



**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**INDORE BENCH**

**COURT NO. 1**

ITEM Nos.202 to 204

TP 230 of 2019 [CP(IB) 192 of 2017]

**Proceedings under Section 7 IBC**

**IN THE MATTER OF:**

Daimler Financial Services Pvt Ltd

.....Applicant

V/s

JSM Devcons India Pvt Ltd

.....Respondent

**Order delivered on 06/07/2023**

**Coram:**

Mahendra Khandelwal, Hon'ble Member(J)

Kaushalendra Kumar Singh, Hon'ble Member(T)

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

**IA/12(MP)2023, IA/116(MP)2023 in IA/12(MP)2023 & IA/171(MP)2023**

These cases are fixed for pronouncement of the orders.

The common order is pronounced in open Court vide separate sheet.

Sd/-

**KAUSHALENDRA KUMAR SINGH  
MEMBER (TECHNICAL)**

Neeraj

Sd/-

**MAHENDRA KHANDELWAL  
MEMBER (JUDICIAL)**



**BEFORE THE ADJUDICATING AUTHORITY**  
**NATIONAL COMPANY LAW TRIBUNAL**  
**INDORE BENCH**

**IA/12 of 2023, IA/116(MP)2023 in IA/12 of 2023 & IA/171(MP)2023**  
**In**

**TP 230 of 2019 [CP(IB)/192/MP/2017]**

**IA 12 of 2023**

*(An application under Sec. 60(5) of IBC, 2016 r.w. Rule 11 of the NCLT Rules, 2016)*

**Mr. Niraj Jakheta**

(Plot Buyer acting for the benefit of all such  
Plot buyers forming the Class of Financial Creditors)

**.....Petitioner**

**Versus**

**Vineet Aggarwal**

RP of JSM Devcons India Pvt Ltd,  
Plot No. 2, Sampurnanand Nagar, Sigra,  
Varanasi, UP, 221010  
E-mail: [VNTG631@GMAIL.COM](mailto:VNTG631@GMAIL.COM)

**.....Respondent No. 1**

**Anish Aggarwal**

JSM Devcons India Pvt Ltd,  
605A, R.S. Tower, Circular Road,  
Lalpur, Ranchi, Jharkhand, 834001  
E-mail: [IP.CISPL@GMAIL.COM](mailto:IP.CISPL@GMAIL.COM)

**..... Respondent No. 2**

**IA 116 of 2023 In IA 12 of 2023**

*(Application under Rule 154 of the NCLT Rules, 2016)*

**Mr. Niraj Jakheta**

(Plot Buyer acting for the benefit of all such  
Plot buyers forming the Class of Financial Creditors)

**.....Petitioner**

**Versus**

**Vineet Aggarwal**

**..... Respondent No.1**

**Anish Aggarwal**

**.....Respondent No. 2**



**IA 171 of 2023**

*(An application under Sec. 60(5) of IBC, 2016 r.w. Rule 11 of the NCLT Rules, 2016)*

**Chaya Gupta**

Proposed RP of

JSM Devcons India Pvt Ltd.

1, Bima Nagar, 202, Almas Dreams Apartment,  
Indore, Madhya Pradesh 452 001.

**.....Applicant**

**In the main matter of TP 230 of 2019 [CP(IB) 192 of 2017]**

*(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

**Daimler Financial Services Pvt**

**..... Applicant**

**Versus**

**JSM Devcons India Pvt Ltd**

**..... Respondent**

**Order Reserved On: 16.06.2023  
Order Pronounced On: 06.07.2023**

**Coram: Mahendra Khandelwal, Member (J)  
Kaushalendra Kumar Singh, Member (T)**

**Appearance:**

For Petitioner: Ld. Adv. Mr. Neeraj Kumar Gupta (IA/12(MP)2023 &  
IA/116(MP)2023) a.w. Ld. Adv. Mr. Abhishek Naik (IA/171(MP)2023)

For Respondent: Ld. Ms. Chaya Gupta a.w. Ld. Adv. Ms. Kriti Vyas



## **ORDER**

1. This IA 12 of 2013 was filed on 12.01.2023 under Section 60(5) of the IBC seeking the removal of the Resolution Professional (RP) Mr. Vineet Aggrawal and Authorized Representative (AR) Mr. Anish Aggrawal on the ground of professional misconduct.

