

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Mentioned Matter)**

(Hearing by Physical / Virtual Hearing)

PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL

: Ms. ANURADHA SANJAY BHATIA – MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 04.09.2023 AT 10:30 A.M.

| TC/CP. Nos. | CA/IA No. | Section/ Rule | Name of Parties |
|---|------------------|---------------------------------|--|
| IA(IBC)/340/2023 In CP/58/9/AMR/2020 | | Sec.12A R/w 30A IBBI | Namburu Naga Venkata Pardha Saradhi (IRP) of BGR Energy Systems Ltd |

ORDER

Mr. Namburu Naga Venkata Pardha Saradhi, IRP present in person. Heard.

IA(IBC)/340/2023 is allowed, vide separate orders.

**Sd/-
MEMBER TECHNICAL**

**Sd/-
MEMBER JUDICIAL**

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI**

**IA(IBC)/340/2023
in
CP (IB)/58/9/AMR/2020**

**Under Section 12A of the Insolvency and Bankruptcy Code, 2016 Read
with Regulation 30 A of the Insolvency and Bankruptcy Code
(Corporate Insolvency Resolution Process) Regulations, 2016 Read
with Rule 11 of NCLT Rules, 2016**

In the matter of
M/s. BGR ENERGY SYSTEMS LIMITED

BETWEEN:

Mr. Namburu Naga Venkata Pardha Saradhi,
Interim Resolution Professional for
M/s. BGR Energy Systems Limited,
Regd.No. IBBI/IPA-003/ICAI-N-00415/2022-2023/14118,
Flat No.A-5, Pannamgadu Industrial Estate,
Ramapuram Post, Sullurpet (T),
Nellore District, Andhra Pradesh-524401.

...Applicant/IRP

Order dated: 04.09.2023

Coram:

Justice Telaprolu Rajani, Member (Judicial).

Hon'ble Anuradha Sanjay Bhatia, Member (Technical)

Parties/Counsels present:

For the Applicant: Mr.Namburu Naga Venkata Pardha Saradhi, IRP.

ORDER

1. This Application is filed by the Applicant/ Insolvency Resolution Professional (IRP) under Section 12A of the Insolvency and Bankruptcy Code, 2016 Read with Regulation 30-A of the Insolvency and Bankruptcy Code (Corporate Insolvency Resolution Process) Regulations, 2016 read with Rule 11 of NCLT Rules, 2016 seeking to withdraw the CP (IB)/58/9/AMR/2020, which is admitted by this Tribunal vide its order dated 01.09.2023. Though Section 12A only permits the application to be filed with approval of ninety nine percent voting share of the Committee of Creditors, which means that it has to be filed only after the constitution of Committee of Creditors (CoC). Regulation 30A(1)(a) of the IBC (CIRP) Regulations, 2016 permits such application to be filed before inviting the Expression of Interest (EoI). The Regulation 30-A of the IBC (CIRP) Regulations, 2016, is reproduced under:

“30-A Withdrawal of application –

- (1) An application for withdrawal under Section 12-A may be made to the Adjudicating Authority –*
 - (a) before the constitution of the committee, by the applicant through the Interim Resolution Professional”*
- (2) The application under sub-regulation (1) shall be made in Form FA of the 67[Schedule-I] accompanied by a bank guarantee-*
 - (a) towards estimated expenses incurred on or by the interim resolution professional for purposes of regulation 33, till the date of filing of the*

application under clause (a) of sub-regulation (1); or

(b) towards estimated expenses incurred for purposes of clauses (aa), (ab), (c) and (d) of regulation 31, till the date of filing of the application under clause (b) of sub-regulation (1).

(3) Where an application for withdrawal is under clause (a) of sub-regulation (1), the interim resolution professional shall submit the application to the Adjudicating Authority on behalf of the applicant, within three days of its receipt.”

2. The IRP states that the application under Section 12A was submitted to him. It is further submitted that complete fee under Regulation 30A (1) (c) & (d) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 was received, hence Bank Guarantee as prescribed under Section 30A(2) need not be filed along with the Application and he filed Form- FA. The same is recorded. Considering that Regulation 30A (1) (c) & (d) are complied with, the Bank Guarantee as prescribed under Regulation 30A (2) is dispensed with. A judgment of the **Supreme Court between Abhishek Singh vs. Huhtamaki PPL Ltd & Anr**, can be taken support of while allowing with this Application. In the said judgment also the facts reflect that the application under section 12A was filed before the constitution of Committee of Creditors (CoC). The Supreme Court observed that in the circumstances mentioned therein, the NCLT should have exercised its inherent powers to meet the ends of justice. It is further observed that Regulation 30A of IBBI

Regulations provide complete mechanism for dealing with the applications filed under such provision. Since the expenses of the IRP are taken care of under the said provision and safeguards provided under Regulation 30A of IBBI Regulations are fulfilled by the Operational Creditor (OC) and since there is no complainant in that regard by the IRP, there need not be any demur to allow this Application. Hence, I.A (IBC)/340/2023 is allowed and permission is granted to withdraw the Petition. Consequently, CP (IB)/58/9/AMR/2020 is dismissed as withdrawn.

Accordingly, CP(IB)/58/9/AMR/2020 along with I.A(IBC)/340/2023 are disposed of.

Sd/-

MEMBER TECHNICAL

Sd/-

MEMBER JUDICIAL

Swamy Naidu(PS)