IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 209
IB-424/ND/2023
IA-6/ND/2025, IA-4218/ND/2024

IN THE MATTER OF:
Appearels India Through Its Properietor Mr. Pradeep
Having registered office at:
Dairy Farms, Post Office Lane,
Masoodpur Village, New Delhi-110070 ... **Operational Creditor**

Versus

Aban Exim Pvt. Ltd.
Having registered office at:
F NO-210-P NO-12, Suneja Tower,
Janakpuri, New Delhi-110058 ... **Corporate Debtor**

AND IN THE MATTER OF IA NO. 6/ND/2025:
MR. VIKRAM BAJAJ RESOLUTION PROFESSIONAL FOR ABAN EXIM PVT. LTD.
HAVING OFFICE AT:
214, TOWER A, SECTOR 47,
GURGAON, HARYANA - 122018 ... **Applicant**

Versus

1. M/s Apparels India
Through its proprietor, Mr. Pradeep & Anr.
Having Office at:
Dairy Farms, Post Office Lane,
Masoodpur Village, New Delhi-110070 ... **Respondent No. 1**

2. Department of Trade and Taxes/VAT/GST
Having Address at:
Vyapar Bhawan, Indraprashta Marg,
IP Estate, Delhi, 110002 ... **Respondent No. 2**

AND IN THE MATTER OF IA NO. 4218/ND/2024:
MR. VIKRAM BAJAJ RESOLUTION PROFESSIONAL FOR ABAN EXIM PVT. LTD.
HAVING OFFICE AT:
214, TOWER A, SPAZEDGE
SECTOR 47, GURGAON, HARYANA - 122018 ... **Applicant**

Under Section: 9 of IBC, 2016

Order delivered on 19.08.2026

CORAM:

SH. ASHOK KUMAR BHARDWAJ	**SH. ATUL CHATURVEDI**
HON'BLE MEMBER (J)	**HON'BLE MEMBER (T)**

PRESENT:

For the Operational Creditor	**:**	Adv. Rakesh Kumar Adv. Preeti Kashyap, Adv.Ankit Sharma, Adv. Pulkit Mehrotra
For the RP	**:**	Adv. Abhishek Anand, Adv. Karan Kohli & Adv. Ridhima Mehrotra

Hearing Through: VC and Physical (Hybrid) Mode

ORAL ORDER

IA-6/ND/2025, IA-4218/ND/2024: On 22.04.2026, we passed the following order:-

> ***IA-6/ND/2025***: *Our attention is drawn to the minutes of the board meeting of the CoC held on 14.01.2024 at 12:30 pm. It is seen from the contents of IA-4218/ND/2024 that the Members of CoC did not turn up to participate in the meeting. The RP sought exclusion of 159 days from the period of CIRP. Nevertheless, subsequently, the CoC Members could pass a resolution that the Corporate Debtor should be liquidated. In such cases, when there are no assets owned by the Corporate Debtor, the liquidation process would cause further burden on the creditor. In the present case, it is not clear whether the Corporate Debtor owns any assets or not. Let the RP place on record the last three Audited Balance Sheets to show as to whether the CD owns any assets or not. Let the notice also be issued to the Operational Creditor to file an affidavit that if it was not prepared to participate in the CoC in first place, with what intent and object it preferred application under Section 9 of IBC. The Operational Creditor shall also place on record the complete details regarding its relationship of the business deal or business transaction entered into by it with the Corporate Debtor. It is made clear that if the Operation Creditor is unable to come up with the factual position clearly, we may have to order an investigation into the matter as to why the Operation*

Creditor did not choose to participate in CoC after order of CIRP.
*List on **28.05.2026**.*

***<u>IA-4218/ND/2024</u>**: List along with IB-424/ND/2023 on **28.05.2026**.*

The Ld. Counsel for the RP submitted that the Corporate Debtor does not own any assets. Such is the stand taken by RP in his affidavit dated 02.06.2026, Para 8-10 of which reads thus:-

8. I state that the present additional affidavit is being filed in compliance with the directions issued by this Hon'ble Adjudicating Authority on 22.04.2026, *wherein* this Hon'ble Adjudicating Authority *inter-alia* directed the Deponent to place on record the last three available Audited Balance Sheets of the Corporate Debtor, to clarify the status of its assets. The relevant portion of Order dated 22.04.2026 reads as under:

> *"In the present case, it is not clear whether the Corporate Debtor owns any assets or not. Let the RP place on record the last three Audited Balance Sheets to show as to whether the CD owns any assets or not."*

