

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, Court II
KOLKATA
IA(IBC)/1599(KB)2022
in
CP(IB)/2050(KB)2019**

In the matter of:

An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016;

And

In the matter of:

Modtech Tradecom Private Limited

.... **Operational Creditor**

Versus

Basu & Co. Road Contractors Private Limited

....**Corporate Debtor**

And

In the matter of:

BJD Engineers India Private Limited, having its registered office at C-128/2,
Mohammadpur, Bhikaji Cama Place, New Delhi 110061.

... **Applicant/Successful Resolution Applicant**

Coram:

Smt. Bidisha Banerjee : **Member (Judicial)**

Shri Balraj Joshi : **Member (Technical)**

Appearances through hybrid mode:

For applicant : Mr. Arik Banerjee, Adv.
Mr. Sumit Biswas, Adv.

For Monitoring Committee : Mr. Arun Kumar Gupta,

Chairman, Monitoring Committee

Date of Hearing: 28/12/2022

Date of Pronouncement: 10/01/2023

O R D E R

Per: Ms. Bidisha Banerjee, Member (Judicial)

1. This application has been filed, under section 60(5) of the Insolvency and Bankruptcy Code, 2016, by the applicant/successful resolution applicant, **BJD ENGINEERS INDIA PRIVATE LIMITED**, seeking approval of Mr. Ajay Jalan and Mr. Yash Jalan as directors on the Board of the Corporate Debtor instead of Mr. Padam Singh, who has tendered resignation already. This application is supported by an affidavit duly affirmed by Mr. Narendra Kumar Tripathi, Director of the applicant, which is placed at page 167 of the application.
2. On a petition being CP(IB)/2050(KB)2019 filed by Modtech Tradecom Private Limited (***Operational Creditor***), against Basu & Co. Road Contractors Private Limited (***Corporate Debtor***), the Corporate Debtor was admitted under CIRP *vide* order dated 19/02/2020 appointing Mr. Ananda Rao Korada as the Interim Resolution Professional. Subsequently, this Adjudicating Authority *vide* its order dated 29/12/2020 appointed Mr. Arun Kumar Gupta as the Resolution Professional.
3. *Vide* order¹ dated 16/06/2022 passed in IA(IB)No.64/KB/2022 this Adjudicating Authority had duly approved the Resolution Plan of the successful

¹ Annexure "A" at pages 12 to 57 of the application

resolution applicant. Further, *vide* order² dated 20/06/2022 certain inadvertent typographical errors were duly corrected by this Adjudicating Authority. The applicant has duly annexed with the application a copy of the Resolution Plan³.

4. It is stated in the application that as per internal page 36 (running page 94 of the application) of the approved Resolution Plan the formation of the new Board of Directors of the Corporate Debtor after the effective date would be comprising of two directors being (a) Mr. Narendra Kumar Tripathi, who is also one of the directors of the applicant and (b) Mr. Padam Singh. However, Mr. Padam Singh due to his personal reasons has refused to act as director on the Board of the Corporate Debtor and has tendered his resignation.
5. It is further stated that in the above circumstances, Mr. Narendra Kumar Tripathi, issued a letter dated 28/11/2022 requesting the Chairman of the Monitoring Committee to convene a meeting of the Monitoring Committee wherein the agenda was to introduce two new directors on the Board of the Corporate Debtor instead and in place of Mr. Padam Singh on account of his unwillingness to act as director of the Corporate Debtor. Copy of the said letter dated 28/11/2022 forms Annexure "C"⁴. Pursuant to the aforesaid notice, a meeting of the Monitoring Committee was held on 01/12/2022, being 5th meeting of the Monitoring Committee, wherein the resignation of Mr. Padam Singh was accepted and introduction of Mr. Ajay Jalan and Mr. Yash Jalan as two new

² At pages 58 and 59 of the application

³ Annexure "B" at pages 60 to 139 of the application

⁴ At page 140 of the application

directors on the Board of the Corporate Debtor was approved. A copy of the minutes of the 5th meeting of the Monitoring Committee forms Annexure “D”⁵.

6. It is also stated that before the meeting of the Monitoring Committee another letter was addressed on 30/11/2022 to the Monitoring Committee of the Corporate Debtor whereby the names of Mr. Ajay Jalan and Mr. Yash Jalan was again proposed along with their affidavits u/s. 29A of the Insolvency and Bankruptcy Code, 2016. A copy of the letter dated 30/11/2022 along with the affidavits u/s. 29A of the IBC given by Mr. Ajay Jalan and Mr. Yash Jalan forms Annexure “E”⁶.
7. Ld. Counsel for the applicant submits that pursuant to the meeting of the Monitoring Committee necessary forms in Form DIR 12 have been filed with the RoC showing the appointment of two directors being Mr. Ajay Jalan (DIN 00300362) and Mr. Yash Jalan (DIN 09005830) on the Board of the Corporate Debtor. A copy of the latest master data of the Corporate Debtor forms Annexure “F”⁷.
8. In the aforesaid circumstances this application has been made u/s. 60(5) of the Code seeking approval of this Adjudicating Authority the appointment Mr. Ajay Jalan and Mr. Yash Jalan on the Board of the Corporate Debtor in place and stead of Mr. Padam Singh. The applicant has stated in the application that approval of the Adjudicating Authority is required for due implementation of the approved Resolution Plan so that the Corporate Debtor can be revived

⁵ At pages 141 to 144 of the application

⁶ At pages 145 to 163 of the application

⁷ At page 164 of the application

successfully and carry its business through its Board of Directors in accordance with law.

9. We have heard the Ld. Counsel for the applicant and Mr. Arun Kumar Gupta, Chairman of the Monitoring Committee and perused the records. Since the Board is supposed to contain two Directors, and only one has tendered resignation whereas induction of Mr. Ajay Jalan and Mr. Yash Jalan will make it three, the Ld. Counsel submitted at hearing that only Mr. Ajay Jalan may be permitted to be included in the Board to replace Mr. Padam Singh. Accordingly, this Adjudicating Authority, keeping in view of the recommendation of the Monitoring Committee, hereby approves of replacement of Mr. Padam Singh with Mr. Ajay Jalan for the purpose sought to be served.
10. IA(IBC)1599(KB)2022 shall thus stand disposed of in accordance with the above directions.
11. The Registry is directed to send e-mail copies of the order forthwith to all the parties and the Chairman, Monitoring Committee for information
12. Certified copy of the order may be issued to all the concerned parties, if applied for, subject to compliance with all requisite formalities.
13. File be consigned to the records.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, 10th day of January, 2023

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