

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

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

U/s 10 of IBC, 2016
R/w Rule 7 of I & B (AAA) Rules, 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

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL



1. Kamineni 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

JM Financial Asset Reconstruction Company Limited
3rd Floor, B-Wig, Saushish IT Part, Plot No.68E,
Off. Dattapada Road, Opp. TATA Steel,
Borivali (East), Mumbai - 400 066.

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

Judgment pronounced on 27th November, 2017

CORAM:

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

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. S.V. Ramakrishna, Advocate
 Interim Resolution Professional : Shri CB Mouli (party in person)

Parties in person

1.	Shri M. Prabhakara Reddy, AGM	Indian Bank
2.	Shri Sajan Joseph, CM (Law)	Indian Bank
3.	Shri Jayakar Rao, Manager	Oriental Bank of Commerce
4.	Shri T. Aravind Kumar, Chief Manager	Andhra Bank
5.	Ms. Y. Srilatha, CM (Law)	Andhra Bank
6.	Shri D.S. Murthy, AGM	Allahabad Bank
7.	Shri D. Venkata Ramana, ZM	Indian Overseas Bank
8.	Shri Deepak N. Bhardwaj, ZM	Bank of Maharashtra
9.	Shri B. Ratan Kumar, G.M.	Central Bank of India
10.	Shri Y. Anil Kumar, AGM	Central Bank of India
11.	Ms. Renuka, CM	Central Bank of India

Per: Rajeswara Rao Vittanala, Member (Judicial)
 Ravikumar Duraisamy, Member (Technical)

JUDGEMENT

1. The present Company Petition bearing CP(IB)No.11/10/HDB/2017 (which is herein after referred to as Company petition) is filed by Kamineni Steel & Power India Pvt. Ltd (hereinafter, referred to as the Company/Corporate Debtor), represented by its Managing Director Dr. 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 inter-alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of Kamineni Steel & Power India Pvt. Ltd.

2. The Adjudicating Authority, vide order dated 10th February, 2017, admitted the Company Petition and appointed Shri C.B. Mouli as Interim Resolution Professional (IRP), and directed him to constitute a Committee of Creditors (CoC), and cause public announcement of initiation of CIRP 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) etc.

3. In pursuance to the above order, the Resolution Professional, has made public announcement in Form-A in newspapers viz. The Hindu and SAAKSHI on 16th February, 2017 and it was also displayed in the IBBI website and Corporate Debtor's website as per IBC Regulations. Two (2) Registered Valuers namely M/s Mott McDonald Pvt. Ltd., having its office at Level 4, Regus Business Centre, Gumidelli Commercial Complex, 1-10-39, to 44, Old Airport Road, Begumpet, Hyderabad-500016. Telangana, India at a remuneration of Rs.2.50 Lakhs and another namely Serval Krishna Engineers Private Limited, having its office at C-23, Sterling Vilia, Vikrampur,



Secunderabad - 500009 on a remuneration of Rs.1.50 Lakhs are appointed.

4. Since the Corporate Insolvency Resolution Process could not be completed within the stipulated time of, 180 days, an application is filed by the Resolution Professional by seeking extension of further 90 days' time. Accordingly, we have considered the application as per merit, and after satisfying that further time is required for bonafide reasons in favour of resolution process, allowed the C.A. NO.139 of 2017 vide order dated 27th July, 2017 by extending further time of 90 days from 09.08.2017.



5. In pursuance to above orders of Tribunal, Shri C.B Mouli, RP conducted a total of 9 meetings of Committee of Creditors. The details of those meetings with gist of decisions taken in respective Committee of Creditors of Financial Creditors of the Company are as follows:-

(1) 1st CoC meeting was held on 08.03.2017 with following decisions:

The decisions arrived in first meeting of creditors inter-alia include: (i) confirmation as to appointment of IRP as Resolution Professional (ii) Indian Bank, the Lead Bank, was authorized to inform the approved valuers to proceed with their

valuation for arriving at a value as per Regulation 35 of Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016 and submit within 10 days.

The committee of creditors authorized Indian Bank, the lead Bank, to inform the Resolution Professional, the Corporate Debtor and this Tribunal the appointment of Resolution Professional and his fee.



(2) 2nd CoC Meeting was held on 06.04.2017

In the 2nd CoC meeting held on 06-04-2017, the projected expenses for essential costs and factory maintenance costs were taken on record, to pay the insurance for the Assets of the Company, and funding of the Insurance premium, Confirmation on operating the bank account with the Lead Bankers, Indian Bank to be operated by Mr. C. Bala Mouli, Resolution Professional and Mr. P. Venkatesh, Chief Financial Officer jointly.

(3) 3rd CoC Meeting held on 12.05.2017

It was noted that in view of two Valuer's reports already circulated along with video recording the liquidated value of the assets of the Company was not meeting the debt due to the secured creditors and hence operational creditors would not have a chance to recover any of their dues.

The Corporate Debtor had made a presentation for resolution plan giving three options.

It was discussed in detail and it was resolved to appoint SBI Capital Markets Ltd., to determine sustainable debt portion of the corporate debtor to enable the creditors to assess the viability of the resolution plan. It was resolved that Indian Bank, Lead Bankers, would fix fee to them and inform Resolution Professional who will have to appoint them for assignment to be given in a time frame of 15 days.



It was resolved to have a creditors meeting to consider SBI Capital Markets Ltd. presentation and take a view in principle about the resolution plan proposed by the corporate debtor

(4) 4th CoC Meeting was held on 27.06.2017

In the 4thCoC meeting held on 27-06-2017, Resolution plan submitted by Corporate Debtor was reviewed and SBI Capital Markets Limited's draft TEV report was considered and it was resolved that fresh infusion of funds of Rs.150 Crores as projected is not acceptable if it comes as priority debt instead of equity.

The Corporate Debtor shall infuse funds for working capital and the Corporate Debtor within 15 days or on or before 14th July, 2017 must come out with a concrete resolution plan including offering OTS acceptable to the lenders and present to the core committee of the Creditors and upon in-principle approval by the core committee of the creditors, it will be presented in the next Meeting of the committee.



(5) 5th CoC meeting was held on 20-07-2017,

Resolution plan submitted by Corporate Debtor was reviewed and the revised resolution plan already circulated by Corporate Debtor was considered. Revised resolution plan was for fresh infusion of funds of Rs.150 Cr projected in the form of equity/debt but not as a priority debt as earlier.

It was resolved to request SBI Capital Markets Limited to prepare final TEV Report accordingly showing the revised sustainable debt year wise and to reduce zero interest debt period from 17 years. Corporate Debtor proposed to raise working capital of Rs.100 Cr as advances from suppliers against sales so as to ease working capital liquidity.

As the members expressed that they have to go to their respective Boards for approval of any of their resolutions and also to give suitable time to SBI Capital Markets Limited, it was unanimously resolved with 100% voting power to authorize Resolution Professional to request the Hon'ble NCLT, Hyderabad Bench, the Adjudicating Authority, for an extension of insolvency resolution proceedings for a period of 90 days.



(6) 6th CoC meeting was held on 24-08-2017

The Corporate Debtor submitted an expression of interest from AREA Group of Companies, Chandigarh to infuse Rs.150 cr as equity share capital/preference share Capital/debentures subject to getting a firm approval from the lenders which was circulated during the meeting.

SBI Capital Markets Ltd shall submit its final report by 28.08.2017 to the lead Bankers, Indian Bank. The lead Bankers shall immediately circulate to the other lenders the final report of the SBI Capital Markets Ltd TEV, so as to enable the Members of the Creditors Committee to go to their respective sanctioning Authorities for their approval and all the Members of the CoC shall be ready with their individual mandate to approve or otherwise the resolution plan submitted by the Corporate Debtor by the time next CoC is held.

(7) 7th CoC meeting was held on 26-09-2017,

The members of the Creditors Committee comprising of 87.69% of voting power have expressed that revised resolution plan submitted by the corporate debtor is under circulation and that corporate debtor shall improve the offer to enable to consider the resolution plan.

The lending bankers of the committee indicated that the sustainable portion should be improved to 40% of the total debt.

JMF ARC Limited holding 12.31% voting power had stated that they are not in favour of resolution plan submitted by the corporate debtor and they might reconsider only if the corporate debtor improves the levels of the sustainable debt.

Corporate debtor was given one week's time and by 4th October, 2017 and shall circulate through email the ability to improve the levels of the sustainable debt and thereafter the committee of the creditors shall meet to take a final call on the resolution plan.

The Corporate debtor had stated that during the last eight months, at any point of time, it was never suggested/indicated in the Committee of Creditors meetings to the company, that the resolution plan is required at the sustainable debt



level of 40%. In view of the this development, the corporate debtor had sent a detailed mail to Lenders on 29.09.2017 explaining the entire position and with a request to give their valuable inputs and suggestions with clarity on the above subject, keeping in view of the viability of the unit and SBI Capital Markets Limited final TEV study report, before 04.10.2017, so as to enable them to submit a detailed reply/ revised resolution plan, if felt necessary. The response from the Lenders is awaited inspite of follow up.

(8) 8th CoC meeting was held on 16-10-2017

It was agreed that the Resolution Plan submitted by the Corporate Debtor should also be providing for the monitoring and supervision of the Resolution Plan by the present Resolution Professional, in case approved by the Committee of the Creditors, in compliance with section 30(2) of the IBC and section 38 of the IBBI (Insolvency Resolution Process for Corporate persons) Regulations, 2016.

Indian Bank having 22.33% of voting power had sent an email that resolution plan was rejected by the sanctioning authorities.

JMF ARC Limited having a 12.39% of voting had in the meeting held on 26th September, 2017 rejected the resolution plan.



However, both Indian Bank and JMF ARC Limited having an aggregate voting percentage of 34.72% had expressed that they would reconsider resolution plan if portion of the sustainable debt is increased either by way of expanding capacity utilization or by more equity infusion.

Corporate Debtor had explained that portion of the sustainable debt was already indicated and also vetted by SBI Capital Markets Limited appointed by the Committee of Creditors and the final study report was submitted in September, 2017 firming up the sustainable debt at Rs.360/- Cr with an equity infusion of Rs.150 Cr.

Indian Bank had also expressed that OTS proposal will also be acceptable to them subject to their Board's approval if it is at desired level and the corporate debtor was asked to give a proposal.

Corporate Debtor had expressed that time was very short and within a short time it is not practical or possible for him to give any fresh OTS offer at this juncture.

The following Banks in all having aggregate of 65.28% of voting power had informed that they do not have mandate to produce from their sanctioning authorities to approve the Resolution plan submitted.



Sl.No.	Name of Bank	% of voting
1	Indian Overseas Bank	15.15
2	Andhra Bank	12.81
3	Central Bank of India	11.82
4	Oriental Bank of Commerce	10.94
5	Allahabad Bank	8.20
6	Bank of Maharashtra	6.36
	TOTAL:	65.28

Corporate Debtor was asked to submit a fresh OTS proposal through email to all the bankers, which will be considered by them subject to the approval from their respective sanctioning authorities.

Resolution Professional had expressed that Hon'ble NCLT Hyderabad Bench had given an extension of time to the members to go to their respective sanctioning authorities and now a fresh proposal for resolution plan would not meet statutory time period.

The Corporate Debtor on 18-10-2017 sent a mail submitting the following OTS Scheme proposal as an alternative to the resolution plan already submitted and pending with the lenders for disposal, subject to approval of all financial creditors and Hon'ble NCLT, and offered the following terms:

Sl No	Particulars	Details
1	One time Settlement (OTS)	Rs.525.00 Crores



	proposal for the All banks put together			
2	1st Instalment for the OTS proposal to be paid	10% of the OTS amount by 31st March, 2018		
3	Balance payment of the OTS proposal to be done in the following manner		FY-2018-19-H1-30.09.2018	20% of OTS amount
			FY-2018-19-H2-31.03.2019	20% of OTS amount
			FY-2019-20-H1-30.09.2019	25% of OTS amount
			FY-2019-20-H2 By 31.12.2019	25% of OTS amount
4	Repayment period **	Structured Repayment period to be provided as proposed above for payment of the OTS amount without interest.		
5	Remarks	The above structured repayment of the OTS instalments could be accelerated /preponed in the event of early availability of Strategic Investor/stake sale than projected. However, the company shall try its best for the earliest closure of OTS scheme.		

However this OTS offer was subject to, without prejudice to their right to deal the company cases in various legal forums viz., NCLT, DRT etc., as deem fit and felt necessary at a later date.”

