



SL. No. 1

**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 13.02.2025 at 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA(IBC) (Plan)/02/2025 in CP(IB) No. 492/7/HDB/2019
NAME OF THE COMPANY	KSK Mahanadi Power Company Limited
NAME OF THE PETITIONER(S)	Power Finance Corporation
NAME OF THE RESPONDENT(S)	KSK Mahanadi Power Company Limited
UNDER SECTION	7 of IBC

ORDER

IA(IBC) (Plan)/02/2025

Orders pronounced, recorded vide separate sheets. In the result, IA(IBC) (Plan)/02/2025 is allowed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, COURT - II**

IA (IBC) Plan No.2 OF 2025

in

CP(IB) NO. 492/7/HDB/2019

[U/s. 30(6) and Section 31(1) of the I&B Code, 2016 r/w Regulation 39(4) of the IBBI (IRPCP) Regulations, 2016]

In the matter of

**M/s.Power Finance Corporation Ltd. vs. M/s. KSK Mahanadi Power
Company Ltd.**

In the matter of:

Mr. Sumit Binani
Resolution Professional of
M/s.KSK Mahanadi Power Company Limited
Nicco House, 2 Hare Street, 2nd Floor
KOLKATA – 700 001

.... Applicant

Vs.

1. M/s.JSW Energy Limited
JSW Centre, bandra Kurla Complex
Bandra East
Mumbai – 400 051
Maharashtra
2. Committee of Creditors of
M/s. KSK Mahanadi Power Company Limited
Represented by Power Finance Corporation
Urjanidhi, 1 Barakhamba Lane
Connaught Place
NEW DELHI – 110 001.

... Respondents

Order Pronounced on : 13.02.2025

Coram:

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

Parties / Counsels Present:

For the Applicant : Mr. S.R.Rajagopal, Senior Counsel
Mr. Anoop Rawat, Mr. Allwin Godwin
Mr. Vishrut Kansal, Mr. Aditya Marwah
Ms. Niranjana Pandian and
Ms. Snigdha Saraff, Advocates
For the R1 : Ms. Rubaina Khatoon, Advocate
For the COC : Mr. Uday Khare, Mr. Madhav Kanoria
Ms. Srideepa Bhattacharya and
Ms.Neha Shivhare, Advocates

[PER : BENCH]

ORDER

1. The instant Application bearing IA (IBC) (Plan) 2/2025 has been filed on behalf of the Resolution Professional of the Corporate Debtor, M/s. KSK Mahanadi Power Company Limited (**CD/KMPCL**), under Section 30(6) and 31(1) of **IBC**¹, r/w regulation 39(4) of the applicable **Regulations**², seeking approval of the **Resolution Plan**³, submitted by the Successful Resolution Applicant (**SRA**) M/s. JSW Energy Limited (**JEL**) duly approved in the 56th Committee of Creditors (**COC**) meeting physically and by e-voting with 100% voting share on 10.01.2025.

¹ Insolvency & Bankruptcy Code, 2016

² IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

³ Resolution Plan dated 29.11.2024 alongwith all its annexures, clarifications and addenda.

2. The Company Petition CP(IB) No. 492/7/HDB/2019 filed by M/s. Power Finance Corporation Ltd., the Financial Creditor (**FC/PFC**), was admitted by this Authority u/s 7 of IBC, vide Order dated 03.10.2019 ordering commencement of CIRP⁴ against M/s. KSK Mahanadi Power Company Limited, the **CD**, by appointing Mr.Mahender Kumr Khandelwal as the Interim Resolution Professional and subsequently replaced by Mr.Sumit Binani as Resolution Professional.
3. Public Announcement⁵ of the commencement of CIRP was made in Form-A on 06.10.2019 in the newspapers⁶, inviting claims from the creditors of the CD. In response, claims were received from the Financial Creditors.
4. After collating all the claims received and determining the financial position of the CD, initially, the IRP constituted the COC on 24.10.2019. Finally, after amending the list of creditors on various dates, the Applicant constituted the COC comprising of the following Financial Creditors:

⁴ Corporate Insolvency Resolution Process

⁵ Annexure-A1 @ pg. 41 of the Application

⁶ Times of India, English Daily Newspaper in Hyderabad and Raipur editions.

