

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
SPECIAL BENCH
COURT - 2

ITEM No.302
IA 887 of 2023
In
CP(IB) 398 of 2020

Order under Section 22(3)(b) of IBC

IN THE MATTER OF:

ABP Apparels Pvt Ltd

.....Applicant

.....Respondent

Order delivered on 25/09/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order

The order is pronounced in open Court vide separate sheet.

-Sd-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD SPECIAL BENCH, COURT-II**

**IA No.887/NCLT/AHM/2023
IN
CP (IB) No.398/NCLT/AHM/2020**

(Application Under Section 22(3)(b) of the IB Code, 2016)

In the matter of M/s ABP apparels pvt. Ltd.

MEMO OF PARTIES

**Committee of Creditors represented through
HDFC Bank Limited.**

3rd Floor, Shivalik-3,
Above ICICI Bank,
Opp. Reliance Fresh,
Drive-in- Cinema,
Thaltej, Ahmedabad 380054

... Applicant / Committee of Creditor

VERSUS

1. Mr. Santanu Bhattacharjee,

Interim Resolution Professional of
ABP Apparels Private Limited
Godrej Central Tower D,
Flat No.1001, Shell Colony,
Chembur (East),
Mumbai City,
Maharashtra, 400071

2. Mr. Kinjalkumar Madhubhai Choudhary

Proposed Resolution Professional of
Apparels Private Limited,
9-B, Vardan Complex,
Nr. Vimal House,
Lakhudi Circle, Navrangpura,
Ahmadabad, Gujarat ,380014

... Respondents

Order pronounced on: 25/09/2023

CORAM:

**MR. SHAMMI KHAN,
HON'BLE MEMBER (JUDICIAL)**

**Dr. V.G. VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)**

Appearance:

For the Applicant : Mr. Sumit Parikh, Adv.
For the Respondent-1 : Mr. Nayan Mahar, Adv.

ORDER

1. This is an application filed on 11.08.2023 by the Committee of Creditor (hereinafter referred to as "CoC") represented through HDFC Bank Limited under Section 22(3)(b) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code") seeking for an order for the Replacement of present Interim Resolution Professional of the Corporate Debtor M/s. ABP Apparels Limited.
2. The facts as narrated in the application and explained by the counsel for the applicant/ CoC are summarized hereunder :
 - (i) The application was filed by the M/s. ABP Apparels Private Limited/Corporate Debtor itself under Section 10 of the Code for seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred to as the 'CIRP'), which was admitted vide order dated 15.06.2023 and Mr. Santanu Bhattacharjee was appointed as Interim Resolution Professional (hereinafter referred to as "IRP").
 - (ii) The IRP under Section 15 of the IB Code r.w. Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, made a public announcement in FORM-A on 17.06.2023. The

last date for submission of a claim by the creditors was 29th June 2023.

- (iii) The IRP collated all claims submitted by the creditors pursuant to Public Announcement and accordingly constituted a Committee of Creditors (hereinafter referred to as the “CoC”) as per Regulation 16 of CIRP Regulations on 07.07.2023, however the IRP has received claims from the creditors hence re-constitute on 30.07.2023.
- (iv) The IRP Convened the 2nd CoC meeting was held on 31.07.2023 wherein CoC Members has resolved to replace the present Interim Resolution Professional i.e Mr. Santanu Bhattacharjee (herein referred as ‘IRP’) with Proposed Resolution Professional Mr. Kinjalkumar Madhubhai Chaudhary (herein referred as ‘RP’), the said resolution was approved with 70.05% Voting result.

3. We also heard counsel of the IRP as well as Respondent No.1 on the following contentions: -

- 1) CoC failed to ratify the remuneration and expenses incurred by IRP while performing his duties as IRP of the Corporate Debtor.
- 2) Fees to be paid to the proposed Resolution Professional is in Contravention to the fees prescribed under the CIRP Regulations read with IP Regulations.

4. For the sake of ready reference, the relevant provision of section 22 of the Code, which is applicable is reproduced hereunder:

Section 22 Appointment of resolution professional.

(1) The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.

(2) The committee of creditors, may, in the first meeting, by a majority vote of not less than 1[sixty-six] per cent. of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.

(3) Where the committee of creditors resolves under sub-section (2)-

(a) to continue the interim resolution professional as resolution professional 2[subject to a written consent from the interim resolution professional in the specified form], it shall communicate its decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority;

or

(b) to replace the interim resolution professional, it shall file an application before the Adjudicating Authority for the appointment of the proposed resolution professional 3[along with a written consent from the proposed resolution professional in the specified form].

5. The CoC in compliance with Section 22(3)(b) of the IBC 2016 has in its meeting dated 31.07.2023 approved the resolution that was put to vote for replacing the IRP Mr. Santanu Bhattacharjee with Proposed Resolution Professional Mr. Kinjalkumar Madhubhai Chaudhary.

6. Accordingly, we pass the following orders:

1. Since, in the meeting held on 31.07.2023 seeking appointment of the RP Mr. Kinjalkumar M Chaudhary is approved with 70.05% majority (29.95% of the CoC members were absent) by E voting the same was approved with requisite majority.

2. Therefore, we hereby appoint Mr. Kinjalkumar Madhubhai Chaudhary (having Registration No. IBBI/IPA-001/IP-P-

02196/2020-2021/13463) as a RP of the Corporate Debtor. Mr. Santanu Bhattacharjee, outgoing IRP is directed to handover the Custody of entire assets, documents and process papers to the incumbent RP within three days from the date of this order.

3. CoC is directed to settle the outstanding fees/expenses of the IRP within a period of seven days from the date of this order.

Accordingly, IA 887 of 2023 is allowed and disposed off.

-Sd-
Dr. V.G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

Prakash - Steno