

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

CP(IB) No.127/10/HDB/2017

U/s 10 of IBC, 2016
R/w Rule 7 of the I& B
(Application to Adjudicating Authority) Rules, 2016

In the matter of:

Anrak Aluminium Limited
APIIC Industrial Park, G. Koduru (V)
Makavarapalem (M)
Visakhapatnam District -531113
Andhra Pradesh

....Petitioner/Corporate Debtor

Versus

State Bank of India
SAM Branch-II
3-4-1013/A, 1st Floor
CAC, TSRTC Bus Station,
Kachiguda,
Hyderabad-500027

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

....Respondent/Financial Creditor

Date of order 31.08.2017

CORAM

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

Counsels / Parties present

For the Corporate Debtor : Mr. V.B. Raju, Advocate

For the Financial Creditor : Mr. V.K. Sajith, Advocate

Per: Ravikumar Duraisamy, Member (Technical)



ORDER

1. The present Company Petition bearing CP (IB) No. 127/10/HDB/2017, is filed by Anrak Aluminium Limited, (Petitioner /Corporate Debtor herein), seeking direction to initiate Corporate Insolvency Resolution Process (CIRP), under Section 10 of the Insolvency and Bankruptcy Code, 2016 R/w Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016,
2. Heard Shri V.B. Raju, Learned Counsel for the Petitioner/Corporate Debtor and Shri V.K. Sajith for the Respondent/Financial Creditor.
3. The application was initially filed on 07.07.2017 and Registry vide letter dated 27.7.2017 sought some documents in order to ensure that there is no lacunae in application, when it is placed before the Adjudicating Authority in the light of time schedule as prescribed under the IBC.
4. The case was listed before the Adjudicating Authority for the first time on 28.7.2017. Since the registry has raised certain objections/sought documents vide above letter dated 27-07-2017, the learned counsel for the petitioner sought seven days' time to comply with the same. The Petitioner was also permitted to intimate the Respondent about the next date of hearing by duly serving a copy of the petition to the Respondent and the case was posted to 07.08.2017. The Corporate Applicant vide Memo dated 04-08-2017 submitted that the Corporate Applicant herein has served copy of petition together with all the enclosures which were filed with this Hon'ble Tribunal on all its secured creditors/banks. A copy of confirmation/acknowledgements received from the said banks/financial institutions are filed finally today. On 07.08.2017, both the counsels



sought one week time to get necessary instructions from SBI, since the issue involved also relates to major socio-economic issues. So the case was again listed before this Adjudicating Authority on 14.08.2017. Heard Counsels for both the sides and the counsels were directed to list out all developments taken place in the matter as on today and furnish the same by the next date of hearing and case was posted to 31.08.2017.

5. Brief particulars of Anrak Aluminium Limited/Corporate Debtor:

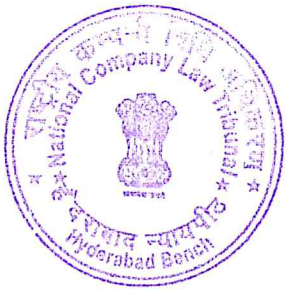
- a) The company was incorporated in March 2007 to install a 1.50 MTPA Alumina refinery along with 3*75(225 MW) power plant at Rachapalle Village, Visakhapatnam District, Andhra Pradesh.
- b) The shareholding by Penna Group is 70% and Ras Al Khaimah Investment Authority (RAKIA) (An investment body of Ras Al Khaimah, one of the seven emirates of UAE) is 30%.

6. Brief particulars of Project:

- a) In consonance with MoU, RAK has identified Indian Partner M/s Penna Cement Group and established a Special Purpose Vehicle (SPV) in the name of Anrak Aluminium Limited to take up the implementation of Alumina Refinery for manufacture of Alumina in the first stage.
- b) From the balance sheet of the corporate debtor, it is noted that Penna Cement Industries Limited is a major shareholder holding more than 20% of the share capital of Anrak Aluminium Limited. Penna Cement Industries Limited had Rs.14.70 Crores and Pioneer Builders Limited had Rs.50.27 Crores as equity share capital of the Corporate Debtor.



