

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2

ITEM No158

IA/424(AHM)2021 in CP(IB) 848(AHM)2019

Order under Section 22(3) IBC,2016

IN THE MATTER OF:

COC Sintex Industries Ltd.

.....Applicant

V/s

Pinakin S. Shah IRP For Sintex Industries Ltd

.....Respondent

Order delivered on ..05/10/2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)

Virendra Kumar Gupta, Hon'ble Member(T)

PRESENTS:

For the Applicant :

For the Respondent :

ORDER

The matter is listed today for pronouncement of the order.

The order is pronounced in the open court, vide separate sheet.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

**IN THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-2**

**IA 424 of 2021 & IA 392 of 2021
In CP (IB) No. 848 of 2019**

IA 424 of 2021

An application for replacement of the Interim Resolution Professional and appointment of the Proposed Resolution Professional under Section 22(3) of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

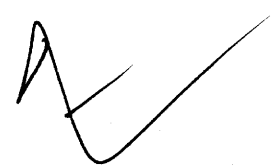
Committee of Creditors
M/s Sintex Industries Limited
Through Punjab National Bank
Having address at: Large Corporate Branch,
Neelkamal Building, Ashram Road,
Ahmedabad, Gujarat-380 009

... Applicant

Versus

M/s Sintex Industries Limited
Through Mr. Pinakin Surendra Shah
As IRP for the Corporate Debtor
Vis-à-vis in his individual capacity
Having address at: A-201, Siddhi Vinayak
Towers, Behind DCP Office, Next to Kataria
House, Off. S. G. Highway, Makarba,
Ahmedabad, Gujarat-380 051

... Respondent



IA 392 of 2021

An application is filed under Section 22 and Section 60(5) of the Insolvency and Bankruptcy code, 2016 r.w. Rule 11 of the NCLT Rules, 2016 further r.w. Regulation 7 of the IBBI (Insolvency Professional) Regulations, 2016.

In the matter of:

Mr. Amit Dineshchandra Patel
Having address at: Abhijeet-1.
Mithakali Six Roads, Ellis Bridge,
Ahmedabad – 380 006

... Applicant

Versus

1. Punjab National Bank
Large Corporate Branch
Neel Kamal Building,
Ashram Road, Ahmedabad – 380 009
2. Pinakin Shah
Interim Resolution Professional of
Sintex Industries Limited (Corporate Debtor)
Having address: A/201 Siddhi Vinayak
Towers, B/H BMW Showroom Next to
Kataria House, Off S. G. Highway
Makaraba, Ahmedabad, Gujarat-380 051

... Respondents

Date of Hearing: 28.09.2021

Date of Pronouncement of Order: 04.10.2021

**Coram: MADAN B. GOSAVI, MEMBER (JUDICIAL)
VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)**

Appearance:

Learned Senior Counsel, Mr. Rashesh Sanjanwala, along with Learned Counsel, Mr. Jaimin Dave appeared for the Applicant. Learned Counsel Mr. Arjun Sheth, along with Learned Counsel Mr. Pavan S. Godiawala appeared for the Respondent.

ORDER

[PER: VIRENDRA KUMAR GUPTA, MEMBER (T)]

1. Through IA 424 of 2021, Committee of Creditors is seeking replacement of IRP.
2. The facts, in brief are that the Corporate Debtor was admitted into CIRP vide order of this Authority dated 06.04.2021. IP was appointed as IRP. Now, in the first meeting of COC held on 10.05.2021, the Committee of Creditors resolved to appoint Mr. Shailendra Ajmera as Resolution Professional with a majority voting share of 90.71%. Thereafter, the Applicant was authorized with 99.94% to file this application.
3. It is also claimed that proposed Resolution Professional has given his consent and no proceedings are pending against such person. However, Suspended Management of the Corporate Debtor has alleged that proposed Resolution Professional is not an independent person and has a conflict of interest with the Corporate Debtor, however, as per the Applicant, Suspended Management has failed to bring any material to substantiate such allegation. In this regard, it is

also claimed that proposed Resolution Professional has also given affidavit declaring on oath that he is an independent person and there is no conflict of interest in any manner whatsoever, as alleged by the Suspended Management of the Corporate Debtor.

4. In addition to this, it is also claimed that after admission of Corporate Debtor into CIRP, such Suspended Management have no power or Authority to raise such objections. Applicant has also placed reliance on the decision of the ***Hon'ble Supreme Court in the case of Karad Urban Co-operative Bank Limited Vs. Swwapnil Bhingardevay*** and raised that Committee of Creditors has made a conscious call on the remuneration payable to the Resolution Professional and informed that such decision cannot be challenged as it amounts to exercise of commercial wisdom by COC.
5. The Applicant has also filed an additional affidavit wherein it has been stated that the fee of proposed Resolution Professional is lesser than the fee being paid to existing IRP and the proposed resolution professional has extensive

experience of handling of CIRP of the Corporate Debtor with large asset base. Some allegations have also been made as regard to buyers and unprofessional conduct of existing IRP. The Applicant has also relied on the decision of **the Hon'ble NCLAT in the case of Naveen Kumar Jain Vs. Committee of Creditors of K.D.K. Enterprises (P.) Ltd.**, for the proposition that replacement of RP is an exercise of commercial wisdom by COC which cannot be interfered. For the same proposition reliance had also been placed on the decision of **the Hon'ble NCLAT in the case of Bank of India Vs. Nithin Nutritions (P). Ltd.**, wherein it is held that there is no doubt that the COC has the requisite powers to propose change of the Interim Resolution Professional even in meeting/s subsequent to the first meeting mentioned in Section 22(2) of IBC. There is no requirement that COC should give particular reasons for the change.

