IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KOCHI

IBA/45/KOB/19

(Under Section 10 of Insolvency and Bankruptcy Code, 2016)

Order delivered on 28.11.2019

Coram: Hon'ble Shri Ashok Kumar Borah, Member (Judicial)
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

In the matter of

1. Ashraf Abdulla Kunju,
   Adhils House, Kannanalloor,
   Kollam.

2. Shahide Beevi Ashraf, Adhil House,
   Kannanalloor, Kollam. .... Corporate Applicants

Vs.

M/s Adhils Builders and Developers Pvt.Ltd.
Kannanalloor, Kollam. .... Corporate Debtor

For Corporate Applicant	:	Mr.Joseph Kodianthara,Senior Advocate
For Corporate Debtor	:	None present
For Financial Creditor	:	India Law LLP.

ORDER

This Application was filed by **ASHARAF ABDULLAH KUNJU** i.e. the Corporate Applicant in Form No.6 as prescribed under Sub Rule (1) of Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 ('Rules') for initiating Corporate Insolvency Resolution Process against **M/s. ADHILS BUILDERS AND DEVELOPERS PRIVATE LIMITED** i.e., Corporate Debtor under Section 10 of Insolvency & Bankruptcy Code 2016 (for short to be referred hereinafter as the 'Code'). The Corporate Debtor falls within the definition of the term 'Corporate Applicant' as defined in Sub-Section (5) of Section 5 of the Code.

1. The Corporate Debtor was incorporated on 07.12.2011 having its registered office is at Kannanalloor, Kollam in the State of Kerala and therefore, the mater falls within the territorial jurisdiction of this Tribunal. The Corporate Debtor had changed the name from Ashkab Builders and Developers Private Limited to Adhils Builders and Developers Private Limited in 18 .05.2016.

2. The Application has been filed by Mr. Asharaf Abdullah Kunju, Managing Director of Corporate Debtor who has been authorised to file an application under the Code vide Special Resolution dated 20.09.2019.(Annexure F of the Application)

3. The authorised share capital of the Company is ₹ 1,00,000/- (Rupees One lakh Only) divided into 10,000/- (Ten Thousand Only) equity shares of ₹10 each (Rupees Ten Only) each.

4. As per Memorandum of Association of the Corporate Debtor (Annexure G/2) the main objects of the Corporate Debtor are '*to take up the Business of the Builders, Contractors, and Construction and Developing of Pre-Fabricated and Pre-Cast Houses building Flats and Villas and all type Residential Buildings.*'

5. It is stated that the Corporate Debtor availed a cash Credit limit of ₹5,00,00,000/- (Rupees Five Crore Only) from State Bank of Travancore. The State Bank of Travancore had provided cash credit (h) MSMSE Vyapar Mithra Scheme. The primary Security Hypothecation of Stock of

Building Materials such as Ceramic / vitrified Tiles, wall tiles, electrical goods plumbing and sanitary equipment's and fittings etc. The Loan was issued by receiving 7.32 Ares of land and semi-permanent Commercial shed and 9.00 Ares of land with double storied residential building as collateral securities. It is further stated that due to the slow economic conditions of the state as well as lower trade practice, non-receivables from the creditors on the point of sale increase the liability with the bank and repayment with the bank was badly affected. The applicant had paid an amount of ₹2.29 crores towards the bank and the same was identified and paid from the sales which also affected the business. The monthly expenses of the company were about ₹2,00,000/- which is also identified from the business. The Applicant was supplied with tiles by several manufactures and the concern being a supplier to other retailers found difficult to get the payment back from those retail outlets which increased the debts of the Company.

6. The corporate debtor also furnished Stock List as on August 2019 (Annexure C) , list of assets and liabilities as on 20.10.2019 (Annexure D) establish the Financial Condition of the Corporate Debtor, following is the status of the Corporate debtor under different heads:-

<u>REVENUE FROM OPERATIONS</u>

Period	Revenue from Operations
2016	4,53,49,590.56
2017	1,98,08,959.36
2018	84,29,423.00
2019 (provisional)	55,32,592.00

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ACCUMULATED PROFIT/LOSS OF THE CORPORATE DEBTOR

Period	Accumulated profit/loss of the Corporate debtor
2016	(15,75,640.90)
2017	(53,75,378.40)
2018	(1,37,53,374.90)
2019 (provisional)	(1,59,69,510.90)

LONG TERM BORROWINGS AND OTHER LIABILITIES

Period	Long Term Borrowings and other Liabilities
2016	10,544.00
2017	18,575.00
2018	18,575.00
2019 (provisional)	18,575.00

CURRENT LIABILITIES

Period	Current Liabilities
2016	7,27,50,574.19
2017	6,51,49,375.78
2018	7,33,13,676.52
2019 (provisional)	7,76,71,268.52

7. It is clear from above that the entire net worth of the company has been eroded, therefore the Company is unable to meet its financial obligation. Thus, Corporate Debtor has fallen into debt trap and competent to set in motion the insolvency Resolution Process under the code to ensure maximum value of assets which is in the interest of all the stakeholders.
8. Meanwhile the bench issued notice to the Financial Creditor and he appeared before this bench and submitted the following: -

(a) The bank has served a demand notice on the Corporate Debtor on 29.12.2018for immediate repayment of outstanding debt.

