IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT– I) CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **03.03.2025** THROUGH VIDEO CONFERENCE

PRESENT: HON'BLE SHRI SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF : BR Green Industries Pvt Ltd
Vs
Svaryu Energy Ltd

MAIN PETITION NUMBER : CP(IB)/193(CHE)/2023

(IA/MA) APPLICATION NUMBERS

IA(IBC)/141(CHE)/2025

ORDER

CP(IB)/193(CHE)/2023
IA(IBC)/141(CHE)/2025

Present: Mr. Pawan Jhabakh, Ld. Counsel for IRP.
Ms. Santhya, Ld. Counsel for Bank of Baroda.
Ld. Sr. Counsel Shri. R. Sankaranarayanan and Mr. Arjun Suresh for Medha Servo Drives (P) Ltd.
Mr. Kumarpal Chopra, Ld. Counsel for Corporate Debtor.

Ld. Counsel for the IRP submits that the dues of the IRP has been paid including the CIRP cost by the Corporate Debtor.

Vide separate Order pronounced in open Court, Application for withdrawal under Section 12A of IBC is **allowed**.

The Petition is accordingly **dismissed as withdrawn.**

File be consigned to records.

-sd-
[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)

-sd-
[SANJIV JAIN]
MEMBER (JUDICIAL)

MS

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI

In the matter of ***M/s. Svaryu Energy Limited***

IA/IBC/141/2025
In
CP/IB/193/2023

(filed under Section 12 A of the Insolvency and Bankruptcy Code, 2016 along with Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016)

Surinder Babbar,
Interim Resolution Professional of Svaryu Energy Limited
IBBI/IPA-001-IP-P-02534/2021—2022/13878
C13/54, 2nd Floor, Sector 3 Rohini, North West,
National Capital Territory of New Delhi- 110085

Order pronounced on ***3rd March, 2025***

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Present:

For Applicant : Mr. Pawan Jhabakh, Ld. Counsel for IRP
For Corporate Debtor : Mr. Srinath Sridevan, Ld. Sr. Counsel &
Mr. Pranav, Ld. Counsel

ORDER

This application IA(IBC)/141(CHE)/2025 has been filed by the Interim Resolution Professional of Svaryu Energy Limited, the Corporate Debtor under Section 12A of IBC seeking permission to withdraw Company Petition *CP IB*

No. 193 of 2023 whereby Corporate Debtor was admitted into Corporate Insolvency Resolution Process (CIRP) on 18th December 2024 based on the petition filed by BR Green Industries Private Limited, the Operational Creditor under section 9 of the Insolvency and Bankruptcy Code, 2016. It is stated that by the 18th December 2024 order, the Applicant was appointed as the Interim Resolution Professional (hereinafter referred to 'the IRP').

2. It is stated that as soon as the copy of Order was made available, admitting Corporate Insolvency Resolution Process against the Corporate Debtor, a public announcement was made on 24th December 2024 in Form A, under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It is stated that the public announcement was made in English newspaper "Financial Express", and in regional language newspapers being "Makkal Kural" and "Prathakal".

3. It is stated that pursuant to the Public Announcement, claims with proof were to be lodged with the Applicant on or before the 7th January 2025. It is stated that claims to an extent of Rs.1398,93,77,532.26 (Rupees One Thousand Three Hundred and Ninety Eight Crores, Ninety Three Lakhs, Seventy Seven Thousand, Five Hundred and Thirty Two, and Twenty Six Paisa) were received which were provisionally considered, subject to the process of substantiation,

verification and reconciliation. The list of claims is enclosed and annexed along with the Application as Annexure A3.

4. It is stated that the Corporate Debtor intends to revive the business of the Corporate Debtor as a going concern. It is stated that a Settlement Agreement was executed on 03.01.2025 with the Operational Creditor, "BR Green Industries Private Limited". The terms and conditions of the Settlement Agreement agreed by the Operational Creditor are enclosed along with this Application as Annexure A 4.

