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**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD**

SPECIAL BENCH - COURT 1 (URGENT HEARINGS THROUGH VIDEO CONFERENCE)

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

HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 02.11.2020 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No. 563 & 201 /2020 in CP (IB) No. 675/7/HDB/2018
NAME OF THE COMPANY	KSK Energy Ventures Ltd
NAME OF THE PETITIONER(S)	IFCI Ltd
NAME OF THE RESPONDENT(S)	KSK Energy Ventures Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

IA No. 563/2020 and IA no.201/2020 are listed for orders.


Orders passed vide separate orders.

IA No.651/2020, is listed today for hearing.

Counsel for applicant prayed time for making submissions. At his request matter is adjourned.

Put up the matter on 26.11.2020.


Member(Technical)


Member(Judicial)

Pavani

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

IA 201 OF 2020
IN
CP (IB) No. 675/7/HDB/2018

Application under Section 60 (5) of IBC, 2016

In the matter of **IFCI versus KSK Energy Ventures Limited**

Between

INOX Air Products Private Limited
7th Floor, Ceejay House
Dr. Annie Besant Road, Worli
Mumbai – 400018

...Applicant/
Operational Creditor

VERSUS

KSK Energy Ventures Limited
Represented by Shri Sai Ramesh Kanuparthi
Resolution Professional
8-2-293/82/A/431/A
Road No. 22, Jubilee Hills
Hyderabad – 500033, Telangana Hyderabad

...Corporate Debtor

Date of order: 02.11.2020

Coram

Hon'ble Shri K. Anantha Padmanabha Swamy, Member (Judicial)
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

Appearance:

For Applicant: Ms Dipali Sheth, Advocate

For Respondent: Mr. V.K. Sajith, Advocate

Heard on: 29.09.2020

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

ORDER

1. Under consideration before us is the interlocutory application filed under Section 60 (5) of Insolvency & Bankruptcy Code, 2016, seeking direction to Resolution Professional appointed for KSK Energy Ventures Limited to reassess the claim raised by the Applicant.

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2. **AVERMENTS:-**

The averments apropos to the Application in brief are:-

- 2.1 That this Tribunal admitted the petition filed under Section 7 of IBC, 2016 filed by IFCI / Financial Creditor and Corporate Insolvency Resolution Process (CIRP) commenced against KSK Energy Ventures Limited / Corporate Debtor on 04.09.2019 by appointing the Applicant herein as Interim Resolution Professional (IRP) who was later confirmed as Resolution Professional.
- 2.2. That the Applicant is engaged in the business of manufacturing industrial gases and medical oxygen and was drawing power from Maharashtra State Electricity Distribution Company Limited ("MSEDCL") and drawing power from Sai Wardha Power Generation Limited (SWPGL) as a captive consumer of its captive generating plants (Unit 3 & 4) to meet its energy requirements and Corporate Debtor is in absolute control of the affairs of SWPGL by holding 78.35% equity shares in SWPGL.
- 2.3 It is averred by the Applicant that in 2016, the Corporate Debtor approached and represented to the Applicant that SWPGL is a special purpose vehicle established with the objective of operating power plants and requested for investment in SWPGL and assured the Applicant that upon such investment, the Applicant would be entitled to consume guaranteed power generated by the Corporate Debtor/SWPGL from its CGP Units and further assured that consumption of such power would entitle applicant to benefits such as no levy of Cross Subsidy Surcharge (CSS) and Additional Surcharge (ASC) which Applicant would be liable to pay under the Electricity Act, 2003, if the power plant was not a CGP.
- 2.4 The Applicant avers, upon such representations and assurances the parties entered into Power Delivery Agreement dated 03.01.2017 read with Supplementary Agreement dated 04.01.2017 (PDAs) and Share Purchase and Shareholder's Agreement (SPSA) dated 03.01.2017 (collectively known as Agreements). As per the composite understanding, the

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Applicant purchased 17,68,970 "A" Class equity shares of SWPGL from the Corporate Debtor and in turn Corporate Debtor/ SWPGL provided cost-effective power supply to the Applicant till 31.10.2018 but suspended supply of power from November, 2018 . Further, the Applicant was charged ASC and CSS by MSEDCL for the months from April-October, 2018 which is contrary to the agreements.