(b) He claimed that the outstanding debt amount was much higher than shown in the instant application by the Corporate Applicant.

© He also stated that the entire CIRP cost must be borne by the Corporate Debtor only.

9. The learned Counsel for the Corporate Applicant has conveyed their agreement for bearing CIRP cost. Thereafter the Counsel for financial Creditor has not raised any objection for the application and agreed for the admission.

10. We have heard the learned counsel for the Corporate Debtor, learned counsel for Financial Creditor and perused the records. We come to the conclusion that the application filed by the Corporate Applicant is complete and also as the Financial Creditor has not raised any objection, the application is deemed to be admitted. Accordingly, the Application **IBA/45/KOB/2019 is Admitted**. While admitting the application the moratorium is declared for prohibiting all the following as provided in section 14(1) of the code:

> "(a) *the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
>
> (b) *transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

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(c) *any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

(d) *the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor."*

11. It is further directed that the supply of essential goods or services to the corporate debtor, if continuing shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub section (1) of section 14 of the code shall however not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to the sureties of the corporate debtor.

12. The moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this bench approves the resolution plan under Subsection (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

13. We hereby appoint **Mr. Sankar P Panicker**, having Registration No. **IBBI/IPA003/IP-N00037/2017-18/10300**, address **Panicker And Panicker, Advocates, 64/768, Jaikunj, Chitoor Road, Ernakulam Kerala- 682035** and (E-Mail sankarpanicker@gmail.com), as recommended in the application as an Interim Resolution Professional with the following directions:

(i) The term of appointment of **Mr. Sankar P Panicker**, shall be in accordance with the provisions of Section 16(5) of the Code.

(ii) In terms of Section 17 of 'the Code', from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the 'Corporate Debtor' shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the 'Code', including taking control and custody of the assets over which the 'Corporate Debtor' has ownership rights recorded in the balance sheet of 'Corporate Debtor' etc. as provided in Section 18 (1) (f) of the 'Code'. The Interim Resolution Professional is directed to prepare a complete list of inventories of assets of the 'Corporate Debtor';

(iii) The Interim Resolution Professional shall strictly act in accordance with the 'Code', all the rules framed thereunder by the Board or the Central Government and in accordance with the 'Code of Conduct' governing his profession and as an

Insolvency Professional with high standards of ethics and moral;

(iv) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the 'Code' read with Section 15 calling for the submission of claims against 'Corporate Debtor'; and

(v) It is hereby directed that the 'Corporate Debtor', its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the 'Corporate Debtor' as a going concern and extend all cooperation in accessing books and records as well as assets of the 'Corporate Debtor';

(vi) The Interim Resolution Professional shall after collation of all the claims received against the corporate debtor and the determination of the financial position of the corporate debtor constitute a committee of creditors and shall file a report, certifying constitution of the committee to this Tribunal on or before the expiry of thirty days from the date of his appointment , and shall convene first meeting of the committee within seven days of filing the report of constitution of the committee.

(vii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

14. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Dated the 28th day of November, 2019.

Certified to be True Copy

Sd/-

(Veera Brahma Rao Arekapudi)
Member (Technical)

Sd/-

(Ashok Kumar Borah)
Member (Judicial)

Deputy Registrar
National Company Law T...
Kochi Bench, Kochi - 682 021

Memo No.IBA/45/KOB/2019/1029-1031

Date: 2.12.2019

To

1. M/s Joseph & Kuriyan, Advocates, 42/2260, Providence Road, Koch8i-682018 (**Counsel for the applicant**). — Issued by post
2. M/s India Law LLP, 66/1058, First Floor, Veekshanam Road, Ernakulam North-682018. (**Counsel for the respondents**) — Issued by hand

order received on 3/12/2019 Reethu ? Advocate

3. Mr. Sankar P Panicker, Panicker And Panicker, Advocates, 64/768, Jaikunj, Chitoor Road, Ernakulam Kerala- 682035 **(Interim Resolution Professional)** — Issued by post

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