

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**Coram: SHRI DEEP CHANDRA JOSHI,**  
**HON'BLE JUDICIAL MEMBER**  
**SHRI RAGHU NAYYAR,**  
**HON'BLE TECHNICAL MEMBER**

**IA No. 369/JPR/2020 and**  
**CP No. (IB)- 146/7/JPR/2020**

**IN THE MATTER OF SECTION 7 OF IBC, 2016.**

**IN THE MATTER OF:**

**SHAKUNTALA JOSHI & ORS.**

**... Financial Creditor**

**VERSUS**

**M/S HYPER TECHNO BUILDMART PRIVATE LIMITED & ORS.**

**...Corporate Debtor**

**IN THE MATTER OF CP NO. (IB)- 146/7/JPR/2020**

**MEMO OF PARTIES**

**Mrs. Shakuntala Joshi**

1-C- 14, R.C. Vyas Colony,  
Bhilwara- 311001 (Rajasthan)

**...Applicant No. 1**

**Mrs. Sharda Sharma**

Room No. 101, Plot No. 116, Ramjharokha,  
CHS Opp. IES School, Charkop, Sector- 2,  
Kandiwali West, Mumbai- 400067  
(Maharashtra)

**...Applicant No. 2**

**Mr. Navneet Joshi**  
1-C- 14, R.C. Vyas Colony,  
Bhilwara- 311001 (Rajasthan)

...Applicant No. 3

**Mr. Arun Kumar Sharma**  
Vatsalaya, ITI Road, Shastri Nagar,  
Gulabpura (Rural), Bhilwara- 311001  
(Rajasthan)

...Applicant No. 4

**Mr. Dinesh Chandra Toshniwal**  
Plot No. 40, Krishna Nagar, Setu Marg,  
Chittorgarh- 312001 (Rajasthan)

...Applicant No. 5

**Mrs. Radha Sharma**  
1-C- 14, R.C. Vyas Colony,  
Bhilwara- 311001 (Rajasthan)

...Applicant No. 6

**VERSUS**

**M/s Hyper Techno Buildmart Private Limited**  
Shri Nath Residency, A-2 & 3, V.S.P. Nagar,  
Near Mahila Ashram College, Bhilwara- 311001  
(Rajasthan)

...Respondent

**IN THE MATTER OF IA NO. 369/JPR/2020**

**MEMO OF PARTIES**

**Mrs. Shakuntala Joshi**  
1-C- 14, R.C. Vyas Colony,  
Bhilwara- 311001 (Rajasthan)

...Applicant No. 1

**Mrs. Sharda Sharma**

Room No. 101, Plot No. 116, Ramjharokha,  
CHS Opp. IES School, Charkop, Sector- 2,  
Kandiwali West, Mumbai- 400067  
(Maharashtra)

...Applicant No. 2

**Mr. Navneet Joshi**

1-C- 14, R.C. Vyas Colony,  
Bhilwara- 311001 (Rajasthan)

...Applicant No. 3

**Mr. Arun Kumar Sharma**

Vatsalaya, ITI Road, Shastri Nagar,  
Gulabpura (Rural), Bhilwara- 311001  
(Rajasthan)

...Applicant No. 4

**Mr. Dinesh Chandra Toshniwal**

Plot No. 40, Krishna Nagar, Setu Marg,  
Chittorgarh- 312001 (Rajasthan)

...Applicant No. 5

**Mrs. Radha Sharma**

1-C- 14, R.C. Vyas Colony,  
Bhilwara- 311001 (Rajasthan)

...Applicant No. 6

**VERSUS**

**M/s Hyper Techno Buildmart Private Limited**

Shri Nath Residency, A-2 & 3, V.S.P. Nagar,  
Near Mahila Ashram College, Bhilwara- 311001  
(Rajasthan)

...Respondent No. 1

**M/s State Bank of India**

Stressed Assets Regulatory Branch,  
3<sup>rd</sup> Floor, Matrix Mall, Sector- 4,  
Jawahar Nagar, Jaipur- 302004 (Rajasthan)

...Respondent No. 2

IA No. 369/JPR/2020

and

CP No. (IB)- 146/7/JPR/2020

For the Applicant : Prashant Agrawal, CA  
Apoorv Khator, Adv.  
For the Respondents : NK Zaveri, Adv.