National Company Law Tribunal, Hyderabad Bench, Court-II

I.A. No. 2/2025 in
C.P.(IB) No.492/7/HDB/2019

Date of Order: 13.02.2025

S.No.	Name of the Financial Creditor	Voting Share (%)
1.	Aditya Birla ARC Limited	32.67
2.	Prudent ARC Limited	16.02
3.	Power Finance Corporation Limited	14.84
4.	Rural Electrification Corporation	11.81
5.	UCO Bank	3.60
6.	Bank of India	3.58
7.	IDBI Bank Ltd.	2.88
8.	Phoenix ARC Private Limited	2.85
9.	India Infrastructure Finance Company (UK) Limited	2.54
10.	RARE Asset Reconstruction Limited	2.06
11.	Canara Bank	1.89
12.	Punjab National Bank	1.13
13.	State Bank of India	1.10
14.	Asset Reconstruction Company (India) Limited (ARCIL)	0.94
15.	Union Bank of India	0.85
16.	ASREC (India) Ltd.	0.51
17.	Housing and Urban Development Corporation Ltd.	0.50
18.	Axis Bank Limited	0.12
19.	Bank of Baroda	0.10
Total		100%

5. The IRP invited Expression of Interest (**EOI-1**) from Prospective Resolution Applicants (**PRAs**), by issuing Form-G on 08.01.2020. The last date for submission of Expression of Interest was extended from time to time and finally it was fixed as 29.11.2021. In response, EOIs were received from the PRAs and the Applicant shared the RFRP⁷ dated 12.12.2021 to the eligible PRAs by fixing the last date for submission of Resolution Plans as 08.07.2022 after extending the last date from time to time. Subsequently, a final list of PRAs was issued by the Applicant on 22.12.2021 and also shared the IM⁸ to the COC as well PRAs.
6. Pursuant to the meetings of the common lenders of KMPCL, being related entities, M/s.KSK Water Infrastructure Private Limited (**KSK Water**), Raigarh Champa Rail Infrastructure Private Limited (**RCRIPL**), Punjab National Bank (**PNB**), one of the Financial Creditors of KSK Water had filed an IA 32/2020 in CP(IB) 492/7/HDB/2019 and CP(IB) 813/7/HDB/2019 seeking consolidation of CIRPs of KMPCL and KSK Water, which was dismissed by this Authority vide order dated 12.02.2021. Aggrieved by the order dated 12.02.2021, PNB preferred an Appeal (AT) (CH) (Ins) No.46/2021 (**Consolidation Appeal**) before the Hon'ble NCLAT,

⁷ Request for Resolution Plan

⁸ Information Memorandum

Chennai and later on a substitution application was filed by Prudent ARC as PNB had assigned its loans to Prudent ARC, which was dismissed as withdrawn.

7. ASREC (India) Ltd. (**ASREC**) had filed an IA 403/2022 in IA 374/2022 and this Authority vide Order dated 07.06.2022 directed to stay on the CIRP of KMPCL, until further orders, pending outcome of the said Consolidation Appeal.
8. The Applicant had filed an IA 507/2024 in IA 403/2022 in IA 374/2022 before this Authority seeking for directions to proceed with the standalone resolution process of KMPCL. This Authority vide Order dated 05.04.2024 disposed of stating that the Applicant may proceed with the Resolution Plan process of KMPCL.
9. Pursuant to the Order dated 05.04.2024, the IRP invited Expression of Interest (**EOI-2**) from Prospective Resolution Applicants (**PRAs**), by issuing fresh Form-G⁹ on 11.04.2024. In response, EOIs were received from 25 PRAs and the final list of PRAs was published by the Applicant on 13.05.2024. The Applicant issued the provisional list of PRAs to the COC as well as to all the PRAs on 02.05.2024 and issued final list of PRAs to the COC on 13.05.2024¹⁰.

⁹ Hari Bhoomi, Andhra Prabha and ET, Delhi, daily newspaper – Annexure 8 at pg. 51 of the application

¹⁰ Annexure A-10 at pg. 85 of the application.

10. The Applicant shared the RFRP¹¹ dated 18.05.2024 to the eligible PRAs by fixing the last date for submission of Resolution Plans as 31.07.2024 alongwith the Information Memorandum (**IM**) and Evaluation Matrix, other relevant details of the CD and access to the Virtual Data Room (**VDR**).
11. Meanwhile, Uttar Pradesh Power Company Limited (UPPCL) had filed a Writ Petition W.P.No.25060 of 2024 before the Hon'ble High Court of Telangana seeking, inter alia, for a direction of consolidation of the CIRPs of KMPCL with KSK Water and RCRIPL (**UPPCL Writ**), which was disposed of directing UPPCL to approach this Authority and deferred the CIRP of KMPCL. As aggrieved by the order of Hon'ble High Court of Telangana dated 10.09.2024, the COC of KMPCL preferred an appeal before the Hon'ble Supreme Court of India, vide SLP(C) No.23339/2024 (Civil Appeal No.11086 of 2024) wherein it was held that '*the High Court of Telangana had no justification to direct the deferment of the CIRP of KMPCL*'. Accordingly, UPPCL Writ Order cease to be operative on 14.10.2024.
12. UPPCL had filed an IA 1949/2024 before this Authority seeking consolidation of KMPCL, RCRIPL and KSK water, which was dismissed at admission stage by this Authority, vide Order dated 29.11.2024.

