

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH**

CA No. 993/2019  
In (IB)-348(ND)2017

**In the matter of**

**Rachna Sarees**

...Operational Creditor

**Versus**

**AND IN THE MATTER OF**  
**CORPORATE INSOLVENCY OF**  
**Charming Apparels Private Limited**  
**Through the Resolution Professional**  
**Mr. Arvind Garg,**  
**302-A, Pal Mohan Plaza,**  
**D.B. Gupta Road, Karol Bagh**  
**New Delhi - 110005**

...Corporate Debtor

**AND IN THE MATTER OF:**

**ATUL JAIN**  
**S/o Late Sh. Ram Chandra Jain,**  
**R/o 148E, Club Road, Sainik Farms,**  
**New Delhi - 110060**

...Applicant

**VERSUS**

**RESOLUTION PROFESSIONAL & ANR.**

- 1. Charming Apparels Private Limited**  
**Through the Resolution Professional**  
**Mr. Arvind Garg,**  
**302-A, Pal Mohan Plaza,**  
**D.B. Gupta Road, Karol Bagh**  
**New Delhi - 110005**
- 2. Mr. Sanjay Singhal,**  
**Resolution Applicant,**  
**9/10, Plot No. 8,**  
**Sarswati Kunj, Alipur Road**



Order delivered on: 10.02.2020

Coram:

**SMT. INA MALHOTRA, HON'BLE MEMBER (J)**  
**SH. L. N. GUPTA, HON'BLE MEMBER (T)**

**Present for the Petitioner.: Mr. Arvind Garg, RP, Ms. Heerika Shukla, PCS, Mr. Rahul Mendiratta, Advocates**

**Present for the Respondent: Mr. Krishnendu Dutta, Mr. Rishi Sood, Mr. Shashank Pandey, Mr. Aditya Dewan, Advocates**

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

1. CA 993/2019 has been filed by one of the Ex-Directors, Shri Atul Jain, raising objections to the resolution plan submitted by the applicant, Mr. Sanjay Singhal. The objections raised are primarily on the ground that the CIR process is vitiated as the information memorandum filed by the RP does not give complete disclosure of the assets of the Corporate Debtor. It is submitted that all the assets are under-valued and not in consonance with the fair market value and is therefore being handed over to the resolution applicant at an under-valued price to the detriment of the stake holders. It is submitted that no valuation report has been shared by the Resolution Professional with the suspended Board of Directors. It is also stated that the claims of the workers and employees of the company have been ignored. The plan is also impugned on grounds

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that the Resolution applicant has failed to elaborate on their “nominees” or who would be running the Corporate Debtor. The Resolution Plan is objected on the grounds that certain assets, a list of which has been annexed, have not been taken into consideration for the purpose of valuation.

2. We are unable to appreciate the arguments advanced by the ld. counsel appearing on behalf of the objector. The applicant, being one of the ex-Directors, primarily does not have locus to object to the Resolution once the COC has approved it. Unless it is tainted with legal infirmities, the Adjudicating Authority is not required to interfere or question the commercial wisdom of the COC, and a Resolution Plan which is otherwise, in conformity with the requirements of the Code, has to be allowed. The movable assets annexed along with the application is in the form of a hand written inventory and lists miscellaneous items only. Upon going through this list, we find the objections unsustainable. Ld. Counsel for the RP confirms that the liquidation value of all the assets of the Corporate Debtor have been taken into consideration including the listed miscellaneous items like sewing machines, cloth etc. which are mentioned in the handwritten loose sheet of paper. The valuation has been conducted on all business assets of the Corporate Debtor, including the stock in trade, its 11 cars and immovable assets.

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3. The allegations that the assets have been undervalued have not been substantiated and remain mere averments, as no data has been provided to the contrary that the average fair price arrived at by professional valuers were wrong and should be discredited. The submission that the claims of the workmen and employees have been ignored is equally without any basis as the claims which had been received from employees/workmen were unsubstantiated and were not admitted. Despite the same, the resolution plan has made provisions to meet such exigencies.

