

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1  
VC AND PHYSICAL (HYBRID) MODE  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
01-04-2024 AT 10:30 AM**

**IA(IBC) 474/2024 in CP (IB) No. 275/7/HDB/2022**  
u/s. 7 of IBC, 2016

**IN THE MATTER OF:**

M/s. SunEdison Energy India Private Limited

...**Financial Creditor**

**AND**

M/s. KSK Energy Company Private Limited

...**Corporate Debtor**

**C O R A M:-**

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

**ORDER**

**IA(IBC) 474/2024**

Learned Counsel Mr Maharshi Viswaraj, for applicant present through Video Conference.

Mr Krishna Komaravolu, Liquidator present through Video Conference.

Matter passed over.

Matter called again. Orders pronounced. In the result, we hereby order closure of the liquidation proceedings against the Corporate and consequently the liquidator stands relieved. **Accordingly, this application is disposed of.**

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**

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

**IA No. 474 OF 2024**

**IN**

**CP (IB) No. 275/7/HDB/2022**

*APPLICATION UNDER REGULATION 45(3)(a) of IBBI (LIQUIDATION PROCESS) REGULATIONS, 2016*

**IN THE MATTER OF**

**M/S. SUNEDISON ENERGY INDIA PRIVATE LIMITED  
FINANCIAL CREDITOR**

**Versus**

**M/S. KSK ENERGY COMPANY PRIVATE LIMITED  
CORPORATE DEBTOR**

**Filed by**

M/s. KSK Energy Company Private Limited  
Represented by the Liquidator  
Krishna Komaravolu  
7-1-214, Flat No.401, Vamsikrishna Apartments,  
Dharam Karan Road, Ameerpet,  
Hyderabad -500016

**.... APPLICANT/LIQUIDATOR**

Date of order: 01.04.2024

**Coram**

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

**Appearance:**

For Applicant: Mr. M. Viswaraj, Advocate

**PER: BENCH  
ORDER**

1. The Applicant who is the Liquidator for M/s. KSK Energy Company Private Limited (“**Corporate Debtor**”), has filed this Application *seeking closure of the liquidation process of the Corporate Debtor* on account of successful sale of the Corporate Debtor as a going concern to M/s Innopark India Private Limited.
2. To put precisely, this Tribunal ordered liquidation of the Corporate Debtor on 25.05.2023 and appointed Krishna Komaravolu as the Liquidator.
3. Pursuant thereto, the liquidator carried out the following functions:-
  - (1) Public announcement as required under Regulation 12 of IBBI(Liquidation Process) Regulations, 2016 was carried out on 28.05.2023 in Financial Express (English) and Nava Telangana (Telugu) newspapers calling upon the stakeholders to submit / update their claims on or before 24.06.2023.
  - (2) 1<sup>st</sup> meeting of the Stakeholders Consultation Committee (SCC) was held on 01.06.2023 in accordance with Regulation 31A(6) of IBBI (Liquidation Process) Regulations, 2016, with the Committee of Creditors formed under Section 21 of IBC 2016 to act as the Consultation Committee as provided under Regulation 31A(1A) of Liquidation Regulations.
  - (3) The Liquidator verified the claims received from Financial Creditors and Statutory Authorities.
  - (4) The Liquidator in accordance with Regulation 32A of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, initiated

the steps to first sell the Corporate Debtor as going concern as provided under Regulation 32A of IBBI (Liquidation Process) Regulations, 2016

- (5) The Liquidator published a sale notice i.e., Public Announcement of E – Auction to sell the corporate debtor as going concern, seeking Expression of Interest (Eoi) in two newspapers viz. Business Standard (English) and Nava Telangana (Telugu) newspapers on 07.07.2023. The last date for submission of Eoi was 22.07.2023 along with Rs.1,00,000/- refundable deposit.
- (6) Based on the Valuation reports, the Reserve Price was fixed at Rs.1,21,44,000/- (Rs. One Crore Twenty One lakh and Forty Four Thousand only) and EMD was fixed as 10% of the reserve price i.e., Rs. 12,14,400/-. The last date for submission of EMD was 02.08.2023 and E-Auction Date was 04.08.2023 between 03.00 P.M. and 05.00 P.M.
- (7) The Liquidator made specific reference at Page No. 12 of the Process Information Document regarding the assets not available to the Successful Bidder, which is detailed hereunder:
- (A) Shares held by the Corporate Debtor in KSK Mahanadi Power Company Limited (KSKMPCL):
    - (i) 19,06,90,000 shares held by the Company in KSKMPCL were invoked by the Consortium of Lenders of KSKMPCL, thereby the Consortium became the beneficial owner of those shares.
    - (ii) 18,00,00,000 shares held by the Company in KSKMPCL were invoked by the Medha Servo Drives Private Limited (MSDPL), thereby MSDPL became the beneficial owner of those shares.