¹¹ Request for Resolution Plan

13. Pursuant to the RFRP¹² dated 18.05.2024, 10 PRAs submitted their Resolution Plans. These were opened in the 10th COC Meeting held on 01.08.2024:

- i. Adani Power Limited
- ii. Capri Global Holdings Pvt. Ltd.
- iii. Coal India Ltd.
- iv. Consortium of iLabs India Special Situations Fund and Sai Wardha Power Generation Private Limited
- v. Jindal Power Limited
- vi. JSW Energy Limited
- vii. NTPC Ltd.
- viii. Orissa Metaliks Private Ltd.
- ix. Sherisha Technologies Pvt. Ltd.
- x. Vedanta Ltd.

14. After availing the extensions and exclusions allowed periodically¹³, the last date for completing the CIRP was set at 16.02.2025.

15. The COC had filed an IA 1365/2024 seeking distribution of surplus/idle funds available with the CD to its Creditors in accordance with Section 53 of the Code, which was allowed by this Authority on 05.08.2024 permitting interim distribution of the surplus funds of the Corporate Debtor. Accordingly, the Applicant had distributed the same in five

¹² Annexure A-11 of the application

¹³ Para 4.74 of the Application

tranches, pursuant to which, the voting percentage of the secured financial creditors have been modified. The applicant also paid the employees and workmen dues in full. Thereafter, the applicant had filed an IA 2356/2024 for record of the updated list of creditors pursuant to the Interim Distribution of Funds.

16. Pursuant to the 2nd COC Meeting held on 29.11.2019, the RP appointed M/s. RBSA Valuation Advisory LLP and M/s. GAA Advisory (**Registered Valuers**) to determine the Liquidation Value and Fair Value of the CD respectively.
17. Further, M/s. RBSA Valuation Advisory LLP was appointed as the Process Advisor for evaluating the Resolution Plans.
18. The RP conducted a total of 57 meetings of the COC during the CIRP.
19. The challenge process to maximize the value of assets and interest of the stakeholders (**Challenge Process**) was conducted by COC in their 55th meeting held on 25.10.2024 and continued till 26.10.2024. Out of 10 PRAs, the following 6 PRAs participated in the Challenge Process, which went on for 11 (eleven) rounds. M/s.JSW Energy emerged as the highest bidder in the last round offering upfront cash recovery from the RA to financial creditors to the tune of Rs.15,985.08 crores.

- i. Adani Power Limited
- ii. Capri Global Holdings Pvt. Ltd.
- iii. Jindal Power Ltd.
- iv. JSW Energy Limited
- v. NTPC Ltd; and
- vi. Vedanta Limited

20. Pursuant to the conduct of the Challenge Process, all PRAs except M/s.Coal India Limited submitted its revised plan.

21. In the 56th COC Meeting held on 02.12.2024, the Applicant informed that there were no findings in respect of any PUFEE transactions. The COC discussed upon the compliance, feasibility and viability of the final Resolution Plans as submitted by the 10 PRAs and put for e-voting. During the e-voting, the COC with 100% voting¹⁴ rights approved the Resolution Plan dated 29.11.2024¹⁵ submitted by M/s.JSW Energy Limited. The voting share is detailed as follows:

¹⁴ Voting result dated 11.01.2025 as Annexure A-13 of the application

¹⁵ Resolution Plan dated 29.11.2024 alongwith all its annexures, clarifications and addenda as Annexure-14 @ pg. 395 of the application.

