

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH, KERALA

CP(IBC)/23/KOB/2021

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016)

Order delivered on: 07.01.2022

Coram:

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)  
Hon'ble Mr. Shyam Babu Gautam, Member (Technical)

In the matter of:

Raychem-RPG Private Limited  
RPG House, 463, Dr. A. B Road,  
Worli, Mumbai-400030

.... Applicant/Operational Creditor

**Versus.**

Soura Natural Energy Solutions Pvt. Ltd  
X/126 G, 1<sup>st</sup> Floor, SNDP Building  
NH Junction, Chirangara, Koratty P.O  
Chalakyud Thrissur Kerala-680308

... Respondent/Corporate Debtor

Appearance (through Video conferencing):

For Applicant/Operational Creditor : Shri. Manav Thomas, Advocate

For Respondent/Corporate Debtor : Shri. Shameem Ahamed, Advocate

**ORDER**

**Per : Ashok Kumar Borah, Member (Judicial)**

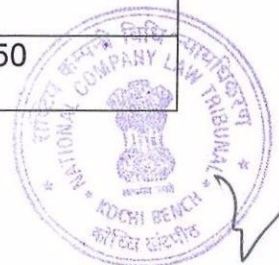
1. This application has been filed under Section 9 of IBC by Raychem-RPG Private Limited. (hereinafter referred to as 'Operational Creditor') represented by Mr. Jitesh Patel, against **Soura Natural Energy Solutions Pvt. Ltd.** (hereinafter referred to as



'Corporate Debtor') for recovery of the defaulted payment of the Operational Debt of Rs. 3,25,67,246.45/- (Rupees Three Crores Twenty-Five Lakhs Sixty-Seven Thousand Two Hundred and Forty-Six and Forty Paise only) on account of sale of goods and an amount of Rs. 1,17,04,792.16/- (Rupees One Crore Seventeen Lakhs Four Thousand Seven Hundred and Ninety-Two and Sixteen Paise Only) on account of interest payable thereto, aggregating Rs. 4,42,72,038.61/- (Rupees Four Crores Forty-Two Lakhs Seventy-Two Thousand and Thirty-Eight and Sixty-One Paise Only).

2. The applicant Operational Creditor stated that the Corporate Debtor requested them to supply certain goods as per the agreed terms and conditions between them, agreeing that they will make payment for the goods within a period of one month of issuing the invoice, along with interest, which is applicable till the date of full payment of the purchase orders.
3. It is further stated that the Operational Creditor on receiving the purchase orders promptly delivered the goods and the purchase orders and invoices were issued for the same. However, the Corporate Debtor defaulted on the payment of 11 invoices issued by the Operational Creditor which are as under: -

Invoice No.	Invoice date	Date of default	Amount of Invoice (in Rs.)
7251800016	24.04.2018	09.05.2018	5,79,138.97
7251800017	25.04.2018	10.05.2018	1,475,328.42
7251800018	25.04.2018	10.05.2018	3,363,799.80
7251800019	25.04.2018	10.05.2018	127,440
7251800022	26.04.2018	11.05.2018	461,569.50
7251800023	29.04.2018	14.05.2018	11,094,720
7251800088	30.06.2018	15.05.2018	6,956,250



7251800102	19.07.2018	03.08.2018	312,700
7251800103	19.07.2018	03.08.2018	948,253.46
7251800011	30.05.2019	14.07.2019	1,965,262.06
7251800012	30.05.2019	14.07.2019	5,279,754.24

4. As no payments were received from the Corporate Debtor towards the dues, the Operational Creditor issued a demand notice dated 23.12.2020 under Section 8 of the Insolvency and Bankruptcy Code, 2016 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Corporate Debtor has neither denied the debt nor shown the existence of any dispute prior to the receipt of Statutory Notice in Form -3 of the I&B Code, 2016. From this, it is clear that the Corporate Debtor is unable to discharge its lawful debts/liabilities.
5. The Corporate Debtor filed a counter statement stating that the Corporate Debtor was procuring the goods from the Operational Creditor for the EPC project. It is normal that in the EPC contract arrangements, generally there is an understanding between the vendors and the contractors and some credit period is offered for the payments depending upon the payments from the contractor.
6. The learned counsel for the Corporate Debtor argued that it is the claim of the Operational Creditor that an amount of Rs. 3,25,67,246/- has not been credited during the period 24.04.2018 till 15.03.2021. During this period an amount of Rs. 3,03,53,800/- was paid to the Operational Creditor and the bank statement of the Corporate Debtor is annexed as an evidence to that effect.
7. It is also stated that Invoice Number 7251800016 dated 24.04.2018 for Rs. 5,79,168.97, Invoice No. 7251900011 dated 14.07.2019 for Rs.19,65,262/- and the Invoice Number 7251900012 dated 14.07.2019 for Rs. 52,79,754/- mentioned in the



application filed by the Operational Creditor are not received by the Respondent herein. On the other hand, Invoice Number 7251900004 dated 25.04.2019 for an amount of Rs.10,35,650/- and Invoice Number 7251900005 dated 30.04.2019 for an amount of Rs. 29,47,242.26/- were received by the Respondent from the Operational Creditor, which is not mentioned in the list of invoices. From this, according to the Corporate Debtor it is clear that in the absence of a complete reconciliation of the accounts between the parties, the present claim of Rs. 4,42,72,038.61/- is completely ambiguous and cannot form the foundation of an application under Sec 9 of I&B Code,2016.