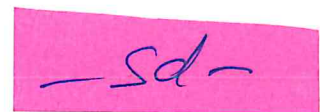
4. We find the present application is devoid of any merit. The applicant, being an Ex-Director had been present at various meetings of the COC and was fully aware of the development and decision taken by the members of the COC. It is unfortunate that this has only resulted in delay in approval of the resolution plan which has been done vide our separate order being passed today.

5. The objections raised are frivolous and a desperate bid to stall the resolution of a company which is debt ridden and has not conducted any business for the almost 3 years.

6. Application is dismissed.



**(L. N. Gupta)**  
**Member (T)**



**(Ina Malhotra)**  
**Member (J)**

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH**

CA No. 842/2019  
In (IB)-348(ND)2017

**In the matter of**

**Rachna Sarees**

**...Operational Creditor**

**Versus**

**AND IN THE MATTER OF**  
**CORPORATE INSOLVENCY OF**  
**Charming Apparels Private Limited**  
**Through the Resolution Professional**  
**Mr. Arvind Garg,**  
**302-A, Pal Mohan Plaza,**  
**D.B. Gupta Road, Karol Bagh**  
**New Delhi - 110005**

**...Corporate Debtor**

**AND IN THE MATTER OF:**

**ATUL JAIN**  
**S/o Late Sh. Ram Chandra Jain,**  
**R/o 148E, Club Road, Sainik Farms,**  
**New Delhi - 110060**

**...Applicant**

**VERSUS**

**RESOLUTION PROFESSIONAL & ANR.**

- 1. Charming Apparels Private Limited**  
**Through the Resolution Professional**  
**Mr. Arvind Garg,**  
**302-A, Pal Mohan Plaza,**  
**D.B. Gupta Road, Karol Bagh**  
**New Delhi - 110005**
- 2. Mr. Sanjay Singhal,**  
**Resolution Applicant,**  
**9/10, Plot No. 8,**

CA No. 842/2019  
In (IB)-348(ND)2017  
Rachna Sarees  
Dilshad

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**Sarswati Kunj, Alipur Road  
Civil Lines, Delhi - 110054**

**...Respondent**

**SECTION: 9 of IBC, 2016**

**Order delivered on: 10.02.2020**

**Coram:**

**SMT. INA MALHOTRA, HON'BLE MEMBER (J)  
SH. L. N. GUPTA, HON'BLE MEMBER (T)**

**Present for the Petitioner.: Mr. Arvind Garg, RP, Ms. Heerika Shukla, PCS, Mr. Rahul Mendiratta, Advocates**

**Present for the Respondent: Mr. Krishnendu Dutta, Mr. Rishi Sood, Mr. Shashank Pandey, Mr. Aditya Dewan, Advocates**

**ORDER**

**PER SMT. INA MALHOTRA, MEMBER (J)**

1. A resolution plan has been submitted for turning around the business of the Corporate Debtor. Vide order dated 8<sup>th</sup> December, 2017, the petition for initiating the Corporate Insolvency Resolution Process of the Corporate Debtor was admitted. Though an Interim Resolution Professional was appointed vide the aforesaid order, due to various lapses, the RP could only be appointed and confirmed on 26<sup>th</sup> November, 2018 upon which the actual resolution process was put on track. Mr. Arvind Garg, the Resolution Professional has taken steps in accordance with the statutory requirements which include appointment of Registered Valuers and inviting expressions of interests. Extensions and exclusions

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were prayed for during this period before a resolution plan was approved by the COC and submitted before this Bench. The same however, could not be taken up on account of objection being filed by one of the Ex-Directors, Mr. Atul Jain. The said objections has been dismissed vide our separate order and we therefore proceed to consider the Resolution Plan.

