NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1154 of 2025

[Arising out of the Impugned Order dated 09.06.2025 passed by the Adjudicating Authority, National Company Law Tribunal, Ahmedabad Bench, in I.A. No. 92/NCLT/AHM/2023 in C.P. (IB) No. 385/NCLT/AHM/2020]

In the matter of:

NIRAV TARKAS
Erstwhile Interim Resolution Professional
of Shreebhav Polyweaves Private Limited
209, BN Chambers, Opp. Welcome Hotel,
R.C. Dutt Road, Vadodara, 390005

…Appellant

Versus

VIKASH JAIN
Erstwhile Resolution Professional
of Shreebhav Polyweaves Private Limited
204, Wall Street-1,
Near Gujarat College, Ellisbridge,
Ahmedabad-380006
Email: ca.vikasjain2@gmail.com

…. Respondent

Present:

For Appellant : Mr. Arpit Gupta, Mr. Divya Pratap Parmar and Ms. Akansha Agarwal, Advocates.

For Respondent : Mr. Karan Valecha, Advocate.

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 (‘**IBC**’ in short) by the Appellant arises out of the Order dated 09.06.2025 (hereinafter referred to as ‘**Impugned Order**’) passed by the Adjudicating Authority (National Company Law Tribunal, Division Bench, Court-I, Ahmedabad) in IA No. 92/NCLT/AHM/2023 in CP (IB) No.

385/NCLT/AHM/2020. By the impugned order, the Adjudicating Authority has allowed I.A. No. 92 of 2023 and directed the Appellant herein to refund the fees of Rs.12,46,248/- withdrawn by him from the account of the Corporate Debtor. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant.

2. Coming to the facts of the present case, Shreebhav Polyweaves Pvt. Ltd- the Corporate Debtor was admitted into CIRP vide CP(IB)No. 385 of 2020 filed by State Bank of India (**"SBI"**) as the Financial Creditor. The Adjudicating Authority on the suggestion of SBI, had appointed Shri Nirav Tarkas-Appellant as the Interim Resolution Professional (**"IRP"** in short) on 31.08.2021 to which appointment the IRP had given his prior consent in Form-2. The Adjudicating Authority while appointing the IRP had directed SBI to pay a sum of Rs 2,00,000/- only to the IRP as fees and expenses till the Committee of Creditor (**"CoC"** in short) took a decision on the fees and expenses. The CoC which comprised of only one member with SBI having 100% exposure, in the 1st CoC meeting held on 01.12.2021 resolved to replace the IRP as discussed in Agenda Item No. 3. The Adjudicating Authority on 25.04.2022 allowed the application filed by the CoC seeking replacement of the IRP based on the resolution passed by the CoC in its first meeting. Accordingly, Mr. Vikash Jain was appointed as the Resolution Professional (**"RP"** in short). The IRP was invited to the 2nd CoC meeting scheduled on 02.05.2022 for handing over formalities. The IRP however absented himself from the said meeting. During the 3rd CoC meeting held on 27.05.2022, the IRP placed before the CoC the expenses incurred by him for necessary ratification. The 3rd CoC meeting did not ratify the fees of the IRP on the ground that the same was not approved by the CoC. During the 4th CoC meeting held on 21.06.2022, the IRP informed the CoC that he had already drawn the fees amounting to Rs 9,83,684/-. The IRP had also drawn fees of Rs.2,62,564/- for the month of April, 2022. The RP intimated the IRP to refund the fees since the fees had been drawn without the approval of the CoC. The RP filed IA No. 92(AHM)/2023 seeking directions of the Adjudicating Authority for refund of the fees which had been drawn by the IRP without ratification of the CoC. Before this sum could be refunded by the IRP, the Adjudicating Authority approved the resolution plan submitted by the Successful Resolution Applicant (**"SRA"** in short) following which a Monitoring Committee (**"MC"** in short) came to be constituted. The MC in its 3rd meeting passed a resolution that Shri Vikash Jain, erstwhile RP would continue to pursue IA No. 92 of 2023 before the Adjudicating Authority. The Adjudicating Authority allowed IA No. 92 of 2023 on 09.06.2025 directing the IRP to refund Rs 12,46,248/- to the Corporate Debtor's account within 30 days. Aggrieved by this order, the present Appeal has been preferred by the IRP.

