



S.No.1

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1  
VC AND PHYSICAL (HYBRID) MODE  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
05-02-2026 AT 11: 45 AM**

**CP(IB) No. 299/7/HDB/2018**

**AND**

**I A (IBC) 2000/2025 & Inv Ptn (IBC) 19/2025 in IA (IBC) 2000/2025 in**

**CP(IB) No. 299/7/HDB/2018**

u/s. 7 of IBC, 2016

**IN THE MATTER OF:**

Punjab National Bank

(Erstwhile Oriental Bank of Commerce)

**...Financial Creditor**

**AND**

NCS Sugars Ltd

**...Corporate Debtor**

**C O R A M:-**

SH. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)

SH. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)

**ORDER**

**I A (IBC) 2000/2025**

Present: Ms. Devangi, Learned Counsel for the Respondent.

**Orders pronounced, recorded vide separate sheets.**

**In the result, this application is allowed and disposed of.**

**Inv Ptn (IBC) 19/2025 in I A (IBC) 2000/2025**

Present: Ms. Devangi, Learned Counsel for the Applicant.

**Orders pronounced, recorded vide separate sheets.**

**In the result, this application is dismissed.**

**Sd/-**

**MEMBER (T)**

**Sd/-**

**MEMBER (J)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – I**

**IA.NO. 2000 OF 2025  
IN  
CP (IB) No. 299/7/HDB/2018**

*Under Section 27 of the Insolvency & Bankruptcy Code, 2016*

**IN THE MATTER OF :**

Punjab National Bank  
(Erstwhile Oriental Bank of Commerce)

... Financial Creditor

V/s.

NCS Sugars Limited

... Corporate Debtor

**Filed by:**

Committee of Creditors  
Through Alchemist Asset Reconstruction Company Limited,  
Having office at A-270, First and Sixth Floor,  
Defence Colony, New Delhi – 110019.

... Applicant

**Date of Order: 05.02.2026**

**CORAM:-**

**SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)  
SHRI. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)**

**PARTIES/COUNSELS APPEARANCE:-**

For the Applicant : Ms. Varsha Banerjee, Counsel



**PER: BENCH**

**ORDER**

1. This Application is filed by the Applicant Under Section 27 of the Insolvency & Bankruptcy Code, 2016 praying to allow the application and appoint Mr. Bihari Lal Chakravarty ('Proposed Resolution Professional') as the Resolution Professional of the Corporate Debtor and discharge Mr. K.Sivalingam, from his current appointment as the Resolution Professional of the Corporate Debtor.

**2. The averments put forth by the Applicant are:**

2.1 The Corporate Debtor having engaged in sugar manufacturing and power generation in Andhra Pradesh, was classified as an NPA in the year 2013. An application under Section 7 of the IBC was filed by Punjab National Bank (PNB), herein, leading to the initiation of CIRP by this Tribunal on 24.06.2022 wherein Mr. K. Sivalingam ('Present Resolution Professional') was appointed as the Interim Resolution Professional of the Corporate Debtor. The copy of the order dated 24.06.2022 by this authority in CP (IB) No. 299/7/HDB/2018 is annexed as **Annexure A-4**.

2.2 The Committee of Creditors (CoC) was constituted in accordance with Regulation 17(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") and the Present Resolution Professional filed the report certifying the constitution of CoC before this Tribunal on 22.07.2022. Thereafter,



the present Resolution Professional convened 55 CoC meetings where several discussions and decisions in regard to the CIRP were taken.

- 2.3 The PNB one of the creditors of the Corporate Debtor had vide an email dated 6<sup>th</sup> October, 2025 informed the present Resolution Professional, that pursuant to an Assignment Agreement, PNB has assigned its debt account to Maximus Asset Reconstruction Company Limited (“Maximus”). Resultantly, there was a change in the constitution of the CoC with Maximus replacing the erstwhile CoC member PNB.

