

\$~CP-24 & 12

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CO.PET. 449/2016

NITYA KUKREJA Petitioner

versus

ABW INFRASTRUCTURE LIMITED Respondent

+ CRL.O.(CO.) 1/2019

ABW INFRASTRUCTURE LTD.(IN PROV.LIQN.)..... Petitioner

versus

ATUL BANSAL & ANR. Respondent

Present: Mr.Sermon Rawat and Mr.Parikshit Goyal, Advs. for Ex. Director

Mr.Anil Grover, AAG, Haryana with Ms.Noopur Singhal, Adv. for DTCP, Haryana HSIIDC

Mr.Alok Kumar, Ms.Somya Yadava, Ms.Snigdha Singh, Mr.Chirag Babbar, Mr.Ashutosh Jain and Mr.Ketul Hansraj, ADvs. for Alchemist Asset Reconstruction Company in CA 343/2019

Mr.A.P.Dubey and Mr.Vipin Singh, Advs.

Mr.Nikhil Nayyar, Sr.Adv. with Mr.Divyanshu Rai, Mr.Naveen Hegde, Advs for ABW Alottees Welfare Association

Mr.Ashish Dholakia, Ms.Madhavi Khare, Mr.Saurabh Dev Karan Singh, Advs. for applicant in CA 343/2019 for Dove Infrastructure Pvt. Ltd.

Mr.Kunal Sharma, Adv. for the Official Liquidator

Ms.Abha Nijawan, Mr.Vipin Singh, Advs. for applicant in CA 156/2019 & 158/2019

Mr.Aaditya Vijay Kumar and Mr.Keith Varghese, Advs. for ABW Allottees Welfare Society

Ms.Swati Jain, Adv. for Mr.Ashish Kumar Gupta, Adv. for applicant in CA 160/2019

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

23.05.2019

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CO.PET. 449/2016

1. Learned Forensic Auditor Mr.Ravinder Bhatia, Chartered Accountant pursuant to the order of this court dated 5.4.2019 has appeared in person. He has filed an interim report.

2. It has been pointed out in the interim report that records of the respondent company are lying at the office of the respondent at Gurgaon at the third level of the basement. He has also pointed out that the record is incomplete. However, records as seen reveal that Mr.Atul Bansal and Mrs.Sona Bansal who were the Directors of the respondent company were also the Directors of 87 other companies. There are transactions that have taken place between the respondent company and the said 87 companies. However, there are no records available regarding the said 87 companies. The Chartered Accountant of the respondent company Mr.Ashok Bhartiya has in a written communication dated 17.4.2019 to the Forensic Auditor stated that it has no records available. He has also pointed out that the person responsible for the finalisation of the accounts and for getting them audited was one Mr.Vijay Grover who was Director of the respondent company and was working directly under the Chairmanship of Mr.Atul Bansal, Chairman/Director of the respondent company.

3. In the report the Forensic Auditor has also pointed out the list of 9 banks which are still being operated by the respondent company details of which are as under:-

S.No.	Bank Name	Account Number	Branch Address
1.	Yes Bank	006184000000303	Address not found

2.	Axis Bank	911020060400797	Ground Floor & Basement, S.C.O.No.29, Sector-31-32 A, Urban Estate, Gurgaon-122001
3.	Allahabad Bank	50028110114	Ishwar Nagar opp.New Friends Colony, Hathwa Road, New Delhi-110055
4.	Bank of Maharashtra	60108138146	Rectangle 1, D-4 Saket District Centre, Saket, New Delhi-110017
5.	HDFC Bank	-2802320003274	First India Place, Mehrauli Gurgaon Road, Gurgaon, Haryana-122002
6.	ICICI Bank	165305000060	Shop No.1,2 & 3 DLF Cross Point Opposite Galleria Market, DLF Phase Gurgaon, Haryana-122002
7.	ICICI Bank	165305000126	-do-
8.	Bank of Baroda	058602000001077	Sansad Marg, New Delhi
9.	Indian Overseas Bank	003502000015174	Karol Bagh, New Delhi

4. A communication was written to the banks by the Official Liquidator on 11.4.2019. There has been no response from the banks. The aforementioned banks are directed to immediately freeze all transactions. No payments will be made from the accounts. They will also transmit a copy of the Statement for the last three years of the bank accounts to this court with a copy to the Forensic Auditor Bhatia and Bhatia, Chartered Accountants.

5. A copy of this order will be sent by the Registry to the aforementioned banks. A copy of this order be also given *dasti* to the Forensic Auditor who is also authorised to interact with the banks and to seek any further information that may be necessary.

6. I am informed that Mr.Atul Bansal and Mrs.Sona Bansal have been declared Proclaimed Offenders in other proceedings. Similarly, Mr.Vijay Kumar Grover is in judicial custody in FIR No.165/2016 registered with Police Station EOW Cell. Let Production Warrants be issued for production of Mr.Vijay Kumar Grover, who is an accused in the aforementioned FIR, through Superintendent Tihar Jail, for the next date of hearing.

7. The Forensic Auditor is permitted to inspect the accounts books which are lying in the basement of the office at Gurgaon. The auditor is authorised to expend a sum of upto Rs.50,000/- for organising any infrastructure required in the office where the records are stored for the purpose of carrying out the audit. Such expenditure shall be refunded by the OL to the Auditor. The Official Liquidator will ensure that the office is open on the dates requested by the forensic Auditor from 10.00 AM till 7:00 PM. The concerned official will ensure his timely presence in the said premises.