3. Making his submissions, Shri Arpit Gupta, the Ld. Counsel representing the IRP submitted that there is a lack of correct appreciation on the part of the Adjudicating Authority of statutory entitlement of an IRP for his fees. Submitting that the IRP had been selected by SBI on a monthly fee of Rs. 1,21,000/-, the fees did not require any further approval of the CoC since the CoC consisted of SBI as the sole member. Since the fee was approved by the SBI at the time of his appointment, it had acquired a binding nature which the SBI cannot resile from paying. The refusal on the part of SBI to pay the fees was a breach of a concluded contract between the two parties which the Adjudicating Authority failed to appreciate. The Appellant further asserted that the IRP cannot be denied the fees and made to refund the fees already drawn as he had undertaken multifarious steps to run the Corporate Debtor as a going concern. Another flaw in the impugned order is that the Adjudicating Authority did not consider the fact that when the resolution plan already stood approved, the MC did not have the authority to further pursue the IA filed earlier by the RP for recovery of IRP fees. Contention was also made that the IRP fees anyways stood extinguished from the plan once the plan was approved and hence recovery of the same was not possible. Thus, the MC had no jurisdiction to maintain the present application post approval of the resolution plan. It was also asserted that when no allegations of incompetence, fraud or lack of diligence had been raised against the IRP on the conduct of the CIRP proceedings, his replacement, without giving an opportunity of hearing, was an act in violation of natural justice.

4. Refuting the contentions raised by the Appellant-IRP, the Ld Counsel for the Respondent, Shri Karan Valecha submitted that the Adjudicating Authority had rightly observed that IRP had unauthorisedly withdrawn fees from the account of the Corporate Debtor since the fees had not been ratified by the CoC which was a statutory requirement. The IRP had additionally withdrawn fees even during April 2022 by which time he was even replaced. Unless, the fees incurred by the IRP was ratified by the CoC, it did not qualify to be treated as “CIRP Costs” in terms of Section 5(13) of IBC and Regulations

31 and 33 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as "**CIRP Regulations**"). Since the fees had been drawn by the IRP without ratification of CoC, it became the bounden duty of the RP to recover the fees from the IRP since it is the responsibility of the RP to take custody of the assets of the Corporate Debtor for maximisation of the value of the assets. Since it is the duty of the RP to protect the estate of the Corporate Debtor and the interest of all stakeholders, the RP was empowered, both in terms of law and equity, to recover the unratified payments drawn by the IRP. Justifying the locus of the MC to authorise the RP to continue prosecution of the I.A. for recovery of fees from the IRP, it was contended that once the resolution plan is approved and the CoC ceases to function, the MC fills the vacuum to take steps in furtherance of the plan implementation. It was also pointed out that the conduct of the IRP was manifestly obstructive and marked by non-cooperation. In support of their contention that there were sufficient grounds for replacement of the IRP, it was stated that even the IBBI vide Order No. IBBI/DC/197/2023 dated 21.12.2023 had suspended the license of the IRP in view of his unbecoming conduct of indulging in repeated deviations from statutory responsibilities. It was emphatically asserted that in replacing the IRP the provisions of the IBC had been adhered to with the CoC having decided with majority share to replace the Appellant-IRP in the 1st CoC Meeting followed by confirmation by the Adjudicating Authority approving the replacement of the IRP with another RP. The due process had been followed for replacement of the IRP and there is no evidence of breach of natural justice.

5. We have duly considered the arguments advanced by the Learned Counsel for the parties and perused the records carefully.

