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INSOLVENCY & BANKRUPTCY

Anark Aluminium, a joint venture of RAKIA, moves NCLT

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Anark Aluminium a joint venture between UAE's Ras Al Khaima Investment Authority ("RAKIA") and India's Penna Group has moved National Company Law Tribunal ("NCLT") under the Insolvency and Bankruptcy Code 2016 ("IBC"). This is the first instance where a joint venture of foreign government arms is filing insolvency petition under the IBC.

The joint venture had been set up in the wake of an MoU entered into between the Government of Andhra Pradesh and the Government of Ras Al Khaima for setting an aluminium refining plant and smelter involving Rs. 6000 crore at Visakhapatnam. For the supply of bauxite required for the project, Andra Pradesh Mineral Development Corporation ("APMDC") executed a bauxite supply agreement with Anarc Aluminium. Despite setting up the plant, Anark Aluminium couldn't commence mining operation due to various issues over mining of bauxite. Recently, Government of Andhra Pradesh has decided to cancel the bauxite supply agreement between Anark Aluminum and APMDC citing findings of the Comptroller and Auditor General's report and opposition of tribals against the mining. RAKIA also, on its part, commenced an arbitration proceeding against the Governments of India and Andhra Pradesh under India UAE Bilateral Investment Promotion and Protection Agreement.

In its insolvency petition before the NCLT Hyderabad, Anark Aluminium stated that it defaulted Rs. 3242 crores of Indian rupee loan and US$96 million of external commercial borrowing to a consortium of lenders headed by SBI.

IndiaLaw LLP is representing the consortium of lenders in this matter

Anrak Moves NCLT after AP Declines Bauxite Supply

JV between India's Penna & UAE's RAKIA first Indo-overseas firm to seek insolvency

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Hyderabad: In what is considered the first instance involving a joint venture with a foreign government arm seeking insolvency, Anrak Aluminium, the joint venture between India's Penna group and UAE's Ras Al Khaimah Investment Authority (RAKIA), has moved the National Company Law Tribunal (NCLT).

The move comes close on the heels of RAKIA serving an arbitration notice on the Indian government and Andhra Pradesh seeking either to fulfil commitment to supply bauxite or pay compensatory damages on its investment of $44.71 million. The development also comes weeks after Andhra government decided to cancel the agreement that the Andhra Pradesh Mineral Development Corporation (APMDC) had entered into with Anrak Aluminium to supply bauxite during the erstwhile Congress government headed by YS Rajasekhara Reddy.

Interestingly, few weeks back Anrak approached the Odisha government seeking bauxite resources to be mined either directly or through government-owned Odisha Mining Corporation (ODC) to turn its Andhra project viable. The Indo-UAE joint venture has also offered to set up an aluminium smelter and captive power plant in Odisha, involving around Rs 9,000 crore of investments.

A decade ago in February 2007, Andhra Pradesh government had entered into a MoU with the government of Ras-al Khaimah for an aluminium refining plant and smelter involving ₹6,000 crore, backed by bauxite supplies from APMDC, at Visakhapatnam.

The project of Penna-RAKIA joint venture had proposed to set up a 1.5 million tonnes a year of alumina refinery along with a 225MW coal-based co-generation power plant. APMDC had agreed to supply bauxite from four blocks of Jerrala deposits with mineable reserves of over 200 million tonnes. However, despite the plant getting ready for commercial operations by March 2013, Anrak Aluminium couldn't commence mining operations owing to various controversies over bauxite mining in tribal areas and couldn't begin alumina refinery operations owing for want of bauxite.

Responding to arbitration notice from RAKIA, served under the India-UAE bilateral investment promotion and protection agreement (BIPA), India's Ministry of Mines told the foreign firm that the dispute doesn't fall under BIPA purview and advised resolving it under Indian laws.

Last April, Andhra Pradesh government had decided to cancel the bauxite supply agreement between APMDC and Anrak Aluminium, citing discrepancies in the agreement pointed out by the Comptroller and Auditor General (CAG) and opposition by tribals on bauxite mining.

When contacted, the APMDC vice-chairman Ch Venkaiah Chowdary said, "After examining all the issues pertaining to the project, the Andhra Pradesh government has taken a decision to cancel the agreement in the public interest."

In its insolvency petition filed before the Hyderabad bench of NCLT, Anrak Aluminium said it defaulted ₹3,242 crore of rupee loans and $96 million (approximately ₹617 crore) of external commercial borrowings to the lenders' consortium headed by SBI.

"Anrak Aluminium, which has been in dialogue with its lenders, views that it is better to go in for insolvency and put the assets to productive use than scrapping the idle plant that causes maximum losses," Sajith VK, partner with India Law LLP, representing the lenders' consortium headed by SBI, told ET.

Anrak had submitted to NCLT that lenders had also appointed SBI Caps and RBSA to conduct techno economic viability study with outside bauxite where both reports confirmed that "the operations with outside bauxite is not viable with current debt levels."