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**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
NEW DELHI BENCH  
BENCH III**

I.A. No. 809/2022&  
IA-998/2022 in IA-809/2022  
In  
IB-846/ND/2020

**In the matter of:**

Umesh Yarn Agencies

...Operational Creditor

Versus

Flora Dyeing House Private Limited

...Corporate Debtor

**In the matter of IA-809/2022**

**Mr. Hemant Gupta,**  
Resolution Professional  
M/s Flora Dyeing House Private Limited

... Applicant

**In the matter of IA-998/2022:**

Parveen Sood

...Applicant

Verus

Resolution Professional & Anr

...Respondents

Delivered On: 20.09.2022

**CORAM:**

**Sh. BACHU VENKAT BALARAM DAS**  
Hon'ble Member (Judicial)

**Dr. BINOD KUMAR SINHA**  
Hon'ble Member (Technical)

For Resolution Professional: Mr. R.K. Gupta (Advocate)& Adv Swaralipi Deb Roy  
For Applicant in 998/2022: Adv. Rishi Sood

*(Signature)*

1

IA-809/20202, IA-998/2022 in IB-846/ND/2020  
D.O.O – 20.09.2022

*(Signature)*  
22/09/2022



## **ORDER**

Per: Dr. Binod Kumar Sinha, Member (Technical)

1. Under consideration is an application filed by the Resolution Professional bearing IA No. 809/2022 and another application filed by the suspended Director bearing IA No. 998/2022 in IA No. 809/2022. Both these IAs are disposed off by this common order.

### **IA No. 809/2022**

2. The Resolution Professional has filed the instant application under section 30(6) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC") r/w Regulation 39 (4) of the Insolvency and Bankruptcy board of India (Insolvency Resolution Process for Corporate Persons) Regulations (hereinafter referred as "IBBI (CIRP) Regulations, 2016), in IA No. 809/2022 for seeking approval of Resolution Plan under section 31(1) of IBC in the matter of M/s Flora Dyeing House Private Limited (hereinafter referred as "Corporate Debtor")

3. Mr. Hemant Gupta ('Applicant') is the Resolution Professional for Flora Dyeing House Private Limited, who has submitted the Resolution Plan duly approved

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IA-809/20202, IA-998/2022 in IB-846/ND/2020  
D.O.O – 20.09.2022



by the Committee of Creditors (hereinafter referred as "CoC") which is accompanied by the compliance certificate in the prescribed Form H.

4. It is submitted that Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor was admitted by this authority vide its order dated 07.04.2021 pursuant to the application filed by Operational creditor and Applicant was appointed as the Interim Resolution Professional (IRP) vide same order. It is stated that public announcement in compliance with section 13, 15 and other applicable sections of IB code read with regulation 6 of IBBI (CIRP) Regulations, 2016 was made by the Applicant in Financial Express, English edition and Jansatta, Hindi edition on 13.04.2021 for intimating the commencement of CIRP against CD and calling for claims. Two Registered valuers were appointed on 21.05.2021 in terms of Regulation 27 of CIRP Regulation, 2016. After receipt of claims, IRP constituted Committee of Creditors (CoC) with the South Indian Bank Limited, being the sole member of

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IA-809/20202, IA-998/2022 in IB-846/ND/2020  
D.O.O - 20.09.2022



CoC on 03.05.2021, first CoC meeting was held on 11.05.2021 and the IRP was confirmed as Resolution Professional (RP).

5. It is further submitted that the applicant convened the second CoC meeting on 23.06.2021, wherein CoC approved the eligibility criteria for prospective resolution applicant and the publication for Form-G for invitation of expression of interest. It is stated that Form-G was published in Financial Expression (English) and Jansatta (Hindi) (Delhi Edition) on 23.06.2021. Pursuant to that several Expression of interest were received by RP. In Compliance of Regulation 36A (10) of IBBI (CIRP), 2016, the applicant issued the provisional list of 5 prospective resolution applicants (PRAs) on 18.07.2021. Thereafter, the applicant shared information memorandum (IM) and issued request for Resolution Plan (RFRP) to prospective resolution applicants on 23.07.2021 and invited them to submit resolution plan by 23.08.2021, however, no resolution plan was received by the

*[Handwritten Signature]*



applicant by that date though few of PRAs requested for extension of time for submission of Resolution plan.