National Company Law Tribunal, Hyderabad Bench, Court-II

I.A. No. 2/2025 in
C.P.(IB) No.492/7/HDB/2019

Date of Order: 13.02.2025

S.No.	Name of the Financial Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for/ Dissented / Abstained)
1.	Aditya Birla ARC Limited	32.67	Voted for
2.	Prudent ARC Limited	16.02	Voted for
3.	Power Finance Corporation Limited	14.84	Voted for
4.	Rural Electrification Corporation	11.81	Voted for
5.	UCO Bank	3.60	Voted for
6.	Bank of India	3.58	Voted for
7.	IDBI Bank Ltd.	2.88	Voted for
8.	Phoenix ARC Private Limited	2.85	Voted for
9.	India Infrastructure Finance Company (UK) Limited	2.54	Voted for
10.	RARE Asset Reconstruction Limited	2.06	Voted for
11.	Canara Bank	1.89	Voted for
12.	Punjab National Bank	1.13	Voted for
13.	State Bank of India	1.10	Voted for
14.	Asset Reconstruction Company (India) Limited (ARCIL)	0.94	Voted for
15.	Union Bank of India	0.85	Voted for
16.	ASREC (India) Ltd.	0.51	Voted for
17.	Housing and Urban Development Corporation Ltd.	0.50	Voted for
18.	Axis Bank Limited	0.12	Voted for
19.	Bank of Baroda	0.10	Voted for
Total		100%	

22. The Applicant has further submitted that as the approved Resolution Plan meets all the requirements envisaged under IBC and Rules/Regulations made thereunder, on 13.01.2025, the RP issued 'Letter of Intent' (LoI)¹⁶ to M/s.JSW Energy Limited declaring them as Successful Resolution Applicant (**SRA**). They were requested to comply with the terms of the LOI and submit the Performance Security. In turn, on 15.01.2025, the Resolution Applicant unconditionally accepted the LOI and submitted Performance Bank Guarantee No.1731325BG0B00056, dated 14.01.2025 for Rs.250 crores¹⁷ (Rupees Two Hundred and Fifty Crores only), valid upto 17.01.2026 with further claim period upto 17.01.2027, with acceptance of LOI.

23. The salient details of the Resolution Plan, submitted by JSW and as approved by the CoC, are as follows:

- i. JSW is a renewable energy company and a leading power generation company in India, incorporated in 1994.
- ii. JSW has an operational capacity of 7,536 MW, which includes five thermal power plants with a capacity of 3,508 MW, two hydro power plants with a capacity of 1,391 MW, solar power projects with a

¹⁶ LOI @ pg. 443 of the application

¹⁷ Performance Bank Guarantee as Annexure A-16 @ pgs. 445 to 452 of the application



capacity of 675 MW, and wind projects with a capacity of 1,962 MW.

- iii. The JSW is also constructing a 240 MW Greenfield hydro power project in Himachal Pradesh and the second unit of a 350 MW coal based Thermal Power Plant in Odisha.
- iv. JSW has previously acquired Ind Barath Energy (Utkal) Limited and acquired and integrated 1391 MW Hydro assets of the Jaypee group, as an SRA under the Code.

24. The amounts provided for the stakeholders under the Resolution Plan¹⁸ are as under:

(Rs. in lakhs)

Sl. No.	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors***	(a) Creditors not having a right to vote under sub-section (2) of section 21			1,598,508	
		(b) Other than (a) above				
		(b) Other than (a) and (b) above: (i) who did not vote in favour of the Resolution Plan				

¹⁸ Form-H @ Page 459-470 of the Application

National Company Law Tribunal, Hyderabad Bench, Court-II

I.A. No. 2/2025 in
C.P.(IB) No.492/7/HDB/2019

Date of Order: 13.02.2025

		(ii) who voted in favour of the resolution plan	28,30,345.86	21,86,773.34		
		Total [(a) + (b)]	28,30,345.86	21,86,773.34		
2	Unsecured Financial Creditors*	(a) Creditors not having a right to vote under sub-section (2) of section 21	1,59,503.40	13,538.97		
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	2,33,608.94	1,22,721.03		
		Total[(a) + (b)]	3,93,112.34	1,36,260.00		
	Financial Creditors (Secured & Unsecured)**	Total (1+2)	32,23,458.20	23,23,033.34	1,598,508	49.59%
3	Operational Creditors	(a) Related Party of Corporate Debtor	--	--	--	--
		(b) Other than (a) above: (i)Government (ii)Workmen (iii)Employees**** (iv) Operational Creditors (Other than Workmen and Employees and Government Dues)	3,07,433.48 -- 1,309.22 4,08,543.75	1,32,408.78 -- -- 1,53,843.92	9,900	1.38%
		Total[(a) + (b)]	7,17,286.45	2,86,252.70		
4		Other debts and dues	Other Creditors (other than Financial Creditors and Operational Creditors)	172.30	171.01	
Grand Total			39,40,916.95	26,09,457.05	1,608,408	61.63%

*Rs.99 crores payable to Operational Creditors includes Other Creditors. The (%) in column (7) will increase pursuant to the distribution of additional amounts to operational creditors, on a pro-rata basis in terms of the Distribution Framework approved by COC in 56th meeting of COC held on 02.12.2024 vide voting result declared on 11.01.2025 (“**Distribution Framework**”).



