

BEFORE THE AJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD

IA 319/2017 In C.P. (LB) No. 33/9/NCLT/AHM/2017


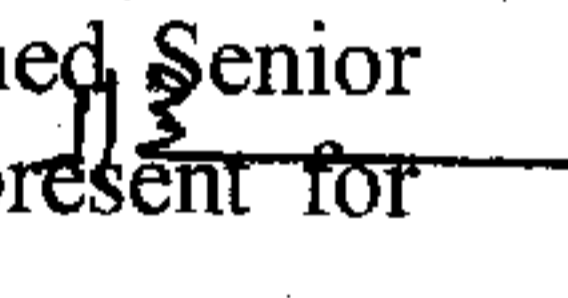
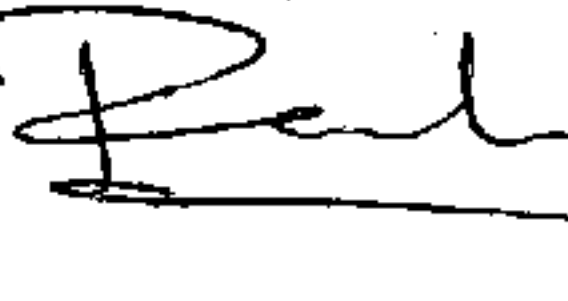

Coram: Present: Hon'ble Mr. BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 14.11.2017

Name of the Company: Bank of India
V/s.
Renish Petrochem FZE & Anr.


Section of the Companies Act: Section 9 of the Insolvency and Bankruptcy
Code

S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MR. NAVIN PAHWA	<u>ORDER</u> SR. ADV.		
2.	MR. KETAN PARIKH	ADV.		
	MR. RAHEEL PATEL	ADV.		
	MR. NANDISH CHUDGAR	ADV.		

Learned Advocate Mr. Ketan Parikh with Learned Advocate Mr. Nandish Chudgar
with Learned Advocate Mr. Raheel Patel present for Applicant. Learned Senior
Advocate Mr. Navin Pahwa with Learned Advocate Ms. Ritu Shah present for
Respondent No.1. in IA 319/2017.

Mr. Nandish Chudgar
also Raheel Patel Advos. " "
Common Order pronounced in open court. Vide separate Sheets.
b. Nandish Chudgar Associates


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 14th day of November, 2017.

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH**

I.A. No. 277 of 2017

And

I.A. No.319 of 2017

And

I.A. No.320 of 2017

And

I.A. No.321 of 2017

In

C.P. No.(IB) 33/9/NCLT/AHM/2017

In the matter of IA No.277 of 2017:

Bank of India
Head Office at Bandra-Kurla Complex,
Star House, C-5, G Block,
Bandra(E),
Mumbai-400051

And

Bank of India
Ahmedabad Mid Corporate Branch
BOI Building, 1st Floor,
Swastik Char Rasta, Navrangpura,
Ahmedabad-380009

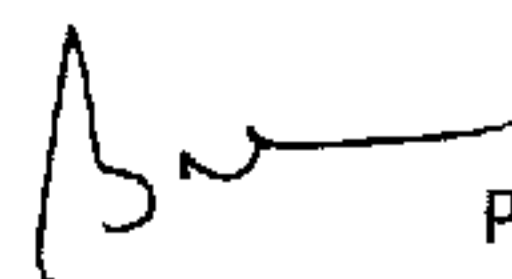
: Applicant.

Versus

(1) Renish Petrochem FZE
Registered Office at
P.O. Box 42168
Hamariyah Free Zone,
Sharjah, United Arab Emirates.

Corporate Office at
37th Floor, HDS Tower, Cluster-F,
JLT, P.O. Box, Dubai-12537
United Arab Emirates.

: Opponent No.1.
Operational Creditor.



(2) Ardor Global Private Limited
Registered Office at
"ARDOR HOUSE"
Mondeal Business Park
Beside Gurudwara,
S.G. Road, Thaltej,
Ahmedabad-380059

: Opponent No.2
Corporate Debtor.

Appearance:

Mr. Ketan Parikh, learned Advocate for Applicant.

Mr. Navin Pahwa, learned Senior Advocate with Ms. Natasha Sutaria,
learned Advocate for Opponents.

In the matter of IA No. 319 of 2017:

Bank of India
Head Office at Bandra-Kurla Complex,
Star House, C-5, G Block,
Bandra(E),
Mumbai-400051

And

Bank of India
Ahmedabad Mid Corporate Branch
BOI Building, 1st Floor,
Swastik Char Rasta, Navrangpura,
Ahmedabad-380009

: Applicant.

