



**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT-II**

IA 416/AHM/2022

AND

IA 275/AHM/2022

IN

CP (IB) 848/NCLT/AHM/2019

IA 275/AHM/2022

In the Matter of Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016

**MR. PINAKIN SHAH
INTERIM RESOLUTION PROFESSIONAL OF
SINTEX INDUSTRIES LTD.**

...Applicant

AND

IA 416/AHM/2022

In the Matter of Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of National Company Law Tribunal Rules, 2016

AXIS BANK LIMITED

... APPLICANT

Versus

MR. PINAKIN SHAH & ORS.

... RESPONDENTS

IA 416/AHM/2022

IA 275/AHM/2022

IN CP (IB) 848/NCLT/AHM/2019



In CP (IB) 848/NCLT/AHM/2019

**INVESCO ASSET MANAGEMENT
(INDIA) PVT. LTD.**

...FINANCIAL CREDITOR

Versus

SINTEX INDUSTRIES LTD.

...CORPORATE DEBTOR

Order Pronounced: 10.02.2023

CORAM:

**DR. DEEPTI MUKESH
HON'BLE MEMBER (Judicial)
MR. AJAI DAS MEHROTRA
HON'BLE MEMBER (Technical)**



MEMO OF PARTIES

IA 275/AHM/2022

MR. PINAKIN SHAH
INTERIM RESOLUTION PROFESSIONAL OF
SINTEX INDUSTRIES LTD.

A-201, Siddhi Vinayak Towers
b/h DCP office, next to Kataria House,
Off. S. G. Highway, Makaraba,
Ahmedabad- 380051, Gujarat

...Applicant

Present:

For the RP : Mr. Navin Pahwa, Sr. Adv. a.w.
Ms. Pragati Bansal, Adv.
Mr. Pavan Godiawala, Adv.
For the Resolution : Mr. Mihir Thakore, Sr. Adv. a/w. Mr. Raheel Patel, Adv.
Applicants a/w. Mr. Aalay Shah, Adv. (For Gandhi Law
Associates)
Mr. Vishnu Shriram (i/b. Khaitan & Co.)

IA 416/AHM/2022

Axis Bank Limited

Trishul, 3rd Floor, Opp. Samrtheshwar Temple,
Near Law Garden, Ellisbridge,
Ahmedabad- 380006

... Applicant

Versus

1.Mr. Pinakin Shah
Interim Resolution Professional of
Sintex Industries Ltd.

A-201, Siddhi Vinayak Towers
b/h DCP office, next to Kataria House,
Off. S. G. Highway, Makaraba,
Ahmedabad- 38005

IA 416/AHM/2022

IA 275/AHM/2022

IN CP (IB) 848/NCLT/AHM/2019



2. Committee of Creditors of Sintex Industries Ltd.,
04th Floor, Chanakya Building
Near Dinesh Hall, Off. Ashram Road,
Ahmedabad- 380009

3. Reliance Industries Ltd.
Joint- successful Resolution Applicant of
Sintex Industries Ltd.
3rd Floor, Maker Chambers IV, 2
22, Nariman Point, Mumbai - 400 021

4. Assets Care & Reconstruction Enterprise Ltd.
Joint successful Resolution Applicants of
Sintex Industries Limited
2nd Floor, Mohandev Building, 13, Tolstoy Marg,
New Delhi-110001

...Respondents

Present:

For the Applicant : Mr. Joy Saha, Sr. Adv. a/w. Mr. Orijit Chatterjee, Adv.,
Mr. Deep Morabia, Adv. & Mr. Shubham Raj, Adv.
Ms. Shraddha Ambre, Adv. I/b. Fox Mandal & Associates

For the Resolution Applicant : Mr. Mihir Thakore, Sr. Adv. a/w. Mr. Raheel Patel, Adv.
a/w. Mr. Aalay Shah, Adv. (For Gandhi Law
Associates)
Mr. Vishnu Shriram (i/b. Khaitan & Co.)

For Respondent No. 2 : Mr. Rashesh Sanjanwala, Sr. Adv. a/w.
Mr. Siddharth Sinha, Adv.,
Mr. Virgil Braganza

For the RP : Mr. Navin Pahwa, Sr. Adv. a.w.
Ms. Pragati Bansal, Adv.
Mr. Pavan Godiawala, Adv.



ORDER

1. IA No. 275/AHM/2022 is an application for approval of resolution plan and IA No. 416/AHM/2022 is an objection to the resolution plan. Both IAs are connected, hence are disposed of by this common order.

