

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD  
COURT NO. II**

**IA No. 412/AHM/2022  
AND  
Inv. P No. 03/AHM/2022  
IN  
IA No. 275/AHM/2022  
IN  
CP (IB) 848/AHM/2019**

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.

**IN THE MATTER OF IA No. 412/AHM/2022**

**Malay Mahanti & Ors.**

**...Applicants**

**VERSUS**

**Pinakin Shah & Ors.**

**...Respondents**

**AND**

**IN THE MATTER OF Inv. P. 03/AHM/2022**

**Colonel Rakesh Kumar Dandapat & Ors.**

**...Intervenors**

**AND**

**IN THE MATTER OF IA No. 275/AHM/2022**

**Pinakin Surendra Shah  
IRP of Sintex Industries Ltd.**

**...Applicant**

**AND**

**IN THE MATTER OF CP (IB) 848/AHM/2019**

**Invesco Asset Management  
(India) Pvt. Ltd.**

**... Financial Creditor**

**VERSUS**

**Sintex Industries Ltd.**

**...Corporate Debtor**

**Order Pronounced On: 05/09/2022**

**Coram:**

**DR. DEEPTI MUKESH,  
HON'BLE MEMBER (JUDICIAL)  
AJAI DAS MEHROTRA,  
HON'BLE MEMBER (TECHNICAL)**

**MEMO OF PARTIES****IA 412/AHM/2022****1. Malay Mahanti**

Shareholder of Sintex Industries Limited  
305/306, Casablanca Hiranandani Estate  
Ghodbunder Road Patlipada,  
Thane West Thane, Maharashtra, 400607

**2. Vishal Kumar**

Shareholder of Sintex Industries Limited  
Flat No. 901 Senina CHS Ltd.  
Hiranandani Estate Ghodbunder Road Thane,  
Maharashtra, 400607

**3. Shrabani Mahanti**

Shareholder of Sintex Industries Limited  
Ghodbunder Road Patlipada, Thane West  
305/306, Casablanca Hiranandani Estate Thane,  
Maharashtra, 400607

...Applicants

Versus

**1. Pinakin Shah**

IRP of Sintex Industries Limited  
A/201 Siddhi Vinayak Towers,  
B/H BMW Showroom Next to Kataria House,  
off S.G.Highway, Makaraba,  
Ahmedabad, Gujarat- 380051

**2. Reliance Industries Ltd.**

**Along with**

**Assets Care and Reconstruction Enterprise Limited**

3<sup>rd</sup> Floor, Chamber IV 222 Nariman Point

Mumbai MH 400021

And

2<sup>nd</sup> Floor, Mohandev Building 13,

Tolstoy Marg New Delhi DL 110001

IA No. 412/AHM/2022

Inv. P No. 03/AHM/2022

In IA No. 275/AHM/2022

In CP (IB) 848/AHM/2019

**3. Securities Exchange Board of India**

Plot No.C4-A, 'G' Block  
 Bandra-Kurla Complex, Bandra (East),  
 Mumbai-400051, Maharashtra

...Respondents

**Present:**

For the Applicant: Mr. Nilesh Udermani, Advocate  
 For the Respondent: Mr. Naveen Pahwa, For IRP

**Inv. P. 03/AHM/2022**

**1. Colonel Rakesh Kumar Dandapat**

Jalipa Mil Station  
 Barmer, Rajasthan - 344 001

**2. Dhyan Appachu Bollachettira**

28, Jeremiah Road, Fraser Town,  
 Bangalore, Karnataka - 560 005

**3. Vignesh Subramanya Baliga**

154, 2<sup>nd</sup> Cross, RR Layout  
 Near Saibaba Temple, Arekere  
 Bangalore, Karnataka - 560 076

**4. Manish H. Jani**

10, Ronak Society  
 Opp. Sarthak Tower, Ramdevnagar  
 Satellite, Ahmedabad-380 015

