

THE HON'BLE SRI JUSTICE C. V. BHASKAR REDDY

WRIT PETITION No.25060 of 2024

ORDER:

This Writ Petition is filed seeking the following relief:-

“...to issue a writ order direction in the nature of Mandamus declaring the action of:

- a. The Respondent Nos.3, 5 and 7 through the Respondent Nos. 2, 4 and 6 or independently to file an application for consolidation of CIRP of KSK Mahanadi Private Limited, KSK Water Infrastructures Private Limited and Raigarh Champa Rail Infrastructure Private Limited before the Learned NCLT, Hyderabad Bench for effective adjudication of this issue;*
- b. The Respondent Nos.2, 4 and 6 i.e. the resolution professional of KSK Mahanadi Private Limited, KSK Water Infrastructures Private Limited and Raigarh Champa Rail Infrastructure Private Limited to provide all such information as may be necessary for the Learned NCLT, Hyderabad to adjudicate upon the issue of consolidation of CIRP of KSK Mahanadi Private Limited, KSK Water Infrastructures Private Limited and Raigarh Champa Rail Infrastructure Private Limited;*
- c. The Respondent Nos.1 and Respondent No.8 to analyse and investigate the conduct of the Respondent No. 3, Respondent No. 5 and Respondent No. 7 i.e. the committee of creditors of KSK Mahanadi Private Limited, KSK Water Infrastructures Private Limited and Raigarh Champa Rail Infrastructure Private Limited from the perspective of whether these respondents have failed miserably in discharging the fiduciary duty foisted upon them by the IBC.*
- d. The Respondent Nos.1 and 8 to expeditiously come up with a framework for group insolvencies to prevent any situation like the present.*
- e. The Respondent Nos. 2, 4 and 6 and Respondent Nos. 3, 5 and 7 i.e. the respective Resolution Professional and Committee of Creditors of all Corporate Debtors to not take any action including seeking approval of*

resolution plans for these companies till the pendency of the present writ petition...”

2. Considered the submissions of Sri B.Chandrasen Reddy, learned Senior Counsel representing Sri Amir Bavani, learned counsel appearing for the petitioner; Ms.N.V.R.Rajya Lakshmi, learned counsel representing Sri Gadi Praveen Kumar, learned Deputy Solicitor General of India, appearing for respondent No.1 and Sri Krishna Grandhi, learned counsel appearing for respondent Nos.5 and 7 and with their consent this writ petition is disposed of at the admission stage.

3. It is stated that the petitioner is a Company incorporated under the provisions of the Companies Act, 1956 and it is primarily responsible for distribution of the electricity in the State of Uttar Pradesh. It is further stated that respondent No.2-KSK Mahanadi Power Company Limited (“KSKMPCL”) being represented by its Resolution Professional Mr.Sumit Binani, is a public company currently undergoing Corporate Insolvency Resolution Process (“CIRP”) in terms of the Code as per the order, dated 03.10.2019 passed by the National Company Law Tribunal, Hyderabad (“NCLT”). Respondent No.3 is the Committee of Creditors of KSKMPCL being represented by Aditya Birla ARC Limited having 33.369% of the voting rights in the committee of creditors in KSKMPCL. Respondent No.4-KSK Water Infrastructures Private Limited (“KSKWIPL”). It is

further stated that after initiation of Corporate Insolvency Resolution Process against the Corporate Debtors, one of the creditors of KSKMPCL i.e., Punjab National Bank has filed I.A.No.32 of 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. The said application was rejected by the NCLT *vide* order, dated 12.02.2021, wherein it was observed as follows:

“We being Adjudicating Authority, if direct CoC and RP of different Companies to sit together to resolve insolvency of different Corporate Debtors together then there will be chaotic situation relating to consolidation of assets and liabilities of all the Companies. In fact, inherent jurisdiction state in Rule 11 of the NCLT Rules cannot be used to create such situation.

Before passing order we put it on record that CoC in all the above Companies may sit together and find out common resolution Applicant so as to achieve the object of maximization of assets of all the Corporate Debtors. We in our limited jurisdiction cannot direct consolidation of CIRP of different Corporate Debtors.”

