

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH COURT-III**



**I. A. No. 632/2021**

**In**

**C. P. No. 27/IB/C-III/2019**

*Under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016.*

**Mr. Darshan Majmudar**

*Residing at:*

501, Santoor Residency, Nehru Road, Vile Parle (East), Mumbai – 400057

**... Applicant**

Vs

**Mr. Abhay Narayan Manudhane**

***Resolution Professional of Housing Development & Infrastructure Development***

HDIL Towers, Anant Kanekar Marg, Bandra (East), Mumbai - 400050

**... Respondent**

*In the matter of*

**Bank of India**

*... Financial Creditor*

Vs

**Housing Development and Infrastructure Limited**

*... Corporate Debtor*

**Order pronounced on: 03.01.2025**

**Coram:**

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati, Member (Technical)

**Appearances:**

For the Applicant : Adv. Shyam Kapadia, Adv. Bhanu Chopra a/w Adv. Trupti Shetty & Adv. Danovy Creado

For the RP : Adv. Shadab S. Jan a/w. Adv. Prangana Barua a/w. Adv. Mufaddal Paperwala i/b. Adv. Crawford Bayley & Co.

**Per: Sh. Charanjeet Singh Gulati, Member (Technical)**

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1. This Interlocutory Application (IA) is filed by Mr. Darshan Majmudar (**Applicant**) under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**I&B Code**) read with Rule 11 of National Company Law Tribunal (NCLT) Rules, 2016 seeking the following reliefs:
  - a. *direct the RP to forthwith intimate the Registrar of Companies, Ministry of Corporate Affairs and Stock Exchanges that the Applicant has resigned from the Corporate Debtor and take steps required to remove the name of the Applicant as the CFO, CS and Compliance Officer of the Corporate Debtor and the email id and/or any other details of the Applicant that may be reflecting in the official records;*
  - b. *direct the RP to forthwith make the necessary changes in the official website of the Corporate Debtor by deleting the name and the details of the Applicant as the CFO, CS and Compliance Officer of the Corporate Debtor;*
  - c. *direct the RP to take the custody of the Car i.e. Honda City bearing Registration No. MH-04-EQ-6203;*
  - d. *direct the RP to make payment of salary due from 20<sup>th</sup> August, 2019 upto 7<sup>th</sup> July, 2020 (after deducting Ad hoc amount of Rs.2,28,000/- paid by RP) along with interest thereon;*
  - e. *direct the RP to deposit the TDS of Rs.17,79,3501- for the year F.Y. 2018-19 with the Income Tax authorities and hand over the relevant TDS Certificates to this Applicant;*

- f. direct the RP to make payment of PF, gratuity and other dues to this Applicant and to intimate the PF office accordingly;*
- g. ad interim reliefs in terms of prayers (a) to (f) above;*
- h. issue such other directions that this Hon'ble Tribunal may deem fit and necessary.*


2. **Facts and submissions emerging from the Application:**

- 2.1 Mr. Darshan Majmudar (**Applicant**) was appointed as the Company Secretary of Housing and Development Infrastructure Limited (**HDIL/Corporate Debtor**) on 02.11.2007 and thereafter, on 14.02.2014, the Applicant was appointed as the Chief Financial Officer of the Corporate Debtor in a strictly personal capacity.
- 2.2 The Corporate Insolvency Resolution Process (**CIRP**) was initiated against the Corporate Debtor vide this Tribunal's Order dated 20.08.2019 in CP/27/2019 and Mr. Abhay Narayan Manudhane (**Respondent 1**) was appointed as the Interim Resolution Professional (**IRP**) and was subsequently confirmed as the Resolution Professional (**RP**).
- 2.3 The RP took charge of the affairs of the Corporate Debtor and was responsible for the day to day functioning thereof. The Applicant rendered his full co-operation and assistance to the RP to ensure that the Corporate Debtor remains a going concern. However, the RP did not pay remuneration to the Applicant and other employees of the Corporate Debtor during the period of the CIRP. At times, some miniscule payments of around Rs. 2500 - Rs. 5000 were made by the RP Ad hoc.
- 2.4 Consequently, from September 2019 onwards, there was a mass exodus of employees from the Corporate Debtor. Several people including the Key Managerial Personnel i.e. Mr. Venkat Iyengar, Mr. Bhavesh Shah and Mr. Makarand Todankar resigned from the Corporate Debtor. Pertinently, the RP promptly accepted their resignations without seeking any approval of Committee of Creditors (CoC). In the Accounts




