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IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KERALA

CP(IB)/41/KOB/2021

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016)

Order delivered on: 07/01 /2022

Coram:

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)
Hon'ble Mr. Shyam Babu Gautam, Member (Technical)

In the matter of:

Iapetus Shipping
Shop No.113, 1st Floor, Pacific Business Park
8a National Highway Mahendranagar
Gujarath .... Applicant/Operational Creditor

Versus.

Fontana Impex Private Limited
RKP-3/332. G, Paramban Tower,
Ramanattukara,
Kozhikode,
Bypass Kozhikode-673631 ...Respondent/Corporate Debtor
(ex-parte vide order dated 20.12.2021)

Appearance (through Video conferencing):

For Applicant/Operational Creditor : Shri. Piyush Luktuke, Advocate

For Respondent/Corporate Debtor No appearance

ORDER

Per: Shyam Babu Gautam, Member (Technical)

1. This application has been filed under Section 9 of IBC by **Iapetus Shipping** (hereinafter referred to as 'Operational Creditor') represented by Mr. Parthiv Vinodray

Dave, against **Fontana Impex Private Limited** (hereinafter referred to as 'Corporate Debtor') for recovery of the defaulted payment of the Operational Debt of Rs. 1,27,20,141/- (Rupees One Crore Twenty-Seven Lakhs Twenty Thousand One Hundred and Forty-One only) on account of service to Corporate Debtor between 26.02.2021 to 28.05.2021 including interest payable thereto, aggregating Rs. 3,85,257.57/- (Rupees Three Crore Eighty-Five Lakhs Two Hundred and Fifty-Seven and fifty-Seven Paisa Only). The Corporate Debtor as a part of acknowledgment of debt has paid Rs.6,77,262/- (Rupees Six Lakhs Seventy-Seven Thousand Two Hundred and Sixty-Two Only).

2. Due to the continuous failure of the Corporate Debtor to honour its commitments, the Operational Creditor had issued a statutory notice dated 01.09.2021 under Section 8 of the Insolvency and Bankruptcy Code, 2016.

3. The Operational Creditor through demand notice claimed payment of an outstanding sum of Rs. 3,85,257.57/- (Rupees Three Crores Eighty-Five Lakhs Two Hundred and Fifty-Seven and fifty-Seven Paisa Only) being the total principal amount along with interest at the rate of 18% per annum within a period of 10 days from the date of receipt of the notice. The said notice was received by the Corporate Debtor on 13.09.2021. In response to the same, the Corporate Debtor had sent a reply dated 20.09.2021 acknowledging the amount claimed in the demand notice, and sought concession in the form of Demurrage Charges and Interest charges. Therefore, according to the Applicant/Operational Creditor the amount claimed in the demand notice is a lawful debt payable by the Corporate Debtor. Hence, the Operational Creditor filed this Application to initiate Corporate Insolvency Resolution Process, against the Respondent/Corporate Debtor declaring Moratorium and appointment of an Interim Resolution Professional under Section 9 of the Code.

4. The Operational Creditor issued notice of this application to the Corporate Debtor, which was served on 06.12.2021. The Registry of this Tribunal also issued notice to the Corporate Debtor to enter appearance before the Tribunal on 20.12.2021 and file counter to the Application. The said notice to the Corporate Debtor was duly served on 27.11.2021. Since there was no appearance, the Operational Creditor was directed to send notice to the Corporate Debtor intimating the next date of hearing and the matter was adjourned to 20.12.2021. The Operational Creditor sent notice to Corporate Debtor on 30.11.2021 which was served on 6.12.2021 according to the postal track report. However, neither the Corporate Debtor has appeared nor filed a reply statement. Therefore, the Respondent was declared ex-parte vide order dated 20.12.2021.

