

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH AT HYDERABAD

CP(IB) No. 11/10/HDB/2017

Date: 10.02.2017

In the matter of:

Kamineni Steel & Power India Pvt Ltd.,

“KAMINENI”, 4th Floor,

King Koti.

Hyderabad

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

.... Petitioner

Counsel for the Petitioner:

...Sh. GSN Murthy

CORAM

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judicial)

ORDER

(As per Rajeswara Rao Vittanala, Member (J))

1. The present Company Petition bearing number 11/10/HDB/2017, has been filed by Kamineni Steel and Power India Pvt Ltd (hereinafter referred as the Company), represented by Mr. K. Sashidhar, under Section 10 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by interalia seeking to initiate Corporate Insolvency Resolution Process in respect of the Company.



2. Sh. GSN Murthy, Learned Counsel for the Petitioner, while reiterating the contents raised in Form No.6, further submits that Kamineni Steel

and Power India Private Limited, was incorporated on 20.10.2008 and CIN changed upon formation of Telangana State in date base of MCA vide mail dated 12.06.2014 vide new CIN U27100TG2008PTC061482, and the principal business activities of the Company include manufacture of steel billets and wholesale of metal scraps, etc. The Nominal Share Capital of the Company is Rs.25000 lakhs divided into 25,00,00,000 equity shares of Rs.10 each and the Paid up share capital is Rs.2276.213 lakhs divided into 227,621,300 equity shares of Rs.10/- each fully paid-up.

3. The Learned Counsel submits that the Company, upon erosion of entire net worth due to accumulated losses, in accordance with provisions of Section 15(1) of SICA has filed a reference with BIFR on 17.11.2016 vide acknowledgement no. 9913(H), dated 17.11.2016 and as such the reference was pending with BIFR.
4. The Learned Counsel, further submits that in terms of notification dated 25th November, 2016 as to repeal of SICA Repeal Act, 2003, all references made to BIFR or all proceedings or appeals of whatever nature pending before BIFR/AAIFR got abated with effect from 1st December, 2016. Accordingly, the reference made by Company to BIFR on 17.11.2016 got abated.



Accordingly, the Petitioner approached this Tribunal in prescribed format, duly complying the procedure mentioned in the said provisions and also paid the prescribed fee of Rs.25,000/-.

5. The Learned Counsel for the Petitioner submits that, the Company was installed with a capacity of 360,000 MTPA and a captive gas based power plant of 220MW near Narketpally Mandal, Nalgonda district, Telangana. The Original project was estimated as Rs. 1539 crores, which had been funded by terms loan of Rs.1248 crores by 8 consortium banks with Indian Bank as Leaders and balance to be met by promoters by way of equity to the tune of Rs. 291 crores. The total debt comprised of senior debt of Rs. 1151 crores and sub debt of Rs. 97 crores. The consortium banks include Andhra bank, Allahabad bank, Bank of Maharashtra, Central bank of India, Indian Bank, Indian Overseas Bank, the Karur Vysya Bank and Oriental Bank of Commerce with Indian bank as Leader.

The Company availed the term loans, fully pertaining to steel projects and about 45 % of sanctioned loans, relating to power project. The steel plant commenced one of the operations on March 30, 2013, due to non-availability of full power requirements against scheduled COD on October, 2012. The implementation of power plant was delayed due to lack of clarity of availability of gas. Due to the delay in commencement of operation of steel plant resulted in cash flow mismatch, the company could not meet the repayment schedule from FY 2014-15 as per original repayment schedule in original loan agreement. In the above circumstances, the term loan facilities were restructured in Aug, 2014 along with sanction of additional term loan of 74.80 crores by consortium banks to meet expenses towards IDC. The COD of power plant was



shifted from July, 2015 to July, 2017. The lenders of the Company were also informed in September, 2015 that the power project has deferred indefinitely due to the ambiguity on the availability of natural gas.

6. In FY 2014-15, the Company manufactured about 60632 MT of Billets with a capacity utilization of 17% and achieved net sales of about Rs.196 crores. During same FY, the company incurred net loss of Rs.77 crores from operations. During FY 2015-16, the Company achieved a net turnover of Rs. 63 crores and incurred an operational loss of Rs. 275 crores after meeting interest and depreciation. Consequently, the total accumulated loss reached to Rs. 355 crores as on 31.03.2016 making the net worth negative at Rs. 127 crores. The major reasons for such accumulated operational losses, interalia include:

- a. Delay in getting power connection from the Government for more than one year from 2013 to 2014;
- b. Full scale of operations could not be achieved as scheduled, due to delay in power supply from TSSPDCL;
- c. Bearish crude oil prices softened demand for seamless pipes used in oil and gas industry which affected its major customer USTPL;
- d. Decline in steel prices due to (i) structural slowdown in all large steel consuming countries; (ii) Overcapacity & aggressive dumping by neighbouring countries;
- e. Lower realization and stiff competition resulting in significant erosion of margin for small and medium players;
- f. Cash losses due to substantial erosion of margin.



