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7/9/20

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

MA/100/KOB/2020
IN
IBA/45/KOB/2019

(Under Section 33(1)(a), 34(4) and 60(5)(C) of the Insolvency and Bankruptcy Code, 2016)

Coram: **Order delivered on 28th August, 2020**

Hon'ble Shri Ashok Kumar Borah, Member (Judicial)

IN THE MATTER OF

ASHRAF ABULLA KUNJU & SHAHIDE BEEVI ASHRAF

VS

ADHILS BUILDERS AND DEVELOPERS PVT. LTD.

Parties/Counsel present (through video conference)

For the applicant : *Shri Shankar P Panicker, Advocate (RP)*

The instant M.A has been filed by the Resolution Professional in the matter of Ashraf Abdulla Kunhu and another Vs. Adhils Builders and Developers (Pvt) Limited for the following reliefs:

(a) To liquidate the company based on the resolution of the Committee of Creditors in their 5th meeting held on 30.07.2020.

(b) To appoint Shri Dilip KP, Veluthedath House, Ponnurunni, Vytilla, Kochi-682019 having registration No. with IBBI viz., IBBI/IPA-001/IP-P01310/2018-19/12220 as the liquidator of the company under Section 34(4) of IBC 2016 for remuneration and expenses totalling to

Rs. 8.5- lakhs (Rupees Eights Lakhs Fifty thousand only) based on the decision of the 5th meeting of the CoC held on 30.7.2020.

(c) To consider based on the decision of this Hon'ble Tribunal dated 28.11.2019 and the concurrence by the CoC in their fifth meeting that a sum of Rs. 16.88 lakhs as the Cost of CIRP to be borne by the Company and the dues to the RP to the tune of Rs. 12.96 lakhs be processed as per Section 53 of the IBC 2016.

2. The brief facts leading to this MA are that this Tribunal vide order dated 28.11.2019 admitted the IBA No. 45/KOB/2019 and appointed the applicant herein as the Interim Resolution Professional. Thereafter in the first meeting of Committee of Creditors it was resolved to appoint the Interim Resolution Professional as Resolution Professional in the matter of Adhils Builders and Developers Pvt. Limited. This report filed by the Interim Resolution Professional has been taken on record by this Tribunal on 2.1.2020.. On 17th December, 2019 the Committee of Creditors (CC) was constituted with the Sole financial creditor viz., State Bank of India, who is having 100% voting power. The information memorandum was discussed on 21st January, 2020 and even though the expression of interest was published on 5th February, 2020,there was no response from any prospective bidders. Another CoC was called on 2nd March, 2020 to decide the future course of action. In that CoC it has been resolved to recommend liquidation of the company and decided to get approval from the Adjudicating Authority. In that meeting the name of Liquidator from the panel of Insolvency Professionals has been proposed and resolved to submit before the Adjudicating Authority. It has been further stated that the CIRP should have been completed by 26th May, 2020, however, due to the disruption on account of Lock down restrictions imposed by the Central Government and State Government, there was delay in the CIR Process. This fact

was already reported to this Tribunal on 14th July, 2020 and the report was taken on record on 23rd July, 2020. On 30th July, 2020 in the 5th meeting of the CoC, it has been resolved to recommend the liquidation of the company by proposing Shri Dipeep KP as the Liquidator of the company in place of the present Resolution Professional, as the present RP is not willing to continue as the Liquidator. Hence the present MA is filed for the aforesaid reliefs.

3. I have heard Shri Shakar P Panicker, learned Resolution Professional and have meticulously gone through the annexures appended to the application. In the minutes of the fifth meeting of Committee of Creditors held on 30th day of July 2020 through video conferencing as per Regulation 21(1) of the IBC (Insolvency Resolution Process for Caproate Persons) Regulations, 2016, Mr. Naresh Kumar, AGM of State Bank of India, Trivandrum, Mr.Pushakarakshan VP, AGM (Law) State Bank of India, Trivandrum and Ms. Alcina Nettikadan, Chief Manager, SBI, Trivandrum, who are representing the Sole Financial Creditor in the CoC, and also the Resolution Professional, who appeared as the Chairman of the meeting. The committee has discussed in detail about lack of response to the expression of interest by any prospective investors. It was also observed that the continuation of the CIRP will reduce the value of the stakeholders. The Bank has moved for physical possession of the house property mortgaged by the Guarantor under the SARFAESI Act. Based on the discussions, the CoC decided to recommend for Liquidation of the Company/Corporate Debtor. The CoC has informed that they have received the approval from the competent authority for recommendation of the Liquidation of the Company under Section 33(1)(a) of IBC 2016. It was resolved to recommend liquidation of the CD subject to the decision of the Adjudicating Authority as per Section 33(1)(a) of the IBC 2016. In item No.2 the appointment of Liquidator for liquidation process has been discussed and it was resolved to approach the

