

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH at AHMEDABAD
COURT 1**

IA 39 of 2020 in TP 232 of 2019 CP(IB) 421 of 2018

Coram: Hon'ble Ms. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF INDORE BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 27.02.2020**

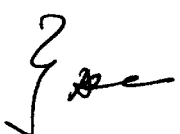
Name of the Company: Committee of Creditors through Bank of
Baroda

V/s

Pithampur Poly Products Ltd

Section 22 IBC, 2016

Section:

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	Jaimin Dave	Adv.	IRP.	
2.	for Aditya Pandya	Adv.		
	NILESH UDERWANI	ADVOCATE	CoC	

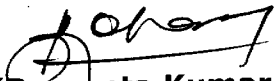
ORDER

The parties are represented through their respective learned Counsel(s).

The present interlocutory application is filed under Section 22 of the Insolvency and Bankruptcy Code, 2016.

Heard the counsel for both the parties.

The present IA is allowed as per our ^{order} recorded separately.


(Prasanta Kumar Mohanty)
Member (Technical)


(Harihar Prakash Chaturvedi)
Member (Judicial)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH at AHMEDABAD**

IA No.39 of 2020 in
CP (IB) No.421/7/NCLT/AHM/2018

In the matter of:

Committee of Creditors
Represented through Bank of Baroda
Through its Authorized Officer
Mr. Ashish Shrivastava
Chief Manager, Bank of Baroda
Navlakha Branch Applicant
Indore

Versus

M/s. Pithampur Poly Products Ltd.
Plot No.115, Sector-ITI
Industrial Area, Pithampur
District-DharCorporate Debtor
Madhya Pradesh

Order delivered on 27th February, 2020.

Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)

And

Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)

Appearance:

Mr. Nilesh P. Udernani, for the Applicant/Committee of Creditors
(Bank of Baroda).

Mr. Jaimin Dave, Advocate for Mr. Aditya Pandya, Advocate, for the
Interim Resolution Professional.

ORDER

[Per: Mr. Harihar Prakash Chaturvedi, Member (J)]

1. The present Interlocutory Application is filed, under Section 22 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as 'I & B Code') by the Committee of Creditors (CoC), through Bank of Baroda (sole member of



the CoC), on 15th February, 2020, seeking appointment of **Mr. Gopal Krishana Saraswat** as Resolution Professional (RP) by replacing the existing Interim Resolution Professional (IRP), **Mr. Jagdish Kumar**, with following prayers:

- a) This Tribunal may be pleased to allow the present application.
- b) This Tribunal may be pleased to pass an order under Section 22 of the Code to replace the interim resolution professional and to appoint the proposed resolution professional as resolution professional for corporate insolvency process of the Respondent Company.

2. The applicant, in the present application, has stated that

2.1 This Tribunal, vide its order dated 03.01.2020 passed in CP (IB) No.421/7/NCLT/AHM/2018, Bank of Baroda vs. Pithampur Poly Products Pvt. Ltd., has admitted the IB Petition and appointed Mr. Jagdish Kumar to act as Interim Resolution Professional of the corporate debtor company.

2.2 It is stated that the IRP made requisite public announcement as contemplated under the provisions of Section 15 of the Code and invited claims from all the creditors. It is stated that upon receipt of the claims, the CoC was constituted.

2.3 It is further stated that the first meeting of the CoC was convened on 07.02.2020, wherein the resolution to approve Mr. Jagdish Kumar (IRP) as Resolution



Professional was deferred by the members of the CoC for the next meeting of the CoC. The second meeting of the CoC was held on 13.02.2020 whereby a resolution was passed for replacement of the present IRP, Mr. Jagdish Kumar, and by proposing new RP Mr. Gopal Krishana Saraswat, [having Registration No.IBBI/IPA-001/ P00620/2017-2018/11076]. The sole member of the CoC, unanimously, has proposed to appoint RP, Mr. Gopal Krishana Saraswat as the RP in place of Mr.Jagdish Kumar, for the remaining Corporate Insolvency Resolution Process period.

2.4 In support of the present application, the applicant has annexed copy of the written consent dated 13.02.2020, received from the proposed Resolution Professional, which is in prescribed Form AA, under the provisions of the Code and regulation framed thereunder.

