

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, CHENNAI**

IBA/1424/2019

Under Section 9 r/w Rule 6 of the IBC, 2016

**In the matter of Regen Infrastructure and Service Private
Limited**

SB Aditya Power Projects Private Limited

SF, 13/5, Abdul Razak Street,
Sathyanarayanapuram,
Moulivakkam, Chennai-600125

---Operational Creditor

V/s

Regen Infrastructure and Services Private Limited

Sivanandam, 1st Floor, New No.1,
Pulla Avenue, Shenoy Nagar,
Chennai -600030

---Corporate Debtor

Order delivered on: 19.02.2020

Coram:

R. VARDHARAJAN, MEMBER (JUDICIAL)

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Operational Creditor: *Shri. Gautham Venkatesh, Advocate*
Ms. Haruni Subramani, Advocate

For the Corporate Debtor : *Shri. S. Aravindan, Advocate*

ORDER

Per: R. VARDHARAJAN, MEMBER (JUDICIAL)

Order pronounced on: 19.02.2020

It is an Insolvency and Bankruptcy Application (in short "**IBA**")
filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in
short, **IB Code, 2016**) r/w Rule 6 of the Insolvency and Bankruptcy

(Application of Adjudicating Authority) Rules, 2016 (for brevity, **AAA Rules 2016**) by M/s. SB Aditya Power Projects Private Limited (hereinafter referred as "**Operational Creditor**") for initiate Corporate Insolvency Resolution Process (in short "**CIRP**") against M/s. Regen Infrastructure and Service Private Limited (hereinafter referred as "**Corporate Debtor**") on the ground the Corporate Debtor defaulted in paying ₹78,46,699 as on 18.07.2017 for services rendered by the Operational Creditor to the Corporate Debtor.

2. On perusal of this application, it appears that Part – I of the Application being Form 5 discloses the particulars of the Operational Creditor as being represented by the Authorized Representative Mr. Sheik Bareed, and the Operational Creditor has passed a Board Resolution to this effect on 16.09.2019, which is annexure-II-5 at page 80 of the typed set.

3. Part – II of the Application discloses the details of the Corporate Debtor and it is evident that the Corporate Debtor was incorporated on 04.01.2008 and the Authorized Share Capital is ₹100,00,00,000/- and the Paid-up-capital is ₹73,29,15,000/-. The Registered Office of the Corporate Debtor is situated at Sivanandam, 1st Floor, New No.1, Pulla Avenue, Shenoy Nagar, Chennai -600030 which co-relates with the address as disclosed in the Master Data.

4. Part – III of the Application discloses the fact that the Operational Creditor has not proposed the name of the "Interim

Resolution Professional" (IRP) and left it to the discretion of this Tribunal to appoint the IRP.

5. Part – IV of the Application gives the details of the operational debt as well as the circumstances which led to the default of the operational debt by the Operational Creditor. A perusal of the same posits the fact that in beginning of 2013 M/s. Regen Powertech Pvt Ltd (Holding Company of RISPL/CD), M/s. Regen Infrastructure and Services Private Limited herein CD and M/s. Renewable Energy Generation Private Limited (holding 100% of shares of RISPL/CD) in other words RISPL and REGPL were the wholly-owned subsidiaries of Regen Powertech Private Limited had approached Operational Creditor for cable trench formation, execution of civil foundation work, formation of gravel crane platform and allied services. Based on the assurance/representations/ guarantees/ work orders of the companies, the Operational Creditor had executed the work orders on credit basis and raised invoices for the same to be paid upon the completion of the work. Thereafter, the M/s. Renewable Energy Generation Private has merged with the Corporate Debtor on 02.02.2015 a fresh certificate of incorporation was issued by the ROC, Chennai. The Operational Creditor has duly rendered the services to the Corporate Debtor, a cumulative of ₹1,49,98,074 was due and payable as on 18.07.2017 by the Corporate Debtor. Thereafter, the Regen Powertech Pvt Ltd holding company, had made excess payment of

sum of ₹ 65,81,663.12/- towards the work order placed by it and for the services rendered by the Operational Creditor which are as follows:

| Serial Number | Invoice Numbers and date | Amount in Rupees |
|---------------|---|--------------------|
| 1 | SBA/MH/Regen/06 dated 08.03.2013 | 30,33,720 |
| 2 | SBA/MH/Regen/09 dated 26.03.2013 | 10,11,240 |
| 3 | SBA/MH/Regen/2013-14/004/05.05.13 | 30,33,720 |
| 4 | SBA/MH/Regen/2013-14/005/05.05.13 | 14,38,208 |
| 5 | SBA/MH/Regen/2013-14/012/05.08.13 | 1,79,776 |
| 6 | SBA/MH/Regen/2013-14/013/05.08.13 | 1,79,776 |
| 7 | SBA/MH/Regen/17 dated 17.09.2013 | 5,05,620 |
| 8 | SBA/MH/Regen/2013-14/018/17.09.13 | 1,79,776 |
| 9 | SBA/MH/Regen/2013-14/019/17.09.13 | 1,79,776 |
| 10 | SBA/MH/Regen/2013-14/020/17.09.13 | 1,79,776 |
| 11 | SBA/MH/Regen/24 dated 17.09.13 | 5,05,620 |
| 12 | SBA/MH/Regen/2013-14/ST-01 dt.21.10.13 | 5,05,620 |
| 13 | SBA/MH/2013-14/ST-07 Dt.21.2013 | 1,79,776 |
| 14 | SBA/MH/2013-14/ST-08 Dt.21.2013 | 1,79,776 |
| 15 | SBA/MH/2013-14/ST-09 Dt.21.10.13 | 5,05,620 |
| 16 | SBA/MH/2013-14/ST-11 Dt.12.11.13 | 5,05,620 |
| 17 | SBA/MH/2013-14/ST-12 Dt.12.11.13 | 1,79,776 |
| 18 | SBA/MH/2013-14/ST-13 Dt.29.11.13 | 5,05,620 |
| 19 | SBA/MH/2013-14/ST-14 Dt.29.11.13 | 1,75,282 |
| 20 | SBA/MH/2013-14/ST-15 Dt.26.12.13 | 1,79,776 |
| 21 | SBA/MH/2013-14/ST-16 Dt.26.12.13 | 5,05,620 |
| 22 | SBA/MH/2013-14/ST-17 Dt.09.01.14 | 5,05,620 |
| 23 | SBA/MH/Regen/2015-16/ST-002 Dt.29.06.15 | 1,82,400 |
| 24 | SBA/MH/Regen/2015-16/ST-003 Dt.29.06.15 | 1,82,400 |
| 25 | SBA/MH/Regen/2015-16/ST-004 Dt.29.06.15 | 1,82,400 |
| 26 | SBA/MH/Regen/2015-16/ST-005 Dt.29.06.15 | 95,760 |
| | Total | 1,49,98,074 |
| | Less: Advance Tax Paid | 5,69,712 |
| | Less: Excess Payment made by Regen Powertech Pvt Ltd | 65,81,663 |
| | Total | 78,46,499 |

6. Subsequently, the Operational Creditor had sent a letter dated 18.07.2017 to M/s. Regen Powertech Pvt Ltd, being the holding company of the Corporate Debtor for seeking approval to adjust the aforesaid amount of ₹65,81,663.12/- against the sum of ₹1,49,98,074/-. In response to the letter dated 18.07.2017 sent by Operational Creditor, the corporate debtor including REGPL which had merged into corporate debtor had reconsolidated the statement of showing such acknowledgment of M/s. Regen Powertech Pvt Ltd post aforesaid adjustment, the Corporate Debtor owed the Operational Creditor sum of ₹78,46,699/- outstanding.

7. Thereafter, the Operational Creditor had contacted the Corporate Debtor periodically seeking payment of outstanding debt, but no payments have been forthcoming from the Corporate Debtor. Since the substratum of the Corporate Debtor has eroded and it unable to make payment of outstanding debt, the Operational Creditor had issued a demand notice to the Corporate Debtor on 24.06.2019. On receipt of the demand notice, the corporate debtor counsel and operational Creditor counsel conversed with one another to settle the unpaid outstanding debt amicably with a time frame.

8. On 03.08.2019, after obtaining due instructions from the Corporate Debtor, the counsel for the Corporate Debtor had forwarded via mail a draft Memorandum of Settlement to the counsel for the Operational Creditor, whereby the corporate debtor had agreed to



clear the unpaid outstanding debt in instalments with the first payment to begin on 31.08.2019 and last being 30.11.2019. Later on the counsel for the Operational had obtained instruction from the Operational Creditor for revised instalments payment schedule amongst others and forwarded the revised draft Memorandum of Settlement on 05.08.2019 to the corporate debtor. On receipt of the mail dated 05.08.2019, the counsel for the Corporate Debtor had not responded to the counsel for the Operational Creditor on the aforesaid revised draft Memorandum of Settlement.

9. Thereafter, the Operational Creditor has issued Demand Notice as mandated under Sec. 8 of the I&B Code, 2016 to the Corporate Debtor on 26.08.2019, demanding the Corporate Debtor to repay a sum of ₹78,46,699/- within 10 days from the receipt of the notice, which was received by the Corporate Debtor on 27.08.2019. However, after receipt of the notice, the Corporate Debtor has chosen not to reply to the Demand Notice issued by the Operational Creditor.

10. The Operational Creditor has also filed Affidavit by complying with Section 9 (3) (b) of the I&B Code, 2016, along with the typed set of document, it has been deposed that the Operational Creditor has not received any payment or notice of dispute with regard to the unpaid operational debt.

11. On 10.02.2020, the counsel for the corporate debtor, represented that the Corporate Debtor is not having any defence in

relation to claim as submitted by the Operational Creditor in the Application. On seeing the record of this Tribunal, it is also vouched that no reply has been filed by the Corporate Debtor. The Counsel for the petitioner brought to the notice of this Tribunal, that a memo has been filed on 10.02.2020 in relation to the IRP in case this Tribunal chooses to admit the Application.

12. By taking into consideration the facts mentioned supra, we are inclined to admit the Application as has been filed by the Operational Creditor and consequently Corporate Insolvency Resolution Process is initiated. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the list furnished by Insolvency and Bankruptcy Board of India appoints **Ms. Renuka Devi Rangaswamy, Reg. No [IBBI/IPA-001/IP-P01863/2019-2020/12871] Email: jrassociatescbe@gmail.com** as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:



- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 of by the respondent 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 respondent in respect of its property including any action under the Securitization 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 respondent.

13. However, during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

- (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.



14. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

15. The Operational Creditor is directed to pay a sum of **₹2,00,000/-** (*Rupees Two Lakhs Only*) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

16. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in

to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry.

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[S. VIJAYARAGHAVAN]
Member (Technical)

TJS

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[R. VARADHARAJAN]
Member (Judicial)