... Intervenors

**Present:**

For the Intervenor: Mr. Jeet Kasia, Advocate

## ORDER

1. The Application bearing **IA No. 412/AHM/2022** is filed in IA No. 257/AHM/2022 by three shareholders of the Corporate Debtor Sintex Industries Ltd. ('Applicants') namely Mr. Malay Mahanti, Mr. Vishal Kumar and Mr. Shrabani Mahanti against the Interim Resolution Professional Mr. Pinakin Shah, Reliance Industries Ltd. along with Assets Care and Reconstruction Enterprise Ltd. ('Respondent No. 2') and Securities Exchange Board of India ('Respondent No. 3') under Section 60 (5) (c) of the Insolvency and Bankruptcy Code, 2016 ('Code') seeking following directions:
  - a) *Your Lordship may be pleased to allow the application under Section 60(5)(c) of the Insolvency and Bankruptcy Code, in the interest of Applicant/stakeholders;*
  - b) *Your Lordship may be pleased to direct the Respondent to provide the copy of Approved Resolution Plan by CoC to the applicant since the applicants are shareholders of the Corporate Debtor;*
  - c) *Your Lordship may be pleased to direct Respondent No. 2 to amend the resolution plan with respect to maintaining minimum shareholding of the Corporate Debtor or in the alternate appropriate modification in the plan;*
  - d) *Your Lordship may be pleased to quash the particular clause in the plan with respect to delisting of Corporate Debtor from NSE and BSE;*
  - e) *Your Lordship may be pleased to grant any other relief or relief as may deem fit in the interest of justice;*
  
2. The **Inv. P. 03/AHM/2022** is also filed in IA No. 275/AHM/2022 by the four shareholders claiming to be public shareholders of the Corporate Debtor ('Intervenors') under Section 60 (5) (c) Code seeking following directions:

- a) *Allow the present application and allow the Applicants to intervene in the captioned Interlocutory Application No. 275 of 2022 and the Company Petition (I.B.) No. 848 of 2019;*
  - b) *Pending the present application, direct the Interim Resolution Professional to provide a copy of the Resolution Plan as approved by the Committee of Creditors, minutes of COC meetings and a copy of the Interlocutory Application No. 275 of 2022 to the Applicants;*
  - c) *Pending the present application, pass an appropriate interim order, staying the entire Corporate Insolvency Resolution Process of Sintex Industries Ltd. being conducted by Mr. Pinakin Surendra Shah and implementation of any Resolution Plan subsequent thereto;*
  - d) *Allow the present application and pass appropriate directions to set aside the Corporate Insolvency and Resolution Process in the case of Sintex Industries Ltd. conducted till date, appoint a new Interim Resolution Professional and initiate Corporate Insolvency Resolution Process de novo with respect to Sintex Industries Ltd.;*
  - e) *Pass any other order or directions as this Hon'ble Tribunal deems fit and proper in view of the facts and circumstances of the instant case.*
3. The backdrop of the case is that an insolvency application filed by financial creditor Invesco Asset Management (India) Pvt. Ltd. under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor, was admitted on 06.04.2021 and Mr. Pinakin Shah was appointed as Interim Resolution Professional (IRP). Thereafter IRP constituted CoC and the CoC in its first meeting held on 10.05.2021 decided to appoint Mr. Shailendra Ajmera as Resolution Professional. However, in an application bearing IA No. 424/AHM/2021 filed by CoC for

replacement of Resolution Professional, following direction were issued to CoC vide order dated 05.10.2021:

*“9.....In these circumstances, in our view it would be advisable that CoC should reconsider its decision as change of IRP in between would result into delay in process. One of the objects of IBC, 2016 is to complete CIRP in the time bound manner which would get defeated. Thus, we hold that the CoC should reconsider its decision and evaluate the performance of IRP dispassionately. In case it is found that the present IRP can complete the CIRP in professional manner to the satisfaction of the CoC then the present IRP may be allowed to continue. However, if it is not found so then CoC may file an application for change of IRP based upon short comings in the overall performance of IRP so far. In this view of the matter, we refrain ourselves from dealing other contentions made by both sides.”*

It is noted that no application for replacement of IRP has been filed. Thereafter IRP conducted CIRP of the Corporate Debtor and in pursuant of approval of resolution plan by CoC by 98.88% voting right in its 21<sup>st</sup> meeting held on 2.03.2022, the IRP had filed IA 275/2022 for approval of resolution plan. Thereafter, the abovementioned two Applications are filed in IA 275/2022 by the shareholders of the Corporate Debtor.