#### **Voting Share of Committee Members**

S.No.	Name of Creditor	Percentage of Voting Share
1	Alchemist ARC Limited	41.20%
2	Maximus ARC Limited	39.11%
3	National Spot Exchange Limited	12.33%
4	IFCI Limited	3.95%
5	Indian Overseas Bank	2.81%
6	ICICI Bank Limited	0.60%

- 2.4 The resolution plan of the Corporate Debtor remains pending consideration, and the CIRP of the Corporate Debtor continues to be affected by several pending issues which includes (i) the time utilized in adjudication of various critical disputes pending before the Hon’ble NCLT, Hon’ble NCLAT and Hon’ble Supreme Court (including the Review Petition filed by the Corporate Debtor against the Order of the Hon’ble Supreme Court in I.A. 61511 of 2024 in



W.P. (C) No. 995/2019 during the CIRP, (ii) the need to evaluate the resolution plan received, especially in light of the removal of the going-concern sale option under the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, so as to enable the CoC to determine the course of action that would best secure value maximization for all stakeholders (iii) the recent assignment of debt by a major financial creditor, necessitating reasonable time for the newly inducted CoC member to review the matter and participate effectively in deliberations.

- 2.5 The conduct of the Resolution Professional has also repeatedly been a matter of concern before the CoC as he has failed to initiate the audit of CIRP costs as repeatedly directed by CoC members. He has allowed the CIRP costs to escalate disproportionately despite the Corporate Debtor remaining non-operational, which issue is also pending adjudication before Hon'ble NCLAT, Chennai in Company Appeal (AT) (Insolvency) No. 297 of 2025 filed by the Applicant. The cumulative effect of these actions is pendency of the CIRP, with unnecessary financial burden upon creditors.
- 2.6 The CoC members in the 55<sup>th</sup> Meeting held on 17<sup>th</sup> November, 2025 passed a resolution under Section 27(2) of the Code read with applicable regulations and approved the replacement of the current Resolution Professional, with Mr. Bihari Lal Chakravarty ('Proposed Resolution Professional'), bearing Registration No. IBBI/IPA-002/IP-N00863/2019-2020/12776 as the Resolution Professional of NCS Sugars Limited.



2.7 In the said meeting the CoC, with 80.91% approved the appointment of Proposed Resolution Professional as the Resolution Professional of the Corporate Debtor under Section 27 of the Code. Copy of the 55<sup>th</sup> CoC meeting held on 17<sup>th</sup> November, 2025 is annexed as **Annexure A-1**. Copy of summary of Voting of the Minutes of the 55<sup>th</sup> CoC meeting held on 17<sup>th</sup> November, 2025 is annexed as **Annexure A-2**. Copy of Authorization in favour of the Applicant by other assenting CoC Members to file the present application is annexed as **Annexure A-3**. Copy of the Consent Form of Mr. Bihari Lal Chakravarty along with IBBI Registration Certificate and Authorization for Appointment are annexed as **Annexure A-5**.

3. Therefore, the point that arises for our consideration is:

**Whether the Committee of Creditors has the authority under the Insolvency and Bankruptcy Code, 2016 to replace the Resolution Professional by requisite majority, without this Tribunal going into the merits of such decision?**

4. We have heard Ms. Varsha Banerjee, Learned Counsel for the Applicant. Perused the record and case laws.

5. It is a settled position of law that the commercial wisdom of the CoC is paramount in matters concerning the conduct of the Corporate Insolvency Resolution Process, including the appointment or replacement of the Resolution Professional, so long as the decision is taken in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 and the Regulations framed thereunder.



6. From the material placed on record, it is evident that the CoC, in its duly convened meeting, has resolved by the requisite statutory majority to replace the present Resolution Professional and to appoint another Insolvency Professional in his place. The decision has been taken following due procedure, and there is nothing on record to show that the same suffers from any illegality, procedural irregularity.
7. This Adjudicating Authority is not expected to sit in appeal over the commercial wisdom of the CoC. Once the CoC has exercised its discretion within the framework of law, the role of this Tribunal is limited to examining whether the process adopted is in conformity with the Code and the Regulations. In the present case, the requirements under Section 27 of the IBC have been duly complied with. Moreover, the prayer of the Resolution Professional to implead him as party in the present application has already been rejected in Intervention Petition No. 19 of 2025.
8. Therefore, without going into the merits of the decision of the CoC, this Tribunal finds no reason to interfere with the resolution passed by the CoC for replacement of the Resolution Professional.
9. In view of the above, the Application is allowed. The replacement of the Resolution Professional as resolved by the CoC is hereby approved.