2. The Interlocutory Application was filed by Mr. Niraj Jakheta, one of the members of the CoC of the Corporate Debtor JSM Devcons (India) Pvt Ltd (being one of the plot buyers). As submitted by the applicant, this Adjudicating Authority vide order dated 12.04.2019 had admitted the application for initiation of Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor under Section 7 of the IBC, 2016 (the Code) filed on behalf of one of the Financial Creditor namely Daimler Financial Services Private Limited and *inter alia* appointed Mr. Vineet Aggrawal having Registration No. IBBI/IPA-001/IP-P00475/2017-18/10818 as the Interim Resolution Professional (IRP); and as required under Regulation 4A of the CIRP regulation, IRP had given the name of 3 Insolvency Professionals in the public announcement dated 20.04.2019 for appointment of Authorized Representative (AR) of the Financial Creditors enclose; and in pursuance of the public announcement, the IRP had selected the highest choice for AR among three proposed Insolvency Professionals and filed an application for appointment of Mr. Anish Aggrawal as the Authorized Representative of a class of the Financial Creditors. It is submitted that AR was appointed vide order dated 09.10.2019 by this Adjudicating Authority.

3. The applicant has narrated the various acts and omissions as well as the misconduct on the part of the RP Mr. Vineet Aggrawal. It has been pointed out that the RP has failed to convene the required CoC meetings and by this time almost more than three years have passed and there is no satisfactory progress in the CIRP. The applicant has also enclosed affidavits by 52 plot buyers in support of his application and proposed a new name for the RP namely Mr. Sunil Prakash Sharma having Registration No. IBBA/IPA-02/IPN00551/2017-18/11726. Thereafter, during the course of the



proceedings, the applicant filed another affidavit by 75 plot buyers (including the applicant) supporting the application and authorizing the applicant to pursue the application for the collective benefit of plot buyers. Through these affidavits, the applicant along with 74 plot buyers proposed to appoint Ms. Chaya Gupta (IBBI/IPA-002/IP-N00984/2020-2021/13133) as Resolution Professional.

4. It is noted that a number of Interlocutory Applications were also filed by the plot owners, whose registration was done prior to the initiation of, CIRP seeking direction to the RP not to consider their plot/property as assets of the Corporate Debtor. All those, Interlocutory Applications as well as the present IA 12 of 2023, were listed on 19.01.2023, and upon hearing the matter vide order dated 19.01.2023, this Adjudicating Authority had called upon the RP to appear personally before the Bench. On 19.05.2023, when all these matters were taken up for hearing, the RP had chosen not to appear. The Learned Counsel Mr. Neeraj Kumar Gupta appearing for the applicant had submitted that meanwhile, the IBBI vide order dated 14.03.2023 has suspended the registration of Mr. Vineet Aggrawal, the RP in this case also, for the next two years.

The Learned Counsel Mr. Neeraj Kumar Gupta also pleaded for the appointment of Ms. Chaya Gupta as new RP. While passing the order dated 19.05.2023, this Adjudicating Authority had taken note of the fact that such proposal for substitution (replacement) had not come up from the CoC. It was then submitted that the CoC could not be conducted because the present RP was neither conducting any meetings nor appearing before the Adjudicating Authority in spite of the directions; and in the absence of any call from the side of the RP for holding the CoC meeting, it was difficult to get all the plot buyers, being a member of the CoC, assembled for any meeting to take any call as regards to the appointment of any new RP. In the circumstances, the Adjudicating Authority vide aforesaid order dated 19.05.2023 gave the following direction.

*“We have taken note of the facts of this case and keeping in view the inordinate delay in the CIRP on account of the failure of the present RP to*



*discharge his functions in accordance with the provisions of IBC, we are of the view that let Ms. Chaya Gupta conduct a meeting of the CoC within 15 days from passing on this order and the CoC may take a call as to whether they would like Ms. Chaya Gupta to be appointed and confirmed as the new RP or they wish to propose someone else. The CoC then to pass a resolution to that effect and file a copy to this Adjudicating Authority, so that a decision can be taken in this regard”.*

