down in Chapter III of Part II of the Code, 2016;
11. The Applicant has also sought leave for forfeiture of the amount of Rs.73,58,462/- and Rs.40,00,000/- paid by the respondent as respondent failed to implement the plan as per the terms and conditions stipulated in the resolution plan. The Applicant submits that in accordance with Part V of the RFRP under the heading Consequences of non-compliance by SRA with Conditions Precedent; *Without prejudice to the consequences set out in Section 33 of IBC, the Designated Lender may encash the Performance Security by way of Performance Bank Guarantee provided by the Successful Resolution Applicant and reserve right to take any other action if any under the Applicable Law including but not limited to cancel the Resolution Plan submitted by the Successful Resolution Applicant (At Page 51 of IA #1989/2023).*
12. The Applicant further submitted that the time schedule for implementation of Resolution plan duly approved by the COC and the Hon’ble Tribunal is as under:

Instalment	Time Schedule from effective date	Amount in Rs.	Payment Due Date
1	Within 15 days	8,80,716/-	27.07.2023

2	Within 30 days	81,26,294/-	10.09.2023
3	Within 60 days	20,52,034/-	24.12.2023
4	Within 90 days	189,61,354/-	06.07.2024
Total		4,42,92,310/-	

13. However, the respondent has paid only Rs.1,30,55,462 inclusive of Performance Bank Guarantee of Rs.88,58,462/- [20% of the plan amount as RFRP]. Thus, the amount paid other than Performance Bank Guarantee is only Rs.25,00,000/-. Whereas, as per the terms of the plan, he was required to pay Rs.1,10,59,044/- in addition to the Performance security. Thus, respondent has contravened the terms of payment as stipulated in the Approved Resolution plan.

14. Respondent has not filed any counter to the submissions made by the Applicant.

Our Findings:

15. Admittedly, the RFRP has condition for forfeiture of the already paid amount in case of failure of implementation of the plan. But in our view, the conditions stipulated in the approval of the resolution plan will have precedence over the terms and conditions stipulated in the RFRP. We find that no such conditions for forfeiture of total amount is stipulated in the approved resolution plan.

16. However, this Tribunal's order dated 07.07.2023 approving the Resolution Plan in Para 22(iv) stipulates as under:

“ It is hereby ordered that the amount deposited by the SRA to the tune of Rs.73,58,462/- in lieu of Performance Bank Guarantee shall remain as Performance Bank Guarantee till the amount proposed to be paid to the creditors under this plan is fully paid off and the plan is fully implemented. Since Performance Bank Guarantee as proposed in RFRP is 20% and the

amount available is less by Rs.15 lakhs, we direct that the payment made by SRA should first be utilized to top up the performance security to comply with the Regulation 36 B(4A) of CIRP Regulations. Thereafter, the remaining amount may be distributed amongst the stakeholders as per the Section 53 of the IBC, 2016.

17.Further, the IBBI(Insolvency Resolution Process for Corporate Persons) Regulations 2016. Regulation 36 B (4A) is reproduced hereunder for more clarity in the order:

(4A) The request for resolution plans shall require the resolution applicant, in case its resolution plan is approved under sub-section (4) of section 30, to provide a performance security within the time specified therein and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule. Explanation I. – For the purposes of this sub-regulation, “performance security” shall mean security of such nature, value, duration and source, as may be specified in the request for resolution plans with the approval of the committee, having regard to the nature of resolution plan and business of the corporate debtor. Explanation II. – A performance security may be specified in absolute terms such as guarantee from a bank for Rs. X for Y years or in relation to one or more variables such as the term of the resolution plan, amount payable to creditors under the resolution plan, etc.]

18.In view of the above facts we are of the view that Performance Security of Rs.88,58,462/- shall stand forfeited as the resolution applicant could not implement the resolution plan, but the remaining amount of Rs.25 lakhs paid by Resolution Applicant which is over and above the Performance Security amount i.e 88,58,462/- is required to be refunded to the Resolution Applicant.

19.In the above back drop, the prayer for forfeiture of amount is allowed in part.

- 20.** Shri P.V.Narayana Rao, Insolvency Professional, having Registration No: IBBI/IPA-001/IP-P-01706/2019 -2020/12633; Address: 1-9-279, Beside Satabdi Apartments,Ramnagar Gundu, ,New Nallakunta P O ,Other, Telangana ,500044; e-mail: rao_ca60[at]rediffmail[dot]com; is hereby appointed as Liquidator;
- 21.** He shall issue public announcement stating that the Corporate Debtor is in liquidation in terms of Regulation 12 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- 22.** The moratorium declared under Section 14 of the Code, shall cease to have effect from the date of the order of liquidation;
- 23.** Subject to Section 52 of the Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. This shall however not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- 24.** All the powers of the Board of Directors, Key Managerial Personnel and partners of the corporate Debtor shall cease to have effect and shall be vested in the Liquidator.
- 25.** The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code read with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- 26.** Personnel connected with the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as would be required for managing its affairs.
- 27.** The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Section 34(8) of the Code.

28. The applicant is directed to serve the copy of this order to Registrar of Companies, Regional Director, Official Liquidator of Hyderabad, Registered office of the Corporate Debtor for information and compliance.

29. The Applicant is directed to file the compliance memo in respect of forfeiture of Performance Security within 10 days from the date of receipt of this order.

SD

**CHARAN SINGH
MEMBER (TECHNICAL)**

SD

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
MEMBER (JUDICIAL)**

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