

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD SPECIAL BENCH
COURT - 1

ITEM No.3
IA/652(AHM)2021
in
CP(IB) 321 of 2020

Order under Section 43,45,50 & 66 IBC,2016

IN THE MATTER OF:

Amit Dineschandra Patel

.....Applicant

V/s

Chandra Prakash Jain RP of Sintex Prefab & Infra Ltd

.....Respondent

Order delivered on ..16/03/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Ajai Das Mehrotra, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

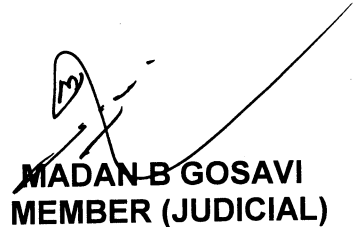
ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.



**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**



**MADAN B GOSAVI
MEMBER (JUDICIAL)**

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD SPECIAL BENCH
COURT - 1

ITEM No.4
IA/145(AHM)2022
in
CP(IB) 321 of 2020

Order under Section 60(5) IBC,2016

IN THE MATTER OF:

Amit Dineschandra Patel

.....Applicant

V/s

Chandra Prakash Jain RP of Sintex Prefab & Infra Ltd

.....Respondent

Order delivered on ..16/03/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Ajai Das Mehrotra, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.



**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**

Sweta



**MADAN B GOSAVI
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AT AHMEDABAD
COURT-I**

**IA 652 of 2021
& IA 145 of 2022
in C.P. (IB) 321 of 2020**

[An application filed under Sections 43,45,50 and 66 of the IBC,
2016]

In the matter between:

Amit Dineshchandra Patel

Having Address at:

7th Floor, Abhijeet-1, Mithakali six roads,

Ellis Briege, Ahmedabad-380006,

E-mail- amit@sintex.co.in

.....Applicant

Versus

Chandra Prakash Jain

Resolution Professional of

M/s Sintex Prefab and Infra Limited (Corporate Debtor)

Having Address at:

D-501, Ganesh Meridian,

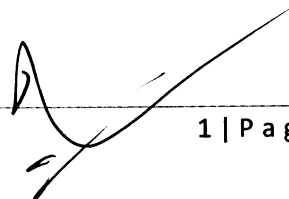
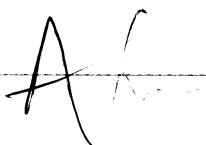
Opp. Gujarat High Court, S.G. Road,

E-mail-Jain CP@yahoo.com

Cirp.sintexprefab@gmail.com

.....Respondent

**Order Reserved on: 16.02.2022
Order Pronounced on: 16.03.2022**



Coaram: MADAN B. GOSAVI, MEMBER (J)
AJAI DAS MEHROTRA, MEMBER ((T))

Appearance:

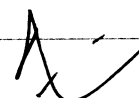
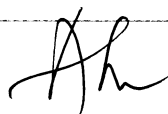
For the applicant: Adv. Mr. Arjun Seth

For the Respondent: Adv. Mr. Monaal Davawala

ORDER

(Per Bench)

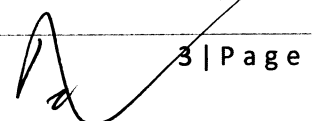
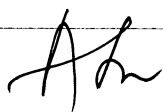
1. The present application has been filed by Mr. Amit Dineshchandra Patel, the suspended Director of Sintex Prefab & Infra Limited (hereinafter referred as "Corporate Debtor") against the Resolution Professional of Sintex Prefab & Infra Limited presently carrying out the CIRP of the Corporate Debtor. It is worthwhile to note that Committee of Creditors (COC) has not been made party in this application.
2. The brief facts of the case are that on an application of Bank of Baroda, the Financial Creditor, the Corporate Debtor was admitted in CIRP on 24.02.2021 as it has failed to repay the financial debt of Rs. 395 crores. The Committee of Creditors in the 2nd COC meeting held on 22.04.2021 have decided to undertake transaction audit of the Corporate Debtor w.e.f. 01.04.2018 to 01.02.2021. M/s. Batliboi and Purohit,



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Chartered Accountants were appointed as transaction auditor vide letter dated 28.05.2021. Subsequently, the COC in the 4th meeting held on 02.06.2021 decided to conduct forensic audit w.e.f. 01.04.2015. Vide letter dated 08.06.2021, the auditors were informed that the transaction audit will be for the period 01.04.2015 to 02.03.2021. Subsequently, vide letter dated 05.07.2021, the Resolution Professional (RP) informed the auditor that the audit for the period 01.04.2015 to 31.03.2018 (3 years) will not form part of the transaction audit, but will be considered as forensic audit.

