

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH**

**COURT III**

**I.A. 1312/2022**

Under Regulation 31, 33 & 34 of Corporate Insolvency Resolution Process

(CIRP) Regulations

**In the matter of**

**Resolution Professional**

**Jogma Laminates Industry (P) Ltd.**

1103 Raj Sunflower Royal Complex

Eksar Road, Borivali (West), Mumbai 92

**...Applicant/Resolution Professional**

**Vs.**

**Committee of Creditors**

**Jogma Laminates Industry (P) Ltd.**

**...Respondents**

**In the matter of**

**C.P. No. (IB) 4065/MB/2018**

Dena Bank Limited

**...Financial Creditor**

**Versus**

Jogma Laminates industry Private Limited

**...Corporate Debtor**

**Reserved for order on: 28.11.2022**

**Order delivered on: 06.12.2022**

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

**Appearance:**

For the Applicant: Adv. Partho Sarkar a/w Adv. Partik Sarkar

i/b Vidhi Legal

For the Respondents: Adv. Nausher Kohli a/w Adv. Vaisala

Pant, Adv. Nasarin Shaikh i/b Indus Law

**Per: H.V. SUBBA RAO, Member (J)**

## **ORDER**

1. The present I.A. is filed by the Resolution Professional Mr. Rohit Vora claiming the following reliefs:
  - a. *To direct the COC members to pay their share of outstanding CIRP cost as set out in Exh A; in terms of the binding precedent/s stated in para (iv) e) supra.*
  - b. *India Resurgence Fund (erstwhile Religare Finvest), having not contributed anything towards CIRP, given the spirit of ruling in B. Rameshwar (RP – Easun Reyrolle supra), India Resurgence Fund be directed to be removed from COC.*
  - c. *Directions be issued to summon attendance of Adv. Karl Tamboly Under Rule 39(2) of NCLT Rules.*
  - d. *Any other reliefs to the instant applicant in terms of prayer clause a) to c).*
  - e. *Such other directions given the facts/circumstances of the present matter.*
2. Heard Mr. Partho Sarkar, counsel appearing for the Resolution Professional and perused the record. The learned counsel appearing for the Resolution Professional fairly submitted that even though he has sought directions be issued to summon the attendance of advocate Adv. Karl Tamboly under Rules 39(2) of NCLT Rules in terms of prayer clause 'c' he is not seriously pressing for the same and pressing for only relief of the payment of RP's fees.
3. Before deciding the above issue, it is important to mention here that the present applicant herein filed another M.A. bearing M.A. No. 3399/2019 claiming fee and expenses till 31.08.2019 which was disposed of by this Tribunal on 10.11.2022. In fact, the present application bearing I.A. 1312/2022 also could have been disposed of along with the above M.A. through common order since both the applications are filed for the same relief for different periods and also in view of addressing common arguments in both I.A.s in one hearing. However, due to inadvertence the above M.A. 3399/2019 was disposed of and therefore necessity has arisen for passing appropriate order in the present I.A. 1312/2022 for the fee of

RP for the remaining period from 24.04.2019 to 24.04.2022. On, 28.11.2022 when the above I.A was listed for clarification, the learned counsel appearing for the Applicant/RP brought to the attention of this Tribunal about the above inadvertent error and requested to pass appropriate order in the present I.A. It is appropriate to observe here that the CIRP process has come to a standstill due to tussle between the RP and the COC which ultimately led to filing liquidation application bearing M.A. No. 3688/2019 by the Resolution Professional himself without backed by any resolution of COC which was allowed by this Tribunal vide order dated 16.11.2022 since CIRP order was passed way back on 25.04.2019. Therefore, the issue that needs to be decided in the present I.A is:

*Whether the Resolution Professional is entitled for the same fee as was fixed by the COC without doing any work?*

4. The only contention of Mr. Partho Sarkar, counsel appearing for the RP is that even though the COC has resolved to replace the RP with Mr. Rajat Naidu in the third COC meeting held on 18.07.2019, no such application was filed by the COC for change of RP and therefore the present RP is entitled for the agreed fee till the RP was discharged through an order of this tribunal. In the present application, the RP is claiming an amount @ 3.75 lacs per month both for himself and his team besides expenses in a sum of Rs. 1,68,60,372/- without doing any work. The RP cannot claim fee by taking advantage of the inaction of the COC in filing an application for his replacement nor on certain observations made in MA 3399/2019 as the above MA was filed for fee and expenses during the active period of CIRP. This Bench made certain observations in M.A. 3399/2019 since the COC is objecting for payment of fee and expenses of the team of RP even during the active CIRP period which was the lis in M.A 3399/2019. The Applicant cannot claim the same amount for subsequent period even without considering Covid circumstances etc. by taking advantage of certain observations in M.A. 3399/2019.
5. It is also pertinent to observe here that the Resolution Professional has already claimed his fee and expenses till 31.08.2019 in the earlier M.A. 3399/2019 and in the present I.A. 1312/2022, he claimed fee and expenses

from 24.04.2019 to 24.04.2022 under Exhibit 'A' of the present application. The Resolution Professional has already claimed the expenses of Rs. 1,50,000/- for preferring M.A. 3399/2019 which was allowed by this Bench. Surprisingly, he claimed another 7,95,407/- towards legal fee and expenses for moving the present I.A. for the same relief of payment of fee. It is an admitted fact that human life was completely paralyzed, business activities, production, transport everything has come to standstill all over globe due to COVID-19 pandemic from 25.03.2020 till the end of 2021 due to three waves of COVID. This tribunal is unable to understand how the RP can claim fee not only for himself but also his team for the COVID period more so by creating a tussle between the COC and himself with regard to way forward of the CIRP process. This bench also observes that the RP having filed an application for liquidation orally opposed for passing an order of liquidation contending that the Corporate Debtor is viable for resolution. The major COC member is alleging that the RP has handed over interim custody of the Corporate Debtor to the members of the suspended board which is not denied by RP. This Bench has taken a very serious note about the conduct as well as the way of charging fee by RP without doing any work.

6. Therefore, for the aforesaid reasons, this bench is of the considered opinion that the RP is merely entitled for his fee of Rs. 1,00,000/-+GST per month from 01.09.2019 to 24.04.2022 as fairly agreed by M/s Relegere Finvest Ltd who is a major COC member along with actual expenses like valuation expenses etc. incurred by Resolution Professional for protecting the property. against production of bills till the property is handed over to liquidator as certified by COC. The COC is also at liberty to approve any other expenses incurred by RP as it deems fit without being influenced by any of the above observations made in this order. The CoC is hereby directed to act accordingly.
7. With the above observations and directions, the above I.A is **disposed of.**

**Sd/-**

**ANURADHA SANJAY BHATIA  
MEMBER (TECHNICAL)**

**Sd/-**

**H.V. SUBBA RAO  
MEMBER (JUDICIAL)**