

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KERALA**

**IA(IBC)34/KOB/2022
IN
CP(IB)/23/KOB/2021**

(Under Section 12A of IBC, 2016 read with Regulation 30A(1)(b) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

Order delivered on: 11th March, 2022

Coram:

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)
Hon'ble Mr. Anil Kumar. B, Member (Technical)

Applicant: -

Mr. Mukesh K.P.,
Interim Resolution Professional of-
M/s. Soura Natural Energy Solutions
Indian Private Limited,
Abraham and Jose, Chartered Accountants,
36/3117B, IInd Floor, Choondani Building,
Kathrikadavu Jn., Kaloore, Kochi,
Kerala- 682 017.
Email: -aajca.kochi@gmail.com.

In the matter of: -

M/s. Raychem-RPG Private Limited,
RPG House, 463, Dr. A.B Road,
Worli, Mumbai- 400 030.
Email: -jpatel@raychemrpg.com.

...Operational Creditor

Versus

M/s. Soura Natural Energy Solutions India Pvt. Ltd.,
X/126 G, 1st Floor, SNDP Building,
NH Junction, Chirangara, Koratty P.O.,
Chalaky, Thrissur, Kerala- 680 308.
Email: - contact@soura.in.

... Corporate Debtor

Parties/Counsel present (through video conference):-

For Applicant/IRP ...Shri. Vinod P.V., Smt. Reetha D., Advocates.
For Operational Creditor ... Shri Manav Thomas, Advocate.
For Corporate Debtor ... Shri. Shameem Ahamed M.P., Cyriac Tom, Advocates.

ORDER

Per: Ashok Kumar Borah, Member (Judicial)

This Interlocutory Application has been filed under Section 12A of the Insolvency and Bankruptcy Code, 2016 read with Regulation 30A (1) (b) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 by the Interim Resolution Professional seeking the following relief:

- Pass an order for withdrawal of the Application No. CP(IB)/23/KOB/2021 admitted under Section 9 of the Insolvency and Bankruptcy Code based on the Form-FA filed by the Operational Creditor under Section 12A of Insolvency and Bankruptcy Code, 2016 read with Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

2. The brief facts of the case are as under: -

Vide order dated 07th January 2022 in CP(IB)/23/KOB/2021 this Tribunal admitted the application filed by M/s Raychem-RPG Private Limited, the Operational Creditor against the Corporate Debtor M/s Soura Natural energy Solutions India Private Limited, and appointed the applicant as the Interim Resolution Professional ("IRP"). The Applicant/IRP made paper publication on 14th January 2022 in Form-A inviting claims from the stake holders. The publication was made in newspapers Business Line (all Kerala Edition) and Malayala Manorama (Thrissur Edition), where the registered office of the Corporate Debtor is situated. The last date of receipt of claims was on 27th

January, 2022 and the Applicant/ IRP received claims from two Creditors till the last date published.

3. The Applicant/IRP constituted the Committee of Creditors on 3rd February, 2022 and a report to that effect was filed before this Tribunal on 05th February 2022. The Applicant/IRP issued notice and agenda for convening the meeting of Committee of Creditors on 07 February, 2022. It is further stated that on 08th February 2022, the suspended directors of the Corporate Debtor submitted the Form-FA for withdrawal of the Application along with the consent terms to the Applicant/IRP. The summary of settlement arrived between the parties are as follows:

- a) The amount due has been fixed at Rs.4,43,12,565/- being the principal of Rs.3,12,22,210/- and interest @ 12% calculated to Rs.1,30,90,355/- (Instead of interest @ 24% claimed by the applicant as per the terms of payment);
- b) The Corporate Debtor has paid an amount of Rs.11,00,000/- towards the dues outstanding as per the petition, before the date of order of this Tribunal admitting the Insolvency Petition;
- c) Rs. 30,00,000/- has been paid to the applicant on behalf of the Corporate Debtor upfront on executing the settlement terms;
- d) Corporate Debtor would pay an amount of Rs. 10,00,000/- per month starting from 1st March 2022, until the entire amount of Rs. 4,43,12,565/- is paid.

4. The IRP has placed the Form-FA before the Committee of Creditors in its meeting held on 11th February 2022. The Committee observed that the Corporate Debtor is a going concern and is engaged in the business of installation and maintenance of solar power plants for domestic as well as commercial purpose and has running projects. Further there are only two claims received by the IRP. One is from Punjab National Bank, who is the sole member of the Committee with 100% voting rights and other claim from the operational creditor, who filed the IBC Application against the

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Corporate Debtor. The Operational Creditor has already settled with the Corporate Debtor in terms of the deed of settlement as above. Punjab National Bank made an observation that the account of the Corporate Debtor is not classified as NPA as on the date of admission. Mr. Manoj S.M., suspended director of the Corporate Debtor made a statement before the Committee that it shall take necessary steps for renewal of the accounts and ensure that the account is continuing to be classified as standard account. In the above circumstances, the Punjab National Bank agreed to the proposal for withdrawal stating that in the event of default, the Punjab National Bank will have the right to take legal action for recovery of dues. Further the Operational Creditor agreed to bear the entire costs and expenses till the approval of the withdrawal of the Application and has paid the IRP Fee and expenses till date. Accordingly voting was conducted and Committee of Creditor consisting of the sole member with 100% voting rights resolved to approve the withdrawal of the application.

5. We have heard the learned counsel for IRP, and learned counsel for the Operational Creditor and perused the documents appended with the case records including the Resolution passed by the 1st CoC in its meeting held on 11.02.2022. Agenda Item No. 7 is as under: -

"RESOLVED THAT the application in Form FA for withdrawal of the application filed by the operational creditor, M/s Raychem RPG Private Limited, before the Hon'ble National Company Law Tribunal having application number CP(IBC)/23/KOB/2021 is approved by the Committee of Creditors and the Interim Resolution Professional is hereby permitted to file the application before the Hon'ble National Company Law Tribunal, Kochi, along with the terms and conditions of settlement. The permission issued is subject to the condition that the members of the committee reserve their right to initiate fresh proceedings under insolvency and Bankruptcy Code, 2016 and other forums, in case of default by the Corporate Debtor.

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FURTHER RESOLVED THAT the amount payable towards the fee and expenses incurred by the Interim Resolution Professional is paid by the applicant and applicant shall bear all expenses till the date of disposal and committee of creditors shall not be liable to pay any amount towards the expenses on CIRP proceedings."

6. In view of the Resolution passed by the CoC in the 1st CoC Meeting dated 11th February 2022 and filing of Form- FA by the Interim Resolution Professional seeking withdrawal of CP(IB)/34/KOB/2021 with 100% voting right, nothing further to be decided in the matter. Since nothing has been stated by the IRP regarding the payment received by him, it is presumed that he has received the fee and expenses from the CoC.
7. Therefore, the Corporate Debtor is relieved from the rigors of CIRP and consequently the IRP is discharged of his duties. The Powers of the Board of Directors stand restored and the Company is directed to operate under the management of its Board of Directors. This **IA(IBC)/34/KOB/2022 is allowed** and the Applicant is permitted to withdraw the CP(IB)/23/KOB/2021.

Dated the 11th day of March, 2022

Sd/-
(Anil Kumar. B)
Member (Technical)

Sd/-
(Ashok Kumar Borah)
Member (Judicial)

RRN