Department, out of 18 staff members, 16 members resigned. Except for two staff members i.e. Mr. Sachin Raut who looked after petty cash and Mr. Vithal Chaturvedi, all the relevant staff were allowed to leave the Corporate Debtor.

- 2.5 The Applicant repeatedly requested the RP to hire some staff in the Accounts Department, especially because the Applicant was not conversant with the SAP accounting system, however, the RP neglected to take any measures to this effect. Thereafter, in November 2019, the RP instructed the Applicant to make a Note comprising the details of the accounts personnel who had resigned and the number of employees required to be hired to ensure that the work is ongoing. Accordingly, on 06.11.2019, the Applicant made a Note. The same was checked by RP in the presence of this Applicant and the RP made his handwritten observations on the Note. The RP himself acknowledged the need to appoint new staff and gave assurances to hire staff, however took no steps in furtherance thereof.
- 2.6 The Applicant is the sole bread winner of his family and depends on his professional income to support them. The Applicant was forced to operate with skeletal/no support in the accounts team and without any payment of salary. In spite of being well aware of the need for staff or support, the RP did not take any measures to this end.
- 2.7 On 22.03.2020, the Government of India imposed a nationwide lockdown on account of the prevailing COVID-19 pandemic. This lockdown was extended from time to time. As a result, the office of the Corporate Debtor was shut. On 28.05.2020, the Applicant fell ill and got fever and out of abundant caution, the Applicant was advised to home-quarantine. On 13.06.2020, the Applicant tested positive for COVID-19 and was once again tested positive on 04.07.2020.
- 2.8 Considering the Applicant's deteriorating health conditions and the fact that the Applicant did not have any support staff in the accounts



department and further that the Applicant had not been paid any remuneration for nearly nine months, the Applicant tendered his resignation to the RP on 07.07.2020. While doing so, the Applicant assured the RP that he would provide any and all co-operation as would be required of him in matters relating to or associated during his tenure.

- 2.9 The Applicant spoke to the RP immediately on tendering the resignation and stated that Corporate Debtor had provided him a Laptop and a Honda City Car bearing Registration No. MH-04-EQ-6203 (Car), which was required to be returned to the Corporate Debtor. The RP acknowledged this fact and informed the Applicant that the modalities for its return could be worked out. The RP advised the Applicant to mention in his resignation letter that he was the CFO and a CS in HDIL. The Applicant, accordingly, made changes in the resignation letter as advised by the RP and re-submitted the resignation letter. Thereupon, the RP informed the Stock Exchange that the Applicant has tendered his resignation. This was also published by the press.
- 2.10 However, the RP vide his email dated 09.07.2020 addressed to the Applicant stated that the Applicant's resignation would be placed before the COC in the ensuing meeting for necessary directions as the Applicant was a Key Managerial Personnel (KMP) of the Corporate Debtor. The RP alleged that, in the meantime, the Applicant would have to continue as the CFO & CS of the Corporate Debtor.
- 2.11 Pertinently, no approval of the COC was sought by the RP when the other KMPs i.e. Mr. Venkat Iyengar, Mr. Bhavesh Shah and Mr. Makarand Todankar had resigned. The Applicant submits that there was no question of RP seeking approval of his resignation from COC. The Code contemplates seeking approval of CoC only in the situation when RP seeks to change the KMP and not when the resignation is tendered voluntarily. In the circumstances, no approval of this Applicant's voluntary resignation was required to be obtained from COC. In any event and even otherwise, no citizen of this country can be forced to work



against his wishes and that too without a salary on which he is dependant to support his family. Neither does the IBC mandate such an obligation nor does the Constitution of India permit it.