(iii) 25,00,00,000 shares held by the Company in KSKMPCL were pledged to IFCI Limited as security against the Loan provided to the Company.

(B) Shares held in KSK Mineral Resources Private Limited (KSKMRPL):

(i) 1,02,27,000 shares held by the Company in KSKMRPL were pledged to Prudent ARC Ltd as security against the loan provided to VS Lignite Power Private Limited.

(ii) 3,90,50,700 shares held by the Company in KSKMRPL were pledged to Consortium of Lenders of KSKMRPL as security against the loan provided to KSKMRPL.

(iii) 2,72,85,900 shares held by the Company in KSKMRPL were pledged to Asset Reconstruction Company (India) Limited as security against the loan provided to KSK Electricity Financing India Private Limited.

(8) The 1<sup>st</sup> Progress Report (Regulation 15(1)(a)), List of Stakeholders (Regulation 31) and Preliminary Report (Regulation 13) were prepared and filed with NCLT, Hyderabad.

S. No.	Report	Date of Filing	Application No.	Order date
1	1 <sup>st</sup> Progress Report	19.07.2023	1213 of 2023	03.08.2023
2	List of Stakeholders	29.07.2023	1348 of 2023	21.08.2023
3	Preliminary Report	29.07.2023	1347 of 2023	21.08.2023

- (9) The Liquidator constituted a Stakeholders Consultation Committee on 29.07.2023 as stipulated under Regulation 31A of the Liquidation Regulations, 2016.
- (10) At the request of the few more interested parties a Corrigendum to the Sale Notice dated 07.07.2023 was published in two newspapers viz. Business Standard (English) and Nava Telangana (Telugu) newspapers on 23.07.2023. In response to the sale notice published in Newspapers on 23.07.2023, the following parties have expressed their interest in participating in the E-Auction Process by furnishing the particulars along with refundable Deposit amount of Rs.1,00,000/- :
- Kalinga Metalics Limited
  - Innopark India Private Limited
  - Anirudh Agro Farms Limited

The Liquidator ensured that all the said parties have submitted the required affidavits under Section 29A of IBC 2016.

- (11) The last date for submission of bid application along with EMD was 09.08.2023 and the E-Auction date was 11.08.2023.
- (12) C1 India Private Limited, a private agency was hired for conducting the E-Auction of the Corporate Debtor and the E-Auction Process Document was displayed on their E-Auction Portal <https://www.bankeauctions.com>. The qualified bidders were provided with access link to data room for due diligence of the corporate debtor. The last date for submission of Earnest Money Deposit and Bid Application was 09.08.2023. All the three applicants submitted their bid

application along with the requisite Earnest Money Deposit of Rs. 12,14,400/- (Rupees Twelve lakhs fourteen thousand and four hundred rupees only) on or before 09.08.2023.

- (13) At the E-auction held on 11.08.2023, M/s. Innopark India Private Limited submitted the final bid for INR 1,46,44,000/- (i.e., higher by 20.59% of Reserve Price) to acquire the Corporate Debtor as a going concern and was declared as H1 bidder. The same was communicated by the Liquidator communicated to all the Stakeholders of the Corporate Debtor and all the Creditors (Financial/Operational/Employees & workmen) vide his mail dated 11.08.2023.
- (14) 'Letter of Intent' was issued to the Successful Bidder on 14.08.2023 by the Liquidator and directed to complete all the pending formalities and remit the remaining amount as prescribed in the Process Document within 90 days from the date of issuance of Letter of Intent, with a rider that any payment made after 30 days from the date of issuance of Lol, shall attract interest @ 12% per annum. The Successful Bidder has made the payment of balance sale consideration on 28.09.2023.
- (15) In the 3<sup>rd</sup> meeting of the SCC on 09.10.2023, the Liquidator apprised the SCC about the completion of E-Auction process that culminated in M/s. Innopark India Private Limited being the Successful Bidder and further apprised the SCC about the remittance of the balance amount of Rs.1,33,29,600/- on 28.09.2023 and Rs. 63,735/- towards Interest @12% p.a. for the delay of 14 days of payment. Accordingly, Sale Certificate was issued to the Successful bidder.

