

**BEFORE THE NATIONAL COMPANY
LAWAPPELLATE TRIBUNAL, NEW DELHI
(APPELLATE JURIDICATION)**

I.A. NO.2166 of 2020

IN

Company Appeal (AT) (Insolvency) No.1056 OF 2019

IN THE MATTER OF:

RAJESH GOYAL

....APPELLANT

VERSUS

BABITA GUPTA & ORS.

....RESPONDENTS

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Filed by:-

DATE: 18.09.2020
PLACE: NEW DELHI



RISHABH JAIN

D-472/2018

ADVOCATE FOR THE IRP

H. NO-2511, S.T. NO.-12, BIHARI COLONY

SHAHDARA DELHI - 110032

MOBILE NO-9873431798

E-mail: rjcs092gmail.com

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**OBJECTIONS ALONG WITH AFFIDAVIT FILED BY THE
INTERIM RESOLUTION PROFESSIONAL.**

1. That with reserving right to file appropriate application under section 424 and 425 of the Companies Act 2013, the objections are being filed at the instance of IRP representing the CD.
2. That at the outset it is submitted that the present application is not maintainable as the same is being filed under Rule 31 read along with Rule 11 of NCLAT Rules 2016 in a disposed off matter. It is trite that this Hon'ble Appellate Tribunal being a tribunal can not exercise the power what is not expressly or by necessary intendment given by the legislature.
3. That the Applicant in a desperate attempt to convince this Hon'ble Appellate Tribunal to extend the time granted by this Hon'ble Appellate Tribunal vide order *R*,

dated 05.02.2020 has misrepresented this Hon'ble Appellate Tribunal that Rs. 5.25 Crores has been infused by him whereas source of Rs. 5.25 crore is realization of account receivable of the CD.

4. That during the pendency of the appeal this Hon'ble Appellate Tribunal vide order dated 13.01.2020 directed to IRP to enter into settlement with the creditors of the CD thereafter the IRP in consultation with the Application and RG Luxury Association floated the settlement terms. The creditors on the faith on this Hon'ble Appellate Tribunal & IRP voted in favor of settlement terms and in this, inter-alia, background the order dated 05.02.2020 was passed.
5. That the one of binding force, presumption and reason behind passing of order dated 05.02.2020 was that the allottees (Financial Creditors) were the main beneficiaries of the infrastructure have already reached settlement with promotor and the fact that promotor as a "outsider financial creditor" has agreed to invest the amount not from the account of the CD but from the other sources to keep infrastructure as a going concern. For ease of reference the said para is reproduced herein below:

**"..... the allottees (Financial Creditors)
were the main beneficiaries of the infrastructure
have already reached settlement with promotor**

and the fact that promotor as a “outsider financial creditor” has agreed to invest the amount not from the account of the CD but from the other sources to keep infrastructure as a going concern.....” [Para 20]

- 6. That the ground reality of the Applicant is that though he undertook to invest as an outsider financial creditor but has miserably failed to invest anything in the CD. the Applicant be put to strict proof how much amount he has invested in compliance of order dated 05.02.2020 as an outsider financial creditor.
- 7. That the settlement agreement entered into between the allottees and the Applicant have been breached by the Applicant in its entirety. Therefore, the extension can not be given as of today there is no settlement between the allottees and the Applicant and the Applicant is the guilty of breach of settlement.
- 8. That in terms of para 20(vii) of the order dated 05.02.2020 the IRP has filed the appropriate application before the AA on the ground that the sum of the period was inflicted / affected due to the pandemic (i.e. Covid-19) but still there is breach of settlement in light of factors other than pandemic.
- 9. That the Respondent no.-1 vide resignation letter dated 18.09.2020 has expressed his un-willingness to

R.

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continueas IRP in this matter due to the reasons and conundrum arising due to various interpretations of order dated 05.02.2020. Copies of the resignation tendered by IRP is annexed as **“Annexure-1”**.

10. In case this Hon'ble Appellate Tribunal is inclined to extend the time of the Reverse CIRP then this Hon'ble Appellate Tribunal is requested to consider the resignation and direct the Applicant to release pending fee and out of pocket expenses and to appoint a new IP as IRP of the CD.

It is, therefore, most respectfully prayed that this Hon'ble Appellate Tribunal may be pleased to take this report on record.