6. It is averred that the CoC approved the extension of last date of submission of Resolution Plan from 23.08.2021 to 07.09.2021 in its 4<sup>th</sup> meeting dated 27.08.2021 and on 07.09.2021, only one out of 5 PRAs, namely Mr. Ramdhan Gupta & Mr. Naresh Aggarwal submitted their resolution plan. The Applicant placed the Resolution Plan before the CoC in 5<sup>th</sup> CoC meeting dated 15.09.2021. The CoC noted that the resolution plan value proposed by the resolution applicant is very low and needs a considerable upward revision. In the meantime, this Adjudicating Authority vide order dated 26.10.2021 excluded 43 days (19.04.2021 to 31.05.2021) from CIRP Period. Furthermore, the CIRP Period was further extended for 90 days by this authority vide order dated 24.11.2021. It is stated that in the 10<sup>th</sup> CoC meeting dated 15.01.2022, the matter for consideration and approval of resolution plan submitted by Mr. Ramdhan Gupta & Mr. Naresh Aggarwal was taken up as agenda for discussion and



16/2

same was approved with 100% voting and they were declared as successful resolution applicant. It was further resolved that the successful resolution applicant shall transfer the benefit of the avoidance transaction application or any other rights in the avoidance application u/s 43 and 66 of the Code in favour of the South Indian Bank and resolution plan was accordingly amended.

7. The summary of the Resolution plan submitted by the Resolution Applicant is as follows:

#	Particulars	Proposed Settlement (in INR)
1.	CIRP Costs	INR 25,00,000/- within 30 days from NCLT order
2.	Operational Creditors	INR 5,00,000/- within 30 days from NCLT Order
3.	Payment to the South Indian Bank Limited (Secured against Land and Building etc.) Others	INR 7,00,00,000/- within 90 days from NCLT Order (38.37% of claim amount admitted by RP)
<b>Total</b>		<b>INR 7,30,00,000/-</b>

Note: As Resolution Applicant is not aware about the liquidation value determine by the RP, details of compliance of provision of section 30(2) of IBC, 2016 regarding payment of liquidation value to dissenting financial creditor, CoC and RP will be at liberty to modify

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*distribution of money in compliance with the provisions of Section 30(2) of IBC, 2016 but total outgo of funds from Resolution Applicant shall be limited Rs,7,30,00,000/- i.e., Rs. Seven Crores Thirty Lacs.*

**Objection to Resolution Plan (IA-998/2022)**

8. This is an application under section 60(5) of Insolvency and bankruptcy code,2016 (hereinafter referred to as IBC) has been filed on behalf of the Ex-director of the Corporate Debtor Company seeking rejection of the Resolution plan as approved by the Committee of Creditors (herein after referred to as CoC). It is submitted that as per the Resolution plan submitted by the Resolution professional, the offer given by the Resolution Applicant is Rs.7,30,00,000/- (Rupees Seven Crore and Thirty Lakhs Only) wherein an amount of Rs. 7,00,000,00/- (Rupees Seven Crore Only) would be paid to the South Indian Bank limited against the admitted claim amount of Rs.18,24,33,482/- (Rupees Eighteen Crore Twenty Four Lakh Thirty Three Thousand and Four Hundred Eighty Two Only) wherein, an amount of Rs.5,00,000/- (Rupees Five Lakh Only) would be paid to the

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7

IA-809/20202, IA-998/2022 in IB-846/ND/2020  
D.O.O – 20.09.2022



operational creditors against the admitted amount of Rs.7,45,56,577/- (Rupees Seven Crore Forty Five Lakh Fifty Six Thousand Five Hundred and Seventy Seven Only) and an amount of Rs.25,00,000/-(Twenty Five Lakh Only) would be paid as an CIRP cost and the total amount as approved by COC is Rs.7,30,00,000/- (Rupees Seven Crore and Thirty Lakhs Only) respectively.

9.It is averred that the sole intent and objective of IBC code, 2016 is pertaining to the maximization of the asset of the Corporate Debtor. However, in the present scenario the Resolution profession had accepted the Resolution plan which is much lesser than the liquidation value of the Company. It is further submitted that as per the resolution plan submitted by the Resolution profession before the Hon'ble Adjudicating Authority, the liquidation value of the Corporate Debtor Company is Rs.8,50,00,000/-(Rupees Eight Crore Fifty Lakh Only) wherein, the present Resolution plan has been accepting as a value of Rs.7,30,00,000/- (Rupees Seven Crore and Thirty

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Lakhs Only) which has resulted in great harm, injury to the creditors of the Corporate Debtor company as the maximization would have been ultimately dispersed to the creditors under the provision of insolvency and bankruptcy code.

