

SL. No.6

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

Hearing Through: VC and Physical (Hybrid) Mode

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

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

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 22.12.2023 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC) 1607/2023 in CP (IB)No.813/7/HDB/2019
NAME OF THE COMPANY	KSK Water Infrastructures Pvt Ltd
NAME OF THE PETITIONER(S)	Punjab National Bank
NAME OF THE RESPONDENT(S)	KSK Water Infrastructures Pvt Ltd
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/1607/2023

Orders pronounced, recorded vide separate sheets. In the result, this application is allowed.

SD/-
MEMBER (T)

SD/-
MEMBER (J)

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

**IA. No. 1607 of 2023
In CP (IB) No.813/7/HDB/2019**

[U/S 60(5) of the IBC, 2016 r/w regulation 36A of the IBBI
Regulations. 2016 r/w rule 11 of NCLT Rules 2016]

IN THE MATTER OF:

PFC Projects Limited & Ors.

...Applicants

Versus

V. Venkatachalam,
Resolution Professional of
KSK Water Infrastructures Private Ltd & Ors.

...Respondents

MEMO OF PARTIES

1. PFC Projects Limited

Power Finance Corporation Ltd.,
Urjanidhi, 1, Barakhamba Lane,
Connaught Place, New Delhi-110001
Email: projectksk_cirp@pfcindia.com

...Applicant No.1

2. REC Limited

REC World Headquarters,
I-4, Sector-29, Gurgaon,
Haryana- 122001
Email: dkgupta@recl.in

...Applicant No.2

3. NTPC Limited

Engineering Office Complex (EOC),
Sector 24, Noida 201301
Email: MKJAIN@NTPC.CO.IN

...Applicant No.3

Versus

1. V. Venkatachalam,
Resolution Professional of
KSK Water Infrastructures Private Limited
No. 12-13-205, Street No.2,
Tarnaka, Secunderabad-500017
Email: ip.kskwipl@ibcprofessionalsolutions.com

...Respondent No.1

2. Committee of Creditors of
KSK Water Infrastructures Private Limited
Through Prudent ARC Limited
8-2-293/82/A/43 1/A, Road No.22
Jubilee Hills, Hyderabad - 500033
Email: aka@prudentarc.com

...Respondent No.2

Date: 22.12.2023

CORAM:

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

Counsel/Parties present:

For the Applicant : Mr. Avinash Desai, Sr. Adv,
along with Mr. Amir Bavani,
For the Respondent No.1 : Mr. Y. Suryanarayana
For the Respondent No.2 : Mr. Mayur Mundra

Per: Sanjay Puri, Member (Technical)

ORDER

1. This application has been filed by a consortium consisting of PFC Projects Limited (**PPL**), REC Limited (**REC**), and NTPC Limited (**NTPC**), hereinafter collectively referred to as **Applicants**. The Applicants have challenged the decision made by the Committee of Creditors (**CoC**), as communicated by the Resolution Professional (**RP**) of M/s.KSK Water Infrastructure Private Limited, the

Corporate Debtor (**CD**). In their decision, the Respondents have disqualified the Applicants from being included in the final list of eligible prospective resolution applicants (**PRA**).

2. The Corporate Debtor was admitted into CIRP on 23.08.2021, subsequent to which RP invited Expressions of Interest (**EOI**) from PRAs with the cut-off date of 07.09.2021. In response, nine EOIs were received. However, due to existing disputes between the CD and M/s. KSK Mahanadi Power Company Limited (**KMPCL**)¹ regarding certain commercial arrangements and ongoing legal proceedings, the PRAs, seeking clarity on the resolution of these disputes, requested an extension of the deadline for submitting their bids.
3. It was in this background, on 22.04.2022, the Applicants approached the RP, seeking permission to submit their EoI and participate in the bidding process for the Corporate Debtor. Given this context and with the aim of maximizing value and concluding the CIRP which was set to conclude on 07.07.2022, the RP, with the approval of the CoC, presented an application (IA No. 522 of 2022) to this Authority, seeking permission to reopen the bidding process for the Corporate Debtor and invite the Applicants. Vide order dated 05.06.2023, this Authority granted an

¹ Also in CIRP separately

extension of the timeline for receiving EOIs from the Applicants by 2 months from the date of the order.