**Order Pronounced On: 23.12.2021**

**ORDER**

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

1. The Application in the prescribed Form No.1 is filed by Mrs. Shakuntala Joshi and Others ('Applicants'/ 'Financial Creditors') for initiation of Corporate Insolvency Resolution Process ('CIRP') in the case of M/s Hyper Techno Buildmart Pvt. Ltd. ('Respondent'/ 'Corporate Debtor'). The application is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules'). The Applicants are allottees under the real estate project of the Respondent i.e., Shree Madhav Residency. The Power of Attorney(s) in favour of Mrs. Shakuntala Joshi on behalf of other Applicants to submit the instant Application have been filed at Annexure 6A (Colly).
2. The Respondent is a Private Limited Company, incorporated under the Companies Act, 1956, on 15.12.2009 and duly registered with the Registrar of Companies, Jaipur bearing CIN: U70101RJ2009PTC030504. The Registered Office of the Company is at Shrinath Residency, A-2 & 3, V.S.P. Nagar, Near Mahila Ashram College, Bhilwara - 311001 (Rajasthan). The

authorized share capital of the Respondent Company is Rs. 30,00,000/- (Rupees Thirty Lakhs Only) and the paid-up share capital is Rs. 2,43,000/- (Rupees Two Lakhs Forty-Three Thousand Only). The Master Data of the Respondent is at Annexure 8.

3. It is stated that the Respondent started a group housing project in the name of Shree Madhav Residency on Khasra No. A 188, 189, 212, 213 with a total area of the project being 1672.25 sq. mtr. registered with the Rajasthan Real Estate Regulatory Authority ('RERA') with project registration no. RAJ/P/2017/208. The project was scheduled to commence on 01.07.2016 and was estimated to be completed by 20.12.2018. However, as per information submitted by the Respondent with RERA, the actual commencement of the said project was started from 01.07.2017 with no extension for completion of the project.
4. It is further stated that the Respondent proposed 60 apartments and as per information available with RERA on 07.09.2020, a total 16 number of apartments have been booked/ sold/ allotted. In compliance with Section 7(1) of the Code, Mrs. Shakuntala Devi, an allottee along with other allottees of total 10 flats have preferred this Application having more than 10% share of the total number of allottees under the same real estate project.
5. The learned counsel for the Applicant submits that as per Section 5(8)(f) which defines 'Financial Debt' w.e.f. 06.06.2018, the explanation to the aforementioned section gives effect to the amount raised from the real estate

project, which has the commercial effect of borrowing, therefore, falls under the jurisdiction of this NCLT Bench. He further submits that under explanation to Section 7(1) of the code, a financial creditor either by itself or jointly with other financial creditors may file an application for initiating CIRP against the corporate debtor before the adjudicating authority when a default has occurred and as per explanation to this section, ‘a default includes a default in respect of a financial debt owed not only to the applicant/financial creditor but to any other financial creditor.’

6. The learned counsel furthermore submits the applicants have complied with the threshold limit as prescribed under Section 4(1) read with Notification No. S.O. 1205 E (F No. 30/9/2020-Insolvency) dated 24.03.2020 and with Section 7(5)(a) of the Code is as follows: -

*“(5) Where the Adjudicating Authority is satisfied that—*

*(a) a default has occurred and the application under sub-section (2) is complete, and no disciplinary proceedings is pending against the proposed resolution professional, it may, by order, admit such application.”*

7. The details of each allottee and individual transactions have been summarized hereinbelow:

Sr. No.	Name of Allottee	Date of agreement	Flat No.	Date of completion	Sale consideration	The total amount paid to date
1	Shakuntala Joshi	05.12.2015	404	05.06.2018	17,51,000	17,75,000
2	Shakuntala Joshi	05.12.2015	405	05.06.2018	10,70,000	8,11,000

3	Shakuntala Joshi	05.12.2015	1006	05.06.2018	17,51,000	9,74,000
4	Sharda Sharma	16.11.2015	302 & 303	16.05.2018	24,96,000	24,96,000
5	Navneet Joshi	16.11.2015	306	16.05.2018	17,50,000	12,00,000
6	Arun Sharma	28.12.2015	506	28.06.2018	17,50,000	12,20,000
7	Dinesh Chandra Toshniwal	01.06.2017	701	01.12.2019	20,00,000	20,00,000
8	Radha Sharma	01.06.2016	304	01.12.2018	17,51,000	9,00,000
9	Radha Sharma	14.11.2015	305	14.05.2018	8,40,800	8,40,800
	TOTAL				1,51,59,800	122168000

8. The Applicant stated that the Respondent failed to execute the contracts by not handing over the possession of units within 30 months i.e., 2.5 years from the date of execution of the contract. It is also stated that no building and construction work is going on as on date and it has been stopped for the last many months.