10. It is further averred that the value of land and building of the Corporate Debtor Company is over Rs. 10,00,000,00/- (Rupees Ten Crore Only) and the value of plant and machinery is over Rs.1,50,00,000/- (Rupees One Crore Fifty Lakh Only) wherein, the Resolution plan as proposed by the Resolution Applicant intends to pay an amount of Rs.7,30,00,000/- (Rupees Seven Crore and Thirty Lakhs Only) to the financial creditor and other stakeholder including the statutory authorities.

11. It is further stated that the applicant has placed on record the allotment letters of the year 2019 issued by Haryana State Industrial and Infrastructure Development Corporate Limited (HSIDC) pertaining to the allotment of Industrial Plot situated in Barhi, Haryana (where the Land and building of the Corporate



Debtor is situated) which are sold 27,700/- per Sq. Mt and @ 31,700/- per Sq. Mt wherein, the tentative area of the Corporate Debtor is approximately 4,050 sq. Mt and the total value of the Industrial plot as per the conservative estimated Rs. 11,21,85,000/-(Rupees Eleven Crore Twenty One Lakh Eighty Five Thousand Only). In view of the above discussion the applicant prayed for the rejection of the resolution plan submitted by the resolution applicant.

12. The Resolution Professional also filed its reply and questioned the maintainability of the present application and locus of the applicant. The RP further submitted that these are the delay tactics of the ex-director with sole intent to delay the approval of resolution plan, which is against the object of the IB Code, 2016. Furthermore, the applicant has filed the present application after the application for approval of resolution plan has been filed by the resolution professional. Therefore, this clearly shows the intention of the ex-director to derail the insolvency resolution process of the Corporate Debtor. Hence, prayed that

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10

IA-809/20202, IA-998/2022 in IB-846/ND/2020  
D.O.O – 20.09.2022



the application may be dismissed in view of the contention raised above.

13. We have heard the arguments and perused the record filed along with the pleadings. It is relevant to mention here that the resolution professional has given several opportunities to suspended Board of Directors to bring the better resolution plan for insolvency resolution of the corporate debtor as evident from minutes of CoC meetings, however, they failed to bring any resolution plan before the CoC. It is also pertinent to discuss the judgment of Hon'ble Supreme Court

- i. In *K. Sashidhar v. Indian Overseas Bank*, 2019 SCC Online SC 257, the Hon'ble Apex Court has made it clear that there is a judicial hands-off when it comes to the commercial wisdom of the Committee of Creditors
- ii. Also, the Hon'ble Supreme Court of India in the matter of *Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors.*, Civil Appeal No. 8766-67 of 2019, vide its judgment dated

15.11.2019 has observed as follows:



*38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants.*

It is clear from above judgments that the Adjudicating Authority has limited jurisdiction when considering the approval of resolution plan and CoC has been empowered to exercise their commercial wisdom while considering the resolution plan. Furthermore, it is a settled position of law that the resolution plan is not justiciable and the Adjudicating Authority has to see whether the resolution plan is as per the law and relevant regulation. Once the Adjudicating Authority is satisfied that the resolution plan satisfies all the provisions of IB Code and relevant regulation then this Authority has to approve the resolution plan as approved by the CoC. In the instant case the resolution

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12

IA-809/20202, IA-998/2022 in IB-846/ND/2020  
D.O.O – 20.09.2022



plan is approved by CoC with 100% voting in favour. Therefore, we do not find any merits in the present i.e., IA-998/2022 and same is **dismissed** accordingly.