- g. Allowing import of Steel Billets from China and other countries at cheaper prices;
- h. Lack of timely support of working capital from bankers;
- i. Non implementation of 5/25 scheme as per RBI guidelines by all consortium lenders in true letter and spirit even though the TEV study had been completed and vetted by IEC of expert constituted by IBA/RBI.

The above factors resulted in mismatch of cash flows and resultant financial crisis leading to heavy operational losses and consequent erosion of entire network.

7. At the instance of consortium Bankers, detailed techno economic viability study of "Steel Division" has been conducted by Atlas Financial Research & Consulting Pvt Ltd. Hyderabad during August, 2015 and they concluded that the project can be made technically feasible and economically viable subject to implementation of Flexi-structuring scheme by consortium banks and infusion of additional funds as per RBI guidelines. The TEV study had been vetted by IEC constituted by IBA/RBI. Based on the vetted scheme, the proposal submitted by Company has not been implemented by consortium bankers within the time frame. Out of 8 consortium bankers, 4 bankers have implemented the scheme and 4 are yet to implement the scheme. In accordance with detailed discussions in Consortium meeting/s, the Company explored the possibilities for long term revival and accordingly, is working out various



options for restructuring and revival proposals covering conversion of non-sustainable debt into CCD/Equity with moratorium period, re-phasing of existing outstanding with moratorium period, infusion of additional funds by Promoters/ Strategic investor, reduction of rate of interest, etc and the detailed proposal.

8. The Learned Counsel further submits that default is still continuing and it required institution of Corporate Insolvency Resolution Process in respect of the Petitioner Company, by this Tribunal. The Board of Directors at their meeting held on 31.01.2017, authorized Sh. K. Sashidhar, Managing Director of the Company to file necessary application under the provisions of Insolvency and Bankruptcy Code, 2016 on behalf of the Company to initiate Corporate Insolvency Resolution Process. Accordingly, the present Company Petition is filed before this Tribunal under Section 10 of IBC, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, requesting for implementation of Resolution plan by the lenders, which includes, re-phasing and restructuring of the debt which will result in the improvement of operations and serviceability of debt obligations.



The details of the financial creditors as on 31.01.2017 are detailed in Annexures 5 and 5A, which are here under:

Name of Financial Creditor	Address of Correspondence	Details of debt raised and amount of default (Rs. In crores)		
		Type of facility	Debt O/s	Amount of Default
Indian Bank	Surabhi Arcade, Bank Street, Koti, Hyderabad - 500001	Loans	297.76	297.76
Oriental Bank of Commerce	Plot No.1271, Road No.63, Jubilee Hills, Hyderabad - 500033	Loans	164.11	164.11
KVB/JM Financial Asset Reconstruction Company Pvt Ltd (from 28.03.2016 onwards)	KVB: Himayat Nagra Branch, Hyderabad - 500029. JM FARCPL: 3 rd Floor, B Wings, Suashish IT Part, Plot No.68E, Off. Dattapada Road, Opp. Tata Steel, Borivali (East), Mumbai - 400066	Loans	166.41	166.41
Allahabad Bank	3-6-435, Ground Floor, Main Road, Himayatnagar, Hyderabad - 500029	Loans	111.87	111.87
Indian Overseas Bank	Large Corporate Branch, Jubilee Hills Check Post, Hyderabad	Loans	226.30	226.30
Central Bank of India	Bank street Branch, Koti, Hyderabad	Loans	158.36	158.36
Andhra Bank	Specialised Corporate Finance Branch, 3 rd Floor, 6-3-648, Padmaja Landmark, Adj to RTA office, Somajiguda, Hyderabad - 500082	Loans	193.29	193.29
Bank of Maharashtra	ECIL Road, Kapra Branch, Hyderabad	Loans	86.91	86.91
Total			1405.01	1405.01



Name of Financial Creditor	Address of Correspondence	Details of debt raised and amount of default (Rs. In crores)		
		Type of facility	Debt O/s	NPA Date as per Bank records
Indian Bank	Surabhi Arcade, Bank Street, Koti, Hyderabad - 500001	Loans	297.76	01.Nov.14
Oriental Bank of Commerce	Plot No.1271, Road No.63, Jubilee Hills, Hyderabad - 500033	Loans	164.11	30.Sep.16
KVB/JM Financial Asset Reconstruction Company Pvt Ltd (from 28.03.2016 onwards)	KVB: Himayat Nagra Branch, Hyderabad - 500029. JM FARCPL: 3 rd Floor, B Wings, Suashish IT Part, Plot No.68E, Off. Dattapada Road, Opp. Tata Steel, Borivali (East), Mumbai - 400066	Loans	166.41	23. Mar.16
Allahabad Bank	3-6-435, Ground Floor, Main Road, Himayatnagar, Hyderabad - 500029	Loans	111.87	01.Oct.14
Indian Overseas Bank	Large Corporate Branch, Jubilee Hills Check Post, Hyderabad	Loans	226.30	01.Jan.16
Central Bank of India	Bank street Branch, Koti, Hyderabad	Loans	158.36	31.Dec.15
Andhra Bank	Specialised Corporate Finance Branch, 3 rd Floor, 6-3-648, Padmaja Landmark, Adj to RTA office, Somajiguda, Hyderabad - 500082	Loans	193.29	30.Jun.16
Bank of Maharashtra	ECIL Road, Kapra Branch, Hyderabad	Loans	86.91	01.Sep.15
Total			1405.01	



9. I have considered the entire material, and heard the arguments of the Sh.G.S.N. Murthy, Learned Counsel for the Petitioner.