2. IA No. 275/AHM/2022

2.1. This Application is filed by Mr. Pinakin Shah Interim Resolution Professional of Corporate Debtor under Section 30(6) and Section 31 of the Code r/w Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016 ('CIRP Regulations') r/w Rule 11 of NCLT Rules, 2016 seeking following reliefs:

- a) *Allow the present application;*
- b) *Pass an order approving the Resolution Plan submitted by the Resolution Applicants in respect of the Corporate Debtor under Section 31(1) of the Code and declare that the same be binding on the Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan;*
- c) *Pass an order directing the Resolution Applicants to implement the Resolution Plan in the manner set out under the Resolution Plan;*
- d) *Issue such other necessary orders as may be deemed fit in the matter.*

2.2. 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 made a public announcement in Form-A on 10.04.2021 and collated claims and constituted CoC of 28 financial



creditors. 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 and Mr. Pinakin Shah IRP has continued as IRP. This application is also filed by Mr. Pinakin Shah as Interim Resolution Professional.

2.3. The Interim Resolution Professional submits that CoC in its 2nd meeting held on 31.05.2021 resolved for pan India publication of Form-G. Accordingly, Form-G was published on 11.06.2021 inviting expression of interest (‘EoI’) in Economic Times, Ahmedabad & Mumbai edition (English- Western Region), The Hindu, Coimbatore Edition, Punjab Kesari, Punjab edition and The Stateman, Kolkata edition and last day for receipt of EoI was 15.07.2021. The CoC in its 3rd meeting held on 02.07.2021 accorded for appointment of registered valuer for Land & Building, Plant & Machinery and Securities and Financial Assets of the Corporate Debtor. Thereafter on a resolution passed by CoC in its 4th



meeting held on 19.07.2021 as resolved, revised Form-G was published on 31.07.2021 and last day for receipt of expression of interest was revised to 14.08.2021.

2.4. It is stated that on a resolution passed by CoC in its 7th meeting held on 04.09.2021, an application for extension of CIRP period by further 90 days beyond 180 days was filed and the same was allowed vide order dated 15.11.2021. It is stated that considering the 2nd wave of covid-19, CoC in its 11th meeting held on 08.11.2021 approved modification of evaluation matrix and extension for submission of resolution plan till 11.12.2021. The resolution plan from following prospective resolution applicants were received:

- 1) Reliance Industries Limited jointly with Assets Care & Reconstruction Enterprise Limited- (Consortium), Mumbai
- 2) Welspun Group, through- Easygo Textiles Private Limited, Mumbai.
- 3) Himatsingka Ventures Private Limited, jointly with Shrikant Himatsingka & Dinesh Kumar Himatsingka (Consortium), Bangalore.
- 4) GHCL Limited. Noida (Delhi).

2.5. It is stated that the CoC in its 13th meeting held on 23.12.2021 approved the filing of application for availment of CIRP period of 60 days beyond 270 days, expiring on 01.01.2022. In view thereof, an application bearing IA No. 197/2022 for extension was filed and thereafter another application bearing IA No. 262/2022 was filed for exclusion of certain period. Both applications were disposed of vide order dated 24.03.2022, which is reproduced below:

“IA 262 of 2022

Application filed by the Resolution Professional seeking exclusion of certain period relying on the order passed by Hon'ble Supreme Court dated 23.09.2022 taking cognizance for extension of the



limitation. Learned Counsel states that 330 days expired on 02.03.2022. Resolution plan is already approved by the CoC. Prayer (b) is for extension of CIRP period by further 30 days beyond 02.03.2022. Learned Senior Counsel Mr. Pahwa states that if the Bench is inclined to grant exclusion, then extension of 30 days may be granted in order to enable Resolution Professional to file appropriate application seeking approval of resolution plan which is already approved by CoC in its 21st meeting dated 02.03.2022. Learned Sr. Counsel further states that IA for approval of Resolution Plan is already filed. From 03.03.2022, 30 days extension of the CIRP period is granted. Application is allowed and disposed of in terms of the above order.

IA 197 of 2022

Application filed under Section 12(2) of the IBC, 2016. In view of allowing IA 262 of 2022, this application has become infructuous. Application is disposed of as infructuous.”

- 2.6. It is further stated that the CoC in its various meetings discussed the resolution plans and in 21st CoC meeting held 2.03.2022, all four plans were put to vote. The voting lines were opened from 05.03.2022 till 19.03.2022 wherein out of twenty-eight CoC members two members representing 1.12% did not exercise their vote and twenty-six members representing 98.88% voted for resolution plan submitted by Reliance Industries Limited jointly with Assets Care & Reconstruction Enterprise Limited- (Consortium), Mumbai. Thus, the resolution plan was approved unanimously by all CoC members who exercised their vote.
- 2.7. The letter of intent was issued on 20.03.2022 by IRP in terms of the Resolution Plan and the same was acknowledged by joint Successful Resolution Applicants (‘SRA’). The Applicant submits that the SRAs has given the performance guarantee of Rs. 365,10,00,000/- dated



23.03.2022 issued by Axis Bank in the name of Punjab National Bank, on behalf of CoC.

