

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

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

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

IA No. 74/JPR/2023
In CP No. (IB)- 20/7/JPR/2020

IN THE MATTER OF:

M/S ROSHAN COLONISERS PVT. LTD.

...FINANCIAL CREDITOR

VERSUS

M/S GRATEFUL BUILDINFRA PVT. LTD. & ANR.

...CORPORATE DEBTOR

MEMO OF PARTIES

IA No. 74/JPR/2023:

M/S ROSHAN COLONISERS PVT. LTD.

Shop No 9-10, Narayan Sagar,
Block A, Near Narayan Vihar,
Gopalpura Byepass, Ajmer
Road, Jaipur-302020

...Financial Creditor

VERSUS

M/S GRATEFUL BUILDINFRA PVT. LTD. & ANR.

G0123, Ramanuj Path, Shyam
Nagar, Jaipur- 302019

...Corporate Debtor

IN RE:

MR. JAI PRAKASH RAWAT
22-B, New Colony, Chandni
Chowk, Jhotwara, Jaipur-
302012 (Rajasthan)

...Applicant Resolution Professional

COUNSEL FOR APPLICANT(S) : Karan Gandhi, Adv.
Jai Prakash Rawat, RP

COUNSEL FOR RESPONDENT(S): Neha Gyamlani, Adv.
Aditya Jain, Adv.
Bhavya Golecha, Adv.
Amol Vyas, Adv.

Order Pronouncement On: 20.10.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The present application bearing *IA (IBC) No. 74/JPR/2023* has been filed by *Mr. Jai Prakash Rawat*, Resolution Professional of *M/s Grateful Buildinfra Pvt. Ltd.* ('Corporate Debtor') under Rule 11 of NCLT Rules, 2016 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') seeking withdrawal of the pending Applications numbered *IA No. 141/JPR/2021, IA No. 142/JPR/2021, IA No. 144/JPR/2021, IA No. 145/JPR/2021* and *IA No. 148/JPR/2021* which are pending for adjudication.
2. In the main application, the Financial Creditor being *M/s Roshan Colonisers Pvt. Ltd.* had filed an application under Section 7 of the Code seeking CIRP of the Corporate Debtor. This Adjudicating Authority vide order dated 02.03.2021 initiated the CIRP of the Corporate Debtor and appointed *Mr. Shailesh Dayal* as the IRP. Later, vide order dated 06.07.2022, *Mr. Jai Prakash Rawat* was appointed as the RP as approved by the CoC.
3. The present application has been filed on the following set of facts:

3.1. The Applications numbered as *IA No. 141/JPR/2021*, *IA No. 142/JPR/2021*, *IA No. 144/JPR/2021*, *IA No. 145/JPR/2021* and *IA No. 148/JPR/2021* were earlier preferred by the erstwhile RP seeking directions in respect to certain plots, the details of which has been tabulated below for reference.

<i>Sr. No.</i>	<i>IA No.</i>	<i>Subject Matter</i>
1.	141/JPR/2021	Application for directions on Plot No. 246
2.	142/JPR/2021	Application for directions on Plot No. 242
3.	144/JPR/2021	Application for directions on Plot No. 241
4.	145/JPR/2021	Application for directions on Plot No. 240
5.	148/JPR/2021	Application for directions on Plot No. 239

3.2. The CoC in its 8th Meeting held on 28.09.2022 decided to withdraw the above stated pending IAs filed for the society plots and seek civil remedy for by preferring civil suits in Civil Court of competent Jurisdiction. The relevant part of the minutes of the 8th meeting of the CoC held on 28.09.2022 is as below:

“RESOLVED THAT IAs Nos. 141/JPR/2021, 142/JPR/2021, 144/JPR/2021, IA No. 145/JPR/2021 and IA No. 148/JPR/2021 filed and pending before the

Adjudicating Authority be withdrawn forthwith by the RP, being the applicant therein.”

“RESOLVED FURTHER THAT the RP is hereby directed to file appropriate legal cases. Declaration suits with respect to the subject matter of the aforesaid IAs before courts of appropriate jurisdiction for declaration of title in favour of the Corporate Debtor and for taking possession of the said society plots in accordance with applicable law.”

3.3. The CoC member present in the meeting opined that a decree of title would be required from a civil court of appropriate jurisdiction in favor of the Corporate Debtor as per CPC, and the Adjudicating Authority did not have power to adjudicate upon the title of such society plots. Further, IBC was a time bound procedure and the proceedings before the Adjudicating Authority being summary in nature, there was remote possibility of determination of title by the said authority within the CIRP period.

3.4. It is seen that the IAs as stated above were preferred against the Respondent therein to vacate the immovable properties situated at respective addresses and to handover vacant and peaceful possession of the society plot to the applicant/ RP. The RP sought vacation to continue with the CIRP of the Corporate Debtor and ensure valuation and maximization of the value of assets of the Corporate Debtor after securing the control and management of the immovable assets/ society plots which belonged to the Corporate Debtor.