8. The Forensic Auditor is also authorised to seek information and records from any functionaries who have dealt with the respondent company in the last three years in any manner whatsoever. The Forensic Auditor will file an interim report before the next date of hearing.

9. List on 08.08.2019. On that date Mr.Ashok Bhartiya, Chartered Accountant shall remain present in Court. Mr.Ravinder Bhatia may serve a copy of this order on Mr.Ashok Bhartiya by Registered A.D.

CA 343/2019

1. This application is filed under Rule 9 read with Rule 6 of the Companies (Court) Rules, 1959 by Dove Infrastructure Private Limited seeking to place on record a Scheme of Compromise and Arrangement between the respondent company and a class of creditors. The case of the applicant is that it is the owner of the land at Sector- 37, Faridabad where one of the projects of the respondent company was being constructed. 54% of the FSL had been given to the respondent company for the purpose of development. Balance land had been given to some other entity who has completed their project. It is proposed by the applicant to take over the undone project and complete it with the help of resources from the flat buyers and from its own resources.

2. It appears that the respondent company and the applicant had also mortgaged this land to DMI Finance Ltd. who have assigned the debts to ARCIL. ARCIL have in exercise of powers under SARFAESI ACT taken over the possession of the land prior to passing of the winding up order.

3. Let a meeting be held between the applicant and ARCIL and the Official Liquidator on 4.6.2019 at 11:00 AM in the office of the Official Liquidator to discuss a possible settlement.

4. Alongwith this application a Scheme of Compromise and Arrangement between ABW Infrastructure Limited and a class of creditors pertaining to Gateway Tower situated at Sector-37, Faridabad is proposed. As per the Scheme it would be the applicant, namely, Dove Infrastructure Private Limited who will take over the construction of the units. Dove Infrastructure Private Limited will complete the units in terms of the agreement entered into between the unit buyers and AB Infrastructure Limited and hand over possession to the unit buyers accordingly. Some

additional liabilities may have to be incurred by the unit buyers.

5. The aforesaid project stands stalled as the respondent company has gone into liquidation. The scheme as proposed seeks to develop one of the schemes located at Sector-37, Faridabad. It would be in the interest of the unit buyers that the scheme is put up for approval under section 391 of the Companies Act. It is ordered accordingly. Let an appropriate meeting be held of all the unit buyers which may be conducted in the manner stated herein on 20.07.2019 at 11:00 AM.

- i. Mr. S.P.Kamrah, Adv. (Mobile: 9810610466) is appointed as the Chairperson and Mr. Anant Singh Ubeja, Advocate (Mobile 9999787778) is appointed as the Alternate Chairperson to conduct the said meeting.
- ii. The Quorum of the meeting of the unit buyers of the respondent company shall be 50% in number and more than 50% in value of the total secured/unsecured debt.

6. In case the quorum as noted above for the above meetings is not present at the meetings, then the meetings shall be adjourned by half an hour, and thereafter, the person(s) present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum, the valid proxies received by the respondent Company shall also be considered, if the proxy in the prescribed form duly signed by the person entitled to attend and vote at the respective meetings is filed at the registered office of the respondent Company or with the OL at least 48 (forty eight) hours before the meeting. The Chairpersons and Alternate Chairpersons shall ensure that the proxy registers are properly maintained.

7. The Chairpersons and Alternate Chairpersons shall ensure that notices

for convening the aforesaid meetings, along with copies of the proposed Scheme and the statement under Section 393 of the Act along with the proxy form, shall be sent to all the unit buyers of the respondent Company of the Scheme at Gateway Tower, Sector-37, Faridabad by recognised courier at their registered or last known addresses at least 21 (twenty one) days before the date appointed for the respective meetings, in their presence or in the presence of their authorized representatives.

8. Notice of the meetings shall also be published in Delhi editions of the newspapers, namely 'Statesman' (English) and 'Veer Arjun' (Hindi) in terms of the Companies (Court) Rules, 1959, at least 21 (twenty one) days before the date appointed for the respective meetings.

9. The Chairpersons and Alternate Chairpersons will be at liberty to issue suitable directions to the management of respondent Company/applicant groups in order to ensure that the aforesaid respective meetings are conducted in a just, free and fair manner.

10. The fee of the Chairpersons and the Alternate Chairpersons for the aforesaid respective meetings shall be Rs.80,000/- each, in addition to meeting their incidental expenses, to be borne by the applicant Company. The Chairpersons shall file their reports within two weeks from the date of holding of the aforesaid respective meetings.

11. The application is allowed.

CA 394/2019

This application is filed by the applicants Manesar Allottees Welfare Association seeking direction to the Official Liquidator to permit copies of all the documents pertaining to ABW Aditya Niketan and ABW City Centre Manesar, Gurgaon so that the same can be provided to HSIDC/HUDA.

Reliance is placed on judgment of the Supreme Court dated 12.3.2018 in *Rameshwar and others vs State of Haryana, Civil Appeal No.8788/2015* to submit that in terms of the said judgment HSIIDC would require these documents for the purpose of processing the claims of the applicant.

In case HSIIDC seeks any documents from the Official Liquidator the Official Liquidator may provide necessary photocopies of the same. The applicants are also free to approach the Official Liquidator for inspection of the necessary documents. In case they approach the Official Liquidator the OL may provide necessary inspection of the documents and photocopies at their costs. This court has already noted the submission of the Forensic Auditor regarding the limited extent of documents being available with the OL.

Application stands disposed of.

CA No.47/2019

Adjourned to 8.8.2019.

CA 156/2019 & 158/2019

Let the OL file his report regarding the prayes of this application.

List on 8.8.2019.

JAYANT NATH, J

MAY 23, 2019

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