Subsequently Indian Bank has sent an email on 25.10.2017, suggesting the company to file OTS proposal for Rs.600 Crores.



Later the Corporate Debtor after the JLF meeting with the Bankers on 26-10-2017 and referring to the mails sent by Lead Banker, Indian Bank to the RP on 26-10-2017, final OTS proposal, as suggested by the lenders stating as under;

Based on the deliberations of the JLF Meeting and as communicated by the Bank, the summary of the OTS proposal is as follows -

Amount in OTS - Rs.600 Cr.

ii) Payment terms -

- a. 5% - 45 days from the date of the NCLT Order
- b. 10% - by 31st March 2018
- c. 85% - payable in three half-yearly installments (25% - Sept'18 / 30% - March'19 / 30% - Sept'19) with grace period for the last payment by 1 month (till Oct'19), if necessitated.
- d. Interest Rate - Lead bank 1 year MCLR +2% (10.35%). Simple interest to be charged on the outstanding amount from 1/4/2018 on reducing balance basis." and requested to place the above OTS proposal before this Tribunal for obtaining necessary confirmation and approvals from the COC of lenders."
- e. After receiving the mail the RP sent mails to the members of the CoC informing the Resolution Plan to be considered on 27-10-2017 when the 9thCoC meeting was convened with the permission from the members for a



shorter notice u/s Regulation 19(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(9) 9th CoC meeting was held on 27-10-2017 with members having 100% voting power;

- (a) The Resolution Plan presented by the Resolution Professional based on the e-mail sent by the Corporate Debtor on 26-10-2017 late in the evening based on the suggestions in the JLF Meeting, which was immediately circulated to the Members of the CoC, was approved by members of CoC having 55.73% voting power:

S. No	Name of the Bank	% of Voting Power
1	Indian Bank	22.33
2	JM Financial Asset Reconstruction Co. Ltd	12.39
3	Allahabad Bank	8.20
4	Andhra Bank	12.81
	Total	55.73

Had submitted their in principle approval from their Sanctioning Authorities and Indian Bank confirmed by their letter: IBHYDMAIN:KSLOTS "2017-18 dated 27-10-2017 & Allahabad Bank by way of mail dated 27-10-2017 confirmed subject to providing final sanction after getting sanction from



appropriate authorities & the same is accepted by majority of the Lenders.

- (b) Indian Overseas Bank having voting power of 15.15% rejected the Resolution Plan by way of revised OTS, and cited reasons for rejection by way of letter IOB/LCB/NPA/o1/2017-18 dated 27-10-2017.
- (c) The in principle approvals by the members of CoC having voting power of 29.12% expressed that they remain OPEN awaiting the in principle approval from their respective sanctioning authorities.



S.No	Name of the Bank	% of Voting Power
1	Oriental Bank of Commerce	10.94
2	Central Bank of India	11.82
3	Bank of Maharashtra	6.36
	Total	29.12

- (d) On 30-10-2017, Oriental Bank of Commerce having 10.94% voting power sent mail conveying their in principle agreeability for the Resolution plan by way of OTS and that their final approval was subject to similar approvals from the majority of co-lenders. On 30.10.2017 Bank of Maharashtra having 6.36% voting power not sent any mail or communication and remained 'OPEN'. On

30.10.2017 Central Bank of India having 11.82% voting power informed by way of mail that they are not agreeable for the Resolution plan by way of OTS

(e) The Percentage of Consenting Lender Banks/Financial Creditors for approving the Resolution Plan by way of OTS as on 30.10.2017

S. No	Name of the Bank	% of Voting Power
1	Indian Bank	22.33
2	JM Financial Asset Reconstruction Company Ltd	12.39
3	Allahabad Bank	8.20
4	Andhra Bank	12.81
5	Oriental Bank of Commerce	10.94
	Total	66.67

(f) The Percentage of Dissenting Lender Banks nor approving the Resolution Plan by way of OTS as on 30-10-2017

S.No	Name of the Bank	% of Voting Power
1	Indian Overseas Bank	15.15
2	Central Bank of India	11.82
	Total	26.97

(g) The Percentage of Lender Banks remained OPEN for the approval of the Resolution Plan by way of OTS as on 30-10-2017

S.No	Name of the Bank	% of Voting
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		Power
1	Bank of Maharashtra	6.36%
	Total	6.36%

(h)The Members of the financial creditors, who remained as OPEN if considered as Neutral and not against the resolution plan and if they can be eliminated from total voting cast, the consenting percentage of Lending Bankers would go up to 71.19% from 66.67%.

During the last 9 months, the company has been submitting various resolution plans from time to time as required by the financial creditors as per their advice and discussions in various CoC meeting held on different dates. The Company has clearly expressed many a times to the lenders that the Company is ready to cooperate for successful implementation of resolution plan and sort out the issue amicably. In spite of all the above developments, no concrete resolution plan has emerged from the financial creditors, till date.

The Company submitted that as per the Resolution Plan proposed under sustainable debt option, the proposal does not intend any hair cut on the principle debt to the banks.

6. Resolution Professional, therefore, submitted that he has followed all extant provisions of IBC in respect of CIRP in question and thus Resolution is in accordance



with law and it may be approved by the Tribunal/Adjudicating Authority. He has also relied upon the following judgments and guidelines/notifications of Reserve Bank of India:-

- (i) The Observations of the NCLT Mumbai Bench in the matter of **Raj Oil Mills Ltd and Edelwise Asset Reconstruction Company Ltd**, based on the observations by the Hon'ble Supreme Court in the cases of **Bachandevi And another vs Nagar Nigam, Gorakhpur** and another reported in (2008) 12 Supreme Court case 372, relevant paras 18 to 21 and **Sarladevi and others vs Kishan Chand**, reported in (2009) 7 Supreme Court cases 658.
- (ii) The NCLT Mumbai Bench in the matter of **Raj Oil Mills Ltd and Edelwise Asset Reconstruction Company Limited** while dealing with the section 22 of I&B Code 2016 in para 8.1 observed that "the term 'may' used has prescribed a jurisdiction to deal with the issue of percentage of voting share depending upon the facts and circumstances of each case" and in Para 8.2 expressed an opinion that "a viable solution is to give the preference to the decision taken by the largest percentage of the financial creditors"



- (iii) The RBI vide its notification No.: 2016-17/299 Dated May, 2017 vide DBR.BP.BC.No.67/21.04.048/2016-17, in exercise of the powers conferred by Sec.21, 35 A and 35 AB of the Banking Regulation Act, 1949, Where in the context of JLF Meeting notified as under:

“In Para 4. In this context, it is reiterated that lenders must scrupulously adhere to the timelines prescribed in the frame work for finalizing and implementing the Corrective Action Plan (CAP). To facilitate timely decision making, it has been decided that, henceforth, the decisions agreed upon by a minimum of 60 percent of creditors by value and 50 percent of creditors by number in the JLF would be considered as the basis for deciding the CAP, and will be binding on all lenders, subject to the exit (by substitution) option available in the frame work, lenders shall ensure that their representatives in the JLF are equipped with appropriate mandates, and that decision taken at the JLF are implemented by the lenders within the timelines.

In para 5 “it shall be noted that”


The stand of the participating banks while voting on the final proposal before the JLF shall be unambiguous and unconditional.



Any bank which does not support the majority decision on the CAP may exit subject to substitution within the stipulated time line, failing which it shall abide the decision of the JLF

The bank shall implement the JLF decision without any additional conditionality's; and

The Boards shall empower their executives to implement the JLF decision without requiring further approval the Board.”

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7. In the instant case incidentally the final OTS amount had emerged only after the JLF Meeting along with the Corporate Debtor on 26.10.2017 evening and The Banking Regulation Act 1949 envisages a consensus among lending bankers with a majority of 60% of creditors by value and 50% of creditors by number. Though I&B Code 2016 is a different enactment, but the intent and spirit is similar to go by the decision of the majority of lending banks.
 8. The learned Resolution Professional, by taking into consideration of above legal position, the voting pattern, prays to treat the resolution plan/revised OTS in question as approved and accordingly, approve the same under section 30(4) of IBC, 2016.
 9. The Learned Resolution Professional further stated the following in the resolution plan:

Operational Creditors

- (i) Electricity Dues - TSSPDCL - Rs.14.23cr
- (ii) Other operational creditors - Rs.0.13cr
- (iii) Statutory Dues - NIL
- (iv) Dues to Employees - NIL

The operational creditors shall be paid in a staggered manner after payment to financial creditors in the usual course of business. There are creditors for capital expenditure which shall also be paid from operational cash flows in the normal course of business.



10. The Resolution in question was rejected only by the following Financial Creditors out of total of Financial Creditors:

Indian Overseas Bank	15.15%
Central Bank of India	11.82%
Bank of Maharashtra	6.36%

11. Indian Overseas Bank having voting power of 15.15% rejected the Resolution Plan by way of OTS, and cited following reasons vide their letter IOB/LCB/NPA/01/2017-18 dated 27-10-2017:

The company is a fairly new unit and has operated only for few months. Hence the wear and tear is minimal and the value of the unit should be better than the enterprise valuation given by the valuer.

As per the Audited Balance Sheet of the Company for FY 2015-16 the Net Block of Fixed Assets have been valued at Rs.1011.71 crores whereas the enterprise value arrived by Mott McDonald is Rs.873.62 crores. Furthermore the Realizable Value of unit as per valuations obtained by the Resolution Professional during April 2017 from Serval Krishna Engineers Limited and True Valuers and Engineers is Rs.786.90 crores and Rs.735.75 crores respectively. It may be observed here that the various valuations obtained show significant variance in the value of the unit and as per the IBC 2016 the average of two closest estimates is to be considered as the liquidation value. The OTS value offered by the company is still significantly lower than the expected liquidation value.

12. The Promoter/Director of the company, Dr. K. Shashidhar who has extended his personal guarantee for the captioned account is a highly resourceful individual and the same may be observed from MCA portal that Dr. Shashidhar is also a director in 9 other group companies. The Corporate Guarantee of M/s United Steel Allied Industries Private Limited is also available to the lenders. United Steel Allied Industries Private Limited is holding 99% equity in the captioned company and is having Total Net worth of Rs.161.52 crores as per Audited Balance Sheet for FY 2014-15. Furthermore the promoter is having equity stake in



Kamineni Hospitals, which is one of the most reputed hospitals in Hyderabad. The group is also having a medical college. Moreover Dr. Shashidhar is reported to own a highly valued residential property. On initiation of appropriate action against them there is a good chance of higher recoveries for the lenders.

“Besides the amount for which we are entitled as per the provisions of the insolvency and Bankruptcy Code 2016, we reserve our right to proceed against the guarantors for recovery of balance dues to our Bank”.



13. He further contended that if the process of liquidation of the company's assets, if opted for, is a time consuming process and realization of the assets will take a minimum of 2 to 3 years. In such case, the valuation will only deplete and it is opined by the majority of the lenders that it may not fetch more than Rs.600 Crores at any point of time and hence, the OTS offer of Rs.600 crore is acceptable.
14. Further it is also noted that Central Bank of India with voting share of 11.82% had not provided any reasons for dissenting to the resolution plan by way of OTS proposal. However, the dissenting creditors would be conveniently paid their dues in accordance with the Regulation 38(c) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution process for Corporate Persons) Regulations, 2016. And is not

prejudicial to their interest's as in the case of "Kamineni Steel and Power India Private Limited" the average liquidated value as determined by the two Registered Valuers is more than the OTS Amount settled.

15. It is further contended that:

- (a) As per provisions of section 30 (2) of IBC, and Regulation 38 & 39(4) of the IBC (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, that the contents of the revised resolution plan meet all the requirement of the IB Code having provided for settling of the Insolvency Resolution Process costs which includes (a) Resolution Professional fees (b) essential staff salaries and factory maintenance costs. (Section 30(2)(a) of IBC).
- (b) That Payment to the operational creditors shall be made in a staggered manner after payments to the financial creditors in the usual course of business. (Section 30(2)(b) of IBC).
- (c) That the management of the affairs of the Company shall be done by the existing management team after approval of the resolution plan. (Section 30(2)(c) of IBC).
- (d) That the implementation and supervision plan will done by the Resolution Professional as approved by



the CoC in its meeting held on 16.10.2017 in compliance with section 30(2)(d) of the IBC and Regulation 38 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(e) That there is no contravention to any provisions of applicable laws for the time being in force. (Section 30(2)(e) of IBC).