- c) The 23 banks consortium led by State Bank of India appraised the project at a cost of Rs.4608 Cr with debt equity ratio of 65:35. Accordingly the debt was envisaged as Rs.2995 Cr. and equity was Rs.1613 Cr on non-recourse basis.
- d) Keeping in view of the total product to be exported the company has obtained sector Special Economic Zone (SEZ) status from the Ministry of Commerce, Government of India, New Delhi vide letter No.F.1/116/2008-SEZ dated 24th December, 2008.
- e) Citing local issues the Government of Andhra Pradesh rescinded the bauxite supply agreement and consequently Andhra Pradesh Mineral Development Corporation (APMDC) failed to honour its commitment under the binding agreement. The company has contested this as an affected party and moved before the Hon'ble High Court of Judicature of Andhra Pradesh and Telangana. The High Court has passed an interim order questioning Government powers to interfere. Matter posted for further hearing.
- f) APMDC has cancelled the Bauxite Supply Agreement vide letter No.APMDC/Baux-Jerrela/2016/2020 dated 21-11-2016. The company has filed a Writ Petition in the Hon'ble High Court of Andhra Pradesh and Telangana vide Writ Petition No.12474 of 2016. APMDC went ahead in cancellation of bauxite supply agreement in spite of the stay granted by the Hon'ble High Court of Andhra Pradesh and Telangana.
- g) The company has completed the project. The company could not commence commercial operations due to non-availability of raw material as APMDC has cancelled the bauxite supply agreement.



7. For absolutely no act of omission or commission on the part of the project sponsors and solely on account of direct State Government force majeure a potential national asset has been lying in an unproductive and wasting state for over 4 years, huge private and public funds invested face the threat of permanent loss of value as the assets are located in coastal area and are getting impaired and seriously damaged. Further delay will certainly undermine revival and ability to operate as a going concern.
8. The total amount expended on the project as on 31st March, 2017 is Rs.5,712 Crores as against project cost of Rs.4,608 Crores as appraised by SBI. Out of this amount Rs.3,461 crore is funded as debt and balance as equity and internal accruals. Out of the total debt lending Rs.1,334 crore has already been paid back as interest leaving only an amount of Rs.2,130 crore spent towards hard costs from the loans. The Banks have made minimum in the provision of 40% as on 31.03.2017 and the balance has to be provided during the current year. The total outstanding with all the banks as on 31.03.2014 i.e. the date of classifying the account as NPA is approximately Rs.2,905crore.
9. In the consortium meeting held on 22.06.2017, the following decisions were taken including to file application in NCLT for winding up of the company.
10. The account was restructured on 24.12.2012, issued a demand notice under section 13(2) of SARFAESI Act on 07.03.2017, the company has submitted revised OTS offer of Rs.1,100 crores approximately which was rejected by the core committee meeting.



11. As per the minutes of the meeting held with Vice Chairman and Managing Director (VC & MD) of APMDC on 02.06.2017, the following was minuted:-

The project was financed by 23 Banks led by SBI have financed an amount Rs.4000 crores approximately to the corporate debtor. The account of the company have slipped into NPA category with all the 23 Banks and requested for support from APMDC in resolution of the account by way of either the allotment of Jerrela Mines or Acquisition of the Factory. In view of the huge public money involved, SBI and PNB suggested that APMDC to explore the possibility of takeover of the company by APMDC and run the unit. APMDC opined that the matter may be taken up at Government level.

12. As per the minutes of the core committee meeting of Anrak Aluminium held at SBI, Hyderabad on 22-06-2017 the following was recorded:-

VC & MD, APMDC opined that the matter is not in their hands and can be taken up at Government Level. Further DGM, SBI informed that at this stage we have only three opinions available for the Banks i.e. (a) One Time Settlement (OTS), (b) Sale to ARC and (c) Going to NCLT. It was also finally decided by the bankers to file application in the NCLT for winding up of the company.



13. The company fulfilled all the obligations relating to further implementation and having idle and ready for operations since March 2013 in the absence of bauxite from the designated mines.
14. The company was registered with Project Monitoring Group (PMG) as a stalled project on May 2013. There was an inordinate delay in stage-II clearance i.e. a full 7 years delay.

15. Upon perusal of the balance sheet as at 31.03.2017 and the provisional balance sheet as at 27-07-2017, apart from above facts submitted by the parties, the Adjudicating Authority made the following observations:

Particulars	27-07-2017 (Rs. In crores)	31-03-2017 (Rs. In crores)
1.Share Capital	1669.25	1669.25
2. Long Time Borrowings	2619.89	2619.89
3.Tangible Assets	1180.48	1191.69
(a) Plant & Machineries	1010.39	1019.88
(b) Factory Buildings	104.30	105.29
4. Capital work in progress	3571.95	3534.07
5. Inventories	133.92	133.96
6. Prepaid Expenses (paid to APMDC towards Afforestation compensation)	137.80	137.80
7. Raw Materials	123.61	123.59
8.Break up of Raw Materials Inventories		
(a) Bauxite	68.61	68.61
(b) Caustic Soda	30.12	30.10
(c) Hydrated Alumina	24.87	24.87
9. Salaries, Wages and Bonus	4.46	19.41



16. In spite of assurances given by the Counsels during the hearings, they have failed to submit the developments taken place as of today, future plans for revival of the Company considering thousands of crores of Rupees (Rs.5712 Crores) had already been invested in the project and the project is complete but commercial operation is yet to commence. Keeping in view the interest of both the parties, various Stakeholders especially Banks, corporates and to protect public funds as the case involves major socio-economic issues, employment generation, the Adjudicating Authority granted one more opportunity to explore the possibility of commencing commercial operation of

the Company rather than winding up/close the Company by selling of properties of the Corporate Debtor.

