

023/2712

**Translation**

In the Name of Allah Most Gracious Most Merciful  
In the Name of His Highness the Amir of the State of Kuwait  
Sheikh Meshaal Al Ahmad Al Jaber Al Sabah

Ministry of Justice  
Court of First Instance  
Hawally Courts Complex  
Bankruptcy Management

**Decision**

On Sunday, 24/12/2023 at the headquarters of the Bankruptcy Management.  
With membership of Mr. Suliman Bin Yousef, Bankruptcy Judge.  
In the presence of Mr. Bader Al Farsi, Secretary.

**In application No.2/2023 – Protective Settlement**

Listed under computer No. 232185260.

Submitted by	Mushrif Trading & Contracting Company
Versus	1- Kuwait Finance House. 2- Muscat Bank. 3- Burgan Bank. 4- Gulf Bank. 5- Ahli Bank of Kuwait. 6- Warba Bank. 7- Bahrain & Kuwait Bank.

**Having perused the application and the enclosed documents.**

Whereas the facts, as evident from reading the papers, are concluded in that the applicant company, a Kuwaiti shareholding closed company, has applied an application on 9/7/2023 to the Bankruptcy Management to open the protective settlement procedures against all its creditors, enclosed with an explanatory memorandum of the applicant facts. In explanation of the same, it said that its position confirms that there are reasons making it expect and fear the inability to pay its debts, as confirmed from the labour lawsuits filed by personnel, the 1<sup>st</sup> instance commercial lawsuits filed by all the clients, whether suppliers, sub-contractors and banks financing the projects, which represent more than 2000 cases being deliberated at the courts, including those in which final judgments were passed and have not been implemented yet. Further, there is a deficit in the Company financial position as confirmed from the Company financial statements for the fiscal year ended on 31/12/2021, whereby the losses were estimated by approximately KD 75,000,000. These losses exceed 75% of the capital. The Company assigned the undertaking of a technical study on the continuity of the its businesses to Fatema Saqer Al Rashoud Office, registered with M/s Capital Markets Authority, which issued on 2/12/2022 a technical report indicating that the Company's businesses are sustainable, and that it will continue payment of its debts to be subject to protective settlement under the ordinary context of practicing its businesses. Therefore, all the conditions for submitting the protective settlement application apply on it. Accordingly, the Company convened an extraordinary general assembly and on 1/9/2022, it agreed to submit the protective settlement application. Further, it mentioned in its memorandum an explanation of the protective settlement proposal, and concluded it with the request to open the protective settlement procedures. It enclosed with the application four files (nos. 4 box files) for the supporting documents of the application.



Further, the application was enclosed with the original of the consolidated financial statements of the applicant company for the fiscal year ended on 31/12/2021 and the fiscal year ended on 31/12/2022, as well as the independent auditor's report for the same, issued by (HLB Kuwaiti Accountant Auditing Office), copies of all a statement indicating the details of the banks' dues, a statement of the names of the companies and contractors to whom outstanding amounts are due, and a statement of the names of personnel to whom outstanding amounts are due.

Further, it is confirmed from perusal of the enclosed documents that in the hearing of 14/6/2023, a court judgment was issued in case No.4439/2021 commercial 1<sup>st</sup> instance/43 filed by 1- Khaled Ali Al Kharafi & Brothers Construction Contracting Company KSCC, 2- Real Estate Construction and Manufacturing Company KSC (joint interventionist) ruling for declaring the bankruptcy of the applicant company in the manner set forth in the text of the judgment.

The applicant company did not accept this judgment and challenged it by appeal No.4383/2023 commercial/7, and the appeal has not been decided yet.

During the hearing of the application by the bankruptcy judge, the applicant company submitted the original report of the protective settlement plan issued by (Fatema Saqer Al Rashoud Chartered Accountants and Advisors), enclosed with two files (2 box files) for the documents supporting the proposal.

