

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO: II**

**Hearing Through: VC and Physical (Hybrid) Mode**

**CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)**

**CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 09.05.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/785/2024 in CP(IB) No.492/7/HDB/2019
NAME OF THE COMPANY	KSK Mahanadi Power Company Ltd
NAME OF THE PETITIONER(S)	Power Finance Corporation
NAME OF THE RESPONDENT(S)	KSK Mahanadi Power Company Ltd
UNDER SECTION	7 of IBC

**ORDER**

**IA (IBC)/785/2024**

**Present:** Ld. Counsel Mr. Mayur Mundra for the Applicant.

Ld. Counsel Mr. Allwin Godwin along with Mr. Anoop Rawat,  
Mr. Aditya Marwah, Mr. Aditya Marwah, Mr. Vishrut Kansal,  
Mr. Snigdha Saraff and Ms. Niranjana Pandian for the Respondent.

Written submissions filed by both the parties. **Heard. Reserved for orders.**

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO: II**

**Hearing Through: VC and Physical (Hybrid) Mode**

**CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)**

**CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 09.05.2024 AT 10:30 AM**

<b>TRANSFER PETITION NO.</b>	
<b>COMPANY PETITION/APPLICATION NO.</b>	<b>IA (IBC)/672/2021 in CP(IB) No.492/7/HDB/2019</b>
<b>NAME OF THE COMPANY</b>	<b>KSK Mahanadi Power Company Ltd</b>
<b>NAME OF THE PETITIONER(S)</b>	<b>Power Finance Corporation</b>
<b>NAME OF THE RESPONDENT(S)</b>	<b>KSK Mahanadi Power Company Ltd</b>
<b>UNDER SECTION</b>	<b>7 of IBC</b>

**ORDER**

**IA (IBC)/672/2021**

Orders pronounced, vide separate sheets. In the result, this application is disposed. Partially allowed.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**

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

**I.A.No.672 of 2021 in**  
**CP (IB) No.492/07/HDB/2019**

**Between:**

Mr. Sumit Binani, Resolution Professional of  
M/s. KSK Mahanadi Power Company Limited,  
Price Water House Coopers Private Limited,  
# Y-14, Block EP, Sector V, Salt Lake,  
Kolkata – 700 091.

....Applicant

**And**

M/s Chhattisgarh State Power Distribution Co.Ltd,  
2<sup>nd</sup> Floor, Vidyut Sewa Bhawan,  
Dangania, Raipur,  
Chhattisgarh – 492 013.

....Respondent

**In the matter of:**

Power Finance Corporation Limited,  
Urjanidhi, Barakhamba Lane,  
Connaught Place,  
New Delhi – 110 001.

....Financial Creditor

**Vs.**

M/s. KSK Mahanadi Power Company Ltd.,  
8-2-293/82/A/431/A,  
Road No.22, Jubilee Hills,  
Hyderabad – 500 033.

....Corporate Debtor

**Date of order : 09.05.2024**

**CORAM:**

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

**Counsels present:**

For the Applicant : Mr. Allwin Godwin, Advocate along with  
Advocates Ms. Niranjana Pandian,  
Mr. Anoop Rawat, Mr. Aditya Marwah and  
Mr. Barathwaz.

For the Respondent : Ms. Gurpreet Kaur Chawla, Advocate

Heard on : 22.04.2024

**Per : Sanjay Puri, Member (Technical)**

**ORDER**

1. The short issue in this case is about the liquidated damages that arose in pre-CIRP period, which have been adjusted by the Respondent from the payments due to the Corporate Debtor (CD) during CIRP<sup>1</sup>.
2. The CD is a power generation company, which had a Power Purchase Agreement (PPA) with the Respondent for supply of electricity for distribution. For certain violations of the PPA, which were being contested, the Respondent had held the CD liable to pay Rs 64.18 crores<sup>2</sup> as liquidated damages. Admittedly this liability, albeit contested by the CD, arose in the pre-CIRP period.

---

<sup>1</sup> Corporate Insolvency Resolution Process.

<sup>2</sup> 7.16 crores on account of delay in starting the Commercial Operations, and Rs 57.02 crores for not supplying obligatory 5% power to the Respondent during the pre-CIRP period.

3. During March & April 2019 (before CIRP commenced on 18.10.2019), the Respondent had recovered a sum of **Rs 4.38 crores** from the amounts payable for the electricity supplied by the CD. There is no dispute about this amount, as this recovery took place during the pre-CIRP period.
4. Between June 2020 and till July 2021, i.e. after the commencement of CIRP in October 2019, the Respondent recovered another sum of **Rs 21.72 crores** from the amounts payable to the CD.
5. The Applicant who is the Resolution Professional (RP) of the CD for CIRP period, has approached this Authority against the recoveries made by the Respondent. It is claimed that the Respondent could not have recovered any amount payable by the CD from the payments it was to receive from the Respondent.
6. The Respondent, according to the Applicant is just another creditor of the CD, if at all (for the claim of Respondent was being contested), and it could only have lodged its claim before the Applicant under the provisions of IBC. The Respondent could not have recovered any amount on its own, to the detriment of the other creditors, is the argument of the Applicant.
7. There is a short reply to this application filed by the Respondent. Other than asserting their right to adjust the aforesaid liquidated damages to the extent of Rs 4.38 crores before CIRP period, no significant objection has been raised against the contentions of the Applicant RP.
8. We agree with the Applicant. Any amount recovered by the Respondent from the sums payable to the CD after CIRP date was in violation to the moratorium under section 14 of IBC. The

Respondent is directed to refund the sum of Rs 21.72 crores that was recovered post CIRP from the dues payable to the CD, and do not withhold any money in future from the dues payable to the CD on account of the aforesaid 'Liquidated Damages', which remain disputed.

9. The Respondent is at liberty to file a claim with regard to the aforesaid 'Liquidated Damages' before the RP for consideration under the resolution plan. The RP is directed to include the claim of the Respondent, in the RFRP<sup>3</sup> document, if not done already. Necessary amendment to the RFRP may be issued to all PRAs in that regard.

With the above remarks, this IA is disposed. Partially allowed.

**Sd/-**

**(SANJAY PURI)**  
**MEMBER (TECHNICAL)**

**Sd/-**

**(RAJEEV BHARDWAJ)**  
**MEMBER (JUDICIAL)**

VL

---

<sup>3</sup> Request For Resolution Plan.