

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD

SPECIAL BENCH - COURT 1 (HEARINGS THROUGH VIDEO CONFERENCE)

PRESENT: HON'BLE SHRI BHASKARA PANTULA MOHAN – MEMBER JUDICIAL
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 23.02.2021 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC) No. 45/2021 in CP (IB) No. 231/7/HDB/2020
NAME OF THE COMPANY	Affluence Engineering & Enterprises Limited
NAME OF THE PETITIONER(S)	Foster Infin & Trading Pvt Ltd
NAME OF THE RESPONDENT(S)	Affluence Engineering & Enterprises Limited
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

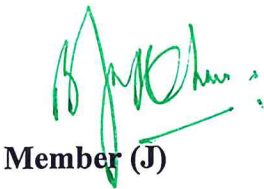
Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Orders pronounced in IA No. 45/2021 vide separate sheets. CP (IB) No. 231/7/HDB/2020 is withdrawn under Section 12-A of IBC.


Member (T)

Binnu


Member (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

**IA (IBC) No.45 of 2021
in
C.P (IB) No.231/7/ HDB/ 2020**

**APPLICATION UNDER SECTION 12A OF THE I&B
CODE, 2016 READ WITH REGULATION 30A OF THE
INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(INSOLVENCY RESOLUTION PROCESS FOR
CORPORATE PERSONS) REGULATIONS, 2016.**

In the matter of:

Affluence Engineering and Enterprises Limited
Having its registered office at:
Plot No.48, 1st Floor, Nagarjuna Hills
Punjagutta
Hyderabad – 500082.

**.. Applicant/
Corporate Debtor**

Versus

Foster Infin and Trading Private Limited
Having their office at 5A
Vengala Rao Nagar
Hyderabad – 500038
Represented by its Director,
Venkata Ramana Reddy Pesaladinne.

**.. Respondent
Financial Creditor**

Date of order : 23.02.2021

Coram:

**HON'BLE SHRI BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)**

and

**HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI,
MEMBER (TECHNICAL)**

Parties / Counsels Present:

For the Applicant : Ms. Mummaneni Vazra Laxmi
Counsel for IRP

**Per: SHRI VEERA BRAHMA RAO AREKAPUDI,
MEMBER (TECHNICAL)**



Heard on : 17.02.2021

AVERMENTS

This application is filed by the applicant/ Interim Resolution Professional under section 12A of the I&B Code, 2016 read with Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, (hereinafter referred to as "IBBI Regulations) praying that order dated 18.01.2021 passed by the Tribunal in CP (IB) No.231/7/ HDB/ 2020 be quashed and set aside.

2. The Adjudicating Authority has admitted the above petition vide order dated 18.01.2021 (ANNEXURE-I) and Shri Madhusudhan Rao Gonugunta has been appointed as IRP. CIRP process has commenced on the said day.

3. It is submitted in para 3 of the IA that after order dated 18.01.2021 passed in CP (IB) No.231/7/ HDB/ 2020, the CD has settled its dues with the FC. Pursuant thereto the FC had submitted Form FA dated 10.02.2021 to the IRP and requested the IRP to file the present application for withdrawal. The IRP, in turn, has submitted Form FA 10.02.2021 (page 17) along with Resolution dated 09.02.2021 (page 18) passed by the Directors signed by Shri G. Srinivasa Raju, Director.

4. It is further submitted that the parties have arrived at settlement vide Agreement of Settlement Deed dated 10.02.2021 (page 19) executed between the parties.

OBSERVATIONS :

5. Heard the learned counsel for both the sides. Perused the IA and the documents annexed thereto. Relevant provisions governing such withdrawal are (i) Regulation 30A of the IBBI Regulations and section 12A of the I&B Code, 2016. Said provisions are reproduced hereunder:

Regulation 30A of IBBI Regulations:

"30A. Withdrawal of application. (1) An application for withdrawal under section 12A shall be submitted to the interim resolution professional or the resolution professional, as the case may be, in Form FA of the Schedule before issue of invitation for expression of interest under regulation 36A. (2) The application in sub-regulation (1) shall be accompanied by a bank guarantee towards estimated cost incurred for purposes of clauses (c) and (d) of regulation 31 till the date of application. (3) The committee shall consider the application made under sub-regulation (1) within seven days of its constitution or seven days of receipt of the application,

*whichever is later. (4) Where the application is **approved by the committee with ninety percent voting share**, the resolution professional shall submit the application under sub-regulation (1) to the Adjudicating Authority on behalf of the applicant, within three days of such approval. (5) The Adjudicating Authority may, by order, approve the application submitted under sub-regulation (4)."*

Section 12A of the I&B Code, 2016 :

"Withdrawal of application admitted under Section 7, 9 or 10:

*12A. The Adjudicating Authority may allow withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with approval of **ninety percent voting share of the committee of creditors**, in such manner as may be prescribed."*

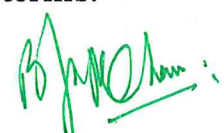
6. It is observed that the applicant has not enclosed any Bank Guarantee as required under sub-regulation (2) of Regulation 30A of the IBBI Regulations. However, Agreement of Settlement Deed dated 10.02.2021 entered into between the Financial Creditor and the Corporate Debtor is produced.

7. As regards constitution of CoC, nothing has been stated in the IA. However, it is orally stated that CoC has not been constituted. Thus, this IA is filed before constitution of CoC. In such a case, the question of approval of application by CoC with 90% voting share does not arise. Nevertheless it is observed that Board Resolution dated 09.02.2021 is enclosed, whereby Venkata Ramana Reddy Pesaladinne, Director of the company has been authorised to file Form FA and the said Director has filed Form FA. On the facts and in the circumstances of the case, the application deserves consideration.

ORDER :

8. In the result, order dated 18.01.2021 passed in CP (IB) No.231/7/ HDB/ 2020 is recalled along with consequential steps, if any, taken. Notice of admission of petition is discharged. Petition filed under section 7 of the I&B Code being CP (IB) No.231/7/ HDB/ 2020 is dismissed as withdrawn. IA (IBC) No.45 of 2021 is allowed in the above terms.


22/02/21
Veera Brahma Rao Arekapudi
Member Technical


Bhaskara Pantula Mohan
Member Judicial