NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-II

(IB) 1048(ND)/2019
IA/4208/2020

IN THE MATTER OF:

WORLDWIDEMETALS PVT LTD ...OPERATIONAL CREDITOR

VERSUS

J.P. ENGINEERS PRIVATE LIMITED ...CORPORATE DEBTOR

AND

IN THE MATTER OF:

COMMITTEE OF CREDITORS (COC) ...APPLICANT

VERSUS

MR. SUMIT BANSAL, IRP OF CORPORATE DEBTOR ...RESPONDENT

SECTION: U/S 22(3)(b) of IBC, 2016

AND

(IB) 1048(ND)/2019
IA/5482/2020

IN THE MATTER OF:

WORLDWIDE METALS PVT LTD ...OPERATIONAL CREDITOR

VERSUS

J.P. ENGINEERS PRIVATE LIMITED ...CORPORATE DEBTOR

AND

IN THE MATTER OF:

WORLDWIDE METAL PRIVATE LIMITED
THROUGH ITS DIRECTOR
SH. PREM CHAND GUPTA ...APPLICANT

VERSUS

COMMITTEE OF CREDITORS OF
JP ENGINEERS PRIVATE LIMITED
REPRESENTED BY
(A) ANDHRA BANK (NOW UNION BANK OF INDIA) THROUGH
SH. RUPESH AGARWAL, ASSISTANT MANAGER

(B) AXIS BANK THROUGH

MR. SHEKHAR THAKUR, RELATIONSHIP MANAGER

(C) ICICI BANK THROUGH

MR. RAJENDER SHARMA, RELATIONSHIP MANAGER

...RESPONDENT(S)

SECTION: U/S 60(5) of IBC, 2016

Order delivered on: 27.01.2021

CORAM:

HON'BLE MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

HON'BLE MR. L. N. GUPTA (TECHNICAL)

PRESENTS:

Mr. Abhishek Kumar, Advocate for IBBI in IA No. 4208/2020, Ms. Gurmeet Bindra Advocate for ICICI Bank, Mr. Alishan Naqvee, Ms. Swet Shikha - for Operational Creditor in I.A. NO. 4208/2020, Advs, Mr. PBA Srinivasan & Mr. Avinash Mohapatra (Advocates) for Committee of Creditors in IA 4208 /2020 and IA 3088/2020, Mr. Harshal Kumar, Adv. For Ex-Director, Mr. Abhinav Shrivastava & Mr. Karan Kohli for Axis bank in IA/3088 of 2020

ORDER

Per Mr. Abni Ranjan Kumar Sinha (Member Judicial)

Since, in IA/5482/2020, a prayer has been made to reject the prayer for replacement of RP and this is the subject matter of IA/4208/2020, we would like to dispose of both these IAs together by this common order.

Facts of IA/4208/2020: -

1. The present application is filed on behalf of Committee of Creditors under section 22(3)(b) of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code") for replacement of Interim Resolution Professional (IRP) in terms of the resolution passed in the

third meeting of the Committee of Creditors held on 26th August, 2020.

2. The brief facts leading to filing of the instant application are as under:

i. That CIRP was initiated against the Corporate Debtor, J. P. Engineers Private Limited vide order dated 26.02.2020 and the the IRP constituted a Committee of Creditors (hereinafter referred as the 'COC') comprising of financial creditors of the Corporate Debtor.

ii. That vide Notification no. CG-DL-E-04032020-216535 dated 4th March, 2020, Ministry of Finance issued G.S.R 154(E) in exercise of the powers conferred by Section 9 of Banking Companies Act, 1980, whereby the Central Government made the the Scheme of amalgamation of Andhra Bank and Corporation Bank into Union Bank of India Scheme, 2020. It came into force on the 1st day of April, 2020. As per clause 4, sub clause (9) of G.S.R.154 (E), Andhra Bank in the present proceedings will be substituted by 'Union Bank of India'. Andhra Bank is holding 86.89% of voting share in the COC.