Further, a number of the major creditors appeared by their attorney lawyers before the bankruptcy judge during the deliberation of the application in the hearings, namely M/s Kuwait Finance House, Gulf Bank, Ahli Bank of Kuwait, Muscat Bank, Burgan Bank and the Bank of Bahrain and Kuwait, which sought a grace period for the application in order to prepare the reply to the submitted

protective settlement proposal. Attorney of Kuwait Finance House submitted three dockets which included copies of the documents supporting the debt. Attorney of Ahli Bank of Kuwait submitted a letter for a brief on the debt and the executive procedures adopted against the applicant company enclosed with copies of their supporting documents. Attorney submitted a letter for commenting on the protective settlement proposal submitted by the applicant company and a docket which comprised copies of the documents supporting the debt.

On 19/9/2023, the bankruptcy judge issued a decision for communicating with the Bankruptcy Committee for undertaking the inspection of the applicant and documents submitted therein and declare the opinion in this respect in the manner set forth in its text.

Accordingly, the Bankruptcy Committee lodged report No.40 dated 15/10/2023 in the Bankruptcy Management, and concluded with the following final opinion:

- 1- The settlement plan did not include information on the ability of the Company to continue practicing its activity in light of the financial deficit and the possibility to obtain the necessary projects for practicing the activity.
- 2- The submitted plan did not include a statement of the future cash flows, including the applied basis and assumptions.
- 3- The plan did not include information to address the accumulated losses which exceeded the Company capital.
- 4- The plan relied on the collection of funds from debtors and court judgments, which may not be ascertained or estimated, as this is subject to the assessment of the judicial authorities.



Therefore, it is not possible to declare the opinion on the possibility of settlement or submit a report to the Bankruptcy Management, taking into consideration the unavailability of the above information.

In the hearing of 19/10/2023, the applicant company appeared by an attorney lawyer and another attorney lawyer. Further, its chairman appeared personally. The lawyer appearing for the applicant submitted a memorandum of defense which included the reply and objections to the result of the Bankruptcy Committee report, and has also submitted a docket.

On 2/11/2023, the bankruptcy judge issued a decision for communicating again with the Bankruptcy Committee for examining the application, the documents submitted therein, declare the opinion in this respect and investigate the objections of the applicant company in the manner set forth in its text.

Accordingly, the Bankruptcy Committee lodged the second report No.44 dated 6/11/2023 to the Bankruptcy Management, which concluded with the final opinion that pursuant to the Company's responses to the observations of the Bankruptcy Committee for its ability to practice its business, therefore the Bankruptcy Committee recommends accepting the protective settlement plan according to the following:

- Meeting and acceptance of the creditors of the settlement plan with submission of a time schedule to this effect.
- Removal of the pledge on the equipment and giving the legal grace period according to the discretion of the bankruptcy judge, in order for the Company to be able to practice its business, and take the protective procedures to prevent transacting with the equipment.

- The continuation of the executive management's administration of the Company's businesses and following up its claims.
- Implement a plan for addressing the accumulated losses according to the submitted proposal.

After lodging the 2<sup>nd</sup> report of the Bankruptcy Committee, representatives of the creditors Messrs. Kuwait Finance House, Gulf Bank, Ahli Bank of Kuwait, Muscat Bank and Burgan Bank, referred to the headquarters of the Bankruptcy Management in the manner confirmed in details in the minutes of the hearings. Attorney of Kuwait Finance House stated in the hearing of 9/11/2023 that the 2<sup>nd</sup> report of the Bankruptcy Committee No.44 dated 6/11/2023 was perused, and declared his approval of the conclusion of the opinion, provided the remarks stated in the committee's first report are addressed. He stated that his principal agrees on the opening of the protective settlement procedures. Attorney of the Gulf Bank submitted in the hearing of 14/11/2023 a memorandum in which he commented on the content of the 2<sup>nd</sup> report of the Bankruptcy Committee, at the end of which he declared is approval of issuing a decision for opening the protective settlement procedures pursuant to the application submitted by the applicant company, and start the executive steps according to the law. Attorneys for the creditors Ahli Bank of Kuwait, Muscat Bank and Burgan Bank requested in the hearing of 14/11/2023 a grace period to obtain approval of their principals/creditors to open the procedures. The hearing of the application was adjourned for consideration and action according to the development, after each of the creditors Ahli Bank of Kuwait, Muscat Bank and Burgan Bank submit their response in connection with the 2<sup>nd</sup> report of the Bankruptcy Committee and the extent of their approval to open the procedures.



