

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI PRASANTA KUMAR MOHANTY,
HON'BLE TECHNICAL MEMBER**

IA No. 134/JPR/2022 &
IA No. 286/JPR/2022
In CP No. (IB)- 146/7/JPR/2020

UNDER SECTION 7 OF IBC, 2016

IN THE MATTER OF:

SHAKUNTALA JOSHI & ORS.

...Financial Creditors/Applicants

VERSUS

HYPER TECNO BUILDMART PVT. LTD.

... Corporate Debtor/Respondent

AND IN THE MATTER OF:

IA No. 359/JPR/2022 & IA No. 286/JPR/2022

MEMO OF PARTIES

Rishab Chand Lodha
Resolution Professional
Hyper Techno Buildmart Pvt. Ltd.

...Applicant

For the Applicant : Abhishek Devgan Adv.
Rishabh Chand Lodha, RP in person

Order Pronounced On: 31.08.2022

ORDER**Per: Shri Deep Chandra Joshi, Judicial Member**

1. This Interim Application ('IA') bearing IA No. 134/JPR/2022 is filed by Mr. Rishabh Chand Lodha ('Applicant') under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('IBC / Code') read with Rule 11 of NCLT Rules, 2016 ('Rules') seeking appropriate directions for commencement of the Corporate Insolvency Resolution Process ('CIRP'), and set out specific timelines for the Applicant to comply with as envisaged under the Code.
2. This Adjudicating Authority *vide* Order dated 23.12.2021 has commenced the Reverse CIRP of Hyper Techno Buildmart Private Limited ('Corporate Debtor') under Section 7 of the IBC, and the Applicant was appointed as Interim Resolution Professional ('IRP'). Thereafter, the Applicant was appointed as Resolution Professional ('RP') on 01.02.2022 by the Committee of Creditor(s) ('CoC') in its first meeting.
3. The Applicant has moved the present Application on the following set of facts:
 - a. That as mandated under Section 15 of the Code and in terms of Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations') published a public announcement on 26.12.2021 in Rashtrdoot & Indian Express newspapers for

intimation of commencement of CIRP of Corporate Debtor and invitation of the claim(s).

- b. As per the directions of this Adjudicating Authority, the Applicant requested the promoters of the Corporate Debtor to prepare necessary plans and comply with the directions of this Adjudicating Authority. However, no reply was received from the promoters. Copy of the Letter dated 27.12.2021 is annexed as Annexure A – 2 of the Application. Further, the Applicant *vide* email dated 28.12.2021 intimated the directors of the Corporate Debtor regarding the commencement of CIRP against the Corporate Debtor. Copy of email dated 28.12.2021 is annexed as Annexure A – 1 of the Application.
- c. A reminder letter by way of speed post was sent to the Promoters on 29.12.2021, which was returned undelivered with the remark ‘addressee left without instructions’. Copy of Letter dated 29.12.2021 along with tracking report is annexed as Annexure A – 3 of the Application. Thus, an application, IA No. 194/JPR/2022, under Section 19(2) of the Code seeking co-operation and requisite records/ information for completion of CIRP.
- d. Two Registered Valuers were appointed to ascertain the quantum of remaining construction and its estimated cost in completion of the

project. The report of appointed valuers is annexed as Annexure A – 4 of the Application and reproduced for ease of reference.

S. No.	Valuer	Estimated Cost (Rs.)
1.	Mr. Manish Surana- Architect	4,76,69,000/-
2.	Mr. Hemant Singh- Civil Engineer	4,57,52,600/—

- e. Subsequently, upon receiving the afore-mentioned reports, efforts were made to arrange interim finance for the project completion. In this regard, various Builders/ Financers who were willing to Finance the Project of the Corporate Debtor were approached. However, no results were yielded. Meanwhile, in Second CoC Meeting, dated 07.03.202, the RP put one of the agenda to provide interim finance. The members of the CoC unanimously rejected the restart and also to finance the construction process of the ‘Shree Madav Residency’. In alternate, the CoC has authorised the RP to seek necessary directions for the completion of the CIRP as per the usual process and rules laid under the Code. Copy of the minutes of the Second CoC meeting dated 07.03.2022, including summary records of e-voting result of the aforesaid resolutions proposed, is annexed as Annexure A – 5 (Colly) of the Application.
- f. As per applicable provisions of the Code, the timelines and framework for issuing and publication of Form G within Seventy-

Five days from the commencement of CIRP have already elapsed. RP has prayed for modification in Order dated 23.12.2021, which passed in the light of the Hon'ble NCLAT's Judgment in Company Appeal (AT) (Insolvency) No. 926 of 2019 and switch to CIRP as envisaged under the IBC.

