



**NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, COURT-I, CHANDIGARH**

**I.A. No. 2162/2023  
in  
CP (IB) No. 90/Chd/Chd/2018  
(Admitted)**

**Application under Rule 11 of the  
National Company Law Tribunal Rules,  
2016**

**IN THE MATTER OF I.A. NO. 2162 of 2023:**

**MADAN GOPAL JINDAL**

**Resolution Professional of M/s White Water Hospitality Private Limited**

ADDRESS:

M.G.Jindal & Associates,  
SCO:7-8, 4th Floor, Jandu Tower, G.T.Road,  
Miller Ganj, Ludhiana (Punjab)141003  
Email: [mgjindal@gmail.com](mailto:mgjindal@gmail.com)

**...Applicant/Resolution Professional**

**Vs.**

**V.I.R. FOODS LIMITED**

Address:

SCO:25, Sector -26, Madhya Marg,  
UT Chandigarh - 160019  
Email: [virfoods@gmail.com](mailto:virfoods@gmail.com)

**...Respondent No. 1**

**BHARAT FOOD AND AGRO PRODUCTS**

Address: SCO: 25, Sector -26, Madhya Marg,  
UT Chandigarh-160019  
Email: [bharatfap@gmail.com](mailto:bharatfap@gmail.com)

**...Respondent No. 2**

**KAMAL KANT DEWAN**

Address: H. No. 115, Sector 2, Panchkula  
Email: [kamalkdewan@gmail.com](mailto:kamalkdewan@gmail.com)

**...Respondent No. 3**



**IN**

**AND IN THE MAIN MATTER OF:**

**V.I.R. Foods Ltd.**

**...Petitioner/Financial Creditor**

**Vs.**

**White Water Hospitality Private Limited**

**...Respondent/Corporate Debtor**

**Order delivered on: 09.04.2026**

**Coram: MR. KHETRABASI BISWAL, MEMBER (JUDICIAL)  
MR. SHISHIR AGARWAL, MEMBER (TECHNICAL)**

**Present:**

For the Applicant:

Mr. Nahush Jain, Advocate

For the erstwhile CD:

Ms. Munisha Gandhi, Senior Advocate

Ms. Salina Chalana, Advocate

Ms. Sonal Alagh, Advocate

Mr. Rajat Singh, Advocate

For the Respondent No. 2 and 3:

Mr. Aditya Grover, Advocate

For the Respondent No.1:

Ms. Ramneek Kaur Mann, Advocate

**PER: SH. KHETRABASI BISWAL, MEMBER (JUDICIAL)  
SH. SHISHIR AGARWAL, MEMBER (TECHNICAL)**

**ORDER**

The present Application is filed on behalf of the Resolution Professional (hereinafter referred to as **the Applicant**) of M/s White Water Hospitality Private Limited (hereinafter referred to as **the CD**) under Rule 11 of the



National Company Law Tribunal Rules, 2016 (hereinafter referred to as **NCLT Rules**) for seeking directions regarding payment of CIRP costs (including IRP/RP fees). The Applicant has claimed the following reliefs:

- (a) to direct the Respondents / Financial Creditors / COC members to pay the outstanding CIRP Cost (including the Fees of RP as well as Security expenses);
- (b) Or/And issue such necessary orders/ directions as may be deemed fit in the matter.

**2. The facts of the case, as stated in the Application and the short notes, are as under:**

(a) M/s V.I.R. Foods Limited(hereinafter referred to as the Respondent No.1), a Financial Creditor, initiated CIRP under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **the Code**) against the CD which was admitted by this Tribunal, vide Order dated 21.11.2019. Mr. Madan Gopal Jindal was appointed as the Interim Resolution Professional (hereinafter referred to as the IRP). Pursuant thereto, the IRP issued a public announcement in Form-A on 23.11.2019 inviting claims from stakeholders.

(b) The CoC was constituted pursuant to receipt of claims from following Financial Creditors till the stipulated date:

<b>Name of the COC member</b>	<b>VOTING SHARE (in percentage)</b>
V.I.R Foods Limited	10.28%
Bharat Food And Agro Products	80.48%
Kamal Kant Dewan	9.24%
Total	100%



(c) The 1st CoC meeting was held on 20.12.2019 wherein amongst others, a resolution related to the appointment of Madan Gopal Jindal as RP was passed. In the said 1st meeting of CoC dt. 20.12.2019 unanimous resolutions were passed regarding the fees of IRP and RP, which are as follows:

(i) The CoC in Agenda item no. 7 discussed the Fees of IRP and expenses incurred by IRP, total of which was Rs. 1,59,257/-. The same was unanimously approved and ratified by the CoC.

(ii) Further, the CoC in Agenda item no. 8 discussed the Fees of RP and expenses incurred by RP, and it was unanimously approved that RP is appointed for a Professional Fee of Rs.1,25,000/- per month plus actual expenses and GST, if any, till the period he continues to act as RP.