In the hearing of 14/12/2023, the applicant company appeared by an acting attorney lawyer, who submitted the original of the investigation study of the amounts of the applicant company's creditors, issued by Fatema Saqer Al Rashoud Office, enclosed with unclassified documents consisting of the statements of the details of the creditors' dues, provided with their names, addresses and debt amounts of each creditor. The study and the statements enclosed therewith stated that the total debts of the affected Company amounts to 133,307,336 Kuwaiti dinar (one hundred, thirty three million, three hundred, seven thousand, three hundred and thirty six Kuwaiti dinar), and that the debt due to the creditor Gulf Bank amounts to KD 37,236,431, that the debt due to the creditor Kuwait Finance House amounts to KD 37,061,194, the total of which exceeds more than half the total debts of the affected Company. The attorney of the applicant Company requested expediting the issuing of the decision to open the protective settlement procedures.

In the hearing of 21/12/2023, it has been confirmed that the statement of the creditors Ahli Bank of Kuwait, Muscat Bank and Burgan Bank has not been received by submitting their response in connection with the bankruptcy report and the extent of their approval to open the procedures up to date. The applicant Company submitted a letter for expediting the opening of the protective procedures which stated that the grace period for pronouncing the judgment in appeal No.4383/2023 commercial/7 in connection with the declaration of bankruptcy case was extended to the hearing of 10/1/2024.

Whereas the bankruptcy judge has decided to present the papers to today's hearing for action in the application of opening the protective settlement procedures according to the presented facts.

**Legal basis:**

Whereas it is determined according to the provisions of articles 1, 29 33, 58/7 and the last paragraph thereof, and 61 of the Bankruptcy Law promulgated by law No.71 of 2020 that in the implementation of the provisions of this law, the following words and expressions shall have the meaning set forth next to each of them: suspension of claims: the suspension of any case or executive procedure filed against the debtor, whenever it is related to his funds or debts. The bankruptcy judge shall decide the claim within ten days of the expiration date of the period scheduled for replying to the same, by issuing a decision for opening the protective settlement procedures. Within ten days of the date of issuing the bankruptcy judge's decision for opening, rejecting or dismissing the opening of the procedures, the Bankruptcy Management shall publish the decision and announce it, notify those concerned with the same, and disclosure in Kuwait Stock Exchange if the debtor is listed therein, mandate the debtor to disclose the same on its website, unless the bankruptcy judge decides ot suffice with any of such methods or other methods. The bankruptcy judge may decide to announce the decision by one of the daily newspapers issued in a foreign country if a significant part of the debtor's creditors, its funds, or businesses are in this country or for any other reason deemed by the bankruptcy judge. In all circumstances, the decision issued for opening the procedures shall be registered within the grace period set forth in this article. The issuing of the decision for opening the protective settlement procedures shall result in suspending the claims for a period of three months following the date of issuing the decision. Taking into consideration the provisions determined under this law in connection with the application to open the procedures, the debtor may submit the application for opening the protective settlement procedures according to the following: 7-If a final judgment was already issued for declaring the bankruptcy of the debtor, the application may not be submitted unless after the passing of three years after the termination of the bankruptcy. As an exempt on from the



provisions of clauses (...,..., 7) of this article, the debtor may submit the application at any time if it is enclosed with a proof of the prior approval of the required majority of the protective settlement proposal for which the application is submitted.