I state that the financial and operational status of the Corporate Debtor is entirely defunct, as evidenced by the following facts placed before the CoC:

i. **Non-Availability of Updated Financials:** The Audited Balance Sheets of the Corporate Debtor are available only up to the financial year ending 31.03.2017. Copy of the Audited Balance Sheets for the Financial Years 2014-15, 2015-16, and 2016-17 are annexed herewith and marked as <u>ANNEXURE A-3 (COLLY)</u>.

ii. **Failure of Suspended Management:** The suspended Board of Directors have formally submitted that the books of accounts of the Corporate Debtor have not been updated or maintained after 31.03.2017 , and that the books of accounts have completely stopped being maintained or updated thereafter. Copy of the written communications/emails received from the suspended directors in this regard are annexed herewith and marked as <u>ANNEXURE A-4 (COLLY).</u>

iii. **Cancellation of Statutory Registrations:** Upon obtaining the login credentials for the GST portal from the suspended management, it was discovered that the GST registration of the Corporate Debtor was cancelled since **April 2023** i.e., prior to initiation of CIRP of the Corporate Debtor.

iv. **Absence of Assets and Business:** The Corporate Debtor has no ongoing business operations, no revenue generation, and possesses no realizable assets whatsoever.

10. I state that the aforementioned state of affairs was duly recorded and discussed during the 2nd meeting of the CoC. The relevant excerpt of the minutes of the 2nd CoC meeting is reproduced hereinbelow for the ease of reference of this Hon'ble Adjudicating Authority:

> *"The RP further briefed that the suspended board of directors have submitted that the audited financial statements of the company are available only up to 31-3-2017 and that the books of accounts have not been updated thereafter. Further there is no assets and business in the Corporate Debtor. The login details of GST portal were provided and on login it is observed that the GST number was cancelled in April 2023. The suspended directors submitted that they were appointed for completing minimum number of directors and have provided all available information. The representative of GST submitted that since the company does not have any assets and updated accounts are also not available, carrying on the CIRP will only entail additional costs for the COC members. In such a scenario the applicant / COC member, Apparels India should consider moving a proposal for withdrawal of CIRP under Sec 12A of IBC, 2016."*

Copy of minutes of the 2nd CoC meeting convened on 23.08.2024 is annexed herewith and marked as **ANNEXURE A -5.**

Indubitably, the CIRP as also Liquidation Process involves costs and liabilities. The provision to the effect had been made in Regulation 2(1) (ea) of the IBBI (Liquidation Process) Regulations, 2016. The provisions regarding Liquidator's fee is contained in Regulation 4 of the aforementioned Regulations, which reads thus:-

> ***4. Liquidator's fee.***
>
> *(1) The committee may fix the fee of the liquidator in the first meeting after the appointment of liquidator during the liquidation process, in accordance with sub-section (8) of section 34.*
>
> *(2) If the committee has not fixed the fee under sub-regulation (1), the fee as a percentage of the amount distributed to the stakeholders, for the balance period of liquidation, will be as under:*

Amount of Distribution (In rupees)	Percentage of fee on the amount distributed		
	in the first six months	in the next six months	thereafter
Amount Distributed to Stakeholders (exclusive of liquidation costs)			
On the first 1 crore	5.00	4.00	2.0
On the next 9 crore	4.00	3.00	1.50
On the next 40 crore	2.50	2.0	1.0
On the next 50 crore	1.25	1.0	0.50
On further sums realized	0.25	0.20	0.10

Explanation.- It is hereby clarified that the requirements of this regulation shall apply to the liquidation processes commencing on or after the date of the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Fourth Amendment) Regulations, 2026.

We also see from the Regulation 39 (B) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, the CoC has to make provision regarding liquidation cost. The Regulation reads thus:-

Regulation 39B: Meeting liquidation cost.

[1][**39B.** *(1) While approving a resolution plan under sub-section (4) of section 30 or deciding to liquidate the corporate debtor under sub-section (2) of section 33, the committee may make a best estimate of the amount required to meet liquidation costs, in consultation with the resolution professional, in the event an order for liquidation is passed under section 33.*

(2) The committee shall make a best estimate of the value of the liquid assets available to meet the liquidation costs, as estimated in sub-regulation (1).

(3) Where the estimated value of the liquid assets under sub-regulation (2) is less than the estimated liquidation costs under sub-regulation (1), the committee shall approve a plan providing for contribution for meeting the difference between the two.

(4) The resolution professional shall submit the plan approved under sub-regulation (3) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.