3. The main contention of the petitioner is that Section 43 and Section 50, which deal with preferential and extortionate transactions, respectively specify the look back period as 2 years preceeding insolvency commencement date, and therefore, the audit of 6 years is beyond the purview of IBC. The applicant has also cited the decision of Hon'ble Supreme Court in the case of Anup Jain vs. Axis Bank Limited and Ors. (2021) 8 SCC 401.
4. In its reply the RP stated that it was brought to the notice of COC that CD had demerged from its parent company (Sintex Industries Ltd) w.e.f. 01.04.2015 through Scheme of Arrangement approved by NCLT on 23.03.2017, and that on



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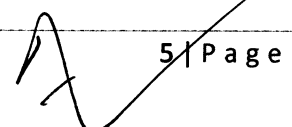
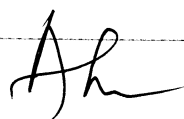
physical verification very few assets were physically found though the properties and plant and machinery were shown at high value. The RP stated that COC had approved the forensic audit and the cost of forensic audit shall be borne by the COC and shall not form part of CIRP cost. The RP further stated that the look back period is applicable only to transactions covered by Sections 43 & 45 of IBC, and specifically there is no such restriction for transactions covered by Section 66 of IBC.

5. We have considered the submissions of the applicant and the respondent. Once the CIRP sets in, the management of the company passes in the hands of RP and COC. The suspended management has no role to play. The time limits of look back period given in Section 43 and Section 50 of IBC are to be considered by the Adjudicating Authority while considering the applications, if any, filed under the said Sections. It is worthwhile to note that no time limit for look back period has been given for consideration by Adjudicating Authority of transactions which can be termed fraudulent transactions, under the provisions of Section 66 of the IBC 2016.
6. The duties of Resolution Professional includes appointment of accountants, legal or other professionals [Section 25(2)(d)] of IBC. No time limit for audit has been prescribed in the IBC.

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Further as per Para 12 of reply of Resolution Professional dated 05.07.2021, the cost of forensic audit shall not form part of CIRP cost and the same shall be borne by the financial creditors.

7. It is true that as per Section 18(a)(1) of IBC, the IRP has to collect information relating to the assets, finances and operations of the CD for determination of financial position of the CD for period of previous 2 years but we have every doubt in our mind that whether IRP, or later Resolution Professional (RP) can allow forensic audit of CD for back period of event, which he may not be apparently in charge of as per above provision. However, for carrying the forensic audit independently by the COC, who are in control of the affairs of the CD, it will not be proper for us to restrict them relating to any point.
8. We have gone through the judgment of Hon'ble Supreme Court cited by the applicant (8 SCC 401) and do not find any restriction regarding time limit or look back period for initiation/conduct of transaction or forensic audit.
9. The only issue in this case is initiation of audit for which the expenses are to be borne by the COC, and which will not be part of the CIRP cost, and at this stage it will be premature to



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suggest whether any transaction will be found which is preferential, extortionate or fraudulent. The locus standi of suspended management to interfere and prevent audit is questionable, as the suspended management has no role after initiation of CIRP. Further, the rights of the applicant suspended Director are in no way prejudiced by initiation of audit. We feel that the intervention of Adjudicating Authority at this stage is unwarranted. Hence, the application IA 652 of 2021 in CP(IB) 321 of 2020 is dismissed.

10. Since IA 652 of 2021 in CP(IB) 321 of 2020 is disposed of, hence, IA 145 of 2022 in CP(IB) 321 of 2020 filed for the preponement of IA 652 of 2021 in CP(IB) 321 of 2020 also stands disposed of.



(Ajai Das Mehrotra)
Member (Technical)



(Madan B. Gosavi)
Member (Judicial)

Shamsh Tabrez (PS)