

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 310
IB-2582/ND/2019
New IA-1582/2025

IN THE MATTER OF:
M/s. Jakson Limited

... **Applicant/Petitioner**

Versus

M/s. Three C Universal Developers Pvt. Ltd. ...

Respondent

Under Section: 9 of IBC, 2016

Order delivered on 07.04.2025

CORAM:

SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (J)

MS. REENA SINHA PURI
HON'BLE MEMBER (T)

PRESENT:

For the Applicant

: Adv. Prachi Johri

For the RP

: Adv. Abhishek Anand, Adv. Karan Kohli, Adv.
Akshit Awasthi, Adv. Anvita Dwivedi

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

IA-1582/2025: The prayer made in the captioned application reads thus:

- A. *“Pass an order directing the replacement of Mr. Rakesh Kumar Gupta as the Resolution Professional in the CIRP of Three C Universal Developers Pvt. Ltd.*
- B. *Appoint an independent Resolution Professional to take over the CIRP.*
- C. *Direct a forensic audit of all transactions executed during the tenure of Mr. Rakesh Kumar Gupta as RP and into the expenses undertaken by him in the CIRP till date.*
- D. *Refund and restoration of fee taken by Mr. Rakesh Kumar Gupta.”*

Our attention is drawn to order dated 30.07.2024 passed by IBBI (Annexure A-4 to the application). In terms of the said order the RP Mr. Rakesh Kumar Gupta has been placed under suspension. The relevant excerpt of the order reads thus:



4. ORDER

- 4.1 An Insolvency Professional, acting as Interim Resolution Professional or Resolution Professional is entrusted with the duty of carrying out the provisions of the Code with the objective of achieving the purposes of the Code inter alia being balancing the interests of all stakeholders. He has a duty to maintain the sanctity of the processes under the Code by adhering to the provisions of the Code and regulations framed thereunder in letter and spirit.
- 4.2 The DC observes that, as examined in earlier paragraphs, Mr. Rakesh Kumar Gupta has erred in his judgement to constitute the CoC with operational creditors despite having knowledge of existence of a Financial Creditor. This act of omission is against the fundamental design principle as enshrined in the Code. Leaving aside the issue of inappropriate handling of the issue related to inclusion of Financial Creditor, he further erred in his judgement to include relevant numbers of the OCs in the CoC. The pretext that their presence ought not have affected the outcomes, as OC with dominant share any way would have called the shots, defies any logic and goes against the principle of inclusive decision making. Therefore, such an act of Mr. Rakesh Kumar Gupta, being the resolution professional does not exude his *bona fide* and also dents the confidence and trust of stakeholders of the insolvency resolution ecosystem. Further, Mr. Rakesh Kumar Gupta has also breached the timelines in inviting Expression of Interest in successive attempts and has contravened regulation 36A(3) of the CIRP Regulations. He was also found lackadaisical in his approach in seeking extension of the CIRP period and correctly recording the minutes of the meeting. Mr. Rakesh Kumar Gupta should have exercised more caution in performance of his duties.
- 4.3 In view of the foregoing, the DC in exercise of the powers conferred under Section 220 of the Code read with Regulation 13 of the Inspection and Investigation Regulations and Regulation 11 of the IP Regulations hereby suspends the registration of Mr. Rakesh Kumar Gupta (Registration No. IBBI/IPA-001/IP-P00833/2017-2018/11418) for a period of one year.

