

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Ins) No. 916 of 2023 & I.A. No. 1662 of 2024**

**(Arising out of the Order dated 15.05.2023 passed by the National Company Law Tribunal, Mumbai Bench, Court-II in IA/3525/2022 in CP (IB) 934/MB/2020.)**

**IN THE MATTER OF:**

**Mr. Amit Sangal Proprietor of M/s. Nitin Plastic**

Head/ Registered Office : First Floor, Rana Marke,  
Meerut Road, Muzaffar Nagar- 251003

(Uttar Pradesh)

E-mail: [nitinplastics@gmail.com](mailto:nitinplastics@gmail.com)

**...Appellant**

**Versus**

**1. Mr. Kairav Anil Trivedi**

IRP of M/s. Prince MFG Industries Private Limited  
(IBBI Registration No. :IBBI/ IPA-002/ IP-N00728/  
2018-2019/12332)

Address: 413-414, Sharamjeevan B5, Opp. Lodha,  
New Cuffee Parade, Wadala (E),  
Mumbai – 400037 (Maharashtra)

E-mail : [kairavtrivedi2002@yahoo.com](mailto:kairavtrivedi2002@yahoo.com)

**...Respondent No. 1**

**2. Canara Bank Ltd.**

Member of Committee of Creditors of M/s. Prince  
MFG Industries Private Limited

Office Address: Ground Floor, Mittal Tower, “C”  
Wing, Nariman Point, Mumbai – 400021  
(Maharashtra)

E-mail: [cb2360@canarabank.com](mailto:cb2360@canarabank.com)

**...Respondent No. 2**

**Present**

**For Appellants:** Mr. Anuj Solanki & Mr. Rohit Gaur, Advocates.

**For Respondents:** Mr. Mohammed Zain Khan for Intervenor/SRA.  
Mr. Anuj P. Agarwala, for CoC.

Mr. Prakash Shinde, Ms. Ruchita Jain, Advocates  
for CoC.

Mr. Gaurav Mitra, Mr. Ishan Roy Chowdhury,  
Advocates for RP.

**With**

**Company Appeal (AT) (Ins) No. 792 of 2023  
& I.A No. 2680, 4184, 5214 of 2023, 2203, 2573 of 2024**

**(Arising out of the Order dated 15.05.2023 passed by the National Company  
Law Tribunal, Mumbai Bench, Court-II in IA/2977/2022 in CP (IB)  
934/MB/2020.)**

**IN THE MATTER OF:**

**Mr. Amit Sangal Proprietor of M/s. Nitin Plastic**  
Head/ Registered Office : First Floor, Rana Marke,  
Meerut Road, Muzaffar Nagar- 251003  
(Uttar Pradesh)  
E-mail: [nitinplastics@gmail.com](mailto:nitinplastics@gmail.com)

**...Appellant**

**Versus**

**1. Mr. Kairav Anil Trivedi**  
Resolution Professional of M/s. Prince MFG  
Industries Private Limited  
(IBBI Registration No. :IBBI/ IPA-002/ IP-N00728/  
2018-2019/12332)  
Address: 413-414, Sharamjeevan B5, Opp. Lodha,  
New Cuffee Parade, Wadala (E),  
Mumbai – 400037 (Maharashtra)  
E-mail : [kairavtrivedi2002@yahoo.com](mailto:kairavtrivedi2002@yahoo.com)

**...Respondent No. 1**

**2. M/s Prince MFG Industries Private Limited**  
Through Resolution Professional  
Registered Address: A-101, 1<sup>st</sup> Floor, Sunshine plaza  
Naigaum Cross Road, Dadar (East)  
Mumbai – 400014 (Maharashtra)  
E-mail : [kadam@princeswr.com](mailto:kadam@princeswr.com);  
[kairavtrivedi2002@yahoo.com](mailto:kairavtrivedi2002@yahoo.com)

**...Respondent No. 2**

**3. Committee of Creditors (CoC)**

Which comprises of :

**(a) Canara Bank**

Ground Floor, Mittal Tower, “C” Wing,  
Nariman Point,  
Mumbai – 400021 (Maharashtra)  
E-mail: [cb2360@canarabank.com](mailto:cb2360@canarabank.com)

**(b) Axis Bank**

7<sup>th</sup> Floor, Axis House, C-2, Wadia  
International Centre, P.B Marg, Worli,  
Mumbai – 400025 (Maharashtra)

**(c) ICICI Bank**

ICICI Bank Tower, Bandra-Kurla Complex,  
Mumbai- 400051  
E-mail: [rupam.gupta@icicibank.com](mailto:rupam.gupta@icicibank.com);  
[Saurabh.periwal@icicibank.com](mailto:Saurabh.periwal@icicibank.com);  
[Kamleshkumar.chaudhary@icicibank.com](mailto:Kamleshkumar.chaudhary@icicibank.com)

...Respondent No. 3

**Present**

**For Appellants:** Mr. Anuj Solanki & Mr. Rohit Gaur, Advocates.

**For Respondents:** Mr. Mohammed Zain Khan for Intervenor/SRA.  
Mr. Krishnendu Datta, Sr. Advocate, Mr. Anuj P. Agarwala, Mr. Akhil Nene, for CoC.  
Mr. Prakash Shinde, Ms. Ruchita Jain, Advocates for CoC.  
Mr. Gaurav Mitra & Mr. Ishan Roy Chowdhury, Advocates for RP.

**With**

**Company Appeal (AT) (Ins) No. 1034 of 2024**

**(Arising out of the Order dated 28.03.2024 passed by the National Company Law Tribunal, Mumbai Bench, Court-II in Company Petition No. 04/2023 in CP (IB) 934/MB/2020.)**

**IN THE MATTER OF:**

**Mr. Amit Sangal Proprietor of M/s. Nitin Plastic**  
Head/ Registered Office : First Floor, Rana Marke,  
Meerut Road, Muzaffar Nagar- 251003  
(Uttar Pradesh)  
E-mail: [nitinplastics@gmail.com](mailto:nitinplastics@gmail.com)

**...Appellant**

**Versus**

**Mr. Kairav Anil Trivedi**  
Resolution Professional/Insolvency Professional  
(IBBI Registration No. :IBBI/ IPA-002/ IP-N00728/  
2018-2019/12332)  
Address: 413-414, Sharamjeevan B5, Opp. Lodha,  
New Cuffee Parade, Wadala (E),  
Mumbai – 400037 (Maharashtra)  
E-mail : [kairavtrivedi2002@yahoo.com](mailto:kairavtrivedi2002@yahoo.com)

**...Respondent No. 1**

**Present**

**For Appellants:** Mr. Anuj Solanki & Mr. Rohit Gaur, Advocates.

**For Respondents:** Mr. Gaurav Mitra & Mr. Ishan Roy Chowdhury,  
Advocates for RP.

**J U D G E M E N T**

**(20.02.2025)**

**NARESH SALECHA, MEMBER (TECHNICAL)**

1. The first two appeals have been filed under Section 61(1) of the Insolvency and Bankruptcy Code, 2016 ('Code') by the Appellant i.e., Mr. Amit Sangal, Proprietor of M/s. Nitin Plastic (the Operational Creditor of the Corporate Debtor herein), against the Impugned Order dated 15.05.2023 passed by the National Company Law Tribunal, Mumbai Bench (II) ('Adjudicating Authority') in IA/3525/2022 and IA/2977/2022 in Company Petition No. (IB) 934(MB)/2020).

**2.** The first appeal has been filed U/S 61(1) of the Code by the Appellant i.e., Mr. Amit Sangal, Proprietor of M/s. Nitin Plastic, the Operational Creditor of the Corporate Debtor herein, under section 425 of the Companies Act, 2013 and Section 60(5) of the Code r/w Section 10 and Section 12 of the Contempt of Court Act, 1971, read with Rules 11 and 34 of the National Company Law Tribunal Rules, 2016, against the Impugned Order 28.03.2024 passed by the National Company Law Tribunal, Mumbai Bench (II) (**‘Adjudicating Authority’**) in Contempt Petition No. 04/2023 in Company Petition No. (IB) 934(MB)/2020).

**3.** Mr. Kairav Anil Trivedi, who is the Interim Resolution Professional (IRP) of M/s. Prince MFG Industries Private Limited (**‘Corporate Debtor’**) is the Respondent No. 1 in all the three appeals.

Canara Bank who is the one of the Members of CoC of the Corporate Debtor, is the Respondent No. 2 in Company Appeal (AT) (Ins.) No. 916 of 2023 and Respondent No. 3(a) in Company Appeal (AT) (Ins.) No. 792 of 2023 .

The Committee of Creditors (**‘CoC’**) in Company Appeal (AT) (Ins.) No. 792 of 2023 have been bifurcated into three parts constituting Canara Bank holding 67.36% voting rights as Respondent No. 3(a), Axis Bank Limited holding 18.72% voting rights as Respondent No. 3(b) and ICICI Bank, 13.92% voting rights as Respondent No. 3(c), and together they constitute as the Respondent No. 3 herein.

M/s. Prince MFG Industries Private Limited (**‘Corporate Debtor’**), through its Resolution Professional, is the Respondent No. 2 in Company Appeal (AT) (Ins.) No. 792 of 2023.

4. The Appellant, the Operational Creditor of the Corporate Debtor filed an application being CP (IB) No.934/MB/2020 under Section 9 of the Code for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, which was admitted by the Adjudicating Authority and CIRP was initiated vide Impugned Order dated 05.10.2021.

5. The Appellant submitted that Respondent No. 1, who is the Interim Resolution Professional was not appointed as the Resolution Professional (RP) during the first meeting of the CoC held on 10.11.2021. The Appellant Submitted that it is evident from item No. 15 of the said meeting agenda, which proposed the confirmation of Respondent No. 1 as Resolution Professional, was rejected by the members of CoC through a voting process. It is further submitted that this is clearly evidenced by the email dated 19.11.2021, from Right2Vote Infotech Private Limited, the online voting platform, wherein it was stated that the voting result for Item No. 15 was recorded as "dissent." It is the case of the Appellant that despite this, Respondent No. 1 manipulated the voting outcome by tampering with the results and intentionally filed false and fabricated documents, thereby wrongly claiming his appointment as the Resolution Professional of the Corporate Debtor. Furthermore, the Respondent No.1 deliberately withheld correct facts and misrepresented the outcome to the Adjudicating Authority through false submissions and affidavits, thereby committing perjury for his personal gain and for providing unlawful benefits to the Suspended Board of Directors ('SBOD').

6. The Appellant contended that Canara Bank, a member of the CoC, Respondent No. 2 in Company Appeal (AT) (Ins.) No. 916 of 2023 and Respondent No 3(a) in Company Appeal (AT) (Ins.) No. 792 of 2023 filed an application (I.A. No. 247/2022) on 02.02.2022, under Section 27 of the Code, seeking the replacement of Respondent No. 1 as the Interim Resolution Professional highlighting misconduct of Respondent No. 1. An additional affidavit by Respondent No. 2 in Company Appeal (AT) (Ins.) No. 916 of 2023 and Respondent No 3(a) in Company Appeal (AT) (Ins.) No. 792 of 2023, presented evidence of Respondent No. 1's false submissions, manipulation of voting results, and violations of the Code's provisions, rules, and regulations. The Appellant submitted that these actions reflect fraudulent intent of the Respondent No. 1 to mislead the CoC, the Adjudicating Authority, creditors, stakeholders, and the Insolvency and Bankruptcy Board of India (IBBI). The Appellant submitted that Respondent No. 1 deliberately concealed the results of the e-voting, misrepresented himself as being appointed as the Resolution Professional, and committed serious irregularities during the CIRP in collusion with the SBOD to undermine the integrity of the Code's framework and violated the rules and procedures of the Adjudicating Authority which amounted to grave misconduct and fraud.

7. The Appellant submitted that Respondent No. 1 executed a Memorandum of Understanding ('MoU') dated 10.11.2021 in collusion with SBOD and handed over possession of the factory, including movable assets, inventories, plant and

machinery, moulds, etc., at Haridwar to M/s. Sarvashree Industries Private Limited (SIPL), with retrospective effect, i.e. from 05.10.2021. The Appellant highlighted that this occurred on the same date that the application under Section 9 of the Code was admitted, at a time when the Interim Resolution Professional had neither received the order nor made a public announcement. This action was carried out without the prior consent and approval of the CoC, which constitutes a violation of Section 28 of the Code. The Appellant elaborated that under Section 28 of the Code, the Interim Resolution Professional is required to seek the prior approval and consent of the CoC before transferring any assets of the Corporate Debtor during the CIRP. The Appellant asserted that the transfer of assets to SIPL, carried out without the necessary approval of the CoC is contrary to the interests of all creditors and stakeholders of the Corporate Debtor. The Appellant also contended that Respondent No. 1 acted beyond the duties assigned to the Interim Resolution Professional under Section 18 of the Code during the CIRP, violating the provisions of Section 18 of the Code and committed material irregularity in exercise of power is arbitrary and illegal.

**8.** The Appellant submitted that on 30.12.2021, Respondent No. 1 presented a draft MoU during the second meeting of the CoC for approval, however, it is brought out by the Appellant that this MoU had already been executed on 10.11.2021 with retrospective effect from 05.10.2021, which was done without the prior consent or approval of the CoC. The appellant contended that this action was taken to mislead the CoC and the Adjudicating Authority.

9. The Appellant highlighted that the Respondent No. 1 violated several provisions of the CIRP Regulations. The Appellant cited some of these violations as enumerated below: -

*(a) Violation of Regulation 19: The appellant submitted that the first CoC meeting was called with only a 2-day notice dated 08.11.2021, whereas the regulations mandate a minimum of 5 days' prior notice for convening a CoC meeting.*

*(b) Violation of Regulation 26: The Respondent No. 1 as the Interim Resolution Professional failed to submit the record of the first CoC meeting and did not conduct the second CoC meeting for 50 days. Even during the second CoC meeting on 30.12.2021, the Interim Resolution Professional made false and misleading statements regarding the agenda. Specifically, item No. 7 in the minutes of the second CoC meeting was fraudulently included to mislead the CoC. The agenda mentioned the review of efforts made by the Respondent No. 1 for entering into a third-party MOU and the possibility of continuing plant operations at Haridwar during the CIRP where the said MoU mentioned was already executed on 10.11.2021 with retrospective effect dated 05.10.2021, without the consent of the CoC.*

*(c) Violation of Regulation 35A: The Interim Resolution Professional/alleged Resolution Professional failed to take any steps or furnish reports regarding preferential or fraudulent transactions, despite stating that the Corporate Debtor had borrowed a huge loan and that there was no balance in the bank accounts or any*

*stock/inventory available at the factory in Haridwar. The Appellant accused that the Respondent No. 1 did not investigate how the funds were allocated by the SBOD or whether any preferential or fraudulent transactions occurred, which clearly indicates that the Respondent No. 1 was colluding with the SBOD for ulterior motives.*

*(d) **Violation of Regulation 36:** The Respondent No. 1 failed to provide the Information Memorandum to the CoC within the required time frame, resulting in a delay of 94 days.*

**10.** The Appellant also submitted that the Respondent No.1 has violated the Code of Conduct for Insolvency Professionals, as outlined in the First Schedule of Regulation 7(2)(h) of the IBBI (Insolvency Professional) Regulations, 2016, read with Sections 207 and 208 of the Code, which further established the improper conduct and collusion of the Respondent No. 1 in the handling of the CIRP.

**11.** The Appellant submitted that Respondent No.1, was never formally appointed as the Resolution Professional in the first meeting of the CoC under Section 22 of the Code, nor in any subsequent CoC meetings under Section 27. Despite this, the Respondent No. 1 falsely represented himself as the Resolution Professional in the MoU and the minutes of the first CoC meeting. The Appellant alleged that Respondent No.1 committed fraud and misrepresentation before the Adjudicating Authority to obtain orders, and such orders are void ab initio as per established legal principles.

**12.** The Appellant assailed that Respondent No. 1 had committed the offence of perjury by intentionally and willfully filing false documents and submissions, along with an affidavit, before Adjudicating Authority, including false or tampered minutes of the first CoC meeting. As a result, Respondent No. 1 is liable for proceedings under Section 195 read with Section 340 of the Code of Criminal Procedure, 1973 ('CrPC'). The appellant further asserted that Respondent No. 1's actions constitute a serious violation of legal and procedural integrity, and should be dealt with accordingly under criminal law.

**13.** The Appellant contended that the CoC filed an application IA 247 of 2022 for the replacement of the Resolution Professional under Section 27 of the Code. The Respondent No. 1 submitted that under the provisions of the Code, there is no requirement to make the Resolution Professional a party in the application for replacement, as it is within the commercial discretion of the CoC to replace the Resolution Professional without providing any reasons. However, in this case, Respondent No. 1, with malafide intention, interfered and objected to his replacement, arbitrarily attempting to retain and usurp the position of Resolution Professional for the Corporate Debtor. The Appellant highlighted that Respondent No. 1 had failed to specifically deny any of the allegations made by the CoC in their additional affidavit filed in I.A. No. 247 of 2022.

**14.** The Appellant submitted that, as per item No. 13 of the Minutes of the 6<sup>th</sup> CoC Meeting, the CoC informed Respondent No. 1 about the fraud committed by the SBOD during the management of the Corporate Debtor before the initiation

of the CIRP. The Appellant stated that Canara Bank, member of the CoC holding 67.36% voting rights of CoC, shared the Forensic Audit Report dated 10.05.2021, with Respondent No. 1, and based on this report, further actions were initiated against the Corporate Debtor and its promoters, including an intimation to the CBI. The Appellant further submitted that the Canara Bank, has classified the account of Corporate Debtor as "fraud" and was in the process of declaring the promoters and Corporate Debtor as willful defaulters, in line with RBI guidelines. Axis and ICICI Banks also classified the account as fraud.

