

Sr.No- 194/2019

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

**Coram: DR. POONDLA BHASKARA MOHAN,**  
**HON'BLE JUDICIAL MEMBER**

**SHRI RAGHU NAYYAR,**  
**HON'BLE TECHNICAL MEMBER**

IA No. 84/JPR/2019  
IA No. 97/JPR/2019  
IA No. 124/JPR/2019  
IA No. 126/JPR/2019  
IA No. 153/JPR/2019  
IA No. 193/JPR/2019  
IA No. 229/JPR/2019  
Dairy No. 1385/2019  
IB No. - 726/ND/2018  
TA No. 70/2018

**UNDER SECTION 9 OF THE INSOLVENCY AND BANKRUPTCY  
CODE, 2016**

**IN THE MATTER OF:**

**MANOHAR KARAMCHANDANI,**  
40, Katewa Mansion,  
Shastri Nagar Shopping Centre,  
Jaipur-30201 6 (Rajasthan)

**...OPERATIONAL CREDITOR/APPLICANT**

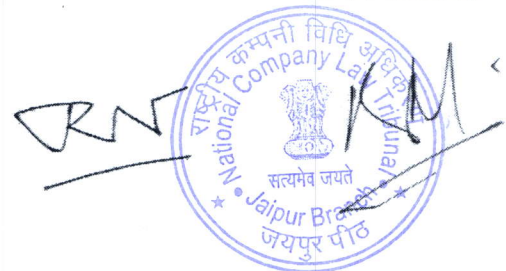
**VERSUS**

**BALAJIDHAM BUILDESTATES PVT. LTD.**  
3'd Floor, E-295-296, Lalkothi Scheme,  
Behind New Vidhan Sabha, Jaipur-302015 (Rajasthan)

**...CORPORATE DEBTOR/RESPONDENT**

**Assistant Registrar**  
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**Jaipur**

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**For the Applicant:** Naresh Kumar Sejvani, Adv.  
Prashant Agrawal, Adv.

**For the Respondent:** Vaibhav Khasliwal, Adv.  
Sandep Taneja, Adv.

**Order Pronounced On: 06.09.2019**

**ORDER**

1. Based on an application moved by the Operational Creditor, Sh. Manohar Karamchandani, against the Corporate Debtor, Balajidham Buildestates Private Limited, for initiation of the Corporate Insolvency Resolution Process (CIRP) under Section 9 of the Insolvency and Bankruptcy Code, 2016 and having been convinced in relation to the non-payment of the claim amount made in the petition by the Operational Creditor pointing out to a default as envisaged under the provisions of Section 9 of IBC, 2016, this Tribunal admitted the insolvency petition on 02.11.2018 and also appointed one Ms. Sarita Duck as Interim Resolution Professional (IRP) in relation to the affairs of the Corporate Debtor.
2. In terms of Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) the said Interim Resolution Professional made a public announcement in FORM-A on 05.11.2018 in Indian Express (English Edition) and Punjab Kesari (Hindi Edition). In compliance of Regulation 8A

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(3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) the said IRP on receipt of claims from homebuyers in Form CA, made a public announcement on 20.11.2018 in Indian Express (English Edition) and Punjab Kesari (Hindi Edition) and had given three choices namely Mr. Prashant Agrawal, Mr. Rajneesh Singhvi and Mr. Vikas Rajvanshi to act as authorized representative of the said creditors. In terms of Regulation 16A of the above said Regulation Mr. Vikas Rajvanshi was selected as the Authorized Representative of Financial Creditors in the class of Form CA.

3. The Resolution Professional constituted the Committee of Creditors and issued the notice for convening the first meeting of the CoC on 05.12.2018. In its first meeting, the appointment of the Interim Resolution Professional (IRP) was confirmed as a resolution professional and it was also brought to the notice of this Tribunal by report filed vide Diary No. 753/2018 dated 10.12.2018 that in the first meeting of the CoC, claims have been submitted by 36 (Thirty Six) Financial Creditors, 6 (Six) Operational Creditors, 2 (two) Workmen & Employees, 19 (Nineteen) Home Buyers and 7 (Seven) claims from creditors other than Financial and Operational Creditor. It is also noted that the key person late Shri Pramod Agrawal has expired on 24.07.2018 and also the projects undertaken by the Corporate Debtor are incomplete and disputed because of which many home buyers and investors