2.8. As per Form-H annexed by the Applicant, the Fair Value and Liquidation Value of the Corporate Debtor are Rs. 5,18,768.05 lakhs and Rs. 363280.60 lakhs respectively. The present Resolution Plan offers an amount of Rs. 3651.32 crores, which is higher than the liquidation value.

2.9. Affidavits dated 10.12.2021 from Mr. Vipul Shah and Mr. Devendra Sitlani authorized representative of the joint Successful Resolution Applicants i.e. Reliance Industries Limited and Asset Care and Reconstruction Enterprise Ltd. declaring the eligibility of the joint successful Resolution Applicants under Section 29A of the Code is placed on record.

2.10. It is further submitted by the Applicant IRP that the resolution plan complies with provisions of Section 30(2) of Code and Regulation 38 of the CIRP Regulations.

2.11. The amount provided for the stakeholders under the Resolution Plan as per Form-H, is as under:

Sr. No .	Category of Shareholder*	Sub-Category of Stakeholder	Amount Claimed (Amount in Rs. Crores)	Amount Admitted (Amount in Rs. Crores)	Amount provided under the Plan# (Amount in Rs. Crores)	Amount provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-	NIL	NA	NA	NA



		section (2) of Section 21				
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	1.50 7488.71	1.50 7488.71	0.54 INR 3553.97 (includes upfront-2946 Equity-171.43 Cash & cash equivalents-436.54)	36% 47.45%
		Total [(a)+(b)]	7490.21	7490.21	3554.51	47.45%
2	Unsecured Financial Creditors	(a)Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		(b)Other than (a) above: (i) who did not vote in favour of the resolution plan (ii) who voted in favour of the resolution plan	84.65 143.86	84.65 143.86	4.95 8.43	5.85% 5.85%
		Total[(a)+(b)]	228.51	228.51	13.38	4.98%
3	Operational Creditors	(a)Related party of the Corporate Debtor	NIL	NA	NA	NA



		(b)Other than(a) above:				
		(i) Government	0.0018	0.0018	0.0018	100%
		(ii) Workmen & Employees.	10.9076	10.9076	10.9076	100%
		(iii) Other Operational Creditors	72.518	72.518	72.518 (Upper cap)	(on Prorata basis based on admitted claim)
		Total[(a)+(b)]	83.4275	83.4275	83.4275	100%
4	Other debts and dues		-	-	-	-
	Grand Total	[1+2+3]	7802.15	7802.15	3651.32	46.79%

2.12. It is noted that clause 1.8.10 of the resolution plan provides that proceeds, if any, received from insurance companies from claims pertaining to cyclone Tauktae shall, on actual basis, be paid to financial creditors after adjusting any excess CIRP costs.

2.13. On query raised on 26.09.2022, the Learned counsel for Interim Resolution Professional submitted as below:

“.... On further query raised by the Bench with respect to latest judgment passed by the Hon’ble Supreme Court in State Tax Officer V/s. Rainbow Papers Limited, the Learned Counsel for RP along with RP in person makes a statement that the observation in the said judgment will not have any bearing, as the entire statutory dues are being paid as per the provisions made in the Plan.”

2.14. It is noted that clause 7.7 of the resolution plan provides as under:

“In the event any transactions are avoided/ set aside by the Adjudicating Authority under the terms of Sections 43, 45, 47, 49, 50 or 66 of the IBC and any amount is received by the Resolution



Professional or the Corporate Debtor in furtherance thereof, such sums shall be for the benefit of the Financial Creditors and shall be a pass-through amount to the Financial Creditors. It is clarified that the Dissenting Financial Creditors shall not be entitled to receive any distribution from recoveries out of avoidance transactions referred above.....”

2.15. It is seen that on the request made by Ld. Counsel for IRP on 28.06.2022, notices were issued to SEBI and RoC and Income Tax Department had accepted the notice. Order dated 28.06.2022 is reproduced below:

“IA 275 of 2022

Application for approval of resolution plan filed by RP.

Learned Sr. Counsel, Mr. Pahwa states that notice to SEBI, Income Tax Department and ROC needs to be issued. Learned counsel for Income Tax Department accepts notice and undertakes to file reply within two weeks.

Issue notice to SEBI and ROC.”

It is noted that none of the above authorities has filed their reply.

2.16. It is to be noted that for getting the approval of the Adjudicating Authority, the resolution plan should adhere to the following requirements as per Section 30(2) of the Code read with CIRP Regulations:

- (i) It should provide for the payment of insolvency resolution process costs in priority to the repayment of other debts of the corporate debtor.