2.5 Applicant has placed on record further documents;

- i) A copy of the order dated 03.01.2020 passed by this Tribunal in CP (IB) No. 421 of 2018, as Annexure-A.
- ii) A copy of the minutes of the meeting dated 07.02.2019 and the results of the e-voting, as Annexure-B.



- iii) Copies of the minutes of the meeting dated 13.02.2020 and the voting details of the members of the CoC, as Annexure-C (Colly).
 - iv) A copy of the written consent, received from the proposed RP, dated 13.02.2020, as Annexure-D.
3. The Counsel, for the retiring IRP Mr. Jagdish Kumar, has contended that he is having no objection if the present application is allowed. However, appropriate direction may be given to the Committee of Creditors, for making payment towards cost and expenditure of the Corporate Insolvency Resolution Process, which were incurred and borne by the IRP for triggering CIRP, i.e. towards announcement through paper publication of the commencement of CIRP in respect of the Corporate Debtor Company and other administrative expenses.
4. We heard the submissions of the Ld. Counsels of both the parties at length and we have also gone through the relevant provisions of **Section 22** the I&B Code, which reads as follows;

“Appointment of resolution professional.

- 22.(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 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 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.
- (4) The Adjudicating Authority shall forward the name of the resolution professional proposed under clause (b) of sub-section (3) to the Board for its confirmation and shall make such appointment after confirmation by the Board.
- (5) Where the Board does not confirm the name of the proposed resolution professional within ten days of the receipt of the name of the proposed resolution professional, the Adjudicating Authority shall, by order, direct the interim resolution professional to continue to function as the resolution professional until such time as the Board confirms the appointment of the proposed resolution professional.”

Section 27 of the Code goes further by prescribing the procedure for “**Replacement of resolution professional by the committee of creditors**”, which reads as under;

- 27.(1) **Where, at any time during the corporate insolvency resolution process, the committee of creditors is of the opinion that a resolution**



professional appointed under section 22 is required to be replaced, it may replace him with another resolution professional in the manner provided under this section.

- (2) *The committee of creditors may, at a meeting, by a vote of sixty six per cent of voting shares, propose to replace the resolution professional appointed under section 22 with another resolution professional.*
- (3) *The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.*
- (4) *The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and a resolution professional shall be appointed in the same manner as laid down in section 16.*
- (5) *Where any disciplinary proceedings are pending against the proposed resolution professional under sub-section (3), the resolution professional appointed under section 22 shall continue till the appointment of another resolution professional under this section."*

5. In the light of above stated discussion and by following the above stated provisions, we find that the decision of CoC to replace the IRP, by appointing with another RP, i.e. Mr. Gopal Krishana Saraswat is *bonafide* and in conformity with the above stated procedure. Hence, the present IA deserves to be allowed, accordingly, it is allowed with following directions;

- i) The appoint of Mr. Gopal Krishana Saraswat, as RP, in respect of the corporate debtor company, is hereby approved. He is required to submit proof/credential of registration with the IBBI to the CoC by making

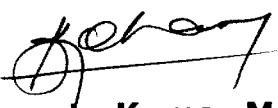
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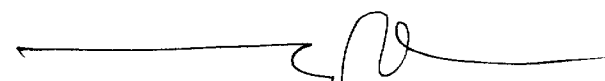


necessary declaration to this effect that there is no any disciplinary proceeding pending with or being contemplated by the IBBI against him, such exercise to be completed, within two weeks, from the date of receipt of an authentic copy of this order.

- ii) Further, the applicant / Committee of Creditors is directed to make payment of amount due towards CIRP cost and expenses borne by the retiring IRP, Mr. Jagdish Kumar, which includes his fee, public announcement – paper publication, administration expenses, such amount to be considered by the sole member of the CoC, as per rule and procedure and it shall be payable to him within four weeks, from the date of receipt of an authentic copy of this order.
- iii) The applicant/CoC to file compliance report of payment to the IRP at the earliest in the Registry of this Tribunal.

6. With the aforesaid observations and directions, the present IA, i.e., IA No. 39 of 2020 in CP (IB) No.421 of 2018, is disposed of.


(Prasanta Kumar Mohanty)
Adjudicating Authority &
Member (Technical)


(Harihar Prakash Chaturvedi)
Adjudicating Authority &
Member (Judicial)