

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

8. I.A. 3285/2023

IN

C.P.(IB)-500(MB)/2023

CORAM: SHRI H. V. SUBBA RAO, MEMBER (J)
MS. MADHU SINHA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **01.08.2023**

NAME OF THE PARTIES: Korea Trade Insurance Corporation

V/s.

Futura Polyesters Limited.

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Adv. Tasneem Khatau i/b Probus Legal, Counsel appearing for the Petitioner,
Adv. Raina Birla i/b Mr. Moulik Chokshi, Counsel appearing for the IRP,
Senior Counsel Mr. Ravi Kadam a/w Adv. Komal Khushalani, Adv. P. Wagh,
Adv. H. Singh, Mr. Malhar Z. i/b Corporate Baylay & Co., Counsel appearing
for the ex-director of the Respondent, Adv. Meghna Arvind i/b MDP &
Partners, Counsel appearing for the Bank of India are present.

I.A. 3285/2023

The above Interlocutory Application is filed by the IRP under Section 12A of
the Insolvency and Bankruptcy Code for withdrawal of the CIRP order passed
against the Corporate Debtor. The counsel appearing for the Applicant
submits that the above matter was settled amicably by entering into consent
terms dated 28.06.2023 for an amount of USD 2,439,000.00 to be paid as per
the scheduled mentioned in the consent terms against the total claim of USD
3,566,584.52.

Ms. Meghna Arvind, Counsel appearing for the Bank of India who is one of the Financial Creditor of the Corporate Debtor orally objected for allowing the above withdrawal application on the ground that they have also filed a Section 7 Petition against Corporate Debtor which is pending before Court No. II for admission and the Corporate Debtor is purposefully taking adjournment in that matter since 2018. She has also invited the attention of this bench to certain adverse observations passed by the Hon'ble Bombay High Court against the directors of the Corporate Debtor and therefore prayed for dismissal of the above application filed under 12A by the IRP. The Counsel appearing for the Corporate Debtor seriously objected the above request of BOI contending that BOI have already initiated Section 7 proceedings before Court-II and therefore the present application filed by the IRP cannot be rejected.

He further submitted that as per law laid down by the Hon'ble Supreme Court in "*Abhisekh Sing Vs. Huhtamaki PPL Ltd. and Another*" the 12A application filed by IRP before the constitution of COC has to be disposed of immediately since the parties had settled the dispute even before the COC has been constituted.

After hearing the submissions on both sides and upon perusing the material, this bench is of the considered opinion that this bench is left with no option except to allow the above Interlocutory Application. Accordingly, the above IA is **allowed** withdrawing the CIRP Order passed against the Corporate Debtor and releasing the Corporate Debtor from all the rigorous of the moratorium.

Bank of India is at liberty to move appropriate application before Court-II for obtaining necessary restraint orders against the Corporate Debtor if at all they so wish.

Accordingly, the above I.A. **3285/2023** and C.P. **500/2023** are **disposed of**.

Sd/-
MADHU SINHA
Member (Technical)
//Vitthal//

Sd/-
H. V. SUBBA RAO
Member (Judicial)