NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

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

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

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 20.02.2020 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA NO. 840&927/2020in CP(IB) NO. 458/7/HDB/2018
NAME OF THE COMPANY	Konaseema Gas Power Ltd
NAME OF THE PETITIONER(S)	IDBI Bank Ltd
NAME OF THE RESPONDENT(S)	Konaseema Gas Power 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

Y.Suryanarayana Adv. 98498-66556

VVSN Raju counsel for RP Adv 9866446467

ORDER

Order pronounced in open court. Applications bearing IA No.840/2019 and 927/2019 are disposed of vide separate order.

MEMBER TECHNICAL

MEMBER JUDICIAL

AS

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

IA No.840/2019
In
CP(IB)No.458/07/HDB/2018

<u>In the matter of:</u>

Konaseema Gas Power Limited
Having its Registered Office at
Progressive Tower, 6-2-913/914,
Khairatabad, Hyderabad – 500034,
Telangana.
(Rep. by CA.Kambhammettu Sri Vamsi, RP)

...Applicant/
Corporate Debtor

IA No.927/2019

In

CP (IB) No.458/7/HDB/2018

<u>Between:</u>

Amaravathi Textiles Private Limited
33-263, Kandimall Road, Pandaripuram,
Chilakaluripet – 522616.

...Applicant/
Resolution Applicant

Vs

1. Konaseema Gas Power Limited
   II Floor, Progressive Towers,
   6-2-913/914, Khairatabad,
   Hyderabad – 500 004.

   ...Corporate Debtor/
   Respondent No.1

2. IDBI Bank Limited
   IDBI Tower, World Trade Complex,
   Cuffe Parade,
   Mumbai – 400 005

...Respondent No.2/
Members of CoC/
Petitioner

3. Power Finance Corporation Limited
"Urjanidhi", 1, Barakhamba Lane
Connaught Place,
New Delhi – 110001 ...Respondent No.3/
Member of CoC

4. Rural Electrification Corporation Ltd,
Core 4, SCOPE Complex,
7 Lodhi Road, New Delhi – 110003. ...Respondent No.4/
Member of CoC

5. Housing & Urban Development Corporation Ltd.
HUDCO Bhavan, India Habitat Centre,
Lodhi Road,
New Delhi – 110 003. ...Respondent No.5/
Member of CoC

6. Central Bank of India
Chandramukhi, Nariman Point
Mumbai – 400 021 ...Respondent No.6/
Member of CoC

7. UCO Bank
10, BTM Sarani,
Kolkatta – 700 001 ...Respondent No.7/
Member of CoC

8. Union Bank of India
239, Back Bay Reclamation,
Nariman Point,
Mumbai – 400 021. ...Respondent No.8/
Member of CoC

9. Punjab National Bank.
Plot No.4, Sector-10, Dwaraka,
New Delhi – 110 075. ...Respondent No.9/
Member of CoC

10. Life Insurance Corporation of India
Yogakshema, Jeevan Beema Marg,
Mumbai – 400 021 ...Respondent No.10/
Member of CoC

11. General Insurance Corporation of India
Suraksha 170, J, Tata Road,
Church gate,
Mumbai – 400 020. ...Respondent No.11/
Member of CoC

12. PTC India Financial Services Ltd.,
7th Floor, Telephone Exchange Building Bhikaji Cama Place,

New Delhi – 110066.

...Respondent No.12/
Member of CoC

Order pronounced on: 20.02.2020

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

Parties/ Counsels Present:-

For the Applicant in IA No.840/2019/ RP:

Mr.V.V.S.N.Raju, Advocate

For the Applicant in IA No.927/2019

Mr.Y.Suryanarayana, Advocate

For the Financial Creditor:

Mr.Srinivas Chitturu, Advocate

Per: K. Anantha Padmanabha Swamy, Member Judicial

COMMON ORDER

IA No.840/2019

1. The present Application bearing IA No.840/2019 in CP(IB)No.458/7/HDB/2018 is filed by Resolution Professional U/s. 33 of the IB Code, 2016 inter-alia praying to pass an order of Liquidation against the Corporate Debtor herein and appoint the Proposed Liquidator as Liquidator of Corporate Debtor in accordance with the provisions of Sec.34(4)(c) of IBC, 2016.

