

3

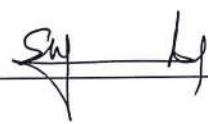
**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL

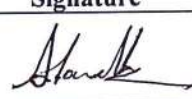
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 26.10.2018 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) No.11/10/HDB/2017
NAME OF THE COMPANY	Kamineni Steel & Power India Pvt Ltd
NAME OF THE PETITIONER(S)	
NAME OF THE RESPONDENT(S)	
UNDER SECTION	10 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
VH SANKH	Adv.	9908011272	

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Harinath. N. Rajshankar Rao.	Advocate	789408346	

ORDER

Orders pronounced vide separate orders.


Member(Judl)

Pavani

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, AT HYDERABAD**

CP (IB) No.11/10/HDB/2017
U/s 33 R/w Section 34 of IBC, 2016

IN THE MATTER OF:

K. Sashidhar, Managing Director,
Kamineni Steel & Power India Private Limited,
Kamineni, 4th Floor, King Koti,
Hyderabad-500001,
Telangana

...Petitioner/
Corporate Applicant

Versus

1. Ms/ Kameneni Steel & Power India Pvt. Ltd.,
'KAMINENI', 4th Floor, King Koti,
Hyderabad – 500 001, Telangana
2. Indian Bank
Hyderabad Main Branch,
Surabhi Arcade, Bank Street, Koti,
Hyderabad -500 001
3. Oriental Bank of Commerce
Plot No-271, Road No 63, Jubilee Hills
Hyderabad – 500 033
4. Karur Vysya Bank
Himayat Nagar Branch,
Hyderabad-500 209
5. Central Bank of India
Corporate finance Branch,
Bank Street, Koti,
Hyderabad -500 095
6. Indian Overseas Bank,
Large Corporate Branch,
1st Punnaiah Plaza, Jubilee Hills Check Post,
Hyderabad- 500 034

7. Andhra Bank
Specialized Corporate Finance Branch,
3rd Floor, 6-3-892,
Belvedere Raj Bhavan Road,
Somajiguda, Hyderabad – 500 082
8. Bank of Maharashtra
Asset Recovery Branch,
Door No. 4-3-448 to 460 & 465 to 468,
1st Floor, Vinoothna Pittie's MAJESTY,
Gopalbagh, Near Bank street, Koti,
Hyderabad – 500 001
9. Allahabad Bank
3-6-435, Ground Floor,
Main Road, Himayatnagar,
Hyderabad-500 029

...Respondent /
Financial Creditors

Date of order: 26.10.2018

CORAM:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Counsels present

For Corporate Applicant:	Shri E Ajay Reddy, Advocate
For Indian Bank:	Shri V.K Sajith, Advocate
For IOB & BOM:	Shri B. Praveen Kumar, Advocate
For Allahabad Bank :	Dr. SV Ramakrishna, Advocate

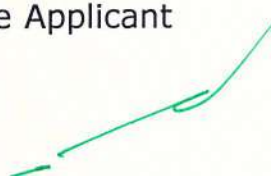
Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)

Heard on : 15.10.2018, 09.10.2018 & 22.10.2018.

ORDER

1. The Corporate Applicant M/s Kamineni Steel & Power India Private Limited filed petition under Section 10 of Insolvency & Bankruptcy Code, 2016 (herein after referred to as "Code") to trigger Corporate Insolvency Resolution Process (CIRP) against the Corporate Applicant. This Tribunal by an order dated 10.02.2017 admitted the petition and initiated CIRP against Corporate Applicant. Shri C.B. Mouli was appointed as Interim Resolution Professional who was later confirmed as Resolution Professional.
2. Since CIRP could not be completed within a period of 180 days, an Application was filed for extension of CIRP by another 90 days. Accordingly, this Tribunal vide order dated 27.07,2017 extended CIRP beyond 180 days by 90 days with effect from 09.08.2017.
3. The Resolution Plan / One Time Settlement (OTS) proposal was submitted by Corporate Applicant which was said to have been approved by the CoC. Thus, Resolution Plan submitted by Corporate Applicant was approved by the Tribunal vide order dated 27.11.2017.
4. Aggrieved by the order of this Tribunal in approving the Resolution Plan/ OTS proposal, Indian Overseas Bank & Others (Financial Creditors) filed an appeal bearing Company Appeal (AT) (Insolvency) No. 335 of 2017 before Hon'ble NCLAT. Another appeal was also preferred by Corporate Applicant bearing Company Appeal (AT) (Insolvency) No. 45 of 2018 and one more appeal was also filed by United Seamless Tubulaar Pvt. (USTPL) bearing Company Appeal (AT) (Insolvency) No. 23 of 2018. Hon'ble NCLAT disposed of three appeals by

