



**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
(COURT-II)**

**IA No. 358 of 2020  
IN  
CP (IB) 602 of 2018**

(Application under Section 30(6) of the Insolvency & Bankruptcy Code, 2016)

**In the matter of:**

**Vikas Gautamchand Jain**  
Resolution Professional of  
Care Office Equipment Limited

**...Applicant**

**Versus**

Care Office Equipment Limited & Ors.

**...Respondents**

**Order Pronounced on: 20/12/2022**

**Coram:**

**DR. DEEPTI MUKESH,  
HON'BLE MEMBER (JUDICIAL)  
AJAI DAS MEHROTRA,  
HON'BLE MEMBER (TECHNICAL)**



**MEMO OF PARTIES**

**IA No. 358 of 2020**

**Vikas Gautamchand Jain**

Resolution Professional of  
Care Office Equipment Limited  
Address at- 204, Wall Street-1, Opp.  
Orient Club, Nr. Gujarat College,  
Ellisbridge, Ahmedabad-380006.

**...Applicant**

**Versus**

1. Care Office Equipment Limited  
(Corporate Debtor)  
Address at- GF-8, Zodiac Square, Beside  
Vishal Mega Mart, Opp. Gurudwara,  
S.G. Highway, Ahmedabad-380054.
2. Hemant Shantilal Shah  
(Ex-Director)  
Address- 302, Shyamal Apartment,  
12 Gujarat Brahmkshtriya Society,  
Paldi, Ahmedabad-380007.
3. Kamlesh Dhirajlal Shah,  
(Ex-Director)  
Address at- 502, Kala Siddhi Apartment,  
Jodhpur Gam Road,  
Ahmedabad-380015.
4. Firoz Pirbhai Sama  
(Ex-Director)  
Address at- 402, Mayrose Tower, B/S  
Ellisbridge, Post Office,  
Ahmedabad-380006.
5. Sandeep Sampatmal Dasani  
Resolution Applicant



Address at- 288, New Cloth Market,  
Raipur, Ahmedabad-380002.

...Respondents

**Present:**

For the Applicant	Nipun Singhavi, Adv.
For the Respondent	Mr. Dhruvit Shah for R-3, Adv.
For the Ex-management	Mr. Arjun seth, Adv.
For the Resolution Applicant	Mr. Atul Sharma, Adv.
For the CoC	Mr. Navin Pahwa, Sr. Adv.

**ORDER**

1. This application has been filed by Mr. **Vikas Gautamchand Jain**, Resolution Professional of M/s Care Office Equipment Limited under Section 30(6) of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as **IBC, 2016**) for approval of the Resolution Plan.
2. The facts in brief are that the Corporate Debtor M/s Care Office Equipment Limited was admitted into CIRP by this Adjudicating Authority vide order dated 29.05.2019, in an application filed by the operational creditor (M/s. Ingram Micro Private Limited) u/s 9 of the IBC, 2016 wherein the moratorium was declared and the Corporate Insolvency Resolution Process (hereinafter referred to as **CIRP**) was initiated. Mr. Akhilkumar Amrutlal Thakkar was appointed as Interim Resolution Professional (hereinafter referred to as **IRP**), who made a public announcement in Form-A on 02.06.2019, and collated claims and



constituted a Committee of Creditors (hereinafter referred to as CoC) comprising of Financial Creditor, viz., Bank of India, State Bank of India and Canara Bank.