5. It is stated that along with the Settlement Agreement dated 3rd January 2025, the Operational Creditor issued Form FA to initiate withdrawal of the Corporate Insolvency Resolution Process on 13th January 2025. Copy of Form FA is appended:

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Annexure A5

FORM FA
APPLICATION FOR WITHDRAWAL OF CORPORATE INSOLVENCY RESOLUTION PROCESS
[Under Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]

13th January 2025

To
The Adjudicating Authority
National Company Law Tribunal
Chennai
Through
Mr. Surinder Babbar (email – ip.surinderbabbar@gmail.com)
(Interim Resolution Professional of Svaryu Energy Limited)
Registration No. IBBI/IPA-001/IP-P-02534/2021-2022/13878

Subject: Withdrawal of Application admitted for corporate insolvency resolution process of Svaryu Energy Limited

I, Surya Dev S/o Sh Janardhan (Bearing Aadhar no 854061231110) authorized representative of BR Green Industries Pvt Ltd had filed an application bearing IBA/193/2023 before the Adjudicating Authority under Section 9 of the Insolvency and Bankruptcy Code, 2016. The said application was admitted by the Adjudicating Authority on 18th December 2024 bearing C.P IBA/193/2023.

2. I hereby withdraw the application bearing CP IBA/193/2023 filed by me before the Adjudicating Authority under Section 9 of the Insolvency and Bankruptcy Code, 2016.

3. I have paid the amount of the CIRP cost to the IRP as per sub-regulation (2) of CIRP Regulation 30A.

BR GREEN INDUSTRIES PRIVATE LIMITED
DELHI

(Signature of the applicant)

Date: 13th January 2025
Place: New Delhi

Recd

6. It is stated that the Committee of Creditors was not formed and therefore this application has been filed by the Applicant in accordance with the provisions of the Insolvency & Bankruptcy Code 2016 and the regulations made thereunder. Further the Counsel for the IRP on instruction has stated that since the CIRP cost and his fees have been fully paid, there is no requirement of bank guarantee as stipulated under Regulation 30A (2) of CIRP Regulations 2016.

7. The present application under Section 12A of IBC has been filed with the following prayers:

i) *That this Adjudicating Authority may allow the Application and permit the withdrawal of the Corporate Insolvency Resolution Process against the Corporate Debtor initiated pursuant to the order dated 18th December 2024 in CP IB No. 193 of 2023;*

ii) *Pass such other orders and further orders, as this Hon'ble Tribunal may deem fit and appropriate.*

8. It is stated that the Corporate Debtor filed an appeal before the Hon'ble NCLAT in *Company Appeal AT CH INS No 10/2025*, against the order admitting Corporate Debtor in CIRP under Section 9 Petition filed by the Operational Creditor stating that parties have entered into a settlement agreement, requesting stay of the CIRP process till Section 12A application is disposed by this tribunal. Hon'ble NCLAT vide order dated 16th January 2025 stayed further proceedings on the impugned admission order of the tribunal till the application of 12A is heard . The copy of the order of Hon'ble NCLAT is reproduced below:

ORDER
(Hybrid Mode)

16.01.2025: This appeal is filed by the CD against the order by which an application filed under Section 9 of the Code by the Operational Creditor has been admitted.

Counsel for the Appellant has submitted that the parties have entered into a settlement agreement on 03.01.2025 pursuant to which an application under Section 12A has been filed on 14.01.2025.

It is submitted that the said application has not been listed for hearing because of the Holiday but it is likely to be listed in near future before the Tribunal.

Counsel for the Appellant has prayed that till the application, under Section 12A is taken up for hearing, further proceedings in pursuance of the impugned order may be stayed in order to avoid any kind of complication.

9. The present application IA (IBC) 141 /2025 was listed for hearing before the tribunal on 24th January 2025, 07th February 2025 and 14th February 2925. On 24th January 2025, the tribunal ordered the applicant IRP to send notices to all the creditors who have submitted their claims to enable them to provide their responses.

