

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 45 of 2018**

(Arising out of Order dated 27<sup>th</sup> November, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad in CP (IB) No. 11/10/HDB/2017)

**IN THE MATTER OF:**

**Kamineni Steel & Power India Pvt. Ltd. ...Appellant**

**Vs.**

**Indian Bank & Ors. ...Respondents**

**Present: For Appellant: - Mr. Rajendra Benival, Mr. Srujana Suman Mund and Mr. Kaustubh Shukla, Advocates.**

**For 4<sup>th</sup>, 5<sup>th</sup> & 7<sup>th</sup> Respondents: - Mr. Kunal Tondon, Advocate**

**With**

**Company Appeal (AT) (Insolvency) No. 23 of 2018**

(Arising out of Order dated 27<sup>th</sup> November, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad in CP (IB) No. 11/10/HDB/2017)

**IN THE MATTER OF:**

**United Seamless Tabulaar Pvt. Ltd. ...Appellant**

**Vs.**

**Kamineni Steel & Power India Pvt. Ltd.  
& Ors. ...Respondents**

**Present: For Appellant: - Mr. Aditya Verma, Advocate.**

**For 1st Respondent:- Mr. Krishna Kumar, Mr. Srujana Suman and Mr. Kaustubh Shukla, Advocates.**

**For 7<sup>th</sup>, 8<sup>th</sup> & 10<sup>th</sup> Respondents: - Mr. Kunal Tondon, Advocate.**

**With**

**Company Appeal (AT) (Insolvency) No. 335 of 2017**

(Arising out of Order dated 27<sup>th</sup> November, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad in CP (IB) No. 11/10/HDB/2017)

**IN THE MATTER OF:**

**Indian Overseas Bank & Ors.**

**...Appellants**

**Vs.**

**Kamineni Steel & Power India  
Pvt. Ltd. & Ors.**

**...Respondents**

**Present: For Appellants:- Mr. Kunal Tandon, Advocate.**

**For 1st Respondent:- Mr. Krishna Kumar, Mr. Srujana Suman, Mr. Sajin V.K. and Mr. B. Vinodh Kanna, Advocates.**

**For 3<sup>rd</sup> Respondent: - Mr. P.V. Dinesh and Sindhu T.P., Advocates.**

**For IRP :- Mr. Kaustubh Shukla, Advocate**

**With**  
**Company Appeal (AT) (Insolvency) No. 15 of 2018**

(Arising out of Order dated 23<sup>rd</sup> November, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in MA 557, 530, 529 & 590/2017, IA 72/2017 in C.P 01/I&BP/2016)

**IN THE MATTER OF:**

**Mr. Chandu Laxman Chavan**

**...Appellant**

**Vs.**

**Union of India & Ors.**

**...Respondents**

**Present: For Appellant: - Dr. U.K. Chaudhary, Senior Advocate assisted by Mr. Shikhil Suri, Mr. Kamaldeep Dayal, Mr. Himanshu Vij and Ms. Vinishma Kaul, Advocates.**

**For 2<sup>nd</sup>, 3<sup>rd</sup> and 20<sup>th</sup> Respondents: -Mr. Ramji Srinivasan, Senior Advocate assisted by Mr. Animesh Bisht, Mr. Karan Khanna and Mr. Tushar Bhardwaj, Advocates.**

**For 22<sup>nd</sup> Respondent:- Ms. Pooja Mahajan and Ms. Mahima Singh, Advocates**

**J U D G M E N T**

**SUDHANSU JYOTI MUKHOPADHAYA, J.**

In these appeals as common question of law is involved, they were heard together and disposed of by this common judgment.

2. An application under section 10 of the Insolvency and Bankruptcy Code, 2016 ('I&B Code' for short) was filed by 'Kamineni Steel & Power India Pvt. Ltd.'- ('Corporate Applicant') before the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad, which was admitted on 10<sup>th</sup> February, 2017 and the 'Corporate Insolvency Resolution Process' was initiated.

3. The 'Committee of Creditors' held different meetings and two Valuer's reports were circulated by video recording the liquidated value of the assets of the Company. The Valuer's report was that 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. It was resolved by the 'Committee of Creditors' on 12<sup>th</sup> May, 2017 to consider SBI Capital Markets Ltd. presentation and to take view in principle about the 'Resolution Plan' proposed by the 'Corporate Debtor'.

