

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

PRESENT: HON'BLE SHRI K ANANTHA PADMANABHA SWAMY – MEMBER JUDICIAL

PRESENT: HON'BLE SHRI BINOD KUMAR SINHA –MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 03.10.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) NO. 492/7/HDB/2019
NAME OF THE COMPANY	KSK Mahanadi Power Company Ltd
NAME OF THE PETITIONER(S)	Power Finance Corpotation
NAME OF THE RESPONDENT(S)	KSK Mahanadi Power Company Ltd
UNDER SECTION	7 OF IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Avinash Desai	Adv	avinash@desailawoffices.com	
Praman Munigela T.P.S. Harsha	" "	praman@desailawoffices.com harsha@desailawoffices.com 9813663313	Praman . M

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
M. S. TRIVIKRAMS RAO	Advocate	9912755001	M.S. Trivikram Rao

ORDER

Order pronounced in open court. CP admitted vide separate order



MEMBER TECHNICAL



MEMBER JUDICIAL

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

CP (IB) No.492/07/HDB/2019

U/s. 7 of the Insolvency and Bankruptcy Code, 2016,
Read with Rule 4 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016.

In the matter of KSK Mahanadi Power Company Limited.

Between:

Power Finance Corporation Limited
'Urjanidhi', 1, Barakhamba Lane,
Connaught Place, New Delhi - 110001.

...Petitioner/
Financial Creditor

And

KSK Mahanadi Power Company Ltd
Having its Regd. Office at
8-2-293/82/A/431/A,
Road No.22, Jubilee Hills,
Hyderabad - 500 033,
Telangana.

...Respondent/
Corporate Debtor

Date of Order: 03.10.2019

**Coram: Shri. K. Anantha Padmanabha Swamy, Member Judicial.
Dr. Binod Kumar Sinha, Member Technical.**

Parties/Counsel Present:

For the Petitioner/Financial Creditor:

Mr. Avinash Desai, Mr. TPS Harsha & Mr. M. Pranav, Counsels.

For the Respondent/Corporate Debtor:

Mr. R. Sankarnarayanan & Mr. M. S. Trivikrama Rao, Counsels.

Per: K. Anantha Padmanabha Swamy, Member Judicial.

ORDER

1. The present petition is filed by 'Power Finance Corporation Limited'
(hereinafter referred to as '**Petitioner/Financial Creditor**') under section

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7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **IB Code, 2016**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against M/s. KSK Mahanadi Power Company Limited (hereinafter referred to as **'Respondent/Corporate Debtor'**).

2. Brief facts of the present case are as under:
3. The Petitioner/Financial Creditor, is a Public Financial Institution under section 4A of the Companies Act, 1956 and under section 2 (72) of the Companies Act, 2013, having its Registered Office at "Urjanidhi", 1 Barakhamba Lane, Connaught Place, New Delhi – 110 001, whereas the Respondent/Corporate Debtor is a public limited company incorporated under the Companies Act, 1956, and having its registered office at 8-2-293/82/A/431/A, Road No.22, Jubilee Hills, Hyderabad, Telangana – 500 033. The main objects of the Corporate Debtor are to carry on the business of thermal power generation and sale thereof.
4. It is stated that the Corporate Debtor had approached various lenders (including the Financial Creditor) sometime around 2009 to finance the proposed 3600 MW (6x600MW) coal based Thermal Power Project to be built at Nariayara in Janjgir, Champa District of Chhattisgarh (hereinafter referred to as "Project"). After due consideration, the lenders had agreed to extend various credit facilities to the Corporate Debtor by way of executing following facility agreements from time to time.
 - a) Common Loan Facility Agreement dated 11.01.2011: In terms of this Facility, an amount totalling to ₹12,142 Crores (Rupees Twelve Thousand One Hundred and Forty Two Crores Only) was disbursed by 27 lenders (Existing Senior Debt) out of which, the amount disbursed by the Financial Creditor is ₹1894 Crores (Rupees One