10. The Applicant Liquidator filed a memo dated 04.02.2025 enclosing the list of claims received. There are 23 claims for Rs.1398.94 crore received by him as under:

List of Claims received

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Annexure A3

List of Claim Received -in the case of Svaryu Energy Limited

S. No.	NAME	TOTAL CLAIM AMOUNT (RS.)
1.	Bundelkhand Saur Urja Limited	₹ 2,76,85,00,000.00
2.	Tirupati Plastomatics Pvt. Ltd.	₹ 53,06,541.00
3.	EMMVEE Photovoltaic Power Private Limited	₹ 27,69,61,547.00
4.	Earth Solar Private Limited	₹ 27,35,94,541.00
5.	Coal India Limited	₹ 2,47,47,00,000.00
6.	BR Green Industries Pvt. Ltd.	₹ 4,68,69,007.23
7.	Medha Servo Drives (P) Ltd, Hyderabad	₹ 72,01,05,126.21
8.	Encorp Powertrans Pvt. Ltd.	₹ 10,04,12,364.00
9.	Smartpaddle Technology Pvt. Ltd.	₹ 2,14,30,843.00
10.	KEI industries Limited	₹ 85,86,990.00
11.	NSDL	₹ 9,565.64
12.	IT Chennai	₹ 2,74,51,11,640.00
13.	Union Bank of India	₹ 32,49,22,192.00
14.	Hooghly Infrastructure Pvt. Ltd.	₹ 1,50,00,000.00
15.	Bowreah Jute Mills Pvt. Ltd.	₹ 1,50,00,000.00
16.	Mitcon Credentia Trusteeship Services Limited on bahalf of Alpha Yield O23 Trust	₹ 13,42,55,137.00
17.	PNB, Linking Road, Bandra West	₹ 7,05,56,557.64
18.	Kapil Nanjibhai	₹ 11,52,500.00
19.	Ramesh Dalvi	₹ 6,28,533.00
20.	Joydeb Bose	₹ 3,20,665.00
21.	Chandrakumar Rathanam	₹ 10,10,294.54
22.	SJVN Green Energy Limited's	₹ 3,57,42,66,763.00
23.	REPP, NLC India Limited	₹ 41,06,76,725.00
	Total	₹ 13,98,93,77,532.26

11. When the matter was listed for hearing on 14.02.2025, apart from the Counsels of IRP, Operational Creditor and Corporate Debtor, other Counsels for creditors were also present in person and through VC as under:

i) Ld. Sr. Counsel Shri. R. Sankaranarayanan for Medha Servo Drives (P) Ltd.

ii) Ld. Counsel Shri. T. Ravichandran for Bank of Maharashtra.

iii) Ld. Counsel Shri. Adeesh Anto for KEI Industries Limited.

iv) Ld. Counsel Shri. Pranay Mohan Govil for Coal India Ltd.

v) Ld. Counsel Shri. Prashant Ranjan for BSUL.

vi) Ld. Counsel Aashish Gupta for Kiran Infra Engineers Ltd.

vii) Ld. Counsel Shri. Kishore Balasubramaniam for NLC.

viii) Ld. Counsel Ms. Lavanya for Zetwork Manufacturing Business Pvt. Ltd.

ix) Ld. Counsel Ms. Hena Datta for EMMVEE Photovoltaic Power Pvt Ltd.

x) Ld. Counsel Mr. Venkata Sivakumar, for Operational Creditor in CP/121/2024.

12. During the hearing on 14th February 2025, Ld. Counsel for Corporate Debtor elaborated the steps taken by Corporate Debtor and also provided the details of claimants along with the nature of claims. It is stated that Claimants No 1, 14, 15, 22 and 23 are the customers for whom the Corporate Debtor undertakes EPC Contracts. The claims filed by them aggregate to Rs.678.35 crore (approx.) out of the total claims of Rs.1398.94 crore. It is stated that these are not the real claims but running accounts from the current projects executed by the Corporate Debtor. It is further stated that Corporate Debtor has initiated

arbitration proceedings against COAL India (Sl No 5) which has submitted a claim for Rs. 247.47 crore. With regards to Income Tax claim (Sl No 12) of Rs. 274.51 crore, it is stated that an appeal has been filed, contesting the claim. Further, it is pointed out that the financial creditors (Sl No 13, 16 and 17) who have submitted claims worth Rs. 52.96 crore were neither present during the hearing, nor made any objection to Section 12 A withdrawal application.