3. It is submitted by the applicant that the CoC in its 1<sup>st</sup> meeting held on 29.06.2019 resolved to replace the IRP Mr. Akhilkumar Amrutlal Thakkar by resolution professional (hereinafter referred to as **RP**) Mr. Vikas Gautamchand Jain and replacement was confirmed vide order dated 27.09.2019 in IA 476 of 2019. The registered valuer was appointed on 47<sup>th</sup> day (15/07/2019) of admission of CIRP as mandated in regulation of CIRP issued by IBBI and invitation for Expression of Interest (EOI) through Form-G was published on 14.08.2019.
4. The resolution professional re-constituted the CoC as per regulation 17(1) of the CIRP regulation 2016 on 21/11/2019 after receiving of another claim from financial creditor namely American Express.
5. 4<sup>th</sup> CoC meeting was conducted by the Mr. Vikas Gautamchand Jain, resolution professional on 23/10/2019 and CoC resolved and authorized the resolution professional to file an application for extension of CIRP for further 90 days. Resolution professional filed an IA 745 of 2019 for extension of CIRP from 25/11/2019, which was allowed by the Adjudicating Authority vide order dated 03/12/2019.
6. The resolution professional conducted the 5<sup>th</sup> CoC meeting on 09/12/2019, comprising of 4 members namely, 1. State Bank of India



(26.37%), 2. Bank of India (56.82%), 3. Canara Bank (16.50%), and American Express (0.31%). Wherein, it was resolved to appoint forensic auditor and fixed his fees. CoC further approved the resolution for publication of Form-G and invitation for EOI (Expression of Interest). The resolution professional published the second Form-G and invited the EOI on 12/12/2019.

7. 6<sup>th</sup> CoC meeting was conducted by the Resolution Professional on 03/02/2020, wherein, Resolution Professional placed the valuation reports received from the two valuers before CoC. The Applicant received valuation reports from the registered valuers wherein the average Fair Value and average Liquidation Value are ₹13,06,67,105/- and ₹9,96,77,134/-, respectively. Resolution Professional received 4 resolution plans from prospective resolution applicants namely; 1. Sudeep Dasani (Individual Capacity), 2. Pranav M. Kothari (Individual Capacity), 3. Shukun Builders Pvt. Ltd. and 4. Zaveri & Company Pvt. Ltd. The said all four plans were placed before CoC. CoC negotiated with resolution applicants and they agreed to modify the resolution plan as per the recommendations of CoC.
8. After deliberation on all 3 plans and giving opportunity to all PRA's for revised plans no suitable viable revised plan was received. CoC passed the resolution and directed and authorized Resolution Professional to move an application to the Adjudicating Authority for exclusion of time



from CIRP and to pray for further time in the interest of revival of the corporate debtor and all the stakeholders.

9. IA 173 of 2020 was filed by the Resolution Professional for exclusion of time from CIRP, which was allowed by the Adjudicating Authority vide order dated 28/02/2020. 8<sup>th</sup> CoC meeting was conducted by the Resolution Professional on 26/02/2020. In this meeting, Resolution Professional informed the CoC that Resolution Professional received modified resolution plan from two resolution applicants based on the negotiated terms and conditions in 7<sup>th</sup> CoC meeting for which prospective resolution applicants agreed to modify the resolution plans. Modified resolution plans were circulated to all CoC members by the Resolution Professional, which were discussed and considered. CoC approved the resolution plan of Mr. Sudeep Dasani, which was considered as more viable and feasible with 99.69% voting share in 7<sup>th</sup> CoC meeting. The Resolution Professional also shared compliance report and due diligence report on resolution plan for reference of the CoC. Resolution applicant No. 1 also submitted an addendum to the resolution plan by confirming that all encumbrances, security interest, liens or attachments etc. shall cease to exist only after full payment to financial creditors, instead of effective date. The same was done on the request of Canara Bank. The copy of the e-voting is also annexed with the application.



10. The Resolution Professional issued the letter of intent('LoI') on 11/05/2020, in favor of successful resolution applicant Mr. Sudeep Dasani after approval of resolution plan by CoC.
11. Thereafter, in compliance of order dated 29/09/2022, revised compliance certificate in form-H by way of affidavit was filed on 14/10/2022, wherein the effect of judgement of Hon'ble Supreme Court in the case of State Tax Officer (1) Vs. Rainbow Papers Limited Civil Appeal No. 1661 of 2020 with Civil Appeal No. 2568 of 2020, was given by treating State Vat as secured creditor.
12. It is submitted by the Applicant RP that the resolution plan is in compliance with provisions of Section 30(2) of IBC, 2016 and Regulation 38 (3A) of the CIRP Regulations.
13. The respondent 2 filed its reply and stated as follows:
  - (i) That the extinguishment of personal guarantees of the promoters of the corporate debtor and extinguishment of the mortgage of their personal assets, after approval of resolution plan. The resolution applicant and person acting in concert (PAC) shall have no right of recovery from old promoters, directors or old guarantors with respect to personal guarantee or any asset mortgaged with financial creditors, the same shall continue with the financial creditor.
  - (ii) That the financial creditor would no longer have any right, title and interest in the loans and the charges thereto, and in turn would no



