

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1431 of 2024
& I.A. No. 5196 of 2024**

In the matter of:

Vashisth Builders and Engineers Ltd. and Vashisth Estates Ltd. (in Consortium) Successful Resolution Applicant (SRA) **....Appellant**

Vs.

Jalesh Kumar Grover & Anr. **...Respondents**

For Appellant **Mr. Sandeep Bajaj, Ms. Pallavi Singh, Mr. Mayank Biyani, Advocates.**

For Respondents **Mr. Viren Sharma, Advocate for R2
Mr. Aalok Jagga, Mr. APS Madaan, Advocates for R1.**

ORDER

(Hybrid Mode)

26.07.2024: **I.A. No. 5196 of 2024:-** This is an application praying for condonation of 15 days' delay in filing the Appeal. Learned Counsel for the Appellant submits that the delay is only 14 days' and the reasons have been given for delay in paragraph 2 and 3 of the application. Cause shown sufficient. Delay is condoned.

Company Appeal (AT) (Insolvency) No. 1431 of 2024 :-

Heard Learned Counsel for the Appellant, Learned Counsel for the Resolution Professional as well as Learned Counsel for the CoC.

2. This Appeal has been filed against the order passed by the Adjudicating Authority dated 22.05.2024 in IA No.1230(CH)2024 which was filed by the

Resolution Professional. In the IA No. 1230(CH)2024, following prayers have been made:-

“PRAYER

In view of the facts narrated herein above, it is most respectfully prayed that this Hon'ble Adjudicating Authority, may graciously be pleased to:-

1. Take on record the proposal submitted by the Resolution Applicant to commence with pre-construction activities at the project site of the Corporate Debtor along with the decision taken by the COC in this regard most respectfully submitted by the Resolution Professional.

2. Any other order/direction as this Hon'ble Adjudicating Authority may deem fit.”

3. In the present case, Resolution Plan submitted by the SRA has already been considered and approved by the CoC and application has been filed for approval of the plan which is pending consideration. During pending consideration of the approval of the plan, the application was filed by the Resolution Professional for seeking leave to commence with pre-construction activities at the project site of the Corporate Debtor. The CoC which is 91% of the homebuyers have approved the proposal where Resolution Applicant has undertaken to not take any compensation or claim for any amount in event the plan is not approved. Resolution Professional has already sent an e-mail dated 08.03.2024 to the SRA which is to the following effect:-

“Dear Sir,

Based on our discussions held yesterday at the COC meeting please note that the RP has obtained his counsel's opinion based on which we have arrived to the conclusion that the PRA may commence with pre-construction activities at his own risk; however, it should not reduce the value of CD. Hence, no demolition work which impacts the

assets of CD can be done. Any work which adds value can be undertaken subject to approval of CoC.

In this regard, you shall submit your proposal which should be specifically defined (detail of work to be undertaken, cost involved & period) and as stated earlier, only for value addition to the corporate debtor. Further, such investment will be solely at your risk PRA for which you will not be entitled for any compensation in case the resolution plan is not approved by AA for whatsoever reasons.

As far as the payment to DTCP is concerned, the same can be made by you to avail the benefit of ongoing Amnesty scheme which will soon come to an end. The said payment being irreversible, provides value addition to CD. Further, this particular payment/ cost can be treated as 'interim finance' if the plan is not approved with the prior approval of COC.

*Thanks & Regards
(Jalesh Kumar Grover)
Resolution Professional
In the Matter of M/s Trishul Dream Homes Limited
Regn No. IBBI/ IPA-001/ IP-P00200/ 2017-2018/ 10390
(AFA valid till 25.10.2024)”*

4. The Resolution Applicant after the CoC meeting held on 07.03.2024 has communicated his proposal on 08.03.2024, which is to the following effect:-

*“Mr. JK Grover,
Resolution Professional
M/s Trishul Dream Homes Ltd. (Undergoing CIRP)*

Dear Sir,

With reference to the discussion held in COC Meeting dated 7th Mar 2024, following is our proposal for Pre- construction works of Group Housing Project of M/s Trishul Dreams Homes Ltd.

S. No.	Description of works	Approximate Cost
1	<i>Clearing and cleaning of the site Excessive vegetation growth of wild plants and shrubs. Removal and disposal.</i>	500,000.00

2	<i>Setting up plant and machinery infrastructure. Concrete Plant and its infrastructure</i>	3,500,000.00
3	<i>Fabrication works for the Aluminum shuttering. Including addition (purchase) of new shuttering, repair, and maintenance of existing shuttering.</i>	7,500,000.00
4	<i>Repair and reinforcement the sheet fence boundary.</i>	500,000.00
5	<i>Appointment of various consultants like Architect, Structure, Firefighting works, Mechanical Electrical plumbing works etc. Consultants shall re-plan the essential services, utilities, building plans as per latest norms laid done. by the DTCP and other authorities.</i>	2,500,000.00 *Being 10% advance payment.
6	<i>Laying of electrical infrastructure for construction works.</i>	500,000.00

The approximate time to execute the aforementioned works will be around 3 months.

We hereby submit that the investment shall be at our own risk, and we shall not seek any compensation against it, in case the plan is not approved by the Adjudicating Authority. However, any equipment, plant and machinery introduced shall be the property of M/s Vashisth Estates Ltd only.

Accounts & Finance

Vashisth Builders and Engineers Ltd. / Vashisth Estates Ltd.

5. When we look into the description of work as was contemplated, the description of work does not contain any construction work rather all the work are pre-construction activities. When Resolution Applicant is not claiming any

equity or any benefit by carrying the said construction and homebuyers have decided and approved the said pre-construction activities, we see no reason not to take the said on the record and permit the pre-construction activities to go on which is for the benefit of homebuyers who are waiting for the last seven years for work to begun. It goes without saying that under the aforesaid activities the Resolution Applicant is not entitled to any construction or to cause any damage to the structure already standing. We are of the view that IA No.1230(CH)2024 filed by the Resolution Professional deserves to be allowed as per the prayers made in the application.

6. In result, we allow the application IA No.1230(CH)2024. The order of the Adjudicating Authority modified accordingly. The Appeal is disposed of.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

Anjali/nn