Thousand Eight Hundred and Ninety Four Crores Only) in full as on 08.09.2015. It is mentioned that the Financial Creditor is also acting as "Lenders Agent" and "Security Trusteeship Agent" in the existing Senior Debt Facility.

b) Sub-Debt Facility Agreement dated 08.07.2011 (Sub Debt Facility):

Under the Sub Debt Facility, a total amount of ₹ 810 Crores was sanctioned to the Corporate Debtor. It is mentioned that Financial Creditor is not a lender in Sub Debt Facility but is only acting as the "Lenders Agent" and Trusteeship Agent" to the said facility.

c) Amended and Restated Common Loan Agreement dated

25.11.2016 (A&R CLA): Prior to execution of A&R CLA, various Senior Debt Lenders, as defined in clause 1.1 of the A&R CLA had executed their individual financing bilateral agreement(s) with the Corporate Debtor for underwriting and cost overrun facility in view of increase in project cost. In doing so, the Financial Creditor had executed such an individual financing bilateral agreement with the Corporate Debtor on 30.03.2016, wherein, a total amount of ₹ 1,660 Crores was committed (PFC Bilateral Agreement). Under PFC Bilateral Agreement, the hold portion of the Financial Creditor was ₹ 805 Crores and the underwriting commitment was ₹ 855 Crores. While the hold portion of ₹ 805 Crores was fully disbursed on 12.02.2018, an amount of ₹ 480.6 Crores was disbursed from the underwriting portion of ₹ 855 Crores on 30.11.2016. Therefore, the entire amount disbursed by the Financial Creditor under the PFC Bilateral Agreement was ₹ 1285.61 Crores.

All the above referred bilateral agreements (including the one executed by the Financial Creditor) were subsequently superseded by the A&R CLA, in terms of which the entire disbursed amount

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stood as ₹5,777 Crores. The amount disbursed by the Financial Creditor under PFC Bilateral Agreement (₹1285.61 Crores) continued to remain the same for the purpose of A&R CLA.

- d) Working Capital Consortium Agreement (Second Amendment) dated 21.12.2017 ("Working Capital Facility"): By way of background, ten lenders (excluding the Financial Creditors) had executed their respective individual financing bilateral agreement with the Corporate Debtor sometime around 2013-14 and had sanctioned an amount of ₹1786.70 Crores.

Post the execution of the above respective financing bilateral agreements, all such lenders had executed the Working Capital Consortium Agreement on 12.04.2014, whereby, the respective terms of all such individual financing bilateral agreement got subsumed in the Working Capital Consortium Agreement.

Thereafter, the Financial Creditor under its bilateral financing agreement with the Corporate Debtor on 20.03.2017 had sanctioned an amount of ₹ 120 Crores towards working capital of the Corporate Debtor (Short Term Loan Agreement).

In view of the above, the total amount of working capital sanctioned under the Working Capital sanctioned under the Working Capital Facility was ₹2,304.20 Crores, out of which the Financial Creditors exposure continued to remain ₹ 120 Crores as per the Short Term Loan Agreement.

- e) External Commercial Borrowing Facility Agreement dated 12.02.2017 (ECB Facility): While the ECB Facility was sanctioned for USD 100 million (USD 100 Million) by Infrastructure Finance Company (UK) Limited, an amount of USD 95 million (USD 95

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million) was disbursed by it. It was mentioned that Financial Creditor is only acting as "lenders Agent" and "Security Agent" under the ECB Facility.

- f) Total amount of principal extended to the Corporate Debtor by the Financial Creditor, under the A&R CLA (Existing Senior Debt & Cost Overrun) and Working Capital Facility and in terms of its obligations under all the Facility Agreements has disbursed a total amount of ₹ 32,99,61,30120 being the principal amount of total debt.