**15.** The Appellant contended that despite having full knowledge of these facts and documents, Respondent No. 1 failed to conduct any forensic or transaction audit after the initiation of the CIRP against the Corporate Debtor. Additionally, Respondent No. 1 did not file any application under Section 66 of the Code for fraudulent trading or wrongful trading, which is a mandatory course of action in light of the fraud identified by the CoC and the banks.

**16.** The Appellant submitted that on 13.10.2022, Respondent No. 1 filed an IA - 2977 of 2022 seeking approval for the Resolution Plan. The Appellant asserted that the Resolution Plan was presented by Respondent No. 1 to conceal the misdeeds, fraud, material irregularities, and violations of the provisions, rules, and regulations of the Code committed by him during his tenure as Interim Resolution Professional/alleged Resolution Professional for the Corporate Debtor.

**17.** The Appellant submitted that the Adjudicating Authority, without considering the documents and applications filed by the Appellant regarding the material irregularities, fraud, and violations of the Code and other laws committed by Respondent No. 1 in collusion with the SBOD, allowed IA No. 2977 of 2022 and approved the Resolution Plan on 15/05/2023 and further the Adjudicating Authority dismissed the Appellant's application (IA No. 3525 of 2022) on the same date, without reviewing the facts and documents provided by the Appellant.

**18.** The Appellant submitted that a complaint was filed by the Appellant against Respondent No. 1 for misconduct before the IBBI, which was registered on 03.10.2022 and disciplinary action was taken against Respondent No. 1, finding him guilty of material irregularities and violations of the Code during his tenure as Interim Resolution Professional and suspended the Respondent No. 1 for six months vide its order dated 23.05.2023 (IBBI/DC/173/2023).

**19.** The Appellant submitted that the Corporate Debtor transferred its assets and inventories to M/s. SIPL, which was managed by the SBOD. This was done to defraud creditors and suppliers, as shown by the matching GST registration address. The Appellant stated that the Respondent No. 1 approved these asset transfers without the CoC's consent, violating the principles of the Code that aim to maximize value and protect stakeholders. The Appellant argued that allowing such actions of the Respondent No. 1 would set a harmful precedent, encouraging future insolvency professionals to bypass the Code for personal gain in collusion with ex-management. The Appellant further asserted that permitting these

unlawful acts will set a dangerous precedent for future Corporate Insolvency Resolution Processes. It will encourage insolvency professionals to act in collusion with the ex-management of the Corporate Debtor for personal gain, undermining the integrity of the Code and enabling violations of the Code for selfish motives.

**20.** The Appellant urged this Appellate Tribunal to dismiss the Impugned Order dated 15.05.2023 and allow the Appeal Nos. 916 of 2023 and 792 of 2023.

**21.** As regards, the third appeal no. Comp. App. (AT) (Ins) No. 1034 of 2024 which is a Contempt Petition arising out of Impugned Order dated 28.03.2024 in Contempt Petition No. 4 of 2023 in CP (IB) No.934/MB/2020, the Appellant submitted that basic facts remain same as enumerated by him in Appeal Nos. 916 of 2023 and 792 of 2023.

**22.** The Appellant submitted that on 08.03.2023, the Appellant filed a Contempt Petition (Contempt Petition No. 4 of 2023) before the Adjudicating Authority against the Respondent No. 1, prompting the Adjudicating Authority to issue a notice to the Respondent No. 1.

**23.** The Appellant contended that the Respondent filed a vague and evasive reply to the contempt petition, failing to specifically deny the allegations made against him. The Appellant further submitted that the Adjudicating Authority, in passing the Impugned order dated 15.05.2023, approving the Resolution Plan in IA 2977 of 2022 in C.P. (IB)/934/2020, did not properly consider the documents, facts, submissions, and objections filed by the Appellant. These objections

highlighted material irregularities, fraud, violations of the provisions, rules, and regulations of the Code, and other relevant laws committed by the Respondent in collusion with the SBOD.

**24.** The Appellant submitted that he filed Company Appeal No. 792/2023 under Section 61(3) of the Code before this Appellate Tribunal, challenging the approval of the Resolution Plan and this Appellate Tribunal issued a notice to all Respondents on 21.06.2023, which was duly accepted by the Respondent No. 1. The Appellant contended that despite the notice of this Appellate Tribunal, Respondent No. 1 fraudulently and with dishonest intent proceeded to implement the Resolution Plan during the pendency of the Appeal. The Appellant highlighted that, as per the Terms of the Resolution Plan, once an appeal has been filed against the order approving the Resolution Plan (IA 2977 of 2022 in C.P. (IB)/934/2020), the Plan could not be implemented, a fact that was known to the Respondent No. 1.

**25.** The Appellant submitted that the CoC, in its reply filed before the Appellate Tribunal in Appeal No. 792 of 2023, has admitted that the management of the Corporate Debtor was handed over to the SRA and acknowledged that the Resolution Plan was implemented on 30.06.2023, just days after the Appellate Tribunal issued a notice in Appeal No. 792 of 2023, which challenges the approval of the Resolution Plan under Section 61(3) of the Code.

**26.** The Appellant submitted that on 11.01.2024, written submissions were filed in Contempt Petition No. 04 of 2023 before the Adjudicating Authority and

obtained favorable order from the Adjudicating Authority by concealing material information and facts, thereby committing fraud to secure an order. The Appellant further contended that the order obtained by the Respondent should be declared void ab-initio.

**27.** The Appellant submitted that the Respondent is liable to be prosecuted for Contempt of Court under Section 425 of the Companies Act, 2013, read with Sections 10 and 12 of the Contempt of Court Act, 1971, as well as Rule 11 and 34 of the NCLT Rules, 2016. To buttress his point, he relied on the judgements of Hon'ble Supreme Court of India in case of *Suo-Motu Contempt Petition (Civil) No. 3 of 2021 In Re: Perry Kansagra, A.V. Papayya Sastry and Ors. Vs. Government of A.P. and Ors.* [(2007) 4 SCC 221] and *Dhananjay Sharma v. State of Haryana* [(1995) 3 SCC 757], *Chandra Shashi v. Anil Kumar Sharma* [(1995) 1 SCC 421] and in *ABCD v. Union of India* [(2020) 2 SCC 52]. The Appellant stated that these judgements support his case.

**28.** The Appellant contended that the Adjudicating Authority dismissed his Contempt Petition No. 4 of 2023 in C.P. (IB)/934/2020 without considering the documents submitted by the Appellant, on the ground that there was no evidence, whereas all relevant documents and evidence regarding false submissions and fraudulent actions by the Respondent were on record, including the IBBI's Order No. IBBI/DC/173/2023 dated 23.05.2023, which was filed before the Adjudicating Authority on 12.06.2023.

**29.** Concluding his arguments, the Appellant urged this Appellate Tribunal to dismiss the Impugned Order dated 28.03.2024 and allow his appeal.

**30.** Per contra, the Respondent No. 1 denied all the averments made by the Appellant in the all three appeals.

**31.** The Respondent No. 1 stated that the Appellant had no locus standi to raise objections in the ongoing CIRP. The Respondent No. 1 stated that post CIRP order, the Operational Creditor has no longer any role in the process and lacks locus standi to challenge the proceedings. The Respondent No. 1 alleged that the Appellant fraudulently obtained confidential documents, such as the minutes of CoC meetings and the Contract Manufacturing MoU, which were not part of the CoC, and has misused these documents to misrepresent facts. The Respondent No. 1 submitted that the Appellant had been filing multiple applications before the Adjudicating Authority, the IBBI, using these fraudulently obtained documents, even after the CoC approved the Resolution Plan. The Respondent No. 1 stated that the CoC has already resolved to retain the existing Resolution Professional and the application for the replacement of the Resolution Professional (IA/247/2022) was withdrawn long before the Appellant's application in IA No. 3525 of 2022.

**32.** The Respondent No. 1 submitted that the Appellant's claim was fully accepted, and payment was made as per the approved Resolution Plan, which was implemented on 30.06.2023. The Appellant submitted that the CIRP had been completed in accordance with the timelines specified in FORM G, despite the

challenges posed by the COVID-19 pandemic. The Appellant stated that 12 CoC meetings were held, and the Resolution Plan was approved by 100% of the CoC, after multiple rounds of negotiations. A forensic audit was conducted with CoC approval, and IA 993 of 2023 had been filed with Adjudicating Authority.

**33.** The Respondent No. 1 contended that the legal implementation of the Resolution Plan remains unaffected by the CIRP followed in the First CoC meeting, and therefore, it cannot be grounds for rejecting the Resolution Plan under Section 30(2)(e) of the Code. The Respondent No. 1 asserted that the Appellant is misusing the CIRP as a recovery tool rather than aiming for the revival of the Corporate Debtor, filing multiple applications and complaints based on fraudulent documents.

**34.** The Respondent No. 1 submitted that filing an appeal is not an automatic right, but is only available to an aggrieved party on valid grounds of fact or law and the Appellant has no role in the CIRP, nor is he a member of the CoC. The Respondent No. 1 stated that the Appellant cannot be considered as an aggrieved person regarding the appointment or replacement of the Resolution Professional under Section 27 of the Code, and the Appellant has no entitlement to access confidential CoC documents, including the minutes of meetings or the MoU. Furthermore, the Appellants was not involved in the proceedings of IA 247 of 2022, which had been withdrawn long before the filing of his IA 3525 of 2022.

**35.** The Respondent No. 1 submitted that the Appellant has consistently misused the CIRP for recovery purposes rather than facilitating the resolution of

the Corporate Debtor. Prior to the initiation of the CIRP, the Corporate Debtor had proposed a settlement to the Appellant, offering an upfront payment of Rs. 25 lakhs along with post-dated cheques (PDCs) of Rs. 1 crore for full repayment of the outstanding debt. Although the Appellant accepted the Rs. 25 lakhs, he refused to withdraw the case and insisted that the CIRP should proceed, despite the debt being acknowledged. Furthermore, the Appellant neither returned the Rs. 25 lakhs nor the PDCs as per the settlement terms, and instead filed section 138 of NI Act cases against the Corporate Debtor and its directors, alleging non-honoring of the PDCs, even though the settlement had failed.

**36.** The Respondent No. 1 contended that during the CIRP, the Appellant attempted to put pressure on the Respondent No. 1 for acting according to the Appellant's demands and sought various favors, including the filing of Section 19(2) applications, police complaints, and fraud applications, all of which were aimed at harassing the SBOD. The Respondent No. 1 stated that he refused to comply with these requests, maintaining that the primary objective of the Code is the revival of the Corporate Debtor, not recovery.

**37.** The Respondent No. 1 submitted that the Appellant, through his lawyer Mr. Anuj Solanki, has made repeated misrepresentations in the past six months, with the same request in all applications—namely, to stay, delay, or reject the approval of the Resolution Plan. In the first instance, the Appellant objected to the Resolution Plan at the hearing on 17.10.2022, but was informed by the Adjudicating Authority that he was not a party and could not raise objections

without filing a separate IA. In the second instance, the Appellant filed IA 3525 of 2022 under Section 60(5) of the Code, falsely claiming that the Resolution Professional was improperly appointed and raising personal allegations against the Resolution Professional, thereby seeking rejection of the Resolution Plan. The third misrepresentation involved the Appellant filing IA 726 of 2023 under Section 47 of the Code, where he again misrepresented the existence of undervalued transactions without providing any supporting data, despite the Resolution Plan already filing a fraud application being heard in IA 993 of 2023. Finally, in the fourth instance, the Appellant filed Contempt Application 4 of 2023, once again seeking to stay the approval of the Resolution Plan. The Respondent No. 1 emphasized that these actions highlight the Appellant's ongoing attempts to derail the CIRP and undermine the Resolution Plan.

**38.** The Respondent No. 1 conceded that while the CoC filed an application for the replacement of the Interim Resolution Professional due to its internal policies, the Respondent No. 1 continued to perform his duties. The Respondent No. 1 stated that he successfully ensured the completion of the Resolution Plan, with all payments being received and distributed as per the plan approved by the Adjudicating Authority.

**39.** The Respondent No. 1 contended that the Resolution Plan has been approved by 100% of the CoC during its 10th meeting, conducted by the Respondent No. 1. This was followed by approval from the Adjudicating

Authority 15.05.2023, in IA 2977 of 2022, after hearing and dismissing IA 3525/2022 of the Appellant as misconceived.

**40.** The Respondent No. 1 also refuted all the averments made by the Appellant in the Company Appeal (AT) (Ins.) No. 1034 of 2024 and denied that he has committed any contempt.

**41.** Concluding his arguments, the Respondent No. 1 requested this Appellate Tribunal to dismiss all three appeals with cost.

**42.** The CoC collectively submitted that the Corporate Debtor was admitted into the CIRP under Section 9 of the Code in Company Petition No. 934 of 2020. Pursuant to this, Respondent No. 1, was appointed as the Interim Resolution Professional by an order dated 06.10.2021.

**43.** The CoC submitted that during the first CoC meeting, in the exercise of their commercial wisdom, the CoC informed that, as per the bank's policy, the Resolution Professional must be appointed from the bank's panel. Consequently, the CoC filed an application for the appointment of the Resolution Professional from the bank's panel. The CoC together stated that Respondent No. 1 executed a MoU on 10.11.2021, concerning the factory and Respondent No. 1 explained and clarified the benefits of executing this MoU, which was subsequently agreed upon by the CoC.

**44.** The CoC jointly consented to retain the Resolution Professional appointed by the Adjudicating Authority and decided to withdraw the application for the replacement of the Resolution Professional.

**45.** The CoC further submitted that following this, the Resolution Professional filed Application No. 2977 of 2022 for the approval of the Resolution Plan, which was approved by the CoC. The plan has been successfully executed, with the entire amount under the plan having been received by the CoC. Furthermore, the management has already been handed over to the Successful Resolution Applicant.

**46.** The CoC submitted that the Resolution Professional has acted in the best interests of the stakeholders and the Corporate Debtor. Furthermore, the CoC contended that the Appellant, being an Operational Creditor, is not even a part of the CoC and, therefore, has no standing to allege material irregularities or challenge the Resolution Plan.

**47.** At this stage, we note that SRA has also filed his intervention application which we will elaborate in finding.

**48.** Concluding the arguments, the CoC collectively submitted that the Appeal being frivolous is liable to be dismissed with cost.

## **Findings**

**49.** The first two appeals has been filed by the Appellant in Comp. App. (AT) (Ins.) No. 916 of 2023 & Comp. App. (AT) (Ins.) No. 792 of 2023 against the same Impugned Order dated 15.05.2023 passed by the Adjudicating Authority in CP(IB) 934/MB/2020. The Adjudicating Authority has disposed of two IA's and hence two appeals have been filed by the Appellant. IA No. 2977/2022 was filed

by the Interim Resolution Professional for approval of the Resolution Plan which is subject matter in present appeal before us in Company Appeal (AT) (Ins.) No. 792 of 2023 and IA 3525/ 2022 was filed by the Appellant raising his objections to approval of the Resolution Plan, which was rejected by the Adjudicating Authority in the Impugned Order dated 15.05.2023 which is in appeal before us in Company Petition No. (IB) -934 (MB)/2020.

**50.** Since both the appeals have been filed against the same Impugned Order dated 15.05.2023 on the approval/ rejection of the Resolution Plan by the Adjudicating Authority and have been pleaded by the same counsels on the same issues, hence we shall deal both the appeals jointly in the following discussion. We have already noted the facts of the same, hence we shall not repeat the same for the purpose of brevity.

**51.** From the pleadings, the following issues emerge which are required to be resolved in order to decide the first two appeals.

**Issue No. (I) (A)** Whether, Mr. Kairav Anil Trivedi appointed as Interim Resolution Professional by the Adjudicating Authority vide CIRP order dated 05.10.2021 was lawfully appointed as Resolution Professional by the CoC in accordance with the Regulations or not.

**Issue No. (I) (B)** Whether the CoC dissented the appointment of Mr. Kairav Anil Trivedi working as Interim Resolution Professional of the Corporate Debtor being appointed as Resolution Professional of the Corporate Debtor or approved his appointment as Resolution Professional in the First CoC Meeting.

**Issue No. (I) (C)** Whether conduct of Mr. Kairav Anil Trivedi the Interim Resolution Professional of Corporate Debtor has been fair, reasonable and in accordance with the provisions of the Code and Regulations or acted in arbitrary and pre-judicial manner as alleged by the Appellant.

**Issue No. (I) (D)** What has been stand of CoC on CIRP Process.

**Issue No. (II) (A)** Whether the MoU signed with the SIPL was in accordance with provision of the Code and the Regulations or otherwise. Whether Mr. Kairav Anil Trivedi violated any of the laid down provisions in approving and signing the said MoU.

**Issue No. (II) (B)** Whether the contractor of Haridwar plant of the Corporate Debtor i.e., SIPL was related party of the Corporate Debtor. Whether Mr. Kairav Anil Trivedi brought out misleading facts before CoC .

**52. Issue No. (III)** Whether, material irregularities, if any, by Interim Resolution Professional /Resolution Professional while taking approval from the Adjudicating Authority will affect the fate of approved Resolution Plan.

**53.** These points are interconnected and inter dependent and shall be dealt in conjoint manner in the following discussions :-

**Issue No. (I) (A)** Whether, Mr. Kairav Anil Trivedi appointed as Interim Resolution Professional by the Adjudicating Authority vide CIRP order dated 05.10.2021 was lawfully appointed as Resolution Professional by the CoC in accordance with the Regulations or not.