IA No.927/2019

2. The present Application bearing IA No.927/2019 is filed by Unsuccessful Resolution Applicant seeking the following reliefs:

   a. To direct the CoC to consider and approve the Resolution Plan submitted by the Applicant herein and based on the viability and feasibility of the plan submitted by the Resolution Applicant as also considering the fact that the Resolution Applicant is prepared to furnish an undertaking as aforesaid and further direct the Resolution Professional to do and perform all such ancillary and incidental acts as may be required to enable the COC to take an appropriate decision for considering and approving the plan.

   b. No order approving the Liquidation Application filed by the Resolution Professional vide I.A. No.840/2019 may be passed by this Adjudicating Authority till the disposal of the instant Application.

   c. To pass such other orders as this Adjudicating Authority may deem fit in the interest of natural justice.

3. Brief facts of IA No.840/2019 are as under:-

   a. It is stated that an application filed by the Financial Creditor U/s.7 of the Code, was admitted for CIRP vide Admission Order dated 18.12.2018 passed by this Adjudicating Authority in the above mentioned case. CA.Kambhammettu Sri Vamsi was appointed as the Interim Resolution Professional who was later confirmed as the Resolution Professional.

b. The Resolution Professional as part of the CIRP had called for Expression of Interest for submission of Resolution Plan from prospective resolution applicants vide an advertisement for inviting Expression of Interest from prospective resolution applicants, which was published on 02.03.2019 in Business Standard, All India Edition (English Language newspaper) and Surya, Hyderabad edition (Regional language newspaper) with the last date for submission of EoI by prospective Resolution Applicant being 18.03.2019, which was extended by the CoC to 10.04.2019 which was finally extended to 07.05.2019, to which two prospective resolution applicants, Amaravathi Textiles Private Limited and Karthik Rukmini Energy Limited (Hereinafter referred to as "Prospective Resolution Applicants"), have submitted their respective applications evincing interest in submission of a Resolution Plan on 18.03.2019, before any extension to the submission of Expression of Interest was made and an email conveying interest was submitted by USP & E Holdings Private Limited, intending to bid for the Corporate Debtor, though no Expression of Interest for submission of Resolution Plan was submitted by it. It is submitted that no Applications expressing Interest for submission of Resolution Plan was received by the Resolution Professional after extending the last date for Expression of Interest on the First and Second instances, i.e., to 10.04.2019 and thereafter to 07.05.2019.

c. It is stated that the CoC has also in the 3rd meeting of Committee of Creditors held on 29.03.2019 and in 4th meeting of CoC held on 30.04.2019 *inter-alia* extended the date of filing of Resolution Plan from 25.05.2019 to 21.06.2019 and accordingly pursuant to the aforementioned submission of interest by Prospective Resolution Applicants, a Resolution Plan was received by the Resolution Professional only from Amaravathi Textiles Private Limited and no Resolution Plan was submitted by the other Prospective Resolution Applicant.

d. As approved by way of Resolution in the 4th CoC meeting held on 30.04.2019 an application was filed by RP before this Adjudicating Authority for extension of CIRP period for a further period of 90 days i.e., from 17.06.2019 to 15.09.2019 over and above 180 days and the same was approved by this Adjudicating Authority vide Order dated 12.06.2019.

e. It is stated that in the 5th CoC meeting held on 01.07.2019, *inter-alia* the Resolution Plan submitted by the sole applicant "Amaravathi Textiles Private Limited" was opened and the observations/shortcomings were duly noted and were also informed to the representatives of the Applicant who were invited for the meeting.

