IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.160 IA/413(AHM)2022 in IA/374(AHM)2022
ITEM No 161 IA/374(AHM)2022
ITEM No 162 IA/474(AHM)2022 in IA/374(AHM)2022 **In CP(IB) 759 of 2019**

Proceedings under Section 9 IBC

IN THE MATTER OF:

Zielem Industries Pvt Ltd **.....Applicant**
V/s
Sintex-BAPL Ltd **.....Respondent**

Order delivered on ..29/06/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

IA/413(AHM)2022 in IA/374(AHM)2022, IA/374(AHM)2022 and IA/474(AHM)2022 in IA/374(AHM)2022 in CP(IB) 759 of 2019

These cases are fixed for pronouncement of the order. The order is pronounced in open court vide separate sheet.

-SD-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-
MADAN B GOSAVI
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I

IA 374(AHM)2022, IA/413(AHM)2022 in IA/374(AHM)2022, and IA/474/(AHM)2022 in IA/374(AHM)2022 in CP(IB) 759 of 2019

CP(IB) 759 of 2019

[Application under section 9 of the Insolvency and Bankruptcy Code, 2016]

In the matter of:

M/s. Zielen Industries Pvt. Ltd.

Having address at:

Survey No. 459 at Post Tajpur (Oran),

Nr. Majara Chokdi,

Ta: Prantij, District Sabarkantha

……Operatioal Creditor

Versus

M/s. Sintex BAPL Ltd.

Having address at:

Abhijit-1, 7th Floor, Mithakhali Six Road,

Ellisbridge, Ahmedabad

….Corporate Debtor

Order pronounced on: 29.06.2022

Coram: MADAN B. GOSAVI, MEMBER (JUDICIAL)
KAUSHALENDRA KUMAR SINGH, MEMBER (TECHNICAL)

MEMO OF THE PARTIES

IA/374(AHM)2022

[An application filed under sections 21, 22, and 60(5) of the Insolvency and Bankruptcy Code, 2016 and 17&18 of the IBBI Regulations, 2016]

In the matter of:

Mahatva Plastic Products And Building Materials Private Limited

Having address at:

Survey No. 650, Welspun City,

Village Versamedi Taluka Anjar,

District-Kutch, Gujarat-370110 **....Applicant**

Versus

1. **Zielen Insustries Private Limited**

   Having address at:

   Survey No. 459, At Pot Tajpur (Oran)

   Nr. Majara Chokdi, Ta: Prantij,

   District-Sabarkantha

2. **Sintex BAPL Limited**

   Represented through the IRP,

   Mr. Ketulbhai Ramubhai Patel,

   R. S. Patel & Company, Chartered Accountants,

   Having address at:

   801, Popular House, Nr. Income Tax Circle,

   Ashram Road, Ahmedabad,

   Gujarat-380009 **....Respondents**

IA/413(AHM)2022 in IA/374(AHM)2022

[An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016]

In the matter of:

Sintex Plastics Technology Limited

Through authorized signatory

Mr. Amit Dineshchandra Patel

Having address at:

Abhijeet-1,7th Floor, Mithakali Six Road,

Ellisbridge, Ahmedabad-380006. **....Applicant**

Versus

1. **Mahatva Plastic Products and Building Materials Pvt. Ltd.**
   Having address at:
   Survey no. 650, Welspun City,
   Village Versamedi, Taluka Anjar,
   District-Kutch, Gujarat-370110.
2. **Zielen Industries Private Limited**
   Having address at:
   Survey No. 459, At Post Tajpur (Oran)
   Nr. Majara Chokdi, Ta: Prantij
   District: Sabarkantha.
3. **Sintex BAPL Limited**
   Represented through IRP
   Mr. Ketulbhai Ramubhai Patel
   R.S. Patel & Company Chartered Accountants
   Having address at:
   801, Popular House, Nr. Income Tax Circle,
   Ashram Road, Ahmedabad,
   Gujarat-380009 **....Respondents**

IA 474(AHM)2022 in IA/374(AHM)2022

[An application under sections 21, 22, and 60(5) of the IBC 2016, read with Rules 17&18 of IBBI Regulations 2016 and Rule 11&32 of NCLT Rules, 2016]

In the matter of:

Asset Reconstruction Company (India) Limited

Having address at:

10th Floor, the Ruby, 29 Senapati Bapat Marg,

Dadar (W), Mumbai-400028.

