



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**INDORE BENCH**  
**COURT NO. 1**

ITEM No.1  
IA/258(MP)2023  
in  
TP 230 of 2019 [CP(IB) 192 of 2017]

**Proceedings under Section 60(5) of IBC, 2016**

**IN THE MATTER OF:**

Chaya Gupta, RP of JSM Devcons (India) Pvt Ltd .....Applicant  
V/s  
Vineet Agarwal, erstwhile RP of JSM Devcons (India) Pvt Ltd .....Respondent

**Order delivered on 01/12/2023**

**Coram:**

P. Mohan Raj, Hon'ble Member(J)  
Kaushalendra Kumar Singh, Hon'ble Member(T)

**PRESENT:**

For the Applicant :  
For the Respondent :

**ORDER**

**IA/258(MP)2023**

The case is fixed for pronouncement of the order.

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

sd/-

**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

Neeraj

sd/-

**P. MOHAN RAJ**  
**MEMBER (JUDICIAL)**



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

**IA/258(MP)2023**

in

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

**IA/258(MP)2023**

*[An application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016]*

**In the matter of:**

**Chaya Gupta, RP of JSM Devcons (India) Pvt Ltd**

911, Apollo Premier, Near

Vijay Nagar Square, Indore M.P. 452010

[Email-jsmdevoncs.rp@gmail.com](mailto:Email-jsmdevoncs.rp@gmail.com)

..... Applicant

**Versus**

**Vineet Agarwal, erstwhile RP of**

**JSM Devcons (India) Pvt Ltd.**

B-108, Sector-88 Noida, U.P.-201304

[Email-vntg631@gmail.com](mailto:Email-vntg631@gmail.com)

..... Respondent

**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)*

**Memo of Parties**

**Daimler Financial Services Pvt. Ltd**

....Financial Creditor

**Versus**

**JSM Devcons (India) Pvt. Ltd**

.....Corporate Debtor

**Coram: P. Mohan Raj, Hon'ble Member (J)**

**Kaushalendra Kumar Singh, Hon'ble Member (T)**



**Appearance:**

For the RP : Ld. Ms. Chaya Gupta (in-person)  
Ld. Adv. Mr. Abhishek Naik (IA/258(MP)2023)

For the Respondent :

**Order Pronounced On 01.12.2023**

**ORDER**

1. This application has been filed by Ms. Chaya Gupta, the present Resolution Professional (RP) of JSM Devcons (India) Pvt Ltd seeking directions to Mr. Vineet Agarwal, erstwhile RP of the corporate debtor to hand over all the documents/records relating to the corporate debtor collected/collated during the CIRP; and also to pass further orders/directions permitting the applicant to re-publish Form-A making a public announcement of initiation/ongoing CIRP and invite claim(s) from the creditor(s) and constitute afresh committee of creditor(s); and pass any orders/direction(s) as may deem fit to this Tribunal.

2. The facts as emerging from the record are that the corporate debtor JSM Devcons (India) Pvt Ltd was admitted into the Corporate Insolvency Resolution Process (CIRP) vide order dated 12.04.2019 passed by this Adjudicating Authority in an insolvency application filed under section 7 of the IBC, 2016. Mr. Vineet Agarwal was appointed as Interim Resolution Professional (IRP) who was later confirmed as the Resolution Professional (RP). During the CIRP, Mr. Anish Agarwal was appointed as the Authorised Representative (AR) of a class of financial creditors (plot buyers) vide order dated 09.10.2019.

3. An Interlocutory Application 12 of 2023 was filed on 12.01.2023 under section 60(5) of the IBC, 2016 seeking the removal of Mr. Vineet Agrawal on the ground of professional misconduct. In that application, various acts and omissions as well as misconduct on the part of the RP Mr. Vineet Agrawal was placed on record. It was pointed out that Mr. Vineet Agrawal as RP had failed to convene the required CoC meetings and by that time almost more than



three years had passed and there had been no satisfactory progress in the CIRP. It is also noted that a number of Interlocutory Applications were also filed by the plot owners, whose registration was done prior to the initiation of the CIRP, seeking direction to the RP not to consider their plot/property as an asset of the corporate debtor. The Adjudicating Authority, while hearing the matter in IA 12 of 2023 as well as other Interlocutory Applications filed by plot buyers, had directed the RP Mr. Vineet Agrawal to appear personally before the Bench. However, in spite of the opportunity given, the RP said had not appeared. Further, the IBBI vide order dated 14.03.2023 had also suspended the registration of Mr. Vineet Agrawal for the next 2 years. In the circumstances, vide order dated 06.07.2023, the Adjudicating Authority had appointed Ms. Chaya Gupta as the new RP and directed Mr. Vineet Agrawal to handover the control of the corporate debtor to new RP Ms. Chaya Gupta. The Adjudicating Authority vide that order had also directed Mr. Vineet Agrawal to hand over the documents of the corporate debtor as well as relevant records related to the CIRP of corporate debtor and Ms. Chaya Gupta, the new RP was directed to take up the CIRP of corporate debtor ahead of the present stage.