National Company Law Tribunal, Hyderabad Bench, Court-II

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*Although an amount of Rs.13,538.97 lakhs has been admitted against related party unsecured financial claim (“Creditors not having a right to vote under sub-section (2) of section 21”), but subsequently an amount of Rs.16,480.83 lakhs is receivable from them which is higher than the claim admitted amount and so, after mutual set-off, the net payable is Nil.

** The amount proposed by JSW Energy Limited in their Resolution Plan is to be payable to Financial Creditors. However, the Resolution Plan does not provide for bifurcation between secured and unsecured financial creditors. Further, the Resolution Plan does not provide a bifurcation of payments made to various stakeholders under operational creditors. Total Resolution Amount shall be distributed to the Creditors in such a manner that the final distribution of the Total Resolution Amount is as per the proportion determined by the COC as per Clause 3.3.6 of the Resolution Plan and as per Distribution Framework.

*** As per the order given by the Hon’ble NCLT dated 05.08.2024, a portion of the admitted claim of the secured financial creditors has been proportionately paid out from the surplus/idle fund distributed in waterfall mechanism during the CIRP. Thus, their current admitted amount has been calculated by deducting the payout during CIRP from the initial gross admitted amount.

**** As per the order given by the Hon’ble NCLT dated 05.08.2024, the admitted claim of the employees has been entirely paid out from the surplus/idle fund distributed in waterfall mechanism during the CIRP. Thus, their current admitted claim amount is Nil after deducting the payout during CIRP from the initial gross admitted amount.

25. Summary of Proposal:

S.No.	Particulars	Amount (Rs. in crores)	Remarks
(A)	Upfront Cash Recovery from Resolution Applicant to Financial Creditors	15,985.08	
(B)	Upfront Cash recovery from Resolution Applicant to Operational Creditors (including Workmen and Employees) and Other Creditors ¹⁹	99.00	

¹⁹ To the extent the admitted claim of the Workmen and Employee has already been discharged pursuant to the interim distribution as approved by this Authority in IA 1365/2024(Distribution Approval Order), then the portion of the Upfront Cash Recovery from Resolution Applicant to Operational Creditors (including Workmen and Employee) and Other Creditors which was to be paid towards the Admitted Claims of the Workmen and Employees under this Resolution Plan shall be to the benefit of

(C)	Cash	Yes	Rs.8,103 crores as on 09.09.2024. To be revised on cut off date.
(D)	Estimated increase in cash between 09.09.2024 and March 31, 2025 (indicative)	Yes	Indicative amount to be Rs.1,300 crores. This will form part of Cash in row (C) above, to be revised on cut off date.
(E)	Trade Receivables	Yes	Rs.3,692 crores as on 30.06.2024, as per information available in VDR To be revised on cut off date, subject to clause 3.3.2(1) of the Resolution Plan
(F)	Legal Proceedings Receivables	Yes	As per Clause 3.3.2(m) of the Resolution Plan
(G)	COC Costs	Yes	As per Clause 3.3.11(c) below
	Aggregate of (A) to (G) referred to as Total Resolution Amount		
(H)	Equity stake in KMPCL to Equity receiving Creditors	26%	As per Clause 3.3.2, 3.3.25 and 3.5.1 of the Resolution Plan
(I)	Takeover of NFB Instruments	Yes	As per clause 3.3.2(k) of the Resolution Plan

the Financial Creditors – who shall be entitled to redistribute the said amounts in accordance with this Resolution Plan.



26. Implementation structure²⁰:

- (i) Upon approval of the Resolution Plan by the COC, the RA will identify a Bid Co.²¹ to acquire the Company. The Bid Co. shall file necessary applications with relevant authorities and obtain approvals necessary for the implementation of the Resolution Plan.
- (ii) Upon approval of the Resolution Plan by this Authority, the RA shall constitute the Monitoring Committee (MC).
- (iii) On the Closing Date²², the following actions will take place and the Bid Co. will assume the control and management of the CD:
 - a) Upfront cash recovery proposed by the Resolution Applicant shall be infused in a designated escrow account of the CD through external third-party debt and quasi equity instrument²³.

²⁰ Clause 3.5 of the Resolution Plan

²¹ BidCo. – Clause 1.1.5 of the Resolution Plan

²² Closing Date – 1.1.17 of the Resolution Plan

²³ Schedule 14 of the Resolution Plan

b) Payments will be made starting from repayment of CIRP costs, Operational Creditors, other creditors, Financial Creditors including the cash entitlement and the upfront cash recovery to the financial creditors.