[Section 30(2)(a)]

- (ii) The repayment of the debts of operational creditors and dissenting financial creditors should not be less than the amount to be paid to such respective creditors in the event of liquidation of the corporate debtor under Section 53 of the Code. Moreover, the



payment to the operational creditor is to be made in priority over the financial creditor; and the payment to dissenting financial creditor is to be made in priority to the consenting financial creditors.

[Section 30(2)(b) read with CIRP Regulation 38(1)(a) & 38(1)(b)];

- (iii) Provides for the management of the affairs of the corporate debtor after approval of the resolution plan.

[Section 30(2)(c) read with CIRP Regulation 38(2)(b)];

- (iv) The implementation and supervision of the resolution plan.

[Section 30(2)(d) read with CIRP Regulation 38(2)(c)];

- (v) It does not contravene any of the provisions of the law for the time being in force.

[Section 30(2)(e)];

- (vi) It conforms to such other requirements as may be specified by the Board.

[Section 30(2)(f)]

Such other requirements of the resolution plan as detailed in IBBI (Resolution Process for Corporate Persons) Regulations, 2016 which are not covered above, are as under:

- (a) The resolution plan should include statement as to how it has dealt with the interests of all stakeholders including financial creditors and operational creditors of the corporate debtor.

[CIRP Regulation 38 (1A)]

- (b) The resolution plan should include a statement giving details as to whether the resolution applicant or any of its related parties has at any time failed to implement or caused to the failure of



implementation of any other resolution plan which was approved by the Adjudicating Authority.

[CIRP Regulation 38 (1B)]

- (c) The resolution plan should contain the term of the plan and its implementation schedule.

[CIRP Regulation 38(2)(a)]

- (d) The resolution plan should also demonstrate that it addresses the cause of default; is feasible and viable; has provisions for its effective implementation; has provisions for approvals required and timeline for the same. Further that the resolution applicant has the capability to implement the resolution plan.

[CIRP Regulation 38(3)]

2.17. In view of the above provisions of the Code, 2016, the resolution plan submitted before us has been examined as follows:

- (i) It is stated in clause 1.8.1 and 2 of the plan that the entire IRP Costs have been or shall be paid out of the Cash and Cash Equivalent of the Corporate Debtor and accordingly, the IRP Costs required to be paid by the joint successful Resolution Applicants are NIL. Any IRP Costs that are not paid out of the Cash and Cash Equivalent due to insufficiency of cash balances in the Corporate Debtor (as per information provided by the Interim Resolution Professional along with relevant supporting documentation and details) ("Excess IRP Cost"), shall be paid by the joint successful Resolution Applicants and such Excess IRP Costs shall be adjusted from the amounts payable to the Financial Creditors and will be paid in priority to all other payments. Thereby, Section 30(2)(a) has been complied with.



- (ii) Clause 3,4 &5 of the resolution plan provides that the Workmen & Employees and Government authorities shall be paid 100% of their admitted dues and other operational creditors be paid subject to cap of Rs. 72,51,82,000/-. It is further stated that such amount shall be paid on the payment date prior to other creditors.
- Further clause 1.8.5 and clause 5.1.1 provides that dissenting financial creditor will be paid in priority to other financial creditor. Thus, the provisions of Section 30(2)(b) read with CIRP Regulation 38(1)(a) & 38(1)(b) are complied with.
- (iii) The mechanism for management and control of the affairs of the corporate debtor after approval of the resolution plan has been provided in the resolution plan. We hold that thereby provisions of Section 30(2)(c) read with CIRP Regulation 38(2)(b) have been complied with.
- (iv) Clause 5.4 of the resolution plan provides that the joint successful Resolution Applicants and Monitoring Committee shall jointly supervise the implementation of plan until payment date. Thereby, Section 30(2)(d) and Regulation 38(2)(d) of CIRP Regulations, 2016 has been complied with.
- (v) It is stated in clause 5.6 that the plan does not contravene any provisions of the law and confirms to other requirements as may be specified by the IBBI. We also noted that the plan does not contravene any provisions of the law for the time being in force. Thereby, Section 30(2)(e) of Code has been complied with.
- (vi) The resolution plan contains a statement regarding dealing with the interests of all stakeholders, including financial creditors and operational creditors, of the Corporate Debtor. Thereby, Regulation 38(1A) of CIRP Regulations, 2016 has been complied with.



(vii) The resolution plan contains a statement that the joint successful Resolution Applicant or any of its related parties has not failed to implement or contributed to failure of implementation of any other Resolution Plan approved by the Adjudicating Authority. Thus, statement giving details of such non-implementation is not applicable under Regulation 38(1B) of CIRP Regulations, 2016.