iii. That in the first COC meeting held on 24 April, 2020 through video conferencing, IRP, Mr. Sumit Bansal was neither confirmed as Resolution Professional (hereinafter referred as RP) nor name of any replacement was proposed due to lockdown. Again in the second COC meeting conducted on 9th June, 2020, Andhra Bank holding 86.89% voting share of COC informed that they intend to replace IRP/RP with the bank empanelled RP and due to lockdown, they have not been able to propose earlier. The Andhra Bank had also sent an email on 5th June to the IRP proposing the name of Mr Vivek Raheja as replacement RP. However, before the of Hon'ble Supreme Court order, the Andhra Bank decided not to move the motion in the second

COC meeting and hence, preserved the status quo in the matter.

iv. That in the third meeting of CoC held on 26th August, 2020, through video conferencing, the COC discussed and voted upon replacement of Interim Resolution Professional, Mr Sumit Bansal and appointment of the proposed Resolution Professional, Mr Vivek Raheja (hereinafter referred as 'RP') in accordance with section 22(3)(b) of IBC, wherein COC decided to put the matter to voting. That replacement of IRP, Mr Sumit Bansal by Mr Vivek Raheja was supported by 100% votes of Committee of Creditors.

v. That the resolution for appointment of Mr. Vivek Raheja, as the Resolution Professional was voted unanimously by all financial creditors.

vi. That the proposed RP i.e. Mr. Vivek Raheja is duly registered with the Insolvency & Bankruptcy Board of India bearing registration number.

vii. That in accordance with section 22(3)(b) of IBC written consent from Mr. Vivek Raheja to act as the Resolution Professional of the Corporate Debtor in the specified form (Form AA).

viii. That in view of the aforesaid facts and circumstances, it is prayed that this Adjudicating Authority may be pleased to allow the present application and permit replacement of Mr Sumit Bansal, Interim Resolution Professional by appointment of Resolution Professional Mr. Vivek Raheja in terms of resolution passed by the Committee of Creditors on 26th August, 2020.

3. The Insolvency and Bankruptcy Board of India has filed its short response and made the following submissions: -

i. That the IBBI maintains and has shared with the Adjudicating Authority (AA), two lists of IPs, one is 'Panel list' and another is 'Database list'.

ii. It is submitted that the Panel of IPs is prepared for specific purposes i.e. Section 16(3)(a) read with Section 16(4) of the Code, wherein Operation Creditor (hereinafter referred to as the "OC") files an application for Corporate Insolvency Resolution Process (hereinafter referred to as the "CIRP") but does not propose an Interim Resolution Professional (IRP) and the clause (a) and clause (c) of section 34(4) of the Code, wherein the Board has to propose name of IP as Liquidator. Thus, it is also submitted that remaining IPs registered with the Board, who do not form part of Panel list as well as the IPs, and who have got registration after preparation of aforesaid panel list, are also eligible to be appointed as IRP, RP, or Liquidator subject to the condition that they hold valid AFA issued by their IPA and no disciplinary proceeding is pending against them. The Board has thus shared the panel of IPs / live database of IPs with AA for the aforesaid specific purposes under the Code, in order to eliminate the administrative delays and save time.

iii. It is submitted that section 22 of the Code requires majority vote of not less than sixty-six per cent of the voting share of financial creditors for appointment of IRP as RP or replacement of IRP by another RP by the Committee of Creditors (CoC). Thus, the process of appointment of RP by a collective decision of the CoC ensures that no particular CoC member is able to impose specific set of eligibility criteria and the process remains a market determined process without any intervention of the Regulator.

iv. However, to ensure objectivity in the process and that only an eligible IP is appointed, the appointment of proposed IP as RP is to be made by the AA upon filing of an application before it. Thus, the provisions of the Code, rules and regulations issued there under, adequately ensure that ultimate authority for appointment of an IP as RP remains with the AA even though proposal thereof is made on the basis of market determined process and collective decision of the CoC.