5. Since the Corporate Debtor did not appear, we have relied on Section 5 (20) and (21) to satisfy the definition of Operational Creditor and Operational Debt. Further, we relied on Section 9 (3) (a), (b) & (c) of the Code to determine whether the process for initiation of CIRP was followed by the Operational Creditor or not. The claim amount in this application is Rs. 1,27,20,141/- (Rupees One Crore Twenty-Seven Lakh Twenty Thousand One Hundred and Forty-One only) /- which satisfies the minimum requirement of the amount of default of Rs. 1 Crore for entertaining an application under Section 9. Therefore, in all counts, this Application is a fit case deserves to be admitted.

6. Since all the aforesaid conditions are fulfilled in the instant case, we find that the application submitted by the Operational Creditor is complete in all respects and it is also evident that the Corporate Debtor agreed to the due amount and disputed only the interest and Demurrage Charges claimed by the Operational Creditor.

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7. In view of the above, the instant application filed by the Operational Creditor against M/s. Fontana Impex Private Limited (Corporate Debtor) is **admitted** and moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code as amended, with the following: -

a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor 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 off by the corporate debtor 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 corporate debtor in respect of its property including any action under the Securitisation 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 Corporate Debtor.

8. It is further directed that the services to the Corporate Debtor if continuing, shall not be terminated or suspended or interrupted during the moratorium period. The moratorium shall however not apply to such transactions as may be notified by the Central Government in consultation with any financial regulator and to a surety in a contract of guarantee to a Corporate Debtor.

a) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of

Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be.

b) That the public pronouncement of the Corporate Insolvency Resolution Process shall be made immediately as specified under Section 13 of IBC.

9. The Operational Creditor has not suggested any name for appointment as the Interim Resolution Professional. Hence this Bench appoints **Mr. Mohanan T.S** Registration No. **IBBI/IPA-001/IP-P-01691/2019 -2020/12624** (Email: **tsmohanan@gmail.com)** residing at **Thekkinathil House, Valayanchirangara P.O, Vengola, Perumbavoor, Ernakulam district, Ernakulam, Kerala -683556** whose name appears in the list of IPs for appointment as IRPs for the Kochi Bench during the period 01.01.2022 to 30.06.2022, as the Interim Resolution Professional to carry out the functions as mentioned under the IBC. The fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The Insolvency Resolution Professional is directed to submit the copy of AFA (Authorization for Assignment) issued by the Insolvency Professional Agency within 2 days from the date of receipt of this order.

10. We direct the Operational Creditor to deposit a sum of Rs. 2 lakhs (Two Lakhs) with the Interim Resolution Professional Mr. Mohanan T.S within three days from the date of receipt of this order, in order to meet out the initial expenses to perform the duties assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016.

11. The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor, and the Interim Resolution Professional.

12. Registry is also directed to send a copy of this Order to the Registrar of Companies, Kerala, for updating the Master Data of the Corporate Debtor. The Registrar of

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Companies shall send a compliance report in this regard to the Registry of this Tribunal within seven days from the date of receipt of the order.

Dated this the 7th day of January, 2022.

Sd/-

(Shyam Babu Gautam)
Member (Technical)

Sd/-

(Ashok Kumar Borah)
Member (Judicial)

LG

Certified to be True Copy-
Deputy Registrar
National Company Law Tribunal
Kochi Bench
12/01/2022.
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Memo No.CP(IB)/41/KOB/2021/.....

Date: 12.01.2022

To

1. Advocate Mr. Piysh Luktuke, 302/B, Sarjan Complex, Opp. Bank of Baroda, Pratap Road, Vadodra-1, Gujarat. (**Counsel for applicant**)
1. M/s Fontana Impex Private Limited, RKP-3/332. G, Paramban Tower, Ramanattukara, Kozhikode, Bypass, Kozhikode-673631 (**Respondent**)
2. Mr. Mohanan T.S residing at Thekkinathil House, Valayanchirangara P.O, Vengola, Perumbavoor, Ernakulam district, Ernakulam, Kerala -683556 (**Interim Resolution Professional**)
3. The Registrar of Companies, Kerala-682021.