As can be seen from the provisions of Regulations 34B(5) of the IBBI (CIRP) Regulations, 2016, the CIRP cost is borne by the members of CoC, if the assets of the CD are not sufficient to meet the same. The Regulations 31 to 34B reads thus:-

> ***Regulation 31: Insolvency resolution process costs.***
>
> *"Insolvency resolution process costs" under Section 5(13)(e) shall mean-*
>
> *(a) amounts due to suppliers of essential goods and services under Regulation 32;*
>
> [2]*[(aa) fee payable to authorised representative under* [3]*[sub-regulation (8)] of regulation 16A;*
>
> *(ab) out of pocket expenses of authorised representative for discharge of his functions under* [4]*[section 25A];]*
>
> [5]*[(ac) fee payable to facilitator under clause (c) of sub-regulation (1) of regulation 16C.]*
>
> *(b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);*
>
> [6]*[(ba) fee payable to the Board under regulation 31A;]*
>
> *(c) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33;*
>
> *(d) expenses incurred on or by the resolution professional fixed under Regulation 34; and*
>
> *(e) other costs directly relating to the corporate insolvency resolution process and approved by the committee.*
>
> *xxx*
>
> ***Regulation 32: Essential supplies.***
>
> ***32.*** *The essential goods and services referred to in section 14(2) shall mean-*
>
> *(1) electricity;*
>
> *(2) water;*
>
> *(3) telecommunication services; and*
>
> *(4) information technology services,*

to the extent these are not a direct input to the output produced or supplied by the corporate debtor.

Illustration-Water supplied to a corporate debtor will be essential supplies for drinking and sanitation purposes, and not for generation of hydro-electricity.

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Regulation 33: Costs of the interim resolution professional.

33. *(1) The applicant shall fix the expenses[1] to be incurred on or by the interim resolution professional.*

(2) The Adjudicating Authority shall fix expenses where the applicant has not fixed expenses under sub-regulation (1).

(3) The applicant shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies.

(4) The amount of expenses ratified by the committee shall be treated as insolvency resolution process costs.

[Explanation. - For the purposes of this regulation, "expenses" include the fee to be paid to the interim resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the interim resolution professional.]

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Regulation 34: Resolution professional costs.

34. *The committee shall fix the expenses to be incurred on or by the resolution professional and the expenses[1] shall constitute insolvency resolution process costs.*

[*Explanation. - For the purposes of this regulation, "expenses" include the fee to be paid to the resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the resolution professional.*

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Regulation 34A: Disclosure of Costs.

*[1][**34A.** The interim resolution professional or the resolution professional, as the case may be, shall disclose item wise*

insolvency resolution process costs in such manner as may be required by the Board.]

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Regulation 34B: Fee to be paid to interim resolution professional and resolution professional.

*[1][**34B.** (1) The fee of interim resolution professional or resolution professional, under regulation 33 and 34, shall be decided by the applicant or committee in accordance with this regulation.*

(2) The fee of the interim resolution professional or the resolution professional, appointed on or after 1st October 2022, shall not be less than the fee specified in clause 1 for the period specified in clause 2 of [2][Schedule-I]:

Provided that the applicant or the committee may decide to fix higher amount of fee for the reasons to be recorded, taking into consideration market factors such as size and scale of business operations of corporate debtor, business sector in which corporate debtor operates, level of operating economic activity of corporate debtor and complexity related to process.

(3) After the expiry of period mentioned in clause 2 of [2][Schedule-I], the fee of the interim resolution professional or resolution professional shall be as decided by the applicant or committee, as the case may be.

(4) For the resolution plan approved by the committee on or after 1st October 2022, the committee may decide, in its discretion, to pay performance-linked incentive fee, not exceeding five crore rupees, in accordance with clause 3 and clause 4 of [2][Schedule-I] or may extend any other performance-linked incentive structure as it deems necessary.

(5) The fee under this regulation may be paid from the funds, available with the corporate debtor, contributed by the applicant or members of the committee and/or raised by way of interim finance and shall be included in the insolvency resolution process cost.]

In the present case, indubitably, the Operational Creditor, namely, Apparels India, could initiate the process but did not participate in the CIRP. As far as the other creditor is concerned, it also abstained from voting in the process. Mr. Kohli, Ld. Counsel for RP, submitted that the dues payable to GST Department are Rs. 1.02 crores. Non-participation of the Operational

Creditor, who initiated CIRP, in the process gives rise to suspicion regarding its very conduct to initiate the process, which cannot be ignored casually.

Once Corporate Debtor has no assets, ordering liquidation would be a futile and expensive exercise. **In the wake, we reverse the CIRP and restore the position as it was as on date of passing the order dated 01.01.2024 directing commencement of CIRP.** The Corporate Debtor is relieved from the rigors of CIRP. It is made clear that Corporate Debtor and its directors would be liable for all the claims and causes, to which they could be subjected but for commencement of CIRP. **The applications stand disposed of.**

Sd/-	**Sd/-**
(ATUL CHATURVEDI)	**(ASHOK KUMAR BHARDWAJ)**
MEMBER (T)	**MEMBER (J)**

Abhijat/Esha