

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. (IB)/138(KB)2021
IA(I.B.C)/1049(KB)2024

**CORAM 1. HON'BLE MEMBER(J), SMT. BIDISHA BANERJEE
2. HON'BLE MEMBER(T), SHRI D. ARVIND**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 24TH MAY 2024

IN THE MATTER OF	REC LIMITED VS HIRANMAYE ENERGY LIMITED
UNDER SECTION	IBC UNDER SEC 7

Appearance (via video conferencing/physically)

Mr. Joy Saha, Sr. Adv.] for the Applicant

Mr. Anuj Singh, Adv.

Mr. Rahul Poddar, Adv.

Ms. Manju Bhuteria, Adv.] for Respondent IRP

Mr. Madhav Kanoria, Adv.

Ms. Srideepa Bhattacharyya, Adv.

Mr. Abhijeet Kashyap, Adv.

Ms. Rituparna Chatterjee, Adv.

ORDER

1. Ld. Sr. Counsel / Counsel for the parties present.
2. **IA(I.B.C)/1049(KB)2024:**
 - a. Heard the Ld. Sr. Counsel Mr. Joy Saha appearing for the Power Trust and Ms. Manju Bhuteria appearing for the Resolution Professional, at length.
 - b. The contention of the Ld. Sr. Counsel for the Petitioner is that pursuant to an order dated 03.05.2024, the Hon'ble Apex Court permitted the Appellant / Power Trust (Promoter of Hiranmaye Energy Limited) to submit a proposal for settlement to the first Respondent which if permitted shall be processed in accordance with law. On the same day Civil Appeal No. 2211 of 2024 was admitted for final hearing.
 - c. Emboldened by the said liberty, the Petitioner has given a detailed settlement agreement in regard to the dues of INR 1,101.56 Crores as under:

Amount (INR in Crores)	Details
75.00	The Promoter shall make the Corporate Debtor deposit INR 75

Amount (INR in Crores)	Details
	Crores (“Upfront Amount”) within five (5) working days from the date on which the settlement plan is approved by the Ld. NCLT, Kolkata (“NCLT Approval Date”).
1026.56	The balance payment of INR 1026.56 Crores may be paid upfront within ninety (90) Working Days. The Lenders agree that they shall have no charge on any assets once the above payment has been made.

d. The contention of the Ld. Sr. Counsel is that the settlement proposal deserves consideration for:

- i. The total profit earned by the Corporate Debtor before interest, taxes, depreciation and amortization (EBIDTA) for the financial year 2021-2022 and financial year 2022-23 is INR 259.94 crores and INR 308.03 crores respectively. Consequently, the Corporate Debtor cannot by any stretch of imagination be deemed to be insolvent;
- ii. During current financial year i.e. 2023-24 between 01.04.2023 to 31.01.2024, the Corporate Debtor raised bills and/or invoices upon the West Bengal State Electricity Distribution Co. Ltd. (hereinafter referred to as the "WBSEDCL") for a total sum of INR 747.98 crores demonstrating the complete solvency of the Corporate Debtor;
- iii. In fact, even during the pendency of the Company Petition, the Corporate Debtor has made a total payment of INR 187.28 crores and INR 129.74 crores to the Respondent No.2 and PFC Ltd., respectively.
- iv. The Corporate Debtor had a subsisting Power Purchase Agreement with West Bengal State Electricity Distribution Company Limited (WBSEDCL) whereby the entire quantity of power generated by the Corporate Debtor is supplied to WBSEDCL as per its fixed tariff;
- v. The Corporate Debtor has a subsisting and ongoing Fuel Supply Agreement under the Shakti Scheme with Mahanadi Coal Fields Ltd. whereby, the supply of raw materials to the Corporate Debtor is completely assured.

- vi. A profit-making power plant having an assured continuous supply of raw materials and an assured State Utility Purchaser of the entire quantity of power generated by it, could not be driven into insolvency.
- e. It appears from a letter dated 22.05.2024 from the RP that, the IRP of Hiranmaye Energy has proposed in response to the letter dated 17.05.2024, from Power Trust, for a meeting to arrive at mutual acceptable proposal sent pursuant to the Hon'ble Apex Court order dated 03.05.2024, as referred to hereinabove. It says the "The RP has requested Power Trust to hear settlement proposal that it intends to place before the Committee of Creditors (CoC) of Hiranmaye Energy Ltd. for their lawful consideration and further action and therefore, Ld. Sr. Counsel Mr. Joy Saha would contend that the proposal will be placed before the CoC through RP in two days for which the following prayers be allowed:
- i. Grant an order to keep in abeyance the present Corporate Insolvency Resolution Proceedings initiated against the Corporate Debtor until further orders;
 - ii. Grant an order deferring the process of accepting and evaluating the EoI or sharing of data with the prospective bidders until consideration of the settlement proposal made by the applicant in terms of the order dated 3 May 2024 passed by the Hon'ble Supreme Court of India in Appeal No of 2211 of 2024;
 - iii. A direction upon the Resolution Professional of the Corporate Debtor to call for a meeting pursuant to the letter dated 17th May, 2024 of the Applicant to arrive at a mutually acceptable proposal along with the lenders and subsequent meetings and to report the discussion to this Court;
- f. Ld. Sr. Counsel also points out that 180 days of the CIRP is not yet over. A provisional list of Prospective Resolution Applicants has been prepared and published, and an extension of time to put in EoI has been granted.
- g. Per contra, vehemently opposing the move on the part of Power Trust, Ld. Counsel Ms. Bhuteria appearing for the RP would submit that the application should be dismissed with cost as CoC is not impleaded and no stay of CIRP be

granted as prayed for, for a stay that was sought for before the Hon'ble Apex Court was not granted and therefore, matter does not warrant any order staying the CIR Process.

- h. We considered the rival contentions and perused the records.
- i. We are of the considered opinion that the Appellant being permitted by the Hon'ble Apex Court to submit a proposal for settlement, to the first Respondent, settlement proposal on behalf of the Power Trust if any be communicated to the RP in three days.
- j. The RP upon receipt of such proposal shall place it before the CoC by calling an appropriate meeting for the purpose.
- k. The CoC will consider the proposal, in light of the order passed by the Hon'ble Apex Court on 03.05.2024 (as referred to supra) and take a decision within a period of two weeks thereafter on the proposal.
- l. Till such time, in the interim, we deem it appropriate to direct that the CIRP proceedings be kept in abeyance till a decision is arrived at by the CoC on the settlement proposal of the Power Trust.
- m. Let a plain copy of the order be made available to the parties for communication and compliance.
- n. List the matter **on 14.06.2024**.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)