(f) That the liquidation value due to dissenting financial creditors will be provided that such payment is made before any recoveries are made by the financial creditors, who voted in favour in accordance with the Regulation 38(c) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution process for Corporate Persons) Regulations, 2016.



16. In the light of the aforesaid contentions and based on the legal pronouncements mentioned above on the voting pattern, considering as a viable solution to give preference to the decision taken by the largest percentage of financial creditors, the Resolution Professional opines and treated the resolution plan as approved and prays this Hon'ble NCLT, Hyderabad to approve the resolution plan under section 30(4) of IBC, 2016.

17. In the light of the aforesaid contents of the Resolution Plan, it is prayed that this Bench may approve the


Resolution Plan for implementation and issue directions to all concerned as may be deemed fit.

18. The company has clearly expressed many a times to the lenders that the company is ready to cooperate for successful implementation of resolution plan and sort out the issue amicably. The company was providing employment to around 450 employees both skilled (325) and unskilled (125) workers who hail mostly from Narketpally and nearby villages in Nalgonda District of Telangana. Most of this work force belongs to weaker section communities with poor economic background. As the company was not able to function due to various reasons as stated above, almost all the work force have lost their jobs and employment. Ultimately the employees and workers and their family have lost their livelihood. Once the company is able to start functioning most of the employees/workers, who lost the jobs and employment earlier, will be taken back by the company and they all shall join the employment immediately as they are all local villagers, who are eagerly waiting to join the factory for own and their family livelihood.

19. Once the Resolution Plan is approved and put in place the company shall commence its operations which will increase manufacturing activity in the area and save the livelihood of around 450 workforce and their family members, in addition the manufacturing activity shall improve exports & foreign earning to the country. This



manufacturing activity in the company will create lot of indirect jobs/employment to hundreds of people in and around the area mostly from villages in Narketpally Mandal, in the connected industries and ancillary units. The manufacturing activities will also going to increase the direct and indirect taxes revenue to both State & Central Government and local bodies. This is the only major industry in the Narketpally Mandal, Nalgonda District and is creating lot of direct and direct employment to many in the locality and nearby villages of Narektpally Mandal.

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20. It is contended by Shri D. Venkata Ramana, Zonal Manager, Indian Overseas Bank that their Bank has decided to reject the OTS offer of Rs.600 crores submitted by the Company as a Resolution Plan, by stating the following issues and other dissenting banks have also taken similar grounds to reject the plan:-

(a) Guarantors Issue:

The Resolution Professional and the lead bank completely ignored the rights of the Bank and other Banks in so far as liability of the Corporate Guarantors and personal guarantors are concerned and it should be rejected for not factoring in the liabilities of the corporate guarantors and personal guarantors and evaluation of their respective assets. Any effort by the borrower to deny the legitimate rights of our Bank and other lenders and coercing the lenders by completely letting off corporate guarantors and personal

guarantors is illegal and void under law. He further submits that the proposal demands huge sacrifices from the Bank as well as other lenders amounting to about Rs.1000 crores and assuming that the plant and machineries are relatively new and there is scope for reviving the production and possibility of making profits by keeping the source of funds a secret, the proposal is entirely against the lenders and tomorrow if the plant is revived and profits are made by letting off the guarantors with zero contribution the present OTS proposal is totally unjust.

(b) Silence on source of funds:-

It is contended that the report submitted by the RP lacks clarity on source of funds required for the proposed pay out. The Bank apprehends that the proposal of the borrower is insincere. Further submits that even during the meeting neither the borrower nor the RP have made any effort to find a suitable investor so that the Bank and other lenders could have minimized the losses by getting a higher value to the borrower. Further the Bank's internal rules do not allow any compromises/settlements wherein the repayment is beyond 12 months. It is further contended that Bank's right to recover against the borrower and guarantors (Personal & Corporate) should not simply be waived merely because it is convenient to do so. It is further submitted RRP-OTS submitted by RP without clarity on source of funds or



recoverable value from Corporate Guarantor and personal guarantor is highly irregular and bank will suffer enormous loss.

21. Dr. K. Shashidhar, S/o K. Suryanarayana, Managing Director, KSPL and also a Resolution Applicant appeared before the Adjudicating Authority on 06.11.2017 and inter-alia submitted as follows:

- (1) Kamineni Steel & Power India Private Limited was incorporated as a Private Limited Company in the State of Andhra Pradesh on 20.10.2008 with an immediate object to set up a manufacturing facilities for the production of Steel Billets with an installed capacity of 360,000 MTPA and a captive gas based power plant of 220 MW, near Sreepuram, Narketpally Mandal, Nalgonda District, Telangana. The original project cost estimated at Rs.1539 Crores had been funded by term loans of Rs.1248 Crores by 8 consortium banks with Indian Bank as Leader 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 and consortium banks include Andhra Bank, Allahabad Bank, Bank of Maharashtra, Central bank of India, Indian bank, Indian Overseas Bank, The Karur Vysya Bank Limited and Oriental Bank of Commerce with Indian Bank as Leader.



- (2) There were several issues and continuous delay in sanction/consideration of company's loan proposal at various stages during pre and post implementation of this project till date by some of the consortium banks, disregarding the spirit of consortium.
- (3) RBI introduced Joint Lenders Forum (JLF) and Corrective Action Plan (CAP) for Revitalizing Distressed Assets in the Economy and accordingly issued a detailed circular vide DBOD.BP.BC.No. 97/21.04.132/2013-14 dated 26.02.2014.
- (4) Accordingly the JLF was formed on 19.05.2014 by the consortium of banks for implementation of CAP for this unit. Subsequently RBI has come forward with a scheme of "Flexible Structuring of the existing Long Term Project loans to Infrastructure and Core Industries" vide circulars No.DBR.No.BP.BC.53/21.04.132/2014-15; dated 15th July, 2014.
- (5) As the company was eligible for implementation of the above restructuring scheme suggested by RBI, the same has been discussed in the consortium meeting of the bankers held during April-2015 and as advised, the company has submitted a detailed restructuring proposal on 27.05.2015 as per RBI circular. During the JLF meeting held on



04.07.2015 it was decided to implement the restructuring scheme.

- (6) As per the above JLF meeting and RBI guidelines, a thorough Techno Economic Viability study was conducted by M/s Atlas Financial Research & Consulting Private Limited, appointed by the lenders. The report has clearly stated that the unit is technically feasible and economically viable. As per the RBI guidelines this TEV study report has been vetted by an "Independent Evaluation Committee (IEC)" of outside experts which was constituted by Indian Banks Association (IBA) at the behest of RBI. The IEC Committee has thoroughly studied the TEV study report and after thorough deliberations with the lead bank/ Indian Bank representatives, has vetted and endorsed the proposed restructuring scheme for its implementation, vide their communication dated 05.08.2015. (The composition of IEC Committee includes members from Institute of Cost and Works Accountants of India, President of Institute of Valuers of India and President of Institute of Engineers of India).



- (7) Taking the cognizance of all the above events, Indian Bank has prepared a Joint appraisal note and sent the same to all the banks on 31.08.2015 for sanction of Flexi restructuring scheme. As per the RBI scheme it has to be sanctioned and

implemented within 120 days from the date of JLF meeting (JLF meeting was held on 04.07.2015 for implementing the scheme and it has to be implemented by 04.11.2015). However the same has been implemented by 4 banks on different dates and four banks are yet to implement the same even after two years.

- (8) While Flexi Restructuring Scheme proposal is under process of implementation by some of the banks including Indian bank, during the consortium meeting held on 25.02.2016, it was informed by Indian Bank, that the account has become NPA in their books as on 01.11.2014, under Asset Quality Review (AQR) of RBI from 01.11.2014 and the same was informed to the company and other banks vide their letter dated 10.03.2016. It was no-where mentioned in Indian Bank's letter, that the account had become NPA due to non- payment of interest/ installment at any point of time and it is due to technical reasons i.e., because of Date of Commercial Commencement of Operations (DCCO) issue. The Company had given a detailed reply to Indian bank on 02.04.2016, clarifying the position and our comments, on the observations made in AQR of RBI.

- (9) As the lenders have abruptly and unilaterally stopped the operations in the working capital loan account, the unit could not function further and



generate need based cash surplus to repay further dues to the member banks of the consortium, which has resulted the accounts became NPA in other banks.

(10) It is stated that the Company had made a payment of about Rs. 421 Crores towards interest and other finance cost to the Financial Creditors, from the amounts released by the banks in the term loan and working capital limits. Hence in a nutshell this amount has not been utilized for the effective operations/functioning of the company's unit.

22. The Company has earlier filed an application with BIFR on 15.11.2016 which got abated because of notification dated 25th November, 2016 as to repeal of SICA Repeal Act, 2003, so the present petition is filed.

23. During the course of resolution process since Feb-2017 the company has submitted various resolution plans from time to time as advised by Committee of Creditors (COC). Three resolution plans were submitted during May, Jul & Aug-2017. SBI Capital Markets Limited was appointed by the lenders during May-2017, to Study (TEV study) the viability of the resolution plan.

(a) The first resolution plan was submitted in May-2017, with sustainable debt of Rs.330 Crores.

As per the discussions of 4th & 5th CoC meetings held on 27.06.2017 & 20.07.2017 and as advised by



the lenders, another resolution plan was submitted for Sustainable Debt level of Rs.360 Crores.

- (b) The third resolution plan submitted in Aug-2017 ensured the following as per the requirement of CoC.

Sustainable Debt of Rs.360 Crores

Rs.150 Crores will come as non-priority debt/ Equity.

Rs.100 Crores will come as advances from suppliers to eased working capital liquidity.

No fresh funding either by way of term loan/funded interest term loan or working capital from the lenders.

There is no sacrifice on the total actual debt of Rs.1405 Crores due to the lenders

The modality of payments for sustainable and unsustainable debts is as per the study report of SBI Capital Market Limited.

SBI Capital Markets Limited has submitted its final study report during Sept-2017 and confirmed the sustainable debt as Rs.360 Crores.

The third resolution plan submitted by the company during Aug-2017 as mentioned in (b) above is totally in tune with the SBI Capital Markets Limited final report.

24. Shri V.K. Sajith, learned Counsel for the lead Banker i.e. India Bank in support of his contentions have relied upon the following judgments:-



The Hon'ble Appellate Tribunal in "*Palogix Infrastructure Limited Vs. ICICI Bank Limited*"- Company Appeal (AT) (Insol.) No. 30 of 2017. By judgement dated 20th September, 2017 held:

"32. The 'I&B Code' is a complete Code by itself". The provision of the Power of Attorney Act, 1882 cannot override the specific provision of a statute which requires that a particular act should be done by a person in the manner as prescribed there under.

When the code is being acknowledged and upheld as complete legislation on its own right in the above cited judgment the fact that code has been fundamental in raising the Rank of Ease of Doing Business in the country; it is logical that the words and phrases used in the Code be understood and aligned to the objectives of the Code and purpose of it being enacted.

Unlike other legislations such as The Recovery of Debts due to Banks and Financial Institutions Act, 1993 or The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, which are "Acts" serving the purpose for which it is enacted i.e "Recovery". Shred tear, salvage and get what is possible, bear the losses on loss on sale of assets.

The IBC 2016 not only is Prescribing the "Actions of the stake holders" but also in detail, provide for the Procedure under which stake holders should "Act" for Resolution of Insolvency, Liquidation Or Bankruptcy, situation and how it (resolution or liquidation) "Should" be "conducted".

It is a Comprehensive legislation, Consolidating solvency statutes into one single Legal eco-system resolving the issue of solvency to the jurisdictions the



Code applies. It also define the Procedures prescribed for the Conduct of the Eco-system relating to the solvency issues.

The code has to be interpreted bearing in mind the following judgement:

Manilal Shah Vs. Sardar Sayed Ahmed (1955) 1 SCR 108, the Hon'ble Apex Court held that where statute itself provide consequences of breach or non-compliance, normally the provision has to be regarded as having mandatory in nature.