6. Before we commence our analysis to return our findings on the rival contentions raised by both the parties, it would be worthwhile to point out that the Adjudicating Authority in the impugned order had outlined four issues for determination which are as reproduced below:

> *"8. We have heard the learned counsel for the applicant and perused the documents on record. The issues for determination are as under: -*
>
> *(1) Whether the Respondent's withdrawal of fees totaling Rs.12,46,248/- without CoC approval or ratification violates the IBC and CIRP Regulations, warranting a refund.*
>
> *(2) Whether the IA is maintainable post-approval of the Resolution Plan on 27.09.2023, considering the Applicant's alleged functus officio status and the Monitoring Committee's resolution.*
>
> *(3) Whether the Respondent's conduct, including delays and non-compliance, impacts the adjudication of this IA.*
>
> *(4) What relief, if any, is appropriate in the interest of justice?"*

Needless to add, aggrieved with the findings of the Adjudicating Authority, these issues have been agitated before us by the Appellant-IRP for our consideration which we now propose to tackle hereunder.

7. Coming to the first limb of the argument of the Appellant, it is their case that the SBI had selected the IRP and also approved a monthly fee of Rs 1,21,000/- as communicated in their appointment letter. This arrangement was therefore in the nature of a concluded contract under the Indian Contract Act, 1872 and refusal on the part of SBI to honour this contract is a breach of the provisions of the Contract Act. Even the Adjudicating Authority on 31.08.2021 had clearly mandated the payment of Rs 2,00,000/- upfront to the IRP as fees/expenses. Accordingly, the expenses and fee was invoiced by the Appellant to the SBI which was not objected to by SBI at any point of time. IRP had also issued a letter on 18.12.2021 to the suspended management of the Corporate Debtor and sent a letter dated 14.01.2022 to the SBI regarding non-compliance of the directions of the Adjudicating Authority dated 31.08.2021 to pay their expenses/fees upfront of Rs 2,00,000/-. The SBI by not complying with the order of the Adjudicating Authority not only violated their contractual obligations but it also tantamount to contempt of the court. It was vehemently contended that when the agenda item on fees of IRP and CIRP expense was placed for decision in the 1st CoC meeting, SBI as the sole CoC Member had even assured that the same would be looked into and processed but that was not done. It is also submitted that since SBI, as the sole CoC member, had tendered their in-principle approval for payment of fees of the IRP, no further formal resolution of the CoC was required.

8. Per contra, it is the contention of the Respondent that the withdrawal of fees by the IRP was unauthorised and illegal as it was not ratified by the CoC which was a statutory requirement. It was pressed that the reversal of the fees was justified as Appellant-IRP has not controverted that withdrawal of fees was done bereft of ratification of the fees by the CoC. Even the order of the Adjudicating Authority of 31.08.2021 had limited the fees of the IRP to Rs. 2,00,000/- until CoC approval, and IRP has failed to produce any document evidencing CoC ratification.

9. Before we return our findings on whether the fees withdrawn by the IRP was in order or not, we may first notice the statutory provisions of IBC and other relevant rules, regulations and orders which govern the realm of CIRP Costs and fees of the IRP/RP.

10. We first come to Section 5(13) of the IBC which defines CIRP Costs which reads as follows:

> ***"Section 5(13): Insolvency Resolution Process Costs***
> *(13) "Insolvency resolution process costs" means—*
> *(a) the amount of any interim finance and the costs incurred in raising such finance;*
> *(b) the fees payable to any person acting as a resolution professional;*
> *(c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;*
> *(d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and*
> *(e) any other costs as may be specified by the Board;"*

Section 5(13) of the IBC clearly includes fees payable to the IRP as integral to CIRP Costs.

11. Further it is important to take notice of Chapter IX of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which deals with "Insolvency Resolution Process Costs".

> *"**33: Costs of the interim resolution professional.***
>
> *(1) The applicant shall fix the expenses 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.

34: Resolution professional costs.

The committee shall fix the expenses to be incurred on or by the resolution professional and the expenses 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.

34-A: Disclosure of Costs.