4. Aggrieved by the same, Punjab National bank (now Prudent ARC Limited) has preferred Company Appeal (AT) (CH) (Ins) No.46 of 2021 on the file of National Company Law Appellate Tribunal, Chennai Bench (for short “NCALT”). It is further stated that during pendency of the appeal, IA(IBC)/374/2022 and IA(IBC)/403/2022 were filed in CP(IB) No.492/7/HDB/2019 on the file of NCLT and in the said applications, *vide* common order, dated 07.06.2022, the NCLT ordered as follows:

“The main prayer in the IA is to direct the R1 i.e. Resolution Professional to defer the last date of submission of the Resolution Plan, and the process of the CIRP of Respondent No.1 till 22.07.2022. The prayer made in IA(IBC)/403/2022 is to stay all further CIRP proceedings of R1 including receipt of Resolution Plan till the disposal of the IA (IBC)/374/2022 in CP (IB) No. 492/7/HDB/2019. The main prayer of the Applicants is that the main Company KSK Mahanadi Power Company Ltd. has got 49 per cent share holding in KSK Water Infrastructure Private Ltd. and Raigarh Champa Rail Pvt. Ltd. All these companies are under CIRP Process. Earlier an effort was made to undertake the resolution process of all three companies together, so that the maximization of assets can be achieved. In the said process an application was also made before this Bench by one of the creditors (Punjab National Bank) for consolidation of CIRP of R2 with R1 which has been rejected by his Adjudicating Authority. Subsequently, the same has been questioned before Hon'ble NCLAT by way of an appeal which is coming for hearing on 22.06.2022. In the meanwhile, the Resolution Professional is proceeded to invite the Resolution Applicants to carry on with the matter even without waiting for the outcome of the appeal pending before Hon'ble NCLAT. In the said scenario, the Applicant had come forward with this application to seek the relevant reliefs as prayed for in the Application. The Axis Bank Ltd. had also filed another IA No. 1161 of 2020 seeking the consolidation of CIRPS of the three Corporate Debtor i.e. KSK Mahanadi Power Company Ltd., KSK Water Infrastructure Pvt. Ltd. and Raigarh Champa Rail Private Limited.

We have perused the records and understood the background of the matter. It is stated that it is always advisable to undertake the consolidation of CIRPs of Corporate Debtors for the maximization of value for the reason the Successful Resolution Applicant would have these three Corporate Debtors in a complete form and any attempt to proceed with in the CIRP process will certainly affect the maximization of the value resulting in the loss to the stakeholders. Even though the issue is being agitated before the Hon'ble NCLAT with regard to one of the Corporate Debtors, we are of the considered view to defer the Resolution Process until further orders subject to the outcome of the

appeal pending before the NCLAT and in the meanwhile, we stay the CIRP proceedings and direct the Resolution Professional not to undertake any such process until the IA (IBC)/374/2022 is disposed of.”

5. It is the case of the petitioner that on the application filed by Financial Creditor for consolidation of CIRPs of Corporate Debtors for the maximization of value for the reason that Successful Resolution Application would have three Corporate Debtors in a complete form and any attempt to proceed with the CIRP process will affect the maximization of the value resulting in loss to the stakeholders, 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. It is the further case of the petitioner that instead of complying with the common order, dated 07.06.2022 passed in IA (IBC) Nos.403 & 374 of 2022 in CP(IB) No.492/7/HDB/2019 by the NCLT, the Financial Creditor withdrawn the Company Appeal (AT) (CH) (Ins) No.46 of 2021.

6. The grievance of the petitioner is that certain rights and interests were created in its favour, in pursuance of the interim order dated 07.06.2022 in IA (IBC) Nos.403 & 374 of 2022 in CP(IB)

No.492/7/HDB/2019 by the NCLT but the same were taken away in view of withdrawal of Company Appeal.

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 of the appeal on the file of NCLAT, Financial Creditor has filed IA(IBC)/374/2022 and IA(IBC)/403/2022 in CP(IB) 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.

8. In view of the above, this Court deems it appropriate to dispose of this Writ Petition by relegating the petitioner to file an appropriate application in CP(IB) No.492/7/HDB/2019 on the file of the NCLT and raise all grounds available under law. 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.

9. With the above observations, this Writ Petition is disposed of. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

Date: 10.09.2024
gkv/scs

C.V. BHASKAR REDDY, J