- 2.12 Subsequently, vide email dated 25.07.2020, the RP informed the Applicant that his resignation was placed before the COC at the meeting held on 20.07.2020. The RP contended that the COC had purportedly rejected the Applicant's resignation and alleged that the Applicant continues as CFO & CS of HDIL.
- 2.13 Despite having resigned from the employment of the Corporate Debtor, the RP continued to wrongly insist that the Applicant was the CFO & CS of the Corporate Debtor. The Applicant has denied the allegation of the RP that the Applicant continues to be an employee of the Corporate Debtor. Several correspondences were exchanged between the Applicant and the RP in this regard.
- 2.14 On 14.07.2020, the Applicant addressed an email to the RP wherein the Applicant once again pointed out to the RP that the Corporate Debtor had provided a Laptop and a Car to him, which had to be returned on his resignation. Since the Applicant was quarantined, he would be unable to personally hand over the same and requested the RP to depute somebody to collect the Laptop and the Car. Despite repeated requests, the RP did not depute a representative to collect the Laptop and the Car.
- 2.15 Instead, the RP filed Interlocutory Application No. 1516 of 2020 before this Tribunal against the Applicant and one Mr. Makrand Todankar wherein the RP alleged that the Applicant has allegedly neither handed over charge nor handed over properties of the Corporate Debtor, in his possession. To the knowledge of the RP, the Applicant had provided all the information and documents that he could possibly give and for the properties i.e. the Laptop and the Car provided by the Corporate Debtor to the Applicant, the RP had not deputed his representative to collect the Laptop and the Car, despite the Applicant requesting the RP.




2.16 On 18.09.2020, the Applicant arranged to send the Laptop to a member of the IT team, Mr. Naveen Thomas, who was authorized to accept the same. However, the Car is lying unused since the lockdown imposed on 22 March, 2020. The Applicant has repeatedly sought instructions from the RP on how to return this Car and is now constrained to file the present Application for this purpose.

2.17 By another email dated 20.09.2020, the Applicant recorded the aforesaid facts and enquired with the RP as regards the return the Car and its key. However, the RP neither replied to the above email nor deputed any person for collecting the Car.

2.18 It is respectfully submitted that RP has not paid salary to the Applicant from August 2019 i.e. for almost 9 months. Despite the resignation, the RP continues to wrongly insist that the Applicant continues to be an employee of the Corporate Debtor and that the Applicant is the CFO, CS and KMP of the Corporate Debtor on the one hand and, on the other hand, has not released any salary to him for either this or the earlier period.

2.19 The Applicant's name and details continue to be reflected on the official website of the Corporate Debtor and websites of the Registrar of Companies, Ministry of Corporate Affairs and Stock Exchange. On the official website of the Corporate Debtor and Stock Exchange, the Applicant's name is reflected as the CFO, CS and the Compliance Officer of the Corporate Debtor. On the website of Ministry of Corporate affairs, the Applicant's name is reflected as a Signatory of the Corporate Debtor. The Applicant's erstwhile email id (clarshan.majmudar@hdil.in) when the Applicant was an employee of the Corporate Debtor, is still reflecting on the website of the Ministry of Corporate Affairs, as the registered email id of the Corporate Debtor. Thus, the RP is also representing to the public at large that any email sent to the Applicant erstwhile email id would constitute a valid service to the Corporate Debtor. The Applicant is not



accessing the email id. The Applicant is not aware if the RP has been accessing the said email id. All this is clearly misleading the public at large regarding the factual position and it is also seriously prejudicing the Applicant's ability to professionally progress when all potential employers believe that the Applicant is still employed with the Corporate Debtor on the basis of representations made by the RP in the public domain.