And local office address at:

610, 6th Floor, Sun Square,

IDFC Bank Building, Nr. Hotel Regenta Central,

Off. C. G. Road, Navrangpura,

Ahmedabad, Gujarat **....Applicant**

Versus

1. **Mahatva Plastic Products and Building Materials Private Limited.**
   Having address at:
   Survey No. 650, Welspun City,
   Village Versamedi, Taluka Anjar,
   District-Kutch, Gujarat-370110.
2. **Zielen Industries Private Limited**
   Having address at:
   Survey No. 459, at Pot Tajpur (Oran)
   Nr. Majara Chokdi, Ta: Prantij,
   District-Sabarkantha.
3. **Sintex BAPL Limited**

Represented through the IRP,

Mr. Ketulbhai Ramubhai Patel,

R.S. Patel & Company, Chartered Accountants,

Having address at:

801, Popular House, Nr. Income Tax Circle,

Ashram Road, Ahmedabad,

Gujarat-380009. **....Respondents**

Present:

For the IRP : Ld. Sr. Adv. Mr. Saurabh Soparkar a.w. Ld. Adv. Mr. Raheel S. Patel.

For the Financial Creditors: Ld. Sr. Adv. Mr. Navin Pahwa a.w. Ld. Adv. Mr. Jay Kansar, Ld. Adv. Mr. Jaimin Dave, Ld. Adv. Ms. Gargi Vyas, and Ld. Adv. Ms. Nancy Soni

For the Suspended Management : Ld. Adv. Mr. Arjun Sheth

ORDER

1. IA/374(AHM)2022 and IA/474(AHM)2022 in IA/374(AHM)2022 are filed by the Financial Creditors of the Corporate Debtor-M/s. Sintex BAPL Limited. The Corporate Debtor has been admitted in Corporate Insolvency Resolution Process (in short "CIRP") vide order dated 18.12.2020. The application i.e., IA/374(AHM)2022 is for direction to the Interim Resolution Professional (in short "IRP")-Mr. Ketulbhai Ramubhai Patel to constitute the Committee of Creditors (in short "CoC") and call CoC's meeting whereas IA/413(AHM)2022 in IA/374(AHM)2022 is filed by Suspended Management of the Corporate Debtor for rejection of IA/374(AHM)2022 on the ground that the Hon'ble NCLAT in its order dated 04.01.2021 directed that CoC shall not be constituted for one week and the order is still continuing.

2. In order to understand the exact controversy, we have to take note of some orders passed by this Adjudicating Authority and Hon'ble NCLAT from time to time chronologically.

3. On 18.12.2020 the Corporate Debtor-M/s. Sintex BAPL Limited was admitted into CIRP at the instance of one of its Operational Creditors-M/s. Zielen Industries Private Limited. The shareholder of the Corporate Debtor-M/s. Sintex Plastics Technology Pvt. Ltd. challenged the order of admission of CIRP by filing an appeal, bearing Company Appeal (AT) (Insolvency) No. 1135 of 2020. It appears that during the pendency of the appeal, Operational Creditor-M/s. Zielen Plastics Technology Pvt. Ltd. entered into a settlement with the Corporate Debtor. The Hon'ble NCLAT directed both of them to approach this Adjudicating Authority to record the settlement. While doing so, the Hon'ble NCLAT directed IRP not to constitute the CoC for one week and further directed this Adjudicating Authority to take care of the interests of all stakeholders while considering the withdrawal of the CIRP.

4. Accordingly, the shareholder of the Corporate Debtor-M/s. Sintex Plastics Technology Pvt. Ltd. filed an application before this Adjudicating Authority, bearing IA No. 18(AHM)/2021 to record the settlement and set aside the CIRP of the Corporate Debtor.

5. That application was vehemently opposed by other stakeholders and more particularly one of the Financial Creditors of the Corporate Debtor i.e., M/s. KKR India Financial Services Limited. Since the hearing of IA No. 18(AHM)/2021 was prolonged, this Adjudicating Authority directed the IRP not to constitute the CoC as per directions of the Hon'ble NCLAT for a further period.

