

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, BENGALURU
(Through web-based video conferencing platform)**

C.P.No.50 of 2023 in
U/s.98 of the Companies Act, 2013
R/w. Rule 75 of the NCLT Rules, 2016

In the matter of:

Mr Velayudham Jayavel,
Liquidator of IDEB Projects Pvt Ltd
F1, Windsor Meenakshmi, 5th Cross
Pai Layout, Hulimavu, Bengaluru 560076
velayudhamj@gmail.com

- Applicant

AND

1. IDEB BUILDCON PRIVATE LIMITED
9th & 10th Floor, Delta Tower,
Sigma Soft-tech Park,
No.7, Whitefield Road
Varthur Kodi, Bengaluru

- Respondent No.1

2. Harkirat Singh Bedi
S/o Iqbal Singh Bedi,
#1-77, Diamond District,
Old Airport, Kodihalli, Bengaluru

- Respondent No.2

3. Avneet Singh Bedi
#1-77, Diamond District,
Old Airport, Kodihalli, Bengaluru

- Respondent No.3

Order delivered on: 19/04/2024

Coram: 1. Hon'ble Justice (Retd.) T. Krishnavalli Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Applicant : Shri Aakash Sherwal

For the Respondent No.2 : Shri Shrihari. S

ORDER

Per: Bench

1. This Application has been filed on 29/08/2022 by Shri Velayudham Jayavel, **Liquidator of IDEB Projects Pvt Ltd** (hereinafter referred to as 'Applicant'), U/s.98 of the Companies Act, 2013 (hereinafter referred to as 'Act') R/w. Rule 11 of the NCLT Rules, 2016 against IDEB BUILDCON PRIVATE LIMITED (hereinafter referred to as 'Respondents'), seeking to direct holding of Extraordinary General Meeting (herein after referred to as 'EGM') of the Respondent No.1 Company in terms of the proviso to Section 98 (1) of the Companies Act, 2013.
2. Brief facts of the case, as mentioned in the Application, by *inter alia* stating as follows:
 - i. It is submitted that Respondent No.1 is a private company and is a wholly owned subsidiary of IDEB Projects Pvt Ltd (hereinafter referred to as the Corporate Debtor). CIRP was initiated against the IDEB Projects Pvt Ltd vide order of this Tribunal Dated 29/03/2019.
 - ii. No Resolution plan was submitted before the CoC after the said initiation of CIRP, hence the COC voted for liquidation and the application for liquidation was allowed by the Hon'ble NCLT on 08/11/2019. Therefore, from 29/03/2019, the Petitioner has been the sole authorised representative of the Corporate Debtor and has been vested with all rights in relation to the Corporate Debtor's 99.9% shareholding in Respondent No.1, as per the provisions of the IBC, 2016. The petitioner was vested with the powers of the board of directors of the Corporate Debtor as per Section 34(2) of the IBC, 2016.
 - iii. As per Section 36(3)(a) of the Code, the shares of Respondent No.1 are asset of the Corporate Debtor. The Petitioner pursuant to his duties under section 35 & 36 took efforts to understand the value of the shares of Respondent No.1. It is further stated that it is essential the value of assets of the Corporate Debtor i.e 99.9% shareholding in Respondent No.1, are preserved in order to

facilitate the sale of these shares by the Liquidator as per the provisions of IBC.

- iv. Further, Respondent Nos.2 and 3 who are the erstwhile directors of the Corporate Debtor are precluded from deriving any benefit from the liquidation estate of the Corporate Debtor as per Section 29A of the IBC, 2016. Hence they are not eligible to act as directors of Respondent No.1 and derive any benefit from the liquidation estate.
- v. Accordingly, the Petitioner issued a requisition notice on 08/06/2022 to the board of directors of the Respondent No.1 and requested them to call for an EGM on 16/06/2022 for the purpose of appointing new directors for Respondent No.1.
- vi. Thereafter, Respondent No.1 issued letter dated 29/06/2022 to the Petitioner and refused to convene EGM without prior approval and authorisation from this Hon'ble Tribunal.
- vii. Owing to the above, the Petitioner herein issued another notice on 19/07/2022 to the Respondent No 2 & 3 and Respondent No2, being the only other shareholder failed to attend the said EGM. The EGM failed for want of quorum 18/08/2022. Hence this Application.

3. The Ld. Counsel for the Respondents, has filed statement of objections vide Diary No.5110 dated 05/10/2023, by *inter alia* contending as follows:

- i. As per Section 36(4)(d) of the code, the assets of any Indian Foreign subsidiary of the Corporate Debtor, shall not be included in the Liquidation Estate assets and cannot be used for recovery proceedings. The Petitioner under the guise of seeking for such prayers, cannot be permitted to take control over the assets of the Respondent No.1.
- ii. Further, it is submitted that the Respondent No,2 and 3 are not deriving any benefits from the Liquidation estate of the Corporate Debtor. They are not drawing any Salary from the Respondent No.1 Company for their personal use. The Respondents have cooperated with the information and documents sought for by the Petitioner,

at all times, and also have not prevented the Petitioner from exercising his statutory rights as a Shareholder.