4. The Applicants in IA 412/AHM/2022 submits that the present application is filed in pursuance of letter dated 20.03.2022 sent by the Corporate Debtor to NSE and BSE, wherein it was informed that through e-voting concluded on 19.03.2022, the resolution plan submitted by Reliance Industries Limited jointly with Assets Care & Reconstruction Enterprise Limited has been duly approved by CoC

and it is proposed in the resolution plan that existing share capital of the Corporate Debtor shall be reduced to zero and the Corporate Debtor will be delisted from the stock exchanges i.e. BSE and NSE. It is further stated that Applicants are the stakeholders of the Corporate Debtor and it is a basic right of the shareholder to know the approved resolution plan. Also, in the case of merger and amalgamation, once the scheme is approved, the same is published on the website of the company. Further the resolution plan must provide exit opportunity to the existing shareholders at a specified price as per SEBI (Delisting of Equity Shares) Regulations, 2021. The Corporate Debtor is also bound by SEBI rules and regulations and therefore interest of such stakeholders must be taken into consideration while dealing with treatment of shareholders under the resolution plan. It is further stated that the SEBI in the matter of Reliance Industries Limited v. Ajay Joshi and Ors. (Company Appeal (AT) (Insolvency) No. 942 of 2019) before Hon'ble NCLAT took following stand:

*"7. With respect to relief prayed by the Appellant, it is most humbly submitted that for cases under IBC, Delisting Regulations shall not apply only if delisting is in accordance with Regulation 3 (3) (including compliance with its provisions) of delisting Regulations which provided that such resolution plan must be approved under section 31 of IBC and either lays down any specific procedure to complete delisting of such shares or provides an exit option to the existing public shareholders at a price specified in the resolution plan."*

In view of above it is stated that treatment of shareholders must be par with the SEBI rules and regulations which is amended in accordance with the provisions of Code and if such amendment is

not made in the plan, it remains non-compliant with Section 30(2) (e) of the Code.

5. The Respondent No. 1 IRP has filed its reply and made following submissions:
  - i. Resolution Plan is a confidential document and also the provisions of the Code do not permit the disclosure of the same to any person who is not a member or participant of the CoC.
  - ii. The delisting and reduction of existing share capital of Corporate Debtor is permitted under the Code and is as per the applicable laws including Companies Act and applicable regulations issued by Securities and Exchange Board of India (SEBI).
  - iii. The present plan is not in contravention of any applicable laws and is duly compliant with Section 30 of the Code, is approved by CoC and its commercial wisdom cannot be altered or modified.
  - iv. The explanation to Section 30 (2) (e) provides that ‘if any shareholders approval is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law’. Thus, the resolution plan is binding on the shareholders.
  - v. The IRP has acted as per the provisions of the Code and made all compliances as required under law. In compliance of Regulation 30 of SEBI (LODR) Regulations, 2015 IRP has

made disclosure of details as to the delisting plans in an approved resolution plan.

6. The Respondent No. 2 Reliance Industries Ltd. along with Assets Care and Reconstruction Enterprise Ltd. has admitted in its reply that the resolution plan approved by CoC proposes delisting and reduction of existing share capital of the Corporate Debtor and makes following submission:
- i. The resolution plan is a confidential document and cannot be shared with parties who are not concerned with its approval/implementation.
  - ii. Under Regulation 37 (ca) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations'), cancellation and delisting of any shares of the Corporate Debtor is permitted for maximisation of value of assets.
  - iii. As per Regulation 3(2) of SEBI (Delisting of Equity shares) Regulations, 2021 ('Delisting Regulations'), in the instant matter so long as Resolution Plan provides for delisting of equity shares, SEBI Delisting Regulations will not apply.
  - iv. Clause 2.3 of the Resolution plan provides the rationale for delisting of the equity shares of the Corporate Debtor, which is reproduced below:

*“ 2.3. The liquidation value of the Corporate Debtor is not expected to be sufficient to cover debt of the financial creditor of the Corporate Debtor in full. Therefore, the Liquidation Value of the equity shareholders will be NIL and they will not be entitled to receive any payment and*

*hence no offer will be made to any shareholder of the Corporate Debtor”*

- v. It is a settled law that commercial decision of the CoC cannot be evaluated or analysed by the Adjudicating Authority and the same is non-justiciable.
7. The Respondent No. 3 SEBI has also filed its reply and submits as under:
- i. If the resolution plan provides for delisting of shares, then provisions of Delisting Regulations will not be applicable on the approval of the resolution plan and exit opportunity is not required to be given by the listed entity to its shareholders.
  - ii. In the instant case, in view of Section 238 of Code, provisions of Code shall have overriding effect on any other law, including SEBI Regulations.