5. Following, that an IA 171 of 2023 has been filed by Ms. Chaya Gupta wherein, it is submitted that in compliance with the said order dated 19.05.2023 passed by this Adjudicating Authority, she had circulated a notice for convening the 7<sup>th</sup> meeting of CoC of the Corporate Debtor on 26.05.2023 and scheduled the meeting on 31.05.2023; that the meeting was accordingly conducted amongst the Committee of Creditors on 31.05.2023 wherein the only agenda put up for considerations and deliberations was the appointment of the applicant as new Resolution Professional. It is submitted that the said agenda was discussed and deliberated extensively among the members and thereafter the same was put forth E-voting of the Creditors and creditors in class; accordingly, E-voting lines were opened from 03.06.2023, which after extensions on request of members of the CoC was finally closed on 07.06.2023. It is further submitted that the CoC members with 99.2% vote had resolved for confirmation of Ms. Chaya Gupta as new Resolution Professional. We have perused relevant records and the minutes of the said CoC meeting in view of the resolution of the CoC as regards the appointment of the new Resolution Professional, we hereby remove Mr. Vineet Aggrawal to act as RP of the Corporate Debtor and appoint Ms. Chaya Gupta (IBBI/IPA-002/IP-N00984/2020-2021/13133) as new Resolution Professional of the Corporate Debtor.

6. Accordingly, Mr. Vineet Aggrawal is directed to hand over the control of the Corporate Debtor to the new RP Ms. Chaya Gupta. Mr. Vineet Aggrawal is also directed to hand over the documents of the Corporate Debtor as well as the relevant records related to the CIRP of the Corporate Debtor forthwith to



Ms. Chaya Gupta, the new RP. Ms. Chaya Gupta is directed to take up the CIRP of the Corporate Debtor ahead of the present stage.

7. It is also noted that the applicant in IA 12 of 2023, namely Mr. Niraj Jakheta had also filed one more application IA 116 of 2023 seeking for some correction under Rule 154 of the NCLT Rules, 2016 in this Adjudicating Authority order dated 24.03.2023. Through the said application, it was pointed out that error has crept in para 3 and para 4 of that order dated 24.03.2023. We have perused the records. The said order was passed in the context of various Interlocutory Applications listed on 24.03.2023. In that order, this Adjudicating Authority had observed that *“despite the order dated 19.01.2023 passed by this Adjudicating Authority, there is no appearance on behalf of the RP; the situation is quite appalling.”*

In that context, in para 3 and para 4 thereof, this Adjudicating Authority had observed as under:

*“In the meantime, the CoC would be at liberty to pass an appropriate Resolution regarding the replacement of the RP and file the same before this Adjudicating Authority within one week.*

*Normally, we could have appointed the IRP/RP from the panel prepared by the IBBI and made it available to this Bench. However, the situation in the present case is quite peculiar i.e., the IP suggested by the CoC was appointed as RP, but he is not discharging his function and is also not represented before this Adjudicating Authority.”*

On perusal of the aforesaid order and taking in view of facts of the case, we find that there was as such no error in the observations made in para 3 & para 4 of the order dated 24.03.2023. Even otherwise, when on the next date of hearing which was on 19.05.2023, when it was pointed out that the present RP is neither conducting any meeting nor appearing before the Adjudicating Authority in spite of the directions; and that in the absence of any call from the RP side for holding the CoC meeting, it was difficult to get all the plot buyers, being a member of the CoC, assembled for any meeting to take any call as regards to the appointment of any RP, this Adjudicating Authority had



then authorized Ms. Chaya Gupta to call a meeting of the CoC and the CoC then to pass a resolution as to whether they would like Ms. Chaya Gupta to be appointed and confirmed as the new RP or they wish to propose someone else. In pursuance of that order, the exercise has already been done and the CoC confirmed the name of Ms. Chaya Gupta to be appointed as the new RP as already mentioned above. Considering the fact of the case, we have already removed Mr. Vineet Aggrawal to act as an RP and appointed at his place a new RP Ms. Chaya Gupta to act as RP. Thus, the application IA 116 of 2023 in effect becomes **infructuous and disposed of** accordingly.

To sum up, we would reiterate that Mr. Vineet Aggrawal stands removed as RP, and in his place Ms. Chaya Gupta is appointed as the new RP.

With this, all the above three IAs are **disposed of**.

Sd/-

**Kaushalendra Kumar Singh**  
**Member (Technical)**

Sd/-

**Mahendra Khandelwal**  
**Member (Judicial)**

Neeraj Gupta/Steno