

**CURRENT REPORT FILED WITH THE POLISH FINANCIAL SUPERVISION
AUTHORITY IN WARSAW**

DATE: February 9th 2023

Subject: [Management Board decision to abandon its intention to file for bankruptcy, as well as decision to propose amendments to arrangement made under RAFAKO restructuring procedure \[CR 10/2023\]](#)

Text of the report:

The Management Board of RAFAKO S.A. of Racibórz (the “**Company**”) – further to the Company’s Current Report No. 2/2023 of January 12th 2023 announcing the Management Board’s decision on its intention to file a bankruptcy petition for the Company and commencement of work on the petition on the same day – announces that on February 9th 2023 the Management Board resolved to abandon its intention to file a bankruptcy petition for the Company.

The Management Board explains that its decision to abandon the intention to file for bankruptcy is based on the following considerations. After the Company received on January 11th 2023 from TAURON Wytwarzanie S.A. of Jaworzno (“**TAURON Wytwarzanie**”) a call for payment of liquidated damages and compensation totalling PLN 1,312,440,218.91 (one billion, three hundred and twelve million, four hundred and forty thousand, two hundred and eighteen złoty, 91/100), addressed to the Company, E003B7 sp. z o.o. of Racibórz, a wholly-owned subsidiary of the Company (the “**Subsidiary**”), and Mostostal Warszawa S.A. of Warsaw (“**Mostostal**”, the Company and Mostostal being jointly referred to as the “**Contractor**”) (the “**Call for Payment**”), as announced by the Company in Current Report No. 1/2023 of January 11th 2023, and after the Management Board resolved on its intention to file a bankruptcy petition for the Company, as announced by the Company in Current Report No. 2/2023 of January 12th 2023, there have been a number of developments which – in the opinion of the Management Board and relevant organisational units of the Company – warrant the conclusion that a material positive change has occurred in the Company’s factual situation and environment, rendering the previous conclusion that the Company had become insolvent no longer valid.

In particular, the following developments have taken place since the occurrence of the events communicated by the Company in Current Reports No. 1/2023 of January 11th 2023 and No. 2/2023 of January 12th 2023:

1. Execution on February 7th 2023 of an agreement between the Contractor, the Subsidiary and TAURON Wytwarzanie, whose conclusion and contents were announced by the Company in Current Report No. 9/2023 of February 7th 2023 (the “**Agreement**”). Provisions of the Agreement relevant to the decision to abandon the intention to file a bankruptcy petition for the Company include:
 - i. TAURON Wytwarzanie’s declaration to extend the deadline set by TAURON Wytwarzanie for the Contractor and the Subsidiary to comply with the Call for Payment as follows: (i) for the part of the sum covered by the Call for Payment amounting to PLN 762,619,657.15 (seven hundred and sixty-two million, six hundred and nineteen thousand, six hundred and fifty-seven złoty, 15/100) the

deadline has been extended until March 8th 2023, and (ii) for the part of the sum covered by the Call for Payment amounting to PLN 549,820,561.76 (five hundred and forty-nine million, eight hundred and twenty thousand, five hundred and sixty-one złoty, 76/100) the deadline has been extended until February 28th 2023, including TAURON Wytwarzanie's undertaking to refrain from enforcing any claims arising as a result of or in connection with the performance of the Contract to the extent stated in the Call for Payment, in respect of the amount of PLN 762,619,657.15 (seven hundred and sixty-two million, six hundred and nineteen thousand, six hundred and fifty-seven złoty, 15/100) until March 8th 2023, and in respect of the amount of PLN 549,820,561.76 (five hundred and forty-nine million, eight hundred and twenty thousand, five hundred and sixty-one złoty, 76/100) until February 28th 2023;