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."

A plain and conjoint reading of above CIRP Regulations makes it amply clear that expenses incurred by IRP/RP assumes the colour of CIRP costs only if ratified by the CoC. Therefore, it follows therefrom that fees, if not ratified, do not fall within the definition of CIRP Costs in terms of Section 5(13) of IBC.

12. Having noticed the statutory construct, we may now glance at the orders of the Adjudicating Authority dated 31.08.2021 on the fees/expenses payable to the IRP on commencement of the CIRP proceedings which reads as under:

"10. We direct the Financial Creditor/Applicant to pay the IRP a sum of Rs.2,00,000/- (Rs. Two lakh) as fees & expenses till the COC decides about his fees /expenses."

When we look at the above order, it is unambiguously clear that the IRP was only entitled to Rs. Two lakhs only towards fees/expenses until the fees and expenses were ratified by the CoC. The caveat of ratification by the CoC is clearly etched out in the said order.

13. Material placed on records reveal that the IRP had admittedly withdrawn Rs. 9,83,684/- during the CIRP and Rs. 2,62,564/- in April 2022 towards his fees. Having already noticed the CIRP Regulations which make it imperative that the fees of the IRP need to be ratified and approved by the CoC, we also notice that the Adjudicating Authority in its order of 13.08.2021 had also mandated the approval of the fees by the CoC. That brings us to the question as to whether the fees so withdrawn was ratified by the CoC in its meetings.

14. At this stage, we may turn to the findings of the Adjudicating Authority in the impugned order on the aspect of fee withdrawal undertaken by the IRP and the validity of such withdrawal. The relevant excerpts of the impugned order read as follows:

> *"13.1. The Applicant alleges that the Respondent withdrew Rs. 9,83,684/- during the CIRP and Rs. 2,62,564/- in April 2022 without CoC approval or ratification, violating Regulation 33 and the Tribunal's order. The <u>CoC's minutes (27.05.2022 and 21.06.2022) confirm that the fees were neither approved nor ratified</u>, and the Applicant's emails (Annexure-F) demanding a refund went unanswered.*
>
> *13.2. The Respondent claims that SBI, as the sole CoC member, gave in-principle approval for fees at Rs. 1.65 lakhs per month, and no formal resolution was required. However, <u>the Respondent has not produced any document post-31.08.2021 evidencing CoC ratification</u>. The Tribunal's order explicitly limited fees to Rs. 2,00,000/- until CoC approval, which was not obtained.*

13.3. <u>Regulation 33(3) mandates that IRP expenses, including fees, be reimbursed only to the extent ratified by the CoC. The IBBI Circular reinforces this requirement. The CoC's explicit refusal to ratify the fees (Annexures-D, E) renders the withdrawals unauthorized. The additional withdrawal of Rs. 2,62,564/- in April 2022, after the Respondent's tenure ended (25.04.2022), is particularly egregious, as it lacks any legal basis.</u>

13.4. The Respondent's claim of <u>in-principle approval by SBI is insufficient</u>, as Regulation 33 and the Circular require formal CoC ratification, not informal consent. The discrepancy between the claimed fee (Rs. 1.65 lakhs/month) and invoiced amount (Rs. 1.21 lakhs/month) further undermines the Respondent's credibility."

(Emphasis supplied)

