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

IA/373/IB/2021, IA/293/CHE/2021 AND 242/CHE/2021 IN IBA/1281/2019

(Under Section 12A of IBC, 2016 and Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, r/w Rule 11 of NCLT Rules, 2016.

In the matter of **M/s. GEES EPC SERVICES PVT LTD**

M/s. Hariprasad Associates,
Partnership firm through

Solomon Rajesh Jeyasingh,
Interim Resolution Professional,
GEES EPC Services Pvt Ltd.,

... ... *Applicant*

Vs

INDIAN OVERSEAS BANK,
Periyar Nagar Branch,
B-46, 70 Feet Road,
Periyar Nagar,
Chennai – 600 082.

... ... *Sole Committee of Creditor/ Financial Creditor / Respondent*

Order Pronounced on 29th April, 2021

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Applicant/IRP	:	V. Arvind Rajagopal, Advocate
IRP	:	Solomon Rajesh Jeyasingh, in person
For Corporate Debtor	:	A.G. Sathyanarayana, Advocate
For Operational Creditor	:	Shankar Varadharajan, Advocate

ORDER

Per: **R. VARADHARAJAN, MEMBER (JUDICIAL)**

1. An Application seeking for withdrawal of Corporate Insolvency Resolution Process (CIRP) filed under Section 12A of Insolvency And Bankruptcy Code, 2016 (*hereinafter to be referred to as* **"IBC"**) and Regulation 30A of Insolvency and Bankruptcy Board of India [Insolvency Resolution Process for Corporate Persons] Regulations, 2016, (*hereinafter to be referred to as* ***"Regulations"***) r/w Rule 11 of NCLT, Rules 2016.

2. The Application seeking for withdrawal has been moved by the Applicant through the Agency of the Interim Resolution Professional (IRP) appointed by this Tribunal at the time of initiating the CIRP against the Corporate Debtor vide its Order dated 25.02.2021. In the averments contained in the Application, it is evident that the IRP appointed by this Tribunal vide its Order dated 25.02.2021 came to be privy of the same on 04.03.2021. Thereafter, it is averred that the IRP has caused a public announcement in Form-'A' to be made and the last date for the claim to be lodged with the IRP was specified as 18.03.2021. Only a claim from the Respondent, namely, Indian Overseas Bank (IOB)

was received and the Committee of Creditors (CoC) was constituted thereafter and to this effect a list of Creditors and Committee of Creditors had also been filed with the Registry of this Tribunal.

3. It is averred that the meeting of the Committee of Creditors being the first meeting was proposed to be held on 26.03.2021, however due to Covid-19 pandemic prevalent in the office of the Respondent Bank and it being the Sole Member of the CoC, the meeting was called off to be convened at a later date. However, thereafter, in view of the Order passed by this Tribunal on 26.03.2021 on an direction given to the IRP not to precipitate the CIR Proceedings and the same stood duly complied with. In the circumstances, till now no CoC meeting had been called.

4. In the meanwhile, it is also brought to the notice of this Tribunal as averred in the Application that an Application under Section 19 (2) of IBC, 2016 was filed by the IRP seeking compliance on the part of the erstwhile Directors of the Corporate Debtor for the smooth processing of CIRP which stands numbered as IA/293/2021. On their part, the erstwhile Directors of the Corporate Debtor had also chosen to file an Application in IA/242/2021 under Section 60(5) of IBC, 2016 against the IRP and

the Operational Creditor wherein a direction has been sought to the IRP to file for the withdrawal of the CIRP against the Corporate Debtor in view of the settlement arrived at between the parties.

5. Subsequent to all of the above on 13.04.2021, Form-'FA' had been received duly signed by the Operational Creditor wherein the Applicant had sought for the withdrawal of the Application namely, IBA/1281/2019 filed by it before this Tribunal under Section 9 of IBC, 2016. The said Form-'FA' is annexed at Page No.8 of the typed set along with an Affidavit verifying the Form-'FA' as enclosed at Page Nos.9 and 10 of the typed set filed along with the Application. The Affidavit has been verified by a partner of the Operational Creditor/Applicant, namely, Mr. A. Keerti Prasad, whose name is also reflected in the copy of the Partnership Deed enclosed along with the typed set filed with the Application duly attested. An Affidavit has been filed by the Applicant in relation to the service of notice of this Application upon Respondent Bank being the Sole Member of the Committee of Creditors (CoC).

6. Pursuant to the notice of the Application, the Respondent Bank/Sole Member of CoC is being represented by its Law Officer, namely Mr. Saanjeed Suman, from the Regional Office of IOB. In

relation to the Application, the Respondent Bank being the Sole Member of the CoC expresses his no objection for the withdrawal of the main Application and the CIRP initiated pursuant to the Order of Admission passed by this Tribunal on 25.02.2021 and the said statement stands recorded.

7. On the part of the Applicant/Operational Creditor, it is represented that as directed by this Tribunal a sum of Rs.2,00,000/- has been paid to the Interim Resolution Professional (IRP) and it is pointed out by the Ld. Counsel for the Operational Creditor that the said payment of Rs.2,00,000/- has been made by way of Demand Draft bearing No.461156 dated 11.03.2021 drawn on Union Bank of India and the receipt of the said payment in a sum of Rs.2,00,000/- is not denied by the IRP, who is also present at the time of representations being made, however, it is claimed that a sum of Rs.73,938.45 is required to be paid being the balance sum of the estimated Insolvency Resolution Process Cost till the date of this Application. In support of the same, a statement is pointed and which statement discloses the break-up of the cost which had been given at Page No.37 of the typed set filed along with the Application.

8. Perusal of the statement of the expenditure as made out at Page No.37 discloses that apart from the fees as claimed by the IRP a major portion of the expenditure seems to have been incurred in respect of meeting of the expenditure in relation to Advocate fees for filing of the Application under Section 19(2) as well as the present Application and for filing a Counter to the Application as filed by the erstwhile Director under Section 60(5) of the IBC, 2016. Since already a sum of Rs.2,00,000/- as represented by the Operational Creditor seems to have been paid and the additional cost in a sum of Rs.75,000/- seems to have been incurred in relation to the legal cost, in view of non-cooperation on the part of the personnel of the Corporate Debtor and also in defending the Application as filed by the erstwhile Director of the Corporate Debtor, we deem it appropriate that the balance sum of Rs.73,938.45 is required to be defrayed by the Corporate Debtor.

9. In view of the Application being allowed and as a consequence, the CIRP initiated against the Corporate Debtor stands withdrawn. In the circumstances, IA/293/2021 filed by the IRP in relation to the personnel of the Corporate Debtor as well as IA/242/2021 filed by the erstwhile Director of the Corporate Debtor stands closed. Further, a balance sum of Rs.73,938.45 shall be

paid by the Corporate Debtor to IRP appointed by this Tribunal in order to defray the expenditure incurred by him, on production of sufficient proof in this regard by the IRP. On and from this date, the duties of the IRP shall stand discharged in view of the Application in IA/373(CHE)/2021 being allowed. The powers of the Board of Directors, which stood suspended in view of the initiation of CIRP by this Tribunal vide its Order dated 25.02.2021 stand restored on and from this date.

-SD-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

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