- ii. The Contractor's, the Subsidiary's and TAURON Wytwarzanie's undertakings to refrain, until February 28th 2023, from raising any monetary or non-monetary claims against each other and towards financing institutions, including any demands/calls for payment and any non-monetary demands, and to refrain from filing any petitions, requests, notices or claims with any judicial or administrative authority;
 - iii. The Contractor's and TAURON Wytwarzanie's declarations of their intention to continue the mediation conducted before the Arbitration Court at the Office of the General Counsel to the Republic of Poland (the "**Arbitration Court**") with the aim of reaching amicable settlement with respect to, inter alia, the claims covered by the Call for Payment, including recognition and confirmation of the possibility of minimising the mutual claims, as well as declarations that both the Contractor and TAURON Wytwarzanie consider amicable settlement a realistic option to resolve their dispute over termination of Contract No. 2013/0928/Ri for the 'Development of new coal-fired generation capacities at TAURON Wytwarzanie S.A. – Construction of supercritical 910 MW generating unit at the Jaworzno III Power Plant – Power Plant II: Steam boiler, turbine generator set, main building, electrical and I&C systems' (the "**Contract**"), and all other outstanding issues between them by March 8th 2023;
 - iv. Indication of areas and issues to be subject to further negotiations, with respect to which the Contractor and TAURON Wytwarzanie intend to negotiate in the course of the mediation process before the Arbitration Court, including undertaking to negotiate and mediate with a view to agreeing on final terms of the settlement agreement by February 28th 2023 and to signing the settlement agreement by March 8th 2023;
 - v. Agreement that the Contract will be terminated within five days of the date of review and joint assessment of the Group A and B Guaranteed Technical Parameters (as defined in the Contract) on the terms set out in the settlement agreement being negotiated, but in any case not later than by December 31st 2023, and that total liability of the Contractor and the Subsidiary for the performance of the Contract will be limited to the amount specified in the settlement agreement;
2. Execution between the Contractor and TAURON Wytwarzanie of annex 16 to the Contract, whose conclusion and contents were announced by the Company in Current Report No. 9/2023 of February 7th 2023;

3. Involvement in the mediation process between the Contractor, the Subsidiary and TAURON Wytwarzanie conducted before the Arbitration Court of financial institutions which had provided performance bonds for the Contract;
4. Extension until March 10th 2023 of the validity term of the performance bond provided for the Contract, as announced by the Company in Current Report No. 6/2023 of January 24th 2023;
5. Execution between the Company and Powszechna Kasa Oszczędności Bank Polski S.A. of Warsaw of an annex to the multi-purpose credit facility agreement of February 7th 2012, as announced by the Company in Current Report No. 5/2023 of January 18th 2023;
6. Continuation by the Company's key customers of their cooperation with the Company, as well as negotiations and mediation conducted with the Company;
7. Continued performance of ongoing contracts and fulfilment of orders by the Company, and continuation by the Company's key subcontractors and suppliers of their cooperation with the Company.

The Management Board also points out that, as communicated in Current Report No. 2/2023 of January 12th 2023, it intended to continue assessment of the Company's insolvency status in the course of work on the bankruptcy petition and analyse future events concerning the Company and its environment. Taking into account the developments which have taken place since January 12th 2023, such assessment and analyses have persuaded the Management Board to abandon its intention to file for the Company's bankruptcy.

In addition, the Management Board announces that on February 9th 2023 it also decided to file a proposal of amendments to the arrangement made in the course of the Company's restructuring procedure, adopted on December 10th 2020 and approved by final decision of the District Court of Gliwice, 12th Commercial Division, dated January 13th 2021, delivered in case No. XII GRz 5/20 (the "**Arrangement**"). The Company had announced: (i) adoption of the Arrangement in Current Report No. 63/2020 of December 10th 2020, (ii) delivery of the court's decision approving the Arrangement in Current Report No. 3/2021 of January 13th 2021, and (iii) receipt by the Company of a certified copy of the court's decision approving the Arrangement along with the certificate of finality in Current Report No. 32/2021 of September 14th 2021.

The Management Board explains its decision to propose amendments to the Arrangement was prompted by the occurrence of circumstances which, in the opinion of the Management Board, constitute grounds for amending the arrangement pursuant to Art. 173.1 of the Restructuring Law of May 15th 2015 (the "**Restructuring Law**"), namely a decline of income from the Company's business which, in the opinion of the Management Board, is of a lasting nature.