15. We notice that the Adjudicating Authority has gone through the meetings of the CoC dated 27.05.2022 and 21.06.2022 to return the findings that the CoC had not approved or ratified the fees of the IRP. The IRP being the person responsible for drawing up these minutes cannot deny the authenticity of these minutes. To be fair to the Appellant, the veracity of these minutes has not been controverted by him nor do we notice any denial on his part that the CoC did not ratify the fees of the IRP. The only defence which has been taken by the Appellant is that since SBI was the sole CoC member and it had already given its in-principle approval for fees at the time of issuing the appointment letter and had assured to process the fees during the 1st CoC meeting, no formal resolution of the CoC was required. As far as the alleged assurance given by the SBI is concerned, we do not find substance in this argument canvassed by the IRP as the CoC minutes at page 102 of Appeal Paper Book do not show any such assurance having been extended by SBI. The plea taken by the IRP that SBI had informally consented to pay is insufficient as it is not found to be in consonance with Regulations 33 and 34 of CIRP Regulations which clearly mandate that approval of CoC was required in respect of fees/expenses. When we look at the wordings of the order of the Adjudicating Authority of 31.08.2021, we find that there is no ambiguity that the order had clearly directed that the fees/expenses of the IRP will have to be decided by the CoC. However, the IRP had failed to get the stamp of approval of the CoC before drawing the fees.

16. In the given backdrop, we find no infirmity in the impugned order that the withdrawal of fees by the IRP was unauthorised and in contravention of the statutory provisions of IBC and CIRP Regulations as well as the order of the Adjudicating Authority dated 31.08.2021.

17. It is an incontrovertible fact that IRP had withdrawn Rs. 2,62,564/- in April 2022 and Rs 9,83,684/- during CIRP towards fees without the approval of the CoC. Unless the fee was ratified by the CoC, the IRP could not have taken such fee from the account of the Corporate Debtor. The CoC having refused to ratify the fees clearly rendered the withdrawal of fees by the IRP as an unauthorized act. Once the Corporate Debtor had been admitted into the rigours of CIRP, it is the responsibility of the RP to take custody of the assets of the Corporate Debtor. Hence, the RP cannot be faulted for having sent an e-mail to the IRP seeking refund of the fees which had been unauthorisedly drawn. However, the IRP did not even respond to the said e-mail to clarify his position as to why and how the drawal of his fees was not unauthorised. Consequently, when such unratified and unauthorized amounts had been withdrawn from the account of Corporate Debtor, the IRP was statutorily bound to refund the amount so withdrawn to the estate of the Corporate

Debtor. The RP sought reversal of the fees as he was statutorily bound to do so to protect the interest of all stakeholders and to ensure that there is no depletion or diminution of the assets of the Corporate Debtor. On this count, we find that the Adjudicating Authority has taken the correct view that since the withdrawal of fees by the IRP was done in an unauthorized manner and was in breach of the statutory provisions of IBC and CIRP Regulations but also the order of the Adjudicating Authority dated 31.08.2021, the said amount was directed to be reversed to the account of the Corporate Debtor.

18. We now come to the next limb of the argument of the Appellant that there is no provision in the IBC or the CIRP Regulations which permits the MC to initiate/continue litigation for recovery of funds or pursue claims like refund of fees from a former IRP. Submission was also pressed that in terms of Regulation 38(4) of the CIRP Regulations, the function of MC is to primarily monitor and supervise the implementation of the resolution plan. The powers of the MC are purely restricted to overseeing the implementation of the resolution plan. Once the resolution plan had been approved, the MC had no authority to pursue or revive any application for recovery of IRP fees and hence did not have the locus to pursue I.A.92 of 2023. It was also submitted that the MC had no jurisdiction to maintain the present application post approval of the resolution plan as the claim with respect to IRP fees stood extinguished once the plan was approved. The Adjudicating Authority should have examined the terms of the approved resolution plan before permitting continuation of proceedings by the erstwhile RP who had already become functus officio.

19. Repelling the arguments of the Appellant, it was contended by the Respondent that it is an admitted fact that upon approval of the resolution plan on 27.09.2023, the CoC stood dissolved and MC came into place to oversee and ensure plan implementation. Be that as it may, it was submitted that the MC thereafter became responsible for safeguarding the objectives of the approved plan. Therefore, any action undertaken by the RP in pursuance of a resolution duly passed by the MC for pursuing pending CIRP related legal proceedings was legally tenable and justifiable.