f. It is stated that in the 6th CoC meeting held on 17.07.2019, *inter-alia* the CoC in line with the 5th meeting of CoC, has asked the Resolution applicant to improve the Plan apart from other clarifications as the amounts forming part of the proposed Resolution Plan were found to be low, including the cost allocated for meeting the CIRP Expenditure and no provision was made for payments to be made to Operational Creditors. That the Resolution Applicant, on 12.08.2019 had submitted a Revised Resolution Plan which was duly placed for discussion in the 7th CoC meeting.

g. In the 7th CoC meeting dated 22.08.2019, *inter-alia* CoC had discussed the Revised Resolution Plan submitted by the Resolution Applicant. The Resolution Professional informed the COC that even though the Resolution Plan was revised and submitted by the Resolution Applicant, which was in compliance with the requirements as mandated U/s.30(2) of the Code, the said Resolution Plan was found to be conditional in nature stipulating certain conditions.

h. It is stated that in the 7th CoC meeting it was observed that the only Resolution Plan submitted was found to be non-compliant in nature, as it was conditional in nature and as such the said Resolution Plan could not be tabled before the members for voting and as such did not require any voting for the same, which was deemed to be non-receipt of any Resolution Plan, fit for examination and acceptance by the CoC.

i. It is stated that in the 8th CoC meeting held on 05.09.2019, *inter-alia* it was observed that there was no Resolution Plan, to be effectively tabled before the CoC and as such the operation of provision as stipulated U/s.33(1)(a) of the Code shall come into effect, subject to an order of this Adjudicating Authority where the Corporate Debtor shall be admitted to Liquidation under the extant provisions of the Code, more specifically under Section 33(1)(a) of the Code. It is submitted that in the 8th Meeting of CoC, the members have not concluded on their decision pertaining to the Liquidation Cost and on fee of Liquidator as prescribed under the I&B Regulations, 2016.

j. It is stated that the Resolution Professional herein, in compliance with Section 34(1) of the Code, has submitted herewith the written consent by way of a Written Communication dated 12.09.2019.

k. It is stated that since the Corporate Debtor does not have any Resolution Plan and the Resolution Plan submitted by the sole Resolution Applicant is a non-compliant one and other facts as discussed in the various meetings by the COC, and as such by operation of law the Corporate Debtor may be referred to Liquidation, and also the Resolution Professional herein may be appointed as the Liquidator and also that the Resolution Professional herein is well acquainted with the facts and circumstances of the Corporate Debtor as the Resolution Professional was looking after the affairs of the Corporate Debtor from commencement of CIRP, i.e., on 18.12.2018 till date, it is imperative that the Corporate Debtor be referred to Liquidation and the Resolution Professional herein be appointed as Liquidator.

4. Committee of Creditors in IA No. 840/2019, filed its counter inter-alia stating as under:

   i. That the lenders of the consortium considering the liquidation of the assets of the Corporate Debtor worth hundreds of crores, involving complexity of issues with reference to the nature of the business, CoC felt desirable to have a person with appropriate domain expertise as the Liquidator and has identified CA Sai Ramesh Kanuparthi, to be proposed Liquidator of the Corporate Debtor and accordingly with 99.06% voting shares has passed a Resolution to propose to the Adjudicating Authority to appoint CA Sai Ramesh Kanuparthi, as Liquidator for Liquidation of Konaseema Gas Power Limited.

   ii. That the Resolution Professional has also issued a letter of no objection for the same vide letter dated 14.10.2019.

5. Brief facts as stated by Applicant in IA No.927/2019 are as under:-

   a. It is stated that the Applicant herein is one among the other applicants who had submitted EoI to the Resolution Professional. On receiving the Information Memorandum from the Resolution Professional, the Applicant herein submitted the Resolution Plan dated 20th June, 2019 to the Resolution Professional with a value of Rs.376.07 Crores.

b. That the Applicant herein submitted EMD of Rs.5,00,00,000/- by way of the Bank Guarantee so as to comply with the requirements of the RFRP.

c. That on submission of the revised Resolution Plan dated 12.08.2019, the Applicant was invited to attend CoC meeting to be held on 22.08.2019 to discuss the revised plan submitted by the Applicant. In response to the said invitation, the Applicant sent the following mail to the Resolution Professional.