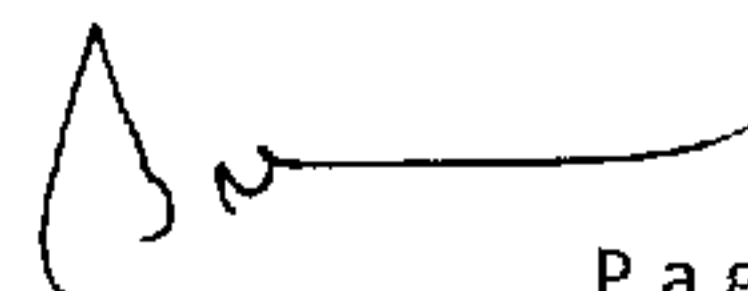
Versus

1. Renish Petrochem FZE
Registered Office at
P.O. Box 42168
Hamariyah Free Zone,
Sharjah, United Arab Emirates.

And

Corporate Office at
37th Floor, HDS Tower, Cluster-F,
JLT, P.O. Box, Dubai-12537
United Arab Emirates.

: Opponent No.1.
Operational Creditor.



2. Ardor Global Private Limited
Registered Office at
"ARDOR HOUSE"
Mondeal Businiess Park
Beside Gurudwara,
S.G. Road, Thaltej,
Ahmedabad-380059 : Opponent No.2
Corporate Debtor.

Appearance:

Mr. Ketan Parikh, learned Advocate for Applicant.
Mr. Navin Pahwa, learned Senior Advocate with Ms. Natasha Sutaria,
learned Advocate for Opponents.

In the matter of IA No. 320 of 2017:

Central Bank of India
Central Office at
Nariman point, Mumbai –

And

Branch Office at
Mid Corporate Finance Branch,
Lal Darwaja,
Ahmedabad-380001 : Applicant.

Versus

1. Renish Petrochem FZE
Registered Office at
P.O. Box 42168
Hamariyah Free Zone,
Sharjah, United Arab Emirates.

And

Corporate Office at
37th Floor, HDS Tower, Cluster-F,
JLT, P.O. Box, Dubai-12537
United Arab Emirates. : Opponent No.1
Operational Creditor.

AND

2. Ardor Global Private Limited
Registered Office at
"ARDOR HOUSE"
Mondeal Businiess Park
Beside Gurudwara,
S.G. Road, Thaltej,
Ahmedabad-380059

: Opponent No.2.
Corporate Debtor.

Appearance:

Mr. Ketan Parikh, learned Advocate for Applicant.
None present for Opponents.

In the matter of IA No. 321 of 2017:

Mr. Fenil Bharatbhai Shah
Residing at
301, Heritage Crescent,
B/h Ananddham Jain Temple
B/s. Shapath-5,
Prahladnagar,
Ahmedabad-380015

: Applicant.

Versus

1. Ramubhai S. Patel,
Having Office at
801, Popular House,
Nr. Income Tax Circle,
Ashram Road,
Ahmedabad-380009

2. Bank of India
Ahmedabad Mid Corporate Branch
BOI Building, 1st Floor,
Swastik Cross Roads, Navrangpura,
Ahmedabad-380009

3. Ravi Kapoor
Having Office at
4th Floor, Shaival Plaza,
Gujarat College,
Ellidbridge, Ahmedabad-380006 : Opponents.

Appearance:

Mr. Arjun Sheth, learned Advocate for Applicant.

Mr. Kiritkant Nanavati, learned Senior Advocate with Mr. Maitreya Bhatt, learned Advocate with Mr. Satyen Thakker, learned Advocate present for Opponent no. 1.

Mr. Nandish Chudgar, learned Advocate with Mr. Raheel Patel for Opponent no. 2.

Order delivered on 14th November, 2017.

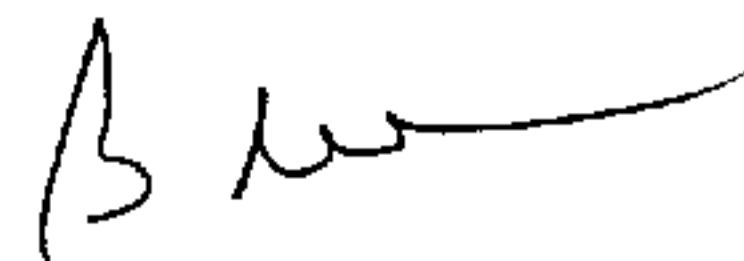
Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J).

COMMON ORDER

1. IA No. 277 of 2017 is filed by Bank of India acting as an Agent of consortium of Banks consisting of Bank of India, State Bank of India, Bank of Baroda, Union Bank of India, Central Bank of India, Oriental Bank of Commerce, and Rajkot Nagrik Sahakari Bank Limited under Section 27 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] requesting this Adjudicating Authority to replace the existing Interim Resolution Professional, Shri Ravi Kapoor with Shri Ramubhai S. Patel as Resolution Professional.

2. IA No. 319 of 2017 is filed by Bank of India to amend the cause title in IA No. 277 of 2017, and prayer clause in IA No. 277 of 2017. The amendment prayed is to alter the Section 27 of the Code into Section 22 or/and Section 27 of the Code. The other amendment is also to correct the Section of law from Section 27 to 22 or/and 27 of the Code in the relief in Clause (A).