14. Now, we examine whether the resolution plan as approved by the CoC meets the requirements as stipulated in the Code.

15. The parameters for approval of resolution plan are set out in section 30 and 31 of the IBC, 2016 and IBBI (CIRP) Regulations, 2016. The Resolution Plan seems to have complied with such mandatory compliance, which are briefly set forth herein below:

Section/Regulation	Compliance made
Section 30(1) of the IBC, 2016	Resolution Applicant submitted that it is eligible to submit a resolution plan. Separate Affidavit Annexed with Resolution Plan.
Section 30(2)(a) of the IBC, 2016 And	As per clause 6.1 of the Resolution Plan, payment of CIRP costs shall be in priority to the payment of other debts of the Corporate Debtor.
Regulation 38(1A) of IBBI (Insolvency Process for Corporate	Clause 20 of the Resolution Plan provides that the Resolution Plan has dealt



Persons) Regulations, 2016	with the interest of all stakeholders.
Section 30(2)(b) of the IBC, 2016  And	Clause 6.3 of the Resolution plan provides for the payment of debts of operational creditors in such as manner as specified by the board.
Regulation 38(2)(c) of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016	Clause 10.5 and 10.6 of the Resolution Plan provides for management and control of the business of Corporate and control debtor
Section 30(2)(c) and Section 30(2)(d) of the IBC, 2016  And	Clause 10 of the Resolution Plan provides management of the affairs of the Corporate Debtor and implementation of the plan until the final payment.
Regulation 38(2) of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016	The implementation of plan as stated in clause 11 of the Resolution Plan is 90 days from the date of approval of Resolution Plan by Adjudicating Authority.
Section 30(2)(e) of the IBC, 2016	Clause 22.1 of the Resolution Plan does not contravene any of the provisions of law for the time being in force.
Section 30(4) of the IBC, 2016	The Committee of Creditors, after considering the feasibility and viability of the Resolution Plan have approved the same by 100% voting share.

*[Handwritten Signature]*



16. It is further averred that in terms of provisions of regulation 39(4) of IBBI (CIRP) Regulation, the RP is required to submit the Resolution plan approved by the CoC along with a compliance certificate in form H of the schedule and the evidence of receipt of performance security required under sub-regulation (4A) of regulation 36B. The same is complied with.
17. It is submitted that in order to ensure smooth implementation of the resolution plan, the resolution applicant has already identified a core team with strong experience. The resolution applicant shall further appoint professional CS, CFO and GM- finance to manage day to day affairs of the company.
18. The Resolution Plan proposes appointment of a Monitoring Committee consisting of one new Director of the Company and Resolution Professional.
19. It is submitted that as per the terms of the request for resolution plan ("RFRP") the successful Resolution Applicant was to submit security for an amount of Rs. 73,00,000/- and same was submitted by the Successful Resolution Applicant as Performance Bank



Guarantee in the current account of corporate debtor as required by regulation 36B (4A) of IBBI (CIRP) Regulations, 2016 as evidence from the Annexure-18.

20. Thus, the resolution plan filed with the Application meets the requirements of section 30 and 31 of IBC, 2016 and Regulation 37, 38, 38(1A) and 39(4) of the IBBI(CIRP) Regulations, 2016. The provisions of Section 29A of IBC are not attracted. The RP has also verified that the "Resolution Plan" approved by the CoC does not contravene any of the provisions of the law for the time being in force. The RP has filed compliance certificate in Form H as required under regulation 39(4) of the IBBI (CIRP) Regulations, 2016.

21. During hearing in the present application on 01.08.2022 we observed that at page 26 of the Resolution Plan, in the form of seeking waiver and concession, the Resolution Applicant has, in fact, included a pre-condition for viability of the Resolution Plan as hereunder:





*"The Resolution Applicants also prays to the NCLT to grant an exemption from the obligation to pay taxes and stamp duty in respect of actions undertaken pursuant to the approval of the resolution plan by the NCLT, since such taxes and duties, if required to be paid, will render the resolution plan unviable for the resolution applicants in monetary terms."*

22. Therefore, during the final hearing, the Applicant was asked to explain as to how the Resolution Plan with such a pre-condition which goes to the root of its viability could be approved. It was submitted on behalf of the Resolution Applicant, that they are ready to exclude this pre-condition. Consequently, while reserving the orders, this Adjudicating Authority directed the Resolution Applicant to file an affidavit with effect to deletion of para 1 of schedule 1- Other Reliefs and Concession containing the said precondition, if they so desire, before this Adjudicating Authority could take a final view. In compliance to



said order, the Resolution Applicant filed an affidavit dated 02.08.2022; the relevant extract of the same is as follows:

*“3.that I confirm and agree to delete the para 1 of schedule 1-other reliefs and concessions at page 26 of the resolution plan i.e., page 166 of IA-809 of 2022 which reads as under:*

*“The Resolution Applicants also prays to the NCLT to grant an exemption from the obligation to pay taxes and stamp duty in respect of actions undertaken pursuant to the approval of the resolution plan by the NCLT, since such taxes and duties, if required to be paid, will render the resolution plan unviable for the resolution applicants in monetary terms.”*

23. It is also observed that the liquidation value of the corporate debtor is Rs. 8.95 crore and resolution plan value is Rs.7.30 crore, which is less than the liquidation value of assets of the corporate debtor.