**Inv. P. 03/AHM/2022**

8. The applicants / Intervenors stating themselves to be public shareholders of the Corporate Debtor make following submissions:
- i. During the course of the CIRP, there have been various media leaks with regard to the proposed Resolution Plans received by the IRP. Thus, there is breach of obligation of confidentiality under Regulation 35(3) of CIRP Regulation. The public shareholders time and again brought this issue to the knowledge of IRP but no action was taken.
  - ii. The IRP after its appointment had accepted to become director on the board of directors of a 100% subsidiary of the Corporate Debtor i.e., BVM Overseas Ltd. on 28.07.2021.

- iii. Before commencement and during the CIRP, the name of the IRP has been reported by three banks in the list of “Wilful defaulters” as per RBI master circular on wilful defaulter dated 01.07.2015 and also criminal proceedings are pending before Hon’ble High Court of Gujarat against IRP before and during CIRP. Thus, as per Regulation 4 of CIRP Regulations the IRP is not a fit and proper person. Also, such person cannot continue to be an IRP of the Corporate Debtor and CIRP conducted by IRP is liable to be set aside and initiated de novo by another Resolution Professional.
  - iv. The resolution plan as approved by the CoC is not balancing the interest of all the stakeholders which include public shareholders holding 95% of shares of the company.
9. The Intervenor has also filed an additional affidavit and submits that vide email dated 21.03.2022, they requested IRP to provide copy of resolution plan but the same was not replied. It is also stated that in consequence of intimation given by Corporate Debtor to the Stock Exchange about the approval of resolution plan and delisting of shares, the stock exchanges had suspended the trading of shares of the Corporate Debtor vide circular dated 21.03.2022. It is also stated that the CoC had filed an appeal before Hon’ble National Company Law Appellate Tribunal (NCLAT) bearing CA (AT) (Ins.) No. 945/2021 against an order dated 05.10.2021 passed in IA No. 424/2021 directing CoC to reconsider its decision to replace IRP, wherein Hon’ble NCLAT on 24.11.2021 passed an order that directions issued by the Adjudicating Authority Committee of Creditors with regard to replacement of IRP be kept in abeyance.

10. The IRP has filed its reply in Inv. P 03/AHM/2022 and submitted that CA (AT) (Ins.) No. 945/2021 filed by CoC is withdrawn as per order dated 24.07.2022 (Copy of which is annexed) and relied upon all other averment made in reply to IA No. 412/AHM/2022, to be considered as pleading in this application by IRP.
11. The Intervenor has filed rejoinder and submits that until a resolution plan is approved by the Adjudicating Authority and consequently share capital is reduced to zero and Corporate Debtor is delisted from stock exchange, the Intervenor cannot be deprived of their right to trade in the shares of the Corporate Debtor on the Stock Exchange. The securities of the Corporate Debtor were last traded at the rate of Rs. 7.80 before its suspension from 22.03.2022. After the issuance of circular dated 21.03.2022 for suspension of trading of shares of the Corporate Debtor, the Intervenor had issued various letters to BSE and NSE to withdraw the said circular, but BSE and NSE had not withdrawn the circulars.
12. The Resolution Professional has filed sur rejoinder and averments made in sur rejoinder are similar to contention raised in reply.
13. Heard submissions, liberty was granted to file written submission. The Intervenor has filed its written submission and reiterated the averments made in pleadings.
14. Considering the relief sought and submissions made by the parties, in both abovementioned applications, following issues need to be decided:

- i) *Whether under the provisions of the Code, the shareholders are entitled to get copy of resolution plan, copy of minutes of CoC meeting and copy of application for approval of resolution plan?*
- ii) *Whether the Adjudicating Authority has power to intervene in the commercial decision of CoC in approving the resolution plan?*
- iii) *Whether the Adjudicating Authority has power to set aside the Corporate Insolvency Resolution Process initiated in pursuance of its own order?*