longer have the right to proceed against the personal guarantors qua the corporate debtor and their personal assets that may have been mortgaged with the financial creditors.

- (iii) That having transferred all the right, title and interest in the loan and the charges thereto from the financial creditors to the resolution applicants, SPV or PAC, there is no question of giving the right to the financial creditors of recovering against the personal guarantors, old promoters, old directors or old guarantors. The same would tantamount to 'blowing hot and cold at the same time', or 'having the cake and eating it too', which is not possible.
- (iv) That the resolution applicant is Qualified Chartered Accountant. He appears to have executed some confidentiality agreement dated 10/01/2020, but strangely notarized on 17/01/2020. Hence, clearly, the confidentiality agreement has not been signed before the gazetted officer.
- (v) That there is no disclosure on source of funds for making payment under the resolution plan through Coral Minchem Pvt. Ltd.
- (vi) That the payment under the purported resolution plan is effectively going to be made by the SPV being Coral Minchem Pvt. Ltd., which is not even treated as a resolution applicant.



- (vii) That successful resolution applicant has no capability to implement resolution plan and their intention is only to sell the offices/shops of the corporate debtor being the assets of the corporate debtor. Thus have no intention to keep the corporate debtor as a going concern.
- (viii) That there is no information on how large funds lying in the bank account of the corporate debtor will be utilized.
- (ix) That there is no reference to the projected cash flows from the business of CD to make payment to the creditors under the purported resolution plan, hence the excuse of force majeure and effect on projected cash flows of the CD have no concern on payments under the resolution plan.

14. The respondent 3 filed its reply and stated as follows:

- (i) That at the time of submission of the EOI, Mr. Sudeep Dasani in his individual capacity has filed the EOI. During submission of revised resolution plan, at that time Mr. Sudeep Dasani filed the revised resolution plan alongwith the joint resolution applicants i.e., 1. Mr. Kamlesh R. Tulsian; 2. Mr. Kishor H. Tulsian as well as the person acting in concert, which shows malafide intention and not having intention to fulfill the object of the legislature to run the business of corporate debtor as going concern.



- (ii) That the Resolution Applicant has proposed in his resolution plan to purchase / acquire the loan assets of the Financial Creditors who are members of the Committee of Creditors and same is considered by the Resolution Professional as well as the Committee of Creditors in the present application for approval of the Resolution Plan in terms of section 30 (6) of the Code which is completely illegal and not within the four corners of the law.
- (iii) That the acquisition of the Corporate Debtor by way of present Resolution Plan will lead to undue benefits to the Resolution Applicant by this kind of approach of the Resolution Professional alongwith the COC. The stakeholders suffering grave loss and prejudice will be the members of the Suspended Management who are the Personal Guarantors for the debts owed by the Corporate Debtor and the dues/recoverables of the Financial Creditors i.e., the members of the COC are covered and well protected in terms of the said Personal Guarantees.

15. Vide order dated 08.09.2022, liberty was granted to the parties to file written submissions within 3 days. The applicant, respondent No. 2, 3 and 5 has filed their written submission. The respondent No. 2 and 3 reiterated same averments which are made in its reply.

- a. The resolution professional filed his written submission and stated as follows:



(i) That the as per the resolution plan, the personal guarantee shall continue with the financial creditors. Resolution applicant and PAC shall have no right of recovery from old promoters, directors or old guarantors with respect to personal guarantee or any asset mortgaged with the financial creditors.