"We thank you very much for inviting us to participate in the 7th CoC of Konaseema Gas Power Ltd. On detailed analysis, we ascertain that the operations of the power plant looks to be very remote due to non-availability of natural gas, which is the main raw material. The domestic natural gas will not be available in the near future. The likely forecast of the availability of domestic natural gas is only in the year of 2023-24. Even though the off take/sale of power is very difficult and doubtful from the power Discoms. You are kindly aware, due to the availability of renewable every which is much cheaper, this power plant will not be able to compete in the energy prices. Keeping in view of this background we have nothing to offer as additional amount and to discuss on the Resolution Plan of Konaseema Gas Power Ltd. Our offer submitted to the Resolution Plan amounting to Rs.384 Crores is as below and is final:

Sl.No.	Particulars	Amount in Crores
(1)	Resolution Cost	154.00

(2)	Working Capital Margin Money	30.00
(3)	Refurbishment Cost	100.00
(4)	Working Capital	100.00
	Grand Total	**384.00**

Kindly communicate your acceptance of our Resolution Plan, if accepted by the CoC and inform us at the earliest. You are kindly aware we have submitted a Bid Bond amounting to Rs.5 crores dated 21.6.2019 from Punjab National Bank towards EMD. In case our offer is not acceptable to the CoC, you may kindly take steps to refund the Bid Bond/EMD immediately to Amaravathi Textiles Private Ltd., along with the initial payment of Rs.5 Lakhs paind along with out Expression of Interest."

d. That as per the communication received from the Resolution Professional vide email dated 5th September, 2019, the revised resolution plans submitted by the Applicant herein is rejected by CoC for the sole reason that the said plan is a conditional plan with a condition which stated that "ATPL (Amaravathi Textiles Pvt. Limited) can take up the Resolution Plan only when Hon'ble NCLT issues appropriate direction in the matter as to supply of gas and also an extension of PPA upto the year 2035. In this regard, it is requested to adjudicating authority through COC and RP to pass appropriate direction as per the IB Code 2016.

e. That the Applicant herein is ready to remove the clause of availability of natural gas and provide an undertaking to this effect as it is the sole reason for rejection of the resolution plan. Further it is pertinent to note that the revised Resolution Plan submitted by the Applicant herein meets and complies all the requirements of the RFRP and the Code and hence the same shall not be rejected as the Applicant herein is the only Resolution Applicant who has submitted the Resolution Plan for revival of the Corporate Debtor.

f. That the Resolution Professional filed a Liquidation Application vide IA No.840/2019 with this Adjudicating Authority for approving the liquidation of the Corporate Debtor.

g. That it is the commercial wisdom of the Resolution Professional and the members of CoC that is being challenged in this instant petition as there is a failure on the part of the resolution professional and members of CoC in exercising their duties of maximization of wealth and assets of the Corporate Debtor which shall be only with the approval of the plan submitted by the Applicant and not by opting liquidation.

6. RP filed his counter in IA No.927/2020, inter-alia stating as under:

a. It is stated that the Applicant itself admitted that the Resolution Plan does not conform to the mandatory requirements of the Code and agreed to submit the revised Resolution Plan. The Resolution Plan was Conditional and Resolution Plan was rightly rejected by the Respondent No.1 herein as per the IB Code 2016 in consultation with CoC.

b. That Counsel for R1 sought permission from this Adjudicating Authority to conduct CoC Meetings. Accordingly the Respondent

No.1 conducted CoC Meetings on 30.08.2019, 08.11.2019 and 13.11.2019.