v. Further, the IP so proposed by the client and seeking appointment by the AA, irrespective of whether he is empanelled with any market participant or not, is however required to adhere with the Code of Conduct stipulated under the regulations governing his registration. The Code requires an IP to, inter alia, adhere to timelines, maintain confidentiality, comply with the restrictions on employment and occupation. <u>However, the Code, the Rules and Regulations made there under neither recognise any empanelment of IPs by market participants nor approve preparation of such panels.</u>

vi. The replacement of an IP is not done by creditor in his individual capacity but by the CoC exercising its powers under the Code.

vii. Although, the Code empowers CoC to replace the IP with another IP, CoC must consider the possible disturbances/delays to the CIRP upon replacement of an IP.

viii. Further, Clause 22 of the Code of Conduct for IPs stipulated vide First Schedule of 'Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 provides that IP must refrain from accepting too many assignments, if he is unlikely to be able to devote adequate time to each of his assignments. Keeping in view the same, the Consent Form to be filed by IPs before accepting assignments under the Code requires IP to disclose the assignments/processes he has in hand. Since the proposed IP, in the instant case, already has eight assignments in hand, it becomes a matter of concern, as to how he would meet the requirement of aforesaid clause 22 of Code of Conduct, to the satisfaction of the Hon'ble NCLT.

ix. As evident from the aforementioned provisions and the judgments, the Code empowers the CoC to take decision to replace an IP; it does not empower a bank / creditor to do so. However, in the instant case, the CoC has prayed for replacement of RP on the ground that the third CoC meeting dated 26-8-2020 vide Agenda-4 has passed a Resolution to change the present RP and appoint Mr. Vivek Raheja as RP in his place. It was categorically recorded in the Resolution, as observed by this Tribunal, that the CoC is satisfied with the working of the present RP but as per the Bank's policy, CIRP proceeding need to be entrusted to the RP empanelled with the Bank.

x. Thus, it unequivocally raises a matter of concern as it is not a good practice to replace an IP where the CoC is satisfied with the performance of the IP, especially when the Code empowers the CoC to take a decision to replace an IP and it does not empower a Bank/ Creditor to do so. No market participant including the CoC can have any policy regarding the appointment of IPs other than what is provided under the Code, the Rules and the Regulations made under the Code. No market participants shall also be allowed to tilt the policy of the Code only to their favour as the objective of the Code is to balance the interests of all stakeholders.

4. The Applicant has filed written submissions and relied on the following judgments:

i. State Bank of India vs. Ram Dev International Ltd. NCLAT
ii. Bank of India vs. Nithin Nutritions Pvt. Ltd. NCLAT
iii. Committee of Creditors of LEEL Electricals ltd. through SBI vs. Leel Electricals through its IRP.

<u>Facts of IA/5482/2020: -</u>

5. The present interlocutory application is being preferred by Worldwide Metals Private Limited through its Director Sh. Prem Chand Gupta, in its capacity as the Operational Creditor of the JP

Engineers Private limited ("Corporate Debtor") under section 60(5) of the of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code") seeking directions against Committee of Creditors.

6. The brief facts leading to filing of the instant application are as under:

i. That the CIRP was commenced against J.P. Engineers Private Limited ("Corporate Debtor") vide order dated 26.02.2020.

ii. Thereafter the shareholder of the Corporate Debtor - Mr. Adish Jain filed an appeal against the CIRP Order before the Hon'ble NCLAT vide Appeal No. 379 of 2020. That the same was dismissed vide order dated 10.08.2020.

iii. Thereafter, the shareholder - Mr. Adish Jain again went on to file an Appeal before the Hon'ble Supreme Court against the order of Hon'ble NCLAT. That the same was dismissed vide order dated 04.09.2020. The shareholder - Mr. Adish Jain even filed a review Petition before the Hon'ble Supreme Court which has been again rejected by the Hon'ble Supreme Court.