**Issue No. (I) (B)** Whether the CoC dissented the appointment of Mr. Kairav Anil Trivedi working as Interim Resolution Professional of the Corporate Debtor being appointed as Resolution Professional of the Corporate Debtor or approved his appointment as Resolution Professional in the First CoC Meeting.

**Issue No. (I) (C)** Whether conduct of Mr. Kairav Anil Trivedi the Interim Resolution Professional of Corporate Debtor has been fair, reasonable and in accordance with the provisions of the Code and Regulations or acted in arbitrary and pre-judicial manner as alleged by the Appellant.

(a) It is noted that Mr. Kairav Anil Trivedi was appointed as Interim Resolution Professional by the Adjudicating Authority while passing the order of initiation of the CIRP of the Corporate Debtor vide order dated 05.10.2021 passed in application filed by the Appellant under Section 9 of the Code in CP(IB) 934/MB/2020 which reads as under :-

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH, COURT - II  
IA No. 1509 of 2021 In C.P. No. 934/IBC/MB/2020

**ORDER**

a. **The above Company Petition No. (IB) -934(MB)/2020 is hereby allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s Prince MFG Industries private Limited. **The IA 1509 of 2021 is hereby rejected** in view of the admission of the present Company Petition.

b. This Bench hereby appoints Mr. Kairav Anil Trivedi, Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00728/2018-19/12332 as the Interim Resolution Professional having registered office at 23A, 5<sup>th</sup> Floor, Jyoti Bldg, Barquatali Dargah Marg to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

(b) We note that the issue of confirmation and approval of the appointment of Mr. Kairav Anil Trivedi was taken up as Agenda Item no. 15 in the first CoC meeting held on 10.11.2021, as noted from the minutes of 1<sup>st</sup> CoC meeting which reads as under :-

15. To confirm and approve the appointment of Mr. Kairav Anil Trivedi (Registration No. IBBI/PA-002/IP-N00728/2018-2019/12332) as the Resolution Professional ("RP") of the Corporate Debtor along with his fees and expenses and the manner of payment.

A brief profile of the IRP having 23 years industry experience as a CFO /CS/ Head Legal with Restructuring and Revival exposure of over Rs 6000 crs was shared with the COC. The IRP also informed that he has the necessary infrastructure for holding COC meetings at his office along with the trained staff including lawyers, FCS and post graduates to assist complete JBC process. The IRP is also a Certified ADR Professional of ICAI having Institutional empanelment and also Independent Director in 2 Listed Companies.

The IRP expressed his willingness to continue as an RP, if approved by the COC, and also disclosed the fact that he is not disqualified from being appointed as an RP, under IBBI guidelines. The COC accordingly passed the following resolutions

**RESOLVED THAT** the COC appoints Mr. Kairav Anil Trivedi, (Registration No. IBBI/PA-002/IP-N00728/2018-2019/12332) as the Resolution Professional ("RP") of the Corporate Debtor and thus his services would continue as an RP.

**RESOLVED FURTHER THAT** the COC approved the RP fees of Rs 1,50,000/- per month and this be treated as CIRP expenses.

**RESOLVED FURTHER THAT** these CIRP expenses would be shared by the entire COC in the proportion of Voting strength of the COC and these CIRP Expenses be deposited in the designated Bank Account of CD by the respective COC members in their share and the IRP be permitted to withdraw the same as reimbursement."

(c) We note that the voting on the proposed resolution for confirmation and approval of Mr. Kairav Anil Trivedi as Resolution Professional was conducted i.e., e-voting platform by M/s Right2vote Infotech Pvt Ltd (Online Voting Platform Provider) that communicated result vide an e-mail dated 19.11.2021, according to which the resolution of item No. 15 of First

CoC meeting held on 10.11.2021 was “dissent” i.e., non approval. The relevant portion of the said e-mail is reproduced as under :-

7. Item No. 15. To confirm and approve the appointment of Mr. Kairav Anil Trivedi (Registration No. IBB/PA-002/IP-N00728/2018-2019/12332) as the Resolution Professional (“RP”) of the Corporate Debtor along with his fees and expenses and the manner of payment.  
RESOLVED THAT the COC appoints Mr. Kairav Anil Trivedi, (Registration No. IBB/PA-002/IP-N00728/2018-2019/12332) as the Resolution Professional (“RP”) of the Corporate Debtor and thus his services would continue as an RP. ....  
Dissent

(d) We take into consideration that on 30.12.2021, Second CoC meeting was held in which CoC proposed name of new Resolution Professional Mr. Pradeep Kabra in place of Mr. Kairav Anil Trivedi vide Item No. 16 of the minutes of meeting which is seen as under :-

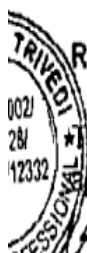
**16. To approve the change in RP u/s 27 of IBC**

Canara Bank Ltd, a COC member, presently holding more than 66% of voting share in the COC, has vide e mail dt 29<sup>th</sup> December 2021 nominated the name of Mr Pradeep Kabra as Resolution Professional to replace the existing RP u/s 27 of IBC, along with his necessary consent to act as Resolution Professional dated 29<sup>th</sup> December 2021 in Form AA along with Form B dated 23 December 2021.

**Reason for this Change in RP:-**

Canara Bank Ltd has stated that as per the Internal policy guidelines of Canara Bank Ltd it is mandate that the Resolution Professional should be an Insolvency Professional who is empaneled specifically with Canara Bank Ltd and accordingly has requested for change in the Resolution Professional by providing the necessary form along with his consent to act as Resolution Professional

**Rely by exiting RP:**



The existing Resolution Professional Mr. Kairav Trivedi states that, he has been appointed under the specific order of the Hon'ble NCLT bench Mumbai and is also

*Kairav Anil Trivedi*

holding empanelment with State Bank of India, Bank of Baroda Ltd, Punjab National Bank Ltd, Indian Overseas Bank Ltd, COSMOS Co-operative Bank Ltd and is also empaneled in the IBB list for NCLT as well as IBB list for empanelment as Liquidator for SEBI. The Registered office of the CD is at Dadar Mumbai and he is also based in Mumbai at Wadala.

In addition, he has more than 23 Yrs Industry experience as CFO/ Head Finance/Head Legal and Company Secretary with specific exposure in restructuring and revival of listed Companies including BIFR and is also a Certified ADR Professional by ICAI and MBA from JBIMS.

He also states that he has performed his duties diligently as per the requirements of the Code.

He further states that has applied to be empaneled with Canara Bank Ltd but as on date his name does not appear in the list of Insolvency Professionals Empaneled with Canara Bank Ltd.

**Proposed Resolution :-**

The COC discussed the same and there were no objections during the meeting, accordingly:-

**RESOLVE THAT,** pursuant to the provisions of section 27 of IBC the COC has proposed to nominate to Mr. Pradeep Kabra having IBB/PA-002/IP-N00728/2018-2019/12332 P01104/2017-18/11730 as Resolution Professional of Prince MFG Industries Pvt Ltd, as per his written consent dated 29<sup>th</sup> December 2021 in place of the exiting Resolution Professional Mr Kairav Trivedi having IBB/PA-002/IP-N00728/2018-2019/12332

**RESOLVE FURTHER THAT,** the necessary application for change in RP u/s 27 would be filed by the COC with the Hon'ble NCLT Mumbai

(e) From the above, it is noted that Canara Bank who is the majority member of CoC (holding 67.36 % of voting rights), proposed the name of Mr. Pradeep Kabra as new Resolution Professional. We also take into consideration that the said resolution has been put for e-voting and the last date of e-voting was 06.01.2022. It was submitted during pleadings that the said resolution for changing Mr. Kairav Anil Trivedi and appointing Mr. Pradeep Kabra was approved by the CoC with 100% voting.

(f) The CoC filed an IA No. 247/2022 on 27.01.2022 and the relevant portion of the said IA reads as under :-

9. 10.11.2021 The first meeting of the Committee of Creditors was held, wherein the IRP was appointed as Resolution Professional (RP) u/s 22 of IBC. Hereto annexed and marked as Exhibit "D" is the copy of minutes of first meeting of Committee of Creditors.

15. The existing Resolution Professional is not an empanelled Insolvency Professional with Canara Bank. Therefore, the Canara Bank proposed for change of Resolution Professional by providing necessary form along with the consent of Mr. Pradeep Kabra to act as Resolution Professional.

16. The aforesaid proposal was placed as agenda no. 16 before the second meeting of COC held on 30.12.2021 as agenda no.16. The COC discussed the same and had no objection for the replacement of existing RP or the appointment of proposed RP.

17. The proposed resolution was put for e-voting wherein the COC by 100% of voting decided to replace the existing RP with another Insolvency Professional i.e. Mr. Pradeep Kabra having registration no. IBBI/IPA-001/IP-P01104/2017-18/11790.

18. The proposed Resolution Professional is registered with IBBI and is eligible to be appointed as Resolution Professional of Corporate Debtor to carry out the further process of CIRP.

19. Accordingly, the Application is being filed by the COC seeking appointment of Mr. Pradeep Kabra as Resolution Professional of the Corporate Debtor in place of the existing Resolution Professional.

- (g) It is noted that in IA No. 247 of 2022, it was mentioned in Para 9 that the Interim Resolution Professional Mr. Kairav Anil Trivedi was appointed as Resolution Professional in the first CoC meeting held on 10.11.2021. We consciously note that this fact has been wrongly pointed out in IA No. 247 of 2022 by the CoC in view of the previous facts where it has been clearly stated vide an e-mail dated 19.11.2021 that M/s Right2vote Infotech Pvt Ltd has declared resolution regarding appointment of Mr. Kairav Anil Trivedi as Resolution Professional which was dissented i.e., not approved.
- (h) Thus, it becomes clear that in Second CoC meeting, the CoC with 100% voting rights, approved replacement of the Mr. Kairav Anil Trivedi and appointment of new Resolution Professional Mr. Pradeep Kabra.
- (i) We have noted that IA. No. 247 of 2022 was filed for replacement of Mr. Kairav Anil Trivedi by new Resolution Professional and Canara Bank filed an additional affidavit on behalf of the CoC on 28.03.2022. The additional affidavit is reproduced as under :-

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

INTERLOCUTORY APPLICATION NO. 247 OF 2022

IN

COMPANY PETITION NO. 934 OF 2020

Committee of Creditors

of Prince MFG Industries Pvt. Ltd. ... Applicant

IN THE MATTER BETWEEN:

Mr. Amit Sangal ... Operational Creditor

Versus

Prince MFG Industries Pvt. Ltd. ... Corporate Debtor

AFFIDAVIT ON BEHALF OF THE COMMITTEE OF CREDITORS OF

PRINCE MFG INDUSTRIES PVT. LTD.

I, Mr. Rahul Yadav, authorised representative of Canara Bank Ltd. on behalf of the Committee of Creditors, do hereby state on solemn affirmation as under:

LEGAL SUBMISSIONS:

1. I say that the present Interlocutory Application No. 247 of 2022 is filed u/s 27 of the Insolvency and Bankruptcy Code, 2016 ("IBC") seeking appointment of Mr. Pradeep Kabra as Resolution Professional ("RP") in place of existing Interim Resolution Professional/Resolution Professional Mr. Kairav Anil Trivedi.

2. Section 27 of IBC 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, resolve to replace the resolution~~

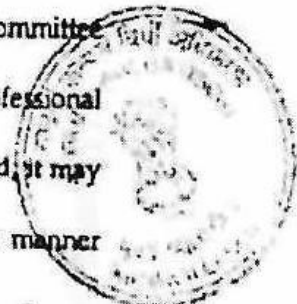
professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form.

(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."

3. From the aforesaid provision it is clear that during the Corporate Insolvency Resolution Process ("CIRP"), at any time, if the Committee of Creditors ("COC") 'is of opinion' that the Resolution Professional appointed under Section 22 of IBC is required to be replaced, it may replace him with another Resolution Professional in the manner provided under Section 27 of IBC.




*[Handwritten signature]*

4. In terms of Section 27(2), the Committee of Creditors at a meeting by vote of 66% of voting share can propose to replace the Resolution Professional appointed under Section 22 of IBC with another Resolution Professional.
5. I submit that, there is no bar on on CoC to appoint a person of it's choice as a RP, except where any disciplinary proceedings are pending against the said person or such IRP/RP is an interested person being employee or in the payroll of the Financial Creditor. In the present case, no disciplinary proceeding is pending against Mr. Pradeep Kabra who is proposed to be appointed as new RP and he is not in the payroll of any of the members of the Committee of Creditors.
6. The power to replace a RP is solely and absolutely vested with the COC and the only prerequisites that are required to be met as per Section 27 of IBC are as under:
  - i. The COC at a meeting, shall pass a resolution with 66% of voting share;
  - ii. Written consent shall be filed by the proposed Resolution Professional in the specified form;
  - iii. The COC shall file an application before the Hon'ble Tribunal for appointment of the proposed Resolution Professional;
  - iv. Whether any disciplinary proceedings are pending against the proposed Resolution Professional.

7. In the present case, the COC in its 2<sup>nd</sup> meeting of COC held on 31.12.2021 has passed a resolution with 100% voting to replace the existing RP with Mr. Pradeep Kabra as RP. Further, the COC has filed an Interlocutory Application No. 247 of 2022 along with the required

written consent of proposed RP in Form-AA and no disciplinary proceedings are pending against the proposed RP. Therefore, all conditions required to replace the existing RP by the proposed RP u/s 27 of IBC are duly complied with.

8. It is submitted that the power to appoint a RP in place of existing RP vests solely and absolutely with the CoC and any decision taken in this regard is not liable to be challenged or set aside as long as the prerequisites of the relevant provisions of Section 27 of the IBC have been duly complied with.
9. The existing RP i.e. Mr. Kairav Trivedi attempted to mislead the Hon'ble Tribunal by submitting that he is performing his duties in professional manner. As a matter of fact the conduct of the existing RP i.e. Mr. Kairav Trivedi is extremely unprofessional and the CoC is not desirous of continuing him as RP. The CoC in order to avoid making any allegation on record avoided to state details of unprofessional conduct of Mr. Kairav Trivedi. The said approach was adapted by CoC on the basis of legal advice and also on the basis of binding judgment of the Hon'ble NCLAT in *State Bank of India vs. Ram Dev International Ltd.* which reads thus.
  - a. "If the CoC record any adverse opinion for replacement of RP, it will not only harm him for the present but will also affect him in future during appointment as RP in another proceeding. In such case, the CoC will have to refer the matter to IBI for initiation of departmental proceeding, which is also not desirable in all the cases.



b. *If the COC forms opinion on the basis of performance of the RP and not because of allegation, it will also go against the RP in interest of the Resolution Process.*"

10. The Hon'ble NCLAT in the matter of *Axis Bank Ltd. vs. Sixth Dimension Project Solution Ltd.* categorically held that Section 22 of IBC does not require giving reasons for replacement. In the said matter the IRP had raised objection that the COC has failed to put forth any valid or tenable reasons for appointment of another RP. The Hon'ble NCLAT held that Adjudicating Authority is not required to decide on such reasons.

11. Similar rationale was followed by the Hon'ble NCLT, Mumbai Bench in the matter of *SBI vs. Videocon Industries Limited* wherein it was held that, the power of COC, to replace the IRP with RP in the first COC meeting as prescribed u/s 22 of IBC or the power to replace the RP at any time during the CIRP proceedings as prescribed u/s 27 of IBC cannot be interfered with. In the insolvency resolution mechanism, the RP acts as a bridge between the COC and the prospective investors and other stakeholders of the Corporate Debtor. Hence, the appointment of the RP should be the one in the active confidence of the COC.

12. It is submitted that, in plethora of judgements the Hon'ble Supreme Court and Hon'ble NCLAT has held that COC is not bound to record any reasons u/s 22 or 27 of IBC for change of IRP/RP with another insolvency professional as RP. It is the prerogative of the COC whether to continue the IRP/RP or replace the IRP/RP by another RP.

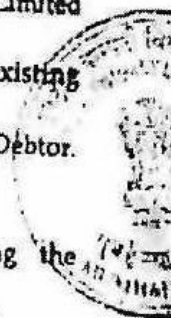
10



13. It is submitted that CIRP is Creditors Driven Process and therefore, it would be erroneous to come to a conclusion that the COC does not have power to change/replace the RP. As per section 22(3)(b) of IBC, the COC can replace a IRP by filing an application with the Adjudicating Authority. Similarly, u/s 27 of IBC, the COC at any time during the CIRP proceedings can change the RP. These provisions of IBC essentially visualizes that the CIRP is a Creditor Driven Process and therefore, to say that the COC does not have powers to change/replace the RP, would be against the letter and spirit of IBC.
14. It is submitted that the law in this regard is well settled and there is no requirement in the law mandating the COC to assign any reasons while appointing or replacing RP. It is the commercial wisdom of the COC whether to continue or replace the RP. Therefore, the objection raised by the existing RP is only to delay the proceedings before the Adjudicating Authority for his personal gains and interest.

**FACTUAL SUBMISSIONS:**

15. The brief fact setting out the conduct and irregularities of the RP during CIRP of Prince MFG Industries Pvt. Ltd. are stated as follows;
16. 05.10.2021 Hon'ble Tribunal vide its order commenced CIRP proceedings against the Prince MFG Industries Private Limited (Corporate Debtor) and appointed Mr. Kalrav Anil Trivedi (existing RP) as Interim Resolution Professional (IRP) of the Corporate Debtor.
17. 03.11.2021 The IRP/RP filed a report certifying the constitution of Committee of Creditors (COC).