4. On careful perusal of the above-mentioned facts, documents placed on record before us, submissions made, and arguments advanced, we find that Mr. Rishab Chand Lodha, the RP, has duly complied with all steps and instructions specified in the Order dated 23.12.2021 passed by this Adjudicating Authority. The Applicant failed to arrange the requisite finance for completing the project without any lapse of duties and earlier directions. In the present matter, given the no co-operation by the Promoters and various other commercial hardships, the Applicant cannot complete the project. In current circumstances, for achieving the objectives of IBC, with the interest of the homebuyers and maximisation of the value of assets of the Corporate Debtor, it is necessary to set fresh guidelines and directions upon the assessment.
5. In view of the aforesaid submissions, this Adjudicating Authority is inclined to commence fresh CIRP against the Corporate Debtor as envisaged under the provisions of IBC, 2016. In this matter, the Resolution Professional

appointed herein, Mr. Rishabh Chand Lodha, shall exercise all the powers enumerated under the Code read with Rules made thereunder.

6. The RP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20, and 21 of the Code, and transact proceedings with utmost dedication, honesty and strictly under the provisions of the Code, and Rules and Regulations thereunder.
7. Consequences of commencement of CIRP shall be inter-alia as follows:
 - i. The RP appointed by the Adjudicating Authority, Mr. Rishabh Chand Lodha, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of the Code, including the issue of a publication in widely circulated Newspapers as contemplated under the provisions of the Code and calling for claims from the creditors of the Corporate Debtor; and collation of the same shall be done.
 - ii. Further, as a sequel of admission, a moratorium, as envisaged under Section 14 of the Code, is invoked concerning the Corporate Debtor, which will be in vogue during the CIRP of the Corporate Debtor. The RP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of the Code concerning the Corporate Debtor.
 - iii. The said RP shall act in accordance with the provisions of the Code.
To defray the expenses incurred by the RP and fee of RP to be

incurred, the existing CoC is directed to deposit a sum of Rs. 1,00,000/- (One Lakhs Only) to the account of RP within three weeks from the date of this Order. This amount shall be proportionately contributed and reimbursed to the Applicant upon formation of the Committee of Creditors. The RP shall duly file a status report apprising this Adjudicating Authority about the progress of CIRP as unfolding concerning the Corporate Debtor. Any expenses incurred by the RP during the Reverse CIRP period shall be kept in the different separate accounts and shall be adjusted against the sale proceed of the 'Shree Madhav Residency' Project.

- iv. In terms of Section 17 and 19 of the Code, all personnel of the Corporate Debtor, including Promoters and Board of Directors, whose powers shall stand suspended, shall extend all co-operation to the RP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the RP.
- v. In terms of Section 7 of the Code, this Order shall be communicated at the earliest, not exceeding one week from today, to the existing members of the CoC, Corporate Debtor, as well as the available registered address of the suspended Board of Directors and Promoters for commencement of CIRP of the Corporate Debtor. A copy of this Order shall also be communicated to IBBI for its records.

8. In view of the foregoing, *inter-alia* including homebuyers' interests and welfare objectives, we allow the prayer of the Applicant. Hence, the Application is accepted and based on the facts and pleadings submitted by the party(s) in the instant case and shall not prejudice any matter or proceedings between the parties, if any, before any other Court, Tribunal or any judicial or other authority.
9. Accordingly, with the aforesaid directions, list the matter in the normal course for consideration of any further/other interim orders as may be necessary, together with the main CP(s) for the continuation of proceedings in the matter.

IA No. 286/JPR/2022

1. This IA is filed under Section 12(2) of the IBC read with Regulation 40 of CIRP Regulations seeking extension of CIRP period of the Corporate Debtor with effect from 21.06.2022. The CIRP of Corporate Debtor was initiated *vide* Order dated 23.12.2021.
2. The Applicant in third CoC meeting dated 16.06.2022 apprised the members the pendency of the IA No. 134/JPR/2022 and expiration of 180 days of the CIRP period on 21.06.2022. Copy of the minutes of third CoC meeting is annexed as Annexure A – 2 of the Application.

3. Therefore, the CoC has resolved unanimously for extension of CIRP period of 90 days, making the total CIRP period of 270 days, subject to the approval of this Adjudicating Authority.

In the light of the Order passed in IA No. 134/JPR/2022, this instant IA is infructuous and is disposed of accordingly.

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CHANDRA
JOSHI
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JOSHI
Date: 2022.08.31
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**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

PRASANTA
KUMAR
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Date: 2022.08.31
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**PRASANTA KUMAR MOHANTY,
TECHNICAL MEMBER**