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

+ CO.PET. 449/2016

NITYA KUKREJA

..... Petitioner

Through:

versus

ABW INFRASTRUCTURE LIMITED

..... Respondent

Through: Ms Mani Gupta and Ms Saumya Upadhyay, Advocates for Resolution Professional.

Mr Kunal Sharma with Mr Shubhendu Bhattacharya, Advocates for Official Liquidator.

Mr Sarad Kumar Sunny, Advocate for applicants in CA Nos. 706/2019 & 707/2019.

Mr Kapil Kumar, Advocate for applicant in CA Nos. 614/2019 & 1093/2019.

Ms Vidhi Goel, Mr Krishna Dev Yadav, Advocates in CA No. 1355/2019.

Mr S.S. Bhatia and Mr Naveen Arya, Advocates for applicant in CA Nos. 614/2019 & 1342/2019.

Ms Shivika Chhabra, proxy counsel appearing for Mr Manoj Kumar Sahu, Advocate for applicant in CA 675/2021.

Mr Manish Kaushik and Mr Ajit Singh, Advocates for Mr Rakesh Aggarwal.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

**05.05.2022**

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**CA Nos.296/2020, 688/2020 & 731/2021 (for early hearing of CA No.186/2020)**

1. These applications have been filed by the Resolution Professional of the respondent company.
2. The applications do not survive as CA No.186/2020 is being taken up for hearing.
3. Accordingly, the same are disposed of.

**CA No.186/2020**

4. This is an application filed by the respondent company (ABW Infrastructure Ltd.) through its Resolution Professional, *inter alia*, praying that the present petition be transferred to the National Company Law Tribunal (hereinafter 'the NCLT') in terms of Section 434(1)(c) of the Companies Act, 2013.
5. The respondent company, ABW Infrastructure Ltd., was incorporated on 01.05.2013. The above captioned petition [CO.PET. 449/2016] was instituted for winding up of the company under Sections 433(e) and 433(f) of the Companies Act, 1956 as the company was unable to pay its debts.
6. By an order dated 29.05.2018, this Court had passed an order admitting the above captioned winding up petition and appointing the Official Liquidator attached to this Court, as the Provisional Liquidator. Initially, the operation of the said order was suspended for a period of four weeks to enable the company to discharge its debts. Since the debts remained unpaid, the said order came into effect on 29.06.2018.
7. It is stated that on that date, a petition filed by Vipin Industries Ltd. under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter 'the IBC') was pending before the NCLT. The said petition was admitted

on 12.09.2019 and the NCLT appointed the Interim Resolution Professional. He was subsequently replaced by the Resolution Professional.

8. The application indicates that the Resolution Professional has received claims from 793 financial creditors including the persons, who are allottees of various apartments. The petitioner [Ms. Nitya Kukreja] has also filed its claim before the Resolution Professional.

9. Ms. Manu Gupta, learned counsel appearing for the Resolution Professional, referred to the decision in the case of *Action Ispat and Power Pvt. Ltd. v. Shyam Metallics and Energy Ltd. & Ors.* [CO.PET. No.11/2019 decided on 10.10.2019], whereby the Division Bench of this Court has upheld the decision to transfer a company petition, which has been directed to be wound up. She also referred to the decision of the Supreme Court in *Forech India Ltd. v. Edelweiss Assets Reconstruction Co. Ltd.* [Civil Appeal No.818/2018 decided on 22.01.2019], whereby the Supreme Court has held that even in those petitions where notices in respect of the winding up petitions have been issued and served, transfer of such petitions to the NCLT under the IBC, can be sought.

10. The learned counsels for some of the parties have supported this application. Some persons claiming to be the creditors of the company have also filed applications seeking similar reliefs. However, there are various parties who have opposed the transfer of the winding up petition on the ground that the same would delay the proceedings.

11. There are several persons who seem to be flat buyers and are seeking execution of sale deeds of the respective units allotted to them. They submit that the Official Liquidator had already invited the claims and has had the occasion to examine the same. In some cases, directions are required to be

issued to the Official Liquidator to execute sale deeds in favour of those applicants who have paid either the entire or almost the entire amount of consideration for their respective units.

12. It is seen that although the Official Liquidator was directed to examine the claims made by various flat buyers and / or creditors, no irreversible steps have been taken by the Official Liquidator for liquidating the company. Clearly, it would not be apposite that proceedings in regard to the company proceed in two forums. It is also seen that in some cases, there is more than one claimant for the same dwelling unit and this issue is also required to be addressed. It is essential that a comprehensive view is taken in respect of all persons, who claim to be allottees of different residential units. In this view, this Court considers it apposite to allow the present application.

13. As noted above, the Resolution Professional has already received claims including from those persons who are pursuing their claims in these proceedings. Accordingly, the present petition is directed to be transferred to the NCLT.

14. Since the Official Liquidator has already had the occasion to examine certain claims, this Court considers it apposite to direct the Official Liquidator to forward a report regarding the claims received and examined by it for assistance of the Resolution Professional. The Resolution Professional is further directed to also take into account claims of all persons, who have filed the same before the Official Liquidator and / or moved the applications in the present petition.

15. It is clarified that all rights and contentions of the parties are reserved.  
**CO.PET. 449/2016, CA Nos.614/2019, 706/2019, 707/2019, 971/2019,**

980/2019, 1093/2019, 1184/2019, 1249/2019, 1250/2019, 1259/2019, 1260/2019, 1342/2019, 1352/2019, 1355/2019, 1356/2019, 117/2020, 118/2020, 614/2021, 794/2021, 87/2022, 89/2022, 91/2022, 123/2022, 139/2022, 140/2022, 141/2022, 142/2022, 151/2022, 152/2022, 153/2022, 154/2022, 182/2022, 233/2022, 265/2022, 266/2022, 267/2022, 268/2022 & 269/2022

16. In view of the above, no further orders are required to be passed by this Court in these applications.

17. The present petition and all the pending applications are, accordingly, disposed of.

**VIBHU BAKHRU, J**

**MAY 5, 2022**

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*Click here to check corrigendum, if any*