

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court – II)  
KOLKATA**

**IA(IBC)/283(KB)2022**

**In**

**CP(IB)/1444(KB)2018**

*An application under regulation 38(8) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with rule 11 of the NCLT Rules, 2016*

*In the matter of:*

Syndicate Bank

... Financial Creditor

*Versus*

Transafe Services Limited

...Corporate Debtor

*And*

*In the matter of:*

Searock Container Terminal, No. 3, K.G.L. Nagar, Manali New Town,, Near Manali –  
Ponneri High Road, Chennai 600103

...Applicant

*Versus*

1. Om Logistics Limited, 130, Transport Centre, Punjabi Bagh, New Delhi 110035;

...Respondent

2. Mr. Anil Agarwal, Resolution Professional, 15B, Ballygunge Circular Road,  
Kolkata 700019.

...Proforma Respondent

***Coram:***

**Smt. Bidisha Banerjee**

**:**

**Member (Judicial)**

**Shri Balraj Joshi**

**:**

**Member (Technical)**

**Date of Hearing: 06/02/2023**

**Order Pronounced on: 16/05/2023**

**Appearance through videoconferencing/physically:**

For Om Logistics Ltd.

**:**

Mr. Shaunak Mitra, Adv.

Mr. S. M. Gupta, PCS

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For R-1 in IA/455/2022 & R-1 to R-3 in IA/201/2022	:	Ms. Tanishka Khandelwal, Adv. Mr. Rahul Sharma, Adv.
For Petrofarma Limited	;	Mr. Arindam Guha, Adv. Mr. Shuvasish Sengupta, Adv. Mr. NirmalyaD asgupta, Adv. Ms. Arpita Dey, Adv.
For BSB Shipping &Ligistics	:	Mr. Arik Banerjee, Adv. Mr. Altamash Alim, Adv. Mr. Sumit Biswas, Adv.
For R-1 to R-8 in IA/164/2022	:	Mr. Rishabh Karnani, Adv. Mr. Aman Khemka, Adv.
For respondent in IA/455/2022 & IA/201/2022	:	Mr. Rahul Sharma, Adv. Ms. Tanishka Khandelwal, Adv.
For applicant	:	Mr. Shaunak Mitra, Adv. Mr. Arun Gupta, PCA

### **ORDER**

***Per: Balraj Joshi, Member (Technical)***

1. This Court convened through hybrid mode.
2. **IA(IBC)/283(KB)2022** has been filed by the applicant, **Searock Container Terminal** under regulation 38(8) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with rule 11 of the National Company Law Tribunal Rules, 2016 against the respondent, **Om Logistics Limited**, the successful resolution applicant of Transafe Services Limited seeking following reliefs: -

*A) Allow the present application;*

*B) To confirm/declare that all Agreements & Addendums which the applicant had executed with the Corporate Debtor before the NCLT, Kolkata order dated 9<sup>th</sup> April, 2021 as null & void;*

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- C) *To direct the Corporate Debtor & Respondent to execute a fresh New Agreement with revised tariff commencing from 1<sup>st</sup> July 2021 till 30<sup>th</sup> June 2022, based on the Amicable Settlement arrived before the D.S.P. Officer, Ponneri, which was based on the false Complaint by the Corporate Debtor and Respondent against the Applicant;*
- D) *To appoint a Joint Surveyor to survey the balance containers because 693 containers which had already surveyed by the Respondent's Surveyor;*
- E) *To direct the Respondent to first Insure and the cost of Insurance to be borne by the Respondent for all handling of the containers (men & machinery) as they are mostly in the worst of worst;*
- F) *To direct the Respondent to give all the containers for repairs to the Applicant as it's the Applicant's nature of business. To direct the Respondent not to send any third party as scrap buyers as the Applicant does not entertain it;*
- G) *To direct the Respondent to pay a sum of Rs.2.16 crores to the Applicant for safeguarding the containers for the past 9 years;*
- H) *To direct the Respondent to settle the balance 2 Invoices of the agreed amount of the Amicable Settlement as signed at the DSP Office, Ponneri which is Rs.11,80,000/-;*
- I) *To direct the respondent to settle the amount of Rs.1,52,048.90 as per the Purchase Order issued jointly by the Corporate Debtor & Respondent dated 24/08/2021 for the repair of 5 containers which has been completed by the Applicant;*
- J) *To direct the Respondent to pay for the handling charges (man power and crane) to the Applicant in surveying the 693 containers by their Surveyor from 11/08/2021 till 30/08/2021 at Rs.500/- per container (693 x Rs.500/- = Rs.4,08,870/- (Incl. GST));*

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*K) To direct the Respondent to execute the New Agreement for the Invoices for the months of July, August, September & October pending amounts of Rs.55,38,542.40. This amount is after the Amicable Settlement till June 2021 and from July, 2021 – (refer index S.No.49);*

*L) Pass such other order as this Hon'ble Tribunal may deem fit in the interest of justice.*