- 2.5 It is further stated by the Applicant that failure to resume supply of power by SWPGL and initiation of CIRP against SWPGL consequent to admission of Company Petition bearing CP (IB) No. 275 of 2018 by this Tribunal on 09.11.2018, resulted in termination of Agreements. Consequently, the Applicant is stated to have filed claims against SWPGL before the Resolution Professional appointed for SWPGL and this Tribunal vide order dated 26.08.2019 passed in IA 372/2019 directed the Resolution Professional for SWPGL to admit the entire claim of the Applicant. Nevertheless, its claim was considered as contingent claim in the approved Resolution Plan for SWPGL. It is the case of Applicant, since Corporate Debtor is liable for the defaults committed by SWPGL towards the Applicant under the Agreements, a notice dated 25.06.2019 was issued to Corporate Debtor. The refusal to make payment by Corporate Debtor vide reply dated 06.07.2019, triggered the Applicant to file Company Petition bearing CP (IB) No. 479 of 2019 against Corporate Debtor. When this petition was pending before the Tribunal, the Applicant discovered about admission of another Company Petition bearing CP (IB) No. 675/2018 by this Tribunal on 04.09.2019 and initiation of CIRP against Corporate Debtor. The Applicant, hence, withdrew CP (IB) No. 479 of 2019 and was permitted to file its claim before Resolution Professional appointed for the Corporate Debtor. Accordingly, the Applicant filed its claim amounting to Rs. 38,38,58,730.31 before Resolution Professional on 01.11.2019 with regard to the debt owed to the Applicant. However, the Resolution Professional vide email dated 28.11.2019 informed the Applicant about


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rejection of its claim without assigning any reasons. The Resolution Professional vide email dated 06.12.2019 informed the Applicant that sufficient documents to prove the existence of an operational debt were not provided by the Applicant which resulted in rejection of its claim by the Resolution Professional. Per contra, it is the case of Applicant that it provided all the documents required for establishing the existence of operational debt and sought directions to the Resolution Professional to re-assess the claim preferred by the Applicant.

3. We heard the Counsel for Applicant and Counsel for Resolution Professional through video conference. This is an application filed under Section 60 (5) seeking directions to the Resolution Professional for reassessing the claim submitted by the Applicant. No reply/counter is filed by Resolution Professional. However, Counsel for Resolution Professional stated that IA bearing 563/2020 which is for passing Liquidation order is pending with this Tribunal. This Application is filed during CIRP.
4. This Tribunal on 02.11.2020 passed liquidation order in IA 563/2020 and liquidator has been appointed for Corporate Debtor. As such, no direction to Resolution Professional is required at this stage. The Applicant has a right during liquidation to present any claim before the Liquidator when public announcement is made by Liquidator inviting claims from stakeholders, as per provisions of the Code dealing with Liquidation.
4. In the result, the IA is disposed of directing the Applicant to file its claim before the Liquidator for considering the claim according to law.


(VEERA BRAHMA RAO AREKAPUDI)
MEMBER (TECHNICAL)


(K. ANANTHA PADMANABHA SWAMY)
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
BENCH AT HYDERABAD**

I.A. No. 563 OF 2020

IN

CP (IB) No. 675/07/HDB/2018

APPLICATION U/S 33(1)(i) OF INSOLVENCY AND BANKRUPTCY CODE 2016 READ WITH RULE 11, 13 & 32 OF THE NATIONAL COMPANY LAW TRIBUNAL RULES (ADJUDICATING AUTHORITY), 2016:

IN THE MATTER OF M/S KSK ENERGY VENTURES LIMITED

Between:

M/s KSK Energy Ventures Limited
8-2-293/82/A/431/A, Road No:22,
Jubilee Hills, Hyderabad - 500033
Rep. by its Resolution Professional
Sai Ramesh Kanuparthi (K.S.RAMESH)

...Applicant/
Resolution Professional

Date of order: 02.11.2020

Coram:

Hon'ble Shri K. Anantha Padmanabha Swamy, Member (Judicial)
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

Appearance:

