

NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

ITEM NO :1

IA NO.134/2020 IN
CP NO.(IB)358/ALD/2019

ATTENDENCE - CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 15.06.2020 at 11:00 AM THROUGH VIDEO CONFERENCING.

NAME OF THE COMPANY : M/S ORION INFRABUILD PVT LTD V/S M/S SKYHIGH INFRAPROJECT PVT LTD.

SECTION OF I & B CODE: 12A OF IBC

PRESENT : HON'BLE MR. JUSTICE (RETD.) RAJESH DAYAL KHARE, MEMBER (J)

COUNSEL FOR APPLICANT/ RP : SH. PANKAJ AGARWAL, ADVOCATE

IA NO.134/2020 IN CP NO.(IB)358/ALD/2019

The matter was taken up today through Video Conferencing at 11:00 AM.

Heard Sh. Pankaj Agarwal, Ld. Counsel for the RP through Video Conferencing today.

Learned counsel for the RP states that he has moved the present application (IA No. 134/2020) under section 12A of I&B code, 2016 r/w Regulation 30A of the I&B Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, praying for withdrawal of application no. CP (IB) NO. 358/ALD/2019 admitted for Corporate Insolvency Resolution Process of M/s Skyhighinfraprojects Pvt. Ltd.

It is contended that M/s Orion Infrabuild Pvt Ltd (Financial Creditor) (hereinafter referred to as the petitioner) had filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 bearing CP (IB) No. 358/ALD/2019 before this Court for initiating the Corporate Insolvency Resolution Process of M/s Skyhigh Infraprojects Private Limited (Corporate Debtor) (hereinafter referred to as the Respondent).

It is further contended that vide order dated 07.01.2020, this Court had admitted the aforesaid petition and had initiated CIRP against the Respondent and Mr. Amar Pal was appointed as the Interim Resolution Professional.

It is further contended that vide order dated 02.03.2020 this Court had appointed CA. Amit Agarwal as Resolution Professional (RP) replacing Mr. Amar Pal on the recommendation of the COC.

It is further contended on behalf of the petitioner that the COC in its 3rd and 4th meeting held on 28.03.2020 and 29.04.2020 respectively had authorised Resolution

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Professional to publish Form-G inviting EOI from prospective Resolution Applicants and the RP received expression of interest from 9 PRA till the last date of submission of EOI.

It is further argued that the Resolution Professional has completed the due compliances under Section 29A of IBC and 6 out of 9 PRA's have filed their Resolution Plan.

It is further contended that in the mean time, before the last date of submission of the Resolution Plan which was 26.06.2020, the Resolution Professional has received email dated 01.06.2020 from Advocate of the Suspended Director of the Respondent expressing his willingness to settle the dues of Financial Creditor, in view of the liberty given vide order dated 27.05.2020 passed by the Hon'ble NCLAT, New Delhi from 04.06.2020, The Resolution Professional received an application in Form FA from Suspended Board of Directors, alongwith settlement agreement and other annexures duly obtained by Financial Creditor and with a request to convene the COC meeting seeking approval for withdrawal of ongoing CIRP.

It is further contended that draft for Rs.45,00,000 (Rupees Forty Five Lakhs only) i.e requisite estimated cost of CIRP was also deposited and thus the RP on 06.06.2020 issued the notice for 7th meeting of COC for seeking approval of the COC to withdraw the outgoing CIRP of the Corporate Debtor.

It is further contended that 7th meeting of COC was held on 10.06.2020 and the proposal for withdrawl of the CIRP was to be considered pursuant to the settlement agreement and it is contended that the COC with 99.3 % of votes approved the said proposal and therefore the present application is being moved by RP who has been authorised to file the withdrawal application before this Court.

It is argued that there is no requirement of any bank guarantee in term of sub-regulation (2) of Regulation 30(A), as the Suspended Directors have already paid a sum of Rs. 45,00,000 (Rupees Forty Five Lakhs only) as cost for the ongoing Corporate Insolvency Resolution Porcess, and have undertaken to pay the balance amount directly.

It is further argued that on 12.06.2020, the Suspended Board of Directors have reimbursed an amount of Rs. 7,70,352/- (Rupees Seven Lakhs Seventy Thousand Three Hundred Fifty Two only) and Rs. 2,27,403/- (Rupees Two Lakhs Twenty Seven Thousand Four Hundred and Three only) in favour of M/s Park Town Complex Pvt Ltd and M/s Orion Infrabuild Pvt Ltd respectively directly through RTGS.

After hearing the learned counsel for the applicant, the present application is hereby allowed. Accordingly the present application is being allowed and the CIRP Process for

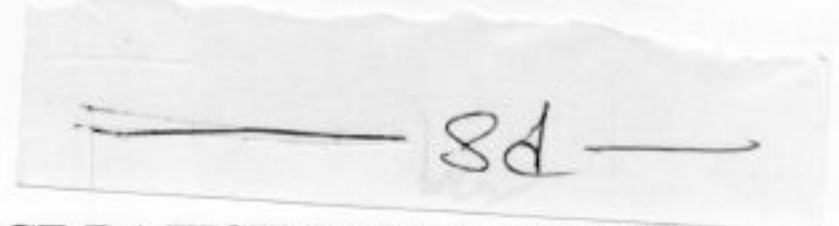
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skyhigh Infrabuild Pvt. Ltd is hereby terminated and the Resolution Professional is hereby discharged.

In case there is a breach of settlement agreement of the Corporate Debtor, petitioner shall have liability to file an appropriate application as per the provisions of law.

Accordingly, the present application stands disposed off.

Dated : 15.06.2020



**JUSTICE RAJESH DAYAL KHARE
(MEMBER JUDICIAL)**

*Typed by :
Shubham Km Singh
(Private Secretary)*