In view of the above and the aforesaid legal rules, and whereas the applicant Company has submitted the application for opening the protective settlement procedures against all its creditors, which indicated the required procedures and its reason, and enclosed with the documents and statements required by articles 20 and 59 of the Bankruptcy Law by the required amount to issue this decision. The Bankruptcy Committee lodged its second report No.44 dated 6/11/2023 to the Bankruptcy Management, and concluded with the final opinion by recommending the acceptance of the protective settlement plan according to the aforesaid clauses. Therefore, the bankruptcy judge is issuing his decision for opening the protective settlement procedures, which is unaffected by issuing a judgment for declaring the bankruptcy of the applicant company according to the judgment issued in case No.4439/2021 commercial 1<sup>st</sup> instance/43, as this judgment has not become final yet and is challenged by appeal No.4383/2023 commercial/7, which has not been decided, as the hearing of 10/1/2024 is scheduled to rule in the appeal. Furthermore, it is confirmed after perusal of the original study of investigating the amounts of the creditors of the applicant company issued by Fatema Saqer Al Rashoud Office, and the statements for the details of the creditors' dues that the total debts of the affected Company amounts to 133,307,336 Kuwaiti dinar (one hundred, thirty three million, three hundred, seven thousand, three hundred and thirty six Kuwaiti dinar), that the debt due to the creditor Gulf Bank amounts to KD 37,236,431, that the debt due to the creditor Kuwait Finance House amounts to KD 37,061,194, the total of which exceeds more than half the total debts of the affected Company. Further, representatives of the creditors Kuwait Finance House and the Gulf Bank appeared before the bankruptcy judge during the deliberation of the application in



the hearings and approved the opening of the protective settlement procedures. Thus, the applicant has submitted a proof of the prior approval of the affected creditors holding more than half the affected debts, of the protective settlement proposal for which the application is submitted. In view of the above, the prohibition to submit the application set forth in clause 7 of article 58 of the Bankruptcy Law has no effect as the bankruptcy judgment is not final. Therefore, the bankruptcy judge advances in issuing the decision for opening the protective settlement procedures according to the aforesaid legal rules, in light of articles 1, 20, 24, 25, 26, 55, 59, 62, 70, 71, 73 and 74, and articles 76 to 81 of the Bankruptcy Law, in the manner set forth in the text of the decision.

**Therefore:**

**We decided the following:**

To open the protective settlement procedures in connection with the application submitted by the debtor (Mushrif Trading & Contracting Company KSCC) with the suspension of all the judicial claims and executive procedures adopted it against it for a period of three months after the date of this decision. The Bankruptcy Management shall notify Central Bank, the Execution General Department, the applicant Company, the respondents and the Bankruptcy Committee with this decision article 55 of the Bankruptcy Law and publishing the decision in the official gazette, as well as register it within ten days, in addition to mandating the applicant Company to disclose this decision on its website, and announce the same in two daily newspapers, one of which is issued in English language, at its cost, submit a proof to this effect, mandate it to proper the draft protective settlement proposal, which includes the details required according to article 73 of the Bankruptcy Law, exert the due diligence to convince the creditors to approve the protective settlement proposal, to coordinate within ten days of the date of issuing this decision with the creditors to form the creditors committee of representatives for their debts categories, pursuant to the provision of article 70 of the Bankruptcy Law, to lodge with the Bankruptcy Management within ten days



of the expiration of the period set forth under the previous article a list of the categories of the debts, to form the creditors committee pursuant to the provision of article 72 of the Bankruptcy Law, to lodge a copy of the protective settlement proposal within a period not exceeding three months after the date of issuing this decision pursuant to the provision of article 74 of the Bankruptcy Law, then endeavour to invite the creditors to approve the protective settlement proposal and complete the procedures determined according to articles 76 to 81 of the Bankruptcy Law.

Bankruptcy Judge	Secretary
Suliman Bin Yousef	Bader Al Farsi
Signed	Bankruptcy Management
24/12/2023	Signed

State of Kuwait – Court of First Instance- Bankruptcy Management – executive form delivered to Mahmoud Abdulmajeed Mahmoud – signature- signed- date: 24/12/2023- Bankruptcy Management.