2.20 The Applicant vide his email dated 08.01.2021 pointed out to the RP that although he has ceased to be an employee of the Corporate Debtor from 07.07.2020, the RP has not yet removed the Applicant's name and details from the Website of the Corporate Debtor and the ROC and requested the RP to forthwith remove the Applicant's name from the website of the Corporate Debtor and to notify the ROC regarding the Applicant's resignation. The RP vide his email dated 08.01.2021 once again sought to contend that the Applicant allegedly continued to hold office as the CFO & CS of the Corporate Debtor and hence, the Applicant's name appears on the ROC and website of the Corporate Debtor.

2.21 It is submitted that, under no circumstances and, more so, in the facts and circumstances of the present proceedings, can the Applicant be compelled to continue in employment of the Corporate Debtor and/or to keep the possession of the aforesaid Car.

2.22 The Applicant further submits that the Applicant has rendered his professional services to the Corporate Debtor for a period of almost 9 months, without receiving his remuneration from the RP. The Applicant submits that the Applicant is entitled to receive his legitimate dues of his salary payable to the Applicant from the period 20.08.2019 upto his resignation on 07.07.2020 (after deducting Ad hoc amount of Rs. 2,28,000/- paid by RP) along with interest and PF, gratuity and other dues. Further, the Applicant had submitted expense vouchers amounting to Rs. 38,000/- seeking reimbursement of the same which is yet to be reimbursed to the Applicant.






- 2.23 It is further submitted that the RP has failed and neglected to deposit the TDS of Rs. 17,79,3501- for the year F.Y. 2018-19 for which the Applicant has received a demand from Income Tax authorities. In the event the RP has still not deposited the same, the RP may be directed to pay the Sum of Rs. 17,79,3501- to the Income Tax Authorities and handover the TDS Certificates to the Applicant.

**Reply of Resolution Professional**

3. It is to be noted that the Applicant, Mr. Darshan Majmudar, had not impleaded the Resolution Professional of the Corporate Debtor as the Respondent in this Application. Subsequently, during the hearing on 15.01.2024, the Applicant undertook to file the Memo of Parties making the RP as the Respondent in the present application. Accordingly, the Applicant filed an affidavit dated 29.02.2024 annexing the revised Memo of Parties which has been taken on record.
4. The RP filed his reply and made the following submissions:

***Resignation of the Applicant***

- i. It is submitted that after the declaration of lockdown, the Applicant stopped attending office and informed that he was unwell due to Covid-19. Thereafter, the Applicant addressed an email dated 08.07.2020 to the RP tendering his resignation from the post of Chief Financial Officer and Company Secretary of the Corporate Debtor. However, considering that the Applicant was a KMP, the RP placed the resignation of the Applicant before the CoC during the 6<sup>th</sup> CoC Meeting held on 20.07.2020.
- ii. During the 6<sup>th</sup> CoC meeting, considering the fact that there was no officer in the Corporate Debtor and the Applicant had exclusively handled the various statutory requirements, the CoC decided not to accept the resignation of the Applicant.

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- iii. Thereafter, the RP sent an email dated 25.07.2020 informing the Applicant, of the decision taken by the CoC. Thus, the Applicant has merely acted as per the decision taken by the CoC. However, despite that, the Applicant has not challenged the said CoC's decision, and thus, the same has attained finality.
  - iv. The Applicant has alleged that other officers had resigned during CIRP without any approval of their resignations from the CoC. In this regard, it is submitted that none of the personnel qualify as KMPs of the Corporate Debtor.