**Sd/-**  
**SANJAY PURI**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**RAJEEV BHARDWAJ**  
**MEMBER (JUDICIAL)**

*Sridher*



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – I**

**Inv.P.No. 19 OF 2025  
IN  
IA.NO. 2000 OF 2025  
IN  
CP (IB) No. 299/7/HDB/2018**

*Under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 read with  
rule 11 of the National Company Law Tribunal Rules, 2016.*

**IN THE MATTER OF M/S. NCS SUGARS LIMITED**

**Between:**

Mr. K. Sivalingam

(Reg. No. IBBI/IPA-001/IP-P0597/2018-2019/12430)

Resolution Professional of NCS Sugars Limited

Having office at Flat No. 1603, Tulive Horizon Residences,

Arunachalam Road, Saligramam, Chennai – 600093, Tamil Nadu.

... Applicant/ Proposed Respondent

V/s.

Committee of Creditors

Through Alchemist Asset Reconstruction Company Limited,

Having office at A-270, First and Sixth Floor,

Defence Colony, New Delhi – 110019.

... Respondent/Applicant

**Date of Order: 05.02.2026**

**CORAM:-**

SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)

SHRI. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)



**PARTIES/COUNSELS APPEARANCE:-**

For the Applicant : Mr. Y.Suryanarayana, Counsel  
For the Respondent : Ms. Varsha Banerjee, Counsel

**PER: BENCH**

**ORDER**

1. This Application is filed by the Applicant Under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 read with rule 11 of the National Company Law Tribunal Rules, 2016 praying to allow the application and implead the Applicant as Respondent in IA. No. 2000 of 2025 in C.P. (IB) No. 299 of 2018 seeking replacement of the Resolution Professional.
2. **The averments put forth by the Applicant are:**
  - 2.1 The Respondent has filed I.A. No. 2000 of 2025 in C.P. (IB) No. 299 of 2018 seeking directions for discharge of the Applicant as the Resolution Professional in the CIRP of the Corporate Debtor and for the replacement of the Applicant i.e., present Resolution Professional with Mr. Bihari Lal Chakravarty, Insolvency Professional as the new Resolution Professional for the ongoing CIRP of the Corporate Debtor.
  - 2.2 This Tribunal vide order dated 24<sup>th</sup> June, 2022 admitted the Corporate Debtor into CIRP and appointed the Applicant as the Interim Resolution Professional and the Applicant was subsequently



confirmed as the Resolution Professional by the Committee of Creditors of the Corporate Debtor.

- 2.3 During the course of the ongoing CIRP, as stated in the application, the Applicant has been discharging all the obligations and functions as the Resolution Professional in accordance with the instructions of the CoC, including but not limited to publication of Form G and Invitation of EoI, issuance of Provisional List and Final List of Resolution Applicants, Issuance of Provisional List and Final List of Resolution Applicants, Issuance of Request for Resolution Plan, Evaluation Matrix and Information Memorandum to Resolution Applicants, evaluation of resolution plans received from the Resolution Applicants. Further, the Applicant, has convened 56 meetings of CoC as on the filing date, wherein matters relating to various aspects of CIRP including CIRP costs were being placed before the CoC.
- 2.4 It is submitted that discussions have been going on with respect to the resolution plan(s) with the CoC members since November, 2024 in almost 17 CoC meetings till date. However, the CoC has been instructing the Applicant to defer the agenda for voting upon resolution plan/liquidation of the Corporate Debtor time and again owing to pendency of litigations concerning the asset base of the Corporate Debtor at the Hon'ble Supreme Court.
- 2.5 The Applicant had filed IA 574/2025 before this Tribunal against the CoC members seeking direction to fund the approved CIRP costs on



priority, and this Tribunal issued a direction vide its order dated 11<sup>th</sup> June, 2025 (the said order has been carried in appeal before the Hon'ble National Company Law Appellate Tribunal) against the concerned CoC members to contribute its share of ratified CIRP Costs within 15 days of its Order. However, contribution still remains unpaid from certain CoC members including the Respondent. Another application IA(IBC)/1501/2025 is filed by the Resolution Professional and is currently pending before this Tribunal relating to the persistent abstention by majority CoC members from voting on the cost agendas, and the consequent difficulties being faced by the Applicant in discharging his statutory duties.

- 2.6 According to the Applicant, he has not received its already approved fees for last 12 months. Nevertheless, in the interest of the stakeholders, CIRP and the Corporate Debtor, continuous services are being rendered relentlessly.
- 2.7 In the 55<sup>th</sup> CoC meeting held on 17<sup>th</sup> November, 2025, the CoC with the majority voting of 80.91% has approved the replacement of the Applicant as the Resolution Professional with Mr. Bihari Lal Chakravarty. During the said 55<sup>th</sup> meeting of CoC, the Applicant requested the CoC members that notwithstanding the replacement of the Resolution Professional, the CoC shall clear the long outstanding dues of the current Resolution Professional in priority. The Respondent has thereafter filed I.A. No. 2000 of 2025 seeking replacement of the Resolution Professional without impleading the



Applicant herein as a party, despite the fact that the reliefs sought therein directly affect the Applicant.