- (16) The Liquidator informed the SCC in its 3<sup>rd</sup> meeting that he had received an email on 09.10.2023 at 02.42 P.M from Mr. Khet Singh Yadav, representative of IFCI Limited communicating that they are relinquishing their Security Interest in the Corporate Debtor in favour of the Liquidation Estate as per provisions of IBC, 2016 at a point when the entire process of Sale as a going concern by way of an E-Auction has concluded, Sale certificate has been issued to the Successful bidder and only distribution of the Liquidation Proceeds is left out. The Liquidator informed the SCC that he would review the situation once again, legal opinion will be taken, if necessary, and the decision of the Liquidator will be communicated to the SCC.
- (17) That considering the legal implications involved, the Liquidator obtained a Legal opinion dated 25.01.2024 and after going through all the records furnished by the Liquidator, it was concluded that *IFCI Limited is not a Secured Financial Creditor eligible for distribution of liquidation proceeds in accordance with waterfall mechanism prescribed under Section 53(1)(b)(ii) of Insolvency & Bankruptcy Code, 2016 on account of the following:*
- a) *Inordinate delay in the relinquishment of security interest in contravention of applicable provisions of IBC, 2016 and Liquidation Process Regulation, 2016.*
  - b) *Non-compliance of Section 52 of IBC, 2016 and Regulation 21A of Liquidation Process Regulation, 2016.*
  - c) *Failure of IFCI Limited in creating the charge over the assets covered under security interest as per the applicable provisions of*

*Section 77 of Companies Act, 2013 and the Companies  
(Registration Charges) Rules, 2014.*

- (18) The Liquidator vide email dated 29.01.2024 shared the legal opinion and final distribution of Liquidation Proceeds to IFCI Limited, Punjab National Bank, Indian Overseas Bank and all other unsecured Financial Creditors. The members of SCC have not raised any objections/observations including IFCI Limited. Therefore, the Liquidator has considered the claim submitted by IFCI Ltd as a claim falling under Section 52 of IBC, 2016 and decided to distribute the Liquidation Proceeds amongst only two Secured Financial Creditors, who have relinquished their Security Interest viz., Punjab National bank and Indian Overseas Bank. Accordingly, the distribution of Liquidation Proceeds was made as under:

<b>KSK ENERGY COMPANY PRIVATE LIMITED</b>			
<b>FINAL DISTRIBUTION OF LIQUIDATION PROCEEDS</b>			
<b>S.No</b>	<b>Particulars</b>	<b>Amount</b>	<b>Amount</b>
<b>1</b>	<b>OPENING BALANCE AS ON LCD (A)</b>	<b>TOTAL(A)</b>	
<b>2</b>	<b>RECEIPTS (B)</b>		
	Refundable Application fee	1,00,000	1,47,09,735
	EMD deposited by Successful Bidder	12,14,400	
	Balance Consideration deposited by	1,33,29,600	
	Interest on delayed payment @12% for 15	65,735	
		<b>TOTAL(B)</b>	<b>1,47,09,735</b>
<b>3</b>	<b>PAYMENTS FOR LIQUIDATION COSTS(C)</b>		
i.	<b>E-Auction Process Costs</b>	2,714	
ii.	<b>Fees of the Liquidator</b>	10,37,295	
iii.	<b>Fees of the Support professionals</b>	4,05,000	
iv.	<b>Legal Counsel Fees</b>	1,35,000	
v.	<b>Legal opinion fees</b>	20,000	
vi.	<b>Publication costs (Public Announcement,</b>	48,616	
vii.	<b>Others (GST and TDS)</b>		
	- GST	58,500	<b>2,44,982</b>
	- TDS	1,86,482	

viii	<b>CIRP Expenses</b>		
	<b>Fees of the RP during the CIRP Period</b>	1,08,000	
	<b>Legal expenses</b>		
	<b>Legal Counsel Fees during CIRP Period</b>	67,500	
	<b>- Lakshmi Prasanna (during CIRP Period)</b>	45,000	<b>1,12,500</b>
	<b>Valuer Fees</b>	59,000	
		<b>TOTAL(C)</b>	
4	<b>Amount Available for Distribution to</b>	<b>D=(A+B-C)</b>	<b>1,32,32,235</b>
5	<b>DISTRIBUTION WORKINGS (E)</b>		
	<b>Balance left for Financial Creditors</b>	<b>Admitted Claim</b>	<b>PAID</b>
	Indian Overseas Bank	<b>1,02,30,62,754</b>	
	Punjab National Bank	<b>83,14,17,808</b>	
		<b>TOTAL(E)</b>	
6	<b>CLOSING BALANCE</b>	<b>(D-E)</b>	

The Liquidator further submits that the amount available to Secured Financial Creditors, after meeting the above mentioned priority payments, is Rs. 1,32,32,235/- only against their total admitted claim of Rs. 1,85,44,80,562/-. The amount available to the Secured Financial Creditors is inadequate to meet their total admitted claim. Further, no amount is available for distribution for any other dues falling under Section 53(1) of IBC, 2016 pertaining to dues of Central/State Government, any operational creditors or any other remaining debts and dues.