***Payment of Salary and other allowances***

- v. As regards the salary for Applicant, it is submitted that the Applicant, being in the management of the Corporate Debtor, cannot claim any right to payment of salary during the CIRP period. Moreover, on account of siphoning of funds by the promoters of the Corporate Debtor, the RP did not have access to sufficient funds for payment of salaries of employees as well as service providers.
- vi. Even after floating various agenda discussion for contribution of interim finance, only a few members of CoC have partly contributed towards interim finance. Thus, the RP has not been in a position to make payment towards dues of employees, security, statutory dues to various government authorities, etc. that have arisen during CIRP.
- vii. From the insolvency commencement date i.e. 20.08.2019 till January 2020, the RP has paid Rs. 5,38,600/- to the Applicant and not Rs. 2,28,000/- as alleged by the Applicant. Further, no amounts were paid for the period in which the Applicant did not attend the office of the Corporate Debtor. It is submitted that any balance amount payable to the Applicant towards salary from September 2019 till March 2020 would form part of the CIRP costs

and would be paid to the Applicant at the end of CIRP subject to ratification by the CoC. Therefore, the relief sought by the Applicant is premature at this stage.

- viii. As regards the payment of provident fund and gratuity, it is submitted that since the Applicant is till date under the employment of the Corporate Debtor, no claims towards provident fund or gratuity can arise.


***Deposit of TDS***

- ix. With respect to deposit of TDS amount of Rs. 17,79,350/-, it is submitted that Applicant is not entitled to seek such a relief under the present application as the claim towards deposit of TDS pertains to income tax dues prior to CIRP for which a claim ought to have been filed by the Income Tax Department. In the present case, neither the Deputy Commissioner of Income Tax (TDS) 1(2) has filed a claim for non-payment of TDS for F.Y. 2018-19 nor has the Applicant submitted any claim for an amount of Rs. 17,79,350/- towards TDS for F.Y. 2018-19.

***IA/1516/2020***

- x. It is further submitted that the Applicant had tendered his resignation without handing over the charge to anyone in the organisation or intimating to the HR of the Corporate Debtor. Subsequent correspondences were exchanged between the Applicant and RP but the Applicant only gave evasive responses that despite being CFO and CS of the Corporate Debtor, he has not been provided with any information or documents. Aggrieved by this, the RP filed IA/1516/2020 against the Applicant under section 19 of the Code for non-cooperation and for not providing information and documents in accordance with the Code.

**IA/1176/2021**


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- xi. Pursuant to initiation of CIRP against the Corporate Debtor, the RP conducted a forensic audit of the Corporate Debtor and identified certain undervalued and fraudulent transactions carried out by the Applicant herein in connivance with the promoters of the Corporate Debtor with an intent of de-frauding the creditors.
- xii. Upon perusing the books of accounts and the forensic audit report, the RP noticed that an amount of Rs. 13,52,12,00,000/- was sanctioned disbursed by 8 different banks between 01.04.2011 to 31.03.2019. The sanctioned amount was primarily disbursed for the purposes of construction and development of various Slum Rehabilitation Authority buildings and projects. However, a substantial amount was utilised for purposes other than the sanction letters issued by the 8 banks.
- xiii. In view thereof, the RP filed application no. 1176/2021 under section 25(2)(j) read with sections 43, 54 and 66 of the Code against the erstwhile promoters of the Corporate Debtor, the Applicant and several other related parties. The RP is also in the process of filing an application against several unexplained back-dated expenses and huge amounts of money missing from the cash book of the Corporate Debtor. It is submitted that the Applicant, being one of KMPs, had a substantial role in the management and affairs of the Corporate Debtor.

***On Take-over of Custody of Car***

- xiv. It is submitted that the RP has taken custody of the car bearing registration no. MH-04-EQ-6203 on 19.03.2021. Thus, prayer clause 'c' has become infructuous.

**Additional Affidavit filed by RP**

5. It is to be noted that during the hearing held on 05.04.2024, direction was given to the RP to again discuss the aspect of the Applicant's



resignation with the CoC. Accordingly, the 36<sup>th</sup> CoC meeting was held on 29.04.2024 wherein majority of CoC decided that the Applicant may be relieved only after he accounts for the entire cash missing as per the books of accounts of the Corporate Debtor.