For this proposition they have relied on the following decisions:

| Sr. No. | Particulars | Relevant Paragraphs |
|---------|---|----------------------------|
| 1. | Bank of India Vs. Nithin Nutritions (P.) Ltd. reported in [2020] 118 taxmann.com 343 (NCL-AT) | Para No. 9 |
| 2. | Axis Bank Ltd. Vs. Sixth Dimension Project Solution Ltd. [Judgement dated 16.08.2019 passed by the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 356 of 2019] | Para Nos. 3 and 5 |
| 3. | Punjab National Bank Vs. Mr. Kiran Shah, IRP of ORG Informatics Ltd. [Judgement dated 06.08.2019 passed by the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 749 of 2019] | Para No. 2 |
| 4. | State Bank of India Vs. Ram Dev International Ltd. reported in [2018] 97 taxmann.com 58 (NCL-AT) | Para Nos. 8,9,10,14 and 15 |

Apart from these contentions the Applicant has also relied on following judicial decisions wherein change of IRP has been allowed to the similar circumstances in these cases: 1. *Vishwanath Sharma Vs. Pawan Kumar Singal, Interim Resolution Professional, Piyush IT Solutions Pvt. Ltd. and Ors.*, 2. *Power Finance Corporation Ltd. Vs. Mahendra Kumar Khandelwal* 3. *Supreme Hydra Engineering Private Limited and Ors. Vs. Dolphin Offshore Enterprise (India) Limited.*

6. In reply, present IRP has submitted that he has conducted CIRP for 170 days and has been able to attract 16 expressions of interest from well-respected ARC/Corporates of the Country. It is also claimed that affairs of the Corporate Debtor as a going concern are managed in the best possible manner and statistics prove this fact. As regard to aspect of competence and independence of the existing IRP, it has been claimed that no communication has been made to him to show his competence to handle CIRP of the Corporate Debtors having large assets base. As regard to appointment of professionals and other key management personnel of Corporate Debtor it has been claimed that right people need not to be replaced or thrown out only for the reason they were working with the Corporate Debtor before initiation of CIRP as their efforts and expertise helps in maintaining the status of the Corporate Debtor as a going concern under the control and supervision of IRP. As regard to the decision of the Hon'ble NCLAT relied on by the applicant it is submitted that on facts said judgments are not applicable. The IRP has also attached the copy of various meetings of COC to show that CIRP is conducted as per rules and regulations of IBC, 2016.

The learned Counsel further placed reliance on the order of this Bench in the case of *Torque Automotive Private Limited* wherein it was held that person from the same location should be appointed as RP whereas the proposed Resolution Professional was based at Delhi, hence, on this ground also such appointment was not justified. As regard to fee it is claimed that fees of proposed Resolution Professional is much higher than present IRP.

7. The Suspended Management has also filed an IA 392 of 2021 in support of continuation of present IRP as RP to conduct CIRP. In this application, the cost factor has also been brought on record. Apart from this it has been claimed that the proposed RP is a Partner of Ernst & Young LLP. which was appointed as an agency for Specialized Monitoring (ASM) of Sintex-BAPL Limited which was the subsidiary of the Corporate Debtor and said firm is still continuing for Sintex-BAPL Ltd., hence, Mr. Ajmera falls into the definition of related party and thus, not entitled to take up the assignment of RP qua the Corporate Debtor. It has also been claimed that said IP should not have given his consent to act as RP in


violation of the code of conduct which such proposed RP is required to follow.

8. The Learned Counsel for the Applicant in IA No. 424 of 2021 submitted that the Suspended Management has got no locus and therefore, this IA is not maintainable and thus, liable reliable to be rejected out rightly. On merit, reliance has been placed on the decision of *the Hon'ble Supreme Court in the case of State Bank of India Vs. Metenere Limited as reported in [2020] 162 SCL 504 (SC)* wherein, the Hon'ble Supreme Court held that the Insolvency Professional may not be disentitled to become RP of the Corporate Debtor merely because such IP was in service of the Financial Creditor and was also getting pension there from. Thus, if the proposed Resolution Professional was having some professional engagement earlier, the same cannot be the correct basis to challenge his appointment as RP.

9. We have considered the submissions made by both the sides have also perused the material on record. In the present case, in the first meeting of COC, COC proposed to replace IRP and

in the second meeting the Applicant was authorized to file this application. The CIRP has started on 06.04.2021 and as per the contentions made on behalf of the existing IRP, IRP has conducted CIRP as well as run the affairs of the Corporate Debtor in a most professional manner even during pandemic situation prevailing all over the country. It is also claimed that COC has not controverted this factual position. It is also stated that around 170 days have already passed and much progress has been achieved for resolution of Insolvency of the Corporate Debtor. Sixteen (16) Expressions of Interest have been received which are being evaluated. During this period i.e. from admission of Corporate Debtor into CIRP and till date there are no adverse comments by COC on the performance of IRP. In our view COC is like a Board of Directors and IRP/RP functions as CEO under the supervision of COC. Thus, there should be perfect cohesiveness between the two pillars of CIRP. It is also noted that in the present case IRP was proposed by the Original Financial Creditor i.e. Invesco Asset Management (India) Private Limited which is a large Financial institution who had filed application under Section 7, hence, prima facie

professional competency, capacity and neutral approach of such IRP cannot be doubted. As noted earlier, CIRP period timeline of 180 days is also approaching. 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.

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10. In view of our decision in IA No. 424 of 2021, IA No. 392 of 2021 has become infructuous. Even otherwise this IA is not maintainable as Suspended Management has no locus to file

this application. This IA stands dismissed and disposed of accordingly.

11. In the result of **IA No. 424 of 2021** stands disposed of in terms indicated above and **IA No. 392 of 2021** stands dismissed.



(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)



(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

Sweta