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have filed cases against directors and it is also noted that 20 criminal cases are pending against the company. It is further noted that as stated in the minutes of the first meeting of the COC filed vide Dairy No. 753/2018 dated 10.12.2018, in some projects no MOU was signed between the specific partners of relevant projects nor any agreement was made vesting powers to any authorized signatory to execute registration on behalf of the other partners. Thus, COC had resolved to appoint Adv. Amol Vyas and Adv. Harish Agarwal to handle all the litigations. Further for computation of the realistic figures of the property held by the Corporate Debtor and to send notices to the debtors, the COC had resolved to appoint Valuer Shri Anoop Singh. The COC had also resolved that interest at the rate of 8 % be charged on all the financial claims admitted and also for calculation of voting rights.

4. The IRP convened 2<sup>nd</sup> COC meeting on 15.01.2019 and on perusal of the same it is seen that the COC had resolved to open an account with Kotak Mahindra Bank Jaipur and fixed a limit upto Rs. 2,00,000 for Resolution Professional to initiate a debit transaction without the permission of the Committee of Creditors for expenses other than approved expenses in first COC and to publish Expression of Interest (EOI) in two Newspaper for calling Resolution Plan from Resolution Applicants. The COC had agreed to apply Evaluation Matrix for resolution Plan. In the said meeting COC had also resolved that Registration of flats by Resolution Professional be done if

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approved by this Tribunal, where full and final payment as per agreement was received by the corporate debtor and only registration was to be done in the name of the purchaser of the property /flats.

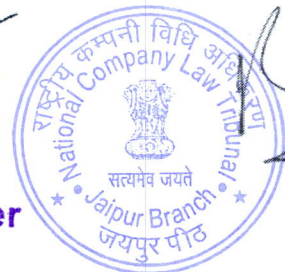
5. The third CoC meeting was held on 27.02.2019 and on perusal of the same it is seen that to manage the affairs of the Company it was resolved to raise interim finance by sale of Flat No. F-4 located at Rameswaram Residency owned by the Company. Further the COC had assented to ratify the expenses incurred upto 3<sup>rd</sup> COC meeting and approved to incur expenses on actual basis till conclusion of CIRP proceedings. However, the agenda to share cash book of the Corporate Debtor and personal details of creditors as demanded by Shri Vinod Dugar, creditor, and the agenda to examine undervalued transactions for sale of property made by the company before one year, which is out of purview of CIRP proceedings, is dissented by COC. Further the COC has assented to conduct Forensic audit from 01.04.2014 to 06.07.2018 and also assented to charge an amount of Rs. 15,000/- (Rupees Fifteen Thousand Only) from Home buyers for registration done in their favour, to approve the insurance of Resolution Professional, to pay fees of Rs. 15000/- per meeting to the Authorized Representative and to conduct investigation for undervalued transaction for year 2014-15 and 2015-16.
6. It is seen from records that Resolution Professional (RP) had filed an Application vide IA No. 84/JPR/2019 on 26.03.2019, stating that for the development of project namely Narayandham situated at 411, Rani Sati

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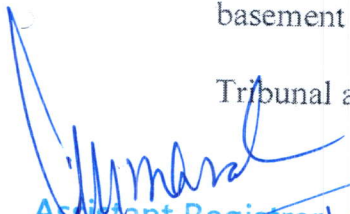
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Nagar, Ajmer Road, Jaipur the Corporate Debtor had entered into Development Agreement dated 02.08.2011 with Mr. Rajesh Mohan Sethi, Mr. Krishan Mohan and Mr. Rajendra Prasad Bansal. Copy of Development Agreement is annexed as Annexure-3 to the Application. Thereafter on 24.08.2015 the corporate Debtor and its aforesaid partners executed a partition deed as stated in IA No. 84/JPR/2019 and as per the said partition deed, 145.83 sq meter of basement and 83.53 sq meter of stilt floor of Narayandham would be owned by the Corporate Debtor. Copy of the partition deed is annexed as Annexure 4 with the Application. Therefore, RP had sent letter dated 22.12.2018 to Narayandham Residential Welfare Society and informed about the CIRP proceeding against the Corporate Debtor and advised to allow the valuer so that further action under IBC may be initiated but the letter was not responded. Thus, the RP visited the site on 28.01.2019 and 16.02.2019 and came to know that the premises was being used by the residents of the society and also came to know that the affairs of the society was handled by Mr. Anurag Shukla. Thereby RP had sent letter dated 01.2.2019 and also had conversation on phone with Mr. Anurag Shukla and advised him to produce documents evidencing claim of the said basement failing which the company will move an application before this Tribunal and take possession but all went in vein. Thus, RP had filed an IA

  
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seeking a direction to Mr. Anurag Shukla to handover the peaceful and vacant possession of the said premises.