6. The said agenda was out for e-voting. However, the voting was not concluded and the meeting got adjourned. During the adjourned 36<sup>th</sup> CoC meeting held on 09.05.2024, the CoC in majority once again decided not to relieve the Applicant from his services.
7. The RP filed an additional affidavit dated 08.08.2024 placing on record the following documents in compliance with the directions of this Tribunal vide order dated 18.07.2024:
  - i. Copy of minutes of the 36<sup>th</sup> CoC meeting held on 29.04.2024.
  - ii. Copy of minutes of second adjourned 36<sup>th</sup> CoC meeting held on 09.05.2024.

**Reply by Applicant to Additional Affidavit of RP**

8. The RP has wrongly conveyed to the CoC that under Section 28(1)(j) of the IB Code, CoC's approval would be required for accepting resignation of the Applicant. Section 28(1)(j) only mandates CoC's approval if the Resolution Professional is taking an action to change the management of the Corporate Debtor. Voluntary resignation by the Applicant cannot be treated as an action being taken by the Resolution Professional and thus S. 28(1)(j) of the IB Code will have no application in the matter. Further, the issue regarding interpretation of Section 28(1)(j) of the IB Code is pending before the Hon'ble Tribunal in the present Application. This was also not informed to the CoC.
9. The RP has not informed the CoC that prior to the Applicant resigning from Corporate Debtor, 3 other KMPs had resigned after the Insolvency Commencement Date. These were Mr. Makarand Todankar (Senior Vice President II Banking), Mr. Venkat Iyengar (Senior Vice President II Procurement), and Mr. Bhavesh Shah (Vice President Information

Technology). Their resignations were not placed before the CoC and no approval under Section 28(1)(j) was sought.

10. The RP has also alleged to the CoC that several investigating agencies are investigating the affairs of HDIL and that in the absence of information from the Applicant, the Respondent is handicapped in such cases. However, this is not true. The Applicant has given all information available with him to the Respondent, as well as to the respective investigation agencies. The Applicant is not working at and/or attending the offices of HDIL since 7 July 2020, and the CIRP is still ongoing without any aid or assistance from the Applicant.

### **ANALYSIS AND FINDINGS**

11. Heard Ld. Counsel for the parties and perused the records.
12. Going by the factual matrix, it is observed that Mr. Darshan Majmudar, the Applicant herein, was appointed as the Company Secretary of the Corporate Debtor on 02.11.2007 and subsequently was appointed as the Chief Financial Officer (CFO) of the Corporate Debtor on 14.02.2014.
13. Thereafter, the Corporate Debtor was admitted to Corporate Insolvency Resolution Process (CIRP) on 20.08.2019 and Mr. Abhay Narayan Manudhane (Respondent) was appointed as the Resolution Professional (RP) of the Corporate Debtor who had taken over the management and affairs of the Corporate Debtor.
14. It is submitted by the Applicant that pursuant to the prevalence of Covid-19 pandemic and nationwide lockdown in India in March 2020, the Applicant had contracted Covid-19 and due to his deteriorating health conditions, the Applicant had tendered his resignation on 07.07.2020. In response, the RP issued an email dated 09.07.2020 stating that his resignation would be placed before the CoC for necessary directions since the Applicant was a Key Managerial Personnel (KMP) of the Corporate Debtor. In the 6<sup>th</sup> CoC meeting held on 20.07.2020, the CoC rejected the

resignation of the Applicant. Aggrieved by the same, the Applicant filed the present application.




15. Objecting to the application, it is contended by the RP that the RP had acted in accordance with the decision of CoC in the 6<sup>th</sup> CoC meeting which has attained finality since the same has not been challenged by the Applicant. In this regard, we observe that mere absence of any challenge against the CoC decision in the 6<sup>th</sup> CoC meeting does not preclude the Applicant from approaching this Tribunal for seeking necessary directions.