For Applicant: Shri Sai Ramesh Kanuparthi through Video

Heard on: 04.09.2020

PER: VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)

1. Under consideration before us is the interlocutory application filed by Resolution Professional under Section 33(1) (i) of Insolvency and Bankruptcy Code 2016 read with Rule 11, 13 & 32 of the National Company Law Tribunal Rules (Adjudicating Authority), 2016, seeking orders to liquidate the Corporate Debtor / **M/S KSK ENERGY VENTURES LIMITED**.
2. The averments apropos to the Application in brief are:-





2.1 This Tribunal admitted the petition filed under Section 7 of Insolvency & Bankruptcy Code, 2016 by IFCI Limited and Corporate Insolvency Resolution Process commenced against M/s KSK Energy Ventures Limited on 04.09.2019 by appointing Mr. Sai Ramesh Kanuparthi, the Applicant herein as Interim Resolution Professional, who was subsequently confirmed as Resolution Professional in the 1st Committee of Creditors (CoC).

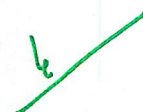
2.2 The Applicant submits, in the 5th CoC meeting held on 18.02.2020, the CoC deliberated at length the scope of revival of the Corporate Debtor as no qualifying resolution plan was received and in the absence of any viable and feasible resolution plan, the CoC with 78.67% voting share resolved to liquidate the Corporate Company. The extract of the Resolution approved by the CoC is as under:

“RESOLVED that the Resolution Professional CA SAI RAMESH KANUPARTHI (KS RAMESH) be and is hereby authorized to intimate the Adjudicating Authority (Hon. NCLT, Hyderabad) the decision of the CoC to recommend Liquidation of the Corporate Debtor, KSK Energy Ventures Limited and take such action as may be necessary under Sec.33(2) of IBC,2016 .”

2.3 Subsequently in the 6th CoC meeting held on 27.02.2020, the CoC deliberated upon the fee of the Liquidator but declined with a majority voting share of 77.95% . The extract of the Resolution approved by the coC is as under:-

“RESOLVED THAT the Resolution Professional CA Sai Ramesh Kanuparthi to be continued as Liquidator with the existing fee of Rs. 3,25,000 plus applicable taxes per month being paid under CIRP and the same will be payable on realization during the period of Liquidation process.”

2.4 It is stated considering the quantum of work involved to complete the liquidation process in a time bound manner, the Resolution Professional expressed his unwillingness to



continue pursuant to Committee declining to compensate the Liquidator with the fee he was entitled to during the CIRP.

2.5 It is submitted, as per Chapter III Section 34 of IBC, 2016, the Resolution Professional to act as Liquidator for the purpose of Liquidation unless replaced by the Adjudicating Authority under Section 34(4) of I&BC, 2016. The relevant provision of Section 34(4) of IBC, 2016 is as under:

(4) The Adjudicating Authority shall by order replace the resolution professional, if-

(a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or

(b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded in writing; or

(c) the resolution professional fails to submit written consent under sub-section (1).

2.6 The Applicant cited Section 39D of Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which provides the committee in consultation with the resolution professional will fix the fee payable to the liquidator pursuant to COC taking a decision to liquidate the Corporate Debtor, under section 33 of the Code. The relevant Extract of the Regulation 39D is reproduced as under:

39D. Fee of the liquidator

While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may, in consultation with the resolution professional, fix the fee payable to the liquidator, if an order for liquidation is passed under section 33, for -

(a) the period, if any, used for compromise or arrangement under section 230 of the Companies Act, 2013;





- (b) the period, if any, used for sale under clauses (e) and (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016; and**
(c) the balance period of liquidation.]