4. Subsequently, the 4<sup>th</sup> Meeting of the 'Committee of Creditors' was held on 27<sup>th</sup> June, 2017 and it resolved that fresh infusion of funds of Rs. 150 Crores as projected is not acceptable.

5. In the 5<sup>th</sup> Meeting of the 'Committee of Creditors' held on 20<sup>th</sup> July, 2017, it was resolved to request 'SBI Capital Markets Ltd.' to prepare final TEV Report accordingly showing the revised sustainable debt year wise

and to reduce zero interest debt period from 17 years. The 'Corporate Debtor' proposed to raise working capital of Rs. 100 Crore as advances from suppliers against sales so as to ease working capital liquidity.

6. In the 6<sup>th</sup> Meeting of the 'Committee of Creditors' held on 24<sup>th</sup> August, 2017, an expression of interest submitted by the 'Committee of Creditors' was noticed and 'SBI Capital Markets Ltd.' was requested to submit its final report.

7. The members of the 'Committee of Creditors' in its 7<sup>th</sup> Meeting held on 26<sup>th</sup> September, 2017 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.

The 'Corporate Debtor' was given one week's time. The 'Corporate Debtor' in its turn sent a detailed mail to lenders on 29<sup>th</sup> September, 2017 explaining the entire position and with a request to give their valuable inputs and suggestions with clarity on the above subject to which request has been made for, so as to enable them to submit a detailed reply/ revised 'Resolution Plan'.

8. In the 8<sup>th</sup> Meeting of the 'Committee of Creditors' held on 16<sup>th</sup> October, 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 Creditors' in compliance with Section 30(2) of the 'I&B Code' and Regulation 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.

'JMR ARC Limited' having a 12.39% of voting had in the meeting held on 26<sup>th</sup> 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.

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.

<b>Sl. No.</b>	<b>Name of Bank</b>	<b>% of voting</b>
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
	<b>Total</b>	<b>65.28</b>

The ‘Corporate Debtor’ was asked to submit a fresh ‘OTS’ proposal through email to all the bankers. The ‘Corporate Debtor’ on 18<sup>th</sup> October, 2017 sent a mail submitting the following ‘OTS’ Scheme proposal suggesting Rs. 525.00 Crores towards One Time Settlement. Time was sought for to pay the amount in different instalments from 31<sup>st</sup> March, 2018 to 31<sup>st</sup> December, 2019 as follows:

“

Sl No.	Particulars	Details	
1	One Time Settlement (OTS) proposal for the All banks put together	Rs. 525.00 Crores	
2	1 <sup>st</sup> Instalment for the OTS proposal to be paid	10% of the OTS amount by 31 <sup>st</sup> 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.
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The aforesaid ‘OTS’ offer was without prejudice to their right to deal the Company cases in various legal forums viz., NCLT, DRT etc.

9. Later the ‘Corporate Debtor’ after the JLF meeting with the Bankers on 26<sup>th</sup> October, 2017 and as communicated by the Bank submitted another ‘OTS’ proposal 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 31<sup>st</sup> March 2018*

*c. 85% - payable in three half-yearly instalments*

*(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 9<sup>th</sup> CoC 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.”*

10. The ‘Resolution Plan’ presented by the ‘Resolution Professional’ based on the e-mail sent, as quoted above was considered in the 9<sup>th</sup> ‘Committee of Creditors’ meeting held on 27<sup>th</sup> October, 2017 and was approved by the members of the ‘Committee of Creditors’ having 55.73% voting power as follows:

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

11. The 'Indian Bank' and the 'Allahabad Bank' by way of mail dated 27<sup>th</sup> October, 2017 confirmed the plan subject to providing final sanction after getting sanction from appropriate authorities and the same is accepted by majority of the lenders.

The 'Indian Overseas Bank' having voting power of 15.15% rejected the 'Resolution Plan' by way of revised 'OTS'.

12. The in principle approvals by the members of the 'Committee of Creditors' having voting power of 29.12% expressed that they remain 'OPEN' awaiting the in principle approval from their respective sanctioning authorities.

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

13. On 30<sup>th</sup> October, 2017, the '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. The 'Bank of Maharashtra' having 6.36% voting power did not send any mail or communication and remained 'OPEN'. On 30<sup>th</sup> October, 2017, the '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'.