Ld. Counsel for the Applicant also placed reliance on the order dated 25.07.2024 passed by this Tribunal in IA-3148/2024 filed in IB-446(PB)2021. The brief order reads thus:



IA-3148/2024: Mr. P. Nagesh, Ld. Sr. Counsel appearing for the Applicant i.e. State Bank of India submitted that the State Bank of India had to move an application for advancement of hearing of the captioned IA from 21.08.2024 to today, as there being a question involved in the proceeding regarding continuation of existing RP and his competence to do so, the entire IRP is in limbo and nobody is certain about the fate of repayment plan. In his submission, in terms of the provisions of Section 105 of IBC, 2016, the Personal Guarantor has to prepare the repayment plan in consultation with the RP and the situation regarding the eligibility of the present RP to continue in the capacity being under cloud, the Resolution process is not progressing in any manner. Relying upon the judgment of Hon'ble NCLAT (Chennai Bench), he submitted that a suspended IP is left with no authority to discharge function in the capacity. The relevant excerpt of the Judgment passed by Hon'ble NCLAT in the matter of **Mr. S Muthuraju Resolution Professional of Mr. Shakthinath Mariappan (Personal Guarantor) Vs.**

Mr. Arunachalam Tenzing [Comp App (AT) (CH) (Ins) No.115/2024], relied upon by Mr. P. Nagesh, Ld. Sr. Counsel reads thus:

“He contends to plead that the Order of Suspension dated 12th April 2023, will have prospective operation and will not apply to the Proceedings of CIRP, in which the Appellant has already been appointed as an IRP and thus he was supposed to be permitted to continue with the CIRP proceedings despite the order dated 12.04.2023, suspending him as IRP, passed by the IBBI.

As far as the contention of the Learned Counsel for the Appellant is concerned with regards his authority to function as IRP, in the CIRP Proceedings which has already been initiated prior to the order dated 12th April 2023, owing to the fact that the said Order of Suspension of his Authority to function as IRP by exercising the powers under Section 220(2) of the Code, would operate prospectively. The contention raised by the Counsel for the Appellant is not accepted by this Tribunal for the reason being that by an Order dated 12th April 2023 his Licence to function as an IRP before this Tribunal, it was as issued in his favour by the IBBI was suspended. We are of the view that the suspension

will relegate back to the date on which the Registration was granted and as soon as the said Order of suspension as IRP was passed on 12th April 2023, he will lack an authority to still to function as an IRP even in the pending Proceedings or any Proceeding which is to be carried henceforth, since having held to be ineligible to function as such, his incapacity, would be his incapacity right from the date he was registered by IBBI.”



2. Mr. P. Nagesh also relied upon the provision of Section 98 of IBC, 2016 and read out Sub-section 1 to 4 thereof. According to him, may be sub-sections 1 and 4 of IBC, 2016 deal with the different situations and when sub-section 1 of Section 98 of the Code provides for replacement of RP on the plea raised by Creditor or Debtor and sub-section 4 of Section 98 provides for his replacement on the application by the Creditors, but in the present situation, as on account of his suspension, the present RP cannot function in the capacity to deal with situation of either availability or non-availability of the repayment plan and in the given circumstances no meeting of the Creditors may be convened, thus the occasion of any application being moved by the Creditors may not arise.

3. Mr. P. Nagesh emphasized with vehemence that the situation needs to be addressed by this Tribunal.

4. Opposing the application Mr. Nandwani, Ld. Counsel appearing for the, Mr. Sandeep Bhatt, RP submitted that when the current RP Mr. Bhatt is representing many other Creditors despite being under suspension and no one has sought his replacement, it is not understood how the State Bank of India i.e. Creditor in the present application can raise such plea. He also submitted that the RP had uploaded reply to the application on DMS on 01.07.2024, but he is not aware that how the same is not reflected in the Case Information System. Mr. Nandwani also submitted that he has not concurred with the order passed by Hon'ble NCLAT and will have to study as to whether any appeal have been preferred against the same or not. Having submitted so, he urged for rejection of the captioned application. Surprisingly, when the application concern only the replacement of RP, the Ld. Counsel appearing

for the for the Personal Guarantor also participated in the proceedings and joined the Ld. Counsel for the current RP to oppose the application. (At this stage, when we were dictating the order, Mr. Dewan interjected and submitted that he is neither supporting nor opposing the application). In view of such stand taken by Mr. Dewan, we leave the issue here only.