DATE: 18.09.2020
PLACE: NEW DELHI

RESPONDENT NO- GAURAV KATIYAR
Insolvency Professional
IBBI/IPA-001/IP-P00209/2017-18/10100

RISHABH JAIN

D-472/2018

ADVOCATE FOR THE INTERIM RESOLUTION
PROFESSIONAL

H. NO-2511, S.T. NO.-12, BIHARI COLONY
SHAHDARA DELHI - 110032

MOBILE NO-987343179

E-mail: rjcs092@gmail.com

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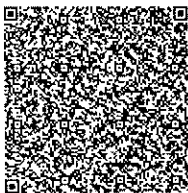
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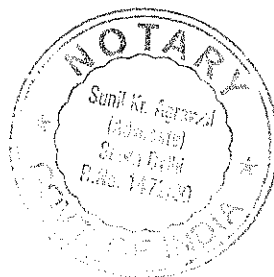
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Certificate No.	: IN-DL81725011719907S
Certificate Issued Date	: 18-Sep-2020 03:33 PM
Account Reference	: IMPACC (IV)/ dl985503/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL81725011719907S
Purchased by	: GAURAV KATIYAR
Description of Document	: Article 4 Affidavit
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: GAURAV KATIYAR
Second Party	: Not Applicable
Stamp Duty Paid By	: GAURAV KATIYAR
Stamp Duty Amount(Rs.)	: 10 (Ten only)



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**BEFORE THE NATIONAL COMPANY
LAWAPPELLATE TRIBUNAL, NEW DELHI
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Company Appeal (AT) (Insolvency) No.1056 OF 2019

IN THE MATTER OF:

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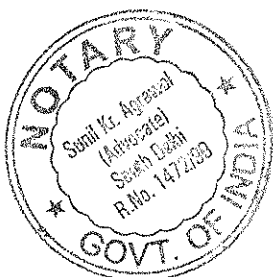
BABITA GUPTA & ORS.

....RESPONDENTS

AFFIDAVIT IN SUPPORT OF OBJECTION

I, Gaurav Katiyar S/o Late Shri Yogesh Kumar Katiyar, aged about 40 years, having office at D-32, East of Kailash, New Delhi - 110065, do hereby solemnly affirm and declare as under

1. That I am the IRP in the above captioned matter and well conversant with the facts and circumstances of the present report and therefore, competent to depose about the same.
2. That the contents of the accompanying objection have been drafted under my instructions and the contents of the same have been read over, explained to me and admitted by me to be true and correct.
3. That the contents of the accompanying objection are based on my personal knowledge.




DEPONENT

GAURAV KATIYAR
Insolvency Professional
IRP/ID/1/001/IR-P/002009/2017-18/10409

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VERIFICATION:

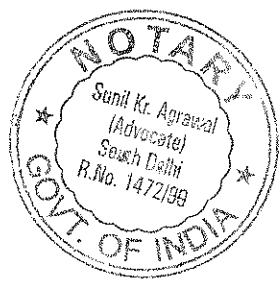
Verified at New Delhi on this day of, September, 2020 that the contents of aforesaid paras are true and correct to my knowledge and belief and no part of it is false and nothing has been concealed therefrom.

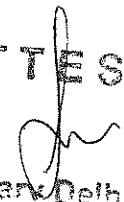


DEPONENT

GAURAV KATIYAR
Insolvency Professional
IBBI/IPA-001/IP-P00209/2017-18/10409

*I identify the
signature of client
Kishore*



ATTESTED

Notary Delhi (India)

18 SEP 2020

19 SEP 2020

Gaurav Katiyar

Insolvency Professional

D-32, East of Kailash, New Delhi - 110065

Annexure-1

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Dear Allottees

Date : 18.09.2020

Rajesh Projects (India) Private Limited

R.G. Luxury Homes

Sub: From the desk of IRP

As all of you must be fully aware that during the pendency of Company Appeal filed by Mr. Rajesh Goyal in Hon'ble NCLAT, all of you entered into settlement terms with me and Mr. Rajesh Goyal on the faith that construction will done under the supervision of the Hon'ble Appellate Tribunal and the Hon'ble Appellate Tribunal vide order dated 05.02.2020 disposed off the said appeal with a novel concept of "Reverse CIRP". Thereafter during 2nd week of March'2020 the kick start as desired to the Corporate Debtor was given by Mr. Rajesh Goyal and finally due to pandemic COVID-19, the site was again closed on my request.

Thereafter lifting of partial lockdown in the State of U.P and NCT of Delhi we collectively (i.e. Mr. Goyal and IRP) tried to again made a kick start to the site of the CD but due to various other factors (including the COVID-19) the same could not be done.