9. Moreover, the State Bank of India ('SBI') had invoked recovery proceedings against the Respondent due to the default in repayment of loan instalments. The Bank issued a notice dated 28.02.2020 under Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI') that the Respondent has defaulted in payment of Rs. 5,90,66,616/- (Five Crore Ninety Lakhs Sixty-

Six Thousand Six Hundred Sixteen Rupees Only) as on 28.02.2020 inclusive of interest, costs and expenses Copy of the notice is found to be attached as Annexures-17 with the Application.

10.As a consequence of default, this Application was filed. As claimed by the Applicant/ Financial Creditor, the Respondent/ Corporate Debtor is liable to pay Rs. 1,22,16,800/- (One Crore Twenty-Two Lakhs Sixteen Thousand Eight Hundred Rupees Only), as an outstanding amount, as reflected in Part IV of the Form - 1 filed.

Part IV

S. No.	Particulars of Financial Debt	
1.	Total amount of debt granted date(s) of disbursement.	Amount of Term Loan granted: - Rs. 1,22,16,800/- (One Crore Twenty-Two Lakhs Sixteen Thousand Eight Hundred Rupees Only)
2.	Amount claimed to be in default and the date on which the default occurred	Total Amount of claim of debt in default is Rs. 1,33,69,430/-  Date of Default: <ul style="list-style-type: none"> <li>• Shakuntala Joshi: 05.06.2018</li> <li>• Sharda Sharma: 16.05.2018</li> <li>• Radha Sharma: 01.12.2018</li> <li>• Radha Sharma: 14.05.2018</li> <li>• Arun Kumar Sharma: 28.06.2018</li> <li>• Navneet Joshi: 16.05.2018</li> <li>• Dinesh Chandra Toshniwal: 01.12.2019</li> </ul> (As per Worksheet 2)

11. In Part-V of Form No.1, the particulars of security held are given, which is stated to be NIL. It is mentioned that some of the applicants have initiated injunction proceedings against recovery proceedings of SBI in Debt Recovery Tribunal, Jaipur ('DRT') (Annexure - 19). One of the Applicants also filed an application before the Hon'ble Rajasthan High Court and successfully got the auction proceedings of SBI stayed from the Hon'ble High Court (Annexure - 18).

12. Vide order dated 12.08.2021, it was observed that though notice was served, as also noted in the Order dated 18.02.2021, no representation was made by the Respondent Corporate Debtor and further, no reply has been filed even after service of notice. It was also stated in the order that if there is no representation made and reply filed by the Corporate Debtor on 28.10.2021, appropriate orders will be passed in the matter based on the records available. It is noted that the Respondent has not filed any reply to this petition despite having numerous opportunities provided by this Authority in the matter and thus, in view of that the Respondent has forgone its right to file a reply.

13. During the hearing, the learned counsel for the Applicant relied on the Application filed and stated that the requirements of Section 7 of the Code are satisfied.

14. We have carefully considered the submissions of learned counsel for the Applicants and the Corporate Debtor and have also perused the record.

15. In the present case, the occurrence of default is evidenced by the details furnished by the applicant including the copies of the agreement to sale, the copies of receipts of money advanced, the copy of the certificate of the project with RERA, the copies of the statement of accounts duly certified under the Bankers Books Evidence Act 1891, and the copy of the notice issued by the SBI under SARFAESI Act, 2002.
16. The application filed in the prescribed Form No. 1 is found to be complete.
17. In Part-III of Form No.1, Mr. Rishabh Chand Lodha bearing Regn. No. IBBI/IPA-001/IP-P01075/2017-18/11766 has been proposed as Interim Resolution Professional ('IRP'). The proposed IRP has filed Form No. 2 stating that no disciplinary proceedings are pending against him with the Board so far.
18. Consequently, while this Adjudicating Authority is inclined to initiate CIRP against the Corporate Debtor under provisions of IBC, 2016, it is required that the concerned Interim Resolution Professional / Resolution Professional ('IRP / RP') shall keep the specific focus on the aforesaid real-estate Project of the Corporate Debtor and in context follow directions of this Adjudicating Authority throughout the process of CIRP, which are inter-alia as follows:
- a. The IRP/ RP shall look after the management of the Corporate Debtor in view of provisions of IBC, 2016, and list and segregate accounts/ ledgers, including investments, expenditures, expenses, receipts, profits, overheads, allocations, vouchers, journals, operating bank accounts and