c. That the Resolution Plan submitted by Unsuccessful Resolution Applicant were meticulously discussed in the CoC Meetings dated 30.08.2019. That in the CoC Meeting dated 30.08.2019, the Petitioner submitted that they would be submitting their revised resolution plan by the next CoC meeting. That the Petitioners submitted the revised resolution plan on 04.11.2019, which was kept for discussions on the CoC Meeting dated 08.11.2019. That the representatives of the Unsuccessful Resolution Applicant were present in the meeting dated 08.11.2019 and were duly informed by the Resolution Professional and the members of the CoC that the Letter of Commitment was missing in the revised plan.

d. That again after carefully discussed in the 10th CoC Meeting dated 08.11.2019 and Respondent No.1 requested the Petitioner herein to submit their revised plan on or before 12.11.2019 by 4.00 PM which will be in compliance with IB Code. The Unsuccessful Resolution Applicant submitted the Modified Resolution Plan on 12.11.2019 and submitted financial projections on 13.11.2019.

e. That after detailed scrutiny, it has been found that Modified Resolution Plan is still inconsistent to the Request for Resolution Plan (RFRP) Document issued by Respondent No.1. Pertinent to mention that RFRP is the primary document, which should be mandatorily adhered to before submission of a given resolution plan.

f. That the Members of the CoC were unanimous in their opinion that the Modified Resolution Plan did not provide adequately on the source of funds, confirmation of technical feasibility and financial viability and therefore did not merit Voting by the Members of the CoC. Modified Plan submitted by the Resolution Applicant herein did not meet the requisite Term and Condition of the RFRP document with respect to :

   i. Letter of Commitment from Bank.

   ii. Source of Fund.

   iii. EMD in the form of Bank Guarantee provided from a Third Party.

g. In the present form the Modified Resolution Plan was inconsistent to the terms and conditions of the RFRP document of Konaseema Gas Power Limited, the Corporate Debtor.

h. That the Resolution Professional herein, vide email dated 18.11.2019, informed the Unsuccessful Resolution Applicant that Plan was found to be non-compliant to the Terms and Conditions of Request for Resolution Plan (RFRP) document for the Corporate Debtor namely, Konaseema Gas Power Limited and therefore not put for Voting to the Members of Committee of Creditors.

i. In the light of aforesaid submissions and commercial wisdom of CoC Members, this application is liable to dismissed with exemplary costs.

7. Heard both the sides and perused the record.

8. It is the case of the Unsuccessful Resolution Applicant/Applicant in IA No. 927/2020 that he is challenging the commercial wisdom of the Resolution Professional and the members of CoC as there is a failure on the part of the resolution professional and members of CoC in exercising their duties of maximization of wealth and assets of the Corporate Debtor by not approving the Resolution Plan submitted by the Applicant and opting for liquidation. Per contra, the RP has stated that the Resolution Plan was Conditional and Resolution Plan was rightly rejected by the Respondent No.1 herein as per the IB Code 2016 in consultation with CoC.

9. It is further observed that the RP sought permission from this Adjudicating Authority to conduct CoC Meetings and accordingly conducted CoC Meetings on 30.08.2019, 08.11.2019 and 13.11.2019. The Unsuccessful Resolution Applicant submitted the Modified Resolution Plan on 12.11.2019 and submitted financial projections on 13.11.2019, and after scrutiny, it was observed that the Modified Resolution Plan was inconsistent to the Request for Resolution Plan (RFRP) Document issued by RP. That the Members of the CoC were of the opinion that the Modified Resolution Plan did not provide adequately on the source of funds,

confirmation of technical feasibility and financial viability and thus same was not considered by CoC.