*Handwritten signature*

Violation of Section 28 of IBC: IRP executed MOU with third party in collusion with suspended directors and handed-over the possession of factory at Haridwar along with plant & machinery, moulds, etc. to third party:

18. 10.11.2021 The IRP without any authorisation, knowledge or approval of the CoC, executed a MOU falsely representing himself as a RP appointed by CoC, on a Rs. 100 stamp paper dated 02.11.2021 with a third party i.e. Sarvashree Industries Private Limited ("SIPL") for contract manufacturing at Haridwar with retrospective effect from 05.10.2021. The MOU is unregistered, unstamped and not notarised.
19. It is evident from the MOU that it was executed in collusion with the suspended Director of the Corporate Debtor as one of the suspended Directors Mr. Piyush Chheda is witness to the MOU. The IRP with mala fide intentions falsely represented himself as a RP duly appointed by CoC when the 1<sup>st</sup> CoC meeting and its voting was yet to be conducted.
20. The IRP without any approval of the CoC handed over the possession of factory at Haridwar to Sarvashree Industries Private Limited along with all the Plant and Machinery, Moulds, etc. which are charged to the banks/lenders and has created interest over the assets of the Corporate Debtor. The CoC strongly believe that the Contractor appointed by the IRP/RP is related party of the Corporate Debtor or the suspended Directors of the Corporate Debtor. The CoC has also received communication from the other sources that the Corporate Debtor is illegally selling the movable assets which are charged to the banks/lenders. Hereto annexed and marked as Exhibit "A" is the copy

of alleged MOU executed by the IRP/RP along with the suspended Directors and Sarvashree Industries Private Limited.

**Violation of Regulation 19: Only 2 days' notice to call 1<sup>st</sup> COC meeting:**

21. 08.11.2021 As per Regulation 19 of CIRP Regulations, the IRP ought to send a notice not less than 5 days to all the participants intimating to convene a meeting. However, the IRP sent the notice on the last moment only to avoid embracement of not convening a meeting within 7 days of filing of the report certifying constitution of the COC i.e. 03.11.2021. The IRP to justify his violation gave frivolous reasons that the notice could not be sent on account of Diwali vacation, wherein during the vacation on 03.12.2021 the IRP/RP filed a report certifying the constitution of Committee of Creditors (COC).

**Not appointed as RP in the 1<sup>st</sup> COC meeting:**

22. 10.11.2021 The 1<sup>st</sup> COC meeting was convened through virtual mode from 2:10 pm to 4:15 pm. Item no. 15 of the minutes was to confirm and appoint IRP (Mr. Kairav Anil Trivedi) as RP of the Corporate Debtor. The COC has voted against the appointment of IRP as RP. The same is evident from the email dated 20.11.2021 received from the Right2Vote Infotech Private Limited (online voting platform provider) which in para no. 7 of states that the voting result of aforesaid item no. 15 appears as "dissent". However, the IRP never provided the report of the results of the 1<sup>st</sup> COC meeting to the members of the COC and falsely represented himself as RP appointed by the COC. Hereto annexed and marked as Exhibit "B" is the email dated 20.11.2021 of online voting platform provider.

**Violation of Regulation 26: Not submitted the copy of record of 1<sup>st</sup> COC meeting:**

23. 20.11.2021 For reasons best known to the RP the electronic voting of the 1<sup>st</sup> COC meeting dated 10.11.2021 commenced on 17.11.2021 i.e. after 7 days after the meeting and concluded on 20.11.2021. As per Regulation 26 of CIRP Regulations the IRP/RP is ought to announce and make a written record of the summary of the decision taken on a relevant agenda item along with name of members of the COC who voted for or against the decision or abstained from voting. Further, the IRP/RP ought to circulate a copy of the record made to all the COC members/participants by electronic means within 24 hours of the conclusion of the voting. Despite repeated requests of the COC the IRP/RP has till date not provided the report of results of 1<sup>st</sup> COC meeting to the COC members.

Neither submitted the report of 1<sup>st</sup> COC meeting nor conducted the 2<sup>nd</sup> meeting of COC for 50 days:

24. The IRP/RP has abstained from providing the report of 1<sup>st</sup> COC meeting as required as per Regulation 26 of CIRP regulations. Despite of regular requests the IRP/RP neither provided the report nor convened 2<sup>nd</sup> COC meeting for 50 days after conveying the 1<sup>st</sup> COC meeting. Only after repeated requests of the COC member the IRP/RP convened 2<sup>nd</sup> COC meeting on 30.12.2021.

**False and misleading items on agenda of the 2<sup>nd</sup> COC meeting:**

25. 30.12.2021 The 2<sup>nd</sup> meeting of the COC was convened on the request of the COC member on 30.12.2021 from 2:30 pm to 4:30 pm through virtual mode. The IRP/RP maliciously and fraudulently



mentioned Item no. 7 to the minutes of the 2<sup>nd</sup> COC meeting which was as under:

*"7. "To review the efforts being made by the RP for entering into third party MOU and the possibility of continuation of the plant operations at Haridwar during the CIRP period by third party, on contractual basis.*

*The RP shared the Draft copy of the MOU for contract manufacturing dated 10.11.2021 with the COC members.....*

*..... It was proposed that the draft MOU be vetted by the counsel of the COC through Canara Bank."*

It is pertinent to note that the alleged draft MOU shared by the IRP/RP was already executed on 10.11.2021 behind the back of COC without any approval, however, the IRP/RP fraudulently and with malicious intent to show that alleged MOU was executed with the consent of COC placed it as an draft MOU in 2<sup>nd</sup> COC meeting.

26. The total outstanding debt towards the Financial Creditors is Rs.171,13,03,225.53 (Rupees One Hundred Seventy-One Crore Thirteen Lakh Three Thousand Two Hundred Twenty-Five and Fifty-Three Paise Only). As per the report of IRP/RP the Corporate Debtor was not functional as going concern and there was hardly any stock at the time of initiation of CIRP. Now the IRP/RP at the cost of COC claims to restart the plant under the pretext of maximisation of value of assets of the Corporate Debtor.

**Violation of Regulation 35A: Failed to take steps/furnish any report on preferential or other transactions:**

- 27 The IRP/RP himself has stated that in spite of huge loan borrowed by the Corporate Debtor, there is no balance in the bank accounts of the Corporate Debtor nor any stock/inventory available at the factory at Haridwar. However, the IRP/RP failed to take any steps to investigate as to how the funds were allocated by the suspended Directors, whether there is any preferential or fraudulent transactions. This clearly states that the IRP/RP is working in collusion and at the behest of the suspended Directors.

**Violation of Regulation 36: Delay to furnish Information Memorandum to the COC till date (94 days delay):**

28. 02.03.2022 As per Regulation 36(1) of CIRP Regulations the IRP/RP is ought to submit the information memorandum to each member of COC within 2 weeks of his appointment but not later than 54 days from the insolvency commencement date. The RP submitted the Information Memorandum after 148 days i.e. on 02.03.2022, thereby delaying it by 94 days.
29. The RP gave spurious reason for delay stating that "efforts were being made by the RP to obtain the balance information required for preparing the Information Memorandum, but there was delay in receipt of the information from the Corporate Debtor due to no staff being available and the nature of the personalized software being used in the accounts".



40. However, the IRP/RP has till date grossly failed to take any step or action to collect the required information from the Auditors/employees/suspended Directors of the Corporate Debtor or filed any application against the suspended Directors u/s 19(2) of IBC against suspended Directors of the Corporate Debtor. This raises serious doubt upon the conduct of the IRP/RP that the IRP/RP is working at the behest of the suspended Directors of the Corporate Debtor.

**Violation of Regulation 36A: Delay to publish Invitation for Expression of Interest (74 days delay):**

31. 02.03.2022 As per Regulation 36A the IRP/RP has to ought to publish invitation for expression of Interest in Form G at the earliest, not later than 74<sup>th</sup> day from the commencement of CIRP. The RP has delayed it after 148 days, therefore, there is a delay of 74 days. Due the acts of the RP the COC has lost opportunities of having better Resolution Plans for the resolution of Corporate Debtor. The RP has thereafter surpassed all the timelines and frustrated the entire CIRP of the Corporate Debtor.
32. It is submitted that the RP in violation of section 29A of IBC has considered, the suspended Directors Mr. Piyush Chheda and Prince Pipes and Fittings Limited a related company having same management as prospective resolution applicants.
33. From the aforesaid conduct of the RP, the COC is of considered view that either the RP has been incompetent to conduct the CIRP of the Corporate Debtor in timely manner or the RP is working at the behest of the suspended Directors to defraud the Creditors.



*[Handwritten signature]*  
T. CHHEDA  
2023

34 It is submitted that 174 days have already lapsed from initiation of CIRP. The RP till date has failed to form any opinion on the preferential or other transactions or obtain any resolution plan for the resolution of the Corporate Debtor. Therefore, the CoC is not desirous of continuing him as RP.

35 In view of the above strict action may be taken against the RP and report its conduct to IBBI and the Application u/s 27 of IBC be allowed and existing RP be replaced by Mr. Pradeep Kabra.



Solemnly affirmed at Mumbai )

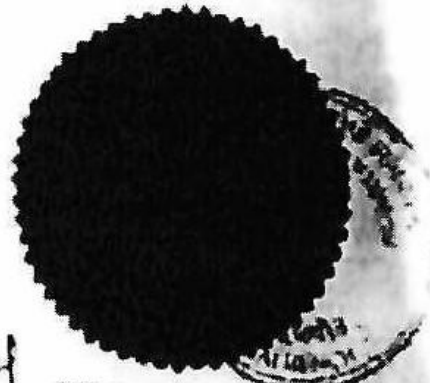
On this 28th day of March 2022)

Seen Ather card  
NO. 7211 2821 6562

प्र. सं. सं. / For CANARA BANK  
Rahul Yadav  
Deponent  
विकास प्रशासन विभाग, मुंबई - 20.  
RECOVERY BRANCH, MUMBAI - 20.



BEFORE ME  
RANU V. PAWAR  
NOTARY,  
GOVT. OF INDIA  
10/D, First Floor, Bahubali,  
17H, Cawasji Patal Street,  
Hutatma Chowk, Fort,  
Mumbai - 400 001.



NOTED B/199  
Sr. No.  
Date 28.02.2022

- We note that Reply was filed by the Respondent No. 1/ Mr. Kairav Anil Trivedi to I.A No 247 of 2022 filed before the Adjudicating Authority. The relevant portion of the reply reads as under :-

16. Without Prejudice to the above, the Resolution Professional states that a detailed reply to all the queries raised by the COC has been provided to them and a copy of this detailed written reply has also been enclosed for reference, even when these queries have no relevance in the present application since these have been raised after the second COC meeting on 30<sup>th</sup> December 2021 i.e. after the decision of replacement thus an afterthought just to misrepresent the real facts since decision to replace cannot be justified and this misleading action of COC is detrimental to the objectives of the Code.

18 All these facts shows that after the Hon'ble bench has raised concerns on the justification of the reasons of removal of the RP the COC is trying create false and misleading evidence which cannot be a ground of removal after the date of passing of resolution on 30<sup>th</sup> December 2021.

Further these reasons mentioned in the Second Affidavit are in complete contradiction of the Affidavit filed at the time of application, thereby proving that the second affidavit is an after thought and therefore irrelevant for taking any decision.

The RP continues to perform his duties diligently and in compliance of the requirement of the Code and thus the reason of replacement of the RP as not being empaneled with Cana Bank is against the object of IBC of Independence of the RP even for the Financial Creditors, there by the COC has not maintained objectivity in exercising decisions on the subject matter bestowed to the committee under the Code.

- From above additional affidavit dated 28.03.2022 of Canara Bank, we observe that the Canara Bank has raised several objection and highlighted misconduct of Mr. Kairav Anil Trivedi the Interim Resolution Professional. From the above additional affidavit, we also note that the grounds for replacement comprised of several violations of regulations by Respondent No. 1/ Mr. Kairav Anil Trivedi. The grounds have been specifically enumerated in para 9 above, where the CoC categorically stated that Mr. Kairav Anil Trivedi attempted to mislead the Adjudicating Authority by submitting that he is performing his duty in professional manner. The CoC further mentioned in para 9 that Mr. Kairav Anil Trivedi has been extremely unprofessional and CoC does not desire to continue him as the Resolution Professional.
- In para 17 of the additional affidavit dated 28.03.2022, the CoC highlighted that Respondent No. 1/ Mr. Kairav Anil Trivedi violated section 28 of the Code in executing MoU with third party in collusion with SBOD and handed over the possession of factory situated at Haridwar along with plant and machinery, mould, etc. The alleged illegal action of Respondent No. 1 regarding MoU were also elaborated in Para 18 to 20 of the additional affidavit, where the CoC has submitted that the Respondent No. 1/ Mr. Kairav Anil Trivedi has falsely represented himself as Resolution Professional duly appointed by CoC whereas voting for his appointment was yet to take place at that stage. The CoC also mentioned that the

contractor appointed by the Interim Resolution Professional was related party of the Corporate Debtor and the Suspended Director of the Corporate Debtor and concluded that the MoU was executed by the Respondent No. 1/ Mr. Kairav Anil Trivedi in collusion with SBOD with wrongful intentions.

- In para 21 of additional affidavit dated 28.03.2022, the CoC highlighted violation of regulation 19 by the Respondent No. 1.
- In para 22 of the additional affidavit dated 28.03.2022, the CoC categorically and specifically mentioned that Mr. Kairav Anil Trivedi was not appointed as the Resolution Professional in the first CoC meeting and Respondent No. 1 has falsely represented himself as Resolution Professional appointed by the CoC.
- The CoC also mentioned in the additional affidavit dated 28.03.2022 that the Respondent No. 1 neither submitted report of first CoC meeting nor conducted the Second CoC meeting for 50 days, violating regulation 26 of CIRP Regulations.
- One of the other serious allegation made by the CoC before the Adjudicating Authority in additional affidavit dated 28.03.2022 pertained to conduct of the Respondent No. 1/ Mr. Kairav Anil Trivedi who has been alleged by CoC that “*IRP/RP maliciously and fraudulent mentioned item No. 7 to the minutes of the Second CoC .....*”.

- We further note that in para 26 of the additional affidavit dated 28.03.2022, the CoC has stated that a total 171.13 Crores (approx.) was outstanding admitted debts towards financial creditors and as per report of the Respondent No. 1/ Mr. Kairav Anil Trivedi the Corporate Debtor was not functioning as going concern and there was hardly any stock/ inventory, whereas the Interim Resolution Professional at the cost of CoC claimed to restart the plan under pretext of maximisation of value of the Corporate Debtor.
- We further note that in para 27 of the additional affidavit dated 28.03.2022 the CoC pointed out that although the Resolution Professional himself reported that inspite of huge loan borrowed by the Corporate Debtor, there was no balance in the bank accounts of the Corporate Debtor nor any stock/inventory was available in the factory at Haridwar. The Respondent No. 1/ Mr. Kairav Anil Trivedi failed to take any action to investigate regarding syphoning of funds and preferring the preferential or fraudulent transaction applications before the Adjudicating Authority.
- The CoC also accused the Respondent No. 1 of violation of Regulation 36 regarding delay to furnish Information of Memorandum to CoC till date of filing of additional affidavit of CoC (94 days).
- The CoC also accused Respondent No. 1 regarding violation of 36A i.e., delay *“not later than 74 days from the commencement of CIRP. The RP has delayed it after 148 days, therefore, there is a delay of 74 days. Due*

*the acts of the RP the CoC has lost opportunities of having better Resolution Plans for the resolution of the Corporate Debtor. The RP has thereafter surpassed all the timelines and frustrated the entire CIRP of the Corporate Debtor.”*

- We note that in Para 32 of the additional affidavit dated 28.03.2022 the CoC has recorded that “.....*the RP in violation of Section 29A of IBC has considered, the suspended Directors Mr. Piyush Chheda and Prince Pipes and Fittings Limited a related company having same management as prospective resolution applicants.*”
- We also note that the CoC has categorically stated Para 33 of the additional affidavit that, “*From the aforesaid conduct of the RP, the CoC is of considered view that either the RP has been incompetent to conduct the CIRP of the Corporate Debtor in timely manner or the RP is working at the behest of the suspended Directors to defraud the Creditors.*”
- Finally, the CoC gave concluding remarks and appealed to the Adjudicating Authority in their additional affidavit which is self explanatory and reads as “*in view of the above, strict action may be taken against the RP and report its conduct to IBBI and the application u/S 27 of the IBC be allowed and existing RP be replaced by Mr. Pradeep Kabra*”.
- We also note from reply of the Respondent No. 1 to the I.A. No. 247 of 2022, wherein the Respondent No. 1 accused the CoC of misrepresentation, not maintaining objectivity of the code and acting contrary to the Code.