- iii. The Petitioner herein was none other than the RP during CIRP Process of IDEB Projects Pvt Ltd. There was no decision taken to change the management of the present subsidiary company, and therefore, the Liquidator cannot at this stage, seek to do the same.
4. The Petitioner herein filed Affidavit wherein it is stated that the Petitioner herein under Section 33(5) of IBC has sought leave of this Court to file the captioned present proceedings under Section 98 of the Companies Act, 2013. That due to clerical mistakes in the Order dated 12/10/2022, an application for rectification was filed respondent No.2 & 3 and the same is pending to be numbered and listed. Further the Petitioner has relied on the judgment of Hon'ble NCLAT in *Rajive Kaul v. Vinod Kumar Kothari and Others*" [CA (AT) (Ins) No. 44/2020]. The Hon'ble NCLAT in the aforesaid judgement held that Liquidator has the power to exercise rights as a shareholder in appointing Nominee Director in a subsidiary Company.
5. The Respondents have filed objections to the above Affidavit vide Diary No. 6361 dated 18/12/2023, stating that the Liquidator cannot resort to the provisions of the Companies Act, when as per Section 238 of the IB Code, the Code would prevail and override other laws. The prayers sought under Section 28(j) of the IBC Code, can only be sought during CIRP process and not during the stage of Liquidation.
6. Heard Counsels for both the parties and carefully perused the pleadings of the parties and extant provisions of the Companies Act, 2013 and the Rules made thereunder.
7. It is pertinent to note here that the shares of the Corporate Debtor in the Subsidiary Company is a part of the Liquidation estate under Section 36 (d) of the IBC and hence power is vested to the Liquidator to take such measures to protect and carry on the business for the benefit of the Corporate Debtor. We hold that as such since the Corporate Debtor is a shareholder of the Respondent No.1 Company, and under Section 100 of the Companies Act, 2013 entitled to call for EGM, the same can be called by the Liquidator who is only acting on behalf of the Corporate Debtor.
8. Under Section 98 of the Companies Act, this Tribunal has limited power to adjudicate the calling of the EGM and cannot decide on the agenda of calling such EGM, it is observed in the order of Hon'ble High Court of

Bombay in *“Invesco Developing Markets Fund v. Zee Entertainment Enterprises Limited” 2022 SCC Online*, wherein it was held that:

“ 42. On a literal and plain reading of Sections 98 and 100, we do not see any discretion/power vested with the Board of a Company to sit in judgment over "any matter" for consideration of which the meeting is requisitioned. On a plain reading, the Board of a Company is mandatorily obliged to requisition a meeting if the requirements specified in sub-sections (2) and (3) of Section 100 are satisfied. Needless to state, whether or not the proposed requisition should be given effect to, is be decided by the shareholders at the general meeting”

Hence the Board of Directors of the Respondent No.1 Company ought to have called for EGM as requisitioned by the Liquidator. When the Respondents refused to adhere to the said requisition, the Liquidator herein has availed Section 100(3) and individually called for EGM on 18/08/2023, which has inadvertently failed due to want of quorum.

9. Since the present Petition has been filed U/s.98 of the Companies Act, 2013 to call the meeting of the Respondent No.1 Company, it is relevant to extract Section 98 (1) of the Companies Act for ready reference, which reads as under:

“Section 98: Power of Tribunal to call meetings of members, etc.

- 1) *If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the Company may be called, or to hold conduct the meeting of the Company in the manner prescribed by this Act or the Articles of the Company, the Tribunal may, either suomotu or on the Application of any Director or Member of the Company who would be entitled to vote at the meeting;*
- a) *order a meeting of the Company to be called, held and conducted in such manner as the Tribunal thinks fit; and*
- b) *give such ancillary or consequential directions as the Tribunal thinks expedite, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act or articles of the Company:*
- Provided** *that such directions may include a direction that one member of the Company present in person or by proxy shall be deemed to constitute a meeting;*

2) *Any meeting called, held and conducted in accordance with any order made under sub-section (1) shall, for all purposes, be deemed to be a meeting of the Company duly called, held and conducted”.*

- 10.** In the present case, since there are only two Shareholders in the Respondent No.1 Company, the other shareholder is not attending the meetings and there is no quorum to hold meeting, therefore, the Applicant has filed the present Application U/s.98 of the Companies Act, 2013 for convening the meeting of the EGM of the Respondent No.1 Company. It is observed that unless the Tribunal grants the relief sought by the Applicant U/s.98 of the Companies Act, 2013, it would not possible to the Petitioner to hold or to conduct the meeting.
- 11.** Upon considering the facts and circumstances and the pleadings of the present Application, the instant Petition is allowed and the Petitioner is directed to hold an EGM of the Respondent No.1 Company as specified U/s.98 of the Companies Act, 2013 to make necessary statutory compliance of the Company. For the purpose of quorum, the Applicant who is holding 99.9% shares of the Respondent No.1 Company shall constitute the quorum of the said meeting either in-person or through proxy. **Accordingly, C.P.No.50 of 2023 is disposed of.**

Sd/-

**MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)**

Sd/-

**T KRISHNAVALLI
MEMBER (JUDICIAL)**