(d) In the 8th CoC meeting held on 02.09.2021, the CoC deliberated upon the fees of the RP and other CIRP expenses under Agenda Item No. 4. The RP placed before the CoC a statement of CIRP costs incurred and to be incurred up to 01.09.2021, amounting to Rs. 37,83,382/-, out of which Rs. 24,25,738/- was outstanding as on that date. Accordingly, the COC unanimously approved and ratified the amount of Rs. 37,83,382/- incurred by RP as CIRP cost. Under Agenda Item No. 6(a) of the 8th CoC meeting, it was unanimously resolved that w.e.f. 02.09.2021, the RP shall be paid a fee of Rs. 70,000 per month plus GST and actual expenses for the next twelve months.

(e) The fees payable to RP which has been duly approved and ratified by CoC as aforesaid is as follows:

S.No.	Purpose	Amount	CoC Approval
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1.	Fees payable to IRP	1,59,257	1st CoC
2.	Fees payable to RP (calculated at Rs. 1,25,000 per month from 21.12.2019 to 01.09.2021) Plus GST Travelling Expenses	27,97,500 69,840	1st and 8th CoC
3.	Fees payable to RP (calculated at Rs. 70,000 per month from 02.09.2021 to 01.09.2022) Plus GST Travel expenses	9,91,200 77,280	8th CoC
	Total	40,95,077	

Out of the Total payable fees of Rs. 40,95,077, an amount of Rs, 10,03,857 has already been received by the RP, therefore an amount of Rs. 30,91,220 is still outstanding to be paid towards the fees of Applicant RP.

(f) **Regarding Appeal against CIRP order before Hon'ble NCLAT:** An appeal being Company Appeal (AT) (Ins.) No. 1489 of 2019 was filed by the suspended Directors before the Hon'ble NCLAT against the CIRP admission order dated 21.11.2019. Vide Order dated 18.12.2019, the NCLAT issued notice and restrained the IRP from selling the assets of the Corporate Debtor without its prior approval, and by Order dated 02.03.2020 directed that all further CIRP proceedings would remain subject to the outcome of the appeal. Thereafter, vide Order dated 05.04.2021, **the Hon'ble NCLAT directed the Financial Creditor, M/s V.I.R. Foods Ltd., to pay the dues of the RP for the CIRP period.** Ultimately, the appeal was allowed and the CIRP admission Order dated 21.11.2019 was set aside by the Hon'ble NCLAT on 17.08.2023.



(g) Consequent upon the CIRP admission order dated 21.11.2019 being set aside, the management of the CD was handed back to its Directors on 25.08.2023. The present application has therefore been filed seeking directions to the Respondents to pay the outstanding CIRP costs, etc.

(h) The Applicant further submitted in the short note that the CIRP costs including RP fees were unanimously approved by all CoC members with 100% voting share in the 1st and 8th CoC meetings. The Respondents are absolutely bound by their own resolutions and cannot now resile from their obligations. Respondent Nos. 1, 2 & 3 have categorically admitted in their replies that: they do not contest the facts relating to CIRP expenses demanded by the Applicant and the CIRP expenses as sought by the Applicant were already approved and acknowledged by them at all times. The Hon'ble NCLAT vide Order dated 05.04.2021 also directed to pay dues of RP for the CIRP period. The Respondents, having approved the CIRP costs and RP fees in multiple CoC meetings, are estopped from denying their liability to pay the same. The Applicant further contented the fact that CD has settled its debt with Respondent No.1 does not absolve the COC members from their obligation to pay CIRP costs which were approved by them during the CIRP process. In any case, until the NCLAT Order dated 17.08.2023 setting aside the CIRP admission, admittedly the COC members were liable to pay entire CIRP dues, as approved by them.



**3. The Respondent No. 2 and 3 in its Reply, has made the following submissions:**

(a) It is stated that Respondent No. 3, in his individual capacity, and Respondent No. 2, being a partnership firm, who were Financial Creditors of the CD and had duly submitted their claims pursuant to the public announcement issued by the RP in terms of the admission Order dated 21.11.2019 passed in the Company Petition filed at the instance of VIR Foods Ltd. Both were accordingly admitted as members of the CoC constituted during the CIRP. However, the said admission Order dated 21.11.2019 was subsequently set aside by the Hon'ble NCLAT vide Order dated 17.08.2023 passed in Company Appeal (AT) (Insolvency) No. 1489 of 2019. Against the said Order dated 17.08.2023, passed by the Hon'ble NCLAT the Respondent No.2 and 3 filed a Civil Appeal before the Hon'ble Supreme Court of India. Similarly, another Civil Appeal also stood filed by M/s VIR Foods Ltd.

