

**THE NATIONAL COMPANY LAW TRIBUNAL**  
**COURT VI, NEW DELHI**  
**I.A. 1041/2024**  
**IN**  
**Company Petition No. (IB) – 512/(ND)/2020**

**IN THE MATTER OF:**

**MR. DURGESH KUMAR SHARMA, SOLE PROP. OF M/S  
SALASAR BUILDERS**

.... FINANCIAL CREDITOR

**VERSUS**

**M/S NORTH RAJASTHAN BUILDWELL PVT. LTD**

..... CORPORATE DEBTOR

**AND IN THE MATTER OF IA 1041/2024-**

**Mr. Jai Prakash Rawat**  
Resolution Professional of  
Corporate Debtor

.... APPLICANT/RP

**VERSUS**

**Mr. Durgesh Kumar Shanna**  
Sole Proprietor of M/s Salasar Builders

..... Respondent No 1

**Mr. Sanjay Bhandari**  
Member of the suspended board

..... Respondent No 2

**CORAM:**

**SHRI. MAHENDRA KHANDELWAL, HON'BLE MEMBER  
(JUDICIAL)**

**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**PRESENT**

**For the Applicant:** Mr. Karan Gandhi Advocate

**ORDER**

**PER- MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)**

**Order Pronounced on: 08.03.2024**

1. The application bearing IA 1041/2024 is filed under Section 12A of the Insolvency and Bankruptcy Code, 2016 read with Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016 seeking withdrawal of the Corporate Insolvency Resolution Process (CIRP) in the matter of M/s North Rajasthan Buildwell Pvt. Ltd.
2. The applicant in the present application has prayed for the following reliefs: -
  - a) *Allow the present Application.*
  - b) *Pass an order for the withdrawal of the corporate insolvency resolution process of North Rajasthan*

*Buildwell Private Limited in terms of Section 12A of IBC, 2016.*

- c) Pass an order and discharge the Applicant/Resolution Professional from his duties to act as a Resolution Professional.*
- d) Pass an order and allow the Applicant/Resolution Professional to hand over the management of the Corporate Debtor back to the Board of Directors of the Corporate Debtor.*
- e) Pass an order for termination of effect of Mortarium as imposed under the provisions of Section 14 of the IBC, 2016*
- f) Pass any other or further orders as may be deemed fit and proper in the circumstances of the case.*

3. Briefly stated the facts of the case as mentioned in the instant application, which are necessary for adjudication, are as follows:

- i. That an application under the provisions of Section 9 of Insolvency and Bankruptcy Code, 2016 was filed by Mr. Durgesh Kumar Sharma to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor (CD).

ii. This Adjudicating Authority admitted section 9 petition and initiate CIRP against the CD vide order dated 18.12.2020.

iii. The Applicant/Resolution Professional has constituted the committee of creditors and filed the same with this Adjudicating Authority. That as on the date of filing the Committee of Creditors is comprised of the following creditors:

S. No	Name of Creditor	Amount Admitted	Voting %
1.	Durgesh Kumar Sharma	1,60,800.00	100%
	<b>TOTAL</b>	<b>1,60,800.00</b>	<b>100%</b>

iv. That the Applicant published Form G on 11.12.2021 however, no Resolution Plan was received, therefore the Committee of Creditor in its 9<sup>th</sup> Meeting resolved to liquidate the CD with 100% voting shares.

v. The Applicant/Resolution Professional has filed an application under the provisions of Section 33 of IBC,

2016 being IA NO. 513/2022 for seeking liquidation of the Corporate Debtor.

- vi. That during the pendency of the Liquidation Application before this Adjudicating Authority, a settlement deed has been executed between the Sole Member of the Committee of Creditors and Mr. Sanjay Bhandari (erstwhile Director) and Promoter of the Corporate Debtor.
- vii. Accordingly, the Sole Member of the Committee of Creditors vide email dated 07.02.2024 informed the Applicant/Resolution Professional about the settlement arrived between parties.
- viii. The Applicant/Resolution Professional called the 17<sup>th</sup> meeting of Committee of Creditors on 17.02.2024 wherein the member of the Committee of Creditors with 100% voting shares has passed a resolution for withdrawal of the CIRP of the CD. Accordingly, the present Application is being filed for seeking withdrawal of the CIRP of the CD.

4. We have gone through the Application and arguments advanced by counsels for the Applicant.
5. In the present case, the RP has filed the application bearing IA 1041/2024 for withdrawal of CIRP under section 12A of the Code read with Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. Relevant extract of section 12A and Regulation 30A is reproduced below: -

***12A. Withdrawal of application admitted under section 7, 9 or 10. –***

*The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified*

***30 A. Withdrawal of application***

*(1) An application for withdrawal under section 12A may be made to the Adjudicating Authority –*

- (a) before the constitution of the committee, by the applicant through the interim resolution professional;*
- (b) after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be:*

6. From the bare reading of the above provisions, it is clear that after initiation of CIRP and after constitution of CoC, approval from 90% members of CoC is required to withdraw the application.
7. In the matter of *Vallal Rck versus M/s Siva Industries and Holdings Limited and others* Civil Appeal Nos. 1811-1812 of 2022, the Hon'ble Apex Court held that when 90% and more of the creditors, in their wisdom after due deliberations, find that it will be in the interest of all the stakeholders to permit settlement and withdraw CIRP, the Adjudicating authority or the Appellate Authority cannot sit in an appeal over the commercial wisdom of CoC.
8. In the present case, the sole member of CoC, with 100% voting shares approved the withdrawal of CIRP in its 17<sup>th</sup> meeting held on 17.02.2024.
9. In view of the above facts and circumstances the IA 1041/2024 stands allowed.

10. We direct that the Corporate Debtor be revived and restored to its original position with the following directions: -

- i. The Corporate Debtor shall remain bound to comply with the statutory requirements in accordance with the law.
- ii. The Corporate Debtor shall be responsible to pay all the statutory dues including Income Tax dues, as per law.
- iii. This order shall not be construed as waiver to any statutory obligations/liabilities of the Corporate Debtor and the same shall be dealt by the appropriate authorities concerned as per relevant laws.

11. The moratorium order passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of this order.

12. The RP is directed to handover the assets, documents, records pertaining to the Corporate Debtor to the suspended management of the Corporate Debtor forthwith. The RP shall be discharged of his duties and responsibilities as RP thereafter.

13. Since the Corporate Insolvency Resolution Process (CIRP) has been withdrawn, all the connected IA(s)/CA(s) stands disposed of.

Let a copy of the order be served to the parties concerned and to the IBBI for their records.

**SD/-**

**(RAHUL BHATNAGAR)**  
**MEMBER (TECHNICAL)**

**SD/-**

**(MAHENDRA KHANDELWAL)**  
**MEMBER (JUDICIAL)**