3. IA No. 320 of 2017 is filed by Central Bank of India, which is one of the Secured Creditors of the Corporate Debtor and the Member of the Bank of India Consortium of secured lenders to recall the order dated 31.7.2017 passed by this Adjudicating Authority in CP (IB) No. 33 of 2017 to the extent of appointing Shri Ravi Kapoor as 'Interim Resolution Professional' on the ground that he is an interested person and to allow the Applicant to propose another Resolution Professional to act as 'Interim Insolvency Resolution Professional'.



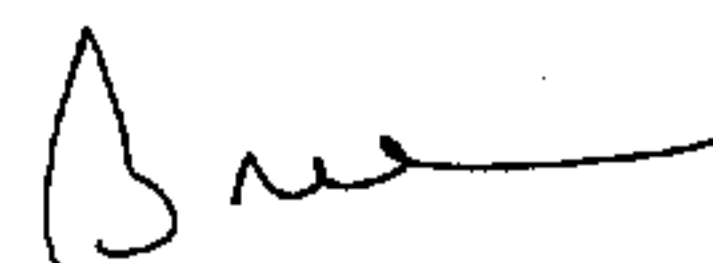
4. IA No. 321 of 2017 is filed by Mr. Fenil Bharatbhai Shah, who is the Promoter/Director of the Corporate Debtor with a prayer not to appoint Mr. Ramubhai S. Patel as 'Resolution Professional' of the Corporate Debtor.

5. The facts in brief, that are germane for the disposal of these four Applications are as follows;

5.1. Renish Petrochem FZE, who is one of the Operational Creditors of Adore Global Private Limited (hereinafter called as 'Corporate Debtor') triggered the Corporate Insolvency Resolution Process under Section 9 of the Code by filing the Petition before this Adjudicating Authority which came to be numbered as 'CP (IB) No. 33 of 2017'. This Adjudicating Authority, after hearing the Operational Creditor and the Corporate Debtor passed the order dated 31.7.2017 whereby the Petition under Section 9 of the Code was admitted. This Adjudicating Authority appointed Shri Ravi Kapoor as 'Interim Resolution Professional' under Section 13(1) of the Code.

5.2. The learned Interim Resolution Professional (IRP), Mr. Ravi Kapoor made a public announcement on 4th August, 2017 inviting the claims on or before 14th August, 2017. The learned IRP filed the Report dated 21st August, 2017 giving the list of Creditors who made their claims.

5.3. The learned IRP filed another Report dated 21st August, 2017 constituting the Committee of Creditors from amongst the Financial Creditors numbering eleven. The IRP in his Report dated 21st August, 2017 stated that the Financial Creditors listed at Serial No. 8 to 11 are related parties and therefore they have no right of representation or participation or voting in the Committee of Creditors. The following are the interested Financial Creditors;



Committee of Creditors

Sr. No.	Name of Creditor	Class of Creditor	Amount of claim admitted
8.	Bharat R. Shah, Proprietor of Zenith Global.	Financial Creditor	Rs.35,40,12500 (Thirty Five Crores Forty Lacs Twelve Thousand Five Hundred Only)
9.	Bharat R. Shah, Karta of Bharat R. Shah, HUF, Proprietor of Cubix Overseas	Financial Creditor	Rs.38,20,31,500 (Thirty Eight Crores Twenty Lacs Thirty One Thousand Five Hundred)
10.	Fenil B. Shah, Karta of Fenil B. Shah, HUF, Proprietor of Magnate Enterprise.	Financial Creditor	Rs.37,63,03,000 (Thirty Seven Crores Sixty Three Lacs Three Thousand Only)
11.	Fenil B. Shah, Proprietor of Equinox International	Financial Creditor	Rs.33,50,60,000 (Thirty Three Crores Fifty Lacs Sixty Thousand Only)

5.4. Bank of India, as a lead Bank of Consortium of Creditors, filed IA No. 277 of 2017 under Section 27 of the Code to replace the IRP Shri Ravi Kapoor with Shri Ramubhai S. Patel as 'Resolution Professional' basing on Resolution of the Committee of Creditors held on 4.9.2017 wherein it was unanimously resolved by the Committee of Creditors to propose the appointment of Shri Ramubhai S. Patel as 'Resolution Professional'.

5.5. IA No. 319 of 2017 is filed seeking amendment of Section of law 27 of the Code mentioned in IA No. 277 of 2017 as Section 22 or/and 27 of the Code.

5.6. In the Additional Affidavit filed by the Bank of India, the Applicant in IA No. 277 of 2017 filed the Resolutions passed in the first meeting of the Committee of Creditors held on 29.8.2017

wherein a Resolution was passed not to appoint IRP as 'Resolution Professional'.