- Thus, we note that at the stage of additional affidavit dated 28.03.2022 before the Adjudicating Authority, the CoC has labelled the Respondent No. 1/Mr. Kairav Anil Trivedi as involved in malicious and fraudulent acts based on specific facts.
- (j) We observe that IA No. 247/2022 was filed by CoC on 27.01.2022 for replacement of Mr. Kairav Anil Trivedi from Interim Resolution Professional and appointment of Mr. Pradeep Kabra as new Resolution Professional of the Corporate Debtor and additional affidavit was filed in connection with IA. No. 247 of 2022 by Canara Bank on behalf of the CoC on 28.03.2022. But till 09.11.2022 these were not adjudicated.
- (k) We further note that on 10.11.2022, the CoC filed new IA No. 3346/2022 withdrawing I.A. No. 247 of 2022 which was approved by the Adjudicating Authority on the same day i.e., 10.11.2022 and the order reads as under :-

**NATIONAL COMPANY LAW TRIBUNAL**  
**MUMBAI BENCH, COURT-II**

2. IA 3346/2022 In C.P. (IB)/934(MB)2020

**CORAM:**

**SHRI SHYAM BABU GAUTAM** JUSTICE P. N. DESHMUKH (Retd.)  
HON'BLE MEMBER (T) HON'BLE MEMBER (J)

**ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE  
NATIONAL COMPANY LAW TRIBUNAL ON 10.11.2022**

**NAME OF THE PARTIES: - Kairav Anil Trivedi RP On Behalf of The  
Coc of Prince Mfg Industries Pvt Ltd  
IN THE MATTER OF  
Mr.Amit Sangal Proprietor of M/s Nitin  
Plastic**

**V/s  
Prince MFG Industries Private Limited**

**APPEARANCES: -**

**FOR THE RP** : Adv. Kairav Trivedi Present in  
Person

**FOR THE COC** : Adv. Ankit Malu  
**Section: 60(5), U/s 9 of Insolvency and Bankruptcy Code, 2016**

---

**ORDER**

The matter is taken up through Virtual Hearing (VC).

**I.A. 3346/2022-** The present application is filed by the Resolution Professional seeks relief for withdrawal of the **I.A. 247/2022**. Counsel appearing for the COC and R.P. present in person, brought our attention to the meeting of the Committee of Creditors held on 01.00.0000 whereby the CoC has resolve to continue with the existing R.P. Hence expressed his desire to withdraw **I.A. 247/2022**. In view of the above facts and circumstances **I.A. 3346/2022** allowed and disposed of. **I.A. 247/2022** is allowed to withdrawn.

**Sd/-**

**SHYAM BABU GAUTAM**  
**Member (Technical)**

Manish Tiwari

**Sd/-**

**JUSTICE P. N. DESHMUKH**  
**Member (Judicial)**

- (1) From the above, it become clears that the Respondent No. 1/Mr. Kairav Anil Trivedi although appointed as Interim Resolution Professional by the Adjudicating Authority in the CIRP order dated 05.10.2021, was never confirmed or appointed as Resolution Professional by the CoC. In fact, the CoC dissented the confirmation or appointment of Mr. Kairav Anil Trivedi as Resolution Professional as noted in the earlier discussions along with the relevant extract of the minutes of the CoC meetings, Right2Vote email and

the additional affidavit dated 28.03.2022 filed by Canara Bank on behalf of the CoC before the Adjudicating Authority in IA No 247 of 2022. From additional affidavit of the CoC dated 28.03.2022, we have already noted that CoC castigated the conduct of Respondent No. 1 on several grounds and used harsh words about the Respondent No. 1 to be “malicious and fraudulent”.

- (m) At this stage, it would be desirable to note the developments which happened between the first event i.e., denial of confirmation and approval of Respondent No. 1/ Mr. Kairav Anil Trivedi as Resolution Professional in 1<sup>st</sup> CoC meeting held on 10.11.2021 till the CoC withdrew the I.A. No. 247/2022 and filed new IA No. 3346 of 2022 on 10.11.2022 before the Adjudicating Authority i.e., exactly one full year from 10.11.2021 to 10.11.2022. We note that the Resolution Plan by SRA was approved by the CoC in 10th meeting held on 18.09.2022. An IA No. 2977/2022 was filed by the Respondent No. 1 on 27.09.2022 before the Adjudicating Authority for approval of the Resolution Plan. As both these events i.e., approval of the Resolution Plan by CoC as submitted by SRA and filing of IA No. 2977/2022 for approval of Resolution Plan by the Respondent No. 1 before the Adjudicating Authority happened prior to withdrawal of application for change of Interim Resolution Professional and appointment of new Resolution Professional by the CoC before the Adjudicating Authority on 10.11.2022, it is indicated that on both critical junctures, the

Respondent No. 1 was not lawfully confirmed/ appointed as Resolution Professional by the CoC.

(n) In this regard, we also note that the same issue of non appointment of the Respondent No. 1 as Resolution Profession by the CoC was also examined by IBBI based on the complaint filed by the Appellant. The IBBI investigated and has given the order finding Respondent No. 1 as guilty and suspended the registration of Respondent No. 1 for a period of six months. The relevant portion of IBBI order dated 23.05.2023 regarding alleged misrepresentation by the Respondent No. 1 in the minutes of the CoC is reproduced as under :-

**2. Alleged Contraventions, Submissions and Findings**

The contraventions alleged in the SCN and submissions by Mr. Trivedi are summarized as follows:

**2.1 Misrepresentation in recording of minutes of CoC:**

2.1.1 It was observed that Mr. Trivedi had conducted the 1<sup>st</sup> meeting of Committee of Creditors (CoC) on 10.11.2021 wherein the agenda regarding confirmation of IRP as RP was discussed. As per

the minutes of the 1<sup>st</sup> CoC meeting recorded and circulated by Mr. Trivedi, the CoC had confirmed the appointment of IRP as RP. The SCN mentions the relevant extract of the minutes states as under:

*“The IRP expressed his willingness to continue as an RP, if approved by the COC, and also disclosed the fact that he is not disqualified from being appointed as an RP, under IBBI guidelines. The COC accordingly passed the following resolutions.*

*RESOLVED THAT the COC appoints Mr. Kairav Anil Trivedi, (Registration No. IBBI/IPA-002/IP-N00728/2018-2019/12332) as the Resolution Professional (“RP”) of the Corporate Debtor and thus his services would continue as an RP.*

*RESOLVED FURTHER THAT the COC approved the RP fees of Rs 1,50,000/- per month and this be treated as CIRP expenses.”*

- 2.1.2 It was further noted from the perusal of 2<sup>nd</sup> CoC meeting held on 30.12.2021, that a resolution for appointment of Mr. Pradeep Kabra as resolution professional in place of Mr. Trivedi was approved by 100% voting of CoC after which an application for the replacement of RP under section 27 of the Code was filed before the AA. It was observed from the perusal of affidavit (para 22) dated 28<sup>th</sup> March 2022 filed by the CoC in the IA for change of RP, that the CoC had in its first meeting voted against the appointment of Mr. Trivedi as RP. The email from online voting platform Right2Vote Infotech Private Limited also shows the voting result of item regarding appointment of IRP as RP appears as “dissent”. But the Mr. Trivedi recorded minutes of 1<sup>st</sup> CoC meeting by misrepresenting the fact.
- 2.1.3 The SCN finds it evident from the said affidavit of the CoC and email dated 19.11.2021 of the Right2Vote Infotech Private Limited (online voting platform provider) that the CoC in the 1<sup>st</sup> CoC meeting had voted against the agenda for appointment of IRP as RP. However, Mr. Trivedi had incorrectly recorded in the minutes that his appointment as RP was confirmed by CoC in the 1<sup>st</sup> meeting. Further, in the Form 2 filed by Mr. Trivedi with IBBI, he mentioned that he was appointed as RP on 10.11.2021 and even in a Memorandum of Understanding (MoU) executed between CD and Sarvashree Industries Private Limited on 10.11.2021 regarding Contract Manufacturing Activity, Mr. Trivedi had represented himself as RP duly appointed by CoC. Hence, it is observed that despite the CoC having voted against the agenda for appointment of IRP as RP as per the e-voting result of 1<sup>st</sup> CoC meeting, Mr. Trivedi failed to record the same in the minutes and instead misrepresented himself as RP on various occasions.
- 2.1.4 In view of the above, the Board was of the *prima facie* view that Mr. Trivedi has *inter alia* violated Sections 22(2) and 208(2)(a) & (e) of the Code and regulation 7(2)(a) and (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with clause 1, 2, 3, 5 and 14 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

#### **Submissions by Mr. Trivedi**

- 2.1.5 Mr. Trivedi submitted that during the meeting of the COC, one of the banks namely Canara Bank having 67% voting share informed the IRP that as per their internal policy guidelines framed by the bank for CIRP process, they need to nominate an Insolvency Professional who is empanelled only with them in their list. Mr. Trivedi clarified to the Canara bank that in case the COC wants to replace the IRP then the provision of section 22 applies wherein in order to

replace the IRP in the 1<sup>st</sup> CoC meeting, the CoC needs to ensure compliance of mandatory requirements mentioned therein. In reply to this, the Canara bank informed that they need to follow a set process before nominating the name of the RP for replacement and this process includes internal approvals of the sub committees who will suggest a name of the RP from their panel and then the consent of the said RP would be obtained and after this the name of the RP would be proposed by the CoC for replacement in the next CoC meeting and then this will be put to vote on resolution for replacement of the RP in the next CoC meeting. Thus, in the 1<sup>st</sup> CoC meeting, neither the CoC obtained the consent from any Resolution Professional along with his Form 2 for replacement of the IRP u/s 22 nor could even propose the name of any resolution professional to be replaced, nor did the COC proposed any resolution for replacement of the IRP u/s 22 in the 1<sup>st</sup> CoC meeting.

- 2.1.6 Accordingly, the CoC agreed during the meeting that this process of replacement of RP would be done in the second CoC meeting, till then the IRP will continue as RP since after 45 days the IRP will be a deemed RP and in order to perform his functions it is necessary that he has complete clarity and properly authorized so as he is allowed to perform his duties with full support of the CoC. Some of the COC members suggested that all this be put for e-voting but on deliberations it was found that the process of e-voting could take another 10 to 15 days due to the leaves during Diwali and this would delay the approval process.
- 2.1.7 Further the matters discussed during the COC which were put for approval was of the routine CIRP expenses already incurred by the IRP like advertisement in newspapers, visit of the IRP to Plant, IRP fees etc and for this the CoC members present in the CoC meeting need to have the authority to approve the same as without this basic authority a member should not be even attend the COC meeting as per the discussion papers issued by IBBI for the Conduct of the COC members. Accordingly, Carana Bank along with the other COC members agreed in the meeting that since these are routine CIRP expenses, reimbursements of the same can be approved by the COC members in the meeting itself and based on this IRP passed all the resolutions as being approved in the COC meeting and the minutes of the meeting were circulated accordingly within the specified time lines of 48 hours. i.e. on the 12<sup>th</sup> November 2021. Further on 17<sup>th</sup> November 2021 after a gap of about 5 days from the closure of the meeting i.e. after circulation of the minutes of the 1<sup>st</sup> CoC meetings on 12<sup>th</sup> November 2021, the IRP informed the Hon'ble NCLT vide its e mail of his continuation as an RP and also filled up the necessary forms with IBBI and ICSI IIP for his continuation of RP.
- 2.1.8 The Minutes of the First COC meeting was submitted by the COC in its application u/s 27 in LA 247 of 2022 on 28<sup>th</sup> Jan 2022. The said minutes confirm the approval of appointment of the IRP as RP in the Fist COC meeting u/s 22 by the COC. Further these minutes does not contain any reference to any e voting nor is there any reference to e voting results since the meeting was concluded based on the discussions there in and the minutes of this first COC meeting were circulated on 12<sup>th</sup> November 2021 within 48 hours. Thereby the first meeting of COC was concluded on 12<sup>th</sup> November 2021.
- 2.1.9 Mr. Trivedi further submitted that the notice of the 2<sup>nd</sup> meeting of the CoC was issued on 24<sup>th</sup> December 2021 to be convened on 30<sup>th</sup> December 2021. A request was received from Canara

Bank on 29<sup>th</sup> December 2021 late evening just a day before the actual meeting date that they are proposing to appoint Mr. Pradeep Kumar Kabra having IBBI Registration no IBBI/IPA-001/IP-P01104/2017-18/11790. Accordingly, this was taken up by the RP for the CoC meeting on the next day i.e. 30<sup>th</sup> December 2021. After receipt of this notice the CoC informed that they have been able to get their internal approval and thus would like to propose to nominate an Insolvency Professional to replace the existing RP u/s 27 of IBC. The resolution for replacement of the existing RP was proposed by the COC in the 2<sup>nd</sup> meeting which was approved by 100% voting. Thereafter, application was filed by the CoC with AA for replacement of Mr. Trivedi, where the CoC at various places has mentioned that the IRP was appointed as RP in the 1<sup>st</sup> CoC meeting. Furthermore, the application was filed under section 27 of the Code which talks of replacement of resolution professional.

### Findings of the DC

2.1.10 Regulation 17 of the CIRP Regulations provides as follows –

*“17. Constitution of committee*

...

*(3) Where the appointment of resolution professional is delayed, the interim resolution professional shall perform the functions of the resolution professional from the fortieth day of the insolvency commencement date till a resolution professional is appointed under section 22”*

Therefore, the regulations make it clear that in case the appointment of resolution professional is being delayed, the duties of resolution professional are performed by the interim resolution professional.

2.1.11 In terms of regulation 17(3) of the CIRP Regulations, the IP appointed as IRP for the CD has to perform the functions of RP, till another RP is appointed by the CoC. This is a temporary arrangement which is a deeming fiction for the IRP and in no way means that IRP is confirmed or appointed as RP by the CD. In the instant case, para 15 of the minutes of the 1<sup>st</sup> CoC meeting specifically mentions that the IRP has expressed his willingness to continue as an RP and subsequently resolution was proposed to confirm the services of IRP as RP. The e-voting result reflects that this proposal was in ‘dissent’. Although, Mr. Trivedi avers that there was no e-voting for the said meeting, the material available on record with respect to the email from voting facility suggests otherwise. It is also noted that, copy of the said minutes was annexed in the application filed before CoC, for replacement of RP, and in the said application no averment was made minutes was recorded incorrectly. However, it is the duty of the IP to be upright in his conduct which is independent of any act of the CoC member and accurately record the discussion of the CoC meetings, motions proposed or voted on, and activities to be undertaken without any scope of further disputes or misrepresentation of situation.

(o) We find sufficient logic in IBBI reasoned order quoted above on the issue being discussed herein.

(p) After discussing above, we come back to the moot question i.e., whether the Respondent No. 1 was at all appointed by the CoC and the answer is straight that Respondent No. 1 was never appointed by the CoC. In fact, the CoC dissented for confirmation and appointment of Respondent No. 1 as Resolution Professional and further filed additional affidavit dated 28.03.2022 before the Adjudicating Authority accusing Respondent No. 1/ Mr. Kairav Anil Trivedi of several serious violations of regulations and his involvement in misconduct. It is only after Resolution Plan was approved by the CoC for which IA was filed by the Respondent No. 1, CoC decided to change their stand and filed IA No. 3346/2022 before the Adjudicating Authority for withdrawing earlier IA No. 247/2022 for change of Interim Resolution Professional.

- Thus, we hold that there was no formal and proper appointment of Mr. Kairav Anil Trivedi as Resolution Professional of the Corporate Debtor by the CoC. We also find that CoC did not approve the Respondent No. 1/ Mr. Kairav Anil Trivedi as the Resolution Professional in 1<sup>st</sup> CoC meeting.
- On issue of contravention of Regulations by the Respondent No. 1/ Mr. Kairav Anil Trivedi, we take into consideration material made available before us especially additional affidavit dated 28.03.2022 filed by Canara

Bank on behalf of CoC before the Adjudicating Authority. We find prima-facie Respondent No. 1/ Mr. Kairav Anil Trivedi conducted CIRP proceeding in violation of several regulations.

(q) We will now take up another issue raised in the appeal i.e., misconduct of Respondent No. 1/ Mr. Kairav Anil Trivedi as alleged by the Appellant.

- It is the case of the Appellant that the misconduct of the Interim Resolution Professional Mr. Kairav Anil Trivedi has been seen in various cases and has been held so in many other courts as well as this court and the Respondent No. 1 is found to be guilty.
- The Appellant alleged that based on Appellant's complaint against the Respondent No. 1, IBBI conducted investigation. As per the order of **Disciplinary Committee of Insolvency and Bankruptcy Board of India bearing No. IBBI/DC/173/2023 dated 23<sup>rd</sup> May, 2023**, the committee thoroughly examined the conduct of Interim Resolution Professional, Mr. Kairav Anil Trivedi and upon their findings, has suspended him for a **period of six months**.
- The Appellant submitted that the IBBI, exercising its powers under Section 218 of the Code, along with Regulation 7(2) and 7(3) of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017, appointed an Investigating Authority to conduct an investigation into the CIRP of the Corporate Debtor.