4. Reply has been filed on behalf of the Respondent *Mr. Naveen Kabra*, who is also a Respondent in *IA No. 141/JPR/2021* vide Diary No. 2453/2023 dated 10.10.2023 wherein the following has been contended:
 - 4.1. It is submitted that after contesting *IA No. 141/JPR/2023* for a period of more than two years, the Applicant is seeking withdrawal of the IA filed for eviction of the Plot No. 246 which is absolutely owned by the answering Respondent. The answering Respondent has been fighting his case for long years and permitting the Applicant/ RP to withdraw the IA without any cost shall cause injustice to the Respondent. Moreover, the Respondent has pointed out the ill-intention of the Applicant/RP for dragging the proceedings unnecessarily.
 - 4.2. Further, the Hon'ble Supreme Court has time and again has observed that frivolous litigation clogs the wheels of justice making it difficult to provide speedy justice to the genuine litigants and in reliance of the same the Respondent has placed reliance on certain Judgments passed by the Hon'ble Supreme Court and Hon'ble NCLAT. Moreover, it has been prayed that no liberty be granted to the Applicant so as to ensure avoidance of frivolous litigations against the Respondent.
5. We have heard the Ld. Counsels for the parties and perused the averments made in the Application, Reply and Written Submissions along with the documents enclosed therein.

6. Mr. Amol Vyas, Adv. the Learned Counsel appearing on behalf of *Ms. Bharti Mittal*, has vehemently opposed the Application numbered as *IA No. 74/JPR/2023* seeking withdrawal of the IAs filed by the erstwhile RP. It is submitted that the CIRP proceedings against the Corporate Debtor has been initiated on account of non-payment of loan of Rs. 30,00,000/- (Rupees Thirty Lakhs) by the Corporate Debtor to its Financial Creditor. The RP on the other hand has concealed the fact that *Mr. Sanjay Bhandari* was holding 99.99% shares in the Corporate Debtor. In the Loan Agreement-cum-Mortgage Deed dated 22.06.2020, it is shown that the Corporate Debtor has advanced a sum of Rs. 2.7 crores for a period of 4 months to *Mr. Sanjay Bhandari* and to secure the aforesaid loan, *Mr. Sanjay Bhandari* has allegedly mortgaged the property situated at Plot No. 241, 242, 246, 249, 250, 251, 252, 272, 273, 274, 275, 239, 240 & 242-B.
7. Also it has been contended that the aforesaid loan agreement relies on the stand taken by the Corporate Debtor before this Adjudicating Authority. A bare perusal of the allotment-letter even assuming, though not admitting, that was issued to *Smt. Patashi Devi*, reveals that the same was in respect of the plots situated at *Dr. Rajendra Prasad Nagar* admeasuring 676.6 sq. yards, whereas the plot which are under the ownership and possession of the Respondent are situated in *Dr. Rajendra Prasad Nagar-A*, admeasuring 400 sq. yards (200 sq. yards + 200 sq. yards). The copy of *Civil Suit No. 339/2012* titled as *Subhash Jain and Ors vs. Gulab Chand* for permanent

and mandatory injunction is also submitted by the Respondent of *IA No.148/JPR/2021* i.e. *Mr. Gulab Chand* in which the Plaintiffs had issued Respondent and the subject matter of the above said suit is Plot No. 239A whereas the RP has filed the *IA No.148/JPR/2021* in respect of Plot No. 239.

8. It is further contended by Mr. Amol Vyas, Adv. appearing on behalf of the Respondent in *IA No. 142/JPR/2021* that civil suit with regard to subject matter of these applications were finally decided by a Competent Court of Law. Once subject matter has been decided by a Competent Court of Law, further opportunity to file a suit while permitting withdrawal of the application will cause injustice to the Respondent for fighting for his case in the pending applications since last three years. In such a situation, the Applicant may not be given liberty to file a fresh suit before a Competent Court of Law.
9. It is stated in the application that the Committee of Creditors in its 8th meeting held on 28.09.2022, decided to withdraw the above stated pending IAs filed for the society plots before the Adjudicating Authority seeking permission to file a fresh suit in a Competent Court of Law. It is also stated in the application that subject matter of pending IAs is beyond the jurisdiction of the Adjudicating Authority. Hence, liberty is sought to file a fresh application in a Competent Court of Law. The Respondent has relied upon certain judgments, however, with respect to present application seeking withdrawal of the IA, the said judgments do not help the Respondent

because the Judgments relied upon by the Respondent are based on the merit of the case.

10. Though Civil Procedure Code, 1908 is not applicable in IBC proceedings but in cases when a suit or proceeding must fail by reason of some formal defect or there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of suit or part of a claim, the Court may grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of the claim.
11. Currently, the Corporate Debtor is undergoing CIRP. The Erstwhile RP had moved IAs before the Adjudicating Authority for eviction of the Respondents from the property as enumerated in the applications. The CoC in its resolution decided not to proceed with the pending applications and resolved to file an appropriate application for withdrawal of the pending applications which are the subject matter of the Civil Courts Jurisdiction.
12. Under the facts and circumstances, we allow the present application with the liberty to file a fresh suit/application before a Competent Court of Law if fresh suit or application is not barred by the principle of res judicata.
13. Since the Corporate Debtor is undergoing CIRP, hence, no cost is being imposed on the Applicant under the facts and circumstances of this case.

14. In view of the above, the Applications bearing *IA No. 141/JPR/2021*, *IA No. 142/JPR/2021*, *IA No. 144/JPR/2021*, *IA No. 145/JPR/2021* and *IA No. 148/JPR/2021* are dismissed as withdrawn.
15. The Order shall be communicated to the parties to the case.

**-Sd-
DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

**-Sd-
RAJEEV MEHROTRA,
TECHNICAL MEMBER**