20. Coming to our analysis, we are of the considered view that it cannot be denied that with the approval of the resolution plan, the role of the RP comes to an end and so does the CoC cease to exist. Regulation 38 of CIRP Regulation, however, envisages an MC to come into position for overseeing the implementation of the plan. There is no statutory bar on the MC which is entrusted with overseeing the plan implementation to delegate on to the erstwhile RP to pursue applications/court proceedings if the MC is either authorised either by the terms of the plan or by the stakeholders to act accordingly. We notice that I.A. No. 92 of 2023 for recovery of fees was filed before Adjudicating Authority on 12.01.2023, while Resolution Plan came to be approved on 27.09.2023. Thus, the IA was already validly instituted prior to plan approval. When we look at the statutory provisions of IBC, we do not come across any specific provision which lays down that approval of the resolution plan automatically terminates or dissolves all pending proceedings connected with the CIRP of the Corporate Debtor. Since the subject matter of the I.A. concerned CIRP costs which was intrinsic to the insolvency process, pursuing its adjudication by the MC even after plan approval did not stand nullified.

21. At this stage, we may notice how the MC had considered the matter. We notice that this matter was considered in the 3rd MC meeting. The minutes of the meeting are as extracted below:

> ***3) <u>Discussion on handling IA 92 of 2023 in CP (IB) 385 of 2020</u>***
>
> *The Chairman shall inform the members of the monitoring committee that as per the order dated 10th February, 2025 passed by the Hon'ble NCLT, Ahmedabad Bench in IA 92 of 2023 in CP (IB) 385 of 2020 it was pointed out by the counsel of respondents that in this matter the Resolution Plan has already been approved by the Hon'ble NCLT vide order dated 27th September, 2024 and the present RP has no locus to pursue this application. In view of the same, decision is to be taken by the members of the monitoring committee as to who shall handle the said application from now onwards.*
>
> *The members of the monitoring committee unanimously decided that Mr. Vikash Jain being erstwhile RP and Chairman of Monitoring Committee of Shreebhav Polyweaves Private Ltd shall continue to handle IA 92 of 2023 in CP (IB) 385 of 2020 in the matter of Mr. Vikash Jain versus CA Nirav Tarkas IRP of Shreebhav Polyweaves Private Limited pending at the Hon'ble NCLT, Ahmedabad Bench. The members of the monitoring committee further decided that the benefit arising from the said application shall be for the benefit of stakeholders.*
>
> *In view of the same, the members of the monitoring committee unanimously resolved by show of hands as under:*
>
> *"RESOLVED THAT, Mr. Vikash Jain shall continue to handle IA 92 of 2023 in CP (IB) 385 of 2020 in the matter of Mr. Vikash Jain versus CA Nirav Tarkas IRP of Shreebhav Polyweaves Private Limited pending at the Hon'ble NCLT, Ahmedabad Bench.*
>
> *RESOLVED FURTHER THAT, that the benefit arising from the said application shall be for the benefit of stakeholders."*

22. When we look at the above proceedings of the third meeting of the MC held on 07.03.2025, we find that it had been resolved therein that IA No. 92 of 2023 would be pursued by the Chairman of the MC who happened to be the former RP. The locus of the RP to pursue IA No. 92 of 2023 therefore cannot be said to be questionable because the RP as the Chairman of the MC had been duly authorised by the MC to pursue the IA No. 92 of 2023 in the interest of all stakeholders. Nothing has been placed on record by the Appellant to demonstrate how the MC exceeded its mandate in having passed a resolution on 07.03.2025 authorising the RP to recover the fees which had been unauthorisedly withdrawn by the IRP. We therefore feel that it was sufficient for the Adjudicating Authority to note that the MC had passed a resolution authorising the former RP to pursue the matter. When the MC had passed this resolution after detailed deliberations, we feel it is irrelevant to examine the terms of the resolution plan in this regard.