15. It is necessary to go through following provisions of the Code and Regulations made thereunder:

***Section 24 of Code:***

***Meeting of committee of creditors. —***

*(1) ...*

*(2) ...*

*(3) The resolution professional shall give notice of each meeting of the committee of creditors to—*

*(a) members of committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5);*

*(b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;*

*(c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent. of the debt.*

*(4) The directors, partners and one representative of operational creditors, as referred to in sub-section (3), may attend the meetings of committee of creditors, but shall not have any right to vote in such meetings:*

*Provided that the absence of any such director, partner or representative of operational creditors, as the case may be, shall not invalidate proceedings of such meeting.*

*(5) ...*

*(6) ...*

**Regulation 21 (3) of CIRP Regulation:****Contents of the notice for meeting**

(3) *The notice of the meeting shall contain the following-*

- (i) *a list of the matters to be discussed at the meeting;*
- (ii) *a list of the issues to be voted upon at the meeting; and*
- (iii) *copies of all documents relevant to the matters to be discussed and the issues to be voted upon at the meeting.*

**Regulation 24 (7) of CIRP Regulation:****Conduct of meeting:**

(7) *The resolution professional shall circulate the minutes of the meeting to all participants by electronic means within forty-eight hours of the said meeting.*

16. Under the Code only the members of CoC, suspended board of directors and operational creditors whose aggregate dues are more than ten per cent, of the debt are entitled to participate in CoC meeting and have access to copies of all documents relevant to the matters to be discussed and the issues to be voted upon at the meeting. Further Regulation 24 of CIRP Regulation authorises Resolution Professional to circulate minutes of meeting only to participants. Thus, we find no provision under the Code which entitle shareholders of the Corporate Debtor to have a copy of the minutes of CoC meeting or copy of resolution plan or access to any other confidential document with regard to corporate insolvency resolution process of the Corporate Debtor. In view thereof, issue (i) is answered negative and prayer (b) sought in both IA No. 412/AHM/2022 and Inv. P No. 03/AHM/2022 to direct the Resolution Professional to provide a copy of the Resolution Plan as approved by the Committee of Creditors with minutes of COC meetings and a copy of the application for approval of Resolution Plan, stands rejected.

17. The Hon'ble Supreme Court in **Jaypee Kensington Boulevard Apartments Welfare Association & Ors vs. NBCC (India) Ltd. & Ors. (Civil Appeal No. 3395 of 2020) dated 24.03.2021** observed as under:

*“78....In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by the CoC. Within its limited jurisdiction, if the Adjudicating Authority or the Appellate Authority, as the case may be, would find any shortcoming in the resolution plan vis-a-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by Code and exposted by this Court.”*

18. Also, in the matter of Committee of Creditors of **Essar Steel India Limited Through Authorised Signatory versus Satish Kumar Gupta & Ors. (Civil Appeal No. 8766-67 OF 2019)** 15.09.2019 the Hon'ble Supreme Court observed as under:

*“43.....Section 60(5)(c) is in the nature of a residuary jurisdiction vested in the NCLT so that the NCLT may decide all questions of law or fact arising out of or in relation to insolvency resolution or liquidation under the Code. Such residual jurisdiction does not in any manner impact Section 30(2) of the Code which circumscribes the jurisdiction of the Adjudicating Authority when it comes to the confirmation of a resolution plan, as has been mandated by Section 31(1) of the Code. A harmonious reading, therefore, of Section 31(1) and Section 60(5) of the Code would lead to the result that the residual jurisdiction of the NCLT under Section 60(5)(c) cannot, in any manner, whittle down Section 31(1) of the Code,*

*by the investment of some discretionary or equity jurisdiction in the Adjudicating Authority outside Section 30(2) of the Code, when it comes to a resolution plan being adjudicated upon by the Adjudicating Authority.*

*46.... . This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal.”*

19. In the instant matter the CoC in its commercial wisdom with 98.88% voting right has approved the resolution plan. Admittedly approved resolution plan provides for delisting of existing shares of the Corporate Debtor. It is not denied that both stock Exchanges BSE & NSE have terminated the trading of shares of the Corporate Debtor after being intimated vide letter dated 20.03.2022.