One of the cardinal principles of interpretation of statute is that, the words of statute must prima facie be given their ordinary meaning, unless of course, such construction leads to absurdity or unless there is something in the context or in the object of the statute to the contrary. When the words of statute are clear, plain and unambiguous, then, the courts are bound to give effect to that meaning, irrespective of the consequences involved. Normally, the words used by the legislature themselves declare the legislative intent particularly where the words of the statute are clear, plain and unambiguous. In such case, effort must be to give a meaning to each and every "word" used by the legislature and it is not sound principle of construction to brush aside words in statute as being redundant or surplus, and particularly when such words can have proper application in circumstance conceivable within the contemplation of the statute

For determination of the issue whether a provision is mandatory or not, refer to decision of Hon'ble Supreme Court in State of Mysore Vs. V.K.Kangan (1976)2 SCC 895. In the said case, the Hon'ble Supreme Court specifically held:

In determining the question whether a provision is mandatory or directory, one must look into the subject-



matter and consider the importance of the provision disregarded and the relation of that provision to the general object intended to be secured. No doubt, all laws are mandatory in the sense they impose the duty to obey on those who come within its purview. But it does not follow that every departure from it shall taint the proceedings with a fatal blemish. The determination of the question whether a provision is mandatory or directory would, in the ultimate analysis, depend upon the intent of the law-maker and that has to be gathered not only from the phraseology of the provision but also by considering its nature, its design and the consequences which would follow from construing it in one way or the other.



25. After considering the pleading of parties, the issues to be considered in the case is whether resolution plan submitted by the Resolution Professional is in accordance with extant provisions of IBC 2016 and the Rules and Regulations made there under. The following provisions under the IBC and the Rules and Regulations made there under are required to be analyzed.

Section 30 of IBC deals with the submission of resolution plan and section 31 deals with the approval of resolution plan and those provisions are extracted below for ready reference:

(1) Submission of resolution plan:

Section 30.

- (1) A resolution applicant may submit a resolution plan to the resolution Professional prepared on the basis of the information memorandum.
- (2) The resolution Professional shall examine each resolution plan received by him to confirm that each resolution plan-
 - (a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;
 - (b) provides for the repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;
 - (c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
 - (d) the implementation and supervision of the resolution plan;
 - (e) does not contravene any of the provisions of the law for the time being in force.
 - (f) conforms to such other requirements as may be specified by the Board.
- (3) The resolution Professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).
- (4) The committee of creditors may approve a resolution plan by a vote of not less than seventy five per cent of voting share of the financial creditors.



- (5) *The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:*

Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

- (6) *The resolution Professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.*

(2) Approval of resolution plan.

Section 31:

1. *If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of Section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.*
2. *Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.*
3. *After the order of approval under sub-section (1),-*
 - a) *the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and*
 - b) *the resolution Professional shall forward all records relating to the conduct of the corporate*



insolvency resolution process and the resolution plan to the Board to be recorded on its database.

(3) Resolution Professional to conduct corporate insolvency resolution process in accordance with section 23 & 24 which are extracted below:

Section 23:

- 1. Subject to section 27, the resolution Professional shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period.*
- 2. The resolution Professional shall exercise powers and perform duties as are vested or conferred on the interim resolution Professional under this Chapter.*
- 3. In case of any appointment of a resolution Professional under sub-section (4) of section 22, the interim resolution Professional shall provide all the information, documents and records pertaining to the corporate debtor in his profession and knowledge to the resolution Professional.*

4) Meeting of committee of creditors.

Section 24:

- 1. The members of the committee of creditors may meet in person or by such electronic means as may be specified.*
- 2. All meetings of the committee of creditors shall be conducted by the resolution Professional.*
- 3. The resolution Professional shall give notice of each meeting of the committee of creditors to-*



- (a) members of Committee of creditors;
- (b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;
- (c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten percent of the debt.

4. The directors, partners and one representative of operational creditors, as referred to in sub-section (3), may attend the meetings of committee of creditors, but shall not have any right to vote in such meetings:

Provided that the absence of any such director, partner or representative of operational creditors, as the case may be, shall not invalidate proceedings of such meeting.

5. Any creditor who is a member of the committee of creditors may appoint an insolvency Professional other than the resolution Professional to represent such creditor in a meeting of the committee of creditors:

Provided that the fees payable to such insolvency Professional representing any individual creditor will be borne by such creditor.

6. Each creditor shall vote in accordance with the voting share assigned to him based on the financial debts owed to such creditor.
7. The Resolution Professional shall determine the voting share to be assigned to each creditor in the manner specified by the Board.



8. *The meetings of the committee of creditors shall be conducted in such manner as may be specified.*
- 5) The Resolution Professional has to prepare an information memorandum as per section 29, which reads as under:

Section 29:

1. *The resolution Professional shall prepare an information memorandum in such form and manner containing such relevant information as may be specified by the Board for formulating a resolution plan.*
2. *The resolution Professional shall provide to the resolution applicant access to all relevant information in physical and electronic form, provided such resolution applicant undertakes-*
 - a) *to comply with provisions of law for the time being in force relating to confidentiality and insider trading;*
 - b) *to protect any intellectual property of the corporate debtor it may have access to; and*
 - c) *not to share relevant information with third parties unless clauses (a) and (B) of this sub-section are complied with.*

Explanation.- For the purposes of this section, "relevant information" means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include the financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified.

The Resolution Professional shall prepare and submit an information memorandum in electronic form to each



member of the committee of creditors and any potential applicant and the information memorandum should contain the following details of the corporate debtor.

Resolution Plan:

A Corporate Insolvency Resolution Plan means a plan proposed by any person who shall be deemed as resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II of the Code. For the purpose of formulation of a resolution plan, the resolution Professional shall prepare and submit an Information Memorandum in electronic form to each member of the committee of creditors and any potential applicant.

Information Memorandum:

(1) The information memorandum prepared by the resolution Professional shall contain the following details of the corporate debtor:

- a. assets and liabilities, as on the insolvency commencement date, classified into appropriate categories for easy identification, with estimated values assigned to each category;
- b. the latest annual financial statements;
- c. audited financial statements of the corporate debtor for the last two financial years and provisional financial statements for the current financial year made up to a date not earlier than fourteen days from the date of the application.
- d. a list of creditors containing the names of creditors, the amounts claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims;
- e. particulars of a debt due from or to the corporate debtor with respect to related parties;



- f. details of guarantees that have been given in relation to the debts of the corporate debtor by other persons, specifying which of the guarantors is a related party;
- g. the names and addresses of the members or partners holding at least one per cent stake in the corporate debtor along with the size of stake;
- h. details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;
- i. the number of workers and employees and liabilities of the corporate debtor towards them;
- j. the liquidation value;
- k. the liquidation value due to operational creditors; and
- l. other information, which the resolution Professional deems relevant to the committee.



(2) The matters listed in paragraphs (a) to (i) above shall be submitted before the first meeting of the committee and the matters listed in paragraphs (j) to (l) shall be submitted within 14 days of the first meeting of the committee, to each of its member and any potential resolution applicant in electronic form.

(3) The information memorandum shall be shared by the resolution Professional after receiving an undertaking from a member of the committee or a potential resolution applicant to the effect that he shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under section 29(2).

(4) A member of the committee may request the resolution Professional for additional information. If such information has a bearing on the resolution plan, the same shall be provided to him within a reasonable time.

(5) Insolvency and Bankruptcy Board of India has made consequential regulations for corporate Insolvency resolution process vide Notification dated 30th November, 2016

IBBI/2016-17/GN/REG004.- In exercise of the powers conferred under sections 5, 7, 9, 14, 15, 17, 18, 21, 24, 25, 29, 30, 196 and 208 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following Regulations, namely-

The following are the relevant regulations to the issue of Corporate Insolvency Resolution Process, which is subject matter in the present case. The Regulations 6,7,8,17,18,22,25,35,36,37,38,39 are reproduced below:

Regulation-6: Public announcement.

1. An insolvency Professional shall make a public announcement immediately on his appointment as an interim resolution Professional.

Explanation: 'Immediately' means not later than three days from the date of his appointment.

2. The public announcement referred to in sub-regulation (1) shall:

- (a) be in Form A of the Schedule;
- (b) be published-



(i) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the interim resolution Professional, the corporate debtor conducts material business operations;

(ii) on the website, if any, of the corporate debtor; and

(iii) on the website, if any, designated by the Board for the purpose,

(c) provide the last date for submission of proofs of claim, which shall be fourteen days from the date of appointment of the interim resolution Professional.

3. The applicant shall bear the expenses of the public announcement which may be reimbursed by the committee to the extent it ratifies them.

Clarification:- The expenses on the public announcement shall not form part of insolvency resolution process costs.

Regulation.7: Claims by Operational Creditors.

1. A person claiming to be an operational creditor, other than workman or employee of the corporate debtor, shall submit proof of claim to the interim resolution Professional in person, by post or by electronic means in Form B of the schedule:

Provided that such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee.



2. The existence of debt due to the operational creditor under the Regulation may be proved on the basis of-

- (a) the records available with an information utility, if any; or
- (b) other relevant documents, including-
 - (i) a contract for the supply of goods and services with corporate debtor;
 - (ii) an invoice demanding payment for the goods and services supplied to the corporate debtor;
 - (iii) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any; or
 - (iv) financial accounts.

Regulation.8: Claims by Financial Creditors:

1. A person claiming to be a financial creditor of the corporate debtor shall submit proof of claim to the interim resolution Professional in electronic form in Form C of the Schedule:

Provided that such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee.

- 2) The existence of debt due to the financial creditor may be proved on the basis of -
 - a) the records available with an information utility, if any; or
 - b) other relevant documents, including-
 - i) a financial contract supported by financial statements as evidence of the debt;



ii) a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;

iii) financial statements showing that the debt has not been repaid; or

iv) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any.

Regulation.17: First meeting of the committee:

(1) The interim resolution Professional shall file a report certifying constitution of the committee to the Adjudicating Authority on or before the expiry of thirty days from the date of his appointment.

(2) The interim resolution Professional shall convene the first meeting of the committee within seven days of filing the report under this Regulation.

Regulation.18: Meetings of the Committee:

A resolution Professional may convene a meeting of the committee as and when he considers necessary, and shall convene a meeting if a request to that effect is made by members of the committee representing thirty three per cent of the voting rights.

Regulation.22: Quorum at the meeting:-

1) A meeting of the committee shall be quorate if members of the committee representing at least thirty three percent of the voting rights are present either in person or by video conferencing or other audio and visual means:



Provided that the committee may modify the percentage of voting rights required for quorum in respect of any future meetings of the committee.

- 2) Where a meeting of the committee could not be held for want of quorum, unless the committee has previously decided otherwise, the meeting shall automatically stand adjourned at the same time and place on the next day.*
- 3) In the event a meeting of the committee is adjourned in accordance with sub-regulation (2), the adjourned meeting shall be quorate with the members of the committee attending the meeting.*



Regulation.25: Voting by the committee:

- 1) The actions listed in section 28(1) shall be considered in meetings of the committee.*
- 2) Any action other than those listed in section 28(1) requiring approval of the committee may be considered in meetings of the committee.*
- 3) Where all members are present in a meeting, the resolution Professional shall take a vote of the members of the committee on any item listed for voting after discussion on the same.*
- 4) At the conclusion of a vote at the meeting, the resolution Professional shall announce the decision taken on items along with the names of the members of the committee who voted for or against the decision, or abstained from voting.*
- 5) If all members are not present at a meeting, a vote shall not be taken at such meeting and the resolution Professional shall-*

- a) Circulate the minutes of the meeting by electronic means to all members of the committee within forty eight hours of the conclusion of the meeting; and
- b) Seek a vote on the matters listed for voting in the meeting, by electronic voting system where the voting shall be kept open for twenty four hours from the circulation of the minutes.

Regulation.35: Liquidation value:

1. Liquidation value is the estimated realizable value of the assets of the corporate debtor if the corporate debtor were to be liquidated on the insolvency commencement date.
2. Liquidation value shall be determined in the following manner:
 - a) the two registered valuers appointed under Regulation 27 shall submit to the interim resolution Professional or the resolution Professional, as the case may be, an estimate of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor;
 - b) if in the opinion of the interim resolution Professional or the resolution Professional, as the case may be, the two estimate are significantly different, he may appoint another registered valuer who shall submit an estimate computed in the same manner; and



c) the average of the two closest estimates shall be considered the liquidation value.

3. The resolution Professional shall provide the liquidation value to the committee in electronic form.

Regulation.36: Information memorandum:-

1. Subject to sub-regulation (4), the interim resolution Professional or the resolution Professional, as the case may be, shall submit an information memorandum in electronic form to each member of the committee and any potential resolution applicant containing -

- (a) at least the matters listed in paragraphs (a) to (i) of sub-regulation (2), before its first meeting; and
- (b) matters listed in paragraphs (j) to (1) of sub-regulation (2), within fourteen days of the first meeting.