10. In view of the facts and circumstances above, this Adjudicating Authority observes that sufficient opportunity was provided to the Applicant in IA No. 927/2019, for placing its Resolution Plan for consideration before RP and CoC. However, the Resolution Applicant has failed in utilizing the same for the reasons whatsoever. Further, in the recent judgement in the case of *Arcelor Mittal India Pvt Ltd vs. Satish Kumar Gupta, 2019 2 SSC1,* Hon'ble Apex Court have laid down that a resolution applicant cannot claim a vested right that his Resolution plan be considered and therefore, no challenge can be preferred to the Adjudicating Authority at this stage.

11. Considering the above, legal and factual position, this Adjudicating Authority is not inclined to grant relief sought by Applicant in IA No. 927/2019 and same is dismissed accordingly.

12. Further, this Adjudicating Authority did not receive any Resolution Plan under Sub-Section (6) of Section 30 before the expiry of insolvency resolution process period U/s.12(1) of the Code. The Resolution Professional has intimated this Adjudicating Authority of the decision of the CoC approved with 100% voting share, to liquidate the Corporate Debtor. Therefore, in exercise of powers conferred under Sub-Clauses (i), (ii) and (iii) of Clause (b) of Sub-

Section (1) of Section 33 of the I&B Code, 2016, we proceed to pass Order as follows:-

(i) This Adjudicating Authority hereby order for Liquidation of M/s. Konaseema Gas Power Limited, which shall be conducted in the manner as laid down in Chapter III of part II of the I&B Code, 2016;

(ii) This Adjudicating Authority hereby appoint Mr. CA. Sai Ramesh Kanuparthi, as resolved by the Financial Creditors in its meeting dated 19.09.2019, to act as Liquidator in the present case, who shall file its written consent along with AoA in the registry within three days from date of this order. He shall issue a public announcement stating therein that the Corporate Debtor is in Liquidation;

(iii) The moratorium declared under Section 14 of the I&B Code, 2016, shall cease to have effect from the date of the order of Liquidation;

(iv) Subject to Section 52 of the I&B Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.

(v) We make it clear that para (iv) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.

(vi) This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the Liquidation process by the Liquidator.

(vii) All the 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 Company Liquidator viz., CA. Sai Ramesh Kanuparthi. In addition to this, the Company Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the I&B Code, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(viii) The personnel of the Corporate Debtor shall extend all assistance and co-operati on to the Company Liquidator as may be required by him in managing the affairs of the Corporate Debtor.

(ix) The Liquidator shall keep in view the provisions of Regulation 32A of Insolvency and Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 and shall endeavour to first sell the Corporate Debtor or its business as going concern. However, if he is unable to sell the Corporate Debtor or its business within 90 days from liquidation commencement date, Liquidator shall proceed to sell the assets of the Corporate Debtor under clauses (a) to (d) of Regulation 32 of Insolvency and Bankruptcy Board Of India (Liquidation Process) Regulations, 2016.

(x) The Company Liquidator shall be entitled to charge such fee for conducting the Liquidation proceedings in such a proportion to the value of the Liquidation estate assets as specified by the Board under Regulation 4(3) of IBBI (Liquidation Process) Regulations, 2016. Accordingly, the fees for conducting the Liquidation proceedings shall be paid to the Company Liquidator from the proceeds of the Liquidation estate.

(xi) Copy of this Order shall be sent to the concerned Registrar of Companies, RD, OL, Registered Office of the Corporate Debtor and Company Liquidator viz., CA. Sai Ramesh Kanuparthi for information and compliance.

(xii) Registry is directed to furnish a copy of this order to IBBI for confirmation of appointment of Liquidator.

11. In terms of the above, IA No. 840 of 2019 filed in CP(IB) No. 458/7/HDB/2018 by the RP under Section 33(2) of the I&B Code, 2016, for initiation of the Liquidation Proceedings against the Corporate Debtor viz., M/s. Konaseema Gas Power Limited, stands **disposed off**.

Dr.BINOD KUMAR SINHA MEMBER TECHNICAL	K.ANANTHA PADMANABAHA SWAMY MEMBER JUDICIAL

Alekhya/SKRathi