

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

**COURT – IV**

27. **IA-3487(MB)/2023 in C.P.(IB)/369(MB)/2022**

CORAM:

MS. ANU JAGMOHAN SINGH  
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI  
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **30.10.2023**

NAME OF THE PARTIES: Kepuce Footwear Private Limited  
Vs  
Cosmic Export Solutions (India) Private Limited

SECTION: 9, 60(5) OF INSOLVENCY AND BANKRUPTCY CODE, 2016.

**ORDER**

1. CS Pramod Kumar Ladda a/w CS Yuvraj Shete, Ld. Authorised Representative for the Applicant/Interim Resolution Professional (IRP) present. None appears for the Respondent/Sole CoC Member/Petitioner in the main CP.
2. **IA-3487(MB)/2023:** This is an Application filed by the IRP on 02.08.2023 under Section 60(5) of the IBC, 2016, seeking direction from the Bench to the CoC to make payment for CIRP expenses and for all cooperation.
3. The present case is that a Petition [C.P.(IB)/369(MB)/2022] was filed by Kepuce Footwear Pvt. Ltd. [CIN: U19200RJ2015PTC047186] having regd. Office at: 53 Prabhat Colony, Path No. 7, Vijay Badisikar Road, Jaipur – 302 024, Rajasthan (Operational Creditor) to initiate CIRP against Cosmic Export Solutions (India) Pvt. Ltd. (Corporate Debtor) was admitted vide order dated 06.06.2023 wherein the Applicant was appointed as Interim Resolution Professional (IRP) of the Corporate Debtor. Contd.....2

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4. The Applicant submits that The Operational Creditor paid only Rs.1,00,000/- to the IRP as advance for CIRP expenses as against Rs. 5,00,000/- ordered by this Tribunal. The IRP published public announcement in Form A on 08.06.2023, for which he received claims and after verification, made List of Creditors and then constituted Committee of Creditors. The CoC consists of only one member i.e. the Operational Creditor who filed Petition under Section 9 of the Code. The first CoC meeting was convened on 03.07.2023 through video conferencing.
5. In the First CoC meeting, the IRP placed agenda before the CoC for appointment of RP or replacement of IRP by new RP. However, the sole CoC member asked for time. The Second CoC meeting was called on 13.07.2023, however, due to unavailability of the member, had to postpone till 15.07.2023. Even in the Second CoC meeting the IRP was not appointed as RP, therefore, he demitted office after completion of 40 days from the commencement of CIRP and continued as Deemed RP (according to the Applicant).
6. Meanwhile, the IRP gathered details about the Corporate Debtor and states that – i) Corporate Debtor (CD) is not in operations since 2018, ii) registered office of the CD has been sold in 2020.
7. Owing to the non-cooperative behaviour of the sole CoC Member/Petitioner in the main Company Petition, IRP filed the above IA seeking indulgence of this Adjudicating Authority to get the payment of his dues as also intends to withdraw from his duties stating that the Corporate Debtor is non-

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functional and its registered office was sold in the year of 2020. Therefore, he requested for liquidation order.

The IRP has filed an additional note on 27.10.2023 wherein he has given details of the subsequent CoC meetings.

8. In the Fourth CoC meeting, no resolutions were passed. However, the representative of the CoC Member stated that the Sole CoC Member does not have sufficient fund to bear the IRP Remuneration and Expenses incurred by the IRP. Further stated that the only motive is to recover the debts by filing application u/s 9 of the IBC, 2016. Also requested the IRP to conclude the CIRP.
9. In the Fifth CoC meeting held on 09.09.2023, the representative of the CoC informed that he will discuss with the CoC member and try to deposit an amount of Rs. 2,00,000/- before the next hearing of the IA-3487/2023. Also, mentioned that he will appear in the next hearing. Also, said that they intend to go for dissolution.
10. In the Sixth CoC meeting held on 09.10.2023, nothing was discussed. In the Agenda of the meeting, the IRP has given a statement of expenses showing CIRP expenses of Rs. 6,27,778/-.
11. Heard the Ld. Authorised Representative of the IRP. There is no representation on behalf of the Operational Creditor. In our earlier order dated 10.08.2023, this Bench had directed the Operational Creditor to cooperate with the IRP for effectively carrying out the CIRP and in case the

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Operational Creditor recommends for dissolution of the Corporate Debtor, to file appropriate Application for the same. However, the Operational Creditor neither complied the directions in the order nor he did appear in any of the hearings on the Application filed by the IRP though it was assured by its representative in the Fifth CoC meeting held on 09.09.2023 that he will attend the hearing on the Application in the NCLT. Further, there are no assets/business operations of the Corporate Debtor as reported by the IRP.

12. Considering the facts and circumstances stated supra, in our considered view, the continuation of the Corporate Insolvency Resolution Process is not possible without any cooperation from the Operational Creditor who is the sole CoC Member. Therefore, the CIRP of the Corporate Debtor is to be terminated.
13. The coordinate bench of the NCLT, Hyderabad Bench in the case of *Energy Infraconsulting India (P) Ltd. v. Athena Chhattisgarh Power Ltd., CP(IB) No. 54/9/HDB/2017* where the IRP could not pursue the CIRP due to the failure of the Operational Creditor to bear the cost of public announcement and professional fees of IRP, revoked and terminated the process of CIRP for non-payment of IRP's professional fees.
14. Considering the peculiar circumstances of the instant case, we are inclined to terminate the CIRP of the Corporate Debtor as the sole CoC Member is not interested to continue the CIRP of the Corporate Debtor. It is noted from the various meetings held since the commencement of the CIRP that the sole CoC Member is reluctant to continue the CIRP, given various instances such

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as non-appointment of IRP as the RP, non-approval of CIRP cost, non-responsive behaviour of the CoC in taking time-bound steps, and the failure to proceed promptly the CIRP of the Corporate Debtor. Further, it was stated by the representative of the sole CoC Member in the fourth CoC meeting that “the only motive is to recover the debts by filing application u/s 9 of the IBC, 2016”, which is not the main purpose of IBC.

15. Accordingly, IRP is hereby relieved from his duty as Interim Resolution Professional of the Corporate Debtor with a direction to the sole CoC Member to immediately ratify the expenses including professional fee submitted by the IRP and make the payment.
16. With the above directions, the CIRP of the Corporate Debtor stands terminated vide this Order and no proceedings shall remain pending. IA-3487(MB)/2023 is **disposed** of. CP(IB)-369/MB/2022 is **closed**. File to be consigned to records.
17. Registry is directed to serve copy of this order to the RoC-Jaipur, IBBI and other relevant authorities.

Sd/-  
**ANU JAGMOHAN SINGH**  
Member (Technical)

Sd/-  
**KISHORE VEMULAPALLI**  
Member (Judicial)