- 2.7. It is further submitted that as per the provisions of the Insolvency and Bankruptcy Code, 2016 and rules and Regulations made there under, the Resolution Professional appointed during CIRP is to continue as Liquidator during liquidation processes. However, the Resolution Professional is in disagreement with the fee fixed by the CoC and hence CoC does not want him to continue. Hence prayed this Tribunal to order liquidation of Corporate Debtor viz., M/s KSK Energy Ventures Limited u/s 33(1)(i) and to decide on the appointment of the Liquidator.
3. We have heard the Counsel for Resolution Professional through video conference. Resolution Professional is also connected through vide conference. This application is filed under Section 33(1)(i) and under Section 34(1) of Insolvency and Bankruptcy Code, 2016 (I&B Code, 2016) praying the Tribunal to order for Liquidation of Corporate Debtor, namely, M/s. KSK Energy Ventures Limited.
4. The Learned Counsel for Applicant would contend, the COC in its meeting dated 18.02.2020 decided to recommend liquidation of Corporate Debtor Company which was approved by COC with 78.61% voting. The Applicant has quoted the Resolution passed by COC which is shown below:

“RESOLVED that the Resolution Professional CA SAI RAMESH KANUPARTHI (KS RAMESH) be and is hereby authorized to intimate the Adjudicating Authority (Hon. NCLT, Hyderabad) the decision of the COC to recommend Liquidation of the Corporate Debtor, KSK Energy Ventures Limited and take such action as may be necessary under Section 33(2) of IBC, 2016”

So, it is the case of Resolution Professional that COC has approved with requisite majority for moving an application

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before the Adjudicating Authority for passing order of Liquidation against Corporate Debtor.

5. Under Section 33(1) of Insolvency & Bankruptcy Code, 2016, the Adjudicating Authority to pass order of Liquidation if no Resolution Plan is received or if any Resolution Plan is rejected under Section 31 of I&B Code, 2016, the Adjudicating Authority to pass an order requiring the Corporate Debtor to be liquidated in the manner laid down in Chapter III of I&B Code, 2016.
6. It is clear no Resolution Plan is received by the COC or any plan is rejected by the Adjudicating Authority. The COC with 78.6% voting share approved a resolution for liquidation of Corporate Debtor.
7. In the application, the Resolution Professional has alleged that the COC in its meeting dated 27.02.2020 declined the fee claimed by the Resolution Professional in case he is appointed as Liquidator with a majority of 77.95% through e-voting. The Resolution Professional has quoted the resolution passed by the COC at para 5 of the application which is reproduced hereunder:

“RESOLVED THAT the Resolution Professional CA Sai Ramesh Kanuparthi to be continued as Liquidator with the existing fee of Rs.3,25,000/- plus applicable taxes per month being paid under CIRP and the same will be payable on realization during the period of Liquidation Process”.

“If the said resolution is dissented to by the COC members with the requisite majority of 66% voting rights, the Ld. Resolution Professional is not willing to continue at the next stage of Insolvency and Bankruptcy proceedings i.e. in the Liquidation of the Corporate Debtor as a Liquidator”.

8. Thus, it is clear COC has not accepted the fee quoted by the Resolution Professional in case he is appointed as Liquidator for the Corporate Debtor. The contention of Resolution Professional is that he is claiming the same fee, which he was paid during CIRP. Thus, it is very clear COC does not agree for

payment of fee as claimed by the Resolution Professional. Even in the subsequent meeting also the COC did not agree for payment of the fee as claimed by the Resolution Professional. This is stated in para 8 of the application. The contention of Resolution Professional is that Insolvency & Bankruptcy Code, 2016 does not provide for discontinuation of Resolution Professional as Liquidator on the basis of approval or dissent of the proposed fee and I&B Code is silent on this. In this connection, learned counsel has drawn our attention to Section 34(4) of I&B Code, 2016 which is quoted hereunder:

(4) The Adjudicating Authority shall by order replace the resolution professional, if –

- a) the resolution plan submitted by the Resolution Plan under Section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or*
- b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded 1 [in writing; or]*
- c) the Resolution Professional fails to submit written consent under sub-section (1).*

9. The Learned counsel for Resolution Professional relied on Regulation 39(d) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and contended the provision provides for fee to be paid to the Resolution Professional.

10. The Learned Counsel for Resolution Professional would contend that the COC is bound to continue Resolution Professional as a Liquidator and that he reported the Tribunal to pass necessary orders in this regard. It is true when liquidation order is passed against Corporate Debtor the Resolution Professional appointed during CIRP is to be appointed as a Liquidator under section 33(1) of the I&B Code. It is also true that Resolution Professional can be replaced by another person as Liquidator in the circumstances stated in

Section 34(4) of I&B Code. Regulation 4 of IBBI (Liquidation Process) Regulation, 2016 deals with fee for the Liquidator. The COC can decide the fee of the Liquidator or in case no fee is fixed by COC, the Liquidator is entitled for fee as prescribed in the table shown therein.

