

**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**  
**COURT-III**

**ITEM No. 301**  
**IA-316/2024**  
**In IB-453(ND)/2022**

**IN THE MATTER OF:**

M/s. JPM Industries Ltd.  
Vs.  
Orkus Pvt Ltd.

.... Petitioner/Applicant

.... Respondent

**Order u/S. 9 of Insolvency & Bankruptcy Code (IBC), 2016.**

**Order delivered on 20.02.2024**

**CORAM:**

**SH. BACHU VENKAT BALARAM DAS**  
**HON'BLE MEMBER (JUDICIAL)**

**SH. ATUL CHATURVEDI**  
**HON'BLE MEMBER (TECHNICAL)**

**(HEARING THROUGH PHYSICAL MODE & VC)**

**PRESENT:**

For the Applicant : Mr. Kunal Godhwani, Advs  
For the OC : Mr. Vivek Singh, Mr. Rahul Arya, Mr./Ms.  
Snehpreet Kaur, Mr. Ritik Drivedi, Advs.  
For the IRP : Mr. Arpit Sharma, Mr. Aman Sharma, Ms. Aparna  
Tripathi, Advs.

**ORDER**

**IA-316/2024**

This application has been filed by M/s. Zambezi Builders Pvt. Ltd., Financial Creditor seeking the following reliefs:

- a. Pass ad interim ex-parte order staying the present CIRP, during the pendency of the present application;*
- b. Remove the respondent No. 1 i.e. Shri Bimal Kumar Sharma as the IRP in the present case;'*
- c. Appoint Shri Ajay Gupta, Insolvency Professional, as the Resolution Professional in the present case, as his name has been nominated by the Applicant, holding 100% voting share in the CoC; alternatively*

- d. Direct the IRP/Respondent No. 1 to immediately hold a CoC meeting for appointment of Resolution Professional in the present case;*
- e. Direct IBBI to investigate into the actions of the Respondent No. 1/IRP; and*
- f. Pass any such order(s) as this Hon'ble Tribunal may deem fit in the facts and circumstances of this case.*

Mr. Kunal Godwani, Ld. Counsel appearing for the Applicant has submitted that he will press only prayer b, which relates to the removal of the respondent No. 1 i.e. Shri Bimal Kumar Sharma as the IRP in the present case and he does not wish to press the remaining prayers at this stage.

It is a matter of record that the CIRP of the Corporate Debtor was initiated vide order dated 07.12.2023, in an application filed under Section 9 of the IBC, 2016 by the Respondent No. 2. The Respondent No. 1 was appointed as the IRP. The IRP made a public announcement on 08.12.2023 and the last date for submissions of the claims was 21.12.2023. The Applicant filed its claim in Form-C of the CIRP Regulations on 19.12.2023 as a secured financial creditor claiming an amount of Rs. 1,13,23,973/-.

It is submitted by Mr. Kunal Godwani Ld. Counsel for the Applicant that the IRP constituted a CoC with the Applicant who is secured Financial Creditor, being the sole member of the CoC, which was reflected in the notice of the 1<sup>st</sup> CoC Meeting issued on 30.12.2023. Further, the details of the claims received by the IRP are also available on the IBBI Website. The IRP called the 1<sup>st</sup> CoC Meeting on 06.01.2024. The Applicant proposed the name

of Shri Ajay Gupta to be appointed as the Resolution Professional in terms of Section 22(2) of the IBC, 2016.

It is submitted in the 1<sup>st</sup> CoC Meeting by the CoC held on 06.01.2024, the following voting agenda was placed:

- a. To ratify the expenses incurred in relation to the CIRP.*
- b. To ratify the enumeration of the IRP.*
- c. To appoint a resolution professional; and*
- d. To appoint certain professionals viz Advocate, Valuer, Accountant, Forensic Auditor, Security Guard and IP support services-corporate consultant.*

However, on the allegations made by the Operational Creditor, stating that the Applicant is a related party of the Corporate Debtor, the IRP abruptly concluded the 1<sup>st</sup> CoC Meeting.

It is submitted by Mr. Kunal Godwani, Ld. Counsel appearing for the Applicant that the IRP has acted contrary to the provisions of the Code, 2016 and proceeded to change the status of the Applicant from Financial Creditor to “related party” basing on a complaint made by the Operational Creditor.

We have also heard the submissions made by Ld. Counsel appearing for the Resolution Professional as well as the Ld. Counsel appearing for the Respondent No. 2.

It is an admitted position that the IRP is in the process of collating and verifying the claims. It is seen from the records that some of the claims have been rejected whereas some of the claims are still under verification. However, the Applicant has been shown to be having 100% voting share in the CoC and the

Resolution Professional has gone ahead to convene the 1<sup>st</sup> Meeting of the CoC on 06.01.2024 where as per the prayers made in the application, he has also gone into the matter of adjudicating on the issue raised by the Operational Creditor with reference to the Financial Creditor being a related party. However, as per the table mentioned in the list of the claims filed by the IRP on the website of the IBBI no claims have been admitted till date but CoC has already been convened which itself is a clear violation of statutory provisions relating to Constitution of the CoC, therefore, the conduct of the Resolution Professional is viewed seriously and we recommend that appropriate action be taken against the Resolution Professional by the IBBI.

Meanwhile, we decide to replace the present Resolution Professional by Mr. Shaikh Nafis Anjum, having registration No. IBBI/IPA-003/IP-N00211/2018-2019/12363 (Mobile No. 9717128400, email – sn.anjum123@gmail.com).

A copy of this order may also be sent to the IBBI.

With the above observations, IA-316/2024 **disposed of.**

-Sd-  
**(ATUL CHATURVEDI)**  
**MEMBER (TECHNICAL)**

-Sd-  
**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**

Ajay