17. From the records/submissions of the parties it is noted that total amount spent as on 31.03.2017 was Rs.5,712 crores and out of which loan component was Rs.3,461crores and balance amount was equity capital and internal accruals. The promoters have also pumped in approximately Rs.1,700 crores. Thus a total amount of Rs.5,712 crores was already invested in various activities of the Corporate Debtor i.e., towards land and building, plant and machinery, fixed Assets etc. and the project is complete and lying idle for almost 4 years. Both the parties submitted that the project has to be shelved in view of cancellation of Bauxite supply agreement by the State Government/APMDC.
18. The Adjudicating Authority considering huge public money already invested by the Banks & contribution of promoters towards the project which had a potential employment generation of more than 1000 employees directly and indirectly, instead of winding up/liquidatingthe Company, as a Still Born Baby, the Adjudicating Authority directed all the parties to explore various possible avenues for operation/running of the company rather than to winding up/liquidate the same which may not be in the interest of Nation and only alternative. During various hearings before the Adjudicating Authority, both the parties pleaded with a closed view to liquidate the Company inspite of Rs.5,712 Crores already invested in the project but was not open to the idea of exploring various avenues for commencing commercial production, even though the project was completed and lying idle for more than 4 years as submitted by them. Further, they have also failed to produce any documents to prove that they have taken up/pursuing with the State Government/APMDC in the matter of revoking the cancellation of Bauxite Supply Agreement



with the State Government/APMDC. Therefore, in the interest of all stakeholders, shareholders especially public funds of banks potential /future employment generation/contribution to GDP/various possible tax revenues to Government, the Adjudicating Authority prima facie was not satisfied to admit the Petition filed u/s 10 of IBC.

19. In spite of granting opportunities to the Corporate Debtor as discussed in pre paras, they have not complied with the directions/suggestions of the Adjudicating Authority as stated supra. Therefore, we are of the view that the Petition under Section 10 of IBC is incomplete, which deserves to be rejected as the Petitioner/Corporate Debtor failed to list out all the developments taken place in the matter as of today/furnish information sought by the Adjudicating Authority.
20. The Adjudicating Authority is also conscious of Section 10(4)(b) of the IBC, 2016 and as discussed supra, the parties were given opportunities to rectify the defects in the application i.e. directions/suggestions of the Bench, to produce any documents to prove that they have taken up/pursuing with the State Government/APMDC in the matter of revoking the cancellation of Bauxite Supply Agreement with the State Government/APMDC/other alternatives which would deemed to be a notice issued under Section 10(4)(b) of the IBC, 2016. From the records made available by all the parties, it is observed that none of the parties has submitted any documents as directed by the Adjudicating Authority in spite of opportunities granted to the applicant to rectify the defects in the application as discussed above. Therefore, we have no other alternative but to reject the application
21. As stated in pre-paras Bauxite Supply Agreement was cancelled in spite of stay order granted by Hon'ble High Court of Judicature of



Andhra Pradesh and Telangana and various alternatives discussed viz. either allotment of Jerrela Mines or acquisition/takeover of the Company by APMDC, the matter was to be taken up with the State Government as per the minutes/recordings dated 02.06.2017 and 22.06.2017. However, none of the parties produced any documents/evidence/proof regarding the issue was regularly followed up with the State Government and its update/current position etc. Therefore we are of the considered view that the parties are at liberty take up issue with State Government/APMDC to resolve the issue before admitting the petition for initiation of CIRP as prayed for.

22. Therefore, the Adjudicating Authority has no other option but to reject the Application/Petition in the larger interest of various stakeholders as narrated supra and in the interest of the nation as stated supra. Accordingly, Company Petition bearing CP (IB) No.127/10/HDB/2017 is rejected. It is also clarified that the rejection would not come in the way of the parties for taking up the issue with the State Government/appropriate authorities and to file a fresh petition in accordance with law.

23. No order as to costs.



Sd/-
Ravikumar Duraisamy
Member (Technical)

Sd/-
Rajeswara Rao Vittanala
Member (Judicial)

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For Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER C.P.(IB) No. 127/10/HDB/2017
निर्णय का तारीख
DATE OF JUDGEMENT 31-8-2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON 4-10-2017