(b) The Hon'ble Supreme Court, set aside the Order of Hon'ble NCLAT and NCLT by order dated 12.12.2023 and recorded the admission of the CD to pay the financial debt of M/s VIR Foods Ltd. amounting to ₹52,64,161.64 along with interest from 01.01.2018 till payment, and remitted the matter to this Tribunal for consideration of the issues specified therein. It is further stated by the Respondent No. 2 and 3 that the IRP/RP has claimed total CIRP costs of ₹40,95,077, out of which ₹10,03,857 has been received and ₹30,91,220 is claimed as payable towards RP's fees, whereas security expenses of ₹17,24,350 stand already paid and settled by the Financial Creditor.



© It is stated by Respondent No. 2 and 3 that once the CD has admitted its liability to pay the financial debt of Respondent No.1 in order to avoid continuation of the CIRP, the entire CIRP costs are liable to be borne by the CD. It is further stated that the CIRP was triggered only due to the failure of the CD to discharge its admitted dues at the initial stage, which led to prolonged proceedings and accrual of CIRP costs. Since the CD ultimately admitted the debt before the Hon'ble Supreme Court, the CIRP costs, including the security expenses and other costs incurred by the RP, are attributable solely to the CD.

(d) The Respondents have prayed that the CD be directed to pay the entire CIRP costs amounting to ₹40,95,077 along with security expenses of ₹17,24,350 and any other CIRP-related expenses to the RP, with a further direction to refund the amounts already paid by the Financial Creditors. It is stated that Respondent No. 3 has already paid ₹25,21,118 towards CIRP costs. They have further sought dismissal of the RP's application seeking recovery of CIRP costs from the Financial Creditors and have requested the RP to place on record a detailed statement of all CIRP expenses for proper adjudication.

**4. The Respondent No.1 in its Reply has made the following submissions:**

(a) The Reply was filed by the RP of Respondent No.1 stating that pursuant to settlement between the CD and Respondent No.1, the just outcome is that the CD, being the beneficiary of the termination of the CIRP, must bear the expenses related to that process. The Respondent No.1 further states that the CIRP of Respondent No. 1 has already been initiated, it cannot directly pay off



the CIRP cost rather RP of CD has to file a claim with the RP of Respondent No.1.

**5. The Corporate Debtor, not a party to the case gave its Reply and written submissions, which are as follows:**

(a) The CD submitted that although it is not a party against whom any relief has been sought in the present application for CIRP costs, it has filed the reply pursuant to the directions of this Tribunal dated 11.03.2024 in order to place the correct factual background before this Bench. The application for recovery of CIRP costs has been filed by the erstwhile Resolution Professional against Respondent No.1 to 3 who were the members of the erstwhile CoC.

(b) It is the case of the CD that the CIRP was set aside by the Hon'ble NCLAT as having been wrongfully initiated. It is further stated that Respondent Nos. 1 to 3 have failed to comply with repeated directions of the Appellate Authority to pay the interim CIRP costs, which remain unpaid till date. The Respondent relies upon settled law, including the judgment of the Hon'ble Supreme Court in ***Rajkumar Brothers and Production Pvt. Ltd. v. Harish Amilineni***, to contend that where CIRP is wrongly initiated, the liability to pay the fees and costs of the Resolution Professional lies upon the financial creditor who invoked the proceedings.

© It is submitted by CD that the alleged RP fees were ratified by the FC and COC and CD never ratified the same and he is not a party to I.A. No. 2162 of 2023 and that no relief has been sought against it therein. The obligation to bear and pay the CIRP costs squarely lies upon the members of the CoC



and/or FC. Moreover, the CIRP was wrongfully initiated against the CD and was subsequently set aside by the Hon'ble Appellate Tribunal.

6. The Applicant filed a Rejoinder to the Reply filed by Respondent Nos.1, 2 and 3 which substantially reiterates the facts and submissions already stated in the main Application.

**Analysis and Findings:**

7. We have Heard the Ld. Counsels for all parties and considered the arguments presented on behalf of the parties and also their respective petitions, replies, and written submissions and have also gone through the legal position in this regard.

8. **The main issue for determination is 'who shall bear the CIRP cost/ RP fees incurred during the CIRP period, when the CIRP has finally been set aside?**

9. The facts of the case clearly show that the Petition was filed under section 7 by the Respondent No.1 i.e V.I.R Foods Ltd., being the Financial Creditor. The petition was admitted by this bench vide Order dated 21.11.2019. The said Order was set aside by Hon'ble NCLAT vide Order dated 17.08.2023 in appeal filed by the respondent CD, in Company Appeal(AT)(INSOLVENCY) No. 1489 of 2019, holding the admission Order to be patently illegal. The NCLAT in the same Appeal, vide its Order dated 05.04.2021, directed the V.I.R Foods Ltd to pay the dues of RP for the CIRP period accrued till that date.