4. Now, through this present Interlocutory Application 258 of 2023, the new RP Ms. Chaya Gupta has sought direction to Mr. Vineet Agrawal for handing over all the documents, and also to pass further orders as stated herein above in para 1 of this order. During the hearing of the matter on 07.09.2023, the RP Ms. Chaya Gupta had submitted that for the last 2 months, she had made more than 10 correspondences via e-mail and requested the erstwhile RP Mr. Vineet Agrawal to hand over the entire documents but he had only submitted only some of the documents with which it is not possible to take up the CIRP ahead. Therefore, vide order dated 07.09.2023, this Adjudicating Authority had directed the new RP, Ms. Chaya Gupta to prepare a report and submit it to the IBBI for necessary action against the erstwhile RP Vineet Agrawal. During the hearing of the matter on that day *i.e.* 07.09.2023, the RP also informed that vide e-mail dated 06.09.2023, Mr. Vineet Agrawal had conveyed that physical records were lying



in his office at Noida, and someone may be deputed to collect all those documents from his office. In that context, this Adjudicating Authority had further directed Ms. Chaya Gupta to depute someone to collect all those physical records as stated by Mr. Vineet Agrawal in his e-mail dated 06.09.2023, and also to submit an affidavit as to whether with the help of all those files which have been shared so far and the physical records, if handed over now, it would be possible for her to proceed ahead in the matter or not and, if not, then what are the steps required for that?

5. Following that, Ms. Chaya Gupta filed two Additional Affidavits dated 14.09.2023 & 20.11.2023. In her first affidavit dated 14.09.2023, she listed the various files that she could receive finally from Mr. Vineet Agrawal and submitted that on perusal of those documents, the RP team found that no substantial documents apart from two claim sheets were available. It is also stated therein that one of the claims sheets had the details of 128 class of creditors and another sheet had 190 plot buyers along with two financial creditors. In that context, she has submitted that in order to verify the credentials of such claims and thereafter, for the appointment of an Authorised Representative for the class of creditors, (as Mr. Anish Agrawal is not billing to continue as AR), claim documents have to be recalled from all those 192 claimants in order to collate and verify the claims to form the CoC afresh for smooth conduct of the CIRP and to bring that to a logical conclusion. Further, by another Additional Affidavit dated 20.11.2023, she has placed the following facts on record. The same are reproduced here as under:

**Para 2-:**

- (i) *“During the course of hearing of the captioned application, this Hon’ble Tribunal sought to know the timeline of CIRP so far inclusive of extension and exclusion sought/granted during the tenure of erstwhile Resolution Professional.*
- (ii) *In its order dated 12.01.2021, this Hon’ble Tribunal has recorded that CIRP was initiated on 12.04.2019 and the 330 days’ got over on 05.03.2020. Further, 172 days were wasted due to the pendency of*



*the application of appointment of AR for the class of creditors. Thereafter, w.e.f. 17.06.2020, the CIRP proceeding was stayed. In much so, the Hon'ble Tribunal noted that 210 days ought to be excluded from counting the total CIRP period as per Proviso 3 of Section 12(2) & (3) of IBC, 2016. As such the revised 330 days' got expired on 13.01.2021.*

*Vide this order, this Hon'ble Tribunal directed the e-RP to consider the resolution plan submitted by Alkon Projects Ltd. and to consider the grievances of the financial creditor(s) i.e. Union Bank of India, Plot-owners/buyers, etc. and to complete the entire exercise within 60 days from the date of order.*

- (iii) *In its order dated 25.03.2021 allowed IA No. 85(MP)2021 whereby this Hon'ble Tribunal excluded the period 12.01.2021 to 13.03.2021 (61 days) for the purpose of calculation of the CIRP period. Nevertheless, this Hon'ble Tribunal considering the factor that the CIRP period was over on 16.03.2021, deemed it fit to grant extension of sixty (60) days from the date of order i.e. 25.03.2021. As such, the CIRP period got over on **24.05.2021**.*
- (iv) *This exclusion was specifically granted noting the fact that a resolution plan by Alkon Projects Ltd was pending consideration with the CoC. It has been specifically noted in the said Order that this Hon'ble Tribunal during the course of hearing on 05.03.2020, indicated and directed the RP that the corporate debtor should not be liquidated without making a dedicated attempt to explore the possibility of revival since the interests of the plot owners/homebuyers would be adversely affected.*
- (v) *This Hon'ble Tribunal vide its order 26.03.2021 was pleased to allow the withdrawal of IA No. 27/2020 (Application for initiation of liquidation of corporate debtor) in view of the observation made by this Hon'ble Tribunal and resolution plan pending consideration with CoC.*