14. The percentage of 'Consenting Lender Banks'/'Financial Creditors' for approving the 'Resolution Plan' by way of 'OTS' as on 30<sup>th</sup> October, 2017 was as follows:

<b>S.No.</b>	<b>Name of the Bank</b>	<b>% of Voting Power</b>
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
	<b>Total</b>	<b>66.67</b>

15. The percentage of 'Dissenting Lender Banks' not approving the 'Resolution Plan' by way of 'OTS' as on 30<sup>th</sup> October, 2017 was as follows:

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

16. The percentage of Lender Banks remained 'OPEN' for the approval of the 'Resolution Plan' by way of 'OTS' as on 30<sup>th</sup> October, 2017 was as follows:

<b>S.No.</b>	<b>Name of the Bank</b>	<b>% of Voting Power</b>
1	Bank of Maharashtra	6.36%
	<b>Total</b>	<b>6.36%</b>

17. The Adjudicating Authority taking into consideration the aforesaid facts, approved the 'Resolution Plan'/ 'Revised OTS Scheme' as submitted by the 'Resolution Professional' vide affidavit dated 3<sup>rd</sup> November, 2017 and declared that the 'Moratorium' imposed on 10<sup>th</sup> February, 2017 ceased to have effect from the date of approval and other directions were given with regard to the 'Resolution Plan'/ 'Revised OTS Scheme'.

18. The aforesaid common order has been challenged by the Appellant in Company Appeals (AT) (Insolvency) Nos. 23 of 2018, 45 of 2018 & 335 of 2017.

19. In Company Appeal (AT) (Insolvency) No. 15 of 2018, the Appellant has challenged the order dated 23<sup>rd</sup> November, 2017 passed by the Adjudicating Authority, Mumbai Bench, Mumbai. In the said case, the 'Corporate Insolvency Resolution Process' was initiated against 'Innoventive Industries Limited'.

20. The 'Committee of Creditors' in the said 'Resolution Process', in its meeting voted with 66.57% in favour of the 'Resolution Plan'. It was not approved with 75% of the voting shares of the 'Committee of Creditors'. A Miscellaneous Application No. 557 of 2017 was filed by the 'Resolution Applicant namely— 'Suyash Outsourcing Pvt. Ltd.' against 'Bank of India', 'Bank of Baroda', 'UCO Bank', 'Canbank Factors Ltd.', 'IFCI

Factors', 'ICICI Bank Ltd.' – ('Financial Creditors') for certain declaration and to direct 'Resolution Professional' to allow the said Applicant to submit revised 'Resolution Plan' after reducing the time earlier envisaged for obtaining shareholders' approval from the period for making cash payments for fresh vote to place before the 'Committee of Creditors' to modify 'Resolution Plan' reducing the time earlier granted.

21. The 'Resolution Applicant' on 3<sup>rd</sup> September, 2017 submitted a term sheet along with proposed 'Resolution Plan' for Rs. 284.3crores (in present value terms) @13% discounting rate with a compulsory change in management of the company to make a cash payment of around Rs. 180 crores within a period of one year subject to all approvals and for conversion of residual debt (Rs.1191.9 crores) into 'Cumulative Convertible Optionally Redeemable Preferential Shares' ('CCORPS' for short), redemption @ 0.01% of which would be guaranteed by the promoter by way of personal guarantee payable in instalment at the end of 20 years, the coupons on 'CCORPS' shall be paid annually to the 'Financial Creditor', the payment towards coupon on the proposed 'CCORPS' shall not start before dissenting lenders are settled. Unsecured lenders having dues of Rs. 41.6 crores will be paid by converting Rs. 36.1 crores due to 'Canbank Factors Ltd.' and 'IFCI Factors Ltd.' shall be converted into 0.01% 'CCORPS' payable in one instalment at the end of 20 years. The applicant has further stated that the 'Resolution Plan'

estimated total recovery of Rs. 284.3 crores as against proposed recovery of Rs. 135.4 crores through liquidation.

22. The Adjudicating Authority taking into consideration the relevant provisions and the aforesaid facts observed that the 'Resolution Plan' having not been approved by not less than 75% of the vote shares of the 'Committee of Creditors' and the 'Corporate Insolvency Resolution Process' of 270 days being already over by 14<sup>th</sup> October, 2017, in absence of any 'Resolution Plan', order to liquidate the 'Corporate Debtor' under Section 34 of the 'I&B Code' with certain other directions were passed.

23. The Company Appeal (AT) (Insolvency) No. 335 of 2017 preferred by some of the members of the 'Committee of Creditors', who opposed the 'Resolution Plan'. According to them, the Adjudicating Authority has wrongly approved the 'Resolution Plan' as it was only approved by 66.3% voting shares of the 'Committee of Creditors'.