iv. That both the suspended directors of the Corporate Debtor - Sh. Mohinder Jain and Sh. Adish Jain have been declared as wilful defaulters and fraudulent borrowers by the Union Bank of India (erstwhile Andhra Bank) who is a lead member of the CoC.

v. That the Applicant was invited for the first time in the CoC meeting to the 4th meeting of CoC dated 28.09.2020 by the Resolution Professional ("RP"), in terms of Section 24 of the Code, as the claim of the operational creditors in totality had exceeded 10% of the debt of the Corporate Debtor. The relevant events that transpired are narrated below:

   a. Even after around six months into the CIRP, the suspended board of Directors had submitted almost no information regarding the Corporate Debtor and were completely in disregard of the orders of this Hon'ble

Tribunal in application filed under S. 19(2) of the Code. However, the members of CoC were least interested in questioning them about the handover of information and assets;

b. The RP had prepared an Information Memorandum under Section 29 of the Code, but no CoC member had taken the same from the RP;

c. The valuation of the Corporate Debtor was not completed even after six months of the onset of CIRP as the Respondents, being custodian of various documents, were neither providing the documents nor providing for payment of fee of the valuers.

d. The RP had filed an application under Section 66 of the Code against the suspended Directors pointing out transactions worth Rs. 200 crores are fraudulent in nature. Post filing of this Application, the Respondents filed an application for change of RP before this Tribunal (I.A. 4208 of 2020). Moreover, the Respondents sought to entrust the CIRP to an RP who already had eight ongoing assignments.

e. The Respondents made all efforts to delay publication of Form-G for the Corporate Debtor.

vi. Thereafter, the Applicant was once again invited to the 5th CoC meeting dated 23.10.2020. The relevant events that transpired are narrated below:

a. The valuation exercise had still been pending due to the laxity on the part of Respondents by neither sharing the documents/information with the valuers nor paying the fee of the valuers. On the contrary, to delay the valuation exercise even further, the Respondents asked the RP to call for fresh expression of interest from valuers and appoint new valuers for doing the valuation;

b. One of the other operational creditors M/s Yajur International had informed the RP that the immovable properties of Corporate Debtor at Ghaziabad and Faridabad, which were secured by the Union Bank of India (erstwhile Andhra Bank), had been sold off by the suspended Directors and some construction activities were going on there. The RP informed the Respondents about the need for conducting a fresh title search and also appointing a security guard so that the properties can be protected. For this, the approval of expenses was sought from the Respondents. However, the Respondents denied the same on the ground that first a visit should be made to ascertain if at all there is any need to appoint any security guard and then it will be decided if at all a security guard is required.

c. The Respondents have not made payment of any fee of expenses to the RP;

d. The Respondents were seen counselling the suspended directors that they should file appropriate reply to RP's application under Section 66 of the Code so that the same may be dismissed.

e. The Respondents asked the RP to provide a draft Form -G, RFRP and evaluation matrix which they will discuss with their senior management and only then will approve the publication.

vii. That the CIRP of the Corporate Debtor, at the hands of Respondents, being members of CoC of the Corporate Debtor has been completely derailed. This is evident from the fact that:

a. The Respondents are not sharing vital documents and information regarding the Corporate Debtor;

b. The Respondents are not conducting the title search of the properties of the Corporate Debtor to ascertain if the same actually belong to the Corporate Debtor or not;

c. The Respondents have not paid any fee and expenses to the RP till date;

d. The Respondents have not resolved to invite expression of interest for the resolution of the Corporate Debtor;

e. The Respondents insist on choosing all the professionals from their internal panels which has the potential to impact the independence of the CIRP.

viii. In light of the foregoing, the Applicant would like to submit that the manner in which the CIRP of the Corporate Debtor is being run at the behest of Respondents, the same will be detrimental to all the stakeholders including operational creditors who have claims to the tune of Rs. 36 crores.