5.7. In IA No. 277 of 2017, the Authorised Representative of Renish Petrochem FZE, that is Operational Creditor of the Corporate Debtor that moved the Insolvency Petition under Section 9, filed Reply opposing the amendment of Section of law from 27 IB Code to 27 or/and 22 of the Code on the ground that the amendment sought is of fundamental in nature which would change the subject matter and the cause of action.

6. Before deciding IA No. 277/2017, IA No.320/2017 and 321/2017, it is necessary to decide IA No. 319 of 2017 which is filed for amendment of Section of law mentioned in IA No. 277 of 2017.

6.1. In this context, it is necessary to refer to Section 22 of the Code and Section 27 of the Code. Section 22 of the Code reads as follows;

"Appointment of resolution professional.

22.(1) *The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.*

(2) The committee of creditors, may, in the first meeting, by a majority vote of not less than seventy-five per cent of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.

(3) Where the committee of creditors resolves under sub-section (2)

(a) to continue the interim resolution professional as resolution professional it shall communicate its decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority; or

(b) to replace the interim resolution professional, it shall file an application before the Adjudicating Authority for the appointment of the proposed resolution professional.

(4) The Adjudicating Authority shall forward the name of the resolution professional proposed under clause (b) of sub-section (3) to the Board for its confirmation and shall make such appointment after confirmation by the Board.

(5) Where the Board does not confirm the name of the proposed resolution professional within ten days of the receipt of the name of the proposed resolution professional, the Adjudicating Authority shall, by order, direct the interim resolution professional to continue to function as the resolution professional until such time as the Board confirms the appointment of the proposed resolution professional.”

Section 27 of the Code reads as follows;

“Replacement of resolution professional by committee of creditors.

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 seventy-five per cent of voting shares, propose to replace the resolution professional appointed under section 22 with another resolution professional.

(3) The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.

(4) The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and a resolution professional shall be appointed in the same manner as laid down in section 16.

(5) Where any disciplinary proceedings are pending against the proposed resolution professional under sub-section (3), the resolution professional appointed under section 22 shall continue till the appointment of another resolution professional under this section.”



6.2. Basically, Section 22(2) of the Code deals with continuing the Interim Resolution Professional as 'Resolution Professional' or replacing the Interim Resolution Professional by another Resolution Professional and the same should take place in the first meeting of the Committee of Creditors by a majority of not less than 75% of the voting share of the Financial Creditors.

6.3. Section 27 of the Code provides a situation where a Resolution Professional appointed under Section 22 require to be replaced by the Committee of Creditors. Therefore, Section 22 or 27 of the IB Code operates at different stages of the Corporate Insolvency Resolution Process. In order to invoke Section 22, there must be a resolution in the first meeting of the Committee of Creditors. Section 27 applies only when it relates to replacing the RP appointed under Section 22. In the case on hand, from the material placed on record, in the first meeting of the Committee of Creditors held on 29.8.2017 there was a Resolution not to appoint Interim Resolution Professional as 'Resolution Professional', but no other person was named as 'Resolution Professional' in the place of IRP, Mr. Ravi Kapoor. But in the second meeting of Committee of Creditors held on 4.9.2017, a Resolution was passed to the effect to propose the appointment of Shri Ramubhai S. Patel as 'Resolution Professional'. Therefore, Bank of India, having filed its Application, IA No.277 of 2017 under Section 27 of the Code, now wants to invoke Section 22 as well as Section 27 of the IB Code or alternatively one among these two Sections by way of amendment.

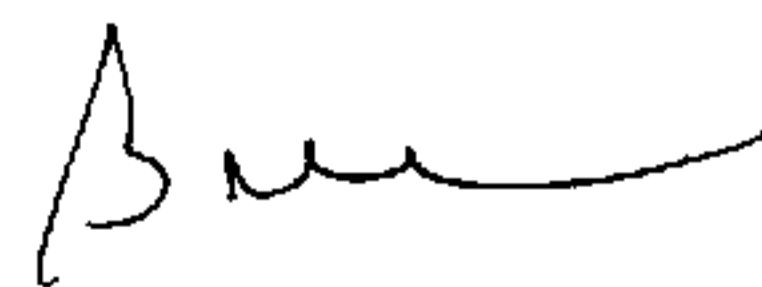
7. The crucial question involved in all these IA No.277/2017, 329/2017 and 321/2017 is whether the IRP, Shri Ravi Kapoor has to be replaced by Resolution Professional, Shri Ramubhai S. Patel. Therefore, by amending Section of law from 27 to 22 or 27 to be read as 22 and 27, the controversy is not going to be changed. Whether the procedural aspects that are required to be followed before filing an Application under Section 22 or 27 of the Code has been followed or not will be discussed while dealing with the merits in the

Applications, IA No. 277/2017, 320/2017 and 321/2017. Therefore, the amendment sought to be proposed only relates to change of Section of law to some extent. Therefore, it cannot be said that the amendment of Section of law is going to change the nature of the enquiry and scope of the Application. It is a settled law, even if an Application is filed by misquoting the Section of law, the Courts have to see the controversy involved, the relief prayed, and then apply the applicable Section of law without dismissing the petitions at the threshold on the ground that the Section of law is wrongly quoted. Hence, in any view of the matter, the amendment sought by the Applicant in IA No.277 of 2017 deserves to be allowed and therefore the Application IA No.277 of 2017 filed by the Bank of India shall be treated as an Application filed under Section 27 or under Section 22 or under Section 22 and Section 27.