On a query raised by the Bench, it was submitted on



18

IA-809/20202, IA-998/2022 in IB-846/ND/2020  
D.O.O – 20.09.2022



behalf of CoC that the following factors have been considered by CoC while approving the proposed resolution plan: -

1. Resolution is main objective of the IBC, 2016 and resolution applicant proposes to revive the corporate debtor.
2. EOIs were received from 5 parties but eventually only one party submitted their resolution plan.
3. Resolution applicant is proposing to make the full payment within 90 days of approval from Hon'ble NCLT.
4. If liquidation is opted that will entail at least Rs. 50 Lakhs as liquidation cost and further it might take 12-18 months to have the realization. They will also stand to lose on time value of money.
5. It is also submitted that the resolution plan provides that the resolution applicant shall transfer the benefit of the avoidance transaction application or any other rights in



avoidance transaction application or in other in favor of the sole CoC Members i.e, the South Indian Bank Limited and the successful resolution applicant has amended its resolution plan to this effect vide communication dated 15.01.2022.

24. Subject to the above discussion for the approval of the resolution plan under the provisions of the Code, the "Resolution Plan" annexed with I.A. No. 809/2022 filed in IB-846(ND)/2020 and modified vide affidavits dated 15.01.2022 and 02.08.2022 as reported by the Resolution Professional is hereby **approved** by this Adjudicating Authority. It shall be binding on the corporate debtor and its employees, members, creditors, guarantors, other stakeholders including statutory authorities and the Resolution Applicant.

25. The Applicant/Resolution Professional has submitted that the Resolution Applicant has sought certain other waivers and reliefs in the Resolution Plan. We are, however, not inclined to grant such



concessions or waivers. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/ liabilities of the Corporate Debtor and shall be dealt with by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned. As regards to the reliefs sought, the Corporate Debtor has to approach the authorities concerned for such reliefs and we trust the authorities concerned will do the needful. The same view has been taken by Hon'ble Supreme Court in the matter of *Ghanashyam Mishra And Sons Private Limited Versus Edelweiss Asset Reconstruction Company Limited*

26. This Authority deems it appropriate to appoint a Monitoring Committee comprising of the Resolution Professional, a representative of the Financial Creditors not related to the Corporate Debtor and one new Director as proposed by the Resolution Applicant.



21

IA-809/20202, IA-998/2022 in IB-846/ND/2020  
D.O.O - 20.09.2022



Number of Members	Comprising of
1	Resolution Professional
1	Representative of CoC not related to the Corporate Debtor
1	New Director of Company

27. The Resolution Applicant or Monitoring Agency as the case may be is at liberty to approach this authority for seeking appropriate directions for effective implementation of the Resolution Plan.

28. The order of moratorium dated 07.04.2021 passed by this adjudicating authority under section 14 of IBC shall cease to have effect from the date of this order.

29. The RP shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI, so that the Board may record the same on its data base.

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22

IA-809/20202, IA-998/2022 in IB-846/ND/2020  
D.O.O - 20.09.2022



30. The approved resolution plan shall become effective from the date of passing of this order.
31. The Resolution Professional shall forthwith send a copy of this order to the participants and the Resolution Applicant.
32. The Registry is directed to communicate this order to the Registrar of Companies concerned with which the Corporate Debtor is registered for updating the master data.
33. Accordingly, IA-998/2022 stands **dismissed** and I.A. No. 809/2022 filed in IB-846(ND)/2020 stands **allowed**.
34. The order is pronounced **through Virtual Hearing**.

*sd-*  
(BINOD KUMAR SINHA)  
MEMBER (TECHNICAL)

*sd-*  
(BACHU VENKAT BALARAM DAS)  
MEMBER (JUDICIAL)



*sd*  
22/09/2022

सहायक पंजीयक  
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