ix. Further, the way the Respondents have been conducting themselves raises pertinent questions of law, which need to be clarified by this Tribunal. The same are as below:

a. Whether the stakeholders of a Corporate Debtor have no role to play even in a case where the intrinsic assumption that the financial creditors would take informed decision to balance interest of all stakeholders, fails?

b. Whether the Operational Creditors and other stakeholders be allowed to suffer losses of their debts at the behest of financial creditors who themselves might be secured creditors and therefore not interested in finding any resolution of the Corporate Debtor?

c. Whether the I&B Code provides no judicial review of the actions of the CoC which may have resulted in heavy losses to the other stakeholders?

d. Whether any responsibility be affixed upon the CoC for their callous approach in conducting a CIRP, delay in taking decisions which has resulted in loss of precious time of CIRP and thereby interests of all stakeholders?

e. Whether any malice be attributed on the part of CoC in the present case considering the peculiar facts and circumstances of the case?

7. We have heard the Ld. Counsel for the applicant/CoC in IA/4208/2020 as well as the Mr. Sumit Bansal, IRP and the Operational Creditor who is the applicant in IA/5482/2020as well as ld. Counsel for IBBI and perused the averments made in both the applications and the decisions upon which the parties have placed reliance.

8. Applicant /CoC has also submitted the written submissions.

9. Ld. Counsel for the applicant/CoC submitted that the Hon'ble NCLAT in a series of the decisions held that the CoC in terms of Section 27 shall replace the Resolution Professional. He also placed reliance upon the following decisions of the Hon'ble NCLAT which was passed in Company Appeal (AT) (Insolvency) No. 302 of 2018, Company Appeal (AT) (Insolvency) No. 497 of 2020, 498 of 2020, 499 of 2020, 500 of 2020 and 501 of 2020 and Company Appeal (AT) (Insolvency) No. 1100 of 2020.

10. He further submitted that the CoC in its meeting dated 26.08.2020 as agenda no. 4, resolved by 100% voting shares to replace the RP, Mr. Sumit Bansal with ***Mr. Vivek Raheja having registration no. IBBI/IPA-001/IP-P00055/2017-18/10133***.

11. He further submitted that in view of that resolution the present application has been filed for replacement of RP.

12. On the other hand, Ld. Counsel on behalf of Mr. Sumit Bansal, IRP, submitted that the application filed under Section 22(3) for replacement of RP is not maintainable because it relates to

replacement of IRP in the first meeting of the CoC and the correct provision is under Section 27 of the IBC by which the RP may be replaced but the present application is filed under Section 22(3), which is not maintainable.

13. Ld. Counsel for the Operational Creditor, who has filed an application which is registered as IA/5482/2020 is submitted that by filing this application he also challenged the decision of the CoC to replace the RP. He further submitted that the reason for replacement of RP has not been mentioned in the Resolution, therefore, on this ground alone, the prayer for replacement of RP is liable to be rejected. He further submitted that this Adjudicating Authority is empowered to review the decision of COC and responsibility may be affixed upon the CoC for their callous approach in conducting a CIRP, delay in taking decisions which has resulted in loss of precious time of CIRP and thereby interests of all stakeholders

14. He further submitted that the respondents of IA/5482/2020, who are the members of CoC are responsible for delay in the disposal of CIRP and with ulterior motive, the present application for replacement of RP has been submitted by the CoC.

15. During the pendency of these applications, the matter was also referred to the IBBI and on behalf of IBBI, a reply has been submitted. In its reply, the IBBI has submitted the provision for the replacement of the RP and we notice that nowhere the IBBI has challenged the wisdom of the CoC, which is vested with the CoC under Section 27 of the Code rather Ld. Counsel for the IBBI submitted that the CoC is empowered to replace the RP but the code cast a duty upon the RP not to accept more assignment and Code of Conduct requires him to demonstrate his integrity, honesty, impartiality and independence in para 10 of its reply it is mentioned that ***"It also requires an IP, inter alia, adhere to timelines, maintain confidentiality, comply with the restrictions on employment and occupation (including not to accept too many assignments, if he is unlikely to be able to***

devote adequate time to each of his assignment), and avoid conflict of interests. However, the code, the Rules and Regulations made thereunder neither recognise any empanelment of IPs by market participants nor approve preparation of such panels" and in para 11 it is mentioned that ***"The replacement of an IP is not done by creditor in his individual capacity but by the CoC exercising its powers under the Code".***

