

August 2024

## **National Company Law Tribunal, Hyderabad (upholding the interests of creditors) permits distribution of surplus funds generated by the corporate debtor during its ongoing corporate insolvency resolution process, to its creditors**

On August 5, 2024, the National Company Law Tribunal (“NCLT”), Hyderabad Bench<sup>1</sup> in the corporate insolvency resolution process (“CIRP”) of KSK Mahanadi Power Company Limited (“Corporate Debtor”), has allowed an application filed by the Committee of Creditors (“CoC”) seeking distribution of surplus funds generated by the Corporate Debtor to its creditors, in accordance with Section 53 of the Insolvency and Bankruptcy Code, 2016 (“IBC”)<sup>2</sup>.

### **Brief Facts**

The CoC of the Corporate Debtor sought for interim distribution of surplus funds amounting to INR 8,821 crore (Indian Rupees eight thousand eight hundred and twenty-one crore) (to the extent that these funds were not required for the smooth functioning of the Corporate Debtor as a going concern), placing reliance on Section 28 of the IBC<sup>3</sup> and a previous order of the National Company Law Appellate Tribunal (“NCLAT”) in the IL&FS case<sup>4</sup>, wherein NCLAT had directed the interim distribution of funds amounting to INR 16,361 crore<sup>5</sup> on a *pro rata* basis, subject to board approval.

### **Notable Findings**

NCLT, while allowing the CoC’s application has, *inter alia*, noted that:

1. the CIRP of the Corporate Debtor had extended for a period of nearly 5 (five) years, consequently the moratorium under Section 14 of IBC had also continued for an extended period;
2. for the entire period of the prolonged CIRP, the Corporate Debtor was functioning as a going concern, generating revenue in excess of what was required for its day-to-day functioning;

<sup>1</sup> *In the matter of M/s. KSK Mahanadi Power Company Limited; Power Finance Corporation Limited, on behalf of the committee of creditors, vs. Mr. Sumit Binani, Resolution Professional. IA No.1365 of 2024 in CP (IB) No.492/07/HDB/2019*

<sup>2</sup> *Section 53 of IBC - Distribution of Assets which, inter alia, provides for mechanism for distribution of proceeds from the sale of liquidation assets in order of priority specified in Section 53 (1) (a) – (h)*

<sup>3</sup> *Section 28 of IBC - Approval of Committee of Creditors for certain actions outlined in Section 28 (1) (a) – (m)*

<sup>4</sup> Order dated May 31, 2022, in *Union of India v Infrastructure Leasing and Financial Services Ltd. & Ors.* (I.A. No. 586 of 2022 in Company Appeal (AT) No. 346 of 2018).

<sup>5</sup> Refer Para 19 of Order dated May 31, 2022 [Interim Distribution - INR 11,296 crore (Indian Rupees eleven thousand two hundred and ninety-six crore) in cash and INR 5,065 crore (Indian Rupees five thousand and sixty-five crore) of InvIT Units]

3. retaining surplus funds in the Corporate Debtor's bank accounts would be in contradiction with IBC's primary objective of promoting credit availability and balancing stakeholder interest;
4. the interim distribution of surplus funds, in terms of Section 53 of IBC, will enable productive utilization of surplus funds, which are otherwise laying idle;
5. such distribution is contemplated in the Request for Resolution Plan ("RFRP") and therefore would not come in the way of resolution plans of prospective resolution applicants ("PRAs"); and
6. resolution plans submitted by the PRAs, in compliance with the RFRP will account for cash balances accumulated in the Corporate Debtor's accounts. If these accumulated balances are not distributed in the interim, they would nonetheless be distributed under any resolution plan submitted.

## Conclusion

Insolvency jurisprudence in India does not explicitly provide for interim distribution of surplus funds of a corporate debtor during the pendency of CIRP. NCLT's judgement serves as a step forward in upholding creditors' interests. Necessary reliefs for creditors, especially in cases where the CIRP has been prolonged, will consequently increase credit supply in the economy, promoting growth and furthering the objectives of IBC.

## Insolvency and Debt Restructuring Practice

JSA is recognized as one of the market leaders in India in the field of insolvency and debt restructuring. Our practice comprises legal professionals from the banking & finance, corporate and dispute resolution practices serving clients pan India on insolvency and debt restructuring assignments. We advise both lenders and borrowers in restructuring and refinancing their debt including through an out-of-court restructuring as per the guidelines issued by the Reserve Bank of India, asset reconstruction, one-time settlements as well as other modes of restructuring. We also regularly advise creditors, bidders (resolution applicants), resolution professionals as well as promoters in connection with corporate insolvencies and liquidation under the IBC. We have been involved in some of the largest insolvency and debt restructuring assignments in the country. Our scope of work includes formulating a strategy for debt restructuring, evaluating various options available to different stakeholders, preparing and reviewing restructuring agreements and resolution plans, advising on implementation of resolution plans and representing diverse stakeholders before various courts and tribunals. JSA's immense experience in capital markets & securities, M&A, projects & infrastructure and real estate law, combined with the requisite sectoral expertise, enables the firm to provide seamless service and in-depth legal advice and solutions on complex insolvency and restructuring matters.

**This Prism has been prepared by:**



**Abhishek Munot**  
Partner



**Tushar Nagar**  
Principal Associate



**Purvi Shrivastava**  
Associate



Ranked Among Top 5 Law Firms in India for ESG Practice



19 Practices and 19 Ranked Lawyers



18 Practices and 25 Ranked Lawyers



Employer of Choice 2024

Energy and Resources Law Firm of the Year 2024

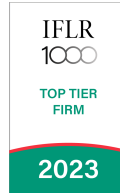
Litigation Law Firm of the Year 2024

Innovative Technologies Law Firm of the Year 2023

Banking & Financial Services Law Firm of the Year 2022



Outstanding Energy and Infrastructure



12 Practices and 42 Ranked Partners  
IFLR1000 APAC Rankings 2023

Banking & Finance Team of the Year

Fintech Team of the Year

Restructuring & Insolvency Team of the Year



7 Ranked Practices, 16 Ranked Lawyers

Elite – Band 1 - Corporate/ M&A Practice

3 Band 1 Practices

4 Band 1 Lawyers, 1 Eminent Practitioner



Recognised in World's 100 best competition practices of 2024



Among Top 7 Best Overall Law Firms in India and 11 Ranked Practices

11 winning Deals in IBLJ Deals of the Year

12 A List Lawyers in IBLJ Top 100 Lawyer List



14 Practices and 38 Ranked Lawyers



Ranked #1 The Vahura Best Law Firms to Work Report, 2022

Top 10 Best Law Firms for Women in 2022



7 Practices and 3 Ranked Lawyers

For more details, please contact [km@jsalaw.com](mailto:km@jsalaw.com)

[www.jsalaw.com](http://www.jsalaw.com)



Ahmedabad | Bengaluru | Chennai | Gurugram | Hyderabad | Mumbai | New Delhi



This prism is not an advertisement or any form of solicitation and should not be construed as such. This prism has been prepared for general information purposes only. Nothing in this prism constitutes professional advice or a legal opinion. You should obtain appropriate professional advice before making any business, legal or other decisions. JSA and the authors of this prism disclaim all and any liability to any person who takes any decision based on this publication.