

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KERALA**

IA(IBC)/19/KOB/2022

AND

IA (IBC)/28/KOB/2022

IN

CP(IB)/41/KOB/2021

*(Under Section 12A of the Insolvency and Bankruptcy Code, 2016 and
Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency
Resolution Process for Corporate Persons) Regulations, 2016)*

Order delivered on 09.02.2022

Coram:

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)

Hon'ble Mr. Anil Kumar. B, Member (Technical)

IA(IBC)/19/KOB/2022

Mohanana T.S
S/o M.K Shankaran
(IBBI/IPA-001/IP-P-01691/2019-2020/12624)
Thekkinathil House, Valayanchirangara P.O,
Vengola, Perumbavoor,
Ernakulam – 683 556.

... Applicant

AND

IA (IBC)/28/KOB/2022

Mohanana T.S
S/o M.K Shankaran
(IBBI/IPA-001/IP-P-01691/2019-2020/12624)
Thekkinathil House, Valayanchirangara P.O,
Vengola, Perumbavoor,
Ernakulam – 683 556.

... Applicant

IN THE MATTER OF
M/s Iapetus Shipping ... Operational Creditor
Versus

M/s Fontana Impex Private Limited ... Corporate Debtor

Parties/Counsel Present (through video conference)

For Applicants ... Shri Mohanan T.S, IRP
along with Shri. Vinu Thomas, PCS

ORDER

Per: Ashok Kumar Borah, Member (J)

This IA(IBC)/19/KOB/2022 has been filed by the IRP Mohanan T.S for withdrawal of Corporate Insolvency Resolution Process under Section 12A of the Insolvency and Bankruptcy Code, 2016 (IBC) and Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in the matter of M/s Iapetus Shipping Vs. M/s. Fontana Impex Private Limited.

2. The brief facts of the case are that vide order dated 7th January, 2022 this Tribunal had admitted the application CP(IB)/41/KOB/2021, for Corporate Insolvency Resolution Process (CIRP) against Fontana Impex Private Limited (Corporate Debtor) under Section 9 of the Insolvency and Bankruptcy Code read with Rule 6 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016 filed by M/s. Iapetus Shipping (Operational Creditor). The Corporate Debtor was engaged in wholesale trading and export of ceramic and vitrified tiles.

3. After initiation of CIRP, the moratorium was declared under Section 14 of the IBC and Shri. Mohanan T.S [Reg No. IBBI/IPA-001/IP-P-01691/2019-2020/12624], Insolvency Professional, was appointed as Interim Resolution Professional (IRP), and directed him to take necessary actions in accordance with the relevant provisions of the IBC.

4. The IRP made public announcement on 14th January, 2022 in English and Malayalam Daily Newspapers such as “Business Line” and “Deshabhimani” respectively. As per the public announcement the due date of submission of claims is on 26.01.2022. Since, no claims from any secured or unsecured Creditors were received as on the above due date and the constitution of the Committee of Creditors (CoC) as per Regulation 17(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, was not held.

5. The learned PCS for the IRP submitted that before the constitution of the CoC, the Operational Creditor had reached a settlement with the Corporate Debtor for payment of his dues as per Settlement Deed dated 22.01.2022. The Suspended Managing Director of Fontana Impex Private Limited has signed the Settlement Deed and the Corporate Debtor has agreed to pay to Operational Creditor, an amount of Rs. 1,29,20,141/- including the IRP cost on or before 28.02.2022, in full settlement of the claim. Further the Corporate Debtor shall deposit a sum of Rs. 20,00,000/- (Rupees twenty lakhs only) into the account of the Operational Creditor, on 21.01.2022. The said amount of Rs. 20,00,000/- (Rupees twenty lakhs only) has been paid. With respect to the balance payment of Rs. 1,09,20,141/- (Rupees One crore nine lakhs

twenty thousand one hundred and forty-one only), a Cheque No. 000065 dated 28.02.2022 of Axis Bank, Morbi Branch, has been handed over to the Operational Creditor by the Corporate Debtor. Based on the settlement terms the Operational Creditor has submitted an application in FORM FA seeking withdrawal of the Corporate Insolvency Process against Corporate Debtor along with the aforementioned Settlement Deed accompanied by an Affidavit verifying the Form FA. The IRP also confirmed that the application in FORM FA seeking withdrawal of the CIRP was received before the constitution of the CoC.

6. The bank guarantee as stipulated under Regulation 30-A(2) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulation, 2016 is not provided along with Form FA since the expenses of the IRP till this application has been directly paid to him.

7. We have heard the learned IRP and his learned PCS and thoroughly perused the whole case records including the settlement agreement, bank receipt, etc. During the hearing, the learned PCS for the Applicant Shri. Vinu Thomas, submitted that the Operational Creditor has paid a sum of Rs. 2,55,000/- (Rupees Two lakhs fifty-five thousand only) to the IRP, towards the total expenses incurred for the CIRP process till the filing of these applications. As per the advice of this Tribunal, he agreed to accept Rs. 1,00,000/- (Rupees One lakh only) as the IRP fees, Rs. 35,000/- (Rupees Thirty-five thousand only) towards the expenses incurred for paper publication and Rs. 15,000/- (Rupees Fifteen thousand only) for Advocate fee. Therefore, the amount of IRP comes to Rs. 1,50,000/- (Rupees One lakh fifty thousand only). This Tribunal

directs the IRP to pay back the balance amount of Rs. 1,05,000/- (Rupees One lakh five thousand only) to the Operational Creditor within 7 days from the receipt of this order and the Operational Creditor is directed to file a receipt memo in this regard within a week thereafter.

8. We also found that an IA(IBC)/28(KOB)/2022 has also been filed by the applicant as per the direction of this Tribunal for submission of documents such as, copy of English and Malayalam Daily Newspaper and Break up of cost of the CIRP process regarding the expenses incurred in this regard. Therefore, the documents will be accepted.

9. In view of the above, the withdrawal application IA(IBC)/19/KOB/2022 stands allowed. Accordingly, the Corporate Debtor is relieved from the CIRP rigors. The IRP is discharged from his duties. The powers of the Board of Directors stand restored. The Company is directed to operate under the management of its Board of Directors. The Application number **CP(IB)41/KOB/2021 stands dismissed as withdrawn vide separate order.**

10. Interlocutory Application in CP(IB)/41/KOB/2021 i.e, **IA(IBC)/19/KOB/2022 and IA(IBC)/28/KOB/2022 stand disposed of.**

11. Registry is directed to send a copy of this order to the IRP and Operational Creditor immediately.

Dated this the 9th February, 2022

Sd/-
(Anil Kumar. B)
Member (Technical)

Sd/-
(Ashok Kumar Borah)
Member (Judicial)

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