

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
03-07-2024 AT 10:30 AM**

**Un Numbered CP
AND
Rst. A (IBC) 1/2024 in Un Numbered CP
u/s. 7 of IBC, 2016**

IN THE MATTER OF:

Foster Infin and Trading Private Limited

...Financial Creditor

AND

Affluence Engineering and Enterprises Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

Rst. A (IBC) 1/2024

Orders pronounced. In the result, **this Rst. A (IBC) 1/2024 is dismissed. No costs.**

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – I, HYDERABAD**

Restoration IA (IBC) No. 1 of 2024

In

CP (IB) No. 231/7/HDB/2020

*(under section 60(5) of Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of
the NCLT Rules, 2016)*

**IN THE MATTER OF M/s. Affluence Engineering and enterprise
Limited.**

Between:

FOSTER INFIN AND TRADING PRIVATE LIMITED

5/A, Vengala Rao Nagar, Hyderabad - 500038

Represented by its Authorized Representative

Shri G SRINIVASA RAJU Director

...Petitioner/Financial Creditor

AND

AFFLUENCE ENGINEERING AND ENTERPRISES LTD

A company having its Registered Office situated

Plot No.48, Ground Floor, Nagarjuna hills,

Punjagutta, Hyderabad

...Respondent/Corporate Debtor

Date of Order: 03.07.2024

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)

Shri Charan Singh, Hon'ble Member (Technical)

Appearance:

For Applicant : Damodar Mundra, Advocate

For Respondent : NA

PER: BENCH
ORDER

1. This Application is filed by the Foster Infin and Trading Private Limited (herein after referred as 'Applicant') against the Affluence Engineering and Enterprises Ltd (herein after referred as 'Respondent') under section 60(5) of Insolvency and Bankruptcy Code, 2016('the Code') r/w Rule 11 of the NCLT Rules, 2016, for seeking relief:

To set aside its order dated 23.02.2021, thereby restoring the said company petition vide No. C.P. (IB) No. 231/7/HDB/2021, in the interest of justice.

2. Heard the Learned counsel for the Applicant Ms Sagarika Konneru.
3. After hearing Learned counsel and after perusal of the Application following point is framed for our consideration.

Whether the main company Petition CP(IB) 231/7/HDB/2020 is liable to be restored.

Submissions:

4. Learned counsel for the Applicant submitted that the Financial Creditor initiated a Company Petition C.P. (IB) No. 231/7/HDB/2020 under section. 7 of the code against the Respondent which was withdrawn subsequent to a settlement agreement dated 10.02.2021.
5. Learned counsel further submitted that the Respondent defaulted in the settlement terms and then this Application is filed for the Restoration of the Company Petition CP(IB) No. 231/7/HDB/2020.

6. The Respondent remained Ex parte and no counter was filed by the Respondent.

Our Observations and Findings:

7. We observed that this Application is filed by the Authorised representative of Applicant Shri G. Srinivasa Raju. We perused and find that the authorisation letter filed with the Application is “Resolution passed by the Board of Applicant authorising Mr. Venkata Ramana Reddy to file Form FA (Application for withdrawal of Corporate Insolvency Resolution Process)” and the authorisation filed is not for filing a Restoration Application and the above said authorisation given earlier for filing withdrawal application is wrongly used for filing this application. The relevant text of the said Resolution is reproduced here under:

“RESOLVED THAT Mr. Venkata Ramana Reddy Pesuladinne, Director of the Company, be and is hereby authorised to file the Form FA (Application for Withdrawal of Corporate Insolvency Resolution Process) with Hon'ble NCLT, Hyderabad bench in the Company Petition titled as Foster Infin and Trading Private Limited vs Affluence Engineering and Enterprises Limited for and on behalf of the Company and to do all acts, deeds & things as and when required to give effects to the above resolution”

8. On perusal of the above record, it is very clear that the person who has filed this Application does not have a proper Authority. We reproduce here Rule. 2(6) of NCLT Rules, 2016, which defines Authorised representative.

“Rule. 2(6) “authorised representative” means a person authorised in writing by a party to present his case before the

Tribunal as the representative of such party as provided under section 432 of the Act;”

9. We also perused the settlement agreement between the parties on the basis of which the Petition was withdrawn and find that this agreement does not contain any clause which conveys an authority to the Applicant to approach this Tribunal in case of breach of contract.
10. We further perused this Tribunal's order dated 23.02.2021 permitting withdrawal of the CP(IB) No. 231/7/HDB/2020 and observed that the order do not provide any liberty to the Applicant to restore the Petition in case of breach of settlement agreement.
11. On careful perusal of the Application, we find that the Applicant also did not mention or provided any detail about contravention of the alleged settlement agreement.
12. In view of the above facts, we decide that this Application is liable to be dismissed on account of maintainability as well as on the basis of merit. The point is accordingly decided.
13. In the above back drop, this Restoration Application is thus dismissed with no costs.

Sd/-

**Sh. Charan Singh
Member (Technical)**

Sd/-

**Dr. Venkata Ramakrishna
Badarinath Nandula
Member (Judicial)**