Along with the decision to file a proposal of amendments to the Arrangement, the Management Board adopted the following amended arrangement proposals:

1. amendments to the Arrangement would concern claims classified into Group 2 and Group 5, without any changes being made to claims classified into other groups;
2. in the case of claims classified into Group 2, the Arrangement is proposed to be amended by:
 - i. dividing the existing Group 2 into the following groups:

- a) Group 2a – creditors holding principal claims of more than PLN 10,000.00 (ten thousand złoty), but not more than PLN 1,000,000.00 (one million złoty), not classified into other groups;
 - b) Group 2b – creditors holding principal claims of more than PLN 1,000,000.00 (one million złoty), not classified into other groups;
 - c) Group 2c – creditors being financial institutions, holding principal claims of more than PLN 10,000.00 (ten thousand złoty) not secured over the Company's assets, under credit facilities, loans, insurance contracts, guarantees or other similar transactions;
- ii. defining the following terms and conditions of restructuring of the Company's liabilities classified into groups established through the division of the existing Group 2:
- a) Group 2a – the terms and conditions of the debt restructuring would remain unchanged and would be implemented as set out for Group 2 liabilities under the Arrangement in its current wording;
 - b) Group 2b:
 - a. instalments 1 and 2, covering 6% of the original principal claim, would be payable on the terms and conditions set out under the Arrangement in its current wording. As stipulated by the Arrangement in its current wording, 20% of the original principal claim would be converted into shares, while 20% of the original principal claim with all incidental liabilities, including interest and charges, would be cancelled;
 - b. the balance of payments under instalments 3 to 20, as provided for under the Arrangement in its current wording, covering 54% of the original principal claim would be settled on the following terms: **(i)** 27% of the original principal claim would be converted into new shares of the Company in accordance with Art. 156.1.4 and Art. 169.3 and 4 of the Restructuring Law, at an issue price of PLN 2.00 (two złoty) – the creditor would subscribe for one new Company share with a par value of PLN 0.01 for each PLN 2.00 (two złoty) of the principal claim, and **(ii)** 27% of the original principal claim would be payable in 12 equal quarterly instalments, the first one payable on July 31st 2025, and each subsequent one payable on the last business day of the calendar month in which payment of the quarterly instalment is due;
 - c) Group 2c:
 - a. instalments 1 and 2, covering 6% of the original principal claim, would be payable on the terms and conditions set out under the Arrangement in its current wording. As stipulated by the Arrangement in its current wording, 20% of the original principal claim would be converted into shares, while 20% of the original principal claim with all incidental liabilities, including interest and charges, would be cancelled;
 - b. the balance of payments under instalments 3 to 20, as provided for under the Arrangement in its current wording, covering 54% of the original principal claim would be converted into new shares of the Company in accordance with Art. 156.1.4 and Art. 169.3 and 4 of the Restructuring Law, at an issue price of PLN 2.00 (two złoty) – the creditor would subscribe for one new Company share with a par value of PLN 0.01 for each PLN 2.00 (two złoty) of the principal claim;
3. in the case of claims classified into Group 5, the Arrangement is proposed to be amended by defining the following terms and conditions of restructuring the Company's liabilities classified into that group:
- i. instalments 1 and 2, equal to 11% of the original principal claim, would be payable on the terms and conditions set out under the Arrangement in its current wording.

- ii. the balance of the principal claim would be payable in accordance with the following repayment schedule:
 - a) instalment 3, equal to 8% of the principal claim, would be payable by the last business day of 2024,
 - b) instalment 4, equal to 8% of the principal claim, would be payable by the last business day of 2025,
 - c) instalment 5, equal to 8% of the principal claim, would be payable by the last business day of 2026,
 - d) instalment 6, equal to 8% of the principal claim, would be payable by the last business day of 2027,
 - e) instalment 7, equal to 25% of the principal claim, would be payable by the last business day of 2028,
 - f) instalment 8, equal to 32% of the principal claim, would be payable by the last business day of 2029;
- iii. all incidental liabilities, including interest and charges accrued before and after the arrangement date, would be cancelled.

All significant developments concerning the Management Board's proposal to amend the Arrangement will be communicated in separate current reports.

Legal basis:

Article 17(1) of the Market Abuse Regulation – inside information.

Radosław Domagalski-Łabędzki – President of the Management Board

Dawid Jaworski – Vice President of the Management Board