7.1. Accordingly, Application IA No. 319 of 2017 is allowed.

8. Now, coming to IA No. 277 of 2017, IA No. 320 of 2017 and IA No. 321 of 2017, the main controversy involved in these three Applications is whether the proposal of the name of Mr. Ramubhai S. Patel as 'Resolution Professional' in place of IRP, Mr. Ravi Kapoor is valid or not, and whether the name of Resolution Professional Ramubhai S. Patel shall be forwarded to the Insolvency and Bankruptcy Board of India ("IBB" for short) for confirmation or not.

9. A careful perusal and reading of Sections 22 and 27 of the Code clearly indicate that this Adjudicating Authority shall forward the name proposed by the committee of creditors for replacement of IRP or for replacement of Resolution Professional under Section 22 and 27 of the Code respectively.



10. A reading of Section 22 and 27 of the Code, no doubt, give scope for this Adjudicating Authority not to recommend the name proposed by the Committee of Creditors.

11. But, on a reading of the Insolvency Code as a whole including section 60(5) along with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016, with specific reference to Chapter VI and Insolvency And Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, more particularly with reference to First Schedule of the said Regulations, it is evident that it gives ample authority, jurisdiction to this Adjudicating Authority to find out whether the procedure laid down in Section 22, 27 and Regulations 18 to 21 of the Insolvency And Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 and the Regulations relating to Code of Conduct for Insolvency Professionals which is there in the First Schedule of Insolvency And Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, have been strictly followed or not.

12. In fact, the main contention of the Petitioner who moved the Petition, CP (IB) No. 33 of 2017 under Section 9 of the Code is that the procedure laid down under Section 22 and Section 27 of the Code and the relevant Regulations have not been followed in proposing the name of Mr. Ramubhai S. Patel as 'Resolution Professional'. In fact, the same plea has also been raised by the promoter/director of the Corporate Debtor in IA No. 321 of 2017.

13. The conclusion reached by this Adjudicating Authority is that it has got authority and jurisdiction to decide whether the procedure prescribed under Section 22 and Section 27 of the Code and IBBI (IR) Regulations and IBBI (IP) Regulations have been followed or not.

14. Section 22 of the Code says that in the First Meeting of the committee of creditors a resolution shall be passed by a majority vote

of not less than seventy-five per cent of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.

15. In the case on hand, the First Meeting of the Committee of Creditors was held on 29.8.2017. The said Meeting was convened by the IRP. In the said Meeting, it was only resolved not to continue the IRP. It was not resolved in the First Meeting of the committee of creditors to replace the IRP by another Resolution Professional. It is argued by the learned counsel appearing for the Applicant in IA No. 277 of 2017 that a decision to replace the IRP by Resolution Professional has been taken in the First Meeting of the committee of creditors held on 29.8.2017 and the said Meeting was convened by the IRP and therefore there is valid compliance of Section 22 of the Code.

16. It is contended by the learned counsel appearing for the Operational Creditor who triggered the Corporate Insolvency Resolution Process under Section 9 of the Code that the resolution passed in the Second Meeting of the Creditors is not a valid resolution since the meeting is not convened by the IRP.

17. In this context, it is necessary to refer to Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016. Chapter VI of the said Regulations deals with meetings of the committee. Regulation 18 of the said Regulations says Resolution Professional may convene a meeting as and when he consider necessary and shall convene a meeting if a request to that effect is made by members of the committee representing Thirty-three percent of the voting rights.

18. In the case on hand, the Second Meeting of the Committee of Creditors has not been called by the IRP. It is not even the case of the Applicant in IA No. 277 of 2017 that a requisition is given to the

IRP to call the meeting of the committee of creditors. A perusal of the Minutes of the Second Meeting of the committee of creditors goes to show that it was called by the committee of creditors themselves and it was chaired by Mrs. Shampa Biswas, AGM, Bank of India, Lead Bank of JLF acted as Chairman of the meeting. In the Minutes of the said meeting, the name of the IRP is not there as present. In the said meeting of the committee of creditors, Central Bank of India also participated, who is Applicant in IA No. 320 of 2017. Therefore, the Second Meeting of the committee of creditors has not been validly called and conducted. Further, a perusal of the written communication filed by the proposed Resolution Professional, Mr. Ramubhai S. Patel goes to show that he was appointed by a resolution passed in the meeting of committee of creditors held on 29th August, 2017. But no such resolution was passed on 29th August, 2017 in the First Meeting of committee of creditors to appoint Mr. Ramubhai S. Patel as 'Resolution Professional' in the place of IRP. In the First Meeting of the committee of creditors held on 29th August, 2017, only a decision was taken not to appoint IRP as Resolution Professional. Therefore, what is stated in the written communication of the proposed Resolution Professional, Mr. Ramubhai S. Patel is something which is not even within the knowledge of the committee of creditors by 29.8.2017.