5. It is stated that the total amount of default as on 24.06.2019 under both A&R CLA and Working Capital facility is ₹ 13,15,27,86,639/- in the following manner:

i. A&R CLA

- a) On account of principal due, accrued interest and delayed charges payable under the Existing Senior Debt Facility forming part of A&R CLA, a total of ₹ 6,30,41,26,689/- is in default.
- b) On account of principal due, accrued interest and delayed charges payable under cost overrun facility forming part of A&R CLA, a total amount of ₹ 5,44,62,79,974/- is in default.

ii. Working Capital Facility:

- a) On account of accrued interest and delayed charges payable under the second Amendment to the Working Capital Consortium Agreement a total amount of ₹ 1,40,23,79,976/- is in default.

6. It is stated that the account of the Financial Creditor was declared as NPA as 15.04.2018 and the same was informed to the Corporate Debtor

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vide letter dated 16.04.2018. the account of the Corporate Debtor was further downgraded as Sub Standard Asset on 31.03.2018.

7. It is stated that due to ongoing Defaults in the various financial facilities by the Corporate Debtor, the Core Committee of lenders agreed that the lead lenders of each consortium constituted for the various facilities issued default notice to the Corporate Debtor along with Notices to the Promoters & Guarantors. The Committee also resolved to issue Pledge Invocation Notices to the Corporate Debtor under various facilities.
8. It is stated that the Financial Creditor herein being the Lenders Agent under the Senior Debt Facility provided in terms of the Amended & Restated CLA and the ECB facility and Sub Debt Facility issued a Default Notice to the Corporate Debtor for the defaults under the aforesaid facilities on behalf of all the lenders.
9. It is stated that the lenders agent appointed under the Working Capital Facility was State Bank of India (SBI) which issued a Default Notice to the Financial Creditor for the defaults under the Working Capital Facility on behalf of all the lenders, including the Financial Creditor.
10. It is stated that the Financial Creditor has issued Pledge Invocation Notices to the pledgers in the capacity of Security Trustee Agent.
11. It is further stated that Corporate Debtor has admittedly defaulted in making the aforesaid payment of its dues to the Financial Creditor. The Financial Creditor herein had also filed a similar Application against the Corporate Debtor before this Tribunal by way of CP (IB) No.600/7/HDB/2018 which was withdrawn by way of order dated 17.05.2019 in terms of the withdrawal affidavit filed by the Financial Creditor. It is to note that the Corporate Debtor by way of its counter affidavit filed therein admitted to the default.


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12. Reiterating above, the counsel for Petitioner prayed to allow the instant Petition.
13. Respondent filed counter stating that they had tried to fulfil their commitment under the various financial facility agreements, but due to peculiar facts and circumstances surrounding the power sector with regard to unavailability of coal and other such factors has pushed the Respondent and the power sector at large, to the extent of creating difficulty with respect to repayment of credit facilities availed by the Respondent.
14. It is stated by the Respondent that though it has been facing severe cash flow issues, it had managed to fulfil its obligations under the facility agreements to the best possible extent. As the cash flow situation became worse, the Respondent's business has landed in severe financial distress on account of number of factors and circumstances that are way beyond its control.
15. It is stated by the Respondent that non-payment of dues by various State Electricity Distribution Companies (DISCOM) is one of the major reasons due to which the Respondent's cash flow situation deteriorated and it was unable to meet its responsibilities as per various facility agreements entered into by it.
16. It is further stated by the Respondent that over the years in spite of the various challenges across power sector, the Respondent and its promoters have increased their support and commitment to the Project much beyond what was originally envisaged and stipulated. It is submitted that while the Financial Creditor as secured project lender has specific claims vis-à-vis the Respondent/Corporate Debtor, it is also a fact on record that the Corporate Debtor's business has landed in this situation on account of several facts and circumstances beyond its control.