Upon making the above payments, the debts of the CD shall stand discharged and extinguished and necessary actions will be taken for release of encumbrances etc.

- c) An amount of Rs.5,00,000/- will be infused by BidCo (SPV/any other person of JSW) into KMPCL, for the purposes of subscribing to the equity shares of KMPCL;
- d) The issued equity share capital of KMPCL already held by existing shareholders shall be entirely cancelled and extinguished;
- e) Thereafter BidCo. shall be merged into KMPCL;
- f) 26% of the shares in KMPCL shall be issued to the Equity Receiving Creditors of KMPCL; (v) the existing Board of Directors of KMPCL shall be replaced and reconstituted by JSW.

g) The existing Board of Directors of the CD will be replaced and a new Board shall be appointed.

27. The Resolution Plan provides for the merger of BidCo with the Corporate Debtor, which shall take effect within the Closing Date, i.e. 90 days from the date of approval. However, such effect shall be contingent upon the approval of the Competition Commission of India (CCI). On the Closing Date, the Corporate Debtor shall be acquired by BidCo, and 100% of its Share Capital shall be beneficially owned by BidCo, free from any Encumbrances, with the shareholding structure reflecting BidCo's ownership (alongwith nominee shareholders) prior to the Merger.

28. Manner of Distribution²⁴:

COC may, in its discretion, adopt the manner and timing of the distribution of the total resolution amount proposed under the Resolution Plan. It is also provided that in the event there are any inter-creditor disputes (including but not limited to disputes relating to cash entitlement under the Plan, manner or priority of distribution of the total resolution amount), the portion of amount pertaining to the dispute shall be set aside and kept in a designated escrow account and

²⁴ Clause 3.3.6 of the Resolution Plan

the said dispute shall not affect the implementation of the COC Approved Resolution Plan or lead to an increase in the upfront cash recovery payable by the Resolution Applicant. (Clause 3.3.6). The distribution framework approved by the COC in its 56th meeting is filed as **Annexure-20 @ pg. 480 (V-III)**.

29. Amounts remaining after distribution shall be distributed to the following three classes of creditors:

- (i) Creditors with Admitted Secured Financial Debt @ 6% simple interest;
- (ii) Creditors with Admitted Unsecured financial Debt @ 6% simple interest; and
- (iii) Operational Creditors with Admitted Operational Debt.

30. **Management of the Corporate Debtor²⁵**: With effect from the date of approval of the COC Approved Resolution Plan by this Authority and during the standstill period, the control and management of the CD will vest with the Monitoring Committee (**MC**) comprising of (i) 2 representatives of the Resolution Applicant; (ii) the Monitoring Agent (who shall be RP or such other person

²⁵ Clause 3.5.4 of the Resolution Plan

jointly appointed by the Resolution Applicant and COC); and (iii) 2 representatives of the Assenting Financial Creditors. During the Standstill Period, the Monitoring Agent shall oversee the operations and management of the CD.

31. Source of Funds:

The Resolution Applicant proposes the aggregate Upfront Cash Recovery Amount of Rs.16,084.08 crores, from the following sources:

- a) Rs.13,000 crores in the form of debt; and
- b) Rs.3,084.08 crores in the form of quasi-equity.

32. Term of the Resolution Plan, Implementation Schedule, effective implementation and supervision for its implementation²⁶

The Plan provides that the Term of the Resolution Plan shall commence on the date of approval of the Plan by this Authority and shall conclude on the Closing Date (as defined in Clause 1.1.17 of the Resolution Plan).

The Plan also provides for an Implementation Plan at Clause 3.5.1.

²⁶ Clause 4.1, Clause 3.5.1, Clause 3.5.2 (a)(iv) and Clause 3.5.5 of the Resolution Plan

33. **Compliance of mandatory contents of Resolution Plan under IBC and CIRP Regulations:** The Applicant is stated to have conducted a thorough compliance check of the Resolution Plan in terms of Section 30(2)(a), (b) & (c) of IBC as well as Regulations 38 & 39 of the CIRP Regulations and has submitted Form-H under Regulation 39(4). A copy of the **Form-H** has also been filed.²⁷ It is submitted that the Resolution Applicant has filed an Affidavit pursuant to Section 30(1) of IBC confirming that they are eligible to submit the Plan under Section 29A of IBC and that the contents of the said Certificate are in order. The **Fair Value** and **Liquidation Value** as submitted in Form-H are stated to be Rs.9,947.74 crores and Rs.6,848.80 crores respectively.
34. **Reliefs & Concessions:** Besides seeking approval of the Resolution Plan submitted by JSW, the Applicant has also prayed for grant of reliefs, waivers and concessions²⁸ to the Resolution Applicant, as set out @ pg. 88 to 95 of the Resolution Plan.
35. In the above backdrop, we have heard the Learned Counsel for the Applicant and perused the records.