19. No doubt, this is sought to be explained by the Applicant in IA No. 277 of 2017 in the Reply filed in IA No. 321 of 2017 stating that a oral communication has been given to the proposed Resolution Professional, Mr. Ramubhai S. Patel to appoint him as 'Resolution Professional' as per the Resolution of the JLF. But, no such JLF Resolution is filed even along with the Reply of the Bank of India in IA No. 321 of 2017. Therefore, the explanation given by the Bank of India that by 29.8.2017 itself JLF proposed the name of Mr. Ramubhai S. Patel cannot be accepted.

20. IA No. 320 of 2017 is filed by Central Bank of India which is one of the Financial Creditors of the Corporate Debtor and it is also

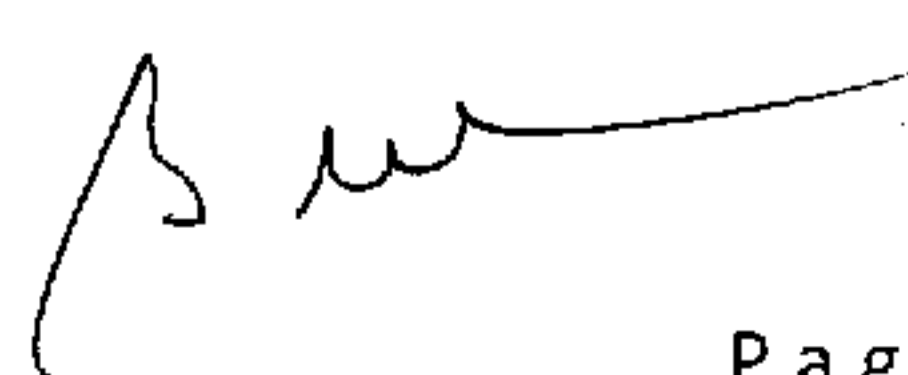
a Member of the Committee of Creditors. A perusal of the 1st Meeting of the Committee of Creditors dated 29.8.2017 and a perusal of the Minutes of the 2nd Meeting of the committee of creditors dated 4.9.2017 show that the representative of Central Bank of India, i.e., Applicant in IA No. 320/2017 also participated in both the meetings. When the Applicant in IA No.3 21/2017 is a party to both the meetings of the committee of creditors it is not entitled to question the proposal of the name of Mr. Ramubhai S. Patel as 'Resolution Professional'. The issue raised by the Applicant in IA No. 320/2017 is that IRP, Mr. Ravi Kapoor shall be replaced but not named who should be the Resolution Professional. The ground, on which Central Bank of India is asking to replace the IRP is that Mr. Ravi Kapoor is a related party to the Corporate Debtor since he has issued search Report for the Corporate Debtor earlier. Whatever the grounds may be, the Applicant in IA No. 320/2017, i.e., Central Bank of India, who is one of the Members of the Committee of Creditors is estopped from projecting its point of view separately deviating from the resolutions passed by the committee of creditors. No doubt, in substance, Central Bank of India is asking for replacement of IRP, Mr. Ravi Kapoor by another person. But the Central Bank of India did not state the proposed Resolution Professional, Mr. Ramubhai S. Patel shall be appointed as 'Resolution Professional'.

21. IA No.321 of 2017 is filed by the Promoter/Director of the Corporate Debtor. The Promoter/Director of the Corporate Debtor is not a Member of the Committee of Creditors. As soon as the insolvency petition is admitted and IRP is appointed the Corporate Debtor is represented by IRP. The promoter/director has nothing to say in the matter of replacement of IRP; continuation of IRP; or in the matter of proposal of name of Resolution Professional. The issue raised by the promoter/director in IA No. 321/2017 is similar to the issue raised by the Operational Creditor who moved the Corporate Insolvency Resolution Process. In IA No. 321 of 2017, several allegations were made against Mr. Ramubhai S. Patel. The learned counsel appearing for the Applicant in IA No. 321/2017 placed

reliance on the decisions of the Hon'ble Supreme Court reported in **AIR 2011 SC Page 1137** in the matter between *Rajendra Prasad Gupta Vs. Prakash Chandra Mishra and Ors.*, in C.A. No. 984 of 2006; and in **(2011) 11 Supreme Court Cases 275** in the matter between *K.K. Velusamy Vs. N. Palanisamy*, in Civil Appeal Nos. 2795-96 of 2011. Those decisions relate to the inherent powers of the Courts and what importance to be given to the procedure to be followed and also relate to the procedure prescribed under Civil Procedure Code. The IB Code, Rules and Regulations is a complete Code by itself and, whenever any special Act or the Rules framed thereunder prescribe a particular procedure it has to be followed and a party cannot be permitted to deviate from such procedure. Therefore, the above said decisions are not applicable to the facts of the present case.

