



INSOLVENCY PROFESSIONAL AGENCY  
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

## Casebook Issue

13:

Resolution process of  
Korba West Power  
Company Limited

**INSOLVENCY  
UNCOVERED**

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### **About Korba West Power Company Limited<sup>1</sup>**

Korba West Power Company Limited (KWPCCL) is a subsidiary of Avantha Power & Infrastructure Limited and is a power generation company based at Raigarh in the State of Chattisgarh. It was incorporated on 15<sup>th</sup> March, 1995 and was renamed as Raigarh Energy Generation Limited later.

It is an unlisted, non-government company limited by shares being classified as a public limited company. It is registered at Registrar of Companies, Gwalior. Its authorized share capital was Rs. 3500crores and its paid up capital is Rs. 1 crore. KWPCCL commissioned its first 600MW Unit. The second unit of is of 600MW capacity.KWPCCL is also committed towards the environment and the community it operates in. It has successfully implemented several community welfare schemes in the field of livelihood, infrastructure, community health and education which has so far benefited over 60,000 people from close to 75 villages.

Its registered office is at First Floor, E-122, Patel Nagar, City Center, Site No.2, Gwalior, Madhya Pradesh-474011, India. Its 4 directors are Mr. Suresh Chandra Jain, Mr. Jayadeb Nanda, Mr. Rambhav Vishwanathan Gatuand Mr.Samir Kumar Mitra.

### **Major Financial Creditors/Bankers<sup>2</sup>**

The major bankers/ financial creditors are Axis Bank with accredit exposure of Rs. 3105.35 crores, followed by Yes Bank with an exposure of Rs. 240.50 crores, Srei Infrastructure Finance Limited and Aditya Birla Finance Limited both the tune of Rs. 100.00 crores each.

## **CIRP of Korba West Power Company Limited (KWPCCL)**

### **CIRP initiation under Section 10 of I&B Code, 2016<sup>3</sup>**

While section 7 and 9 of I&B Code, allows creditors of the defaulting corporate debtor to file and initiate CIRP before the Adjudicating Authority, Section 10 allows a corporate applicant thereof to file an application for initiation of CIRP. The special resolution passed by the shareholders of the corporate debtor or a resolution passed with at least a 3/4<sup>th</sup> of the total number of partners of the corporate debtor is essential for filing of an application under Section 10 of I7 B Code, 2016 before the Adjudicating Authority (AA).

### **Admission and Initiation of CIRP of M/s Korba West Power Company Limited(KWPCCL)<sup>4</sup>**

Corporate Insolvency Resolution Process (CIRP) was initiated and was presented for hearing before the Adjudicating Authority, NCLT of Ahmedabad Bench. The bench was represented by Adv. Mr. Param Mathur and Adv. Mr. Abhishek Shah to represent Adani Power Limited, Adv. Garima Ahuja and Adv. Mr. Salin Jani to represent for Axis Bank . Adv. Ms. Megha Jani, advocate for the petitioner, was represented by Ms. Amrita Patel.

Application was filed by M/s Korba West Power Company Limited as the Corporate Debtor and the same was admitted for CIRP under Section 10 sub section 4 of the Insolvency & Bankruptcy Code, 2016 read with Rule 7 of Insolvency & Bankruptcy (Application to AA) Rules, 2016 seeking initiation of CIRP of KWPCCL on 26<sup>th</sup> July, 2018. Along with it, the moratorium under Section 13 & 14 of I&B Code, 2016 was also declared.

### **Appointment of Mr. Abhijit Guhathakurtha as the IRP<sup>5</sup>**

On 26<sup>th</sup> July, 2018, vide order number CP (IB)190/10/NCLT/AHM/2018 Mr. Abhijit Guhathakurtha was appointed as the Interim resolution Professional (IRP) The name of Mr. Guhathakurtha was proposed by one of the financial creditors, Axis Bank and to that Adv. Ms. Megha Jani, advocate of the petitioner, submitted a No Objection Certificate (NOC). The IRP Mr. Guhathakurtha was directed to do all the necessary actions in terms of announcements, publications and declarations in consonance to the Code, while the Corporate Applicant was advised to communicate the appointment of Mr. Guhathakurtha as IRP by a copy of the said order sent to the IRP's registered address.

Subsequently, Mr. Guhathakurtha was appointed as the Resolution Professional (RP) for the Corporate Debtor KWPCCL after the first meeting of the CoC on 10<sup>th</sup> September, 2018 in accordance to Section 22 of IBC.