20. As aggrieved by act of Stock Exchanges the Applicants in IA 412/2022 are seeking directions to Respondent No. 2 Reliance Industries Ltd. along with Assets Care and Reconstruction Enterprise Ltd., to amend the resolution plan and to quash the particular clause in the plan with respect to delisting of Corporate Debtor from NSE and BSE. In light of observation of Hon'ble Supreme Court, jurisdiction of Adjudicating Authority with regard to resolution plan is limited to Section 30(2) of the Code. The requirements of Section 30(2) have been fulfilled in a resolution plan approved by CoC, can be reviewed only while adjudicating an application filed for approval of resolution plan. This Adjudicating Authority is not an appropriate forum to seek remedy against the act of the Stock Exchanges. The applicant may avail remedy under the law before the appropriate forum. The act of stock exchange may prejudice rights of members of Corporate Debtor but the act is not in relation to the insolvency proceedings and since there is Forum to agitate grievances against stock exchanges, Adjudicating Authority is not required to look into the issues raised herein. We are also supported by the judgement of Hon'ble Supreme Court of India in ***Gujarat Urja Vikas Nigam Limited versus Mr. Amit Gupta & Ors. (Civil Appeal No. 9241 of 2019)*** decided on 08.03.2021, wherein it was held as under:

*“72 Therefore, we hold that the RP can approach the NCLT for adjudication of disputes that are related to the insolvency resolution process. However, for adjudication of disputes that arise de hors the insolvency of the Corporate Debtor, the RP must approach the relevant competent authority.”*

In view thereof, issue (ii) is answered in negative and the prayers (c) and (d) in IA 412/AHM/2022 seeking direction to Respondent No. 2

namely Reliance Industries Ltd. along with Assets Care and Reconstruction Enterprise Ltd. to amend the resolution plan and to quash the particular clause in the plan with respect to delisting of Corporate Debtor from NSE and BSE are also rejected.

21. The Intervener in Inv. P. 03/AHM/2022 has sought an interim order to stay the entire CIRP of the Corporate Debtor and implementation of any resolution plan. Since we are passing the final order and disposing of whole intervention application by this order, the prayer (c) has become redundant.
22. The Intervenors / applicants in Inv. P. 03/AHM/2022 being the public shareholders has sought direction to set aside the Corporate Insolvency and Resolution Process of the Corporate Debtor conducted till date and appointment of new IRP with further direction for de novo initiation of CIRP of the Corporate Debtor at this stage when an application for approval of resolution plan is pending. No doubt IBC is a complete code in itself and there is no provision under the Code which empowers Adjudicating Authority to recall its own order, which has reached finality and CIRP is progressing for resolution. The replacement of resolution professional is prerogative of CoC under the provisions of Section 22 and 27 of the Code. In the instant case, in an application bearing IA No. 424/AHM/2021 filed under Section 22 by CoC for replacement of IRP, CoC was directed to reconsider its decision and evaluate the performance of IRP and if the CoC find any shortcoming in the performance of IRP, it may file an application for change of IRP vide order dated 05.10.2021. No application for replacement of

Resolution Professional was filed by CoC against order dated 05.10.2021. However, an appeal was filed before Hon'ble NCLAT but the same was withdrawn vide order dated 27.04.2022 with following observation:

*“When this Appeal came for hearing, Learned Counsel for the Appellant submits that in view of the subsequent events which have taken place including the approval of the ‘Resolution Plan’, the Appellant be permitted to withdraw the Appeal. We accept and permit the Appellant to withdraw this Appeal.”*

This reflects the intention of the CoC to continue the Respondent No. 1, Mr. Pinakin Shah as the Resolution Professional of the Corporate Debtor. Thus, it is beyond the jurisdiction of this Adjudicating Authority to grant prayer (d) sought by shareholder. In view thereof, issue (iii) is answered in negative and also the prayers (d) in Inv. P. 03/AHM/2022 is rejected.

In view of above, **IA No. 412/AHM/2022** is rejected.

**Inv. P. 03/AHM/2022** is also rejected.

Both above applications are disposed of in terms of above order.

Copy of order be served to the parties.

-Sd-

**AJAI DAS MEHROTRA,  
MEMBER (TECHNICAL)**

-Sd-

**DR. DEEPTI MUKESH  
MEMBER (JUDICIAL)**

*Mansi J./LRA*