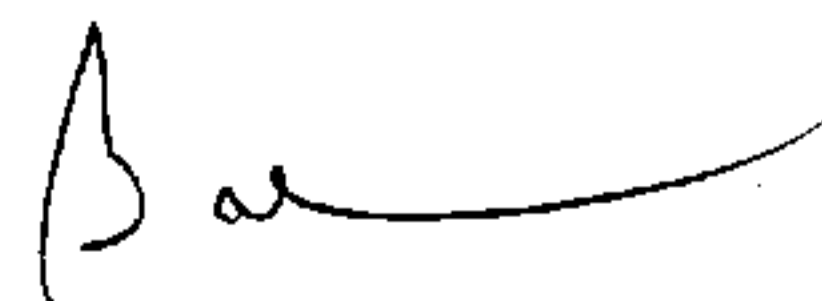
22. Learned Counsel appearing for the Operational Creditor, Ranish Petrochem FZE relied upon the decision of the Hon'ble National Company Law Tribunal, Hyderabad Bench, rendered in ***C.P. (IB) No.111/7/HDB/2017*** in the matter between *IDBI Bank Limited, Mumbai Vs. Lanco Infratech Limited, Hyderabad*, wherein it is observed that 'as per Rule 22 of the Code of Conduct for insolvency professionals as provided in the First Schedule of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, an insolvency professional shall refrain from accepting too many assignments. This Regulation 22 and the observations of the Hon'ble National Company Law Tribunal, Hyderabad Bench, shall also be kept in mind by the Committee of Creditors in proposing the name of the Resolution Professional.

23. It is pertinent to mention here that Corporate Insolvency Resolution Process has been commenced in this case and an application is filed by one of the Operational Creditors of the Corporate Debtor.



24. The other Operational Creditors of the Corporate Debtor also filed Petitions to trigger Insolvency Resolution Process, vide CP (IB) No. 34 of 2017 filed by Nirma Industries Pvt.Ltd. In CP (IB) No. 34 of 2017 filed by Nirma Industries Pvt.Ltd, the Interim Resolution Professional proposed is Shri Ramubhai S. Patel who is now proposed as Resolution Professional by the committee of creditors in its Second Meeting held on 4.9.2017. It is brought on record that Mr. Ramubhai S. Patel and Nirma Group have got some relations and that Mr. Ramubhai S. Patel acted as Adviser to Shree Rama Multi-Tech Ltd for a period of 10 years in which Nirma Group hold 42.5% of the shareholding. Annexure 'F' attached to the IA No. 321 of 2017 disclose the said fact of Nirma Group holding shares in Shree Rama Multi-Tech Ltd. The main controversy is the IRP proposed by Nirma has been proposed as Resolution Professional by the committee of creditors only to favour the Nirma group leaving the petitioner/Operational Creditor Renish Petrochem FZE.

25. In this context, it is necessary to refer to Insolvency And Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016. Its First Schedule deals with Code of Conduct for Insolvency Resolutions. The committee of creditors before proposing any name of Resolution Professional is expected to take into consideration the code of conduct prescribed in First Schedule of IBBI (IP) Regulations, 2016 and discuss all the material placed on record by the eligible Operational Creditors also who are entitled to participate in the meeting of the committee of creditors but not entitled to vote. A perusal of the Second Meeting of the committee of creditors disclose that none of the eligible Operational Creditors participated in the second meeting of the committee of creditors. The requirement of the Code is that the notice shall be given to the eligible Operational Creditors also to attend the meeting of the committee of creditors though they are not entitled to vote. This has also not been followed in the Second Meeting of the committee of creditors held on 4.9.2017.



26. In view of the above discussion, the proposal of the name of IRP, Mr. Ramubhai S. Patel in the 2nd meeting of the committee of creditors has not been validly done and therefore this Authority need not recommend the name of Mr. Ramubhai S. Patel to the Insolvency and Bankruptcy Board of India [IBBI] for his appointment as Resolution Professional.

27. In the case on hand, the decision has been taken in the 1st meeting of the committee of creditors not to appoint IRP as 'Resolution Professional'. In view of the finding of this Adjudicating Authority that the name proposed by the committee of creditors cannot be recommended to the IBBI and in view of the decision of the committee of creditors not to appoint IRP as 'Resolution Professional', a stalemate has been created in the Corporate Insolvency Resolution Process. In this kind of situation, the Hon'ble National Company Law Appellate Tribunal in order passed in ***Company Appeal (AT) (Insolvency) No. 198 of 2017*** in the matter of *Rajinder Kapoor, Proprietor, R.K. Kapoor & Co., Vs. Anil Kumar, Interim Resolution Professional & ors,* observed as follows;

".....However, till the regular "Insolvency Resolution Professional" is appointed, the Interim Resolution Professional may be asked to perform the day to day routine work, strictly in accordance with the provisions of the 'I&B Code'.

