

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

IA(IBC)/68/CHE/2022 IN IBA/43/2020

*(Under Section 12A of the Insolvency And Bankruptcy Code, 2016 r/w
Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency
Resolution Process for Corporate Persons) Regulations, 2019 and Rule 11 of NCLT
Rules, 2016)*

*In the matter of **M/s. ALBA Industries Limited***

Mr. Nagalingam Muthiah

Resolution Professional of
M/s. ALBA Industries Limited

Reg Off:-

B-8, Gems Court, 25/14,
Khadar Nawas Khan Road,
Nungambakkam, Chennai - 06

.....Applicant

IBA/43/2020

M/s. The Federal Bank Limited
Represented by its Assistant Vice President
Mr. Josemon P David
Mount Road Branch,
SVS Club Building,
No. 61, Anna Salai, Chennai – 02

...Financial Creditor

-Vs-

M/s. ALBA Industries Limited
BMC House, 3 2/2 Halls Road,
Egmore, Chennai - 08

... Corporate Debtor

Order Pronounced on 16th March 2022

CORAM

**Justice (Retd) S.RAMATHILAGAM, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

For Applicant

*: Pawan Jhabakh,
Jerin Asher Sojan, Advocates*

ORDER

Per: Justice (Retd) S.RAMATHILAGAM, MEMBER (JUDICIAL)

This is an Application filed by the IRP under Section 12A of
the Insolvency & Bankruptcy Code, 2016 (**IBC, 2016**) r/w
Regulation 30A of the Insolvency and Bankruptcy Board of India

(Insolvency Resolution Process for Corporate Persons) Regulations, 2019 seeking withdrawal of the CIRP in relation to the Corporate Debtor viz., **M/s. ALBA Industries Limited**

2. The brief facts which emerge out of the perusal of the Application reflect as follows: -

- a. Based on the Application filed by the Financial Creditor under Section 7 of the IBC, 2016 against the Corporate Debtor, this Tribunal while admitting the Petition had initiated the CIRP in relation to the Corporate Debtor on 27.04.2021 and appointed the applicant herein as the IRP.
- b. Pursuant thereto, it is averred that M/s. Federal Bank Limited submitted their claim for a sum of Rs. 22,46,44,843/- in response to the public announcement made. Subsequently, CoC was constituted. Thereupon the IRP was appointed as the RP. Later, a claim from M/s. IndusInd Bank Limited to the tune of Rs. 23,19,55,602/- was submitted.
- c. Thereafter, based on the valuation report submitted by the registered valuers and after due approval from the 4th CoC invitation of EoI was published. As a result no such expression was received, the CoC in their 5th meeting decided not to issue EoI for the second time as there were talks regarding withdrawal of the CIRP upon settlement by the suspended director/shareholder of the Corporate Debtor. The same was approved in the said 5th CoC meeting. As discussed in the application it is seen that the parties have entered into a Memorandum of Compromise on 13.11.2022. The extracts of Memorandum of Compromise executed on 13.01.2022 are as follows,



- The Parties hereby have now mutually agreed on a settlement wherein the following amounts would be payable to the Financial Creditors and in line with provisions of section 12 A of the Insolvency & Bankruptcy Code 2016 read with

NAGALINGAM MUTHIAH
 Insolvency Professional
 IBBI/IPA-001/IP-P00774/2017-18/11347
 Nagalingam Muthiah

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 Regulation 30 A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 wish to withdraw the CIRP of the Corporate Debtor.

S. No.	Instalment and Date	Financial Creditor -1, The Federal Bank Limited	Financial Creditor -2 IndusInd Bank Limited
1	Amount Admitted	22,46,44,843	23,19,55,602
2	Settlement Agreed	12,85,00,000	12,99,00,000
3	1 st Instalment on or Before 15 th January'2022	2,49,00,000	2,51,00,000
4	2 nd Instalment on or before 31 st March'2022	10,36,00,000	10,48,00,000
	Total	12,85,00,000	12,99,00,000


- The Parties also further agree that on the execution of this Memorandum of Settlement, the Suspended Director has provided post-dated Cheques for a value of Rs. 20,84,00,000 (Rupees Twenty Crore Eighty Four Lakhs Only) for protect and secure the 2nd Instalment which would be released only upon discharge of the 2nd Instalment by the Corporate Debtor.
- The Parties mutually agree that in event of default by the

Corporate Debtor with respect to the 2nd Instalment by the Corporate Debtor, it would be deemed as breach of this Memorandum of Compromise and all amounts paid prior to the date of default would be forfeited by the Financial Creditors.

- The Parties also hereby agree that in event of default, the Financial Creditor shall be entitled to revive the proceedings before the National Company Law Tribunal, Chennai Bench and the entire amount of financial debt of 45,66,00,445/- (Rupees Forty five Crores Sixty Six Lakhs Four Hundred and Forty Five Only) (“Admitted Claim”) shall be payable by the Corporate Debtor.
- The Parties agree that upon the execution of this Agreement, necessary proceedings would be initiated for the withdrawal of the proceedings in IBA/43/2020

The Copy of the Memorandum of Compromise dated 13th June 2022 entered between the suspended director/shareholder of the Corporate Debtor and the Financial Creditors viz The Federal Bank Limited and Indusind Bank Limited is annexed herewith and marked as “Annexure -11”

- d. It is also submitted that the 1st instalment amount paid is maintained in a separate no-lien account titled as Alba Industries Limited-Compromise Account till the order of approval of withdrawal of CIRP. Further in the 6th CoC meeting, the members have agreed to withdraw with 100% voting Resolved that based on the Memorandum of Settlement dated 13.01.2022 executed by the Federal Bank Limited, IndusInd Bank Limited and the suspended director of the corporate debtor and terms contained therein and taking on record the Form FA (along with bank guarantee submitted by the Federal Bank Limited), the Financial Creditor hereby approve and agree unanimously with 100% voting right to withdraw the CIRP of the Corporate Debtor pursuant to the provisions of section 12A of the Insolvency and Bankruptcy Code, 2016 read with regulation 30A of the IBBI(CIRP) Regulations, 2016.
- e. It is seen from Form – FA, that the bank guarantee has been executed by the Federal Bank with respect to the fees of the RP. Hence the present Application is now moved by the Resolution Professional under Section 12A of IBC, 2016 read with Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

3. Learned Counsel for the Applicant is present. Perusal of the annexures filed along with the Application shows that 1st instalment of payments were vide no-lien account. Further, in terms of the Memorandum of Settlement, the parties have agreed to file an Application under Section 12A of the IBC, 2016 by the RP. 

4. Taking into consideration the said submissions made by the Learned Counsel for the Applicant/RP as well as the averments contained in the Application and also based on the Affidavit filed by the RP/Applicant , this instant Application stands **Allowed** and in this circumstances, IBA/43/2020 stands **Closed**. Consequently, the CIRP initiated against the Corporate Debtor also stands **Closed**.

5. The RP is discharged from his duties. The Company is directed to operate under the Management of the Board of Directors and the Company is released from the rigorous of law upon successful settlement as agreed in the Memorandum of Settlement dated 13.01.2022.

6. Accordingly, IA(IBC)/68(CHE)/2022 stands **Allowed** and IBA/43/2020 stands **Closed**.

-Sd-
B. ANIL KUMAR
MEMBER (TECHNICAL)

-Sd-
Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)

Mohana Priya