24. The Company Appeal (AT) (Insolvency) No. 23 of 2018 has been filed by the 'Operational Creditor'. His grievance is that he wanted to be present in the meeting of the 'Committee of Creditors' but it was not accepted and no response was given by the 'Resolution Professional'. Otherwise, he is not objecting to the 'Resolution Plan' which has been approved by the 'Committee of Creditors' and the Adjudicating Authority.



25. Company Appeal (AT) (Insolvency) No. 45 of 2018 is with regard to same 'Corporate Insolvency Resolution Process' against 'Kamineni Steel & Power India Pvt. Ltd.' by the approved 'Resolution Applicant' on the limited ground that the Adjudicating Authority has made certain observation with regard to liability of Guarantor. According to the 'Resolution Applicant', after approval of the 'Resolution Plan' the right of the Guarantor vanishes.

26. Further, according to 'Successful Resolution Applicant' in 'Kamineni Steel & Power India Pvt. Ltd.' if the counting of vote is done on the basis of actual number of members, it came to 44.8% which should be accepted.

27. In Company Appeal (AT) (Insolvency) No. 15 of 2018, the Adjudicating Authority has not accepted the 'Resolution Plan' approved with 66.57% voting shares of the 'Committee of Creditors' being less than 75%. In this case, the Appellant is the promoter of 'Innoventive Industries Ltd.'- ('Corporate Debtor') has taken plea that Section 21 (8) if read with Section 34(4), including the amendment made therein, then Section 21(8) cannot be held to be mandatory.

28. Section 21 relates to 'Committee of Creditors' which normally is comprising of 'Financial Creditors' of the 'Corporate Debtor' but does not allow the related party who owes financial debt.

29. As per sub-section (8) of Section 21 (as it then was), all decisions of the 'Committee of Creditors' required to be taken by a vote of not less than seventy-five percent of the voting share of the 'Financial Creditors', which reads as follows:

***"21. Committee of Creditors. – (8) All decisions of the committee of creditors shall be taken by a vote of not less than seventy-five per cent of voting share of the financial creditors:***

*Provided that where a corporate debtor does not have any financial creditors, the committee of creditors shall be constituted and shall comprise of such persons to exercise such functions in such manner as may be specified by the Board".*

30. Requirement of minimum seventy-five percent of the voting shares of the 'Financial Creditors' has been reduced subsequent to the passing of impugned orders dated 23<sup>rd</sup> November, 2017 and 27<sup>th</sup> November, 2017. From plain reading of Section 21 (8) (as it then was) it is clear that all the

decisions of the 'Committee of Creditors' is required to be taken by a vote of not less than seventy-five percent of the voting shares of the 'Financial Creditors', including the approval of the 'Resolution Plan'. Sub-section (8) of Section 21 being mandatory in nature, any plan which has not been approved by the 'Committee of Creditors' with voting shares of seventy-five percent, cannot be approved by the Adjudicating Authority as it will be against the provisions of Section 30(2)(e) of the 'I&B Code' which stipulates that the 'Resolution Plan' does not contravene any of the provisions of the law for the time being in force. Less than seventy-five percent of the voting shares of the 'Committee of Creditors' in the matter of approval of the 'Resolution Plan' being against the provisions of clause (e) of sub-section (2) of Section 30, it cannot be approved.

31. In view of the aforesaid reasons, we uphold the decision of the Adjudicating Authority, Mumbai Bench dated 23<sup>rd</sup> November, 2017 which is under challenge in Company Appeal (AT) (Insolvency) No. 15 of 2018 and set aside the impugned order dated 27<sup>th</sup> November, 2017 passed by the Adjudicating Authority, Hyderabad Bench, which are under challenge in Company Appeals (AT) (Insolvency) Nos. 45 of 2018, 23 of 2018 & 335 of 2017.

32. In the result, the Company Appeal (AT) (Insolvency) No. 15 of 2018 is dismissed and Company Appeals (AT) (Insolvency) Nos. 45 of 2018, 23

of 2018 & 335 of 2017 are allowed and the case of 'Kamineni Steel & Power India Pvt. Ltd.' is remitted to the Adjudicating Authority for initiation of liquidation proceeding in terms of Section 33 read with Section 34 of the 'I&B Code' who is required to pass order immediately. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

NEW DELHI

6<sup>th</sup> September, 2018

/AR/