IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

IA No. 96/2023 IN CP (IB) No.43/ALD/2022

In the matter of:
An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of the Corporate Persons) Regulations, 2016 and Rule 11 of the NCLT Rules, 2016.

In the matter of:
KV Foundations India Limited
Having its registered office at:
A-2/31, 3rd Floor, WHS DDA Marble Market, Kirti Nagar,
New Delhi-110015

... *Applicant/Financial Creditor*

Versus

Holy Heights Infrastructures Pvt Ltd.
Having its registered office at:
198/1, Rajpur Road, Dhakpati Dehradun,
Uttarakhand-248001

... *Corporate Debtor*

Coram:

Shri Praveen Gupta.	:	Member (Judicial)
Shri Ashish Verma	:	Member (Technical)

Appearances (through video conference):

For the Applicant in IA No. 96/2023	:	Sh. Keshav Tiwari, Advocate

Order pronounced on: 31.03.2023

ORDER

1. The present order will decide the IA No.96/2023 filed on behalf of the Financial Creditor under Section 60(5) of the Code read with Rule 11 of the NCLT Rule 2016 for replacement of IRP.

-Sd-

-Sd-

2. The brief facts are that in terms of an order dated 22nd February, 2023, the petition under Section 7 filed by the Financial Creditor was admitted and the moratorium was announced. Further, vide para 25 of the said order, Mr. Ashutosh Jain who was proposed as an Interim Resolution Professional by the Financial Creditor, was appointed as IRP and he was directed to take steps as mandated under the Code particularly under Section 15, 17, 18, 20 and 21 of IBC.

3. After passing of the aforesaid order dated 22nd February, 2023, the present application has now been moved seeking replacement of IRP Mr Ashutosh Jain who was earlier appointed as per para 25 of the aforesaid order and in place of him, the name of the new/proposed IRP by the Financial Creditor is for appointment of Mr. Manoj Kumar having R. No. IBBI/IPA 001/IP-P01653/2019-2020/12535.

4. The ground for seeking replacement of the IRP even prior to the constitution of CoC is that the AFA of Mr. Ashutosh Jain issued by the Insolvency Professional Agency had expired on 16th March, 2023 and therefore, he could not assume the responsibility as IRP to take steps in accordance with the order passed on 22nd February, 2023 whereby the application under Section 7 was admitted.

5. We have perused the application as well as the submissions made by the Ld. Counsel representing the Financial Creditor. It is found that the AFA of Mr. Ashutosh Jain had expired on 16th March, 2023, which was not renewed and on account of this he could not take steps in pursuance of the order dated 22nd February, 2023.

6. Now, the new/proposed IRP Mr. Manoj Kumar has given his written consent as per Annexure No.A1 and it has also been declared by him that his authorisation is valid till 29th November, 2023. The credential of Mr. Manoj Kumar and his registration with the agency have also been verified by Ms. Aditi Kharbanda LRA.

-Sd-

-Sd-

7. The Ld. Counsel representing the Financial Creditor has also relied upon judgment in the matter of M/s Govind Shuttering Store Vs. M/s. Kalka Home Developers Pvt. Ltd. And IB No.IB-1220(ND)/2019 wherein also the Operational Creditor has proposed the name of the new IRP before the Constitution of CoC. Further reliance has also been placed on the judgment of Hon'ble NCLAT cited as 2021 SCC OnLine NCLAT 1968 in case of Anil Kumar Ex Interim Resolution Professional (IRP) of M/s. KSL & Industries Limited vs. Allahabad Bank and Others. The relevant part of the order of the Hon'ble NCLAT is as under:

> ***11. <u>Findings</u>***
>
> *……..*
>
> *(iv) So, the Learned Adjudicating Authority have rightly invoked inherent jurisdiction in the fact of this case and passed the Impugned Order.*
>
> *(v) The Learned Adjudicating Authority is conscious of the fact that the Appellant herein could not provide leadership to CIRP proceedings and further there was clash between the Secured and Unsecured Creditors and timeline for CIRP proceedings was running out.*
>
> *(vi) So, the Learned Adjudicating Authority in order to shape the CIRP proceedings on an Application under Rule 11 filed by Respondent No.1/Allahabad Bank, taking note of the fact that there is conflict between the Secured and Unsecured Creditors and no commencement reached by majority of voting share to appoint the Appellant herein as IRP/RP invoked thereunder part in Rule 11 and rightly have passed the Impugned order.*
>
> *…….*

-Sd- -Sd-

(viii) *Taking all these circumstances, and also the fact that the Appellant has only argued on one question of law which was formulated by this Tribunal under this Order dated by 17.09.2020, is only about the exercise of power of Rule 11 of NCLT by the Learned Adjudicating Authority in the facts of this case.*

(ix) *We are of the considered that the Learned Adjudicating Authority have rightly exercise this power and there is no merit in the Appeal and is accordingly dismissed.*

8. In view of the foregoing decisions, we allow the present IA using our inherent power under Rule 11 and hereby appoint. Mr. Manoj Kumar, an insolvency professional registered with Indian Institute of Insolvency Professionals of ICAI and IBBI having registration number IBBI/IPA-001/IP-P-01653/2019-2020/12535 in place of Mr. Ashutosh Jain.

9. The appointed IRP would forthwith take necessary steps in pursuance of the admission order dated 22.02.2023 to continue with the CIR Process and take necessary steps expeditiously to complete the CIR Process within the prescribed statutory time limit. Ist Progress Report after Constitution of CoC is to be filed by 01.05.2023. IA stands disposed off.

-Sd-

(Ashish Verma)
Member (Technical)

-Sd-

(Praveen Gupta)
Member (Judicial)

31st March, 2023

Priya Agarwal
(Stenographer)