Thereafter on receiving various calls and emails from various homebuyers the site was opened for inspection and the progress of construction was shown to the you in phased manner.

Thereafter there was no material development on the site due to various reasons, including main reason shortage of fund and time as granted by the Hon'ble Appellate Tribunal vide order dated 05.02.2020 was expired. In the meantime, IRP filed appropriate application before Hon'ble NCLT for appropriate directions and Mr. Rajesh Goyal filed appropriate application before Hon'ble NCLAT for

GAURAV KATIYAR
Insolvency Professional
IBBI/IFA-001/IF-P00209/2017-18/10409

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seeking extension of time granted to him vide order dated 05.02.2020.

Now, through this letter I would say and submit that as IRP I am no more in position to continue the novel concept of "Reverse CIRP" due to various conundrums as mentioned herein below:

- i. Though I am allowed to continue as IRP and Mr. Rajesh Goyal was allowed to continue the construction, but there is no specific separation of "authority" and "responsibility" between IRP and Mr. Rajesh Goyal leading to following practical problem in day to day affairs of the CD:
 - a. Section 179 of the Companies Act' 2013 empowers the board to act on behalf of the company whereas the same and similar duties have been casted on the IRP u/s 17 and 18 of the I & B Code' 2016;
 - b. It is not clear that if Mr. Rajesh Goyal is managing the day to day affairs of the CD, then all the books of accounts, registered office, movable and immovable assets shall remain in the control and custody of Mr. Rajesh Goyal. Whereas a symbolic possession under the superdari of employees are lying with the IRP. Hence, in future in case Mr. Rajesh Goyal fails to honour the commitments in the order dated 05.02.2020, IRP will be asked about the whereabouts of the books of accounts, registered office, movable and immovable assets because theoretically books of accounts, registered office, movable and immovable assets are in my possession.
 - c. Though as per IBC employees, officers and staff of the CD are required to report to IRP whereas they are only reporting and acting on instruction of Mr. Rajesh Goyal.
 - d. Though as per IBC I am fully entitled to have access the electronic and physical records including books of account & CRM data of the CD but the same are not made available to me. I have to depend on the mercy of Mr. Rajesh Goyal.

GAURAV KATIYAR
Insolvency Professional
IBBI/PA-001/VIP-POQ209/2017-18/10409

- (10)
- e. Though as per IBC I am responsible for complying the requirements under any law for the time being in force for and on behalf of the CD, but to comply the same I am dependent on the employees, officers and staff and Mr. Rajesh Goyal.
- ii. As per Companies Act' 2013, there are clear cut Roles and duties of Statutory Auditor, Internal Auditor, Company Secretary, Accounts Head and PMC, whereas in "Reverse CIRP" IRP is being made the solely responsible for duties and functions of all of these persons as they are not coming (except PMC) are coming forward which is creating "Reverse CIRP" a highly riskier assignment for IRP in comparison to normal CIRP assignment.
- iii. As all of us know Mr. Rajesh Goyal is only and solely running the affairs of the CD including the construction at site. Therefore, it is imperative for Mr. Rajesh Goyal to have aforesaid authority to work freely, but it is not made clear that in case Mr. Rajesh Goyal fails to honour the commitments in the order dated 05.02.2020, the only and solely Mr. Rajesh Goyal shall be responsible as Mr. Rajesh Goyal is taking all the decision(s). Therefore, the ownership of all the decisions of during the "Reverse CIRP" shall be of Mr. Rajesh Goyal. But no immunity is granted to IRP. In the absence of any specific law or any injunction or declaration of immunity to IRP from court, "Reverse CIRP" a highly riskier assignment for IRP in comparison to normal CIRP assignment.

In Business organization management, there is a say that Authority should be equivalent to Responsibilities. In case authority is more than the responsibility, then there are chances of misuse of authority and in case in case authority is less than the responsibility, then person will become ineffective.

As all of you are having lot of expectation from IRP and in future the performance of IRP will judged in light of duties of

GAURAV KATIYAR
Insolvency Professional
IBBI/PA-001/IP-P00209/2017-18/10409

IRP as mentioned in "Code" and without having any authority, IRP becomes ineffective in this case.

Therefore, due to aforesaid conundrum, I am no more in position to continue as IRP for the novel concept of "Reverse CIRP". Hence, I will hold my position and maintain the status quo till new IRP is not appointed in this matter.

In the last but not least I express my sincere thanks and gratitude for reposing the faith in me and giving me this opportunity. I also apologies to all of you for not handing over your dream flats in my tenure.

