

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
09-06-2023 AT 10:30 AM

IA(IBC) 859/2023 & IA No. 241/2020 in CP(IB) 11/10/HDB/2017
u/s. 10 of IBC,2016

IN THE MATTER OF:

Kamineni Steels & Power India Pvt Ltd

...Petitioner

C O R A M:-

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

O R D E R

IA(IBC) 859/2023

Order pronounced, in IA No.859/2023 recorded vide separate sheets. In the result, the following order is passed:

We direct the liquidator immediately to issue necessary sale notice within 15 days from the date of this order and complete the entire task within three months from today. We make it clear that no further extension will be allowed to the liquidator as already four years completed for the process of completion of liquidation.

Accordingly IA is allowed.

IA NO.241/2020

Order in IA No.241/2020 pronounced. Recorded vide separate sheets. In the result, the following order is passed:

As per the orders in IA No.859/2023, we have directed the liquidator to sell the assets of the corporate debtor and complete the liquidation process with in a period of three months from the date of this order.

Therefore, under these circumstances we are of the opinion that liquidator can be directed to examine the claim within 30 days from the date of this order and communicate the outcome to the Applicant.

-SD-

MEMBER (T)

-SD-

MEMBER (J)

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

IA (IBC)/241/2020

In CP (IB) No.11/10/HDB/2017

Application under Section 60(5) of the Insolvency and Bankruptcy
Code, 2016

Between

Southern Power Distribution Company of Telangana Limited
(TSSPDCL)

...Applicant Company

VS

Kamineni Steel & Power India Private Limited, In Liquidation
Rep by Liquidator, Sri. Racharla Ramakrishna Gupta, IRP.

....Respondent/Corporate debtor

Date of order: 09.06.2023

Coram

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)
Shri Charan Singh, Hon'ble Member (Technical)

Parties/ Counsels present:

For the Applicant : Mr.Harish, Counsel.

For the Respondent : Mr.Raja Shekar Ro Selvaji, Counsel.

Liquidator : Mr. Racharla Ramakrishna Gupta.

PER: BENCH

1. This is an Application filed by the Applicant under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 Read with Rule 11 of NCLT Rules, 2016 seeking permission for submitting the claim by Operational Creditor (TSSPDCL) beyond the stipulated time.

2. Gist of the application:

- a. It is averred that corporate debtor has applied for HT Connection which was sanctioned by the then Central Power Distribution Company of Andhra Pradesh (APCPDCL), which is now Southern Power Distribution Company of Telangana Limited (TSSPDCL).
- b. It is averred that as per the agreement executed an HT by the Corporate Debtor dated 03.02.2014 with APCPDCL, the corporate debtor had drawn and consumed electricity supplied by APCPDCL under the said agreement vide H.T.S.C.No.NLG1056. Thus monthly invoices used to be raised by the applicant company, subsequently corporate debtor cleared the dues.
- c. Thereafter corporate debtor failed to make payments against the invoices raised by the Applicant Company and as on 29.10.2015 a total amount of Rs.9,12,01,131/- (Rupee Nine Crore Twelve Lakhs One Hundred and Thirty One Only) was due and payable to the Applicant Company . Since the corporate debtor failed to clear the dues the power supply has been disconnected on 29.10.2015.
- d. Subsequently the HT Agreement for supply of electricity was terminated on 03.02.2016. An amount of Rs. 18,97,58,944/- as on 01.04.2016 was due and payable by the Corporate Debtor to the Applicant Company. The amount was arrived at after adjustment of security deposit of Rs.6,75,00,000/- and consequently the amount payable by the Corporate Debtor stood reduced to Rs.12,22,58,944/-.

- e. In the meanwhile, the Adjudicating Authority admitted CP(IB)/11/10/HDB/2017 on 10.02.2017 and thereby CIRP commenced.
- f. It is averred that Applicant Company issued notice of Demand in Form “A” on 03.11.2018 under section 6 of the Southern Power Distribution Company of Telangana Limited (Recovery of Dues) Act, 1984 and Form “B” on 10.07.2019 under Rule 4(2) of Southern Power Distribution Company Limited (Recovery of Dues) Rules, 1985 for the dues to be payable by the corporate debtor. The Applicant Company had served an auction notice on the Corporate Debtor by placing the same on the gates of the Unit belonging to the Corporate Debtor on 15.04.2019.
- g. The Applicant Company was in receipt of a letter dated 18.04.2019 from the Liquidator of the Corporate Debtor informed that he had seen the auction notice and in that context informed the Applicant Company that the Corporate Debtor is in the process of liquidation after undergoing corporate insolvency resolution process (CIRP) unsuccessfully. The said Liquidator has also mentioned in the aforesaid letter that as per the records available with him, the Applicant Company has not submitted any claims when the Public Announcement was made during the CIRP and also during the Liquidation Process and the Applicant Company may approach the Adjudication Authority in this regard. Meanwhile, the applicant company had furnished Form B (IBC) dated 20/04/2019 for an amount of Rs. 18,90,33,335/- (Rupees Eighteen Crores Ninety Lakhs Thirty