²⁷ Page nos. 459 - 466 of the Application

²⁸ Annexure A-19 @ pg. nos. 471 to 479 of the application

36. The Resolution Plan meets the requirement of Section 30(2) of IBC and Regulation 38 of CIRP Regulations, as under:

a) CIRP Cost²⁹:

The CIRP Costs of the CD, as duly verified and certified by the RP, shall be paid by the CD from the cash flows of the CD and shall be paid in priority over the payments to any other creditors in the manner set out in the Code. The CIRP Cost, inter alia, include (a) The CIRP cost incurred by the Applicant that remain; (b) Costs that pertain to matters which are currently under dispute (as identified in Schedule 3 of the COC approved Resolution Plan) and attain finality prior to the date of approval of the COC approved Resolution Plan by this Authority etc.

Any costs arising during CIRP that pertain to the matters mentioned in Schedule 3 (costs) of the COC approved plan which is currently under dispute and attains finality post the Cut-Off date shall be dealt with by the Resolution Applicant without any reduction to the Total Resolution Amount.

²⁹ Clause 3.2 @ pg.232 r/w Clause 3.3.11 @ pg. 243 of the application

b) Operational Creditors and other Creditors of the CD³⁰ –

The Plan provides for upfront cash payment of Rs.99 crores as upfront cash recovery from the Resolution Applicant to the Operational creditors (including workmen and employees) and other creditors of the CD. Resolution Applicant has provided for payment of the admitted claims of other creditors in full (which amounts to approximately Rs.1.71 crores. The sum remaining after payment of the admitted claims of other creditors in full will be utilised first towards the payment of admitted claims of workmen and employees in full and the balance remaining for the debt of Operational Creditors (other than workmen and employees).

The Plan provides that in case the amounts to be paid to the Operational Creditors is lower than the amounts to be paid to such creditors under Section 30(2)(b) of the Code, such shortfall shall be paid to the Operational Creditors out of the total resolution amount proposed under the Plan as determined by the COC.

³⁰ Clause 3.3.1 r/w Clause 3.3.3 and Clause 3.3.12



c) Financial Creditors³¹:

The Plan provides for payment of upfront cash payment of Rs.15,985.08 crores as upfront cash recovery to the Financial Creditors of KMPCL. Further, the Financial Creditors are also entitled to the cash balances (after deducting CIRP costs and standstill period costs) and trade receivables available with KMPCL as on the Cut-off date; legal proceedings receivables for proceedings initiated prior to the Closing Date, COC costs and equity share of 26% shareholding.

Equity shares of 26% will be allotted to non-common fund based secured assenting financial creditors (who are not common creditors to KSK Water and RCRIPL)

d) Dissenting Financial Creditors:

There are no Dissenting Financial Creditors.

e) The bank guarantee, letters of credit or any other instruments issued on behalf of the CD that are active and have remained uninvoked as on Closing Date shall be continued by the CD post the Closing Date.

³¹ Clause 3.3.2 r/w Clause 3.3.13

f) Treatment of Trade Receivables³²: The Plan provides that on and after the Closing Date³³, the gross trade receivables, including unbilled revenue of the Corporate Debtor as on the cut-off date specified in the Plan, shall be for the sole benefit of and to the order of the Assenting Financial Creditors and further, such creditors may decide the manner and timing of distribution of such proceeds. These proceeds will be paid to the creditors after deducting costs and taxes.

g) Treatment of recoveries from legal proceedings³⁴:

The Plan provides that on and after the Closing date, any recoveries from any legal proceedings initiated prior to the Closing Date on behalf of the CD shall be paid to a designated lender acting on behalf of the Assenting Financial Creditors. Such payments shall be subject to deduction of costs and taxes.

ORDER

37. We have carefully considered the present application seeking approval of the Resolution Plan dated 29.11.2024 (alongwith all its annexures, clarifications and addenda) submitted by the Resolution Applicant M/s. JSW Energy Limited.

³² Clause 3.3.2(l) and (o)

³³ Clause 1.1.17 of the Resolution Plan

³⁴ Clauses 3.3.2 (m)-(o)



38. While reviewing the resolution plan as aforesaid, we have taken into account the judgment in the case of **K. Sashidhar v. Indian Overseas Bank**³⁵ where the Hon'ble Supreme Court has held that:

“if CoC had approved the Resolution Plan by requisite percent of voting share, then as per Section 30 (6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority. On receipt of such proposal, the Adjudicating Authority (NCLT) is required to satisfy itself that the resolution plan as approved by CoC meets the requirements specified in Section 30(2). No more and no less”.