- (vi) Further, in its order dated 05.08.2022, this Hon'ble Tribunal has directed the e-RP to refund the forfeited amount of Rs. 50 Lakhs deposited by Resolution Applicant/ Alkon Projects Ltd., and it has also been recorded that the revised resolution plan submitted by the resolution applicant on 20.02.2021 was rejected by the CoC on 25.02.2021.
- (vii) As per the order sheets available with the Deponent, although multiple applications have been filed by parties but post-hearing dated 23.09.2022, no representation was made or on behalf of Mr. Vineet Agrawal, e-RP and as such no CoC meeting or discussion in relation CIRP was going nor any progress made therein.
- (viii) The entire CIRP is now on standstill and evidently, making no headway. Hence, the captioned Application has been filed before this Hon'ble Tribunal seeking the prayer for reconstitution of CoC to proceed with the CIRP of JSM Devcons India Pvt Ltd to take into its logical conclusion and meet the objectives of the IBC, 2016.
- (ix) Noteworthy to mention, the timeline as per the Code has expired on **24.05.2021**.

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6. Further, considering the peculiar facts and circumstances of the captioned case whereby documents of claimants are not properly available to determine the claims and constitute the CoC, the Deponent humbly prays before this Hon'ble Tribunal to grant the following relief:

- (i) To recall the claim documents from the creditors of the corporate debtor by way of public announcements as well as through e-mails;
- (ii) To rec-constitute CoC and appoint an Authorized Representative for representing the Class of Creditors (Plot buyers), and proceed with the CIRP as per the provisions of the IBC, 2016.



(iii) *To call the documents from other plot owners who have not yet filed their claims (so-called registered plot owners) so we can get to know the actual assets of the corporate debtor”.*

7. We have heard learned counsel appearing for the RP as well as the RP (in-person). We have taken note of the facts in the matter. It is also noted that on a reference to the IBBI as regards the misconduct of Mr. Vineet Agrawal, the disciplinary committee of the IBBI *vide* order dated 20.11.2023 have cancelled the registration of Mr. Vineet Agrawal with immediate effect. This is a case wherein plot buyers' have made investment. Registered sale deeds have also been executed in respect of certain plots. The project, however, has not been completed and not handed over to the plot owners. The CIRP was initiated on 12.04.2019. Since then almost 4 years are over. The resolution of the corporate debtor could not be achieved mainly due to the lack of initiative and expected duties from the ex-RP Mr. Vineet Agrawal. Further, as per the various orders whereby, certain exclusions/extensions were permitted, the timeline has also expired on 24.05.2021. In such cases, generally, the left over option would be passing the liquidation order. However, we note that if any such order is passed, the interest of these plot buyers would be adversely affected. We also note that this is a case of real estate consisting of only land and, as such, even if, a timeline has been exceeded, the value of the assets has not deteriorated; and as such it would be in the interest of the plot buyers that the CIRP continues with an object for seeking resolution of the corporate debtor. We also note that in the manner, the CIRP has been handled and the records are maintained by ex-RP Mr. Vineet Agrawal, it would not be possible for the new RP Ms. Chaya Gupta to proceed ahead and for successful completion of the CIRP, she needs to ascertain the claim from the plot buyers once again and them to reconstitute the CoC and appoint the Authorised Representative for the class of creditors. With this view, the following directions to the RP are being issued:

(i) *To recall the claim documents from the creditors of the corporate debtor by way of public announcements as well as through e-mails;*



- (ii) *To rec-constitute CoC and appoint an Authorized Representative for representing the Class of Creditors (Plot buyers), and proceed with the CIRP as per the provisions of the IBC, 2016;*
- (iii) *To call the documents from other plot owners who have not yet filed their claims (including registered otherwise, if any);*

8. Further, keeping in view the peculiar circumstances of this case we allow 90 days' extension into the CIRP period with effect from the date of this order and direct the RP to complete the CIRP within such extended period.

9. Accordingly, **IA/258(MP)2023 allowed and disposed of.**

*Sd/-*

**KAUSHALENDRA KUMAR SINGH  
MEMBER (TECHNICAL)**

*Neeraj Gupta*

*Sd/-*

**P. MOHAN RAJ  
MEMBER (JUDICIAL)**