16. Considering these submissions made on behalf of IBBI, when we consider the prayer of the applicant/CoC, we notice that it is not the case of the applicant/CoC that RP has been replaced by the creditor in his individual capacity rather it is definite case of the CoC that the decision has been taken by the CoC and not by the individual creditor and the CoC in its meeting dated 26.08.2020 by 100% voting resolved to replace the RP.

17. At this juncture, we would also like to refer to the decisions, upon which the CoC has placed reliance, the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 302 of 2018, consider the replacement of the RP and discussed the various provisions of the IBC under which the replacement can be made, the relevant para of order dated 16.07.2018 passed by the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) no. 302 of 2018 is quoted below: -

"8. Section 22 of I&B Code relates to appointment of Resolution Professional. In the first meeting of the Committee of Creditors by majority voting of not less than 75% voting share (as per un-amended provision) of the Financial Creditors, can either resolve to appoint the Interim Resolution Professional as a Resolution Professional or to replace the Interim Resolution Professional by another Resolution Professional.

9. Section 27 deals with replacement of Resolution Professional by the Committee of Creditors, which reads as follows:

"27. Replacement of resolution professional by committee of creditors. - (1) Where, at any time during the corporate insolvency resolution process, the committee of creditors is of the opinion that a resolution professional appointed under section 22 is required to be replaced, it may replace him with another resolution professional in the manner provided under this section.

(2) The committee of creditors may, at a meeting, by a vote of seventy five per cent. of voting shares, propose to replace the resolution professional appointed under section 22 with another resolution professional.

(3) The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.

(4) The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and a resolution professional shall be appointed in the same manner as laid down in section 16.

(5) Where any disciplinary proceedings are pending against the proposed resolution professional under sub-section (3), the resolution professional appointed under section 22 shall continue

till the appointment of another resolution professional under this

section."

10. From the aforesaid provision it is clear that during the Corporate Insolvency Resolution Process, at any time, if the Committee of Creditors 'is of opinion' that the Resolution Professional appointed under Section 22 is required to be replaced, it may replace him with another Resolution Professional in the manner provided under said section. In terms of Section 27(2), the Committee of Creditors at a meeting by vote of 75% of voting share (as per un-amended provision) can propose to replace the Resolution Professional appointed under Section 22 with another Resolution Professional.

11. Admittedly, Mr. Rakesh Kumar Jain was appointed as Interim Resolution Professional and after completion of 30 days of period his name was approve by the majority vote of the Committee of Creditors in terms of Section 22(2) to function as a Resolution Professional. In terms of the said provision the he is continued and functioned as Resolution Professional.

14. Though such submission seems to be attractive, we are of the view, it is not desirable for a Committee of Creditors to record its opinion in view of the following reasons:

(i) If the Committee of Creditors record any adverse opinion for replacement of Resolution Professional, it will not only harm him for the present but will also affect him in future during appointment as Resolution Professional in another proceeding. In such case, the Committee of Creditor will have to refer the matter to IBBI for initiation of departmental proceeding, which is also not desirable in all the cases.

(ii) If the Committee of Creditors forms opinion on the basis of performance of the Resolution Professional and not because of allegation, it will also go against the Resolution Professional in interest of the Resolution Process.

15. We have already held that except for pendency of a disciplinary proceeding or ineligibility in terms of provisions of the I&B Code, there is no bar for appointment of a person as Resolution Professional. A Resolution Professional if empaneled as an Advocate or Company Secretary or Chartered Accountant with one or other 'Financial Creditor' that cannot be a ground to reject the proposal, if otherwise there is no disciplinary proceeding is pending or it is shown that the person is an interested person being employee or in the payroll of the 'Financial Creditor.