7. It is further seen that the Resolution Professional had also filed Application vide IA No. 97/JPR/2019 against one Mr. Hukum Singh Shekhawat and prayed to direct Mr. Hukum Singh Shekhawat to handover the peaceful and vacant possession of the flat of the Corporate Debtor situated at Khatipura Road, Jaipur to the Resolution Professional and to direct the police authorities to provide adequate protection to the Resolution Professional while taking over the possession of the said flat. The respondent in this IA had filed his reply vide Dairy No. 1388/2019 on 29.07.2019.

8. IA No. 114/JPR/2019, IA No. 115/JPR/2019, IA No. 116/JPR/2019 and IA No. 125/JPR/2019 were filed by Home Buyers and it is seen that on 26.04.2019 this Tribunal had granted permission to withdraw these IAs and file fresh application to apply for condonation of delay in filing the claim.

9. It is further seen that IA NO. 124/JPR/2019 was filed by Mr. Ravi Maheshwari owner of the property situated at Plot No. 44, Keshav Nagar, Sirsi road, Panchawala, District Jaipur- 302034, under Section 60(5) of Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor, Resolution Professional and Directors of the Corporate Debtor namely Mr. Amod Agarwal, Mr. Pramod Agarwal and Ms. Anjana Agarwal wife of Mr. Pramod.

It was submitted that on the said Plot, Corporate Debtor had Manohar Karamchandani vs. Balajidham Buildestates Pvt. Ltd.

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constructed a building without any authority. On perusal of Order dated 31.05.2019 it is seen that Resolution Professional had submitted that Mr. Pramod Agarwal has expired and Ms. Anjana Agarwal is the wife of Mr. Pramod Agarwal. It is further seen that RP and Mr. Amod Agarwal have filed their reply and the Applicant submitted that rejoinder need not be filed.

10. The Resolution Professional had filed Application vide IA. No. 126/JPR/2019 under Section 20 of Insolvency and Bankruptcy Code, 2016 against Mr. Shiv Kumar Lath and others, seeking direction to Respondents in this Application to pay an amount of Rs. 36,00,000 to the Corporate Debtor. It is seen that reply by all the respondents was filed and Resolution Professional submitted that rejoinder need not be filed.
11. It is seen that IA No. 142/JPR/2019, IA. No. 143/JPR/2019, IA No. 173/JPR/2019 and IA No. 209/JPR/2019 were filed by home buyer for condonation of delay in filling claim before Resolution Professional and the same was allowed by this Tribunal.
12. The group of home buyers have filed Application vide IA No. 153/JPR/2019 seeking direction against Resolution Professional. However, Resolution Professional has not filed reply to this Application till the date of order being reserved in this case.
13. The Resolution Professional had also filed Application vide IA No. 193/JPR/2019 under Section 19 and 20 of IBC, 2016 seeking direction to

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Mr. Rajendra Singh Rathore to pay an amount of Rs. 44,00,000/- in compliance of Agreement dated 10.12.2014 to the Corporate Debtor. It is seen that Respondent has not appeared in this Application till the Orders being reserved.

14. The IA No. 224/JPR/2019 is filed by Resolution Professional and the same was allowed to be withdrawn vide Order dated 25.07.2019. The Resolution Professional had also filed Application vide IA No. 229/JPR/2019 under Section 66 of IBC, 2016 against ex directors of the Corporate Debtor and on perusal of Order dated 25.07.2019 it is seen that Mr. Sandeep Taneja accepted and undertook to file reply on behalf of respondent Mr. Amod Agarwal. No reply has been filed in this Application.
15. The IRP convened 4<sup>th</sup> COC meeting on 27.04.2019 wherein it was proposed that since period of 180 days is expiring on 01.05.2019 and no resolution plan had been received, thereby COC had to take a call on whether to extend this period or liquidate the Company. The COC had dissented to approve liquidation of the Corporate Debtor. Thereby Resolution Professional had filed Application under Section 12(2) of the IBC, 2016 seeking for extension of time period of Corporate Insolvency Resolution Process by further 90 days and it was submitted that one of the COC members, all being the home buyers, had desired to settle the issues in one of the projects namely Nishant Nupur, of which construction had not been completed by the Corporate