- The Appellant brought out that based on the findings of the investigation detailed in the Investigation Report submitted by the Investigating Authority, the IBBI issued a Show Cause Notice (SCN) to Mr. Trivedi on 21.03.2023. The SCN, along with Mr. Trivedi's response and other relevant material on record, was referred to the Disciplinary Committee (DC) for consideration. Mr. Trivedi was given an opportunity for a personal hearing, which he attended virtually before the DC on 28.04.2023.
- After the investigation by the DC, it was found that Mr. Trivedi has inter alia violated Sections 28(1)(h), 208(2)(a) &(e) of the Code and Regulation 7(2)(a) and 7(2)(h) read with clauses 1, 2, 3, 5 and 14 of the Code of Conduct of the IP Regulations. The order of the DC suspending Mr. Kairav Anil Trivedi reads as under: -

*“3.1. In view of the foregoing discussion, and material available on record, it is clear that Mr. Trivedi has not recorded the minutes of the 1<sup>st</sup> CoC meeting accurately. Moreover, it is evident that Mr. Trivedi has not disclosed to CoC about the factual status of MoU for Contract Manufacturing Activity. The draft MoU was shared with CoC on 30.12.2021 for vetting and a second opinion was being considered. However, the MoU was already executed on 10.11.2021 without the approval/intimation of CoC. Hence, the DC finds that Mr. Trivedi has suppressed the fact of already entered MoU with the CoC. Therefore, the DC, in exercise of the*

*powers conferred under section 220 of the Code read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 and Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 hereby suspends the registration of Mr. Kairav Anil Trivedi bearing registration number IBBI/IPA-002/IP-N00728/2018-2019/12332 for a period of six months.”*

- (r) The Appellant conceded that the Respondent No. 1/ Mr. Kairav Anil Trivedi filed a Writ Petition bearing **W.P (L) No. 16317 of 2023** before the Hon’ble High Court of Bombay, to which a reply affidavit was filed by IBBI, responding the said Writ Petition. The reply by IBBI clearly demonstrates that the Interim Resolution Professional was not confirmed as the Resolution Professional during the first CoC meeting. Furthermore, it highlighted that the Respondent No. 1 deliberately concealed crucial facts and documents, thereby misleading the court through fraudulent means. The Appellant submitted that Paras 3, 5, 6, 9,10,14, 29, and other sections of the reply affidavit clearly establish misconduct of Appellant which reads as under: -

**“Para 3-** *I say that Petitioner has approached this Hon'ble High Court by suppressing material facts and therefore not entitled to invoke the extra ordinary jurisdiction of this Hon'ble Court. The Petitioner, it appears, has intentionally did not produce the email dated 19.11.2021 from online voting platform Right2Vote InfoTech Private Limited and*

*the affidavit of Committee of Creditors (hereinafter referred as COC) dated 28.03.2022, both clearly stating that COC in its first meeting held on 10.11.2021 had voted against the appointment of the Petitioner as the Resolution Professional, contrary to what the Petitioner is contending now, Annexed herewith and marked as Exhibit 1 is the copy of the email dated 19.11.2021 from online voting platform Right 2 Vote InfoTech Private Limited and the affidavit of Committee of Creditors dated 28.03.2022 filed before the NCLT.*

**Para 5-** *I say that the Petitioner has further suppressed the facts which resulted in the impugned order. The Petitioner is guilty of two major lapses which undermines his integrity and honesty, namely (i) having wrongly recorded in the first COC meeting that he has been confirmed Resolution Professional by the COC and (2) in executing a Memorandum of Understanding (herein after referred as MOU) for contract manufacturing activity on 10.11.2021 with effect from 05.10.2021, whereas on the date of execution of MOU, no such approval was obtained from COC. Notwithstanding when the draft of the MOU was being discussed during the COC meetings for its vetting, the Petitioner did not disclose to COC that the MOU has already been executed.*

**Para 6-** *It is a settled doctrine that suppressing material facts amounts to playing fraud upon the Court and approaching the Court with unclean hands and not entitled for any discretionary reliefs. It is therefore prayed that this*

*Hon'ble High Court may be pleased to not extend the stay granted to the Petitioner.*

**Para 9-** *I say that the lapse on the part of Petitioner in not recording COC's objection to his appointment as the Resolution Professional and by misrepresenting that he has been confirmed as the Resolution Professional and further to enter into a MOU for contract manufacturing activity without the approval/intimation of the COC while the COC was deciding on the said proposal are serious lapses which attracts penal consequences as per the Code, notwithstanding that the Respondent was let off with mere six months suspension.*

**Para 10-** *The entire case of Petitioner is on the ground that COC has allegedly condoned his lapses by subsequently appointing him as the Resolution Professional and that the Resolution Plan submitted by him has been approved by the COC and hence no disciplinary action ought to have been against the Petitioner. It is submitted that the insolvency resolution process under the Code is in rem proceeding and therefore the COC approving the Petitioner as the RP or the approval of the Resolution Plan by the COC does not absolve the Petitioner from the serious lapses committed by the Petitioner while acting as an IRP during the course of CIRP.*

**Para-14** *The Petitioner did not provide any explanation for the false statement recorded by him in the minutes of the first COC that he has been confirmed as Resolution Professional by the COC and secondly for executing the MOU with Sarvashree Industries Private Limited for*

*contract manufacturing activity from 10.11.2021 with effect from 05.10.2021 while COC was only considering the said draft of MOL. The investigating authority subsequently after complying with procedure, submitted the report to the Board. The Report is annexed as Exhibit L to the Writ Petition. The Board after considering the report on coming to a prima facie opinion that sufficient cause exists to take action u/s 220 of the Code, issued a Show Cause Notice in accordance to Regulation 12 of the Inspection and Investigation Regulations, The copy of which is annexed as Exhibit P to the Writ Petition. In reply thereof the Petitioner submitted his, Reply, which is annexed as Exhibit T to the Writ Petition.*

- **Para 24-** *The notes to clauses appended with the Bill, The Insolvency and Bankruptcy Code, 2015 as introduced before Parliament observed as follows:*

*"Clause 194 provides that no act or proceeding of the Board shall be invalid merely by reason of a) any vacancy in, or any defect in the constitution of the Board, or b) any defect in the appointment of a person acting as a member of the Board; or c) any irregularity in the procedure of the Board not affecting the merits of the case. This Clause also provides that the Board may appoint such other officers and employees as it considers necessary for the efficient discharge of its functions under this Code....."*

- The Appellant stated that the Hon'ble High Court of Bombay granted interim relief to Respondent No.1 on a limited issue regarding whether the

Chairperson is a Whole-Time Member, until the filing of IBBI's reply, as per the order dated 20.06.2023. It was stated by the High Court of Bombay that: -

*“4. On the limited issue of Interim relief, we have heard the learned counsel for Petitioner. From perusal of Section 220 of the IBC, 2016 read with definition of the words "Disciplinary Committee" in the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017, prima facie we are of the opinion that the Disciplinary Committee can consist only of Whole Time Member(s), who can then pass orders. In the present case, the impugned order dated 23.05.2023 is passed by Mr. Ravi Mital, who, at least on the Website of the IBBI, is shown as the Chairperson of the IBBI and not its Whole Time Member.”*

- All these allegations were denied vehemently by the Respondent No. 1 who stated that the Appellant is a habitual litigants. The Respondent No. 1 also submitted that since he refused to comply ulterior and unlawful demand of the Appellant, the Appellant has taken up personal vendetta against the Respondent No. 1. The Respondent No. 1 also clarified that all cases cited by the Appellant are misleading and the Respondent has also taken stay from the Hon'ble High Court of Bombay in the present case, where IBBI debarred him for 6 months. The Respondent No. 1 emphatically requested to ignore the baseless allegations of the Appellant about his misconduct.

(s) The Appellant also brought to our notice that earlier also this Appellate Tribunal has passed a judgment in the matter of ***Kairav Anil Trivedi vs. State Bank of India & Anr., (MANU/NL/0955/2023)*** vide its order dated 05.12.2023 in Company Appeal (AT) (Insolvency) Nos. 1439 and 1440 of 2023 wherein this Appellate Tribunal adjudicated an appeal filed by the Respondent No.1, Mr. Kairav Anil Trivedi, who was accused to mislead the Adjudicating Authority regarding the application of Sections 22 and 27 of the Code. Para 10 of our earlier judgment states:

*“10. From the facts which have been brought on the record, it is clear that the appointment of the Appellant as IRP was never confirmed by the CoC nor any material has been brought on record to indicate that the appointment of IRP was confirmed by the CoC by majority of not less than 66% of the vote. When Appellant's appointment as IRP has not been confirmed, the Appellant could have been replaced by the CoC under Section 22. The mere fact that in the Resolution which was placed before e-voting as extracted above, there was alternate resolution both under Sections 22 and 27 cannot be read to mean that there is any infirmity in the resolution passed for replacement with 100% vote.”*

*(Emphasis Supplied)*

(t) The above judgment of this Appellate Tribunal was challenged by Kairav Anil Trivedi before the Hon'ble Supreme Court of India in Civil Appeal Diary Nos. 3150/2024 who dismissed the appeal vide order dated

19.04.2024 in the matter of ***Kairav Anil Trivedi Vs. State Bank of India & Anr.*** (MANU/SCOR/55999/2024), which reads as under:

*“We do not find any reason to interfere with the impugned judgement and other. The Special Leave Petition is accordingly dismissed. Pending application(s), if any, shall stand disposed of.”*

*(Emphasis Supplied)*

(u) Thus, we find that in case of State Bank of India (Supra), the Respondent No 1 was clearly held guilty for same Section 22 & 27 of the Code and finally the Hon’ble Supreme Court of India also rejected Respondent No. 1 is appeal.

(v) The Appellant also mentioned that it has been observed at various instances that Mr. Kairav Anil Trivedi has committed instances of fraud, misrepresentation, ultra vires acts and concealment/suppression of facts and documents during his assignment as the Interim Resolution Professional/Resolution Professional. To buttress his point, the Appellant brought out yet another instance of misconduct of the Respondent No. 1 can be observed in the CIRP of M/s Parenteral Drugs Private Limited (Corporate Debtor), where the IBBI has once again recently on 17.12.2024 suspended Respondent No.1, Kairav Anil Trivedi, for almost similar contraventions and irregularities **for a period of two years.**

(w) It has been brought to our notice that the IBBI issued a show-cause notice to Respondent No. 1, Mr. Kairav Anil Trivedi, on 10.04.2024 in the abovementioned matter to which an order was passed vide order no. IBBI/DC/256/2024 dated 17.12.2024. The Disciplinary Committee of the IBBI states that: -

*“2.1. Irregularity in entering into an MoU.*

*Alleged contravention*

*2.1.1. It was observed that the CIRP of the CD was initiated by the AA vide its order dated 09.02.2023 and Mr. Kairav Anil Trivedi was appointed as IRP in the CIRP of the CD. It was further observed from Mr. Kairav Anil Trivedi's reply to the IA that he visited the Panwa plant of the CD on 13.02.2023 and on the same day, a contract manufacturing Memorandum of Understanding (MoU) between the CD and Virat Tradecorp Private Limited (Virat) was entered into in respect of pharmaceutical plant of the CD situated at Village -Panwa. District - Khargone, Madhya Pradesh. The first meeting of the Committee of Creditors (CoC) was conducted on 13.03.2023 which was adjourned to 18.04.2023. Hence, it is seen that the MoU with Virat was entered on 13.02.2023 without the knowledge and approval of the CoC. The CoC was informed of the MoU with Virat vide email dated 13.03.2023, the day on which first meeting of CoC was held partially.*

*2.1.2. Section 28(1)(k) provides that prior approval of COC is required for certain actions such as for*

*transferring rights, delegation of authority etc. It was observed from Mr. Kairav Anil Trivedi's reply to IA that Panwa Plant of the CD had closed its operation one year prior to initiation of CIRP of the CD. It is mentioned in the SCN that starting manufacturing operation in a closed plant after commencement of CIRP was an important decision and not a decision in ordinary course of business.*

*3.1. In view of the foregoing, the DC in exercise of the powers conferred under Section 220 of the Code read with Regulation 13 of the Inspection and Investigation Regulations and Regulation 11 of the IP Regulations hereby suspends the registration of Mr. Kairav Anil Trivedi (Registration No. IBBI/IPA-002/IP-N00728/2018-2019/12332) for a period of two years which shall run consecutive to period of suspension of registration of Mr. Kairav Anil Trivedi by any other DC order whenever the same takes effect.”*

(x) Based on above detailed submissions, we find that IBBI who is the regulator for Resolution Professionals as per the Code, has categorically held Respondent No. 1 as guilty in the present case and debarred the Respondent No. 1 for six months. It is also a fact that the Respondent No. 1 filed a Writ Petition and obtained ad-interim relief from the Hon'ble High Court of Bombay. However, we consciously note that the Hon'ble High Court of Bombay gave interim relief to the Respondent No. 1 only on one limited technical ground that whether Mr. Ravi Mittal who signed final

disciplinary order acted as whole time member (WTM) or chairman of IBBI. In fact, the Hon'ble High Court of Bombay did not comment on any aspect of merit based on IBBI finding, holding Respondent No. 1 to be involved in misconduct in the present case.

(y) We note that one of ground in the present appeal is violation of CIRP Regulations No. 28 i.e., transferring assets of the Corporate Debtor during CIRP without consent of CoC by signing MoU with SIPL, again alleged to be a related party of Corporate Debtor. In the above quoted case of *Parental Drug (Supra)* which is an independent case in relation to the present appeal, the Respondent No. 1 has been found guilty of violation of Regulation as well as **Section 28(1)(h)** (for obtaining prior approval of CoC in certain cases) and IBBI, the regulator has debarred the Respondent No. 1/ Mr. Kairav Anil Trivedi for a period of two years.

(z) Thus, based on wholistic reading of several cases instituted against the Respondent No. 1/ Mr. Kairav Anil Trivedi, we find merit in the arguments of the Appellant and find Respondent No. 1 involved in misconduct which has also been investigated and confirmed by IBBI.

**Issue No. (I) (D)** What has been stand of CoC on CIRP Process.

(a) We have already taken into consideration the various facts regarding stand of the CoC w.r.t. non confirmation and non appointment of the Respondent No. 1 as Resolution Professional. We have already noted the details of IA

247 of 2022 filed by the CoC for replacement of Respondent No. 1 and appointment of Mr. Pradeep Kabra as new Resolution Professional.

(b) We have further examined in detail the additional affidavit dated 28.03.2022 filed by the Canara Bank on behalf of the CoC in which several allegations of malicious and fraudulent act by Respondent No. 1 were elaborated along with violation of Code & CIRP regulations as contained therein.

(c) In the additional affidavit dated 28.03.2022, the CoC has used the word malicious and fraudulent act of the Respondent No. 1, whereas the CoC filed a fresh IA 3346 of 2022 on 10.11.2022 withdrawing earlier IA 247 2022. During pleadings we asked the reasons for change of such drastic stand from complete castigation and alleging the Respondent No. 1 involving fraudulent activities to clean chit to the Respondent No 1 vide our earlier order dated 30.05.2024 advising CoC to submit facts explaining same in affidavit which reads as under:-.

“On 13.05.2024 the following order was passed :-

*“This appeal is directed against the order dated 15.05.2023 passed by National Company Law Tribunal, Mumbai Bench, Court-II by which IA 3525 of 2022 filed by the present appellant (Amit Sangal) under Section 65 (2) of Insolvency & Bankruptcy Code, 2016 (in short ‘Code’) seeking various reliefs, has been dismissed.*

*2. The CIRP proceedings was triggered by Amit Sangal (Appellant) as an Operational Creditor by filing an*

*application against 'Prince MFG Industries Pvt. Ltd.' which was admitted on 05.10.2021. By virtue of that order, Respondent No. 1 was appointed as IRP.*

*3. The first meeting of the CoC was held on 10.11.2021. In the said meeting, Item No. 15 was in regard to confirmation of approval of appointment of Respondent No. 1 as the Resolution Professional (RP) of the corporate debtor along with his fee and expenses and the manner of payments.*

*4. However, according to Respondent No. 1, he was duly appointed on 10.11.2021 and therefore, intimated the Adjudicating Authority through email dated 17.11.2021.*

*5. However, the Member of CoC who had voted in respect of that resolution had all dissented.*

*6. The second meeting of the CoC was held on 30.12.2021 in which the CoC proposed the name of Pradeep Kabra with his written consent and sought to replace Respondent No. 1.*

*7. As per Section 22 (3) (b) of the Code, the CoC has to file an application before the AA for the purpose of taking an order and in this regard, we have been informed that CoC filed the application bearing I.A. No. 247 of 2022 for confirmation of the appointment of Pradeep Kabra as the IRP. However, I.A. No. 247 of 2022 was withdrawn through an application filed by the RP (Respondent No. 1) bearing I.A. No. 3346 of 2022 though allegedly authorized by the CoC. The said application was withdrawal on 10.11.2022*

*8. During the course of hearing, the issue arose that if the resolution dated 10.11.2021, appointing the Respondent No. 1 as the RP was dissented then how Respondent No. 1 had*

*conveyed to the AA on 17.11.2021 itself that he has been appointed as such.*

*9. We have pertinently asked Respondent No. 1 about the voting which may have taken place on the approval of his appointment on 10.11.2021.*

*10. At this juncture, he has submitted that he has no instructions for making the submissions in this regard, therefore, he prays for an adjournment. Adjourned to 29.05.2024.*

*11. The Respondent No. 1 shall state on an affidavit about the date on which voting took place on the resolution dated 10.11.2021 and also the detail of the voting and it has to be in consonance with the Regulation 26 of the IBBI (CIRP) Regulation, 2016 if it was the case of electronic voting.”*

*2. Pursuant to the aforesaid order, Respondent No. 1 has filed his Affidavit dated 21.05.2024.*

*3. Counsel for Respondent No. 3 submits that the CoC passed the resolution in its first meeting dated 10.11.2021 regarding appointment of Respondent No. 1. But according to Appellant the CoC, at the time of confirming the appointment of Respondent No. 1/ Resolution Professional, dissented.*

*5. Counsel for CoC submits that the voting took place in the first CoC Meeting held on 10.11.2021 regarding appointment of Respondent No. 1. However, nothing is available on record about the voting.*

*6. Counsel for Respondent No. 3 is therefore directed to file an Affidavit of all the Members of the CoC, who have allegedly voted on the resolution dated 10.11.2021 on 10.11.2021 regarding appointment of Respondent No. 1 and*

*also state as to why they dissented about his appointment on 17.11.2021.*

*7. The CoC shall also explain in its Affidavit about the contents of the Additional Affidavit of the application bearing I.A. No. 247 of 2022. In which working of Respondent No. 1 has been labelled as malicious and fraudulent and showed state about the sudden change of heart for filing the application I.A. 3346 of 2022.*

*8. Let the Affidavit be filed by the responsible person of the CoC before the next date of hearing with an advance copy to Counsel for the Appellant.*

*9. Adjourned to **22<sup>nd</sup> July, 2024.***

(d) In pursuant to above, the CoC filed affidavit before this Appellate Tribunal dated 29.07.2024. We have gone through the affidavit and will take into consideration para no. 10, 11 and 12 explaining the reasons.