(viii) The term of the resolution plan is for a period of 59 days which shall commence on the date of the approval of the said plan by the Adjudicating Authority. It provides for the implementation schedule for payment to the creditors as envisaged in the resolution plan within a period of 59 days.

Thereby, Regulation 38(2)(a) of CIRP Regulations, 2016 has been complied with.

(ix) The resolution plan contains the sources of funds; is feasible and viable; has provisions for its effective implementation. Thereby, Regulation 38(3) of CIRP Regulations, 2016 has been complied with.

3. **IA No. 416/AHM/2022**

3.1. This Application is filed by the Applicant Axis Bank Limited through its authorized signatory Mr. Dhaval Thakkar, against Mr. Pinakin Shah Interim Resolution Professional of Corporate Debtor Sintex Industries Ltd., Committee of Creditors of the Corporate Debtor ('CoC') and joint successful resolution applicants, Reliance Industries Ltd. & Assets Care & Reconstruction Enterprise Ltd. under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 ('Code') r/w Rule 11 of NCLT Rules, 2016 seeking following reliefs:



- a) *This Hon'ble Tribunal be pleased to declare that the passing of Resolution 4(a) at the 21st COC Meeting held on 02nd March, 2022 is illegal and contrary to law and the same be set aside;*
- b) *This Hon'ble Tribunal be pleased to permanently restrain the Respondents, their agents, servants, employees and assignees from acting in furtherance of Resolution 4(a) as passed at the 21st Meeting of the COC;*
- c) *This Hon'ble Tribunal be pleased to declare that the distribution of the Lender Repayment Amount would be on a pro rata basis by calculating the admitted claim of each lender relative to the total admitted claims;*
- d) *This Hon'ble Tribunal be pleased to declare that Clause 7.3 of the Resolution Plan submitted by respondent nos. 3 and 4 is ultra vires the Code and further be pleased to strike down the same;*
- e) *This Hon'ble Tribunal be pleased to set aside the approval of resolution plan submitted by the consortium of respondent nos. 3 and 4 with respect to the corporate debtor;*
- f) *This Hon'ble Tribunal be pleased to grant injunction in relation to further steps proposed to be taken as contemplated under the resolution plan submitted by the consortium of respondent nos. 3 and 4;*
- g) *This Hon'ble Tribunal be pleased to grant injunction on the implementation of resolution plan submitted by the consortium of respondent nos. 3 and 4 including distribution of the amounts as contained therein;*
- h) *For interim and ad-interim reliefs in terms of the above;*
- i) *Such other and further orders as this Hon'ble Tribunal may deem necessary;*
- j) *Costs.*

3.2. It is stated that Applicant is a financial creditor of the Corporate Debtor who had filed a claim of Rs. 159,08,05,757/-. The Interim Resolution Professional had admitted claim of Rs. 53,45,66,214/- as secured debt. Also, the IRP has wrongly admitted claim of Rs. 10,56,239,543/- as unsecured debt because the Applicant had a charge on the invoices that



had been discounted. This had been brought to notice of Interim Resolution Professional through various emails however, Interim Resolution Professional altogether failed to reply. Thereafter the Applicant also become a member of Committee of Creditors with 2.09% of total votes.

- 3.3. It is stated that the CoC in its 14th meeting resolved to constitute a core-committee – a sub-committee that would facilitate negotiations with the prospective resolution applicants on behalf of Respondent No. 2 CoC, wherein Applicant was not allowed to have its nominee on account of an alleged and unsubstantiated ground of conflict of interest. The CoC in its 21st meeting along with resolution plan also voted on the manner of distribution and with 75.01% approved following resolution with respect to distribution:

"(a) RESOLVED THAT in accordance with the applicable provisions of the Insolvency and Bankruptcy Code, 2016 (including any statutory modification or re-enactment thereof), the committee of Creditors of Sintex Industries Limited hereby provides its approval for distribution of the upfront cash component payable to be allocated to the financial creditors under the Resolution Plans submitted in the corporate insolvency resolution process of Sintex Industries Limited as per the security interest of the respective financial creditors, proposed equity component to the assenting financial creditor's as per the security interest of the respective financial creditors and that the cash and cash equivalent component payable to the financial creditors will be distributed as per the voting percentage of the respective financial creditors"

It is stated that though the Applicant voted in favour of Resolution plan but voted against the above resolution 4 (a) seeking distribution by security interest and instead voted in favour of alternate i.e. resolution 4 (b) which is reproduced below:

IA 416/AHM/2022

IA 275/AHM/2022

IN CP (IB) 848/NCLT/AHM/2019



“4(b) "RESOLVED THAT in accordance with the applicable provisions of the Insolvency and Bankruptcy Code, 2016 (including any statutory modification or re-enactment thereof), the committee of Creditors of Sintex Industries Limited hereby provides its approval for distribution of the upfront cash components payable to the financial creditors under the Resolution Plans submitted in the corporate insolvency resolution process of Sintex Industries Limited as per voting percentage of the respective financial creditors, proposed equity component to the assenting financial creditor's as per the voting percentage of the respective financial creditors and cash and cash equivalent component payable to the financial creditors will be distributed as: per the voting percentage of the respective financial creditors.”