2.8 The Applicant has also mentioned the grounds for allowing the application, stating that the allegation that the Applicant failed to conduct a cost audit is factually incorrect, misleading, and contrary to record, inasmuch as the Applicant has consistently placed cost details, break-ups, and supporting invoices before the CoC and has already conveyed, including vide emails dated 3<sup>rd</sup> February, 2025 and 24<sup>th</sup> April, 2025 and in the rejoinders filed in IA. No. 574 of 2025 and IA. No. 1501 of 2025, complete openness to an independent audit subject to majority decision of the CoC and compliance with Regulation 30B of the CIRP Regulations, and in the 49<sup>th</sup> CoC Meeting dated 9<sup>th</sup> July, 2025, the Applicant suo moto discussed the cost audit agenda and despite the Respondent therewith informing to obtain quotes, no such quote has ever been received, rendering the present allegation false and misleading.

2.9 As per the Applicant, the timing and tenor of the IA seeking replacement clearly demonstrate mala fide intent, aimed at avoiding payment of long-pending CIRP costs and Applicant's outstanding dues while proceeding with his replacement would be arbitrary and would cause serious prejudice to the Applicant.

### **3. The Respondent filed counter, stating that :**

3.1 The present Application for Impleadment is wholly misconceived, legally untenable, and contrary to the express statutory scheme



governing replacement of a Resolution Professional under Section 27 of the Insolvency and Bankruptcy Code, 2016 (Code), and is liable to be rejected at the outset as the Applicant has neither any vested right to continue as Resolution Professional nor any statutory entitlement to be impleaded or heard in an application seeking his replacement pursuant to a resolution validly passed by the Committee of Creditors (CoC).

### 3.2 Section 27 of the Code is reproduced as follows:

*“27. Replacement of resolution professional by committee of creditors:*

*(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 professional under the section.”*



3.3 In the present case, the Committee of Creditors, in its meeting dated 17.11.2025, having deliberated upon the conduct of the corporate insolvency resolution process and exercising its statutory voting rights, resolved with a majority of 80.91% voting share to replace the existing Resolution Professional, and in compliance with Section 27(3) of the Code, has duly forwarded the name of the proposed Resolution Professional to this Adjudicating Authority for approval, thereby completing all statutory requirements prescribed under the Code. The minutes of meeting of Committee of Creditor dated 17.11.2025 along with e-voting summary is annexed as **Annexure-A** to the counter.

3.4 The Hon'ble National Company Law Appellate Tribunal, in *Sumat Kumar Gupta v. Committee of Creditors of Vallabh Textiles Company Ltd. Company Appeal (AT) (Insolvency) No. 1037 of 2022*, has categorically held that Section 27 of the Code does not envisage any opportunity of hearing to the Resolution Professional, that the principles of natural justice stand excluded by necessary implication, and that replacement becomes complete upon passage of the resolution by the requisite voting majority. The relevant paragraph is reproduced herein below:

*“10. From the decisions of this Tribunal, as noted above, it is clear that replacement of Resolution Professional is complete when required decision is taken by the CoC in its meeting with requisite majority. The submission of learned counsel for the Appellant that Section 27 does not exclude applicability of principles of natural justice does not commend us. When we look into the scheme of Section 27 it by*



*implication excludes the principles of natural justice, it is clear from the scheme of Section 27 that the scheme nowhere provides for any opportunity to the Appellant for hearing. Therefore, it cannot be said that the erstwhile Resolution Professional is entitled to be heard by the Adjudicating Authority before taking decision.”*

3.5 The Hon’ble National Company Law Appellate Tribunal in *Venus India Asset-Finance Pvt. Ltd. Vs. Suresh Kumar Jain, Resolution Professional of MK Overseas Pvt.Ltd. Company Appeal (AT) (Ins.) No. 1395 of 2022 & I.A. No. 4539 of 2022* has held that:

*“33. .... Further, since the decision of the CoC to replace the Resolution Professional was taken by exercising of voting rights assigned to the creditors, it was not necessary for Adjudicating Authority to look into reasons or decide whether there were sufficient reasons for change of the Resolution Professional as the Adjudicating Authority cannot don the mantle of a supervising authority. More importantly, the relevant section 27 does not prescribe the need to assess the performance of the Resolution Professional while seeking his replacement....”*

3.6 In *Swiss Ribbons (P) Ltd. v. Union of India (2019) 4 SCC 17*, the Hon’ble Supreme Court has held that the IRP/Resolution Professional is an administrator of the IB Code and is expected to function under the guidance and the directions of the CoC that controls the Corporate Debtor. When the CoC contemplates change of Resolution Professional, the Adjudicating Authority in terms of the statutory construct has to merely look into two basic check boxes which is whether the CoC has resolved to that effect with 66% vote share and whether the proposed Resolution Professional has given his written consent and not look at any beyond. Both these conditionalities stand met in the present case.



3.7 The Hon'ble Appellate Tribunal in Committee of Creditors of *LEEL Electricals Ltd. Through State Bank of India vs. Leel Electricals Ltd. Through its Interim Resolution Professional, Arvind Mittal Company Appeal (AT) insolvency) No. 1100 of 2020*, where after considering the scheme of Section 27 of the I&B Code regarding requisites under Section 27, following has been observed: -

*“Therefore, invoking of Section 27 and adopting a protracted procedure in that regard, as appears to have been done by the Adjudicating Authority, is unwarranted. This only has resulted in wastage of time and prolonging the CIRP Process. **In the face of CoC resolution passed with more than the requisite majority, it cannot lie in the mouth of IRP that any of his legal rights have been infringed. It would have been wise on his part to bow to the commercial wisdom of the Committee of Creditors and quit gracefully.** Be that as it may, there was no merit in the case set up by IRP before the Adjudicating Authority and the same was required to be dealt with without insisting upon filing of affidavit by the IRP in regard to the provision of law invoked to pass the resolution.”*

3.8 The Respondent also submitted para-wise reply stating that the resolution plan of the Corporate Debtor remains pending consideration, and the CIRP of the Corporate Debtor continues to be affected by several pending issues which includes (i) the time utilized in adjudication of various critical disputes pending before the Hon'ble NCLT, Hon'ble NCLAT and Hon'ble Supreme Court (including the Review Petition filed by the Corporate Debtor against the Order of the Hon'ble Supreme Court in I.A. 61511 of 2024 in W.P. (C) No. 995/2019 during the CIRP, (ii) the need to evaluate the resolution plan received, especially in light of the removal of the



going-concern sale option under the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, so as to enable the CoC to determine the course of action that would best secure value maximization for all stakeholders (iii) the recent assignment of debt by a major financial creditor, necessitating reasonable time for the newly inducted CoC member to review the matter and participate effectively in deliberations.

3.9 The conduct of the Resolution Professional has also repeatedly been a matter of concern before the CoC as he has failed to initiate the audit of CIRP costs as repeatedly directed by CoC members and allowed the CIRP costs to escalate disproportionately despite the Corporate Debtor remaining non-operational which issue is also pending adjudication before Hon'ble NCLAT, Chennai in Company Appeal (AT) (Insolvency) No. 297 of 2025 filed by the Applicant. The cumulative effect of these actions is pendency of the CIRP, with unnecessary financial burden upon creditors.

3.10 The averments relating to funding of CIRP costs, filing of IA No. 574 of 2025, the order dated 11.06.2025 (which is presently under challenge before the Hon'ble National Company Law Appellate Tribunal), and the pendency of IA (IBC) No. 1501 of 2025, are wholly extraneous to and beyond the scope of the present application under Section 27 of the Code, which is confined solely to the issue of replacement of the Resolution Professional, and it is respectfully submitted that all CIRP costs, as and when finally determined and payable, shall be dealt with strictly in accordance with law and



subject to the outcome of the pending proceedings, and therefore the said averments cannot be relied upon to oppose or stall the replacement process.

3.11 The averments relating to non-payment of fees are wholly irrelevant to the present proceedings under Section 27 of the Code, and without prejudice it is submitted that any claim towards fees or expenses of the Resolution Professional shall be considered and dealt with strictly in accordance with the provisions of the Code and applicable regulations, and subject to ratification and approval by the Committee of Creditors, and the same cannot confer any right upon the Applicant to continue in office or to resist replacement duly resolved by the Committee of Creditors.