6. This Adjudicating Authority allowed IA No. 18(AHM)/2021 by recording the settlement and setting aside the CIRP of the Corporate Debtor vide order dated 29.06.2021. That order has been challenged by

KKR India Financial Services Limited in appeal, bearing Company Appeal (AT) (Insolvency) No. 475 of 2021. On 12.07.2021 the Hon'ble NCLAT passed the order of admission of appeal for hearing. Hon'ble NCLAT passed further order and directed that:-

> *"....In the meanwhile, we stay the impugned order and direct that status quo ante-before passing of the impugned order dated 29th June, 2021 shall be restored.*
>
> *It is stated that the Interim Resolution Professional (IRP) is still incharge of the Management. The IRP will continue to be in Management.*
>
> *The CIRP in CP(IB) 759(AHM)2019 shall continue during pendency of this Appeal or further orders in this regard by Tribunal whichever is earlier....".*

7. Meantime, M/s. KKR India Financial Services Limited i.e., one of the Financial Creditors of the Corporate Debtor had already filed an application, bearing CP(IB) No. 276/7/NCLT/AHM/2020 under section 7 of the IBC, 2016 against the Corporate Debtor. This Adjudicating Authority vide order dated 19.07.2021 allowed that application and again admitted the Corporate Debtor in CIRP.

8. That order is challenged in appeal by one of the Directors of the Corporate Debtor, bearing Appeal (AT)(Ins) No. 577 of 2021. The Hon'ble NCLAT admitted the appeal for hearing and passed the order stating that:-

> *"....the Appeal is admitted for hearing. We are of the view that against one Corporate Debtor two simultaneous CIRP cannot be permitted to go on, as CA (AT) (Ins) No. 475 of 2021 vide order dated 12.07.2021, this Tribunal has ordered that the IRP will continue to be management and CIRP in CP(IB) No. 759/AHM/2019 shall continue during pendency of*

this Appeal. In such situation, we stay the impugned order till next date of hearing.....".

9. Above facts are admitted. In view of the above admitted facts, Learned Senior Counsel Mr. Navin Pahwa for one of the Financial Creditors of the Corporate Debtor- M/s. Mahatva Plastic Products And Building Materials Private Limited (applicant in IA No. 374 of 2022) submitted that the IRP is directed to proceed with CIRP. However, IRP refused to constitute the CoC, and hence, this application is filed. All other Learned Counsels appearing for the other Financial Creditors i.e., SBI, M/s. KKR India Financial Services Limited, and Asset Reconstruction Company (India) Limited, etc. adopted the contention and submission of Learned Senior Counsel Mr. Navin Pahwa.

10. We heard Learned Senior Counsel Mr. Saurabh Soparkar for the IRP. We also heard Learned Counsel Mr. Arjun Sheth at length for the Suspended Management of the Corporate Debtor.

11. Learned Counsel Mr. Arjun Sheth for the Suspended Management of the Corporate Debtor submitted that IA/413(AHM)2022 in IA/374(AHM)2022 is filed by his client with a prayer to reject IA/374(AHM)2022 on the ground that the Suspended Management of the Corporate Debtor being necessary party are not made a party in that proceeding. He further submitted even on merits, the prayer of Financial Creditors to constitute CoC is not sustainable in view of the order of the Hon'ble NCLAT. We heard Learned Counsel Mr. Arjun Sheth at length. We also permitted him to file say in IA/374(AHM)2022. Accordingly, a detailed say is filed and it is taken on record. We have gone through the same.

12. Learned Senior Counsel Mr. Navin Pahwa for the Financial Creditor submitted that on 13.04.2022 his client wrote a letter to the IRP requesting him to constitute the CoC and call for the meeting. On

14.04.2022 the IRP turned down this request quoting the order of the Hon'ble NCLAT stating that the Hon'ble NCLAT had directed to maintain the status quo as on 28.06.2021. Learned Senior Counsel further submitted that, in fact, the IRP misread the order of the Hon'ble NCLAT. It is true that in earlier, the Hon'ble NCLAT had directed not to constitute CoC but that order later on varied by the Hon'ble NCLAT on 24.08.2021.

13. Learned Senior Counsel Mr. Saurabh Soparkar submitted that IRP is bound to follow the order from this Adjudicating Authority as well as the order from the Hon'ble NCLAT. He has been directed not to constitute the CoC and he does not wish to commit contempt of that order. However, he leaves the matter to this Adjudicating Authority.

14. Learned Counsel Mr. Arjun Sheth for the Suspended Management submitted that as on today the IRP is in charge of the assets of the Corporate Debtor. The CIRP is still going on. If the CoC is allowed to constitute then the interests of the Suspended Management will affect prejudicially. Their appeal pending for consideration of the Hon'ble NCLAT for setting aside the CIRP itself would become infructuous. This application is not maintainable.