2. The information memorandum shall contain the following details of the corporate debtor -

- (a) assets and liabilities, as on the insolvency commencement date, classified into appropriate categories for easy identification, with estimated values assigned to each category;
- (b) the latest annual financial statements;
- (c) audited financial statements of the corporate debtor for the last two financial years and provisional financial statements for the current financial year made up to a date not earlier than fourteen days from the date of the application;



- (d) a list of creditors containing the names of creditors, the amounts claimed by them, the amount of their claims admitted and the security interest if any, in respect of such claims;
- (e) particulars of a debt due from or to the corporate debtor with respect to related parties;
- (f) details of guarantees that have been given in relation to the debts of the corporate debtor by other persons, specifying which of the guarantors is a related party;
- (g) the names and addresses of the members or partners holding at least one per cent stake in the corporate debtor along with the size of stake;
- (h) details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;
- (i) the number of workers and employees and liabilities of the corporate debtor towards them;
- (j) the liquidation value;
- (k) the liquidation value due to operational creditors; and
- (l) other information, which the resolution Professional deems relevant to the committee.



3. A member of the committee may request the resolution Professional for further information of the nature described in this Regulation and the resolution Professional shall provide such information to all

members within reasonable time if such information has a bearing on the resolution plan.

4. The interim resolution Professional or the resolution Professional, as the case may be, shall share the information memorandum after receiving an undertaking from a member of the committee or a potential resolution applicant to the effect that such member or resolution applicant shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under section 29(2).

Regulation.37. Resolution Plan:-

1. A resolution plan may provide for the measures required for implementing it, including but not limited to the following-
 - (a) transfer of all or part of the assets of the corporate debtor to one or more persons;
 - (b) sale of all or part of the assets whether subject to any security interest or not;
 - (c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;
 - (d) satisfaction or modification of any security interest;
 - (e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;
 - (f) reduction in the amount payable to the creditors;
 - (g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;
 - (h) amendment of the constitutional documents of the corporate debtor;



- (i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose; and
- (j) obtaining necessary approvals from the Central and State Governments and other authorities.

Regulation.38. Mandatory contents of the resolution plan:-

- (1) A resolution plan shall identify specific source of funds that will be used to pay the -
 - (a) Insolvency resolution process costs and provide that the insolvency resolution process costs will be paid in priority to any other creditor;
 - (b) Liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the Adjudicating Authority; and
 - (c) Liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan.
- (2) A resolution plan shall provide:
 - (a) the term of the plan and its implementation schedule;
 - (b) the management and control of the business of the corporate debtor during its term; and
 - (c) adequate means for supervising its implementation.



Regulation.39: Approval of resolution plan:-

- 1) A resolution applicant shall endeavor to submit a resolution plan prepared in accordance with the Code and these Regulations to the resolution Professional, thirty days before expiry of the maximum period permitted under section 12 for the completion of the corporate insolvency resolution process.
- 2) The resolution Professional shall present all resolution plans that meet the requirements of the Code and these Regulations to the committee for its consideration.
- 3) The committee may approve any resolution plan with such modifications as it deems fit.
- 4) The resolution Professional shall submit the resolution plan approved by the committee to the Adjudicating Authority with the certification that;
 - a) the contents of the resolution plan meet all the requirements of the Code and the Regulations; and
 - b) the resolution plan has been approved by the committee.
5. The resolution Professional shall forthwith send a copy of the order of the Adjudicating Authority approving or rejecting a resolution plan to the participants and the resolution applicant.
6. A provision in a resolution plan which would otherwise require the consent of the members or partners of the corporate debtor, as the case may be, under the terms of the constitutional documents of the corporate debtor, shareholder's agreement, joint venture agreement or other document of a similar



nature, shall take effect notwithstanding that such consent has not been obtained.

7. No proceedings shall be initiated against the interim resolution Professional or the resolution Professional, as the case may be, for any actions of the corporate debtor, prior to the insolvency commencement date.

8. A person in charge of the management or control of the business and operations of the corporate debtor after a resolution plan is approved by the Adjudicating Authority, may make an application to the Adjudicating Authority for an order seeking the assistance of the local district administration in implementing the terms of a resolution plan.



26.

Background of the Company

- (a) So far as the background of the Company concerned here, as stated supra, the Company is promoted by USAIPL, a Kamineni group company having stake of 99.98% with a total project cost of Rs.1532 crores (Rs.655 crores for steel and Rs.877 crores for power) out of which the total debt is Rs.1248 crores (Rs.531 crores for steel and Rs.717 crores for power). The total Equity is Rs.286 crores (steel Rs.126 crores and power Rs.160 crores). Steel division commenced its operation on 30.03.2013.
- (b) The Company is situated at Sreepuram Village, Narketpally Mandal, Nalgonda District, Telangana. The Company was functional till the financial year 2014-15 and, it could not continue due to shortage of working capital and various other factors which

includes mismatch of cash flow and financial crises leading to heavy operational losses and consequent erosion of entire net worth. Therefore the Company has filed an application to BIFR on 15.11.2016 under sub-section (1) of Section 15 of Sick Industrial Companies (Special Provisions) Act 1985. The present CP is filed for implementation of Resolution Plan for re-phasing and restructuring of debt, for re-starting of its operation and serviceability of debt obligation and to re-start the manufacturing activities. The Company was giving employment to around 450 employees both skilled (325) and unskilled (125) workers who hail mostly from Narketpally and nearby villages in Nalgonda District of Telangana. Most of this work force belongs to weaker section communities with poor economic background. Due to unavoidable reasons, the Company could not continue to function. Thus, almost all the work force have lost their jobs and employment, leading to unemployment of the workers employed by the Company. It is stated that the Company has a bright prospect to succeed once the company is able to start its functioning most of the employees/ workers who lost the jobs and employment earlier would be taken back into the company and they are local villagers, who are anxiously waiting for the employment in the Company. By restoring the Company to operation,



not only the direct employment, but it will create lot of indirect jobs / employment to thousands of people in and around the area mostly from villages in Narketpally Mandal in the connected industries and Auxiliary units. The manufacturing activities will also increase the direct and indirect tax revenue to both State and Central Government and local bodies. And the Company is only a major industry in Narketpally Mandal in Nalgonda District.



27. By reading of the above provisions of IBC, there is no dispute that the Resolution plan in question fulfills all the eligibility criteria for its approval except the condition prescribed under Section 30(4) of IBC says that the Committee of Creditors may approve the Resolution Plan by voting not less than 75% of voting share of the Financial Creditors. The issue raised in the present CP is that the Resolution plan is not approved by the minimum 75% voting share of the Financial Creditors. The plan is approved by the Indian Bank, (lead Bank), JMF ARC Limited, Allahabad Bank, Andhra Bank and Oriental Bank of commerce constituting 66.67% of voting power, whereas IOB, CBI and BOM which constitute 33.33% have not approved the plan. The Indian Bank having voting power of 22.3%, the major lender and lead Bank has approved this plan.

28. Our observations:

Our observations are majorly classified in to 6 heads and are discussed in detail below:

1. Committee of Creditors Meetings:

- a. It is not in dispute that the IRP approved by the Tribunal was duly approved by the CoC. As stated supra, all the meetings of CoC have been attended by all the CoCs except for one i.e 2nd CoC which is also attended by more than 75% of CoC. Upon perusal of the proceedings of the CoC, it shows that the Resolution Professional has prepared the resolution plan strictly in accordance with law. There are various options as proposed by Resolution Applicant were placed and considered by COC and ultimately the present resolution plan with OTS of Rs.600 crores is emerged which accepted by five Banks. The Resolution Professional, who is having experience in insolvency procedure and duly approved by the IBBI, is competent to analyze the pros and cons of Resolution plan and submit his views on the issue and then Adjudicating Authority is also empowered to analyze the same either for approval or to reject the plan.
- b. The RP conducted 9 CoC meetings on various dates as narrated above. From the material available on record it is observed that apart from the



Resolution Proposals/Revised OTS Scheme submitted by the Corporate Debtor, the CoC do not have any other alternative proposal/Resolution Plan for further evaluation/comparison. Therefore, in the absence of any other alternative proposal other than the Revised OTS proposal which is approved by the majority of the Financial Creditors/Lender Banks totaling to approximately 66.67% of total voting share of Financial Creditors and 5 out of 8 total Financial Creditors. Only three Banks namely IOB, CBI and BOM did not approve the OTS Proposal as agreed by the other counter parts/participants of the Joint Lenders Forum (JLF).

- c. Upon perusal of the documents the Adjudicating Authority also observed that the CoC has authorized the Lead Banker of the JLF i.e. Indian Bank for various activities viz. approval of valuers, appointment of Professionals, to appoint SBI Capital Markets Limited and to fix remuneration etc. Whereas, interestingly, at the time of approval of the Resolution Scheme, the other Banks instead of following the lead Bank or majority of the other banks have taken a different stand and appears that they are interested mostly in liquidation of the Corporate Debtor rather than the Resolution Plan, which is the main preamble of the IBC, the Government of India and RBI and the



other preamble being maximization of value of assets, to promote entrepreneurship, balance the interest of all the stake holders etc.

- d. As per the 6th CoC meeting, after the final report by SBI Capital Markets Limited, the members of the CoC to go to the respective sanctioning authorities for their approval and all the members of the CoC shall be ready with their individual mandate to approve or otherwise the Resolution Plan. However, from the records submitted, it is observed that the members did not have mandate to approve the Resolution Plan submitted by the Resolution Professional. Even, during the hearings held before the Adjudicating Authority on 03.11.2017 & 06.11.2017, the General Managers of all the three dissenting banks did not have any mandate to agree to the revised Resolution Plan and stated that still they have to obtain approval from their competent authorities. The same is also not in conformity with the RBI notification issued in May 2017 that their representatives are equipped with appropriate mandates.

"The Boards shall empower their executives to implement the JLF decision without requiring further approval of the Board."

- e. Though it was recorded in the meeting of the 6thCoC held on 24.08.2017 "All the members of the



CoC shall be ready with their mandate to approve or otherwise". However, from the minutes of the last CoC and other records submitted it was observed that the 9th CoC held on 27.10.2017, whereas the members of CoC have conveyed their approval by way of e-mail/letter only subsequent to that meeting, which is also not in accordance with their own decision as recorded in the 6thCoC as stated above.



f. Voting by the Committee as per Regulation 25(3) and (4), the Resolution Professional shall take a vote of the members of the committee and at the conclusion of the meeting the Resolution Professional shall announce the decision taken on each item along with the names of the members of the committee who voted for or against the decision, or abstain from voting. However, as per the records submitted, all the members did not exercise their vote(s) during the meetings held. Whereas, they have conveyed their approval/concurrence, subsequently only by way of email/letters, which is not in compliance with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016.

g. The Bank of Maharashtra having 6.36% voting share was remain open for the revised OTS proposal,

however subsequently they have also joined with other two dissenting Banks and conveyed their disapproval before the Adjudicating Authority, apparently not to the Resolution Professional during the CoC meetings/JLF meetings.

- h. Upon perusal of the records, the Adjudicating Authority observed that subsequent to the last CoC meeting held on 27.10.2017, Oriental Bank of Commerce having 10.94% of voting power sent a mail on 30.10.2017 conveying their in principle agreeability for the Resolution plan by way of OTS and that their final approval was subject to similar approvals from the majority of co-lenders. Though the decision is of the individual bankers, in view of the preamble of the IBC, other three dissenting banks (being PSBs having similar objects) could have also followed the same safe strategy adopted by OBC.