*“10. We say that the Right2Vote document was erroneously created much after the confirmation of the IRP as RP in the first meeting of the CoC. The dissent reflected in the said Right2Vote document is on the part of Canara Bank which sought to replace the RP for the reasons set out above. We say that by this time, the RP was already confirmed in terms of Section 22 of the IBC and the notification thereof was already sent to the Adjudicating Authority. Consequently, the subsequent dissent recorded is on no legal consequence.*

*11. We say that thereafter, IA No.247 of 2022 was filed for replacement of the Resolution*

*Professional. At the first instance, the Hon'ble NCLT Bench Mumbai, was not impressed with the submissions made in support of the Application No.247 of 2022 and made critical comments against the CoC in order dated 3<sup>rd</sup> February 2022. Therefore, the CoC filed an additional Affidavit dated 28<sup>th</sup> March 2022, in support of the Application stating additional grounds for replacement of the RP. The CoC made several allegations against the RP including his non-appointment which were contrary to the record and incorrect due to the confusion caused on account of the Right2Vote document which was created at a later point of time as explained above.*

*12. It is pertinent to state and submit that subsequently during the CIRP, CoC realised that the RP acted in the best interests of the stakeholders & Corporate Debtor, and the Resolution Plan for Corporate Debtor being in place, CoC withdrew the allegations including non-appointment of RP and found no justifiable reason to pursue the Application. The unanimous decision to withdraw the application was taken during the 11th CoC Meeting dated 5<sup>th</sup> November 2022.*

- (e) From above, we observe that the CoC is trying to justify that the Right2Vote document was erroneously created which caused confusion. We find that the additional affidavit dated 28.03.2022 filed by Canara Bank in support of IA 247 of 2022 before the Adjudicating Authority, where the CoC made several allegations against the Respondent No.1 are quite contrary to new affidavit dated 29.07.2024 before us.

- (f) The CoC has now tried to justify their action in their affidavit dated 29.07.2024 before us merely on the ground that the right to vote document was erroneously created and is the cause of all fall outs.
- (g) When we compare this affidavit of the CoC dated 29.07.2024 filed before us with the additional affidavit of the CoC dated 28.03.2022 filed before the Adjudicating Authority in connection with the IA 247 of 2022 (which we have already noted in detail reproducing the entire additional affidavit in the preceding discussion), we find it rather strange that the affidavit filed before the Adjudicating Authority was backed up by exact details of several violation of regulations including Regulation 19, 26, 35A, 36 A, etc., by the Respondent No. 1 which have completely been ignored by the CoC in the new affidavit dated 29.07.2024 before us.
- (h) We do not find the new affidavit dated 29.07.2024 filed by the CoC before us as convincing and we rather find it in complete contrast with the factual position presented before the Adjudicating Authority, in additional affidavit dated 28.03.2022 in IA No. 247 of 2022, hence we are unable to accept the reasoning given by the CoC in the present affidavit dated 29.07.2024. The bank management may like to review whole process involved to safeguard public money of hundreds of crores of rupees. We rest at this only.

**54. Issue No. (II) (A)** Whether the MoU signed with the SIPL was in accordance with provision of the Code and the Regulations or otherwise. Whether Mr. Kairav

Anil Trivedi violated any of the laid down provisions in approving and signing the said MoU.

- (a) We note that the MoU was signed between the Respondent No. 1/ Mr. Kairav Anil Trivedi on behalf of the Corporate Debtor and SIPL the manufacture contractor for the purpose of allowing the SIPL to operate the plant of the Corporate Debtor at Haridwar on agreed upon terms and conditions. The MoU was signed by the Respondent No. 1 on behalf of the Corporate Debtor. We note that the MoU was signed on 10.11.2021 with the start date of contract manufacturer has been stated to be 05.10.2021 i.e., with retrospective effects.
- (b) We consciously note that CIRP itself was initiated vide order dated 05.10.2021 by the Adjudicating Authority passed in Section 9 application filed by the Appellant. It is interesting to note that effective date of MoU dated 05.10.2021 is also the date on which by the Adjudicating Authority passed the order for initiation of the CIRP. We wonder how, when the CIRP was initiated and the Interim Resolution Professional was appointed on 05.10.2021, the SIPL plant was handed over to the contractor w.e.f. 05.10.2021. This does not stand to any logic.
- (c) Incidentally in the said MoU, the Respondent No. 1 has represented himself as duly appointed Resolution Professional of the Corporate Debtor, which we have seen in preceding discussions that the Respondent No. 1 was never appointed as Resolution Professional of the Corporate Debtor and

apparently statement made by the Respondent No. 1 in the said MoU was not correct. During the Second CoC meeting held on 30.12.2021, the Respondent No. 1 had proposed agenda no. 7 with draft copy of MoU for contract manufacturing dated 10.11.2021 for vetting of CoC and the agenda reads as under :-

*"7. "To review the efforts being made by the RP for entering into third party MOU and the possibility of continuation of the plant operations at Haridwar during the CIRP period by third party, on contractual basis.*

*The RP shared the Draft copy of the MOU for contract manufacturing dated 10.11.2021 with the COC members.....*

*.... It was proposed that the draft MOU be vetted by the counsel of the COC through Canara Bank."*

(d) In this case, we recall that CoC in their additional affidavit dated 08.03.2022 filed before the Adjudicating Authority has recorded as under:-

**It is pertinent to note that the alleged draft MOU shared by the IRP/RP was already executed on 10.11.2021 behind the back of COC without any approval, however, the IRP/RP fraudulently and with malicious intent to show that alleged MOU was executed with the consent of COC placed it as an draft MOU in 2<sup>nd</sup> COC meeting.**

(e) We have already noted that the MoU was signed by Respondent No. 1 on 10.11.2021, however, the same was put up to the CoC in 2<sup>nd</sup> CoC meeting

held on 30.12.2021 as draft MoU which again clearly shows misrepresentation by the Respondent No. 1.

(f) In this connection, we note that the CoC had filed IA No. 247 of 2022 before the Adjudicating Authority labelling the Respondent No 1 involved in fraudulent, malicious intents without any authority. We have already noted the details of additional affidavit filed by the CoC and also reproduced the relevant extract in the previous discussion, which are self explanatory and speak volumes.

(g) We observe that IBBI has taken cognizance of a complaint of the Appellant on the same issue of signing MoU by the Respondent No. 1 without authority of the CoC and found the Respondent No. 1 guilty of violation of Section 28(1) (h), 208(2)(a) and (e) of the Code and regulation 7(2) (a) and 7(2)(h) read with clauses 1,2,3,5 and 14 of the Code of Conduct of the IP Regulations of the Code and the relevant findings of IBBI reads as under :-

## **2.2 Entering MoU without CoC approval:**

2.2.1 It was observed that a Memorandum of Understanding (MoU) was entered by Mr. Trivedi with Sarvashree Industries Private Limited for Contract Manufacturing Activity on 10.11.2021 which came into force w.e.f. 05.10.2021 i.e. the date of initiation of CIRP. In this regard it was discussed in 1<sup>st</sup> CoC meeting as follows:

**“8. To review the possibility of continuation of the Plant operations at Haridwar, by a third party, on contractual basis, during the CIRP period and pass appropriate resolutions, if approved, by CoC.”**

2.2.2 The said issue was further discussed in the 2<sup>nd</sup> meeting of CoC as under:

**“7. To Review the efforts being made by RP for entering into Third party MOU and the possibility of continuation of the Plant operations at Haridwar during CIRP Period by a Third Party, on contractual basis.**

*The RP shared the Draft Copy of the MOU for contract Manufacturing dt 10.11.21 with the COC members.*

*Further to the discussions shared in the last meeting, the RP has completed his due diligence on the party interested in Contract Manufacturing and confirms that the same is not covered under 29A of IBC.*

*...There were a few further clarifications which have been sorted and the draft MOU has been shared with the said party. They are presently getting a second opinion before signing. It is suggested that a further period of max two weeks be provided to them for their second opinion. It was proposed by the COC members during this meeting that this Draft MOU be vetted by the Council of COC through Canara Bank.”*

2.2.3 The SCN notes that the draft MoU was shared with CoC on 30.12.2021 (dated of 2<sup>nd</sup> CoC meeting) for vetting by advocate of CoC and the 2<sup>nd</sup> CoC minutes records that a second opinion was being considered before approving. However, it is noted from the MoU that it was already executed on 10.11.2021 without the approval/intimation of CoC. It was further noted that the Mr. Trivedi was appointed as IRP in the said matter vide AA Order dated 05.10.2021 and the MoU was executed on 10.11.2021 with the suspended director Mr. Piyush Chheda as a witness, which was to come into force from 05.10.2021. It was also noted that Sarvashree Industries Private Limited had given 6 post-dated cheques to CD and one cheque was dated 05.10.2021.

2.2.4 The SCN therefore concluded that it was clear that while the possibility of continuing plant operation by a third party was still being discussed in the 1<sup>st</sup> CoC meeting, the said MoU had already been signed on 10.11.2021 and the same had been made effective w.e.f. 05.10.2021 which is the date of initiation of CIRP. Making the MoU operational retrospectively from the date of initiation of CIRP clearly indicates that even before signing the MoU, the plant was handed over to party for contract manufacturing. This fact negates the submission of Mr. Trivedi that the MoU was executed after doing necessary due diligence and reviewing the 29A clearance with the consent of CoC.

2.2.5 The SCN states that section 28 of the Code enumerates the list of actions which mandatorily requires the prior approval of the CoC. Clause (h) of the sub-section (1) of Section 28 of the Code provides that the RP shall not delegate its authority to any other person without first acquiring the prior approval of the CoC.

2.2.6 In view of the above, the Board was of the *prima facie* view that Mr. Trivedi has *inter alia* violated Sections 25(2)(b), 28(1)(h), 208(2)(a) &(e) of the Code and regulation 7(2)(a) and 7(2)(h) read with clauses 1, 2, 3, 5 and 14 of the Code of Conduct of the IP Regulations.

**Submissions by Mr. Trivedi**

- 2.2.7 Mr. Trivedi submitted that he has received a letter dated 03rd March 2023 from the CoC which states that CoC has no issues with the IRP/RP. The CoC is fully satisfied on the clarification received with respect to the contract manufacturing activity initiated by the IRP/RP. Further, the CoC has withdrawn the application filed for replacement of RP and the existing RP has been continued along with the Contract Manufacturing activity.
- 2.2.8 Mr. Trivedi further submitted that the contract manufacturing activity has ensured that the CD remains a going concern during the CIRP. This has ensured maximization of value of the assets besides providing employment opportunity to the locals, also the entire CIRP expenses are being met from the Contract Manufacturing Income which otherwise would have to be contributed by the CoC since the CD was non-operational.
- 2.2.9 Mr. Trivedi further submitted that the plant has never been handed over to any other person as has been wrongly concluded by the investigating officer as the RP continues to have complete possession of the Plant along with the machinery. The Contract manufacturer is only allowed to enter premises on temporary monthly basis to undertake contract manufacturing activity by using the Fixed assets are under the control of the RP and these facts have been clearly specified in the MOU. The Contract manufacturer does not have any rights on the assets as these are under CIRP. This fact is re confirmed by the frequent visits made by the RP to the Plant location. Further the list of Plant and machinery under the control of the RP has been verified by the valuers. Further all the 6 prospective Resolution applicants have also done physical visit to the pant and their visit report submitted to CoC appreciates the fact that the machines are in running condition and the plant is operational, and thereby under the control of the RP. The non-operational CD would have otherwise fetched only scrap value.

**Findings of the DC**

- 2.2.10 The DC notes that Mr. Trivedi has not refuted the allegations made in the SCN with respect to the signing of MoU by him even when it was under consideration of the CoC. If in the interest of the going concern business of the CD, Mr. Trivedi has entered into any commercial arrangements with any third party, and the same is also the matter of discussion in the CoC meetings, it becomes the bounden duty of Mr. Trivedi to intimate the CoC about the correct factual situations.
- 2.2.11 In the instant case, it is observed that when the CoC was considering on getting the MoU vetted, Mr. Trivedi had already entered into the MoU with the third party and that too from a retrospective date. The DC is of the view that in signing MoU for the contract manufacturing activity, the required transparency was not maintained by Mr. Trivedi. Though the draft CoC was shared with CoC on 10.12.2021 for vetting by Canara Bank, it had already been signed by Mr. Trivedi on 10.11.2021. This conduct of Mr. Trivedi is unacceptable. Therefore, DC finds that Mr. Trivedi has suppressed the fact of already entered MoU with the CoC and therefore holds the violation of section 28(1)(h), 208(2)(a) &(e) of the Code and regulation 7(2)(a) and 7(2)(h) read with clauses 1, 2, 3, 5 and 14 of the Code of Conduct of the IP Regulations.

(h) We observe that the CoC is vested with the authority to oversee the work of Interim Resolution Professional / Resolution Professional and need to specifically approve actions that could impact the Corporate Debtor's

financial health requiring the CoC's prior approval like the transfer of rights or financial or operational debts under material contracts, except when carried out in the ordinary course of business. This provision ensures that the Interim Resolution Professional /Resolution Professional cannot make significant changes to the Corporate Debtor's financial or contractual arrangements without the informed decision and approval of CoC. We note that in present appeal, the Respondent No. 1 did not take prior approval or consent of CoC before signing the said MoU with SIPL.

- (i) We take into consideration Section 28 K of the Code, which reads as under:-

**“Section 28 K of the Code**

**28. Approval of committee of creditors for certain actions –**

**(k) transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business;”**

*(Emphasis Supplied)*

- (j) Based on above analysis, we hold that the Respondent No. 1 signed the said MoU with SIPL in violation of the provisions of the Code and the CIRP Regulations.

**55. Issue No. (II) (B)** Whether the contractor of Haridwar plant of the Corporate Debtor i.e., SIPL was related party of the Corporate Debtor. Whether Mr. Kairav Anil Trivedi brought out misleading facts before CoC .

(a) It has been brought to our notice that SIPL is a related party of the Corporate Debtor and in this connection, the Appellant referred to GST Registration details filed in annexures 16 of the appeal. From registration details it is noted that even prior to commencement of CIRP on 05.10.2021, the SIPL has given the registration effective date as 07.03.2021 and it indicates that the principal places of business for SIPL is the same as the address of the Haridwar plant of the Corporate Debtor. We have perused that on effective date of GST document of SIPL i.e., 07.03.2021 the principal office of SIPL was shown at address- Sarvashree Industries Private Limited, C/O- M/S Prince MFG Industries Pvt. Ltd., Cabin No-02, Ground Floor Plot No-5B, Sector 03, IIE,, Sidcul, Haridwar, Haridwar, Uttarakhand, 249403. This prima-facie indicate that there was a co-relation between the SIPL and the Corporate Debtor/ SBOD.

➤ The relevant documents are reproduced as under :-

**Goods and Services Tax**

Home > Search Taxpayer > Search by GSTIN/UIN

Search Taxpayer \* indicates mandatory fields

GSTIN/UIN of the Taxpayer\*

Enter GSTIN/UIN of the Taxpayer

SEARCH

---

Search Result based on GSTIN/UIN : 05ABFCS4757H1Z5

**Legal Name of Business**  
SARVASHREE INDUSTRIES PRIVATE LIMITED

**Trade Name**  
SARVASHREE INDUSTRIES PRIVATE LIMITED

**Effective Date of registration**  
07/03/2021

**Constitution of Business**  
Private Limited Company

**GSTIN / UIN Status**  
Active

**Taxpayer Type**

Sector - Hardwar - Sector 3



**Principal Place of Business**

SARVASHREE INDUSTRIES PRIVATE LIMITED, C/O- M/s PRINCE MFG INDUSTRIES PVT. LTD., CABIN NO-02, GROUND FLOOR PLOT NO- 5B, SECTOR 03, IIE,, SIDCUL, HARIDWAR, Haridwar, Uttarakhand, 249403

**Whether Aadhaar Authenticated?**

Yes

(On 07/03/2021)

**Whether e-KYC Verified?**

Not Applicable

**Additional Trade Name**

View

|                                  |   |
|----------------------------------|---|
| Nature Of Core Business Activity | ^ |
| Manufacturer                     |   |

|  |   |
|--|---|
| Nature of Business Activities                                      | ^ |
| 1. Wholesale Business 2. Factory / Manufacturing 3. Works Contract |   |

**Dealing In Goods and Services**

| Goods |  | Services |  |
|-------|--|----------|--|
| HSN   | Description  | HSN      | Description  |
| 3917  | TUBES, PIPES AND HOSES, AND FITTINGS THEREFOR (FOR | 995424   | General construction services of local water & sewage pipelines, electricity and |

| Goods |  | Services |  |
|-------|--|----------|--|
| 3922  | BATHS, SHOWER-BATHS, SINKS, WASH-BASINS, BIDETS, LAVATORY PANS, SEATS AND COVERS, FLUSHING CISTERNS AND SIMILAR SANITARY WARE, OF PLASTICS   | 997224   | Real estate appraisal services on a fee/commission basis or contract basis |
| 6910  | CERAMIC SINKS, WASH BASINS, WASH BASIN PEDESTALS, BATHS, BIDETS, WATER CLOSET PANS, FLUSHING CISTERNS, URINALS AND SIMILAR SANITARY FIXTURES |          |  |
| 1009  | other  |          |  |

**HSN:** Harmonized System of Nomenclature of Goods and Services

SHOW FILING TABLE

SHOW RETURN FILING FREQUENCY

**About GST**

GST Council Structure

GST History

**Website Policies**

Website Policy

Terms and Conditions

Hyperlink Policy

Disclaimer

1/1/2024

[GST Media](#)

[Site Map](#)

[Grievance Nodal Officers](#)

[Free Accounting and Billing Services](#)

[GST Suvidha Providers](#)

### Contact Us

Help Desk Number:  
1800-103-4786

Log/Track Your Issue:  
[Grievance Redressal Portal for GST](#)

[f.](#) [v.](#) [t.](#) [in.](#)

---

© 2018-19 Goods and Services Tax Network

Site Last Updated on 03-05-2023

Designed & Developed by GSTN

Site best viewed at 1024 x 768 resolution in Microsoft Edge, Google Chrome 49+, Firefox 45+ and Safari 6+

(b) Thus, we find that the Respondent No. 1 signed MoU with SIPL violating provision of the Code and Regulations as discussed earlier.