23. Hence, we find nothing wrong in the impugned order, for holding that IA No. 92 of 2023 seeking refund of unratified fees of IRP was fully maintainable as applications relating to CIRP costs including fees and expenses of IRP/RP incurred during CIRP continue to survive for adjudication. We find that it has been correctly noticed by the Adjudicating Authority that the MC had passed a resolution on 07.03.2025 authorising the RP, as Chairman of MC, to pursue IA No. 92 of 2023 to recover the fees from the IRP for the benefit of the stakeholders which aligned with the IBC's objective of maximizing value for creditors. We entirely agree that even though on approval of the resolution plan, the role of the RP becomes functus officio, however, once the MC comes into existence to supervise the plan implementation, it can always delegate to the RP in his capacity as Chairman of MC specific tasks including pursuing of pending applications before the Adjudicating Authority as long as the subject matter of any such application lay within the jurisdiction of the Adjudicating Authority. In the present case, as the IA No.92 of 2023 was connected with CIRP-related disputes, the MC did not exceed its mandate to authorize the RP to pursue the said application. Thus, the impugned order does not suffer from any infirmity in holding that the MC had the locus to pursue IA No.92 of 2023 through the erstwhile RP who now donned the cap of Chairman of MC.

24. This brings us to the issue of the decision of the CoC to replace the IRP which has been questioned by the Appellant. Much emphasis was laid to claim that inspite of his medical challenges, the IRP had undertaken several activities towards smooth conduct of CIRP process from 31.08.2021 until 25.04.2022 including convening of CoC meetings, verification of claims, engagement of professionals, statutory filings and meeting of statutory compliances. Nevertheless, it is an admitted fact that IRP had convened the 1st CoC Committee after efflux of nearly three months though in terms of Regulations 17(2) of CIRP Regulations, the IRP is required to hold the first meeting of the CoC within seven days of filing of the report certifying constitution of the CoC to the Adjudicating Authority. Even though the delay has been explained on health grounds, it is the contention of the Respondent that this has not been supported by any medical documentation. We also notice that the Respondent has alleged lack of cooperation on the part of the

IRP having failed to attend the 2nd CoC meeting which had been scheduled for facilitating handing over formalities of the IRP. We however do not wish to enter into the allegations and counter-claims on the conduct of the IRP as this is not germane for the issue at hand since we have to be guided by the statutory provisions of the IBC to assess whether the replacement was done by following the due process.

25. It may be pertinent to deal with the assertion raised by the IRP that his unilateral replacement by the CoC was done without giving him an opportunity to defend himself. When we look at Section 27 of the IBC which deals with the replacement of the IRP by the CoC, we find that this statute empowers the CoC to replace an IRP at any time during the CIRP. In the present case, the CoC in the 1st meeting, after passing a resolution to replace the IRP with majority vote had thereafter filed an application for this purpose before the Adjudicating Authority.

26. If we look at Section 27 of IBC, there can be no disagreement that the process of the replacement of IRP is complete when the required decision is taken by the CoC in its meeting with requisite majority. The law nowhere says that the CoC is required to give an opportunity for hearing to the IRP or to adduce reasons for seeking replacement of the IRP . It is well settled that the relationship between the IRP and the CoC is one of trust and confidence. In the present case, the CoC decided to replace the IRP in the 1st CoC meeting which was followed up by an application before the Adjudicating Authority which was subsequently affirmed by the Adjudicating Authority on 25.04.2022 approving the replacement of the IRP with another RP. That being the case, once the IRP lost the trust of the CoC and the CoC as per its wisdom decided to replace the IRP, that decision should have been accepted gracefully by the IRP. We have no hesitation in holding that the replacement of the IRP was done by following the due process and this order having acquired finality on 25.04.2022 cannot be open for challenge now.

27. In the light of the above discussions, we do not find any substance in the submissions raised by the Appellant to warrant any interference in the impugned order. The impugned order passed by the Adjudicating Authority, not suffering from any infirmities, is hereby affirmed including the directions to refund Rs.12,46,248/- to the Corporate Debtor's account by 10.10.2025. The Appeal being devoid of merit is dismissed. No order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi
Date: 09.09.2025

Harleen/ Abdul