2. Revised OTS scheme

- a. The Corporate Debtor while revising upward the OTS amount to Rs.600 crores from Rs.525 Crores and has also reduced the tenure of repayment from 2½ years to 2¼ years (by 31.12.2019 to 30.09.2019).

b. The corporate debtor in his affidavit dated 09.11.2017 submitted that the 3rd Resolution Plan submitted by the Company is totally in tune with final report of SBI Capital Markets Limited. The Resolution Plan submitted by the Company is yet to be disposed of by the lenders subsequent to the same, the Company has submitted OTS proposal for Rs.525 Crores on 18.10.2017. Indian Bank vide its letter dated 23.10.2017 has requested the Company to improve the OTS offer without mentioning the amount. Subsequently the Indian Bank has sent a email on 25.10.2017 suggesting the company to file OTS proposal for Rs.600 crores. As per the above advise, the Company has offered an OTS proposal of Rs.600 Crores vide their email dated 26.10.2017.

c. Even though the extended time of 270 days as per the IBC Code nearing on 07.11.2017 in the absence of the increased quantum of amount quoted/expected by the Banks, the promoter is also handicapped to afford any further plans/future course by way additional instruments like equity shares, preference shares, convertible debentures, bonds etc., to satisfy the expectations of the Banks.

d. Adjudicating Authority granted sufficient time of hearing to the Bank officials on two occasions each on Friday and Monday (3rd and 6th of Nov, 17) to arrive at a conclusion/reconsider the revised OTS proposal. During the hearing held on 06.11.2017, Senior Officials of all the three dissenting Banks in the rank of GMs





were requested to be present and assist Adjudicating Authority to arrive at a resolution for the issue in question, since the last date even as per the extended time line of 270 days is on 07.11.2017. Accordingly, GMs of all the three Banks were present. However, the Adjudicating Authority surprisingly noted that inspite of spending considerable time, given the whole picture of the need for resolution of Corporate Debtor which had provided direct employment opportunity to around 450 employees till recently and a number of indirect employees/ families/beneficiaries, possible contribution by way of revenue to the exchequer, the contribution to GDP etc., the GMs of the 3 Banks did not even move an inch forward from their previous stand and they simply reiterated/stated that the revised OTS amount proposed by the Corporate Debtor is very less.

e. In spite of repeated questions posed by the Adjudicating Authority at different points as to what extent these three banks would agree for the Revised OTS scheme they simply reiterated time and again that the amount has to be increased substantially, but surprisingly never revealed/indicated their revised/expected amount.

f. As per the direction of the Adjudicating Authority the Promotor of Corporate Debtor was also called upon to have a discussion with all the officials of the Banks on 6.11.2017. However, in spite of ample opportunity extended to the Banks they could

not arrive at a decision about the increased amount being acceptable to the three dissenting Banks. Dr. K. Sashidhar, Managing Director of the Corporate Debtor also appeared before the Adjudicating Authority on 06.11.2017 and submitted that they have paid almost Rs.421 crores towards interest alone from the loans availed. Further he submitted that as per the suggestions of the Banks in the CoC meeting they have worked out the OTS scheme and initially quoted Rs.525 crores, which was substantially increased to Rs.600 crores subsequently. He has also further submitted that in spite of the increased amount all the Banks did not agree/confirm with the proposal for revised OTS Scheme.

g. It is also quite interesting to note that even a private sector Asset Reconstruction Company namely JMF ARC Limited has also accepted to the revised OTS Scheme which was also agreed by the other Public Sector Banks which constitutes 66.67% of the total voting share of CoC. We are of the considered view that the guidelines/directions issued by the Banking Sector Regulator namely RBI would be applicable uniformly/equally to all the Banks either at the time of granting loans for various purposes or at the time of classifying as NPA, recovery of the loans etc. However, even though majority of the Banks have agreed to go ahead with the OTS proposal, only 3 (three) dissenting Banks did not to support the



proposal as the same is not in accordance with their own internal policy/the RBI guidelines.

h. These three dissenting Banks also opined that the liquidation value will be more than the average of two of the registered valuers and the average amount works out to Rs.761 Crores approximately based on the same set of information/facts. Interestingly, another registered valuer who valued the enterprise value of the same corporate debtor arrived at an amount of Rs.873.62 crores, which is more than Rs.112 Crores of the average value. This itself establishes that the liquidation value/estimated realisable value cannot be the same for all the valuers and the same is to true/applicable to the financial creditors/lenders as well. Therefore, it would be prudent to go with the decision of the majority especially in this case wherein 2/3rd of total voting share of the Financial Creditors have approved the revised OTS.

i. As per the revised debt outstanding, submitted by the RP vide written submission dated 31.10.2017, an amount of Rs.187.05 Crores is the debt outstanding to JMF ARC Limited, an amount of Rs.228.26 crores to IOB, an amount of Rs.178.36 Crores to Central Bank of India and an amount of Rs.96 Crores to Bank of Maharashtra. As discussed supra even the private sector ARC whose outstanding debt amount is greater than the Central Bank of India and Bank of Maharashtra have accepted the revised OTS scheme.



From the above facts it appears that private sector ARC is willing to take a haircut/absorbing loss, whereas three public sector banks are not inclined to take hair cut/absorbing loss, even though the other PSBs were willing to take haircut. Therefore, various contentions raised by the three dissenting Banks are not tenable and baseless and thus rejected.

3. Mechanism of Joint Lenders Forum:

a. JLF is one of the mechanism devised by RBI in the year 2014, for rectification, recovery of the loans, restructure, if the stressed asset is more than Rs.100 crores. It is important to note that all the Banks/Financial Creditors were part and parcel of the JLF got together at the time of lending to the Corporate Debtor whereas at the time of considering the Resolution Proposal submitted by the Corporate Debtor all are not together/consensus/same page and only minority of three Banks are still opposing the proposal which is having a minority share in the total voting share of the Committee of Creditors amounting to 33% (1/3rd).

b. As discussed above, as per the guidelines of the RBI, 60% of the creditors by value and 50% of the Creditors by number if they approve the plan, the same will be binding on other lenders, since 7 out of 8 lenders are PSBs. Therefore, considering the RBI Circular though 75% of the lenders in value did not approve the Revised OTS Scheme submitted by the Corporate Debtor, considering the entire issue in its



totality i.e., the revival of the relatively new company, which was started with an investment of more than Rs.1400 Crores, to renew the employment opportunities of both direct and indirect, contribution to State & Central exchequer, to GDP etc., the Adjudicating Authority is of the considered view to approve the Revised OTS Scheme since as majority of the lenders, who are also being the Public Sector Banks and even a private Sector ARC have approved the plan.

c. The dissenting Bankers appears to have been guided by 75% as prescribed under Section 30(4) IBC rather than any policy of them or Reserve Bank guidelines in that regard. Section 30(4) of IBC merely states that Resolution plan may be approved by a vote not less than 75% of voting share of the Financial Creditors. It did not say whether such percentage is out of the total voting share of the Financial Creditors or those present during meetings of respective COC of Financial Creditors. Since IBC is a new Code and still evolving, the above percentage has to be read with various circulars issued by the Reserve Bank of India, which is the Regulator for the Banking sector. The RBI vide its letter no. RBI/2015-16/101 dated 01.07.2015 has circulated master circular with regard to the Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances, to all commercial banks. As per the circular, the objective of Corporate Debt Restructuring (CDR)



frame work is to ensure timely and transparent mechanism for restructuring the Corporate Debts of viable entities facing problems outside the purview of BIFR, DRT and other legal proceedings for the benefit of all concerned. It aims at preserving viable corporate that are affected by certain internal and external factors and minimize the losses to the creditors and other stakeholders through an orderly and coordinated restructuring programme. The CDR standing forum would be representative general body of all financial institutions and banks participating in CDR system.

d. As per one of the CDR circular bearing No. CDR (PMJ) No. 2015-16 dated 25th June, 2015, BIFR cases are covered under clause 6.2 and suit filed case are covered under clause 6.3 are also covered under the scheme. As per clause 6.3,, the accounts where recovery suits have been filed by Corporates against Companies also eligible for consideration under CDR system provided the initiative to resolve the case under the CDR system is taken by at least 75% of creditors (by value) and 60% of creditors (by number) The decision process in CDR system is given under clause 8. As per clause 8(2), the CDR empowered group has to take a decision with regard to prima facie feasibility and or final approval of a Restructuring scheme by a Super Majority vote at a duly convened meeting after giving reasonable notice



to the Lenders and to the Eligible Borrower. Super Majority Vote is defined as votes cast in favour of a proposal by not less than 60% by number and 75% by value of aggregate Principal outstanding financial assistance as on cut-off date. The lenders not having the mandate at the time of CDR EG meeting could furnish their stand shortly after the meeting but not later than the next meeting and their stand if received by then should be taken into account for voting and lenders not furnished their stand before the next CDR EG meeting should be excluded from the meeting. There are several instructions / guidelines given in the master circular.

Clause 16 deals with prudential & accounting issues. Clause 16(ii) (iii) and (iv) are relevant to refer here.

- (ii) The unit becomes viable in eight years, if it is engaged in infrastructure activities and in five years in the case of other units.
- (iii) The repayment period of the restructured advance including moratorium period, if any, doesn't not exceed 15 years in the case of infrastructure advances and ten years in the case of other advances.
- (iv) Minimum promoters' contribution in all cases would be 25% of lenders' sacrifice or 2% of restructured debt, whichever is higher. However, since regulatory guidelines is higher of 20% of lenders sacrifice or 2% of restructure debt (which has to be brought upfront), contribution beyond this amount may be permitted to be infused within a period one year from the date of approval of the package.



The Banking Regulation Act, 1949 has been promulgated. As per section 21 of the Act, power has been conferred on Reserve Bank to control Advances by Banking Companies. Government of India, Ministry of Finance also issued regulations dated 05th May, 2017 promulgating Banking Regulations (Amendment) Ordinance, 2017 in order to enable the Union Government to authorize Reserve Bank of India to direct Banking Companies to resolve specific stressed assets. Accordingly, it has inserted two sections viz 35AA and 35AB after section 35A of Banking Regulation Act, 1949. As per this ordinance, RBI will be empowered to intervene in specific cases of resolution of non-performing assets, to bring them to a definite conclusion. It says that Government is committed to expeditious resolution of stressed assets in banking system. The recent enactment of Insolvency and Bankruptcy Code, 2016 has opened up new possibilities for time bound resolution of stressed assets. The SARFAESI and Debt Recovery Acts have been amended to facilitate recoveries. A comprehensive approach is being adopted for effective implementation of various schemes for timely resolution of stressed assets.

Before the introduction of IBC 2016, Stressed Assets Resolution Mechanism was among other mechanisms viz. the concept of JLF and CAP. The Joint Lenders Forum (further referred to as JLF), was constituted on



the directions of the RBI. In this context, it is relevant to point out here that RBI guide lines/circular issued vide RBI/2013-14/503 dated 26th February, 2014. It is relevant to point out here the RBI guidelines/circular vide notification No.RBI/2016-17/299/DBR.BP.BC.No.67/21.04.048/2016-17; dated 5th May, 2017 in which it is stressed for early identification of stressed Assets and timely implementation of a Correction Action Plan (CAP) to preserve the economic value of stressed assets. And this circular is issued, in exercise of the powers conferred by Sections 21, 35A and 35AB of the Banking Regulation Act, 1949. Para 4 of the Notification is as follows, RBI changed the Percentages and Number required for Approval of a corrective action plan. Para 4 of the Notification is relevant to extract here for ready reference



“4. In this context, it is reiterated that lenders must “scrupulously” adhere to the timelines prescribed in the Framework for finalising and implementing the CAP. To facilitate timely decision making, it has been decided that, henceforth, the decisions agreed upon by a minimum of in the JLF would be 60 percent of creditors by value and 50 percent of creditors by number considered as the basis for deciding the CAP, and will be binding on all lenders, subject to the exit (by substitution) option available in the Framework. *Lenders shall ensure that their representatives in the JLF are equipped with appropriate mandates, and that decisions taken at the JLF are implemented by the lenders within the timelines.*”

In this context, it is to relevant to state that IBC is a new concept evolved with a certain objects to achieve in financial sector and timelines are one of most important objects to be achieved in resolving the issues. Resolution process under IBC involves two different phases. In the first phase, every effort has to be made by the Bankers in light of various instructions/guidelines issued by RBI from time to time, in order to find a solution for insolvency of a Company/Corporate Debtor within a stipulated time, falling which leads to Bankruptcy triggering the Company for liquidation. Ultimately, the Adjudicating Authority is also under legal mandate first to evolve a suitable solution to resolve insolvency of a Company and it is only last and final option, after exhausting all options available for it, to order for liquidation.

In order to resolve the issue of insolvency, it is necessary to bank upon various guideline/ circulars issued by RBI from time to time. So it is not out of context to refer to various percentages prescribed by RBI as discussed above. The counsel for the lead banker also submitted that the Committee of Creditors contemplated under IBC is akin to JLF and that of Resolution Plan is akin to CAP.

e. Adjudicating Authority spent considerable time and heard the matter on 03.11.2017 and 06.11.2017 on two occasions on each day i.e. to ensure that the Resolution Plan is being approved and the Corporate



Debtor is being revived rather than going for liquidation. As generally known, in most of the cases the liquidation value will not match with the outstanding loan amount (including interest) especially in the case of distressed sale.