(ii) That from the very beginning successful resolution applicant Mr. Sudeep Dasani submitted its resolution plan with the name of “Resolution Applicant and his Associates” and CoC also asked about the other associates and source of funds. Resolution applicant also provided the complete details of five person acting in concert with their undertaking, self-attested PAN card and Aadhar card. There is no violation of confidentiality agreement by successful resolution applicant.

b. The successful resolution applicants filed its written submission and stated as follows:

(i) That Mr. Sudeep Dasani is engaged into various businesses/consultancy services and is having more than 20 years of experience in various business activities.

(ii) That Coral Minchem Pvt. Ltd company acquired by the resolution applicants which will be functioning as the SPV for the purpose of implementation of resolution plan.



(iii) That RBI has clearly clarified that a company other than financial company can be assigned the debt under IBC Code and therefore the plan submitted by the resolution applicant is in compliance of the RBI provisions.

16. In the pursuance of order dated 02.09.2022, the successful resolution applicant has filed an affidavit with respect to the source of funds available and details are given below:

Sr. No.	Name of the person	Relationship with the Resolution Applicant	Name of the Bank	Original Amount (Rs.)
1.	Sudeep Dasani	RA	Bank of India	1,14,61,995/-
2.	Sudeep Dasani HUF	RA is Karta	Bank of India	4,37,27,633/-
			Punjab National Bank	4,03,00,000/-
3.	Sampatamal Dasani HUF	Father of RA is karta and RA is member	Bank of India	6,44,40,000/-
		Total		15,99,29,628/-

Copy of source of funds are also annexed with this affidavit.



17. In the compliance of order dated 29.09.2022, the resolution professional filed a revised compliance certificate in Form- H by way of an affidavit on 13.10.2022 to fall in line with the judgment of Hon'ble Supreme Court in the case of State Tax Officer (1) Vs. Rainbow Papers Limited Civil Appeal No. 1661 of 2020 with Civil Appeal No. 2568 of 2020, treating State Sales Tax/VAT dues as secured creditor. The amount provided for various stakeholders under the Resolution Plan revised subsequent to above Hon'ble Supreme Court judgement vide clarification affidavit dated 13.10.2022, is as under:

REVISED DISTRIBUTION TO VARIOUS STAKEHOLDERS						
Sr. No.	Particulars	Earlier Claim Considered	Earlier Distribution	Revised Claim Amount Considered	Revised Distribution	Remark
1.	CIRP	45,00,000	55,00,000	45,00,000	55,00,000	
2.	Secured Financial Creditor (Not having immovable properties as security)					
	State Bank of India	30,94,70,650	54,70,588	30,94,70,650	54,70,588	Note 1
3.	Secured Financial Creditor (having immovable properties as security)					
	Bank of India	66,67,50,581	6,78,31,713	66,67,50,581	6,71,47,809	Note 2



	Canara Bank	19,36,55,348	1,96,97,699	19,36,55,348	1,95,02,843	Note 2
4.	Secured Operational Creditors					
	Commissioner of State Tax of Gujarat-VAT	0	0	87,25,731	8,78,760	Note 3
5.	Unsecured Creditor					
	American Express	35,93,072	25,000	35,93,072	25,000	
6.	Other Operational Creditors					
	Dell Global B.V.	10,59,70,246	2,83,708	10,59,70,246	2,63,065	Note 4
	Ingram Micro India Private Limited	5,90,42,238	1,58,070	5,90,42,238	1,46,569	Note 4
	Asus India Private Limited	97,85,265	26,198	97,85,265	24,291	Note 4
	Global Infonet Distribution Private Limited	32,35,779	8,663	32,35,779	8,033	Note 4
	Commissioner of State Tax of Gujarat-VAT & CST	1,52,40,298	23,661	0	0	Note 3
	GST	0	0	1,68,66,530	41,870	Note 5
	Commissioner of State Tax of Gujarat-CST	0	0	65,14,567	16,172	Note 3
7.	ROC fees	0	10,00,000	0	10,00,000	
	<b>Total</b>	<b>1,37,12,43,477</b>	<b>10,00,25,000</b>	<b>13,88,11,007</b>	<b>10,00,25,000</b>	

*Note 1- Amount payable to State bank of India (Having 1<sup>st</sup> charge over movable stock of the corporate debtor) kept same in compliance with Section*



30(4) and negligible difference. The same is bare by other two secured financial creditors.