13. Ld Senior Counsel R. Sanakara Narayanan on behalf of Medha Servo Drives Pvt Ltd, (which is sub contractor to the Corporate Debtor) submitted that bank guarantee of Rs.17.19 crore provided by Medha to Neyveli Lignite Corporation (NLC) on behalf of Corporate Director is due for renewal and if the bank guarantee is not renewed, NLC may invoke the bank guarantee. Medha Servo Drive had requested the IRP to include the bank guarantee commission as part of CIRP Cost , which was not agreed to by the IRP. Ld. Sr. Counsel submitted that if Corporate Debtor is admitted into CIRP, there is a possibility of NLC invoking the bank guarantee. Further, it was submitted that out of the total claims of Rs.1398.94 crore submitted to IRP, the Corporate Debtor settled only the claim to the tune of Rs. 4.69 crore of the Operational Creditor who moved the Section 9 petition admitting the Corporate Debtor into CIRP and on that basis the present application under Section 12A has been

filed. Ld. Sr. Counsel stated that Corporate Debtor has not made arrangements for settlement of other claimants.

14. Ld. Senior Counsel quoted extensively from Hon'ble Supreme Court's Judgement in ***GLAS Trust Company LLC Vs BYJU Ravindran and Ors*** by pointing out that initially, *when the petition is filed by the financial creditor, operational creditor or corporate applicant, as the case may be, the proceedings are in personam and the only relevant stakeholders are the applicant creditor and the corporate debtor. However, once the petition is admitted and CIRP is initiated, several significant changes take place, including transfer of the management of affairs of the corporate debtor to the IRP, declaration of the moratorium, and collation of the claims against the corporate debtor. Therefore, the proceedings now changed character – they become in rem and are no longer the preserve of only the applicant creditor and the corporate debtor and even creditors who were not the original applicants, become necessary stakeholders.*

15. The creditors Coal India Ltd, Medha Servo Drives (P) Ltd, KEI Industries Limited, REPP, NLC India Limited opined against the admission of 12A application, while the Creditors EMMVEE Photovoltaic Power Private Limited, Zetwork Manufacturing Business Pvt Ltd and Kiran Infra Engineers Ltd

opined in favour of admission of 12A application. Other creditors despite service were not present nor have given any opinion on the application.

16. Ld. Sr. Counsel for Corporate debtor has stated that Corporate debtor is trying to reach out to various creditors about future course of action. Ld. Sr. Counsel stated that even though claims for Rs.1398.94 crore have been received by IRP, except for Medha Servo Drives Pvt Ltd (Sub Contractor), no one has objected the admission of present application under 12A of IBC for withdrawal of CIRP. Ld. Sr. Counsel stated that the Corporate Debtor is engaging with Medha Servo Drives Pvt Ltd to find out an amicable solution. Ld. Sr. Counsel submitted that dues of KEI Industries have been settled. In addition to the submissions made on the hearings, Ld. Sr. Counsel for Corporate Debtor filed a memo (SR No 679 dated 18.02.2025) giving the brief particulars of the Corporate Debtor as under:

Svarayu Energy Limited – Company Profile

Corporate Debtor is an unlisted public company (formerly known as Refex Energy Ltd) engaged in Solar EPC with expertise in **E**ngineering, **P**rocurement and **C**onstruction of large scale Solar Projects. It has completed more than 750 MW+ solar projects. The company is providing work to 160 direct employees and 1200 indirect working force working at execution and maintenance sites. The turnover of the company is Rs. 312 crore (year before last), Rs. 220 crore (Last Year) and projected to be Rs.350 crore for current year. It is said to have an order book of Rs.600 crore to be executed.

17. We have considered the contentions of learned Counsels of the parties and perused the records.

18. In the present case, the application has been filed for the withdrawal of CIRP, before the formation of CoC, based on the settlement arrived at between the Operational Creditor and the Corporate Debtor.