8. It is further stated that there are various amounts to be received from the customer of the Corporate Debtor, all of them are Government Organizations towards the Solar Projects undertaken by the Respondent. All these payments were delayed due to the Covid-19 pandemic and are under process. After the account reconciliation between the Operational Creditor and the Corporate Debtor, the Corporate Debtor is ready to settle dues, if any, and that it will not take more than 3 months to settle the arrears. The extraordinary situations on account of the Covid-19 pandemic also need to be taken into account, which had resulted in the delayed receipts from its customers.
9. It is further stated that the statutory notice issued by the Operational Creditor was received at a time when the office of the Respondent was frequently closed due to the Covid-19 Pandemic and also there have been a lot of resignations including the staff handling commercial matters. Hence the matter could not be brought to the notice of the Managing Director and it is only when the present application 'was filed by the Operational Creditor, the Respondent came to know about the same.



**Findings:**

10. We have heard the learned counsel on either side through video conferencing and have thoroughly perused the records produced by the Operational Creditor and Corporate Debtor. The present application was filed on 27.04.2021 and on 10.08.2021 the Corporate Debtor was directed to file counter on or before 25.08.2021 and the matter was adjourned to 16.09.2021. On 16.09.2021 the learned counsel appearing for the Corporate Debtor stated that the talk of compromise are going on between the parties and that is why he has not filed the counter. However, the Respondent/Corporate Debtor was directed to file counter within 7 days, stating that failing which orders will be passed based on available records. Therefore, the matter was again adjourned. On 22.11.2021 the learned counsel for the Operational Creditor stated that compromise talks are going on and he sought 3 weeks' time to file the settlement memo. However, no settlement memo has been filed by them.
11. It is evident that the Corporate Debtor has admitted and acknowledged the debt, as the Corporate Debtor has stated in the counter that the outstanding due shall be paid out in 'three months' time, which did not happen. The Corporate Debtor has failed to reply to the Demand Notice issued under Section 8 of the I & B Code and has not raised any dispute against the filing of the present application.
12. The Application which has been filed in the prescribed form is complete in all respects. Copy of the Demand Notice in Form 3 dated 23.12.2010 along with the proof of service, reflecting the due receipt of the Notice by the Corporate Debtor, Affidavit in compliance of Section 9(3)(b) dated 12.04.2021 stating that the Applicant has not received any notice of dispute from the Corporate Debtor have been filed by the Operational Creditor in support of its claim.

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13. Since all the aforesaid conditions are fulfilled in the instant case, we find that the application submitted by the Operational Creditor is complete in all respects. Hence, it is a fit case for admission and initiate CIRP against the Corporate Debtor.
14. In view of the above, the instant application filed by the Operational Creditor against M/s. Soura Natural Energy Solutions Pvt. Ltd (Corporate Debtor) deserves to be admitted.
15. The application, therefore, is **ADMITTED** and moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code as amended: -
- a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
  - b) Transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;
  - c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
  - d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
16. It is further directed that the services to the Corporate Debtor if continuing, shall not be terminated or suspended or interrupted during the moratorium period. The moratorium shall however not apply to such transactions as may be notified by the Central Government in consultation with any financial regulator and to a surety in a contract of guarantee to a corporate debtor.



- a) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be.
- b) That the public pronouncement of the Corporate Insolvency Resolution Process shall be made immediately as specified under Section 13 of IBC.
17. The Operational Creditor has not suggested any name for appointment as the Interim Resolution Professional, in case the application is admitted. Hence this Bench appoints **Mr. Mukesh K. P.** Registration No. **IBBI/IPA-001/IP-P01054/2017-2018/11747** (Email: **aajca.kochi@gmail.com**) Office at **Abraham And Jose, Chartered Accountants, 36/3117B, II Floor, Choondani Building, Kathrikadavu Jn., Kochi, Kerala, 682017** from the panel of IP's for appointment as IRP in for the Kochi Bench for the panel 01.01.2022 to 30.06.2022, as the Interim Resolution Professional, to carry out the functions as mentioned under the IBC. The fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The Insolvency Resolution Professional is directed to submit the copy of AFA (Authorization for Assignment) issued by the Insolvency Professional Agency within 2 days from the date of receipt of this order.
18. We direct the Operational Creditor to deposit a sum of Rs. 2 lakhs (Two Lakhs) with the Interim Resolution Professional namely Mr. Mukesh K. P. within three days from the date of receipt of this order, in order to meet out the initial expense to perform the duties assigned to the IRP in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016.

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19. The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor, and the Interim Resolution Professional.
20. Registry is also directed to send a copy of this Order to the Registrar of Companies, Kerala, for updating the Master Data of the Corporate Debtor. The Registrar of Companies shall send a compliance report in this regard to this Registry within seven days from the date of receipt of the order.

Dated the 7<sup>th</sup> day of January, 2022.

Sd/-

(Shyam Babu Gautam)  
Member (Technical)

LG

Certified to be True Copy-

Deputy Registrar  
National Company Law Tribunal  
Kochi Bench

Sd/-

(Ashok Kumar Borah)  
Member (Judicial)

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Mem o No.CP(IBC)/23/KOB/2021/.....

Date: 12.01.2022

To

- Advocate Mr. Manav Thomas, Thomas George and Associates, Nirmalaaraam, Plot No.174, H./No.2-3-74/174, Satyanagar Colony, Uppal, Medchal, Malkajgiri District, Hyderabad-500039.  
(Counsel for applicant).
- Advocate Mr.Shameem Ahmed, Ahmed and Ahmed Associates, Choondani Building, Kathrikadvu Junction, Ernakulam-682017 (Counsel for respondent)
- Mr. Mukesh K. P. Office at Abraham And Jose, Chartered Accountants,36/3117B, II Floor, Choondani Building, Kathrikadavu Jn., Kochi, Kerala,682017 (Interim Resolution Professional)
- The Registrar of Companies, Company Law Bhawan, BMC Road, Trikkakara, Kakkanad.  
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