- 3.4. It is further stated that combined reading of clause 1.8.6 of the summary and clause 5 of Part B of the resolution plan contemplate the distribution of the lender repayment amount to each financial creditor on the basis of their pro-rata share in the overall admitted claims. Also, there is no distinction between the secured creditor and unsecured creditors. It is further stated that as per Section 30(4) of the Code the only power of the COC is to approve and vote upon the Resolution Plan and the "manner of distribution" must necessarily be "proposed in the Resolution Plan so voted upon. However, contrary to this basic understanding, Respondent No. 1 Interim Resolution Professional and Respondent No. 2 CoC have instead gone ahead and voted upon their own manner of distribution that evidently favors select few secured financial creditors and is contrary to the pro rata manner of distribution contained in the Resolution Plan. In doing so, Respondent No. 1 and Respondent No. 2 have committed an illegality and therefore Resolution No. 4(a) ought to be set aside.
- 3.5. It is further submitted that clause 7.3 of the resolution plan which was inserted after the negotiation with the core-committee is ultravires to the



provisions of the Code and also contrary and /or inconsistent with other provisions of the resolution plan such as clause 1.8.6 of the summary clause and clause 5 of the financial proposal. Clause 7.3 is reproduced below:

“7.3 Notwithstanding anything contained in the Plan, the CoC may agree in a meeting to allocate the Lender Repayment Amount, ARC Purchase Consideration and the New Lender Shares amongst the Financial Creditors or secured Financial Creditors, as may be applicable, in any proportion as may be decided by the CoC. Any such allocation as determined by the CoC by a resolution passed with the requisite majority and approved by the Adjudicating Authority shall be binding on the Resolution Applicants.

3.6. The Respondent No. 1 IRP filed reply and has submitted as under:

- (i) The applicant is a member of Committee of Creditors with exposure of 2.06% out of which, the exposure as secured Financial Creditor is 0.70% and that of unsecured Financial Creditor is 1.36%.
- (ii) The applicant has consented to the approval of the Resolution Plan of the joint Successful Resolution Applicants. The Applicant has only voted for the alternate resolution 4(b) whereas the majority members of CoC approved the resolution 4(a) which resolved to distribute the upfront cash component as per the security interest of the respective Financial Creditors.
- (iii) Clause 1.8.6 is made subject to Clause 7.3 are part of the Resolution Plan. It is thus clear that under this Resolution Plan, discretion is given to the Committee of Creditors for making the distribution and that discretion is approved by the Applicant by voting in favour of Resolution Plan.
- (iv) The discretion of Committee of Creditors u/s. 30(4) of the Code to approve a resolution plan after considering its feasibility and viability



also include the manner of distribution. This is in terms observed by the Hon'ble Supreme Court in the case of ***Committee of Creditors of Essar Steel India Limited Through Authorised Signatory versus Satish Kumar Gupta & Ors. (Civil Appeal No. 8766-67 of 2019)*** dated 15.01.2019, as reproduced below:

“40.Thus, what is left to the majority decision of the Committee of Creditors is the “feasibility and viability” of a resolution plan, which obviously takes into account all aspects of the plan, including the manner of distribution of funds among the various classes of creditors.”

(v) The Hon'ble Supreme Court in ***India Resurgence ARC Private Limited versus M/s. Amit Metaliks Limited & Anr. (Civil Appeal No. 1700 of 2021)***, dated 13.05.2021 taken note of following observation and findings of Hon'ble NCLAT in the same matter and dismissed the appeal:

“7. It abundantly clear that the considerations including priority in scheme of distribution and the value of security are matters falling within the realm of Committee of Creditors. Such considerations, being relevant only for purposes for arriving at a business decision in exercise of commercial wisdom of the Committee of Creditors, cannot be the subject of judicial review in appeal within the parameters of Section 61(3) of I&B Code. While it is true that prior to amendment of Section 30(4) the Committee of Creditors was not required to consider the value of security interest obtaining in favour of a Secured Creditor while arriving at a decision in regard to feasibility and viability of a Resolution Plan, legislature brought in the amendment to amplify the scope of considerations which may be taken into consideration by the Committee of Creditors while exercising their commercial wisdom in taking the business decision to approve or reject the Resolution Plan. Such consideration is only aimed at arming the Committee of Creditors with more teeth so as to take an informed decision in regard to viability



and feasibility of a Resolution Plan, fairness of distribution amongst similarly situated creditors being the bottomline.”