### **Claims received by the Resolution Professional<sup>6</sup>**

Soon after the public announcement on 7<sup>th</sup> August, 2018 as per the provisions of Section 15 of I & B Code, 2016, read with Regulation 6 of CIR Regulations, invite was sent for submission of claims by all the stakeholders by 17<sup>th</sup> August, 2018. The RP received a total of Rs. 5034.97 crores of claims from nineteen (19) Financial Creditors, while he received claims of Rs. 291.33 crores from one hundred and ninety-seven (197) claims from operational creditors. Out of these scores, Rs. 5032.16 crores was admitted for the FCs and Rs. 111.45 crores was admitted for the OCs.

### **Appointment of other professionals and selection of prospective resolution applicant<sup>7</sup>**

The 2<sup>nd</sup>CoC Meeting was held on 9<sup>th</sup> October, 2018 and the RP appraised the Committee of Creditors (CoC) about the need of appointment of other professionals

viz. valuation agencies, transaction review auditors, security agencies and information memorandum was shared. Simultaneously, the RP also sought for the approval from CoC for the eligibility criteria of the prospective resolution applicant (PRA).

Post approval from the CoC, on 15<sup>th</sup> October 2018, under section 25(2)(h), the RP floated an advertisement for a Prospective Resolution Applicant (PRA) to submit their expression of Interest (EoI). By 6<sup>th</sup> November, 2018, the last date of accepting EoI, the RP received ten (10) expression of interest from potential resolution applicants who were keen to submit their Resolution Plans for the Corporate Debtor and in the 3<sup>rd</sup> CoC Meeting held on 13<sup>th</sup> November, 2018, the evaluation criteria for the PRA was approved. On 16<sup>th</sup> November, 2018 the members of the CoC was provided with the provisional list of the PRA and on 21<sup>st</sup> November, 2018 the Information Memorandum was provided in respect to all the seven (7) PRA in terms of Section 29 of I & B Code, 2016 read with Regulation 36B of CIR Regulations.

On 27<sup>th</sup> November, 2018, in a formal e-mail by the RP Mr. Guhathakurtha to the COC members, the final list of the Resolution Applicants (RA) was sent. Along with that he also communicated appointment of CRRE South Asia Private Limited and RBSA Valuation Advisors LLP as the Registered Valuers to determine the liquidation value of the Corporate Debtor in accordance to Regulation 35 of CIR Regulations. The liquidation value was Rs. 1454.93 crores and average fair value of Corporate Debtor was Rs. 2496.36 crores. In the mean time, the RP approached Adjudicating Authority (AA) and took an extension of additional 90 days beyond 180 days to complete the process of CIRP which was allowed by an order dated 21<sup>st</sup> January, 2019.

### **Resolution Plans received from three (3) Resolution Applicants<sup>8</sup>**

Mr. Guhathakurtha received three resolution plans from three Resolution Applicants viz.

(a) Adani Power Limited

(b) Worlds Window Impex India Private Limited and

(c) Lakshwadeep Investments and Finance Private Limited

The 6<sup>th</sup>CoC meeting was called and the Resolution Applicants were invited to present their Resolution Plans. Lakshwadeep Investments and Finance Private Limited was considered non-responsive as they had not submitted their earnest money deposit (EMD).

**Adani Power Limited was identified as the best Resolution Applicant and its resolution plan is approved by CoC<sup>9</sup>**

It was on 19<sup>th</sup> March, 2019, the Process Advisor presented his final evaluation of the evaluation plans to the CoC and on that basis the best identified resolution plan was that of Adani Power Limited, which was in accordance with the terms of Regulation 38(3) of CIR Regulations.

On 1<sup>st</sup> April, 2019, the 10<sup>th</sup>CoC Meeting was called, wherein the Resolution Plan of the successful Resolution Applicant Adani Power Limited was placed and was approved by CoC with a voting share of 69.08%.

Post approval from CoC, the Resolution Professional, Mr. Abhijit Guhathakurtha issued a letter of intent on 6<sup>th</sup> April, 2019 to the successful Resolution Applicant Adani Power Limited in accordance with the RFRP which was accepted by Adani Power Limited on 9<sup>th</sup> April, 2019 and the company submitted a Bank Guarantee of 20 crores as performance security.

Abiding by the terms under section 30(6), the Resolution Professional submitted the Resolution Plan seeking an approval under section 31(1) of the Code.

**Highlights of the Resolution Plan<sup>10</sup>**

The said Resolution Plan includes the financial outlay as certified by the Resolution Professional including inter –alia :

- The unpaid CIRP costs will be paid in priority over payments to any other creditors on effective date.
- The claims of the operation creditors amounting to Rs. 291.32 crores.