16. In the present case, as we find that the Adjudicating Authority has failed to take into consideration the aforesaid fact and as there is no allegation against Mr. K. G. Somani and no disciplinary proceeding is pending against him and he is not in the payroll of one or other member of the Committee of Creditors, we are of the view that the Adjudicating Authority was required to approve his name.

17. For the reasons recorded above, we set aside impugned order dated 15th May, 2018 passed by Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi in Company Petition No. (IB)178(PB)/2017 and replace Mr. Rakesh Kumar Jain by appointing Mr. K. G. Somani as Resolution Professional, who will act in accordance with law and ensure early completion of the Resolution Process."

18. The Similar views have been taken by the Hon'ble NCLAT in the other matters i.e. Company Appeal (AT) (Insolvency) No. 497 of 2020,

498 of 2020, 499 of 2020, 500 of 2020 and 501 of 2020 and Company Appeal (AT) (Insolvency) No. 1100 of 2020.

19. When we consider the prayer of the CoC in the light of the aforesaid decisions and the provisions, we are of the considered view that the CoC is empowered to replace the IRP/RP under Section 27(2), if it is approved by the 66% voting shares(after amendment) and if there is no disciplinary proceeding pending against the RP but here in the case in hand, it not the case that any disciplinary proceeding is pending against the proposed RP and it is also not the case that the resolution for replacement of RP was not approved by more than 66% of the voting shares but the only question in the application is that in place of Section 27, the applicant has mentioned Section 22(3) of the IBC 2016.

20. It is the well settled principle of law that mentioning of incorrect Section is not a ground for rejecting the prayer, if the averment made in the application and the prayer shows that it is under the specific provision of the law. So, considering this, we are of the considered view that the objection raised by the erstwhile IRP/RP as well as the Operational Creditor of IB/5482/2020 has got no merit and is liable to be rejected.

21. For the reasons discussed above, we have no option but to agree with the wisdom of the CoC and approve the replacement of RP which is resolved by 100% voting shares of the CoC. **Accordingly, we hereby allow the prayer of the CoC to replace the RP, Mr. Sumit Bansal by Mr. Vivek Rakeja, *having registration no. IBBI/IPA-001/IP-P00055/2017-18/10133 against whom no disciplinary proceeding is pending and* who has also given his consent.**

22. **As we notice the CIRP was initiated on** 26.02.2020, therefore, **we direct the Resolution Professional to expedite the CIRP and take all steps as provided under the IBC and under the Regulation. He is also directed to pursue all pending applications filed by the erstwhile IRP and submit fortnightly report to the**

Adjudicating Authority. Any latches on the part of Resolution Professional shall be dealt in accordance with the provision of Law.

23. However, the erstwhile IRP/ RP, Mr. Sumit Bansal is at liberty to submit his fee and claim expenses before the CoC and the CoC is directed to approve the fee and expenses of the erstwhile IRP/RP in accordance with the provisions of law.

24. **With this order, the IA/4208/2020 stands disposed off.**

IA/5482/2020:

25. As already stated, that by filing this application, the applicant/OC has raised objections regarding replacement of the RP as well as made certain allegations against the CoC. In our considered view, so far as the prayer for rejection of the proposal for replacement of the RP is concerned, we have already considered and rejected this prayer.

26. So far as the other grounds taken in this application are concerned, for the reasons discussed in the aforementioned para, in our considered view, the averment made in the application is not maintainable under Section 60(5) of the IBC because it is the CoC to take the decision in such matters, not the Operational Creditor. Therefore, we find no merit in the averment and prayer made in this application.

27. Accordingly, **IA/5482/2020 also stands dismissed.**

— Sd -

L.N. GUPTA
Member (T)

— Sd -

ABNI RANJAN KUMAR SINHA
Member (J)