

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

ITEM Nos.129 & 130  
**C.P.(IB)/56(MP)2021**

**Proceedings under Section 7 IBC**

**IN THE MATTER OF:**

Motel Rahans Pvt Ltd  
V/s  
JSM Devcons Pvt Ltd

.....Applicant

.....Respondent

**Order delivered on 31/03/2023**

**Coram:**

Ashok Kumar Bhardwaj, Hon'ble Member(J)  
Kaushalendra Kumar Singh, Hon'ble Member(T)

**PRESENT:**

For the Applicant : Ld. Adv. Mr. Nipun Singhvi (IA 98/2023)  
For the IRP/RP : Ld. Adv. Mr. Abhishek Naik a.w Ms. Chaya Gupta  
For the Respondent/(Homebuyers) : Ld. Adv. Mr. Neeraj Kumar Gupta (R-2) (IA 98/2023)

**ORDER**

**IA/98(MP)2023 & IA/79(MP)2023**

**IA/98(MP)2023**

The prayer made in the IA reads thus:- "a) Pass necessary orders by invoking Rule 11 of NCLT Rules read with Section 25(1)(j) and Section 26 of Code and appoint an independent transaction auditor to undertake transaction (under Section 43, 45, 50 & 66) audit for period 2009-10 till ICD and submit report to Respondent No. 1 within 30 days of this order appointing such independent transaction auditor; b) Pass necessary orders directing that fee of lowest quotation received by Respondent No. 1 be paid to such auditor and such fees would form part of Insolvency Resolution Process Cost; c) Pass necessary orders directing Respondent No. 1 to file appropriate application before Adjudicating Authority within 7 days from receipt of Transaction Audit report." As is borne out of the record, the CoC made the proposal for appointment of the Forensic Auditor, as espoused in the captioned IA.

Learned counsel for the Applicant could draw our attention to the Order No. IBBI/DC/128/2022 passed by the IBBI on 07.09.2022, to espouse that the scope of consideration by the CoC regarding the appointment of the Professional is limited to the

determination of their fees and the rest of the decision is left to the RP i.e., whether the services of the Professional is needed or not.

The Para 3.1.3 of the order reads thus:- *“As per Regulation 34 of CIRP Regulations, the CoC shall fix the expenses incurred by the RP and expenses so incurred shall be treated as CIRP cost. Hence, the role of the CoC is limited to approval/ratification of the fee of auditors. The duty of appointment of professionals vests with RP only. Thus, it is noted that he has abdicated his duty for appointing forensic auditor in favour of the CoC members thereby violated Section 25(2)(d) of the code.”* Indubitably, it is for the RP/IRP to run the affairs of CIRP and it is for him to take a call regarding the services of the Professional to be availed for the purpose of successful completion of CIRP.

There can be no doubt that the matter needs to be placed before the CoC for its approval. In the aforementioned order, the IBBI has already made it clear that the decision of the CoC regarding the services of Professional is limited to sanction of their fees and the rest of decision is to be taken by the RP.

The present application has been moved by one of the secured financial creditor who precipitate precept certain irregularities/transactions qua the assets of the Corporate Debtor.

In the wake of such apprehension, there would be no difficulty in conducting the audit of the account of the Corporate Debtor for the period referred to in the IA.

In the wake, the RP is directed to appoint an auditor to conduct the forensic audit of the Corporate Debtor for the period referred to in the IA and the auditor would submit its report within four weeks thereafter.

It goes without saying that the fees of the auditor would be payable by the applicant herein.

**IA/98(MP)2023** stands disposed of. No cost.

**IA/79(MP)2023**

Since one of us (Member Judicial) has to preside another Bench i.e., New Delhi Bench-2 in the afternoon, there is no time left to take up any further matter.

In the wake, hearing in the captioned matter is deferred to 13.04.2023.

Sd/-

**KAUSHALENDRA KUMAR SINGH  
MEMBER (TECHNICAL)**

A. Bhadauria

Sd/-

**ASHOK KUMAR BHARDWAJ  
MEMBER (JUDICIAL)**