4. IBC Code:

a. The main preamble of the IBC is the resolution of the Corporate Debtor rather than the liquidation of the Corporate Debtor. As per the stringent stand of these 3 dissenting Banks it clearly shows that they did not exhibit positive approach in revival of Corporate Debtor and mostly interested in the liquidation of the Corporate Debtor.

b. The salient features of the code are resolution of corporates in a time bound manner, maximization of value of assets, to promote entrepreneurship, availability of credit and balance the interest of all stakeholders etc. When decisions are taken in a time bound manner, there is a greater chance that the firm can be saved as a going concern and the productive resources of the company (the labour and the capital) can be put to best use.

c. The main beneficiaries of the Code are creditors either financial creditors or operational creditors. As per various reports the Non-Performing Assets (NPA) of Banks is in lakhs of crores of rupees, therefore, the main party to the IBC proceedings are Banks and they



are the major beneficiaries/constituents to utilise the code effectively. However, as discussed above, surprisingly these three (3) Banks did not utilise the code to their maximum advantage and did not move an inch forward from their initial stand.

d. From perusal of the records, hearings held on 03.11.2017 and 06.11.2017 on 4 occasions, and the stringent stand taken by the three dissenting banks, the Adjudicating Authority is of the considered opinion that the functioning of these 3 Banks prima facie do not adhere to the preamble of IBC, initiatives of Government/RBI in Restructuring Bad Loans, and also as per their internal policy; maximisation of wealth, balancing the interest of stakeholders, importance of time lines and promoting entrepreneurship etc., therefore, functioning of these three banks in resolving bad loans deserves to be scrutinized by the RBI, who is the regulatory authority for the Banking Sector.

5. Adjudicating Authority

a. Heard Shri E Ajay Reddy, Corporate Applicant, Shri V.K Sajith, learned counsel for Indian Bank, Shri B. Praveen Kumar, learned counsel for IOB & BOM , Dr. S.V. Ramakrishna, learned counsel for Allahabad Bank, Shri CB Mouli, IRP, Shri Deepak N. Bhardwaj, ZM (Bank of Maharashtra), Shri D. Venkata Ramana, ZM(Indian Overseas Bank), Shri M. Prabhakara Reddy, AGM(Indian Bank), Shri Jayakar Rao, Manager (Oriental Bank of Commerce), Shri T. Aravind Kumar,



Chief Manager (Andhra Bank), Ms. Y. Srilatha, CM (Law)(Andhra Bank), Shri D.S. Murthy, AGM (Allahabad Bank), Shri Sajjan Joseph, CM (Law) (Indian Bank), Shri B. Ratan Kumar, G.M (Central Bank of India), Shri Y. Anil Kumar, AGM (Central Bank of India) and Ms. Renuka, CM (Central Bank of India).

b. The case was listed before the Adjudicating Authority on various dates viz., 10.02.2017, 13.03.2017, 21.03.2017, 02.06.2017, 10.07.2017, 7.07.2017, 27.07.2017, 28.07.2017, 15.09.2017, 03.10.2017, 09.10.2017, 20.10.2017, 02.11.2017, 03.11.2017 and on 06.11.2017. On 03.11.2017 and 06.11.2017 hearings were held on 4 occasions.

c. In the IBC at various places the word “may” and “shall” are used. However, Section 30(4) states that the CoC may approve the resolution plan by a vote of not less than 75% of voting shares of the financial creditors. Further, under Section 31 it is provided that “if the adjudicating authority is satisfied”. Therefore, we are of the considered view that even though the CoC may approve a resolution plan with not less than 75% of the voting share, a discretion is given to the Adjudicating Authority to approve the Resolution Plan.



d. Even Sub-Section (2) of Section 31 of IBC gives a discretion any power to the Adjudicating Authority to reject the resolution plan even if it does not confirm to the requirements referred to in Sub-Section (1). This Section also used the term “may” instead of “shall”.

e. Therefore, a paramount duty is cast upon the adjudicating authority while approving the resolution plan he has to exercise his judicious mind in the facts and circumstances of specific case, to consider the spirit of the code and to grant due consideration for the socio economic benefit/cause etc. As discussed in pre pages, the Corporate Debtor is the only major company situated in Nalgonda District.

f. In our view, the prescribed percentage of 75% need not be strictly interpreted as per the Companies Act. As per Sub-Section 2(c) of Section 114 of the Companies Act, 2013 a Resolution shall be a special resolution when the votes cast in favour of the resolution to be not less than three times the number of votes, if any cast against the resolution by members so entitled and voting. However, in the case of IBC, Resolution Plan is the paramount importance rather than the liquidation considering the entire facts of this particular case as discussed supra, the Adjudicating Authority after considering various preambles of IBC approved the resolution plan as submitted by Resolution Professional which is having



concurrence/approval of the majority lenders in number and also percentage of voting rights. Though the dissenting Banks did not approve the resolution plan, the short/want of percentage of voting share was just 8.33% as prescribed under the Code and considering the balance of interest of all the stakeholders being one of the preambles of the code as discussed in detail supra, the Adjudicating Authority was of the view to approve the resolution plan.

g. It is true that Adjudicating Authority cannot act mechanically basing on arithmetic calculations while considering Resolution plan and it has to take into consideration various circulars/guidelines issued by RBI from time to time, economy of the Country, social obligations cast on the part of Government to create employment, rural development. It is not out of place to mention here that Central Government as well as State Governments is wooing investors internally and externally by offering several incentives in order to set up industries in the Country. When such is the policy of Government, is it justifiable to liquidate the Company involved herein, which is located in very remote rural area of newly constituted Telangana State, as explained supra? So it is bounden duty of Adjudicating Authority to analyze the issue in question in wider/macro prospective and transparent way rather in a mechanical way depending on percentage or the word 'may' as used in under section



of 30 (4) of IBC so as to balance the interests of all the stake holders such as employees, creditors, public interest, economy, rural development etc.

h. It is also relevant to point out here the observation of *Hon'ble Supreme Court of India in Jamaluddin Ahmad Vs Abu Saleh Najmuddin and another* which is extracted as follows: the relevant obiter or ratio:

'14. The judicial function entrusted to a Judge is inalienable and differs from an administrative or ministerial function which can be delegated or performance whereof may be secured through authorization.

"The judicial function consists in the interpretation of the law and its application by rule or discretion to the facts of particular cases. This involves the ascertainment of facts in dispute according to the law of evidence. The organs which the State sets up to exercise the judicial function are called courts of law or courts of justice. Administration consists of the operations, whatever their intrinsic nature may be, which are performed by administrators; and administrators are all State officials who are neither legislators nor judges." (See Constitutional and Administrative Law, Phillips and Jackson, 6th Edn., p. 13.) P. Ramanatha Aiyar's Law Lexicon defines judicial function as the doing of something in the nature of or in the course of an action in court. (p. 1015) the distinction between "judicial" and "ministerial acts" is:

If a Judge dealing with a particular matter has to exercise his discretion in arriving at a decision, he is acting judicially; if on the other hand, he is merely



required to do a particular act and is precluded from entering into the merits of the matter, he is said to be acting ministerially. (pp. 1013-14)

Judicial function is exercised under legal authority to decide on the disputes, after hearing the parties, maybe after making an enquiry, and the decision affects the rights and obligations of the parties. There is a duty to act judicially. The Judge may construe the law and apply it to a particular state of facts presented for the determination of the controversy. A ministerial act, on the other hand, may be defined to be one which a person performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to, or the exercise of, his own judgment upon the propriety of the act done. (Law Lexicon, *ibid.*, p. 1234). In ministerial duty nothing is left to discretion; it is a simple, definite duty. Presentation of election petition to the High Court within the meaning of Section 81 of the Act without anything more would mean delivery of election petition to the High Court through one of its officers competent or authorized to receive the same on behalf of and for the High Court. Receiving an election petition presented under Section 81 of the Act is certainly not a judicial function which needs to be performed by a Judge alone. There is no discretion in receiving an election petition. An election petition, when presented, has to be received. It is a simple,



definite duty. The date and time of presentation and the name of the person who presented (with such other particulars as may be prescribed) are to be dorsed truly and mechanically on the document presented. It is a ministerial function simpliciter. It can safely be left to be performed by one of the administrative or ministerial staff of the High Court which is as much a part of the High Court. It may be delegated or be performed through someone authorized.



- i. In the matter of Prowess International Pvt. Ltd Vs. Parker Hannifin India Pvt. Ltd. the Hon'ble NCLAT reiterated; "it is made clear that Insolvency Resolution Process is not a recovery proceeding to recover the dues of the creditors" Resolution maximises the value of assets of the corporate and enables every stakeholder to continue with the corporate to share its fate. Therefore, maximization of value of assets and balancing the interests, resolution triumphs over recovery as well as liquidation in most cases.

6. Banking Sector:

As generally known in the Banking/Corporate Sector, if any compromise has to be arrived at either party will incur a loss/forgo to certain extent in the process of negotiation, even the aggrieved party/the lender also has to quote the acceptable amount of

settlement with attending terms and conditions to resolve the issue.

However, in the instant case, strangely all the three (3) Banks did not quote the acceptable amount of settlement towards OTS, rather simply reiterated that the amount quoted by the Corporate Debtor is less.

We also recognize the fact that each Bank will have its own internal policies, profit margin etc., based on employees cost, cost of borrowing, internal rate of return, own business strategy etc. However, in the instant matter, when more than 2/3rd of voting shares in the CoC approved by Public Sector Banks, who contribute to the economy/social objective and also regulated by the same Banking Sector Regulator, only three (3) Banks opted to act otherwise/taken totally different stand.

It is also quite common, in the Banking industry to absorb certain losses if the company/the industry is not doing well. At the time of revival/resolution plan of the companies, the Banks in general will not get the exact outstanding amount due (including interest). As per an article in Economic Times newspaper dated 23.11.2017, Rs.33,000 Crores were written off by the Banks in 2nd quarter of 2017 and Rs.3.2 lakhs Crores loans written off by the Banks in the past four years. These figures also support our view that the Banks normally may not recover its 100% outstanding dues.




We also failed to understand that these three Public Sector Banks did not exhibit even one percent concern towards social object of the country i.e. they have totally ignored 450 employees employed till recently by the company and their families, number of indirect employment/beneficiaries generated by the Corporate Debtor in the remote village. As per the balance sheet as at 31.03.2016, the corporate debtor had revenue from operations of Rs.64.46 Crores and for the year ended 31.03.2015 (for 3 months) had a revenue of Rs.76.66 Crores.



The Banks inspite of consuming entire time limit including the extended time of 90 days i.e. a total of 270 days prescribed under IBC they could not finalize the Resolution Plan. In the above background, the Adjudicating Authority would like to impress upon all the financial creditors to strictly comply with the time line as prescribed in the IBC, especially in the initial stages of implementation of IBC, if not we fear that the Preamble of the IBC will be lost/purpose for which the code was promulgated will not be achieved.

Adjudicating Authority also had an opportunity to have a quick glance of the annual report of Central Bank of India for the year 2016-17. For the benefit of all stakeholders, important/relevant portion of speech of CMD of CBI addressed to the shareholders are added/quoted. The Bank continued to strategies its

focus on recoveries which yielded better results during the year. Cash recovery increased to Rs.2378 Crores in the financial year ended 31.03.2017 as compared to Rs.1287 Crores in the previous financial year ended 31.03.2016, registering a growth of 84.77%. The Banking industry faces challenges from mounting NPA and Resolution thereof. Further, he also stated that IBC, 2016 should speed up the recovery process.



Asset quality has been the concern of the Bank for last couple of years. Net NPA to net Advances increased to 10.20% as on 31.03.2017 from 7.36% as on 31.03.2016. The Bank has been proactive in respect of NPA management and shall continue its efforts to reduce the NPA level. The Bank has made provisions for NPAs for the year ending 31.03.2016 an amount of Rs.4,913 Crores and an amount of Rs.6,216 Crores for the year ending 31.03.2017. The RBI has also revised the characteristics of Prompt Corrective Action (PCA) and stressed on asset quality and profitability to monitor Banks. The Bank also has Credit Monitoring Department and Recovery Department, the same encompasses in all areas of NPA management including company settlements, OTS Schemes etc. As per the consolidated Cash Flow statement for the year ended 31.03.2017, an amount of Rs.6,219.53 Crores was shown as bad debts written off/provision in respect of NPA.