- Three Thousand Three Hundred and Thirty Five Only) it has not been accepted because it was submitted beyond the prescribed time period.
- h. The amounts due from the Corporate Debtor relating to charges for electricity supplied and for interest and other charges related thereto, under the HT Agreement it had entered into with the Corporate Debtor is contractually obligated to pay the same and further submitted that the failure in submitting the claim was neither wanton nor wilful and was purely by inadvertence.
 - i. The total amount due, including surcharge/interest, from the Corporate Debtor as on 30/01/2020 is Rs.20,55,64,769/- (Rupees Twenty Crores Fifty Five Lakhs Sixty Four Thousand Seven Hundred and Sixty Nine Only).
 - j. Hence the Applicant Company prayed this Adjudicating Authority to issue direction to the liquidator to process the balance amount of the Claim placed by the Applicant Company and proceed accordingly in the interest of Justice and equity.

3. Reply filed by the Respondent:

- a. It is averred that the averments made by the Applicant Company are false and baseless and is liable to be rejected and the applicant fails to establish a valid reason for delay in submission of claim during the Liquidation Process and the reasons provided by the applicant are not justified.
- b. It is averred that as per IBC once a Company moves into liquidation, the Operational Creditor shall submit his proof of claim in person, by post or by electronic means in Form C of schedule II under Regulation

17 of the IBBI (Liquidation Process) Regulations, 2016 read with Section 38 of the Code with Rule 12 of IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) which provides Liquidator to receive claims **within 30 days** from Liquidation commencement, but applicant has failed to file the requisite Form within 30 days and has lapsed over 465 days, which is time barred beyond consideration.

- c. It is averred that the Liquidator published the “ **Sale of the Corporate Debtor as a going concern**” in Newspapers (in Local as well-as English Language) as prescribed by the Code. The Liquidator has issued 4th sale notice on 26th July, 2020 it is also to be noted that the e-auction was conducted on 26th August, 2020 and as per the e-auction M/s. Nimmagadda Suryapradeep Bio-tech Private Limited, Hyderabad was confirmed as a successful bidder. Thus the auction process has been completed and the copy of the 4th Sale Notice Newspaper publication dated for EOI along with e-auction publication and relevant documents are annexed herewith as Annexure –A.
- d. It is further averred that there is no specific provision for a remedy to an aggrieved creditor who has failed to lodge his claim a stakeholder cannot file an Application after the due date, i.e, more than 465 days and such claim shall not be entertained as the Liquidation process is at an vital stage.
- e. Thus the respondent prayed the Tribunal to dismiss the Application with exemplary costs and pass the order that deems fit by the Adjudicating Authority.

4. Rejoinder on behalf of the petitioner:

- a. It is averred by the petitioner that the averments, allegations and statements made by the respondent are baseless.
- b. It is averred that the Respondent addressed a letter dated 18.04.2019 to the applicant that the Corporate Debtor is under liquidation pursuant to the order of this Tribunal dated 26.10.2018 and issued public announcement on 31.10.2018 calling upon stakeholders to submit their claims with proof as per Regulation 12 of the IBBI (Liquidation Process) Regulations 2016 and informed that applicant has not submitted the claim. The applicant submitted the claim in Form B through the Registered post addressed to the Liquidator to their office in Begumpet, Hyderabad on 25.04.2019 and it was received by the respondent office on 29.0.2019 as per the rack status of the Postal Department.
- c. It is averred that the applicant is relied up on order of the Hon'ble Supreme Court, is Suo Moto Writ Petition (C) No.3 of 2020, dated 10.01.2022, in which it has been directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation, as many be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, will come to the rescue of the applicant.
- d. It is also further averred that the applicant relied upon the Judgment of this Tribunal, Hyderabad in the matter of "*The Customs Department vs. Rajendra Prasad Tak dated 19.10.2022,* wherein Tribunal has mentioned in the Para 18 of the order referred the Judgment of *Hon'ble Supreme Court in Uday*

Shankar Trivar v. Ram Kalewar Prasad Singh (2006), in which it was held that procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice.

- e. It is averred that the petitioner prays to condone the delay in submission of the claim and also direct the liquidator to receive the claim of the applicant.
5. Heard both sides. Perused the record. Admittedly liquidation process is not completed, the assets of the corporate debtor which are under liquidation are required to be sold.
6. As per the orders in IA No.859/2023, we have directed the liquidator to sell the assets of the corporate debtor and complete the liquidation process with in a period of three months from the date of this order.
7. Therefore, under these circumstances we are of the opinion that liquidator can be directed to examine the claim within 30 days from the date of this order and communicate the outcome to the Applicant.

-SD-

CHARAN SINGH
MEMBER (TECHNICAL)

Swapna/Pavani

-SD-

DR. N.VENKATA RAMAKRISHNA BADARINATH
MEMBER (JUDICIAL)