3.12 The request made by the Applicant during the 55<sup>th</sup> meeting of the Committee of Creditors has no bearing whatsoever on the legality or validity of the replacement resolved under Section 27 of the Code, and it is reiterated that any claim towards fees or dues of the Resolution Professional, if admissible, shall be considered independently and in accordance with law, and cannot be made a condition precedent for or linked to the replacement process.

3.13 The above averments demonstrates that the present application is gross abuse of process and this Tribunal may be pleased to dismiss the Application for Impleadment as not maintainable and proceed to consider the application for replacement of the Resolution



Professional strictly in accordance with Section 27 of the Insolvency and Bankruptcy Code, 2016.

**4. The rejoinder filed by the Applicant, *inter-alia* stating that:**

4.1 The Applicant has already vide emails dated 3<sup>rd</sup> February, 2025 and 24<sup>th</sup> April, 2025 and in the rejoinder filed in IA 574 of 2025 and in IA 1501 of 2025 before this Tribunal has intimated its openness to the proposal from one of the CoC members namely Alchemist ARC for conducting of an independent audit on the recommendation of the majority of CoC members and has assured to provide complete cooperation in this regard. In absence of any discussion on cost audit being initiated by the CoC members (including Alchemist ARC), the Applicant in fact suo-moto initiated discussions during the 49<sup>th</sup> Meeting of CoC dated 9<sup>th</sup> July, 2025, during which Alchemist ARC explicitly submitted that it shall obtain quotes which can be discussed during the ensuing meeting. The above referred emails and relevant extract of minutes are annexed as Annexure-1 of the rejoinder.

4.2 In *Rathi Graphic Technologies Limited v. Raj Kumar Rathi and others IA No. 31/2021 and IA No. 293/2020 in CP (IB) No. 325/ALD/2019*, Hon'ble NCLT Allahabad bench held that – “*Thus, on the basis of provisions of law governing the conduct of Resolution Professional and CoC (already in existence), BLRC report, 2015, code of conduct as applicable to RP and as proposed for CoC, the judicial approach as regards the applicability of principles of natural justice including the view expressed by Hon'ble Supreme*



*Court in the case of Swiss Ribbons, it can safely be concluded that principles of natural justice have been made part of IBC, 2016 and CIRP Regulations, 2016.”*

- 4.3 The Applicant also submitted para-wise reply to the counter filed by the Respondent, stating that, the Hon’ble Supreme Court in *Union of India v. Tulsiram Patel 1985 AIR 1416*, categorically held that the rule of *audi alteram partem* is a fundamental facet of fair procedure and can be excluded only by express statutory provision or unavoidable legislative necessity. Silence of a statute does not amount to exclusion of natural justice. Similarly, in *Maneka Gandhi v. Union of India AIR 597*, the Hon’ble Supreme Court has held that any procedure which results in civil consequences must be just, fair and reasonable, and that arbitrariness and denial of fair hearing would be violative of Article 14 of the Constitution.
- 4.4 The other Hon’ble Supreme Court judgements like – *A K Kraipak v. Union of India AIR 1970*, *Union of India and Others v. Sanjay Jethi and Another reported in (2013) 16 SCC 116*, *Canara Bank v. K. Awasthy 2005 (6) SCC 321*, etc. that hold that – “Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.



- 4.5 The present application has been filed solely to respond to allegations forming part of the replacement application and to ensure that no adverse findings are recorded without affording the Applicant an opportunity of being heard. The factum of the resolution passed in the 55<sup>th</sup> CoC meeting is a matter of record. However, the Respondent has conveniently omitted that the Applicant in the said meeting expressly requested clearance of long-pending dues, and no finding of misconduct or dereliction was recorded in the meeting.
- 4.6 The reliance placed by the Respondent on *Sumat Kumar Gupta v. Committee of Creditors of Vallabh Textiles Company Ltd. Company Appeal (AT) (Insolvency) No. 1037 of 2022* and *Venus India Asset Finance Pvt. Ltd. v. Suresh Kumar Jain and Venus India Asset Finance Pvt. Ltd. v. Suresh Kumar Jain, Resolution Professional of MK Overseas Pvt. Ltd. Company Appeal (AT) (Ins.) No. 1395 of 2022 & I.A.No. 4539 of 2022* is wholly misconceived and inapplicable to the facts of the present case. Further, the Applicant herein has not been paid his approved professional fees along with other professionals engaged for more than one year, and multiple applications relating to CIRP costs funding, abstention from voting and payment of dues are admittedly pending adjudication before this Tribunal and the Hon'ble Appellate Tribunal. These material distinguishing features were completely absent in the judgment referred by the Respondents, which was rendered in a non-adversarial factual matrix, cannot be mechanically applied to deny impleadment and hearing to the Applicant in a case where contested allegations and substantial financial prejudice are squarely involved.