- (19) The Liquidator filed 2<sup>nd</sup> Progress Report with the Hon'ble NCLT on 12.10.2023 and the 3<sup>rd</sup> Progress Report on 13.01.2024.
- (20) That the Liquidator initiated the payments to the various stakeholders and completed the payments on 31<sup>st</sup> January, 2024. The bank balance as on 31<sup>st</sup> January 2024 was Rs.13,630/- which according to the Liquidator is required for meeting miscellaneous expenses. The receipts and

payments during the liquidation process period were duly audited and copy of the Auditor's Certificate is annexed as **Annexure – A22**.

4. We heard Shri M.Viswaraj, Ld. Counsel for the Liquidator and perused the application filed by him. He has filed necessary documents along with the application. The Final report in Form-H is filed as Annexure A-24. This IA is filed under Regulation 45 (3) (a) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 praying the Adjudicating Authority to order for closure of the liquidation process of the Corporate Debtor Company as liquidation process is complete. The said provision reads as under: -

***“Regulation 45 (3) (a): Final report prior to dissolution.***

***(3) The liquidator shall submit an application along with the final report and the compliance certificate in form-H to the Adjudicating Authority for –***

***(a) closure of the liquidation process of the corporate debtor where the corporate debtor is sold as a going concern;***

5. The Ld. Liquidator would contend, pursuant to public announcement for e-auction M/s Innopark India Private Limited, participated in the e-auction held on 11.08.2023 and was declared as successful bidder. On-going through the facts aforementioned and the material placed along with the Application, it is evident that the assets of Corporate Debtor were sold to M/s Innopark India Private Limited for Rs. 1,46,44,000/-. Besides, the Liquidator realized an amount of Rs 63,735/- interest for delayed payment from the Bidder. The record reveals that the Liquidation value of the Corporate Debtor is Rs. 1,21,44,000/-.

6. The Liquidator has filed a detailed statement of consideration amount received, expenses incurred and distribution to the stakeholders in accordance with Section 53 of the IBC, 2016 along with the copy of the receipts and payments certified by the chartered accountant. The copy of the receipts and payments account as certified by the chartered accountant is in Annexure -A-22.
7. The Tribunal on 22.03.2024 observed that there is a credit balance of Rs. 13,630/- lying in the liquidation account of the Corporate Debtor and sought clarification on this aspect. Pursuant thereto, the Liquidator filed a clarificatory memo stating that the following payment have been made on 26.03.2024 by the Corporate Debtor towards miscellaneous expenses and the current balance in the account is “NIL” and letter has been issued to the Bank on 27.03.2024 for closure of Bank account.

1	Krishna Komaravolu	7,720.96	Reimbursement of court fee/ Bharatkosh paid on filing 07 interlocutory applications (Rs. 7000) during liquidation process period with NCLT along with expenses for notary photocopying etc (Rs. 750/-). Bill attached along with the memo.
2	B. Naga Bhushan	5,900.00	Fee paid to Auditor for issuing certificate
3	Bank charges	9.44	Transaction charges
	Total	13,630.40	

8. We are satisfied with the explanation given by the Ld. Liquidator and documents filed along with the clarificatory memo as above. Therefore, we feel, it is a fit case to order closure of liquidation.

- (i) As a sequel to the above, we hereby order closure of the Liquidation proceedings against the Corporate Debtor viz. M/s KSK Energy Company Private Limited from the date of this Order, in terms of Regulation 45 (3) of Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016. Consequently, the Liquidator stands relieved.
- (ii) The Liquidator is directed to send the copy of this Order within 7 days from the date of pronouncement to the Registrar of Companies, Hyderabad and the concerned authorities and hand over all the books and files of the Corporate Debtor as per provisions of the Code.
- (iii) The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad and concerned authorities for updating the master data.
- (iv) A copy of this order be also forwarded to the Insolvency & Bankruptcy Board of India, New Delhi.
- (v) Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
- (vi) In terms of the above, IA No. 474 of 2024 stands disposed of accordingly.

**SD/-**

**CHARAN SINGH  
MEMBER TECHNICAL**

**SD/-**

**DR. N. VENKATA RAMAKRISHNA BADARINATH  
MEMBER JUDICIAL**

*Binnu*