5. In the wake of the aforementioned judgment of Hon'ble NCLAT, relied upon by Mr. P. Nagesh, Ld. Counsel appearing for the Applicant, we are left with no option but to replace the RP and order appointment of **Mr. Kanti Mohan Rustagi, Registration No. IBBI/IPA-002/IP-N00097/2017-18/10240, Email. Kanti.rustagi@patanjaliassociates.com and Mob. No. 9871306829**, IP as RP, in place of the current RP.



6. Both the Ld. Counsel appearing for the RP and Personal Guarantor raised the issue that if the current RP is replaced and new RP is appointed, all the steps taken by the current RP would turn otiose and redundant and the new RP has to take the steps afresh from the initial stage as his appointment is in terms of the provisions of Section 97 of IBC, 2016.

7. A perusal of Section 98 of IBC, 2016, clearly indicates that the RP needs to be replaced. Could the intention of replacement of RP be same as of appointment of a fresh RP, then the statute could have so provided. We don't agree with the plea raised by Mr. Dewan that entire proceedings have to commence and take place all over again. Even from the aforementioned judgment of Hon'ble NCLAT, the position is very clear. In the said judgment, Hon'ble NCLAT has categorically viewed, "proceeding which is to be carried henceforth". It is not so that in the judgment relied upon by Mr. P. Nagesh, the Hon'ble NCLAT could direct for commencement of proceedings all over again. At the cost of repetition, we repeat the relevant excerpt of the order again. The excerpt reads thus:

"We are of the view that the suspension will relegate back to the date on which the Registration was granted and as soon as the said Order of suspension as IRP was passed on 12th April 2023, he will lack an authority to still to function as an IRP even in the pending Proceedings or any Proceeding which is to be carried henceforth, since having held to be ineligible to function as such, his incapacity, would be his incapacity right from the date he was registered by IBBI."

8. Thus, we don't agree with the plea raised on behalf of the RP as also Personal Guarantor that the RP being Suspended would result in commencement of the proceedings all over again. The cessation of authority of a RP to function in the capacity after suspension and fate of the job already performed by him are two different situations. The function already discharged by the RP who is placed under suspension cannot be fait accompli of his suspension. If the plea raised on behalf of the suspended RP and Ld. Counsel for Personal Guarantor, that the entire proceeding would take place from initial stage is countenanced, then there will be completely chaotic situation and even the purpose of Section 98 of IBC, being on the statute book would be defeated. Thus, it is specifically directed that the newly appointed RP would take steps in the capacity from the stage it was left by the suspended RP. Subject to the aforementioned observation and direction, **the application is disposed of.** No costs.

The aforementioned order was passed by this Tribunal following the order of Hon'ble NCLAT.



In the wake of the aforementioned, we are left with no option but to order replacement of Mr. Rakesh Kumar Gupta, RP. Ordered accordingly.

This Bench appoint Mr. Sanjay Kumar Jha (Email ID) sanjayjhafcs@gmail.com as Resolution Professional, whose details are given below:

IBBI Registration No. : IBBI/IPA-002/IP-N00684/2018-2019/
12031
E-mail Address : sanjayjhafcs@gmail.com
Contact Number : 9811579790

Mr. Rakesh Kumar Gupta will hand over the charge of the process to Mr. Sanjay Kumar Jha forthwith and will continue assisting discharging his function as RP. Regarding the forensic audit of the Corporate Debtor, the CoC would take a call in accordance with law. Mr. Chaudhary, Ld. Counsel for the RP submitted that the Applicant i.e. IDBI Trusteeship Services Limited is not even member of CoC, thus cannot prefer the present application. Irrespective of the locus of the Applicant, once the RP is under suspension, we find no reason not to replace him with another RP. The prayer regarding the refund of fees taken by Mr. Rakesh Kumar Gupta would abide by the outcome of the forensic audit report, if any, take place in terms of the decision of CoC.

The IA stands allowed.

Sd/-

**(REENA SINHA PURI)
MEMBER (T)**

Sd/-

**(ASHOK KUMAR BHARDWAJ)
MEMBER (J)**