And held further in para 35 of the judgement that –

“the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements”.

39. The Hon'ble Supreme Court reiterated this view in the case of **Essar Steel**³⁶ by holding that:

“...it is clear that the limited judicial review, which can in no circumstances trespass upon a business

³⁵ In *K. Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No. 10673/2018) decided on 05.02.2019: (2019) 12 SCC 150

³⁶ *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.* in Civil Appeal No.8766-67/2019, decided on 15.11.2019: (2020) 8 SCC 531



decision of the majority of the CoC, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned....”.

40. Reinforcing the above, the Hon’ble Supreme Court more recently has held in **Vallal RCK vs M/s Siva Industries**³⁷ that:

“21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts.

Emphasizing yet again, that

“27. This Court has, time and again, emphasized the need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC.”

and, by referring to an earlier judgment in the case of **Arun Kumar Jagatramka**³⁸, added a note of caution that

“...However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicating authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and

³⁷ Vallal RCK vs M/s Siva Industries and Holdings Limited & Ors. in Civil Appeal No.1811-1812/2022, decided on 03.06.2022: (2022) 9 SCC 803

³⁸ Arun Kumar Jagatramka v. Jindal Steel & Power Ltd. (2021) 7 SCC 474] : (SCC p. 533, para 95)

bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.....”

41. Therefore, when tested on the touch stone of the rulings, and considering the facts of the case, we are of the view that the Resolution Plan satisfies the requirements of Section 30 (2) of IBC and Regulations 37, 38 & 39 of CIRP Regulations. We also find that the Resolution Applicant is eligible to submit the Resolution Plan under Section 29A of IBC. A copy of the Affidavit filed by the Resolution Applicant and Section 29A Diligence Review Report on Resolution Applicants are filed as **Annexure A-17 @ pg. nos. 453 – 458 of the application** respectively.

42. It is also to be clarified that approval of the resolution plan shall not be construed as waiver of any statutory obligations/ liabilities of the Corporate Debtor and shall be dealt with by the appropriate Authorities in accordance with law. Any waiver sought in the resolution plan, shall be subject to approval by the Authorities concerned. As regards to the reliefs sought, the Corporate Debtor has to approach the authorities concerned for such reliefs and we trust the authorities concerned will do the needful.

“Approval of this plan by NCLT shall be deemed to be sufficient notice which may be required to be given to any person for such matter and no further notice shall be required to be given” as per the view taken by the Hon’ble Supreme Court in the case of **Ghanashyam Mishra**.³⁹

43. With the above remarks, we hereby approve the Resolution Plan dated 29.11.2024 (alongwith all its annexures, clarifications and addenda) submitted by the Resolution Applicant M/s JSW Energy Limited, and order as under:

- i. The Resolution Plan dated 29.11.2024 along with all its annexures, clarifications and addenda forming part thereof shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the resolution plan.
- ii. All crystallized liabilities and unclaimed liabilities of the Corporate Debtor as on the date of this order shall stand extinguished on the approval of this Resolution Plan.

³⁹ Ghanashyam Mishra and Sons Private Limited Versus Edelweiss Asset Reconstruction Company Limited in Civil Appeal No.8129/2019 with Civil Appeal No.1554/2021 and 1550-1553/2021, decided on 13.04.2021.: (2021) 9 SCC 657



- iii. If the SRA fails to pay the amount as envisaged in the Resolution Plan dated 29.11.2024 to the stakeholders within the timeline fixed in the Plan, the entire amount paid by the SRA shall be forfeited.
- iv. It is hereby ordered that the Performance Bank Guarantee furnished by the Resolution Applicant shall remain in force till the amount proposed to be paid to the creditors under this plan is fully paid off and the plan is fully implemented.
- v. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Hyderabad for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- vi. Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to in the resolution plan.
- vii. The moratorium under Section 14 of IBC shall cease to have effect from the date of this order.



- viii. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this order for information.
 - ix. The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.
 - x. The Registry is directed to furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016.
 - xi. The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and also forward a copy to IBBI.
44. Accordingly, **IA 2/2025 in CP(IB) No.492/7/HDB/2019** is allowed and disposed of.

Sd/-

**SANJAY PURI
MEMBER (TECHNICAL)**

Sd/-

**RAJEEV BHARDWAJ
MEMBER (JUDICIAL)**

Syamala