15. We have noted the order passed by this Adjudicating Authority and the Hon'ble NCLAT as above. We considered the submissions of Learned Counsels.

16. Today, the situation is that IRP is in control of the Corporate Debtor for the last one and half years. The IRP did not constitute the CoC. On 12.07.2021 the Hon'ble NCLAT passed the order in appeal, bearing Company Appeal (AT) (Insolvency) No. 475 of 2021, on which the IRP is relying. The Hon'ble NCLAT directed that:-

"....meanwhile we stay impugned order and direct that status quo ante-before passing of the impugned order dated 29th June, 2021 shall be restored.

It is stated that the Interim Resolution Professional (IRP) is still incharge of the Management. The IRP will continue to be in Management.

The CIRP in CP(IB) 759(AHM)2019 shall continue during pendency of this Appeal ***or further orders in this regard by this Tribunal whichever is earlier****.."*

17. It is also to be noted that as to what order the Hon'ble NCLAT had passed prior to 29.06.2021. That order is dated 04.01.2021 whereby Hon'ble NCLAT directed that:-

"....to enable the Appellant to seek such exit, we direct that CoC shall not be constituted for one week from today....".

It is not in dispute that this order is extended by this Adjudicating Authority from time to time pending hearing of IA No. 18 of 2021 which was disposed on 29.06.2021...".

18. While passing the order dated 12.07.2021, the Hon'ble NCLAT made it clear that CIRP in CP(IB) 759 of 2019 shall continue during the pendency of this appeal or further orders in this regard by this Tribunal whichever is earlier. In short, the order to maintain the status quo ante of not constituting the CoC was subject to further order being passed by the Hon'ble NCLAT in the appeal. That same appeal came up for hearing before the Hon'ble NCLAT on 24.08.2021 in Company Appeal (AT) (Insolvency) No. 475 of 2021 (at page no. 103 in IA 374 of 2022 in CP(IB) No. 759 of 2019) wherein the Hon'ble NCLAT passed the order that *"will consider the next application on next date. We make it clear that the RP in this case may continue CIRP"*. In short, The earlier order

not to constitute CoC was not extended by the Hon'ble NCLAT thereafter, and the IRP and other stakeholders are bound by this order.

19. We have already noted that one of the Financial Creditors M/s. KKR India Financial Services Limited had filed an application under section 7 of the IBC, 2016 against the same Corporate Debtor. It was admitted by this Adjudicating Authority. The Suspended Management of the Corporate Debtor filed an appeal, bearing no. Company Appeal (AT) (Ins) No. 577 of 2021. That appeal came up for hearing before the Hon'ble NCLAT on 13.08.2021. The Hon'ble NCLAT passed the following order.

> *"....8. We have considered the submissions, the Appeal is admitted for hearing. We are of the view that against one Corporate Debtor two simultaneous CIRP cannot be permitted to go on, as CA(AT)(Ins) No. 475 of 2021 vide order dated 12.07.2021 this Tribunal has ordered that the IRP will continue to be in management and CIRP in CP(IB) No. 759/AHM/2019 shall continue during pendency of this Appeal..".*

Even in this order also, the Hon'ble NCLAT took note of the fact that IRP to continue in the management of the Corporate Debtor and CIRP to be proceeded with. The order not to constitute the CoC was not extended after 24.08.2021 by the Hon'ble NCLAT and we have to take that order for our consideration.

20. The IRP is directed to proceed with CIRP. Obviously, the IRP has to take further proceeding in CIRP as per sections 18 to 21 of the IBC, 2016. He has to constitute CoC and proceed further in CIRP. He cannot sit idly for years together controlling the affairs of the Corporate Debtor. In our considered opinion, IRP misread some orders of the Hon'ble NCLAT.

21. In view of the above, we allow the application, bearing no. IA/374(AHM)2022 and direct the IRP to proceed with the CIRP as per sections 18 to 21 of the IBC, 2016 and constitute CoC forthwith. In view of this, IA/413(AHM)2022 in IA/374(AHM)2022 field by Suspended Management stands rejected.

22. Accordingly, IA/474(AHM)2022 in IA/374(AHM)2022 also stands disposed of.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

MADAN B. GOSAVI
MEMBER (JUDICIAL)

Rajeev Kr. Sen/Stenographer