**Note 2-** Amount payable to Bank of India and Canara bank (Both bank having 1<sup>st</sup> Charge on Fixed assets of the corporate debtor) has been reduced and paid to Gujarat sales Tax department in the same ratio of said secured financial creditor.

**Note 3-** Gujarat State Tax Department submitted total Claim of Rs 1,52,40,298/. Out to total claim of Rs 1,52,40,298/- by State Tax department, Claim of Rs 87,25,731/- belongs to Gujarat VAT under Gujarat VAT Act and said amount now considered as secured creditor in light of the Hon'ble Supreme Court Judgment. Balance amount of Rs 65,14,567/- belongs to central Sales Tax and considered as unsecured operational creditor in absence of any provision of deemed security interest under relevant Central Sales Tax Act.

**Note 4-** Amount payable to Operational creditor (other than Government Dues) reduced due to consideration of additional claim of GST department.

**Note 5-** Amount payable to Operational creditor (other than Government Dues) reduced due to consideration of additional claim of GST department.

18. It is noted that Form-H has been filed by Resolution Professional wherein all information as regard to conduct of CIRP, as well as process adopted for Resolution Plan, has been given. The total claim amount admitted by the resolution professional from all stakeholders is Rs. 1,38,36,10,007/- and resolution applicant has committed for payment to all the stakeholders Rs. 9,35,25,000/- which amounts to 6.75% of total claim admitted by Resolution Professional. It is stated in the resolution plan that resolution applicant shall pay the actual CIRP cost, upfront *i.e.*, within 90 days of the approval of resolution plan by Adjudicating Authority.
19. As per the revised compliance certificate in form-H by way of affidavit filed on 14/10/2022, the Resolution Applicant furnished performance guarantee security of an amount of Rs. 50,01,250/- as envisaged under the



RFRP ('Request for Resolution Plan') in accordance with the provisions contained in Regulation 36B(4A) of the CIRP Regulations, 2016.

20. During the hearing, a query was sought by the Bench vide order dated 20/07/2022, whether this plan is viable as on date, which was approved in 2020? In compliance of said order, CoC filed an affidavit on 18/08/2022, stating that the lenders meeting was conducted by the Resolution Professional on 02/08/2022, in the said meeting, following points were decided by the CoC members:

- i. All the CoC members except American Express is in the favor of the resolution plan as on date which was approved in 2020 based on the feasibility of the resolution plan considering all the factors as per IBC, 2016. Therefore, CoC with 99.69% voting share wants to continue with the resolution plan.*
- ii. CoC authorized lead bank-Bank of India to submit affidavit in compliance of order of the Court dated 20.07.2022.*

21. It was submitted that Resolution Plan approved by CoC complies with all the requirements of Section 30(2) of IBC, 2016 and relevant regulations made thereunder. Our attention was drawn to the reliefs and concessions, which are mentioned under Chapter No. 12, Part II at page No. 27 in the Resolution Plan. However, the Bench in respect of such relief and concession made it clear that only such reliefs would be granted which this Adjudicating Authority is empowered to in view of the decision of the Hon'ble Supreme Court in the case of *Ghanashyam Mishra and Sons*

***Private Limited Vs. Edelweiss Asset Reconstruction Company Limited***



**and Ors. (Civil Appeal No. 8129 of 2019) dated 13/04/2021** which is reproduced hereinbelow:

*“86. ....The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.*

*87. We have no hesitation to say, that the word “other stakeholders” would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of I&B Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief.....”*

22. It is further noted that certificate regarding the eligibility of resolution applicant under Section 29A alongwith undertaking of the Resolution Applicant to this effect has been filed. We have also perused the contents of Resolution Plan, and are of the view that all requirements provided under Section 30(2) of IBC, 2016 and Regulation 36 to 39 of CIRP Regulations, 2016 have been complied with. We also find that the Resolution Plan addresses the cause for default and also contains measures to run the Corporate Debtor in future. We also find that Resolution plan is both feasible and viable as held by CoC and it also contains provision for its effective implementation. Accordingly, we, being satisfied, approve the Resolution Plan and pass following order:



- I. The approved 'Resolution Plan' shall become effective from the date of passing of this order.
- II. The order of moratorium dated 29/05/2019 passed by this Adjudicating Authority under Section 14 of IBC, 2016 shall cease to have effect from the date of this order.
- III. The Resolution Plan so approved shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors, and other stakeholders involved in the Resolution Plan.
- IV. The monitoring committee as proposed in Chapter No. 8- Term, Implementation Schedule and Monitoring of the Resolution Plan at page 19 of the resolution plan shall be constituted for supervising the effective implementation of the Resolution Plan.
- V. The Resolution Professional, Mr. **Vikas Gautamchand Jain**, shall be released from the duties of the resolution professional of the Corporate Debtor as per the provisions of the IBC, 2016 and rules/regulations made thereunder.
- VI. The Resolution Professional shall forthwith send a copy of this Order to the participants and the resolution applicant(s).
- VII. The Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.



VIII. As regards to various reliefs and concessions which are being sought, we hereby grant the following reliefs and concessions only as against reliefs and concessions claimed by the resolution applicant:

- a) After the payment of the dues to the creditors, as per the resolution plan, all the liabilities of the said stakeholders prior to CIRP against the corporate debtor shall stand permanently extinguished and other claims including Government/Statutory Authority, whether lodged during CIRP or not, shall stand extinguished after the approval of the resolution plan. We further hold that contingent/unconfirmed dues shall also stand extinguished;
- b) From the date of this order, all claims against the corporate debtor, except those provided in the resolution plan of the Corporate Debtor stand extinguished.
- c) From the date of this order, all encumbrances on the assets of the Corporate Debtor before the plan shall stand permanently extinguished.
- d) For reliefs and concessions sought from the Government/Statutory Authorities including environmental clearance as well as stamp duty, we direct the resolution applicant to approach the concerned Authorities. The concerned Authorities may decide the matter as



per applicable provisions of law for effective implementation of the Resolution Plan.

- e) As regard to reliefs prayed under various provisions of the Income Tax Act, 1961, the corporate Debtor/ resolution applicant may approach the Income Tax Authorities who shall take a decision on relief and concessions sought by the resolution applicant in accordance with the provisions of Income Tax Act, 1961.
- f) The management of the Corporate Debtor shall be handed over to the Board of Directors as may be nominated by the resolution applicant for smooth running of the business of the Corporate Debtor;
- g) The Board of Directors of the Corporate Debtor shall also be reconstituted and procedural compliances shall be done to give effect to such reconstitution;
- h) The resolution applicant shall, pursuant to the resolution plan approved under Section 31(1) of the Code, obtain necessary approvals required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under Section 31 or within such period as provided for in such law, whichever is later, as the case may be;



- i) All the approvals of shareholders/members of the Corporate Debtor shall be deemed to have been obtained and the provisions made in the resolution plan as regard to the restructuring of capital shall be binding on them. For concession of stamp duty as prayed in the resolution plan, the resolution applicant may approach the concerned Government Authority.
- j) With respect to the grant of license/ Government approval if the license or approval is terminated, suspended and revoked, the resolution applicant may approach the concerned Department/ Authorities for such approval/ renewal and Government Authorities may consider the request of the resolution applicant as per applicable provisions of law for effective implementation of the resolution plan.
23. Accordingly, IA 358 of 2020 is allowed within terms of the above directions and stands disposed of.
24. Certified copy of this order, if applied for, is to be issued to all concerned parties upon compliance with all requisite formalities.

**-SD-**  
**AJAI DAS MEHROTRA**  
**MEMBER (TECHNICAL)**

**-SD-**  
**DR. DEEPTI MUKESH**  
**MEMBER (JUDICIAL)**

Abhishek/LRA