17. The present petition was filed on 28.06.2019 and after scrutiny by the registry, the same was first listed on 29.07.2019 and the Petitioner was directed to issue notice of date of hearing to the Respondent and the matter was adjourned to 19.08.2019.
18. During the hearing held on 19.08.2019, the counsel for Respondent requested time to file counter and the matter was adjourned to 23.08.2019.
19. During the hearing held on 23.08.2019, the counsel for the Respondent stated they are intending to settle the matter with the Financial Creditor and prayed time. At request, matter was adjourned to 30.08.2019.
20. During the hearing held on 30.08.2019 the counsel for the Respondent stated that there was a meeting of the Joint Group of Term Lenders and Working Capital Lenders of the Corporate Debtor on 22.07.2019 to find out amicable settlement outside of the IB Code, 2016, but, no final conclusions could be arrived at and they are all making serious efforts for receiving their dues from the DISCOMS and other sources. The Financial Creditor also has been a party in that meeting. Further, Respondent's counsel stated that they are trying to make payments to the satisfaction of the Financial Creditor as per the agreed terms of settlement if any, failing which they undertake to file counter. Considering the request, this Adjudicating Authority granted time and matter was adjourned to 13.09.2019 for hearing.
21. During the hearing held on 13.09.2019, the counsel for the Respondent prayed time for filing counter during course of the day and filed the same. On 20.09.2019, the matter was heard at length and was reserved for orders.
22. Heard both the sides and perused the record.



23. In the instant Petition, the Petitioner has proved its case by placing documentary evidence viz., Copies of Facility Agreements and sanction letters, date and details of all disbursements of the facilities etc., and copies of entries in Bankers Book in accordance with the Bankers Books Evidence Act, 1891 (18 of 1891) which proves that a default has occurred for which the present Corporate Debtor was liable to pay. In their counter affidavit, the Respondents have not denied the facts regarding the existence of 'financial debt' and 'default' committed by the Corporate Debtor.
24. The Hon'ble Supreme Court, while deciding the matter in the case of *INNOVENTIVE INDUSTRIES LTD. Vs. ICICI BANK & ANR., in Civil Appeal Nos. 8337-8338 of 2017*, held as under:
- ".....The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under subsection (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."*
25. In the present case, this Adjudicating Authority is satisfied with the submissions put forth by the Petitioner/Financial Creditor regarding existence of 'financial debt' and occurrence of 'default'. Further, the Financial Creditor has fulfilled all the requirements as contemplated under IB Code in the present Company Petition and has also proposed the name of IRP after obtaining his written consent in Form-2. In view of the above, this Adjudicating Authority is inclined to admit the petition.
26. The instant petition is hereby admitted and this Adjudicating Authority Orders the commencement of the Corporate Insolvency Resolution
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Process which shall ordinarily get completed as per the time line stipulated in section 12 of the IB Code, 2016, reckoning from the day this order is passed.

27. This Adjudicating Authority hereby appoint Mr. Mahendra Kumar Khandelwal (IRP) as the name proposed by the Financial Creditor and his name is reflected in IBBI website. He has also filed his written consent in Form - 2. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date of this order, and call for submissions of claim in the manner as prescribed.
28. This Adjudicating Authority hereby declares the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution process for the purposes referred to in Section 14 of the I&B Code, 2016. We order to prohibit all of the following, namely:
- a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution 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 Securitisation 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.*

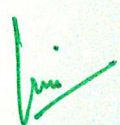
29. However, the supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.
30. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.
31. The Petitioner/Financial Creditor as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.
32. The Registry is also directed to communicate this Order to the Financial Creditor and the Corporate Debtor.
33. The address details of the IRP are as follows:-

Mr. Mahendra Kumar Khandelwal
Reg. No: IBBI/IPA-001/IP-P00033/2016-17/10086.
B-2A, Sunny Valley, CGHS, Dwarka,
Sector 12, New Delhi – 110 078, NCT.
Email ID: khandelwal@pwc.com,
Ph.No. +91 9599588308.

34. The present Petition is hereby admitted.


03.10.19
Dr. Binod Kumar Sinha
Member Technical

Rathi/Rk


K. Anantha Padmanabha Swamy
Member Judicial