cashflows of this Project from the other activities of the Corporate Debtor. Specific bank accounts with respect to the Project, if any, shall only be operational to deposit amounts for completion or any other realizations of this Project and presentation of cheques for encashment for Project expenditure/ expenses only with the countersignature of IRP/ RP. Further, any transactions in such bank accounts shall be brought to the notice of IRP/ RP by means of periodic weekly/ fortnightly status updates or otherwise as required by IRP/ RP. Moreover, any money pertaining to this Project that has been transferred out to any other account of the Corporate Debtor or otherwise, or any other amount not pertaining to this Project which is lying in any Project related bank account, shall be immediately brought to the knowledge of IRP/ RP. The said amount(s) shall be reconciled at the earliest with the report/ application of the IRP/ RP to the Adjudicating Authority.

- b. The IRP/ RP shall be provided with a fortnightly/ monthly statement of account of all bank accounts of the Corporate Debtor other than the Project-related bank accounts to ascertain funds flow or any cross flows.
- c. All accounts related to the Project shall be segregated and be treated as if on a stand-alone basis, akin to an internal undertaking or division. However, the IRP/RP shall have full access to and visibility of all the accounts, dealings, systems and processes of the Corporate Debtor. No

- payment shall be affected from any bank account of the Corporate Debtor without endorsement of the IRP/RP.
- d. The IRP/RP shall complete the Project on a priority basis through existing promoter(s) acting in the capacity of independent financiers and not promoters, to ensure that the Corporate Insolvency Resolution Process reaches success and the allottees take possession of their flats/apartments during CIRP as envisaged in the case of *Umang Realtech*<sup>1</sup>. In the absence of any promoter so stepping forward, the IRP/RP is free to consider any Financing agency/institution of repute in such avatar, independently, failing which he shall look at any other white knight/third party. This Project of the Corporate Debtor shall be/remain insulated and independent from other activities of the Corporate Debtor.
- e. As part of the completion of the Project, the IRP/RP shall check the status of formal sanctions/approvals and necessary certification for smooth completion of the Project. The IRP/ RP shall examine the status of completion of the Project and calculate an estimate of residual/remaining amount required for the completion of the Project and a tentative plan for the same.
- f. The IRP/RP shall prepare a status report of the Project and shall include the status of flats that are already sold, or under the agreement of sale,

---

<sup>1</sup> *Flat Buyers Association Winter Hills – 77, Gurgaon Vs. Umang Realtech Pvt Ltd through IRP & Ors.* in Company Appeal (AT) (Insolvency) No. 926 of 2019.

- and whether corresponding approval of the Financial Creditor is/ was required or not and if the same is in hand.
- g. An initial update on the status of the Project shall be provided to this Adjudicating Authority at the earliest and periodic intervals during ongoing events and in any case, on fortnightly basis for the first two months and a monthly basis thereafter. The update shall include an assessment of unsold inventory and any amount that should be kept in escrow from realizations on sale of such inventory in view of loan burden or for any relevant reasons.
- h. Any accruals on/of the Project shall be banked separately and repayment from such accretion of any liability, if any, shall be made only after obtaining prior permission of the Adjudicating Authority.
- i. In view of the decision of the Hon'ble Supreme Court in *Pioneer Urban Land<sup>2</sup>*, no allottee shall be allowed to seek any refund in respect of the flats allotted to them. However, in case any allottee requests the IRP/RP to find out potential flat buyers and get their money back, the IRP/RP is at liberty to do so.
- j. Upon completion of the buildings at the site, even pending formal certification in this regard, the IRP/RP shall work towards the release of any mortgage charge on the land of the project, and the title/interest

---

<sup>2</sup> *Pioneer Urban Land and Infrastructure Limited & Anr. v. Union of India & Ors.*, AIR 2019 SC 4055.

thereof shall thereafter stand clear but held/appORTioned as indivisible, impartible pro-rata shares of respective flats or any other construction in the land of the project or in favour of the Flat Buyers/owners association/society in conformance with applicable laws.