In the case on hand, in view of the above decision and in order to avoid stalemate in the Corporate Insolvency Resolution Process, this Adjudicating Authority is of the considered view that there shall be a direction to the IRP, Shri Ravi Kapoor to convene a meeting of the Committee of Creditors within 15 days by following the Regulations contained in Chapter VI of Insolvency And Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 by giving notice to the eligible Operational Creditors or their representatives to the amount of their aggregate dues is not less than Ten per cent of the debt as provided under Section 24(3)(c) of the Code with the Agenda

to discuss about the appointment of Resolution Professional in the place of IRP and in such meeting the Financial Creditors who constitute the committee of creditors after hearing the eligible Operational Creditors and their objections, taking into consideration the Code of Conduct provided for the resolution professionals in Schedule-I of Insolvency And Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 shall take a decision for proposal of a name of 'Resolution Professional' other than Mr. Ramubhai S. Patel who is already proposed. This cannot be taken as an adverse remark against the proposed Resolution Professional, Mr. Ramubhai S. Patel or IRP Mr. Ravi Kapoor and it is only with a view to put an end to the controversy in the appointment of Resolution Professional, and with a view to clear the stalemate created in the Corporate Insolvency Resolution Process. The committee of creditors after passing a resolution proposing the name of Resolution Professional is entitled to move before this Adjudicating Authority for recommending such person name to the IBBI. This entire exercise shall be completed within three weeks from the date of this order.

28. In view of the above discussions, IA No. 319 of 2017 is allowed. The IA No. 321 of 2017 is dismissed as not maintainable. The IA No. 277 of 2017 and IA No. 320 of 2017 are disposed of with the following directions;

(A) The IRP, Shri Ravi Kapoor is directed to convene a Meeting of the Committee of Creditors by giving notice to all the Financial Creditors and the eligible Operational Creditors with the Agenda of proposing the name of Resolution Professional for conducting the Corporate Insolvency Resolution Process in relation to Corporate Debtor by following the procedure laid down in Chapter VI of the IBBI (IR) Regulations, 2016; within fifteen days.

(B) In case if the IRP fail to convene the meeting as directed above or in case the committee of creditors fail to propose the name of the Resolution Professional, the Committee of Creditors is at liberty

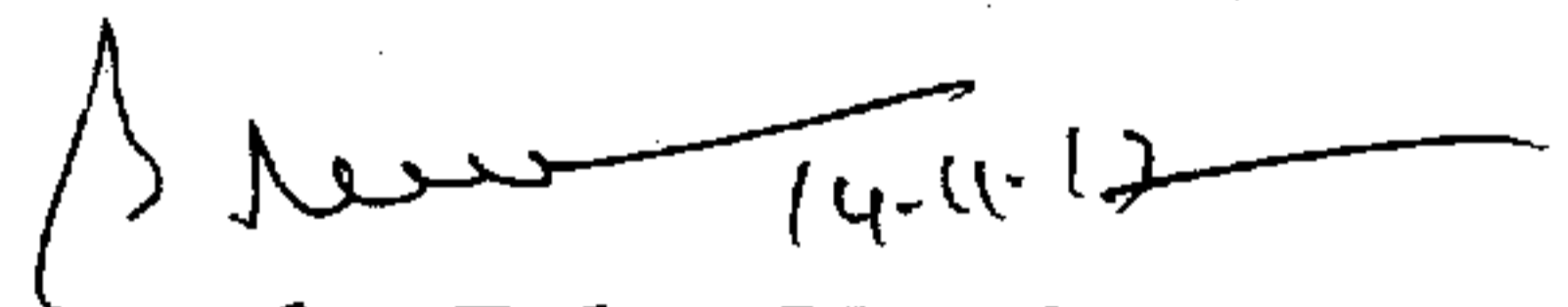
approach this Adjudicating Authority for a direction to the IBBI to appoint a Resolution Professional.

(C) There shall be a direction to the Committee of Creditors to propose the name of the Resolution Professional other than Shri Ramubhai S. Patel after considering the Code of Conduct for insolvency professionals as stated in First Schedule of the Insolvency And Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, and after taking into consideration the point of view if any raised by the eligible Operational Creditors who attended the meeting either in person or through their representative/s, and file an Application before this Adjudicating Authority to recommend such name to the IBBI for appointment as 'Resolution Professional' in respect of continuation of Corporate Insolvency Resolution Process relating to the Corporate Debtor.

(D) The fee of the Interim Resolution Professional shall be decided in the meeting of committee of creditors.

(E) Compliance to above said directions shall be completed within a period of three weeks from the date of this order. There is no order as to costs in all these Applications.

Signature:



**Sri Bikki Raveendra Babu, Member (J).
Adjudicating Authority.**

Rmr.