11. The Resolution Professional has made it clear that he does not agree for the fee proposed by the COC. The COC does not want to continue him as Liquidator following disagreement with the fee claimed by the Resolution Professional. The Adjudicating Authority has power to appoint another person as Liquidator by not appointing Resolution Professional as Liquidator. The Hon'ble NCLAT upheld the power of Adjudicating Authority in appointing another person as Liquidator vide order in **Company Appeal (AT)(Insolvency) No.177/2017 in the matter of Mr. Devendra Padamchand Jain vs. State Bank of India and 9 Ors.** The Hon'ble NCLAT has held in para 23 as follows:

"In view of the aforesaid stand taken by the parties, we hold that the Adjudicating Authority has jurisdiction to remove the Resolution Professional if it is not satisfied with its functioning of the Resolution Professional, which amounts to non-compliance of sub-section (2) of Section 30 of the I&B Code. For the reasons aforesaid no interference is called for. In absence of any merit this appeal is dismissed. For the said reasons recorded above, no order is passed in IA No.784 of 2017 as preferred by Shri T.S.N.Raja, Liquidator. The same stands disposed of. No costs.

The Hon'ble NCLAT has upheld the decision taken by the Adjudicating Authority in appointing another person as Liquidator.

12. This Tribunal on 10.09.2020 passed order directing the CoC / Resolution Professional to suggest the name of Liquidator or in the alternative to convey their willingness for payment of fee to the present Resolution Professional and to appoint him as liquidator. Pursuance of said order of this Tribunal, the Resolution Professional had convened the 7th meeting of CoC





on 05.10.2020 and resolved to appoint Mr. Krishna Komaravolu, having IBBI registration No. IBBI/IPA-002/IP-N00562/2017-2018/11699 as Liquidator.

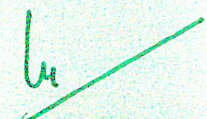
ORDER

13. In the result, the Application is allowed to the extent that Corporate Debtor **M/s KSK ENERGY VENTURES LIMITED** is ordered to be liquidated.
14. Mr. Krishna Komaravolu, bearing Registration No. IBBI/IPA-002/IP-N00562/2017-2018/11699, H.No.7-1-214, Flat No. 409 Vamsikrishna Apartments Dharam Karam Road, Ameerpet, Hyderabad, West Marredpally, Telangana , 500016, email: kkvolu@gmail.com having AFA Validity up to 24.12.2020 is hereby appointed as Liquidator who is directed to file written consent in the prescribed form as per regulations. We hereby direct that the fee shall be paid to the Liquidator as envisaged under Regulation 4 of IBBI (Liquidation process) Regulations, which forms part of the liquidation cost or the fee decided by COC.
15. The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part 2 of the Insolvency and Bankruptcy Code, 2016 by following the liquidation process given in IBBI (Liquidation Process) Regulations, 2016.
16. All powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested in the Liquidator.
17. The Liquidator is directed to issue Public Announcement stating that the Corporate Debtor is in liquidation, in terms of Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016.
18. The Order of Moratorium passed under Section 14 of the Code shall cease to have its effect.



19. This order is deemed to be a notice of discharge to the officers, employees and the workmen of the Corporate Debtor as per Section 33(7) of the Code.
20. Since Liquidation order has been passed no suit or other legal proceedings shall be instituted by or against the Corporate Debtor, save and except as mentioned in Section 52 of the Code, as to institution of legal proceedings by the Liquidator, he is at liberty to initiate suit or legal proceedings with prior approval of this Adjudicating Authority, but this direction shall 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.
21. The Liquidator shall submit a Preliminary Report within 75 days from the Liquidation Commencement date as per Regulation 13 of the IBBI (Liquidation Process) Regulations, 2016.


VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)


(K. ANANTHA PADMANABHA SWAMY)
MEMBER (JUDICIAL)

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