2. The Corporate Debtor was incorporated in the year 1991 and was engaged in the business of manufacture of textiles marketing them under brand name "Charming". However, there has been no business activity for more than two years. The authorized share capital of the company was Rs. 30 Crores. divided into 3,00,000/- equity shares of Rs. 100/- each, while the issued, subscribed and paid up share capital was for Rs. 2,87,34,700/- being 2,87,347 equity shares of Rs. 100/- each. The Corporate Debtor owns fixed assets on which their manufacturing units were established, being plant & machinery installed on industrial plots D/157, D/170, D/171 at Noida. In addition, the Corporate Debtor owns seven commercial shops as well as residential premises apart from 11 luxury cars.

3. The Corporate Debtor's business suffered a downslide incurring large debts. At the instance of Rachna Sarees, one of the Creditors, the Resolution was set into motion.

4. The valuation of the assets of the Corporate Debtor were conducted and the average value arrived at is as follows:

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Average Fair Value : Rs. 26,50,40,057/-

Average liquidation value : Rs.16,16,18,307/-

5. Upon appointment of the RP, publication was effected and the claims were collated. The claims of the Financial Creditors who constituted the COC are as under:

Name of the Financial Creditor	Amount of Claim Filed (Rs.)	Amount of Claim Admitted (Rs.)	% Share	Security Status
HDFC Bank Ltd.	11,07,15,107.97	11,07,15,107.97	76.76%	Secured
Kotak Mahindra Bank	2,77,21,531.56	2,77,21,531.56	19.22%	Secured
HDFC Bank Ltd.	26,38,533.30	26,38,533.38	1.83%	Unsecured
IndusInd Bank	14,83,127.30	14,83,127.30	1.03%	Unsecured
Bajaj Finance Ltd.	16,72,730.00	16,72,730.00	1.16%	Unsecured
Total	14,42,31,030.21	14,42,31,030.21	100.00%	

6. Claims from about 18 operational creditors were received by the RP for a sum of Rs. 53548856/-, against which the claim admitted by him was for Rs. 3,49,03,924/-.

No other claim of any other class of claimants has been admitted. Since the business operation of the Corporate Debtor had come to a complete halt for the last two years, there were no employees/workmen. However,

claims received from workmen/employee remained unsubstantiated and were therefore not admitted.

7. It is submitted that upon invitation for expressions of interest, though seven prospective resolution applicants had evinced an interest, only one resolution applicant actually submitted a resolution plan. Having been duly vetted by the Resolution Professional and being satisfied that it meets the basic criterion required under the Code, it was put up for approval of the COC. The Resolution Plan was proposed by one Mr. Sanjay Singhal. His affidavit along with required declarations as required under the Code are on record. Affidavit deposing that the RA does not suffer from any disqualifications under section 29A of the Code has been filed.

8. The back ground of the resolution applicant is that he has diversified business interests and shall be investing mainly through its existing business of stockbroking carried out by his LLP under the name Agroha Stock Broker LLP. The partners of the LLP are Mr. Sanjay Singhal and his wife Smt. Anita Singhal. The financial statements of Mr. Sanjay Singhal for the last three assessment years were taken into consideration. His various assets and financial worth was duly appraised. The resolution plan proposed by him was renegotiated several times till the final proposal was duly approved by the COC in its 10<sup>th</sup> meeting. The said plan was approved by 97.81% in terms of the voting power as under:



Sl. No.	Name of Creditors	Voting Shares (%)	Voting for Resolution Plan (Voted for/Dissented/Abstained)
1	HDFC Bank	78.59	Voted for resolution plan
2	Kotak Mahindra Bank	19.22	Voted for resolution Plan
3	IndusInd Bank	1.03	Abstained from voting
4	Bajaj Finance Ltd	1.16	Abstained from voting
	Total	100	

9. The resolution applicant has proposed to take over the business of the Corporate Debtor by making an input of Rs. 17 Crore. The same shall be arranged for from his personal resources. The RP and the COC have been satisfied about the financial worth of the Applicant which is more than Rs. 100 Crores.