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Debtor and for the resolution of the same, further period of 90 days was required. Thus, this Tribunal on 03.05.2019 extended the CIRP period from 180 days to 270 days on and from 01.05.2019. In 4<sup>th</sup> COC meeting, it was resolved to raise interim finance by e-auction of Flat No. F-4 situated at Rameshwarsm Residency for managing the affairs of the Company. The COC had also assented to give Plot No. 5 & 6 (club house), registered in the name of Amod Agarwal and Pramod Agarwal, to Home Buyers of Society Weekend to complete construction and avail the facilities on Plot No. 1 to settle the creditors.

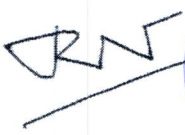
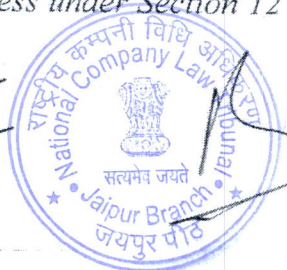
16. The IRP convened 5<sup>th</sup> COC meeting on 22.07.2019 and on perusal of the same it is seen that since maximum period of 270 days expired on 30.07.2019 and as no resolution plan came forth, the COC had assented for liquidation of the Corporate Debtor. In the said meeting no liquidator's name was proposed by the COC. Hence the Resolution Professional has filed an Application for liquidation vide Dairy No. 1385/2019 dated 29.07.2019
17. Taking into consideration the above facts in relation to the affairs of the Corporate Debtor the provisions of Section 33(1) of IBC, 2016 are follows:-

“(i) Where the Adjudicating Authority: -

- a) Before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under Section 12 or

  
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*the fast track corporate insolvency resolution process under Section 56, as the case may be, does not receive a resolution plan under Sub-section (6) of Section 30; or*

- b) Rejects the resolution plan under section 31 for the noncompliance of the requirements specified therein, it shall*
- (i) Pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;*
- (ii) Issue a public announcement stating that the corporate debtor is in liquidation; and*
- (iii) Require such order to be sent to the authority with which the corporate debtor is registered.”*

18. This Tribunal in the circumstances taking into consideration the provisions of law as well as on facts is constrained to order for liquidation of the corporate debtor and in such background the corporate debtor stands liquidated with the incidence of liquidation to follow, on and from the date of this order in terms of the provisions of IBC, 2016 and more particularly as given in Chapter – III of IBC, 2016 and also in terms of Insolvency and Bankruptcy (Liquidation Process) Regulations, 2017 along with the following directions:

- a. Ms. Sarita Duck Resolution Professional holding Registration No. IBBI/IPA- 002/ IP-N00409/2017-18/ 11201, is hereby appointed as

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Liquidator and she has given consent to act as the liquidator vide written communication dated 27.07.2019, under section 34 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, as the COC in its meeting on 27.07.2019 has not proposed any person's name.

- b. Ms. Sarita Duck is directed to issue Public Announcement stating that the corporate debtor is in liquidation, in terms of Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;
- c. The Registry is directed to communicate this Order to the Registrar of Companies, Jaipur and to the Insolvency and Bankruptcy Board of India;
- d. In terms of section 178 of the Income Tax Act, 1961, the Liquidator shall give necessary intimation to the Income Tax Department. Similarly, in relation to other fiscal and regulatory authorities which govern the Corporate Debtor, the Liquidator shall also duly intimate about the order of liquidation
- e. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;

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- f. This order is deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- g. The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant regulations.
- h. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016.
- i. Copy of this order be sent to the operational creditor, corporate debtor and the Liquidator for taking necessary steps.
- j. The pending IA Nos. 84/JPR/2019, 97/JPR/2019, 124/JPR/2019, 126/JPR/2019, 153/JPR/2019, 193/JPR/2019, 229/JPR/2019 as they have bearing on the issues in liquidation, they are directed to be listed along with the IB No. 726/ND/2018 while the liquidation proceedings are placed before this Tribunal.

Sd—

**SHRI RAGHU NAYYAR,**  
MEMBER (Technical)

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**DR. POONDLA BHASKARA MOHAN**  
MEMBER(Judicial)



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