(c) We also hold that the SIPL was related party of the Corporate Debtor and Respondent No. 1 gave misleading facts to the CoC in 2<sup>nd</sup> CoC meeting.

**56. Issue No. (III)** Whether, material irregularities, if any, by Interim Resolution Professional /Resolution Professional while taking approval from the Adjudicating Authority will affect the fate of approved Resolution Plan.

(a) At the first instance, we would mention that there is no specific definition of **Material Irregularity** in the Code :-

(b) We observe that the Black's law dictionary defines the terms "Material" & "Irregularity" separately. These reads as under :-

*Material: 'Important; more or less necessary; having influence or effect; going to the merits; having to do with matter, as distinguished from form. Representation relating to matter which is so substantial and important as to influence party to whom made is "material." See Material fact; Relevant.'* and irregularity as-

*Irregularity: 'The doing or not doing that, in the conduct of a suit at law, which, conformably with the practice of the court, ought or ought not to be done. Violation or non-observance of established rules and practices. The want of adherence to some prescribed rule or mode of proceeding; consisting either in omitting to do something that is necessary for the due and orderly conducting of a suit, or doing it in an unseasonable time or improper manner. The technical term for every defect in mechanics of proceedings, or the mode of conducting an action or defense, as distinguishable from defects in pleadings (see e.g. Fed.R.Civil P. 32(d), irregularities in taking of depositions). Term is not synonymous with "illegality." In Canon law, any impediment which prevents a man from taking holy orders.'*

- Thus, as per the definition mentioned above, Material Irregularity refers to a significant deviation from established rules, practices, or procedures that is substantial enough to influence the outcome of a legal proceeding or decision. It involves a failure to adhere to prescribed methods, either by

omitting necessary actions or performing them improperly or untimely. Such irregularities are not merely formal defects but have a material impact, affecting the merits of a case or the rights of the parties involved. Unlike illegality, which denotes a violation of law, material irregularity pertains to procedural defects that can undermine the fairness or validity of legal proceedings.

- It is crucial to note that the Code provides a comprehensive legal framework for the resolution of insolvency of corporate debtor in a time-bound manner, with the objective of maximizing the value of assets of the Corporate Debtor and ensuring the equitable treatment of stakeholders. The CIRP is a critical mechanism under the Code, and it is imperative that the process is conducted fairly, transparently, and in strict compliance with the provisions of the law.
- Thus, we may derive an inference that a material irregularity in the conduct of the CIRP is one that significantly impacts the fairness, legality, and integrity of the process. Such irregularities can lead to delays, financial losses, and litigation, thereby defeating the objectives of the Code. Material irregularities may arise from non-compliance with the statutory provisions, rules, and regulations governing the CIRP. Any deviation from these prescribed legal provisions, both procedural or substantive, may amount to a material irregularity and affect the legitimacy of the resolution process,

of-course, depending upon the facts and context of each case and no strict guidelines can be laid down.

- In this connection, we note that Section 61(3)(ii) of the Code provides that an appeal against an order passed by the Adjudicating Authority approving the Resolution Plan may be filed if there has been material irregularities in exercise of the powers of Resolution Professional during CIRP. Section 61(3)(ii) of the Code reads as under :-

*“61(3) An appeal against an approving a resolution plan under Section 31 may be filed on the following grounds, namely, ....-*

*(ii)There has been **material irregularities** in exercise of the powers by the Resolution Professional during the corporate insolvency resolution period.”*

*(Emphasis Supplied)*

- Fraud or collusion by the resolution professional with the corporate debtor, or any other stakeholder involved in the CIRP concealment of material facts, non-adherence to significant CIRP Regulations etc. also constitutes a material irregularities. Any act of misrepresentation, concealment, or fraudulent conduct undermines the transparency and fairness of the process. Similarly, mismanagement of the corporate debtor during the CIRP can give rise to material irregularity. The resolution professional is entrusted with the responsibility of managing the affairs of the corporate debtor in a manner that preserves its value. Any instance of mismanagement, including diversion of funds, dissipation of assets, or any

conduct that is detrimental to the corporate debtor, may be considered a material irregularity.

- If a material irregularity is established, the Adjudicating Authority is empowered under the Code to take corrective measures. Such measures may include setting aside decisions taken during the CIRP, directing an investigation into the conduct of the resolution professional, or imposing sanctions on the parties involved. We are conscious that the Adjudicating Authority has limited scope for rejecting a Resolution Plan under Section 31 of the Code and cannot unnecessarily interfere with the “commercial wisdom of CoC”. However, it may not mean that the Adjudicating Authority cannot look into any relevant aspect before approving the Resolution Plan proposed by the CoC. The Adjudicating Authority can reject a plan, if it does not meet the requirement of the Code or Regulations or it violate the Code or Regulations. The Resolution Plan has to be in compliance with Section 30 of the Code. The Hon’ble Supreme Court of India, time and again has stipulated that the commercial wisdom of the CoC is supreme and cannot be interfered as held in catena of judgements including, *K. Shashidhar Vs. Indian Overseas Bank & Ors.* [(2019) 12 SCC 15] and *Committee of Creditors of Essar Steel India Ltd. Vs. Satish Kumar Gupta* [(2020) 8 SCC 531]. While the Adjudicating Authority cannot interfere with the CoC’s commercial decisions, it needs to ensure that the procedure followed by the CoC and/or Resolution Professional is

in accordance with the Code and Regulations. Any significant procedural lapses may be a ground for rejection.

- The evolving jurisprudence in this area will continue to define the scope and implications of material irregularities, but the fundamental principles of fairness, transparency, and compliance with the law must be upheld at all times. All parties involved in the CIRP, including resolution professionals, creditors, and corporate debtors, must adhere to the highest standards of integrity and diligence to ensure that the insolvency resolution process is conducted in a manner that upholds the objectives of the Code and protects the interests of all stakeholders.
- In the present matter before us, the material irregularities have been observed in various instances. The conduct of Mr. Kairav Anil Trivedi, as an Interim Resolution Professional has been investigated by IBBI subsequent to which the Disciplinary Committee of IBBI found the Respondent No. 1 guilty of misconduct and therefore suspended the Respondent No. 1, for 6 months. Thus, we find that there have been material irregularities in CIRP Process, which we have discussed earlier and will not repeat once again here.

(c) In this connection, we note that the Respondent No. 1 has brought out that the Resolution Plan as proposed by Ashish Shah has already been approved by the CoC and confirmed by the Adjudicating Authority vide the Impugned Order dated 15.05.2023 passed in I.A. No. 2977 of 2022

for approval of the Resolution Plan. It has also been brought out by the Respondent no. 1 that the Resolution Plan has been implemented and the money has been distributed to the Creditors. The same fact has been confirmed by the CoC. We also note that there has been intervention application filed by Mr. Ashish Shah which also confirms the same fact.

(d) We further note that in both the appeals, i.e. Company Appeal (AT)(Ins.) No. 916 of 2023 and Company Appeal (AT)(Ins.) No 792 of 2023, two IAs have been filed, namely IA No. 1662 of 2024 and IA No. 2203 of 2024 respectively by an Intervenor/Applicant, Mr. Ashish Shah, who is the Successful Resolution Applicant (SRA).

(e) The Intervenor has brought out that the Appellant had initiated CIRP against Corporate Debtor under Section 9 of the Code, leading to the appointment of Respondent No. 1 as the Interim Resolution Professional by the Adjudicating Authority.

(f) The Intervenor submitted that Respondent No. 1 was subsequently confirmed as the Resolution Professional vide order dated 10.11.2021 and, in compliance with the CIRP Regulations, undertook necessary procedural steps, including the public announcement, constitution of the CoC, and appointment of independent valuers. The valuation report determined the Corporate Debtor's average liquidation value as Rs. 39.20 Crores and the fair market value as Rs. 53.16 crores. The Respondent No. 1 proceeded with the issuance of an Expression of Interest ('EOI'),

following which the Intervenor duly submitted its EOI and Resolution Plan along with the requisite bidding amount of Rs. 5 Lakhs.

(g) It has been submitted by the Intervenor/Applicant that subsequently, the Resolution Plans were presented before the CoC, and all prospective resolution applicants were granted the opportunity to interact with CoC members. After reviewing the submitted plans, the CoC, exercising its commercial wisdom, unanimously approved the Applicant's Resolution Plan through a 100% e-voting process. The said plan was deemed to be most feasible and viable in terms of compliance with the provisions of the Code and asset maximization. The Adjudicating Authority, vide order dated 15.05.2023, also acknowledged the merits of the Applicant's plan, approving it as the most suitable resolution plan in consonance with the objectives of the Code. Furthermore, the Resolution Plan remained unchallenged under Sections 43, 45, 49, 50, and 66 of the Code. The Adjudicating Authority directed the Resolution Professional to hand over all relevant records and documents to the Intervenor/Applicant for further implementation.

(h) The Intervenor/SRA asserts that its role in the CIRP has been crucial, from presenting the Resolution Plan before the CoC to obtaining Adjudicating Authority's approval, thereby ensuring the successful resolution of the Corporate Debtor. The Applicant has since taken over

control of Corporate Debtor from the Resolution Professional as of 30.06.2023, rendering the present appeal infructuous.

- (i) In this connection, we note that the total claims of the creditors were of Rs. 286,95,18,291/- out of which Rs.278,62,79,988/- pertain to Financial Creditors. The total admitted claim of Rs. 179,45,41,528/-. The claimed amount of Canara Bank was Rs. 115,26,84,497/-, Axis Bank was Rs. 32,03,6/8,777/- and ICICI Bank was Rs. 23,82,49,950/-. We also note that the liquidation value of the Corporate Debtor was assessed at Rs. 39.20 Crores and fair value of the Corporate Rs. 53.16 Crores.
- (j) The Resolution Plan has been approved by the CoC and the Adjudicating Authority which is incidentally lower than the fair value Rs. 53.16 Crores and liquidation value of Rs. 39.20 Crores. However, we will not go into aspect, as this lies within the domain of commercial wisdom of the CoC. We note that Rs. 34.95 Crores has been paid by SRA to CoC.
- (k) However, we have to deal with the issue raised by the Appellant in both the appeals that if the approval of Plan was accorded based on concealment of facts or misrepresentation of fact which affect the interest of the stakeholders of the Corporate Debtor, then whether such Resolution Plan could have been approved by the Adjudicating Authority under Section 31 of the Code. We have already examined the that the Appellant has been able to convince us regarding several irregularities and violation of the Code and CIRP regulations by the Respondent No.

1. We have already taken into account in detail and analysed the facts brought out by the Canara Bank on behalf of the CoC in an additional affidavit filed dated 28.03.2022 before the Adjudicating Authority in connection with IA No. 247 of 2022,

(l) We have also taken into account the investigation conducted by the IBBI on the issues of irregularities conducted by the Respondent No. 1 which pertain to present case and we have noted the finding of IBBI holding the Respondent No. 1 of guilty of misrepresentation and various concealment affecting the stakeholders of the Corporate Debtor. We consciously note that the IBBI has held the Respondent No. 1 responsible for violation of provisions of the Code and CIRP Regulations and has debarred the Respondent No. 1 for 6 months.

(m) In this connection, we would like to refer to the recent judgement of Hon'ble Supreme Court of India in the matter of *Independent Sugar Corporation Ltd. v/s Girish Sriram Juneja and others*, [(2025) SCC OnLine SC 181] bearing Civil Appeal No. 6071 of 2023. Although, the said judgement primarily focuses interplay between Competition Commission of India Act, 2002 and IBC Code, 2016 and the mandatory nature of the proviso to Section 31 (4) of the Code, it is much relevant to the subject matter of our present case. The relevant portion of the above mentioned case is reproduced as under:

*“150. In the present case, for reasons discussed above, the statutory provision and legislative intent unequivocally affirm the mandatory nature of the proviso to Section 31(4) of the IBC. For a Resolution Plan containing a combination, the CCI's approval to the Resolution Plan, in our opinion, must be obtained before and consequently, the CoC's examination and approval should be only after the CCI's decision. This interpretation respects the original legislative intent, and deviation from the same would not only undermine the statute but would also erode the faith posed by the stakeholders in the integrity of our legal and regulatory framework.*

*152. Further, the indispensability of procedural safeguards as an integral component of a just legal order must be given its due weight, especially as procedural requirements are not mere formalities to be circumvented for expediency but substantive protections designed to ensure fairness and transparency. In that light, the procedural lapses with respect to objections to the proposed combination and the consequent divestiture modification proposed within the framework of the Competition Act, 2002, seriously vitiated the integrity of the process. It is therefore reiterated and reinforced that adherence to procedural propriety is non-negotiable and that the ends cannot justify the means.*

*153. By upholding the mandatory nature of the statutory provision and emphasising upon the critical importance of procedural safeguards, the principle of rule of law is upheld in alignment with global best practices which underscore fairness, predictability and transparency. Such an approach*

*not only reinforces the integrity and credibility of the legal framework but also highlights India's commitment to fostering a regulatory environment, which is conducive to both business and innovation. Additionally, it also ensures the protection and enforcement of rights in an equitable manner, free from bias or favouritism.*

*154. Therefore, a balance between the need for expeditious relief and adherence to the statutory framework must necessarily be maintained, in order to ensure that the objectives of both, the IBC and the Competition Act are met in a manner that supports India's long term economic aspirations.*

*155.2. Any action taken pursuant to the Resolution Plan shall stand nullified, and the rights of all stakeholders shall be restored as per status quo ante, prior to the approval of the Resolution Plan by the CoC on 28.10.2022.”*

*(Emphasis Supplied)*

(n) From above, we note that the Hon'ble Supreme Court of India has emphasised regarding indispensability of procedural safeguards as an integral component of a just, legal ordered must be given its due weight, especially as procedural requirements are not mere formalities to be circumvented for expediency but substantive protections designed to ensure fairness and transparency.

(o) The Hon'ble Supreme Court of India further laid down the law regarding critical importance of procedural safeguards, the principle of rule of law is upheld in alignment with global best practices which underscore

fairness, predictability and transparency. We note that the Hon'ble Supreme Court of India in the above quoted case has declared that any action taken pursuant to the Resolution Plan shall stand nullified, and the rights of all stakeholders shall be restored as per status quo ante, prior to the approval of the Resolution Plan by the CoC.

(p) We find that the position is similar in the present case.

**57.** We are duty bound to follow ratio as stipulated by the Hon'ble Supreme Court of India in above case of *Independent Sugar (Supra)*. As such, we hold that even the approved Resolution Plan will get affected.

**58.** In view of the above detailed examination, we find merit in both the appeals bearing Company Appeal (AT)(Ins.) No. 916 of 2023 and Company Appeal (AT)(Ins.) No 792 of 2023. Both appeals are allowed. Impugned Order dated 15.05.2023 is set aside. IA, if any, are closed. No costs.

**59.** Parties are directed to appear before the Adjudicating Authority on **28.02.2025**.

**60.** As regards, the Appellant's Contempt Petition bearing no. 1034 of 2024, we understand that the Appellant was aggrieved by the approval of the Resolution Plan and rejection of his objection to approval of Resolution Plan, both in IA No. IA/3523/2022 and IA/2977/2022 dealt in CP (IB) No.934/MB/2020 by the Adjudicating Authority vide Impugned Order dated 15.05.2023. We also note that before the Impugned Order dated 15.05.2023 in CP (IB) No.934/MB/2020 was passed by the Adjudicating Authority, the Appellant also filed Contempt Petition

No. 04 of 2023 before the Adjudicating Authority on 08.03.2024, which was disposed of by Adjudicating Authority vide Impugned Order dated 28.03.2024 in CP (IB) No.934/MB/2020.

**61.** Although we have noted the contention of the Appellant and Respondent in the Company Appeal (AT) (Ins.) No. 1034 of 2024, we do not intend to examine this further, in view of the fact that we have allowed the Company Appeal (AT) (Ins.) No. 916 of 2023 and Company Appeal (AT) (Ins.) No. 792 of 2023. We are of the opinion that no further purpose would be served now.

**62.** The Company Appeal (AT) (Ins.) No. 1034 of 2024 is disposed of in view of the above observations. IA, if any, are closed. No costs.

**[Justice Rakesh Kumar Jain]  
Member (Judicial)**

**[Mr. Naresh Salecha]  
Member (Technical)**

**[Mr. Indevan Pandey]  
Member (Technical)**

Sim