10. The Respondent No.2 and 3 filed a Civil Appeal before the Hon'ble Supreme Court of India against the order of NCLAT dated 17.08.2023. Another



Civil Appeal also stood filed by M/s VIR Foods Ltd (Respondent No.1). The Hon'ble Supreme Court in the Civil Appeal vide its Order dated 12.12.2023 set aside both the judgements of NCLAT and NCLT. The setting aside was done pursuant to the settlement being done by the CD and the Respondent No.1 wherein the CD agreed to pay the amount of Rs. 52,64,161.64 as claimed due by the Respondent No. 1 and further held that the pleas and contentions of Respondent No.2 and Respondent No. 3 regarding their claims will be dealt by this Tribunal. The Hon'ble Supreme Court remitted the matter to this Tribunal to examine the question of fees/cost of the RP.

11. In terms of Section 5(13) of the Code, the fees payable to any person acting as a Resolution Professional and the expenses incurred for running the CIRP comes within the definition of the CIRP cost. The RP renders services during the process of CIRP and the work undertaken during the subsistence of the CIRP cannot be rendered unpaid merely because the proceedings were subsequently set aside. CIRP costs, including RP fees, are accorded priority and must be discharged for the period during which the process remained in force.

12. It can be seen that once the admission of CIRP itself is set aside and the dispute is settled between the initiating Financial creditor and the CD, the liability to bear CIRP costs must follow the party who invoked and pursued the insolvency proceedings, particularly when the CIRP process did not culminate in resolution or liquidation and a settlement was reached between them.



13. The other CoC members i.e Respondent Nos. 2 and 3 neither triggered the CIRP nor benefited from the CIRP. Their participation was incidental to the statutory process that followed admission. Therefore, once the admission order stands set aside and the matter has been resolved between the initiating Financial Creditor and the Corporate Debtor, the liability to bear the outstanding CIRP costs, including the approved fees of the IRP/RP and other expenses, must rest upon the Applicant who set the insolvency process in motion, and the same cannot be thrust upon the other CoC members merely by virtue of their participation in the process pursuant to the now set aside CIRP.

14. The contention of the Respondents that the CD should bear the CIRP costs on the ground that it later admitted its liability before the Hon'ble Supreme Court is legally untenable. Since the very initiation of CIRP was declared illegal by the NCLAT vide order dated 17.08.2023, the Corporate Debtor cannot be held liable for any CIRP costs arising from that vitiated process.

15. The Respondent No. 1 herein, who initiated the CIRP cannot now escape the liability of CIRP costs after having initiated the CIRP mechanism which was held unsustainable in law. This is even more so in the light of the settlement amount having been received by them from the CD, outside the CIRP. Non-payment of CIRP cost to RP would be contrary to the scheme and objectives of the Code and would undermine the independence and functioning of insolvency professionals. In the case of **Rajkumar Brothers And Production**



**Private Limited Vs Harish Amilineni Shareholder and erstwhile Director of Amilonn Technologies Private Limited & Anr, Civil Appeal No. 4044 of 2020, decided on 22.01.2021**, the Hon'ble Supreme Court upheld the order of Appellate Tribunal in which it has directed the Financial Creditor to pay the due fee to the RP -

*"4. ....The Appellant has challenged the impugned order only to the extent of the direction in paragraph 8(C) thereof, which reads as follows:*

***"The IRP/RP will place particulars regarding CIRP costs and fees before the Adjudicating Authority and the Adjudicating Authority after examining the correctness of the same will direct the Operational Creditor to pay the same in time to be specified by the Adjudicating Authority."***

*5. The direction is in the nature of costs of the proceedings under Section 7 of the IBC, which have been found to be unsustainable in law. The Respondent having succeeded, cannot be saddled with the costs of the Corporate Insolvency Resolution Process (CIRP) initiated at the behest of the Appellant or with the fees of the Interim Resolution Professional (IRP). The direction does not warrant interference in appeal.*

*6. We find no grounds to interfere with the order dated 10th August, 2020 passed by the National Company Law Appellate Tribunal in Company Appeal (AT) (Insolvency) No.212 of 2020."*

16. In view of above discussions, the Respondent No. 1 i.e V.I.R Foods Ltd, being the Applicant in CP(IB) No. 90/chd/chd/2018 is directed to bear and expeditiously pay the CIRP cost/fees of RP amounting to Rs. 30,91,220.



17. Accordingly, **I.A. (I.B.C) No. 2162 of 2023** is **allowed in the above terms and disposed** of.

**Sd/-**  
**SHISHIR AGARWAL**  
**MEMBER (TECHNICAL)**  
Sudesh

**Sd/-**  
**KHETRABASI BISWAL**  
**MEMBER (JUDICIAL)**