Letter from Managing Director and Chief Executive Officer of the IOB, while presenting the Annual Report and financial statements for the year 2016-17 also stated -

- a) The biggest economic challenge facing in the banking system is dealing with toxic assets to the tune of Rs.7 lakh Crores, Stressed assets, which include bad loans, restructured debt and advances etc., have risen to above 17% of the total loans.
- b) The Government through an ordinance provided the RBI with powers to intervene a resolution of NPA. RBI lowered the threshold for consensus required among the lenders in the joint lenders forum to approve the resolution process.
- c) Net NPA is Rs.19749 Crores with ratio of 13.99% on 31.03.2017 against Rs.19213 Crores with ratio of 11.89% as on 31.03.2016. Net NPA as on 31.03.2017 has reduced both in terms of percentage and absolute terms as compared to 31.03.2016. On the recovery front the Bank has done fairly well by clocking the recovery of around Rs.8710 Crores for financial year 2016-17 as against Rs.5872 Crores for financial year 2015-16.
- d) Focus areas for NPA Management are



- i) Targeting substandard assets with special thrust on recent slippages for upgradation.
- ii) Intense focusing on NPA accounts, sole financed accounts, consortiums accounts where we are the Lead Bank, chronic NPA accounts where provision is 100%, NPA accounts where migration provision is likely in 2017-18.
- iii) Effecting recovery through Lok Adalats, Recovery Camps, Recovery drives etc.
- iv) Recovery cum resolution in NPA accounts with functional units/continuing activity.
- v) Out Reach program to reach out to NPA borrowers by the branch team.
- vi) Special full time Recovery Teams with 10 to 15 members in each region.
- vii) Android app with "NPA details" to each staff for follow up and recovery on the move.



From the above points, the importance attached to the resolution of NPAs/recovery of bad loans by the Banks is also seen.

Three dissenting Banks submitted that the personal guarantee of the promoter, the guarantee given by the other corporates have not been considered by the resolution Professional/in the OTS Scheme. However, we are of the view that even the

lead bank of the consortium of Banks i.e. Indian Bank and other PSBs and even the Private Sector ARC have not stressed on this issue. During the hearings held, the financial creditors have orally indicated that even if those guarantees are considered the same is not more than Rs.30 Crores approximately, which should not deter the current OTS proposal. Having seen merits in their submissions, the Adjudicating Authority is of the view that the personal guarantee, the guarantee given by the other corporates can be suitably dealt with by the lenders as per their loan agreements in addition to the current OTS Scheme.

In most of cases, the liquidation value may not match the actual outstanding debt amount and the lenders either PSBs, Financial Institutions, ARCs etc. have to absorb some losses and in reality, have been absorbing some losses or to take some haircut. Even, the Government both Central and State also forgoes their dues especially tax dues, other payment to various Government agencies/service providers like electricity, water charges etc. Therefore, sacrificing some amount of loss for revival/the resolution plan, is part of the lenders considering the employment opportunity, socio economic objectives etc. As per the valuation carried out by two registered valuers, the liquidation value is approximately Rs.760 Crores, whereas in the revised OTS scheme the amount proposed is Rs.600 Crores, which is approximately 79% of the liquidation value.



29. It is necessary to advert to the contentions of the three dissenting financial creditors/banks for non-approval of the plan. The IOB represented by Shri D. Venkata Ramana, ZM has filed an affidavit to reject the Revised Resolution Plan/OTS of Rs.600 crores. To reject the plan, he has stated that as per their recovery policy, any OTS to be accepted to be paid by installments should not exceed the period of 12 months and the plan exceeds 12 months, which is not acceptable to his Bank. The amount of Rs.600 crores is very less compared to the distress value arrived at by two valuers. The Resolution Professional did not satisfy the source of funds required for the proposed pay out /OTS. He did not consider the aspect of Intellectual Property Right value of trade mark "KSP". It is further stated that there is every possibility for reviving the Company.

However, he did not file any documents in support of their contentions raised in the affidavit. They did not show any plausible solution for recovering their loan except baldly rejecting the plan. They did not file any alleged policy to deal with issue of OTS i.e., installments should not exceed 12 months. Other banks, namely Central Bank of India, Bank of Maharashtra have also taken similar stand without filing any supporting documents.



30. It appears that some of the issues (intellectual property rights, source of funds) are raised by IOB only in the affidavit submitted before the Adjudicating Authority, but those issues were not discussed in none of the 9 CoC meetings held. The Bank submitted an affidavit by raising all these issues which is not expected to be raised before this Tribunal and the Tribunal is also not expected to adjudicate on each of these issues. Though he submitted that RP has failed to consider the aspect of Intellectual Property Rights (IPR), it is worthwhile to add that, the Balance Sheet of Corporate Debtor as at 31.03.2016 did not contain any amount towards IPR, therefore, the submission of IOB before the Adjudicating Authority is without any basis or only based on assumptions.

31. With regard to the issue of source of funds, the financial creditors should have taken up the issue with the Resolution Professional and in the CoC meetings. It is also noted that in the instant case 9 (nine) CoC meetings were conducted and therefore, the issue of source of funds should have been discussed/sorted out in the CoC meetings rather than bringing the same as an issue before the Tribunal as a reason for rejecting the Revised OTS Scheme. However, it is noticed that in the 6th CoC meeting held on 24.10.2017, the corporate debtor also submitted an EOI from AREA Group of Companies to infuse Rs.150 Crore as an



equity share capital, preference share capital, debentures subject to getting firm approval from the lenders. As can be seen from the above discussions, the revised OTS Scheme is yet to be approved, therefore, it would be difficult to firmly tie up the entire source of funds required in the absence of approval granted by financial creditors.

The submission of the IOB that the Kamineni Group also has medical college, other educational institutions may not be of much relevance until unless they are guarantors to the corporate debtor.

In his affidavit he also questioned that when other companies dealing in steel, doing well in the line of activity etc, the reference of Kamineni Steel accounts to NCLT does not seem to be justifiable. Further it is to be added that at this juncture, it is our duty to point out that as per the directions/initiatives of RBI 12 major NPA accounts were referred to NCLT which includes 3 listed major steel Companies i.e., Essar Steel, Bhushan Steel, Eelctrosteel Steels Limited, which are in the steel sector. Therefore submissions of in none of the CoC meetings this issue was raised/discussed, factually incorrect information to the Tribunal by IOB by way of an affidavit is not expected.

Even in the affidavit filed by the IOB dated 06.11.2017 and 10.11.2017, they have reiterated that



the OTS offer can be substantially increased, however, without substantiating the amount expected from the Corporate Debtor.

IOB also submitted that the report of RP may need to be revisited. At this juncture it is to be stated that even the extended time line prescribed in Section 12 of the IBC expired on 07.11.2017. Therefore, the submission is without any merits, as stated supra one of the objectives of the IBC is to resolve the issue in a time bound manner.

He himself vide his aforesaid affidavit stated that unit is closed from August, 2016 onwards and further there is every possibility of reviving of the corporate debtor. At this juncture, we would like to add that the preamble of the IBC, Government, Adjudicating Authority, RBI and even the other financial creditors is to first revive/resolution plan for the corporate debtor.

32. It is not in dispute that the IRP approved by the Tribunal was subsequently approved by the duly constituted Committee of Creditors. As stated supra, all the meetings of CoC have attended all the CoCs except for one i.e 2nd CoC which is also attended by more than 75% of CoC. Upon perusal of the proceedings of the CoC, it shows that the Resolution Professional has prepared the resolution plan in accordance with law. Various options were



considered during various CoC meetings and also revised the plan. Ultimately, the present resolution plan with OTS of Rs.600 crores is accepted by five banks.

It is also to be mentioned here that there is a quorum prescribed for meeting of CoC and all the meetings of CoC satisfy the quorum and thus committed is competent to take appropriate decision and all the members of Committee of Creditors are supposed to attend the meetings with appropriate mandates from their headquarters. However, the records shows that though the Committee of Creditors have attended all the meetings, they have kept uncertainty pending till 180+90 days period prescribed under the Code, forcing the Tribunal to call all concerned parties to depose before the Tribunal as detailed in this order.

33. It is necessary to advert to the contentions of the three dissent banks for non-approval of the plan. However, all the Banks have not filed any documents in support of their contentions. As stated supra, all the Banking Sector in the Country are bound by various guidelines/circulars issued by RBI from time to time and also the policy of Government of India as detailed supra. It is also relevant to point here that dissenting Banks are also governed by same set of rules/guidelines as followed by other five banks who have accepted the Resolution plan. The CIRP Process



also allows a dissenting financial creditor to exit at the liquidation value.

34. It is not in dispute that IBC is the only alternative available to resolve insolvency and Bankruptcy for debts of any Financial Creditor/Operational Creditor, under sections 7, 8, 9 & 10 of the Code. The Contentions of 3 dissenting Bankers as they would resort to other legal proceedings under other laws to recover the dues from the Corporate Debtor is nothing but non-application of mind and they have miserably failed to avail the opportunity provided under the newly enacted, effective code. They have not come up with any other legally viable alternative remedy except making bald statements as detailed supra. As discussed in detailed supra, especially as per the RBI guidelines the dissenting Bankers are expected to fall in line with Lead Bank in accepting the scheme. In view of above discussion of case, we are satisfied that the Resolution Professional has followed all the extant provisions of IBC, 2016 with extant rules, regulations made there under. And the Resolution plan in question also contains all mandatory clauses as discussed supra. And there are no grounds exists for rejection of resolution plan. Therefore, we are satisfied that the Resolution plan contains all mandatory provisions and the Resolution Professional followed all the extant provisions of IBC, 2016, rules made there under and



IBBI Rules, regulations apart from following Principles of Natural Justice. The Resolution plan in question is also prepared based on information memorandum. The Resolution Plan also provides all the required measures as mandated under Regulations 37 & 38 of IBBI (IRP for Corporate Persons) Regulations 2016.

35. In the aforesaid facts, provisions of IBC and law, taking a practical approach considering the place in which the Unit is situated, to meet the ends of justice by exercising powers conferred upon this Adjudicating Authority, under section 31(1) of IBC, 2016, We hereby allowed the Company petition bearing CP(IB)No.11/10/HDB/2017 with the following directions:

- 1) We hereby approved the Resolution plan/Revised OTS scheme as submitted by the Resolution Professional vide affidavit dated 03.11.2017;
- 2) We hereby declared that the moratorium imposed on 10.02.2017 in this case ceased to have effect from the date of receipt of copy of this order;
- 3) We hereby direct that the Resolution Plan/Revised OTS Scheme of the Corporate Debtor shall be binding on the Corporate Debtor and its



employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

- 4) We also hereby direct the Corporate Debtor, as promised by the Managing Director, to reinstate all the 450 employees, who were on the rolls of the Company (both skilled 325 and unskilled 125 workers) before stopping the operations of the Company, however, subject to their eligibility/fitness;
- 5) We direct the corporate debtor to pay the amount of Rs.0.13 crores to other Operational Creditors at the time of making initial payment of 5% of OTS Scheme and the balance amount towards electricity dues should be paid in equal instalments along with the payments to be made to the financial creditors as per payment schedule in the revised OTS scheme. Since total dues to operational creditors is Rs.14.36 crores, out of which Rs.0.13 crores is for other operational creditors and Rs.14.23 crores is towards electricity dues to TSSPDCL.
- 6) We hereby directed the Resolution Professional to forward all records relating to the conduct of Corporate Insolvency Resolution Process and the Resolution plan to the Insolvency and Bankruptcy Board of India to be recorded on its database.



- 7) The parties are at liberty to make miscellaneous Company Application(s) in order to seek clarification(s), if any, required in implementation of the Resolution plan.
- 8) No order as to costs.

Before parting with this order, we would like to express our views as detailed below for appropriate guidelines/ instructions in Insolvency process:

In order to avoid difficulties faced in the instant Corporate Insolvency Resolution Process, it would be appropriate for the authorities to issue necessary guidelines especially for the members of Committee of Creditors to attend those meeting(s) with full mandate from the their competent authorities so as to take a final call during the meeting(s) itself instead of expressing their acceptance or otherwise outside the meetings of Committee of Creditors.

Further, in view of the above discussions, the functioning of the three dissenting Banks namely Indian Overseas Bank, Central Bank of India, Bank of Maharashtra in resolving the bad loans / NPAs deserves to be carefully scrutinized





by the Banking Sector Regulator and therefore we direct the Registry to forward a copy of this order to the Governor, RBI, Mumbai.

Sd/-
RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)

Sd/-
RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER *CP (ID) No. 11/10/4DB/17*
निर्णय का तारीख
DATE OF JUDGEMENT *27-11-17*
प्रति तैयार किया गया तारीख
COPY MADE READY ON *1-12-17*

[Signature]
Dy. Regr./Asst. Regr/Court Officer/
National Company Law Tribunal, Hyderabad Bench