a common order by allowing the appeal preferred by Indian Overseas Bank & Ors in CA (AT) (Insol) No. 335 of 2017 and Kamineni Steel & Power India Pvt. Ltd in CA (AT) (Insol) No. 45 of 2018 and dismissing the appeal preferred by USTPL in CA (AT) (Insol) No.15 of 2018. Hon'ble NCLAT remitted the case to this Adjudicating Authority with a direction to initiate liquidation proceedings in terms of Section 33 read with Section 34 of IBC. Hon'ble NCLAT held that approval of the Resolution Plan by Financial Creditors having less than 75% of the voting share is in contravention of provisions of law i.e Section 30 (2) (e) of the Code. So the order passed by this Tribunal in approving Resolution Plan was set aside and consequently directed this Tribunal to initiate Liquidation proceedings in terms of Section 33 r/w Section 34 of IBC. On receipt of order copy, the matter was listed for initiating Liquidation proceedings against Corporate Applicant.

5. The Resolution Professional appointed during CIRP filed Affidavit and contended he is entitled to be appointed as Liquidator. Whereas, Counsels for Consortium of Banks strongly opposed for appointing Shri C.B. Mouli, Resolution Professional as Liquidator on the ground that the Resolution Plan was ultimately rejected by Hon'ble Appellate Tribunal and hence, he cannot be appointed as Liquidator by virtue of provisions of 34 (4) (a) of IBC.
 6. The Corporate Applicant filed written submissions and contended Company Civil Appeal (SLP) was filed before Hon'ble Apex Court on 13.10.2018 against the order of the Hon'ble NCLAT. The Corporate Applicant has enclosed the petition copy to the written submissions and is shown as Annexures-1. The Corporate Applicant
- 

also enclosed the case status sheet which is shown as Annexure-2. May be Corporate Applicant has filed civil appeal before the Hon'ble Apex Court. However, there is no stay. The appeal is not yet admitted. Thus, there is no stay obtained against order passed by the Hon'ble NCLAT. The Tribunal has to pass an order of Liquidation basing on the order of the Hon'ble NCLAT.

7. The question whether Resolution Professional who was appointed for the Corporate Applicant during CIRP is to be appointed as Liquidator. Section 34 (4) (a) reads as under:-

34 (4) The Adjudicating Authority shall by order replace the resolution professional, if—
(a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30.

8. The order approving Resolution Plan was set aside by Hon'ble NCLAT on the ground that Resolution Plan does not confirm to the provisions of the Code. Where the Resolution Plan was rejected, the Resolution Professional cannot be appointed as Liquidator by virtue of provisions of 34 (4) (a) of the Code.
9. Hence, in pursuant to the order of Hon'ble NCLAT, this Tribunal has to pass an order of Liquidation against Corporate Applicant under Section 33 (1) (b) of the Code.
11. Therefore, I hereby passed the following order:-
(a) Shri R. Ramakrishna Gupta (IBBI/IPA-002/IP-N00012/2016-17/10029) is hereby appointed as

Liquidator, subject to submission of written consent in the prescribed form.

- (b) All 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 Liquidator.
- (c) I hereby direct the personnel of the corporate Applicant to extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.
- (d) Since Liquidation order has been passed no suit or other legal proceedings shall be instituted by or against the Corporate Debtor, save and except as mentioned in Section 52 of the Code, as to institution of legal proceedings by the Liquidator, he is at liberty to initiate suit or legal proceedings with prior approval of this Adjudicating Authority, but this direction shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (e) I hereby direct that the fee shall be paid to the Liquidator as envisaged under Regulation 4 of IBBI (Liquidation process) Regulations, which forms part of the liquidation cost.
- (f) The Liquidator appointed herein is directed to issue public announcement stating that the Corporate Applicant is in liquidation and also required to send the copy of this order to the concerned Registrar of Companies as required under Section 33 (1) of the Code.

- (g) I am directing the Liquidator appointed in this case to initiate liquidation process as envisaged under Chapter-III of Insolvency and Bankruptcy Code, 2016 by following the liquidation process given in IBBI (Liquidation Process) Regulations, 2016.
- (h) As per Regulation 13 the liquidator shall submit a preliminary report to the Adjudicating Authority within 75 days from the liquidation commencement date providing various details/information as mentioned in the said regulation.
- (i) Registry to convey the name of the Liquidator to IBBI for their record.


(RATAKONDA MURALI)
MEMBER (JUDICIAL)

binnu