Thanking You

Gaurav Katiyar

GAURAV KATIYAR
Insolvency Professional
IBBI/PA-001/IP-P00209/2017-18/10409

Interim Resolution Professional of
M/s. Rajesh Projects (India) Private Limited
IBBI Registration No.: IBBI/PA-001/IP-P00209/2017-18/10409
Address: D-32, East of Kailash, New Delhi - 110065

GAURAV KATIYAR
Insolvency Professional
IBBI/PA-001/IP-P00209/2017-18/10409

Dear Mr. Goyal

Date : 18.09.2020

Rajesh Projects (India) Private Limited

R.G. Luxury Homes

Sub: From the desk of IRP

I write to inform you that as IRP I am no more in position to continue the novel concept of "Reverse CIRP" due to various conundrums as mentioned herein below:

- i. Though I am allowed to continue as IRP and you were allowed to continue the construction as per order dated 05.02.2020, but there is no specific separation of "authority" and "responsibility" between IRP and you leading to following practical problem in day to day affairs of the CD:
 - a. Section 179 of the Companies Act' 2013 empowers the board to act on behalf of the company whereas the same and similar duties have been casted on the IRP u/s 17 and 18 of the I & B Code' 2016;
 - b. It is not clear that if you are managing the day to day affairs of the CD, then all the books of accounts, registered office, movable and immovable assets shall remain in your control and custody. Whereas a symbolic possession under the superdari of employees are lying with the IRP. Hence, in future in case you fail to honour the commitments in the order dated 05.02.2020, IRP will be asked about the whereabouts of the books of accounts, registered office, movable and immovable assets because theoretically books of accounts, registered office, movable and immovable assets are in my possession.

- c. Though as per IBC employees, officers and staff of the CD are required to report to IRP whereas they are only reporting and acting on your instruction.
 - d. Though as per IBC I am fully entitled to have access the electronic and physical records including books of account & CRM data of the CD but the same are not made available to me. I have to depend on your mercy.
 - e. Though as per IBC I am responsible for complying the requirements under any law for the time being in force for and on behalf of the CD, but to comply the same I am dependent on you alongwith employees, officers and staff.
- ii. As per Companies Act' 2013, there are clear cut Roles and duties of Statutory Auditor, Internal Auditor, Company Secretary, Accounts Head and PMC, whereas in "Reverse CIRP" IRP is being made the solely responsible for duties and functions of all of these persons as they are not coming (except PMC) are coming forward which is creating "Reverse CIRP" a highly riskier assignment for IRP in comparison to normal CIRP assignment.
- iii. You know that you are only and solely running the affairs of the CD including the construction at site. Therefore, it is imperative for you to have aforesaid authority to work freely, but it is not made clear that in case if you fail to honour the commitments in the order dated 05.02.2020, the only and solely you shall be responsible as you are taking all the decision(s). Therefore, the ownership of all the decisions of during the "Reverse CIRP" is with you. But no immunity is granted to IRP. In the absence of any specific law or any injunction or declaration of immunity to IRP from court, "Reverse CIRP" a highly riskier assignment for IRP in comparison to normal CIRP assignment.

In Business organization management, there is a say that Authority should be equivalent to Responsibilities. In case authority is more than the responsibility, then there are chances

of misuse of authority and in case in case authority is less than the responsibility, then person will become ineffective.

As in future the performance of IRP will judged in light of duties of IRP as mentioned in "Code" and without having any authority, IRP becomes ineffective in this case.

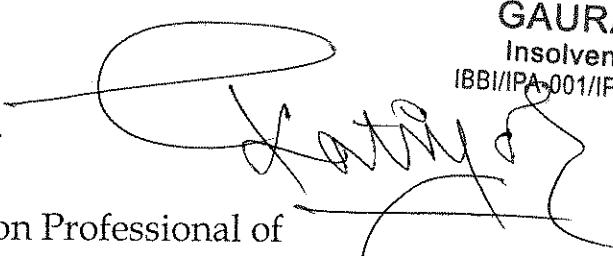
Therefore, due to aforesaid conundrum, I am no more in position to continue as IRP for the novel concept of "Reverse CIRP". Hence, I will hold my position and maintain the status quo till new IRP is not appointed in this matter.

In the last but not least I apologies to you for all the hot discussions and altercations done by me with you over different interpretational issues of aforesaid order and in running day to day affairs of the CD.

The pending bill of my services shall be sent you in due course and you are requested to release my bill as soon as possible.

Thanking You

Gaurav Katiyar



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