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Adjudicating Authority for approval of appointment of Shri Dileep KP as the Liquidator of the company and for payment of remuneration and expenses totalling Rs. 8.50 lakhs (Rupees eight lakhs fifty thousand only) subject to the decision of the Adjudicating Authority. The R.P has appended Form AA signed by Shri Dileep K.P. Resolution Professional, in which it is declared that (i) he has registered with the Board as an Insolvency Professional (b) he is not subject to any disciplinary proceedings initiated by the Board or the Insolvency Professional Agency (c) he do not suffer from any disability to act as a resolution professional (d) he is eligible to be appointed as resolution professional of the Corporate Debtor under Regulation 3 and other applicable provisions of the Code and Regulations (e) he shall make the disclosures in accordance with the code of conduct for insolvency professionals as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regualtions,2016; and (f) he is having only one case in hand at present. It was also resolved to approve an amount of Rs. 16,88,456/- (Rupees sixteen lakhs eighty eight thousand four hundred fifty six only) as costs of CIRP till 30th July, 2020 and Rs. 3,92,000/- (Rupees three lakhs ninety two thousand only) as interim finance brought in by Corporate Debtor as on 30th July, 2020. It was also resolved that the balance amount of Rs. 12,96,456/- (Rupees twelve lakhs nicety six thousand four hundred and fifty six only) being part of the costs of CIRP payable to the Resolution Professional by the Corporate Debtor in terms of the order of this Tribunal dated 28.11.2019 to be considered as per the provisions contained in the IBC 2016. All the above resolutions were passed with 100% voting share.

4. In view of the aforesaid resolution passed by the Committee of Creditors in its 5th meeting held on 30.7.2020 and on the basis of the submissions made by the learned Resolution Professional, this Tribunal pass the following order:

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ORDER

(i) The Corporate Debtor M/s. Adhils Builders and Developers Private Limited is hereby put under liquidation with immediate effect under Section 33 (1)(a) of IBC, 2016.

(ii) Shri Dileep K.P having Registration Number IBBI/IPA-001/IP-P01310/2018-19/12220, having address at Veluthedath House Ponnurunni, Vytilla, Kochi-682019 is hereby appointed as Liquidator of the Corporate Debtor under Section 34 of IBC, 2016. As resolved in the CoC, the remuneration and expenses totalling Rs. 8.50 lakhs (Rupees eight lakhs fifty thousand only) is to be paid to the Liquidator by the Corporate Debtor.

(iii) As resolved by the CoC in the 5th meeting after discussion with the Resolution Professional for reducing the remuneration and based on the decision of this Tribunal dated 28.11.2019, a total sum of Rs. 16.88 lakhs to be paid to the Resolution Professional as the CIRP costs by the Corporate Debtor and the dues to the RP to the tune of Rs. 12.96 lakhs be processed and paic as per Section 53 of the IBC 2016.

(iv) The liquidator is directed to adhere to Section 33(1) (ii) & (iii) and discharge his powers and duties as specified under Section 35 to 41 of IBC, 2016 and meticulously adhere to the Rules and Regulations issued by IBBI in this regard from time to time.

5. With the above directions, the MA BNo.100/KOB/2020 stands disposed of.

True copy.

Dated the 28th day of August, 2020

Certified to be True Copy

Deputy Registrar
National Company Law Tribunal
Kochi Bench

Sd/-
Ashok Kumar Borah
Member (Judicial)

Copy to Shri Shankar P. Panicker, Advocate (R.P).

National Company Law Tribunal
Kochi Bench
राष्ट्रीय कम्पनी विधि न्यायाधिकरण, कोच्चि न्यायपीठ