19. Section 12A read with Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 provide that Adjudicating Authority may allow withdrawal of application admitted under Section 7 or Section 9 of IBC, in such a manner as may be prescribed. Section 12A and Regulation 30A are reproduced below for ready reference:

> ***12A. Withdrawal of application admitted under section 7, 9 or 10.****—The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified.*

30A Withdrawal of application

(1) An application for withdrawal under section 12A may be made to the Adjudicating Authority –

(a) before the constitution of the committee, by the applicant through the interim resolution professional;

(b) after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be:

Provided that where the application is made under clause (b) after the issue of invitation for expression of interest under regulation 36A, the applicant shall state the reasons justifying withdrawal after issue of such invitation.

(2) The application under sub-regulation (1) shall be made in Form FA of the 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.

(4) Where an application for withdrawal is under clause (b) of sub-regulation (1), the committee shall consider the application, within seven days of its receipt.

(5) Where the application referred to in sub-regulation (4) is approved by the committee with ninety percent voting share, the resolution professional shall submit such application along with the approval of the committee, to the Adjudicating Authority on behalf of the applicant, within three days of such approval.

(6) The Adjudicating Authority may, by order, approve the application submitted under sub-regulation (3) or (5).

(7) Where the application is approved under sub-regulation (6), the applicant shall deposit an amount, towards the actual expenses incurred for the purposes referred to in clause (a) or clause (b) of sub-regulation (2) till the date of approval by the Adjudicating Authority, as determined by the interim resolution professional or resolution professional, as the case may be, within three days of such approval, in the bank account of the corporate debtor, failing which the bank

guarantee received under sub-regulation (2) shall be invoked, without prejudice to any other action permissible against the applicant under the Code.

20. Hon'ble Supreme Court in **Glas Trust Company LLC Vs BYJU Raveendran & Ors** in *Civil Appeal No 9986 of 2024* has comprehensively discussed about withdrawal of CIRP application in various situations. The relevant paras are reproduced below:

57. The constitutional validity of various provisions of the IBC, including Section 12A was challenged before this Court. In ***Swiss Ribbons*** *(supra), a two-judge bench of this Court, speaking through Justice Rohinton Fali Nariman, inter alia upheld the constitutionality of Section 12A. One of the questions that arose before this Court, in this context, was what happens if withdrawal is sought after admission of the application, but before the CoC is constituted. This Court observed:*

*"**82.** It is clear that once the Code gets triggered by admission of a creditor's petition under Sections 7 to 9,* ***the proceeding that is before the adjudicating authority, being a collective proceeding, is a proceeding in rem. Being a proceeding in rem, it is necessary that the body which is to oversee the resolution process must be consulted before any individual corporate debtor is allowed to***

settle its claim. A question arises as to what is to happen before a Committee of Creditors is constituted (as per the timelines that are specified, a Committee of Creditors can be appointed at any time within 30 days from the date of appointment of the interim resolution professional). We make it clear that at any stage where the Committee of Creditors is not yet constituted, a party can approach NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the parties concerned and considering all relevant factors on the facts of each case.

Para 58

From the above observations of this Court in ***Swiss Ribbons*** *(supra), the following positions of law may be deduced:*

a. Once the petition instituted by a creditor is admitted, the proceedings before the NCLT become a 'collective proceeding' or a proceeding in rem. Thus, the body which oversees the resolution process, i.e. CoC must be consulted before allowing the claim to be settled;

b. This Court recognized that there was a lacuna in relation to cases where the CoC had not been formed. Accordingly, it was held that, in such cases, *the party can approach the NCLT directly, and the NCLT may exercise its inherent powers under Rule 11 to allow or disallow the application for settlement/withdrawal. However, given the in rem nature of the proceedings, such an application must be decided only after hearing all the parties concerned and considering the relevant factors in the case;------*

Para 63

63. In essence, after a series of deliberations by the legislature, the executive and nudges by this Court, the framework created by Rule 8 of the NCLT Rules and Section 12A of the IBC read with Rule 30A of the CIRP Regulations lays down an exhaustive procedure for the withdrawal of an application filed by creditors under Sections 7, 9, or 10 of the IBC. Withdrawal may be sought at four stages, all of which have a procedure prescribed under the existing framework. These may be summarized as follows:

i). Before the application under Sections 7, 9 or 10 is admitted by the NCLT.

ii) After an application under Sections 7, 9, or 10 is admitted, but before the CoC has been constituted.

iii) After an application under Section 7, 9 or 10 is admitted, the CoC has been constituted and the invitation for expression of interest has not been issued.

iv) After an application under Section 7, 9 or 10 is admitted, the CoC has been formed and the invitation for expression of interest has been issued.