(vi) The Hon’ble National Company Law Appellate Tribunal in Indian Bank versus Charu Desai, Erstwhile Resolution Professional & Chairman of Monitoring Committee of GB Global Ltd. & Anr. (Company Appeal (AT) (Insolvency) No. 644 of 2021 & I.A. No. 2940 of 2021 & I.A. No. 193 of 2022) dated 06.05.2022 observed as under:

“33. When the distribution is ultimately approved by e-voting by the CoC, the approved distribution value to each lender’s including the dissenting Financial Creditors, is taken by the CoC in its commercial wisdom, which cannot be interfered with by the Adjudicating Authority or by this Appellate Tribunal since it has not been placed before us that the approval of the Resolution Plan by the CoC and the Adjudicating Authority violates any statutory provision. We are satisfied that the allocation to the Appellant, a dissenting Financial Creditor, is not in contravention of Section 30(2)(b) (ii) r/w Section 23. As noticed above, in M/s. Amit Metaliks Limited (supra), the Hon’ble Supreme Court has dismissed the Appeal by a dissenting Financial Creditor questioning the allocation to a dissenting Financial Creditor. We have already noticed above the law laid down by the Hon’ble Supreme Court where the Hon’ble Supreme Court has categorically held that what amount is to be paid to different classes or subclasses of creditors in accordance with the provisions of the Code and to a dissenting secured creditor is essentially the commercial wisdom of the CoC. Following law laid down by the Hon’ble Supreme Court, as noted above, we do not find any good ground to interfere with the order of the Adjudicating 28 Company Appeal (AT) (Insolvency) No. 644 of 2021 & I.A. No. 2940 of 2021 & I.A. No. 193 of 2022 Authority approving the Resolution Plan. There is no merit in the Appeal. The Appeal is dismissed.”



(vii) As the distribution of funds amongst the various class of creditors is also part of the commercial wisdom of the members of Committee of Creditors, the objections of Applicant Axis Bank are liable to be rejected.

3.7. The Respondent No. 2 CoC submits as under:

- (i) Clause 7.3 (Allocation of Payments/Settlements and Other Amounts) of the Resolution Plan categorically provides that notwithstanding anything contained in the Resolution Plan, the manner of distribution of *inter alia* the Lender Repayment Amount amongst the financial creditors / secured financial creditors shall be determined by the CoC. Accordingly, it is the CoC, in its financial wisdom that has to decide upon the manner of distribution of the Lender Repayment Amount.
- (ii) The Applicant neither voted against the Resolution Plan nor did it abstain from voting on the Resolution Plan. In fact, the Applicant accorded its consent to the Resolution Plan without any protest or demur. Having voted in favour of the Resolution Plan, the Applicant cannot now challenge the same merely because the manner of distribution of the Lender Repayment Amount preferred by the Applicant is not the manner of distribution approved by majority of the CoC representing 75.01% of the votes in favour.
- (iii) The contention of the Applicant that the manner of distribution adopted by casting votes and thereafter passing the resolution 4(a) (i.e. distribution will be as per the security interest of the respective financial creditor) is arbitrary and illegal, holds no water as the CoC has acted in a fair and transparent manner and moreover the same is a commercial decision of the CoC.



- (iv) The objective of the CIRP as contemplated under the Code is defeated if an assenting creditor is permitted to challenge the very same Resolution Plan it has assented to.

3.8. The Respondent No. 3 & 4, joint Successful Resolution Applicants submitted as under:

- (i) The provision for distribution of payments as per the decision of the CoC in terms of Clause 7.3 of Part B is "notwithstanding anything contained in the Plan".
- (ii) The entire Resolution Plan, including Clause 5.1.1 (b) and Clause 7.3 of Part B. has been approved by the CoC by 98.88% CoC members voting in favour. including the Applicant. Having approved the Resolution Plan, the Applicant has also approved the right of the CoC to decide the distribution mechanism by majority decision. In exercise of this right, the CoC has by 75.01% majority by voting share approved distribution of the upfront consideration and equity component under the Resolution Plan to financial creditors as per their respective security interest.

3.9. Considered the submissions made and perused the documents. Clause 7.3 of Part B of the Resolution plan is reproduced below:

“7.3 Notwithstanding anything contained in the Plan, the CoC may agree in a meeting to allocate the Lender Repayment Amount, ARC Purchase Consideration and the New Lender Shares amongst the Financial Creditors or secured Financial Creditors, as may be applicable, in any proportion as may be decided by the COC. Any such allocation as determined by the CoC by a resolution passed with the requisite majority and approved by the Adjudicating Authority shall be binding on the Resolution Applicants.”