- The claims of the Secured Financial creditors of Rs. 3349.54 crores.
- The liquidation value of the Corporate Debtor amounts to Rs. 1454.93 crores. As the value of liquidation of CD is lesser than the claims of Secured FC therefore the liquidation value would be utilized to pay off the OC claims.
- The Resolution Applicant proposed to pay an ex-gratia to the tune of Rs. 104.28 crores to the OCs (excluding the workmen and employees) within six (6) months from the Effective Date as mutually agreed upon with the relevant OC.
- It will make an upfront cash payment of Rs. 100.00 crores to the Secured FC on pro-rata basis.
- The RA will also infuse fresh funds of Rs. 594 crores to meet the CAPEX.
- The RA will infuse additional Rs. 480.00 crores as requirement towards compliances with environmental and other norms.


### **Concluding Notes**

The preamble of Insolvency & Bankruptcy Code, 2016 aims to promote resolution over liquidation. The first objective is “Resolution”. The purpose of resolution is to maximize the value of the assets of the Corporate Debtor and thereby of all creditors, which forms the second objective of IBC. The third objective is to promote entrepreneurship, availability of credit and balancing the interest of all stakeholders. The Code mentions Resolution Plan as a plan for the insolvency resolution of the CD as a going concern without strictly defining the Resolution Plan. Rather it leaves it open for RA to maximize the scope and value of the assets and balance the interest of all the stake holders.


Korba West Power Limited as the Corporate Debtor and Adani Power Limited as its successful Resolution applicant duly complied with the process of resolution as per I & B Code, 2016





## CIRP Timeline


- 
- 15th March, 1995
  - Date of incorporation of Korba West Power Company Limited.*

- 
- 26th July, 2018
  - CIRP of Korba West Power Company Limited admitted
  - Appointment of Abhijit Guhathakurtha as IRP


- 
- 7th August, 2018
  - Public Annoucments

- 
- 17th August, 2018
  - Submission of Claims*

- 
- 10th September, 2018
  - Appointment of Mr. Abhijit Guhathakurtha as RP*
  - 1st CoC Meeting held*

- 
- 9th October, 2018
  - 2nd CoC meeting conducted*
  - Appointment of other professionals*

- 
- 15th October, 2018
  - Expression of Interest by Proposed Resolution Applicant*

- 
- 1st April, 2019
  - Resolution Plan by Adani Power Limited approved*
  - 10th CoC Meeting held*

- 
- 6th April, 2019
  - Letter of Intent sent to RA Adani Power Limited*

## **Bibliography**

<sup>1</sup><http://www.mca.gov.in/mcafoportal/companyLLPMasterData.do>

<sup>2</sup><https://www.tofler.in/korba-west-power-company-limited/company/U40102MP1995PLCO09177/financials#existingCharges>

<sup>3</sup><https://ibclaw.in/initiation-of-cirp-by-corporate-applicant-under-section-10-of-the-ibc/>

<sup>4</sup>[https://ibbi.gov.in/webadmin/pdf/order/2018/Sep/26th%20July%202018%20in%20the%20matter%20of%20Korba%20West%20Power%20Co.%20Ltd.%20C.P.%20\(I.B\)%20No.%20190-10-NCLT-AHM-2018\\_2018-09-28%2010:18:05.pdf](https://ibbi.gov.in/webadmin/pdf/order/2018/Sep/26th%20July%202018%20in%20the%20matter%20of%20Korba%20West%20Power%20Co.%20Ltd.%20C.P.%20(I.B)%20No.%20190-10-NCLT-AHM-2018_2018-09-28%2010:18:05.pdf)

<sup>5</sup>[https://ibbi.gov.in/webadmin/pdf/order/2018/Sep/26th%20July%202018%20in%20the%20matter%20of%20Korba%20West%20Power%20Co.%20Ltd.%20C.P.%20\(I.B\)%20No.%20190-10-NCLT-AHM-2018\\_2018-09-28%2010:18:05.pdf](https://ibbi.gov.in/webadmin/pdf/order/2018/Sep/26th%20July%202018%20in%20the%20matter%20of%20Korba%20West%20Power%20Co.%20Ltd.%20C.P.%20(I.B)%20No.%20190-10-NCLT-AHM-2018_2018-09-28%2010:18:05.pdf)

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<sup>9</sup><https://ibbi.gov.in/uploads/order/87c920fcc479b7ab9823c42ef53c0140.pdf>

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