10. The issue raised in the present Company Petition was already referred before the BIFR as stated above. The details of financial creditors as mentioned above (Annexure 5 and 5A) indicates that the total outstanding debt of all financial creditors is Rs.1405.01 crores and the same figure was shown as default. The Annexure 5A, as mentioned above, has also furnished the dates of NPA as per the bank records of financial creditors in question, from 1st November, 2014 to 30th September, 2016 in respect of those banks. The details of copies of various documents about the existence of debt and the amount in default of respective banks are enclosed as Annexure 15(i) to 15(x) in Volume II and Annexure 16(i) to 16(xx) in Volume III, Annexure 17(i) to 17(x) in Volume IV, Annexure 18(i) to 18(xiii) in Volume IV, Annexure 19(i) to 19(x) in Volume IV, Annexure 20(i) to 20(ix) in Volume V, Annexure 21(i) to 21(x) in Volume V, Annexure 22(i) to 22(x) Volume V and Annexure 23(i) to 23(x) in Volume V.



The perusal of the above documents indicates that the Company is in default and the net worth has drastically eroded and therefore, required initiation of the Corporate Insolvency Process in respect of the Company under the above Section.

11. The Learned Counsel further submits that the Company Board, in its Board Resolution dated 31.01.2017 (Annexure 7; Page 29), has proposed Mr. Chodavarapu Bala Mouli as the Insolvency Professional (Interim Resolution Professional). Accordingly, Mr. Chodavarapu Bala Mouli (Regd No: IBBI/IPA-001/IP-00690/2016-17/2156) has also filed his acceptance letter (Annexure 8; Pg 29A) wherein, he agreed to accept the appointment as the Interim Resolution Professional, if an order admitting the present application is passed and that he is currently not serving as an Interim Resolution Professional/resolution professional/liquidator. He further certifies that there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.

12. I find that Mr. Ch. Bala Mouli is eligible to be appointed as Insolvency Professional for the Petitioner Company, in all respects, for initiating the Insolvency Proceedings in respect of Kamineni Steel and Power India Private Limited.



13. The Insolvency and Bankruptcy Code, 2016 was enacted by Parliament in 67th year of Republic of India. The objective of the Insolvency and Bankruptcy Code is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all

stakeholders, including alteration in priority of payment of government dues and to establish an Insolvency and Bankruptcy Fund, and matters connected therewith or incidental thereto. An effective legal framework for timely resolution of insolvency and bankruptcy would support development of credit markets and encourage entrepreneurship. It would also improve Ease of doing Business, and facilitate more investments leading to higher economic growth and development.

14. I find that the present Petition/Application, (as referred under Section 10(2) and 10(3) of the IBC.2016), which has been filed by the Petitioner, has been complied with all the requirements as mentioned above and thus it is a fit case to admit the Petition/application.

15. By invoking the powers under Sections 10, 12, 13, 14, 15,16, 17, 18, 19, 20, 21,22 and 25 and other applicable provisions of the IBC, 2016, I, hereby, pass the following Orders:



a. I admit the present Company Petition/Application

b. I declare a moratorium by prohibiting the following actions:

1. The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law. Tribunal, arbitration panel or other authority;

2. Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 3. Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial assets and Enforcement of security Interest Act, 2002;
 4. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- c. Direct to cause the public announcement of initiation of Corporate Insolvency Resolution Process of the Company as per the details given in sections 15(1) and 15(2) on the www.ibbi.gov.in (designated website of Insolvency and Bankruptcy Board Of India, circulated vide IIBI/IP/PUBLIC ANN./221 dated 01.02.2017) in addition to other accepted modes of publication, immediately and call for submission of claims as per Section 15 of the IBC read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- d. I appoint Mr. Chodavarapu Bala Mouli (Regd No: IBBI/IPA-001/IP-00690/2016-17/2156) as an Interim Resolution Professional.
- e. Direct the personnel of Kamineni Steel and Power India Private Limited, to assist and cooperate with Interim Resolution Professional on collecting necessary information and management of the company.



f. I direct the interim Resolution Professional, to constitute a committee of creditors, after collation of all claims received against the corporate debtor and determination of financial position of corporate debtor, as per Section 21. The first meeting of the committee of creditors, shall be held within 7 days of the constitution of committee of creditors and their decision has to be communicated to the Tribunal as per Section 22.

g. I direct the Interim Resolution Professional to follow all the applicable provisions of the Insolvency and Bankruptcy Code, 2016 and Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

h. Post the case to 13.03.2017

Sd/-

Rajeswara Rao Vittanala

Member (J)

V. Annapoorna
V. ANNA POORNA
Asst. DIRECTOR
NCLT, HYDERABAD - 68

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