- 4.7 The reliance placed by the Respondent on *Swiss Ribbons (P) Ltd. v. Union of India (2019) 4 SCC 17*, is wholly misconceived and the ratio sought to be drawn therefrom is erroneous and unsustainable in law. The attempt of the Respondent to mechanically transpose observations from *Swiss Ribbons* to justify exclusion of *audi alteram partem* in an adversarial factual matrix is legally impermissible and deserves to be rejected.
- 4.8 The reliance placed by the Respondent on *LEEL Electricals Ltd. Through State Bank of India v. Leel Electricals Ltd. Through its Interim Resolution Professional, Arvind Mittal Company Appeal (AT) (Insolvency) No. 1100 of 2020*, is wholly misplaced and proceeds on an incorrect reading of the judgment. The judgment does not examine, interpret or decide the question whether an incumbent Resolution Professional is entitled to be impleaded or heard in a replacement application under Section 27, nor does it deal with a situation where false allegations touching upon conduct are pleaded against the RP. Further, in *LEEL Electricals*, there were no pending disputes regarding unpaid professional fees or CIRP costs. Accordingly, *LEEL Electricals* cannot be relied upon to deny impleadment or hearing to the Applicant in the present factual matrix.
- 4.9 It is further denied that the Applicant failed to initiate cost audit or allowed costs to escalate. The cost details, break-ups and supporting documents were consistently placed before the CoC for approval and ratification, and that the Applicant had expressly conveyed openness



to an independent audit, subject to a majority decision of the CoC and compliance with the applicable regulations.

4.10 The Applicant's submission regarding clearance of long-pending, approved professional fees was made only to safeguard his legitimate statutory entitlement and cannot be portrayed as an attempt to condition or obstruct replacement. Once replacement is sought during an ongoing CIRP, the issue of unpaid dues of the incumbent Resolution Professional necessarily arises for consideration, as replacement without addressing such dues would result in manifest financial prejudice.

4.11 The Respondent itself has stated that "in any event all matters relating to CIRP costs, audit or ratification are subject to the decision of the CoC", the factual reality related to the allegation of audit not being conducted are mentioned in the Preliminary Submission. The Applicant prayed to allow the present application and to implead the Applicant as Respondent in IA. No. 2000 of 2025 filed for seeking replacement of the Resolution Professional.

5. Therefore, the point that arises for our consideration is:

**Whether the Applicant is entitled to implead as Respondent in IA.No.2000 of 2025 in CP(IB).No.299/7/HDB/2018 and participate in the proceedings?**

6. We have heard Mr. Y.Suryanarayana, Learned Counsel for the Applicant, Ms. Varsha Banerjee, Learned Counsel for the Respondent. Perused the record and case laws.



7. Without going into the allegations and counter allegations raised by the parties, because it may harm the Applicant's present and future appointment, it is well settled law that the IBC does not postulate that this Authority should sit over the decision take by the CoC. Under the IBC, fetters have been placed on the power of interference by this Adjudicating Authority, so far as the decision of CoC taken with requisite majority is concerned.
8. It is equally settled that the Adjudicating Authority, while dealing with an application arising out of a decision taken under Section 27 of the Code, is not required to examine the reasons for replacement or the conduct of the Resolution Professional, so long as the statutory requirements relating to voting share and consent of the proposed Resolution Professional are fulfilled. Section 27 also does not contemplate the need to access the preference of the Resolution Professional for his replacement.
9. In view of the above legal position, this Tribunal finds that the Applicant has no enforceable right to seek impleadment in the application filed for replacement of the Resolution Professional, nor can this Tribunal sit in appeal over the commercial wisdom of the CoC in exercising its powers under Section 27 of the Code.
10. Accordingly, the present Application is dismissed.

**Sd/-**  
**SANJAY PURI**  
**MEMBER (TECHNICAL)**

*Sridher*

**Sd/-**  
**RAJEEV BHARDWAJ**  
**MEMBER (JUDICIAL)**