21. The present case falls in the second situation *i.e.* after an application under Sections 7, 9, or 10 is admitted, but before the CoC has been constituted. The relevant portion of the above judgement is reproduced as under:

Although Section 12A continues to be silent on this aspect, after the decision in Swiss Ribbons (supra), Regulation 30A was amended to provide for this eventuality. An application for withdrawal in such cases may be made by the applicant through the IRP. The IRP will then place the application before the NCLT, which may pass an order either approving or rejecting the application. As noted above, once the application has been admitted, the proceedings are no longer the sole preserve of the applicant creditor and the corporate debtor. They are now in rem and at this stage, the NCLT must hear the concerned parties and consider all relevant factors before approving or rejecting the application for withdrawal. The NCLT being a quasi-judicial body, must not act as a mere post *office, which stamps and approves every settlement agreement, without application of judicial mind.*

22. Rule 11 of NCLT Rules 2016 deals with the inherent powers of NCLT as under:

> ***11. Inherent Powers.-*** *Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.*

23. Hon'ble NCLAT in **ICICI Prudential Asset Management Company Ltd. Vs. Anand Divine Developers Pvt. Ltd.** in *Company Appeal (AT) (INS) No. 703 of 2022* has dealt with the use of inherent power by the tribunals:

> <u>Invocation of an `Inherent Power':</u>
>
> *32. To be noted, that an `Inherent Power', is to be pressed into service by a `Tribunal' / `an Appellate Tribunal' based on the well settled proposition of `Law' that an `Act of Tribunal' / `Court of Law', shall cause any `prejudice', hardship, inconvenience to an `Homo-sapien' in the considered opinion of this `Tribunal'. In aid of delivering justice to the Stakeholders, an `Inherent Power' can be exercised by a `Tribunal'. An inherent powers' breadth is co-extensive with the necessity.*

24. In the present case, before deciding the application for withdrawal of CIRP proceedings, based on legal provisions in the Code, Regulations and jurisprudence available, after hearing all the stakeholders, going through the representations by all the stakeholders and also using the available information in public domain, the following conclusions emerge:

i) Corporate Debtor is an EPC company which has completed 750+ MW solar power projects in India.

ii) It employs 160 direct employees and 1200 indirect workforce.

iii) It has an unexecuted order book of Rs. 600 cr.

iv) Turnover for the years FY2020-2021, FY2021-2022 and FY 2022-2023 of the Corporate Debtor are Rs.212.03 crore, Rs. 310.48 crore and Rs.323.66 crore respectively.

v) Acuite Ratings & Research, a rating agency vide press release dated 06th May 2024, downgraded the rating of Pass through Certificates of Rs.15 crores to ACUITE D.

vi) Press release dated 30th September 2024 by MITCOIN Credentia Trusteeship Services Ltd as Trustee of ' Pass Through Certificates' of Rs.15 crores issued by Corporate Debtor stated that Svaryu

Energy Limited has failed to pay interest amount for September 2024.

vii) Almost all the counsels of the creditors (Claimants) who made submission during the hearing have stated that they are not opposing the application for withdrawal of CIRP, provided their dues are taken care by the Corporate Debtor.

viii) The Corporate Debtor, has submitted that the Corporate Debtor is engaging with various stakeholders regarding the future plans of the Corporate Debtor including settlement of claims of the stakeholders.

25. While deciding on the application for withdrawal of CIRP process, it is better to understand the **impact of insolvency proceedings** on a Corporate Debtor which is a going concern, where the operations come to a standstill and the following **key challenges** emerge:

- **Liquidity crisis:**

  Inability to meet immediate debt obligations due to cash flow issues, impacting daily operations and ability to pay suppliers and employees.

- **Credit restrictions:**

Difficulty in securing new credit lines from banks and vendors as lenders become cautious due to the insolvency proceedings.

- **Operational disruptions:**

  Potential for operational disruptions due to creditor actions like legal suits, asset attachment, and customer uncertainty.

