

NCLAT Upholds Takeover of SKS Power by Sarda Energy

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Mumbai: The National Company Law Appellate Tribunal (NCLAT) has upheld the tribunal's order approving the SKS Power Generation's (Chhattisgarh) acquisition by BSE-listed Sarda Energy & Minerals (SEML).

The unsuccessful bidders of SKS Power Generation (Chhattisgarh), including Torrent Power, Jindal Power and Vantage Point Asset Management Pte., had approached the appellate tribunal to challenge the lower tribunal's order.

"We do not find that any sufficient grounds have been made out within the meaning of Section 61(3)(ii) of the IBC (Insolvency and Bankruptcy Code) to interfere with the decision of the adjudicating authority (NCLT) approving the resolution plan of Sarda, in these appeals filed by unsuccessful resolution applicant," observed the bench preceded by Justice Ashok Bhushan and technical members Barun Mitra and Arun Baroka.

On August 13, Mumbai's National Company Law Tribunal approved the SKS Power Generation's (Chhattisgarh) acquisition by SEML. SKS Power Generation (Chhattisgarh) has admitted liabilities of around ₹2,697 crore, while the successful bidder's resolution plan proposed to pay about ₹2,000 crore to acquire the company.

The company was admitted under the corporate insolvency resolution process in April 2022, following an application filed by its lender Bank of Baroda. Before the tribunal's approval, the committee of creditors (CoC) led by State Bank of India and Bank of Baroda approved the reso-

lution plan with 100% voting in favour of Sarda Energy & Minerals. In this case, Sarda Energy & Minerals was represented by law firm Chandhiok & Mahajan and Agarwal Law Associates, and the company's resolution professional and the CoC were represented by law firm Trilegal and Cyril Amarchand Mangaldas, respectively. Subsequently, the unsuccessful bidders approached the appellate tribunal to challenge the NCLT's order. The unsuccessful bidders argued



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through their counsel that the resolution professional and the CoC of the company "selectively permitted" the successful resolution applicant to modify its commercial offer after the conclusion of the negotiation process on April 19, 2023.

"The case underscores the importance of transparency and adherence to the IBC framework, with the judiciary playing a limited role in interfering with the CoC's decisions unless material irregularities are evident," said Akshat Khetan, founder of AU Corporate & Legal Advisory Ser-

VICES. "The outcome reinforces the IBC's objective to ensure timely resolution and maximise asset value." SKS Power Generation (Chhattisgarh) set up a coal-based thermal power plant at Binkote and Durrumuda in Raigarh district of Chhattisgarh. The facility is in high demand because it is a rare working power plant available for sale with 25 years of fuel agreement accompanying a railway line.