On bare reading of above clause 7.3 it is understood that the clause unambiguously without considering any other clause / part of the plan empowers the CoC to agree in a meeting to allocate the Lender Repayment Amount, ARC Purchase Consideration and the New Lender Shares amongst the Financial Creditors or secured Financial Creditors, as may be applicable, in any proportion. Thus, the resolution plan itself left the discretion on the CoC to decide manner of allocation of Lender Repayment Amount, ARC Purchase Consideration and the New Lender Shares amongst the Financial Creditors.

3.10. The minutes of 21st CoC meeting reflects that along with the resolution plans, the CoC has also voted on the manner of distribution of resolution plan amount. The nine CoC members representing 75 % of voted in favour of distribution of Lender Repayment Amount as per security interest of each financial creditor and seventeen members representing 24.85% voted in favour of distribution as per voting percentage. No doubt the Applicant Axis Bank has voted against the resolution i.e. distribution as per security interest but admittedly voted in favour of the resolution plan of Respondent No. 3 & 4.

3.11. The submissions made by the Applicant reflects that the Applicant was well aware of clause 7.3 of the resolution plan and admittedly the Applicant being the part of CoC holding 2.06 voting right, has voted in favour of the modified resolution plan which is approved by all CoC member by 98.88 % of vote. This implies that applicant after considering all resolutions and aware about percentage of voting on resolutions has finally given approval to plan in its commercial wisdom. Thus, the relief sought by the Applicant is contrary to its own act of approval of resolution plan and therefore need not be considered and is rejected.



4. We have already examined the resolution plan above and are of the considered view that the resolution plan complies with the provisions of Section 30 (2) and Regulations thereunder. We hereby approve the resolution plan submitted by Reliance Industries Limited jointly with Assets Care & Reconstruction Enterprise Limited- (Consortium), Mumbai and in addition to the above directions, proceed to pass the following orders:

- (i) The resolution plan of by Reliance Industries Limited jointly with Assets Care & Reconstruction Enterprise Limited- (Consortium), Mumbai for Corporate Debtor i.e. Sintex Industries Ltd., stands allowed as per Section 30(6) of the Code.
- (ii) The approved 'Resolution Plan' shall become effective from the date of passing of this order.
- (iii) The order of moratorium dated 06.04.2021 passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of passing of this order.
- (iv) The Resolution Plan so approved shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan.
- (v) The monitoring committee as proposed in the resolution plan shall be constituted for supervising the effective implementation of the Resolution Plan.
- (vi) The Interim Resolution Professional, Mr. Pinakin Shah, is released from the duties of the interim resolution professional of the Corporate Debtor from the date of this order.
- (vii) After the payment of the dues to the creditors, as per the resolution plan, all the liabilities of the said stakeholders prior to CIRP against the corporate debtor shall stand permanently



extinguished and other claims including Government/Statutory Authority, whether lodged during CIRP or not, shall stand extinguished after the approval of the resolution plan. We further hold that contingent/unconfirmed dues shall also stand extinguished;

- (viii) From the date of this order, all claims against the corporate debtor, except those provided in the resolution plan of the Corporate Debtor stand extinguished.
- (ix) From the date of this order, all encumbrances on the assets of the Corporate Debtor before the approval of Resolution Plan shall stand permanently extinguished.
- (x) For reliefs and concessions sought from the Government/Statutory Authorities in connection with the implementation of the Resolution plan, we direct the resolution applicant to approach the concerned Authorities. The concerned Authorities may decide the matter as per applicable provisions of law for effective implementation of the Resolution Plan.
- (xi) The resolution applicant shall, pursuant to the resolution plan approved under Section 31(1) of the Code, obtain necessary approvals required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under Section 31 or within such period as provided for in such law, whichever is later, as the case may be;
- (xii) With respect to the grant of license/ Government approval if the license or approval is terminated, suspended and revoked, the resolution applicant may approach the concerned Department/ Authorities for such approval/ renewal and Government Authorities may consider the request of the resolution applicant



as per applicable provisions of law for effective implementation of the resolution plan.

(xiii) As far as rights of Financial Creditors against the personal guarantees / corporate guarantees in connection with loan / debt obtained by Corporate Debtor are concerned, they shall be at liberty to pursue their rights independent of approval of Resolution Plan.

(xiv) The Interim Resolution Professional shall forthwith send a copy of this Order to the parties concerned and the joint successful Resolution Applicant(s).

(xv) The Interim Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.

5. In view of above, IA 275 of 2022 is allowed and Resolution Plan is hereby approved.

IA No. 416/AHM/2022 is rejected.

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

6. Certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

-Sd-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

Mansi J./LRA

-Sd-

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)