4. The EoI was thus submitted by the applicant on 21.07.2023. The RP however, despite having obtained an extension from this Authority to invite the Applicants, conveyed through an email on 14.08.2023 that, given Power Finance Corporation (PFC)², a constituent of the Committee of Creditors in KMPCL, had filed an appeal in the Hon'ble Supreme Court on a matter contested by the CD, and this appeal is detrimental to the interest of the CD, it can be a disqualification for the Applicants to participate in the CIRP of CD, unless PFC withdrew its appeal. This disqualification of the Applicants, based on PFC's appeal status, was formally conveyed through the emails of 11.09.2023 and 15.09.2023, and led to the exclusion of the Applicants from the final list of eligible Prospective Resolution Applicants (PRAs). This application challenges the decision of the Respondents, CoC/RP, for not including the applicants in the final list of PRAs.
5. The first objection raised by the Respondents is that Applicant No.3, i.e., NTPC, is not necessary or proper for filing the current application, given that the EoI dated 21.07.2023 was submitted by PPL and REC only. However, this objection holds no substance, as the EOI dated

² Applicant No.1 PFC Projects Ltd (PPL) is a fully owned subsidiary of Power Finance Corporation (PFC)

21.07.2023 explicitly allows for the induction of a technical partner, and the inclusion of NTPC as a technical partner cannot be objected.

6. The main objection however to justify their decision to exclude the applicants from the list of PRAs is centered around the fact that PFC, parent company of PPL³, and REC⁴ as members of Committee of Creditors of KMPCL are currently engaged in legal proceedings with the CD. In this legal dispute an appeal is pending before the Hon'ble Supreme Court, involving a commercial arrangement between the CD and KMPCL.
7. We notice that the PPL and NTPC⁵ are not the CoC members in KMPCL. Moreover, PFC and REC, members of the CoC in KMPCL, collectively hold only 27.07% of shares and lack the sufficient voting share to approve any resolution related to litigation, including the filing or withdrawal of any appeal. Furthermore, it has been reported that the Resolution Professional of KMPCL has filed an appeal in the Hon'ble Supreme Court on the same matter, seeking similar reliefs. This appeal is also pending, and the Applicants in the current application do not have any locus to withdraw the said appeal.

³ Applicant No.1

⁴ Applicant No.2

⁵ Applicant No.3

8. Considering the aforementioned, the decision of the Respondents to disqualify the Applicants from participating in the CIRP of the CD based on an appeal filed by the parent company of Applicant No.1, with Applicant No.2 as part of a Committee and holding only 27.07% voting power, in a matter where the CD is a respondent, seems arbitrary and driven by topical expediency.
9. In any case, KMPCL is a distinct entity, and the ongoing litigation concerning it should not unduly influence the decision-making process of the Respondents in the present case. Moreover, engaging in litigation to seek justice should not be grounds for disqualification, especially in a scenario where the concerned party is simply seeking to participate in a competitive bidding process, particularly when invited to do so by those who initially extended the invitation with the approval of the competent authority.
10. In their submissions, the Respondents have stressed on the supremacy of the 'Commercial Wisdom' of the CoC to justify their decision. However, it is for this Authority to ensure that the topical expediency or arbitrariness does not replace the commercial wisdom. As the final decision in the pending litigation lies with the Hon'ble Supreme Court, disqualifying the Applicant on the grounds that their stakes are also involved in that litigation, is arbitrary

and not commercial wisdom. The topical expediency seems to be coming in the way of maximization of value.

11. We cannot overlook the fact that it was upon the insistence of the CoC and RP in this case, that the bidding process for the CD was reopened to consider EoI of these very Applicants “**to maximise the value**” of the CD. It is noteworthy that the CoC/RP, who are now disqualifying the Applicants, were fully aware of the circumstances when they argued and pursued IA No. 522/2022.
12. The Tribunal's order in that IA, dated 05.06.2023, had explicitly acknowledged⁶ the existing disputes between the corporate debtor of KMPCL and the ongoing civil appeal before the Hon’ble Supreme Court, pending adjudication. Respondents cannot take a stand now that because IA 522/2022 was filed before the Appeal of CoC of KMPCL was filed, they were unaware of the circumstances of Applicant No.1 & 2 concerning the appeal before Hon’ble Supreme Court. They had argued and pursued reopening of the bidding process to include the Applicants, despite being aware of the pending litigation in the Supreme Court. Their present stance is inexplicable.
13. In light of these facts, we are inclined to allow the present application with the direction that the EoI of the

⁶ Para 2.b of the order dated 5.6.2023 at Page 53 of the Application

Applicants be considered on merit and a reasonable time allowed for submission of a viable resolution plan.

14. This application is therefore allowed with the foregoing remarks.

Sd/-
(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-
(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

Apoorva