- **Management challenges:**

  Loss of control over decision-making during the CIRP, as a Resolution Professional takes over management of the company.

- **Legal complexities:**

  Navigating intricate insolvency laws and procedures, including dealing with different types of creditors (financial, operational), and potential disputes over debt claims.

- **Valuation challenges:**

  Accurately valuing the company's assets during insolvency proceedings, which can impact the resolution plan and creditor recoveries.

- **Stakeholder conflicts:**

  Balancing the interests of different stakeholders such as creditors, shareholders, employees, and suppliers, who may have conflicting demands during the resolution process.

- **Reputation damage:**

  Negative publicity associated with insolvency proceedings can harm the company's brand image and customer confidence.

- **Time-consuming process:**

  Insolvency proceedings can be lengthy and complex, leading to delays in reaching a resolution and incurring significant legal costs.

26. <u>Balancing the challenges faced by Corporate Debtor during CIRP and assurances given by the Corporate Debtor, we are of the view that one more opportunity may be provided to the Corporate Debtor to manage its own affairs, by coming out of the CIRP.</u>

27. The Corporate Debtor has to use the opportunity to come out of the current situation, for which the Directors of the Corporate Debtor have to play a crucial role. The role of Directors in such a situation is brought out eloquently in the article **'Insolvency Code and Its impact on Role of Directors'** (Source: Independent Directors Databank). Extracts of the same are reproduced for reference :

> *The directors of a company are responsible for management of the company and under **Section 166 of the Companies Act, 2013** (the Act), the director should act in good faith in order to promote the objects of the company for the benefit of*

all stakeholders. Section 166 of the Act does not expressly recognize duty of directors in the event of potential or actual insolvency. Once the company is under financial distress, the duties of the directors shift to maintaining the company as going concern. In developed insolvency jurisprudence, above period is known as twilight period and is considered as the period between the point of knowledge or awareness of no real prospects of avoiding an insolvency proceeding against the company and its actual commencement. During the ***twilight zone****, directors are expected to exercise reasonable skill, care and diligence and have a duty to protect the interests of the corporate creditors and preserve the assets of the company so that the creditors may ultimately realize the debt out of those assets. The twilight period is a challenging time for distressed companies and their directors as they have responsibility to keep business afloat as well act in in the interest of creditors also. During financial distress, many directors are reluctant to cross the line between management and governance. Such financial difficulties limit the ability of the company to raise further resources, impacts goodwill, and adversely affect the rating of the company. However, deep board engagement with management is required to provide guidance to the management to enable them to <u>take proactive steps to overcome financial distress</u>.*

The proactive actions may inter alia include plan for deferring or meeting liability by additional borrowings, sale of assets, working capital management, restructuring of borrowings, etc. including initiating corporate insolvency resolution process by the company itself under Section 10 of the Code. Above actions ensures that not only stakeholders are not caught with sudden adverse actions but also receive co-operation from stakeholders in overcoming difficulties. The directors are expected during financial difficulty period to act in the bona *fide interests of the creditors and simultaneously ensure that adequate steps are taken to keep company off insolvency. Above require board to have deeper engagement with the management to guide them to overcome difficulties and take correct decisions.*

28. Based on the above analysis, after hearing the stakeholders and based on the assurance given by the Corporate Debtor, the Tribunal by using its *inherent powers under Rule 11 of NCLT Rules 2016,* ***allow*** the present Application *IA(IBC)141/CHE/2025*. In the circumstances, CP(IB)/193(CHE)/2023 stands **withdrawn.** Consequently, the CIRP initiated against the Corporate Debtor also stands withdrawn.

29. The Applicant is directed to hand over the management to the Board of Directors , whose powers stood suspended by virtue of the initiation of the CIRP by this Tribunal while admitting the Petition in CP(IB)/193(CHE)/2023 vide Order dated 18.12.2024. The Corporate Debtor is released from all rigours of the IBC, 2016. The Applicant is discharged from all his responsibilities. The Corporate Debtor shall operate through its own Board.

30. File be consigned to records.

-Sd-	**-Sd-**
VENKATARAMAN SUBRAMANIAM	**SANJIV JAIN**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)