10. The RP has annexed all documents and submitted full details. The relevant facts which are duly addressed and provided for under the Resolution Plan are as under: -

Particulars	Rs.
Insolvency Resolution Process Costs (100%)	25,50,000
Financial Creditors (100%)	14,42,31,030
Operational Creditors	1,50,00,000
Lump sum payment to secured financial Creditors (HDFC Bank & Kotak Mahindra Bank) in lieu of interest for the payment period of 6 months)	18,00,000

Provision towards Cost of Monitoring, Compliances and Contingencies	30,54,141
Provision for Contingencies – Workmen/Employee Claims under verification	33,64,829
<b>TOTAL</b>	<b>17,00,00,000</b>

The disbursement of the said amount would be as under:

Time Period from effective Date (T)	Instalments						
		CIRP Cost	Operational Creditors	Secured Financial Creditors	Secured Financial Creditors in lieu of interest	Unsecured Financial Creditors	Provisions for Monitoring, Compliance & Contingency*
Within T + 30 days	5,00,00,000	25,50,000	1,50,00,000	2,80,85,171	-	-	43,64,829
Within T + 90 days	5,00,00,000	-	-	4,81,00,000	9,00,000	-	10,00,000
Within T +180 days	7,00,00,000	-	-	6,22,51,469	9,00,000	57,94,390	10,54,141
<b>Total</b>	<b>17,00,00,000</b>	<b>25,50,000</b>	<b>1,50,00,000</b>	<b>13,84,36,640</b>	<b>18,00,000</b>	<b>57,94,390</b>	<b>64,18,970</b>

11. All the assets of the Corporate Debtor shall be acquired by the resolution professional on an “As is whereis basis” which include movable and immovable assets, as well as proprietary rights over the registered trade mark/brand “Charming”.

12. In addition, the resolution applicant shall also contribute up to Rs. 2 Crores. as additional capital expenditure required for refurbishing the plant and machinery which have been lying idle and for the margin money required as the working capital.

13. It is also proposed that the existing equity shares of the company shall be cancelled and the new equity shall be issued to the resolution applicant and his nominees. The existing shareholders shall not be entitled to any demand or compensation. The existing Board of Directors shall be replaced by new Members to be nominated by the resolution applicant. Due steps be taken with the ROC at the relevant stage. The resolution applicant has worked the projection for sales over the next five years.

14. The resolution applicant also seeks waiver of the past liabilities of the Corporate Debtor. We make it clear that the resolution applicant shall only be liable for the claims received by the resolution professional during the CIR process and which have been duly provided for in the resolution plan.

15. The resolution plan has provided for constitution of a monitoring committee which shall be headed by the Resolution Professional and two other persons, one each to be nominated by the two secured Financial Creditors namely, the HDFC Bank and Kotak Mahindra Bank to monitor full implementation of the resolution plan. The Resolution plan has been

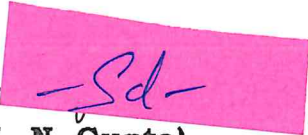
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submitted with Form H along with necessary affidavits and declarations, and adheres to the requirements in terms of section 30(2) of the Code.

16. This Bench, upon due consideration of the facts placed before us, is satisfied that the plan as approved by the COC by 97.81% votes in terms of their financial claims, with no dissent from any other claimant, meets the requirements under the Code. It Therefore receives the consent and seal of approval from this Bench. The Resolution Plan accepted by the COC stands approved. The moratorium order shall cease to have effect. The business of the Corporate Debtor shall be managed by the new Board Members. Due compliances shall be made with the ROC. Any penalty on the Corporate Debtor for non-filing of the statutory Returns by the previous management till date shall stand waived off.

The Resolution Professional shall forward all records relating to the CIR process and the resolution plan to the Board to be recorded in its database.

17. CA No. 842/2019 stands allowed and disposed off.



**(L. N. Gupta)**  
**Member (T)**



**(Ina Malhotra)**  
**Member (J)**