- k. If the Project plans include/permit any construction other than residential flats, the IRP/RP shall seek construction/completion of the same and utilize proceeds thereof for completion of the Project. If any such construction has already been done and proceeds thereof have already been realized, then such details shall be included in reports to the Adjudicating Authority. This, however, shall be at a relatively lower priority as compared to the construction/completion of flats of home buyers.

19. In view of the foregoing, CIRP of the Corporate Debtor is ordered by this Adjudicating Authority mainly rooted on the said real-estate Project and above-mentioned directions. The consequences of initiation of CIRP shall be inter-alia as follows:

- (i) The IRP proposed by the Applicant is Mr. Rishabh Chand Lodha, resident of E-5, Shraman Basant Vihar, Gandhi Nagar, Bhilwara, Rajasthan, 311001, bearing Registration No. IBBI/IPA-001/IP-P01075/2017-18/11766 and email address [rishabhlodha57@gmail.com](mailto:rishabhlodha57@gmail.com), Mobile No. +91-7042527528. He is hereby appointed as the IRP to take over the affairs of the Corporate

Debtor with focus on the aforesaid real-estate Project and duties as required to be performed by him under the provisions of IBC, 2016 including issue of publication in widely circulated newspapers, including one in English and one in Hindi, as contemplated under the provisions of IBC, 2016 and calling for claims from the creditors of Corporate Debtor and collation of the same. The claims related to the pertinent real-estate Project shall take precedence and be segregated.

- (ii) Further, as a sequel of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked in relation to the Corporate Debtor, which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of IBC, 2016 in relation to the Corporate Debtor.
- (iii) The said IRP shall act strictly in compliance with the provisions of IBC, 2016 and with a view to defray his expenses to be incurred and fees on account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Rupees Two Lakhs Only) to the account of IRP within three days from the date of this order. The IRP shall duly file a status report from time to time appraising this Adjudicating Authority about the progress of CIRP unfolding in relation to the Corporate Debtor. The first report, including details about the status of the relevant real-

estate Project, shall be filed, in any case within 21 days of commencement of CIRP.

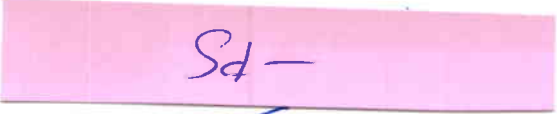
- (iv) In terms of sections 17 & 19 of IBC, 2016 all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP. This order is being passed in an Application filed under Section 7 of IBC, 2016 with a view to bring about resolution of the Corporate Debtor with focus on specific real-estate Project in question and the energies of the IRP/ RP are expected to be channelized accordingly. However, in the event of non-cooperation by the Corporate Debtor or its directors or its employees, the expanse of resolution shall encompass the entire gamut of operations of the Corporate Debtor upon the report/ application of the IRP/ RP and directions in this regard of the Adjudicating Authority.
- (v) In terms of Section 7 of IBC, 2016, this order shall be communicated to the Applicant, Corporate Debtor as well as the Interim Resolution Professional (IRP) appointed by this Adjudicating Authority to carry out the CIRP at the earliest, not exceeding one week from today. A copy of this order shall also be communicated to IBBI for its records.

20. Accordingly, CP No. (IB)-146/7/JPR/2020 is admitted.

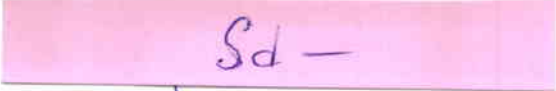
**IA No. 369/JPR/2020**

The learned Counsel for the Applicant in the instant application has prayed to extend the interim order, dated 03.12.2020, passed by this Bench, to the Respondent No.2 for restraining the alienation of the said property until the main petition, i.e., CP No. (IB) 146/7/JPR/2020 under section 7 for admission of CIRP is disposed of.

In view of the aforementioned Order and disposal of the main case, the IA No. 369/JPR/2020 has become infructuous. Accordingly, it stands disposed of along with CP No. (IB) 146/7/JPR/2020.

Sd-

**RAGHU NAYYAR,  
MEMBER (TECHNICAL)**

Sd-

**DEEP CHANDRA JOSHI,  
MEMBER (JUDICIAL)**