

**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 05.08.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO	IA (IBC)/1365/2024 in CP(IB) No.492/7/HDB/2019
NAME OF THE COMPANY	KSK Mahanadi Power Company Ltd
NAME OF THE PETITIONER(S)	Power Finance Corporation
NAME OF THE RESPONDENT(S)	KSK Mahanadi Power Company Ltd
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/1365/2024

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

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

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ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 05.08.2024 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/1658/2024, New IA (IBC)/1657/2024 in CP(IB) No.492/7/HDB/2019
NAME OF THE COMPANY	KSK Mahanadi Power Company Ltd
NAME OF THE PETITIONER(S)	Power Finance Corporation
NAME OF THE RESPONDENT(S)	KSK Mahanadi Power Company Ltd
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/1658/2024

Present: Ld. Senior Counsel Mr. S.R. Rajagopal for the Applicant.

Matter is adjourned to 13.08.2024.

IA (IBC)/1657/2024

Present: Ld. Senior Counsel Mr. S.R. Rajagopal for the Applicant.

Matter is adjourned to 13.08.2024.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

I.A.No.1365 of 2024 in
CP (IB) No.492/07/HDB/2019

In the matter of
M/s. KSK Mahanadi Power Company Limited, Corporate Debtor

Between:

M/s. Power Finance Corporation Limited,
On behalf of Committee of Creditors of
M/s. KSK Mahanadi Power Company Limited,
Urjanidhi, 1 Barakhamba Lane,
Connaught Place,
New Delhi – 110 001.

...Applicant

And

Mr. Sumit Binani,
Resolution Professional of
M/s. KSK Mahanadi Power Company Limited,
4th Floor, Room No.6,
2A, Ganesh Chandra Avenue,
Kolkata – 700 013.

....Respondent

Date of order: 05.08.2024

CORAM:

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

Counsels present:

For the Applicant : Mr. Narender Naik, Advocate

For the Respondent : Mr. Allwin Godwin, Advocate

Heard on : 23.07.2024

Per : Sanjay Puri, Member (Technical)

ORDER

1. This application has been filed by one of the members of the Committee of Creditors (**CoC**) M/s Power Finance Corporation Limited (**PFCL**) on behalf of the entire CoC of the Corporate Debtor (**CD**)¹, seeking distribution of surplus/idle funds available with the CD, to its Creditors in accordance with the Section 53 of IBC. A resolution to this effect has also been passed by the CoC in its 40th meeting² held on 05.01.2024.
2. In the application, the distribution of surplus/idle funds is sought, to the extent these funds are not required for the smooth running of the CD as a going concern. It is stated that this distribution is permissible under Section 28 of IBC, which allows the CoC to approve such transactions with at least a 66% majority during the moratorium period, in the interest of the CD. The applicant has referenced the case of **IL&FS**³, decided by the Hon'ble NCLAT, to support the interim distribution of surplus funds during this period.
3. The applicant has pointed out that during the prolonged CIRP⁴ period of over four years, the CD is being run as a going concern by the Resolution Professional (**RP**) and it continues to generate revenue. As of 21st May 2024, the accumulated funds amount to approximately **Rs 8,821 crores**. These funds, which are not being

¹ M/s KSK Mahanadi Power Company Limited (**KMPCL**)

² Page 34 to 53 of the Application.

³ Union of India vs. Infrastructure Leasing and Financial Services Ltd & Others, in the Company Appeal (AT) No.346 of 2018.

⁴ Corporate Insolvency Resolution Process.

utilized, far exceed the amount required for the operation of the CD as a going concern. Therefore, the applicant has proposed the distribution of these surplus/idle funds to the creditors in accordance with the waterfall mechanism outlined under Section 53 of IBC.

4. The respondent RP has filed a reply to the application, without objecting to the applicant's proposal for the interim distribution of surplus funds. The RP, however, noted that CIRP in this case was initiated on 03.10.2019, and the resolution process after facing intermittent disruptions, and after several extensions granted by this authority, is currently at the plan submission stage. The resolution plans were to be submitted by the Prospective Resolution Applicants (**PRA**s) on or before 31.07.2024.
5. On going through the submissions made in the Application and the grounds taken in support thereof, we agree with the applicant's proposal for the interim distribution of the surplus held by the CD. In this case, CIRP has extended for nearly five years for various reasons and has yet to be concluded. Consequently, the moratorium under Section 14 of IBC has also continued for this extended period.
6. In the meantime, the CD has been operating as a going concern and generating significant revenue, exceeding what is needed for its day-to-day operations. Retaining the surplus funds in the CD's bank accounts contradicts one of the IBC's primary objectives of promoting credit availability and balancing the interests of all stakeholders. The interim distribution of the surplus funds, as proposed in the application, following the mechanism prescribed under Section 53 of the IBC, would enable the productive utilization

of these funds, which are currently lying idle.

7. Such interim distribution will also not come in the way of Resolution Plans to be submitted by the PRAs, as RFRP⁵ dated 12.12.2021 already provides that:

“All cash balances and cash equivalent available with the Corporate Debtor as on the Cut-Off Date, whether freely available or lien marked, shall be for the sole benefit, and to the order of the financial creditors and shall be paid to the financial creditors in the same manner as the Upfront Cash Recovery payable to financial creditors.”

In any case, the Resolution Plans submitted by the PRAs in connection with the Provisions of the approved RFRP, will take into account the cash balances accumulated in the CD's accounts. If these accumulated balances are not distributed in the interim, they would still need to be distributed under any resolution plan submitted.

Considering the above, we allow the present Application and permit interim distribution of the surplus funds of the CD as proposed in Para 12 to 15 of the Application.

Sd/-
(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-
(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

VL

⁵ Request For Resolution Plan