3. The underlying company petition being CP(IB)/1444(KB)2018 was filed by Syndicate Bank, the Financial Creditor against Transafe Services Limited, the Corporate Debtor under section 7 of the Insolvency and Bankruptcy Code, 2016, which was admitted *vide* order dated 21/11/2019 appointing Mr. Anil Agarwal as Interim Resolution Professional. Subsequently, Mr. Anil Agarwal was appointed as Resolution Professional.
4. After due process of CIRP, Mr. Anil Agarwal, Resolution Professional of Transafe Services Limited (CIN: U28992WB1990PLC50028), has moved an application being IA(IB) No. 1238/KB/2020 under section 30(6) of the Insolvency and Bankruptcy Code, 2016 read with regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for approval of a Resolution Plan submitted by Om Logistics Limited in respect of Transafe Services Limited, Corporate Debtor, who was declared H1 Bidder with total bid amount of Rs.49,00,00,000/- duly approved by the Committee of Creditors with 100% voting share.
5. This Adjudicating Authority *vide* order dated 09/04/2021 passed in the said IA(IB)No. 1238/KB/2020 had approved the Resolution Plan of Om Logistics Limited with certain observations as recorded in the said order dated 09/04/2021.
6. *Vide* order dated 21/03/2022 passed in IA(IBC)/852/KB/2021 filed by Om Logistics Limited, applicant [respondent no. 1 in IA(IBC)/283(KB)2022] against Mr. Adimoolam Balanatham, sole Proprietor of Searock Container Terminal,

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respondent (applicant in IA(IBC)/283(KB)2022), this Adjudicating Authority had passed the following orders:

*“5. Since the parties have settled the disputes amicably, we direct the Applicant to pay a sum of Rs.10,00,000-, part of which is stated to have already been given to the Respondent, the remaining payment will be made within one week and in lieu thereof, the Respondent shall hand over 1267 containers to the Applicant immediately. The Applicant shall have all those containers lifted from the godown of the Respondent, at his own cost.”*

*“6. After passing of this order neither of the parties shall have any claim on any account against each other.”*

7. It appears that the applicant herein had submitted its claim of Rs.28,57,762/- as an operational creditor with the RP, out of which RP had accepted their claim to the extent of Rs.26,04,888/- and in the Resolution Plan a sum of Rs.2,59,595/- has been provided. The said sum of Rs.2,59,595/- has been paid to the applicant. Despite this, applicant is raising frivolous claim with regard to pre-CIRP period.
8. The present application, IA(IBC)/283(KB)2022, has been filed by the applicant on 24/03/2022 against the respondents, Om Logistics Limited, Successful Resolution Applicant and Anr., much after the approval of the Resolution Plan vide its order dated 09/04/2021.
9. We have perused the application and the documents attached therewith.
10. On a perusal of the application it appears that the disputes raised in this application are mainly related to post-approval of Resolution Plan by this Adjudicating Authority vide its order dated 09/04/2021. Further, vide order dated 21/03/2022 passed in IA(IBC)/852(KB)2021 this Adjudicating Authority ordered as follows:

*“5. Since the parties have settled the disputes amicably, we direct the Applicant to pay a sum of Rs.10,00,000-, part of which is stated to have already been given to the Respondent, the remaining payment will be made within one week and in lieu thereof, the Respondent shall hand over 1267 containers to the Applicant immediately. The Applicant shall*

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*have all those containers lifted from the godown of the Respondent, at his own cost.”*

*“6. After passing of this order neither of the parties shall have any claim on any account against each other.”*

11. The applicant had submitted its claim of Rs. 28,57,762/- as an operational creditor with the RP, out of which RP had accepted their claim to the extent of Rs.26,04,888/- and in the Resolution Plan a sum of Rs.2,59,595/- has been provided. The said sum of Rs.2,59,595/- has been duly paid to the applicant as per the approved Resolution Plan, thereby all pre-CIRP claims of the applicant have been extinguished.

12. Further, Clause 2 of **Section VII: Details of the proposed resolution / transaction structure** of the approved Resolution Plan clearly mandates that *“all assets (tangible and Intangible) of the Corporate Debtor shall remain in the ownership of the Corporate Debtor during the Resolution Plan implementation period, and thereafter the Resolution Applicant shall be at the liberty to transfer such assets of any persons, including the Corporate Debtor, provided that such transfer shall not be made in contravention to the provision of Section 29A of the Code or the provision of the present plan. From the implementation Date there shall be no charge of any party on any asset of the Corporate Debtor, and the relevant parties shall by virtue of the order of the Adjudicating Authority approving this Resolution Plan, be required to sign and execute any and all relevant document to extinguish such encumbrances and handover the title deeds of all such assets of the Corporate Debtor to the Resolution Applicant upon approval of this plan by the Adjudicating Authority.”*

*“3. By way of approval of the present Resolution Plan, all stakeholders of the Corporate Debtor agree and undertake that any breach of terms of any debt by the Corporate Debtor as on the NCLT Approval Date shall stand cured and/or waived, and that the Corporate Debtor and the Resolution Applicant shall at no point be held responsible for any such breach.”*

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“4. By way of approval of the present Resolution Plan, all stakeholders of the Corporate Debtor agree and undertake that the consideration paid for the assignment/extinguishment of their liability under this Resolution Plan shall be full and final settlement of their debt with the Corporate Debtor and neither the Corporate Debtor nor the Resolution Applicant shall at any point of time be held liable for the same upon approval of this Plan by the Adjudicating Authority.”

13. In the light of the above, this application has no merit and is accordingly dismissed.
14. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
15. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**Balraj Joshi**  
Member (Technical)

**Bidisha Banerjee**  
Member (Judicial)

Signed on this, the 16<sup>th</sup> day of May, 2023

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