

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 11086 of 2024
(Arising out of SLP (C) No 23339 of 2024)

**Committee of Creditors of KSK Mahanadi
Power Company Limited**

Appellant

Versus

**M/s Uttar Pradesh Power Corporation
Limited and Others**

Respondents

ORDER

- 1 Leave granted.
- 2 The challenge in these proceedings under Article 136 of the Constitution is to an order of the Single Judge of the High Court of Telangana at Hyderabad dated 10 September 2024.

- 3 The appeal has been instituted by the Committee of Creditors¹ of a company by the name of KSK Mahanadi Power Company Limited, a public limited company engaged in the generation of electricity, which is currently undergoing Corporate Insolvency Resolution Process².
- 4 The first respondent, Uttar Pradesh Power Corporation Limited instituted a petition under Article 226 of the Constitution, seeking, *inter alia*, a consolidation of the appellant together with the CoCs of KSK Water Infrastructure Private Limited and Raigarh Champa Rail Infrastructure Private Limited. The consolidation of the CIRP of all the three companies through their respective Resolution Professionals was sought before the National Company Law Tribunal³, Hyderabad Bench II.
- 5 The High Court by its impugned order dated 10 September 2024 declined to grant the main relief seeking consolidation of the CIRP of the Corporate Debtor with two other companies for the reasons which are indicated in paragraph 7 of its judgment which is extracted below:

“7 As seen from the material placed on record, the Financial Creditor has filed I.A.No.32/2020 in CP(IB) No.492/07/HDB/2019 on the file of NCLT seeking consolidation of CIRP of Corporate Debtors with two other companies and the said application was rejected by the NCLT vide order, dated 12.02.2021. Challenging the same. Financial Creditor filed Company Appeal (AT)(CH) (Ins) No.46 of 2021 on the file of NCALT. During pendency

- 1 “CoC”
2 “CIRP”
3 “NCLT”

of the appeal on the file of NCLAT, Financial Creditor has filed IA(IBC)/374/2022 and IA(IBC)/403/2022 in CP(IBC) No.492/7/HDB/2019 on the file of NCLT and in the said applications, vide common order, dated 07.06.2022, the NCLT deferred the Resolution Process until further orders subject to the outcome of the appeal pending before the NCLAT and in the meanwhile granted stay of CIRP proceedings and directed the Resolution Professional not to undertake any such process till the IA (IB)/374/2022 is disposed of. **Admittedly, the petitioner herein has not filed any appeal or sought for any direction either from the NCLT or NCALT. Since the petitioner has not filed any application either before the NCLT or NCALT. it is not having any right to question the withdrawal of the appeal by the Financial Creditor.**

(emphasis supplied)

- 6 Having declined to grant the relief of consolidation, the High Court relegated the first respondent to file an application before the NCLT and “raise all grounds available under law”. However, the High Court proceeded to pass the following order:

“.....Upon filing such application, the NCLT is directed to examine the same and pass appropriate orders, in accordance with law, within a period of two (02) weeks from the date of receipt of such application. **Until such time, the Resolution Process shall be deferred.**”

(emphasis supplied)

- 7 The CoC of KSK Mahanadi Power Company Limited has moved this appeal, aggrieved by the direction of the High Court deferring the CIRP. The grievance is that this order was passed by the High Court on the very first date of listing without issuing notice to the CoC or the other respondents.

- 8 We have heard Mr Tushar Mehta, learned Solicitor General for the appellant and Ms Pallavi Pratap, counsel for the contesting first respondent, who is the original petitioner before the High Court in the proceedings under Article 226.
- 9 Mr Nalin Kohli, senior counsel has also appeared on behalf of the Resolution Professional of the Corporate Debtor. The Resolution Professional has also supported the submissions of the appellant before this Court.
- 10 We find merit in the grievance that the High Court had no justification, to direct the deferment of the CIRP in the exercise of its jurisdiction under Article 226 of the Constitution. Significantly, the High Court declined to grant the main relief which was sought in the petition for the consolidation of the CIRP of three corporate entities. After coming to that conclusion, there was absolutely no reason for the High Court to exercise its jurisdiction under Article 226 by directing the deferment of the CIRP. Such a direction under Article 226 breaches the discipline of the law which has been laid down in the provisions of the Insolvency and Bankruptcy Code 2016.
- 11 We accordingly allow the appeal and set aside the impugned order of the High Court to the extent that it directs the deferment of the CIRP of the Corporate Debtor.

- 12 The appeal is accordingly disposed of in the above terms.
- 13 Pending applications, if any, stand disposed of.

.....CJI.
[Dr Dhananjaya Y Chandrachud]

.....J.
[J B Pardiwala]

.....J.
[Manoj Misra]

New Delhi;
October 14, 2024
CKB

ITEM NO.40

COURT NO.1

SECTION XII-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No.23339/2024

(Arising out of impugned final judgment and order dated 10-09-2024 in WP No.25060/2024 passed by the High Court For The State Of Telangana at Hyderabad)

**COMMITTEE OF CREDITORS OF KSK MAHANADI POWER
COMPANY LIMITED**

Petitioner(s)

VERSUS

M/S UTTAR PRADESH POWER CORPORATION LIMITED & ORS.

Respondent(s)

(With IA No.228435/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.228434/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 14-10-2024 These matters were called on for hearing today.

CORAM :

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA**

For Petitioner(s) **Mr. Tushar Mehta, Solicitor General
Mr. Uday Khare, Adv.
Ms. Srideepa Bhattacharyya, Adv.
Ms. Neha Shivhare, Adv.
M/s. Cyril Amarchand Mangaldas**

For Respondent(s) **Ms. Pallavi Pratap, AOR
Mr. A. Bavani, Adv.**

Mr. Nalin Kohli, Sr. Adv.
Mr. Anoop Rawat, Adv.
Mr. Vaijayant Paliwal, Adv.
Ms. Charu Bansal, Adv.
Mr. Vishrut Kansal, Adv.
Mr. Aditya Marwah, Adv.
Ms. Kirti Gupta, Adv.
Ms. Snigdha Saraff, Adv.
Mr. S.S. Shroff, AOR

For R-4 & 6

Mr. Krishna Gandhi, Sr. Adv.
Mr. Abhay Anand Jena, AOR

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 Leave granted.
- 2 The appeal is disposed of in terms of the signed order.
- 3 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)
A.R.-cum-P.S.

(SAROJ KUMARI GAUR)
Assistant Registrar

(Signed order is placed on the file)