16. During the course of hearing on 05.04.2024, this Tribunal directed the RP to once again discuss on the Applicant's resignation with the CoC. The relevant extract of the order dated 05.04.2024 is reproduced below:

*“3. Ld. Counsel for the Applicant submits that no investigation against the Applicant is going on. He further submits that the Applicant is not getting employment anywhere else because of his name is reflected as the KMP in the official website of the Corporate Debtor and the Applicant is not getting salary. The applicant has stopped coming office for the last 4 years. Ld. Counsel for the RP vehemently opposes the present application.*

*4. In view of the above facts and circumstances of the present case, we deem it fit that the resignation of the Applicant is once again put before the COC in view of the latest circumstances without prejudice to the interpretation of Section 28 (j) of the Code and take a decision within two weeks from the date of uploading of the order. List on 08.05.2024.”*

17. Accordingly, in the 36<sup>th</sup> CoC meeting held on 29.04.2024, the resignation of the Applicant was discussed as one of the agendas. The relevant discussion in the said meeting is reproduced below:




*“On scrutiny of Books of Account, the RP sought details of an amount of Rs. 96,40,620.47/- when RP took charge which was the cash balance in the books of CD. However, till date, no satisfactory response is received from Mr. Majumdar nor Mr. Majumdar or any officer of the CD reinstated the Cash balance. In view of the NCLT direction, CoC is once again required to decide whether to relieve Mr. Majumdar.*

*Mr. Manoj Agarwal (Representative of Homebuyers), Representative of Suraksha ARC and Representative of Unity Bank stated that Mr. Darshan Majmudar, Chief Financial Officer ('CFO') and Company Secretary ('CS'), may be relieved only after he accounts for the entire cash so missing as per the books of accounts.”*

18. It is submitted that in the adjourned 36th CoC meeting which was held on 09.05.2024, the CoC, by majority voting, decided to not relieve the Applicant from his services.
19. The RP submits that there are no KMPs in the Corporate Debtor and that the Applicant has not handed over his position to some other officer before submitting resignation. However, as per the Code, it is the RP's duty to appoint such officers and employees to carry out the operations of the Corporate Debtor and the Applicant has no role in the same. Further, we also note that the Applicant had tendered his resignation on 07.07.2020 and since then, the RP took no effective assistance from the Applicant for running the Corporate Debtor as a going concern. Thus, relieving the Applicant would have no impact on the business of the Corporate Debtor.
20. As regards the approval of CoC under section 28 of the Code, we deem it appropriate to first refer to the judgment of Hon'ble Supreme Court in **Moti Ram vs. Param Dev and Anr [(1993) AIR SC 1662]** wherein it was observed as follows:





*“As pointed out by this court, ‘resignation’ means the spontaneous relinquishment of one’s own right and in relation to an office, it connotes the act of giving up or relinquishing the office. It has been held that in the general juristic sense, in order to constitute a complete and operative resignation there must be the intention to give up or relinquish the office and the concomitant act of its relinquishment. It has also been observed that the act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the conditions governing it. (See: Union of India v. Shri Gopal Chandra Misra & Ors., [1978] 3 SCR 12 at p. 21). If the act of relinquishment is of unilateral character, it comes into effect when such act indicating the intention to relinquish the office is communicated to the competent authority. The authority to whom the act of relinquishment is communicated is not required to take any action and the relinquishment takes effect from the date of such communication where the resignation is intended to operate in prasenti. A resignation may also be prospective to be operative from a future date and in that event, it would take effect from the date indicated therein and not from the date of communication. In cases where the act of relinquishment is of a bilateral character, the communication of the intention to relinquish, by itself, would not be sufficient to result in relinquishment of the office and some action is required to be taken on such communication of the intention to relinquish, e.g., acceptance of the said request to relinquish the office, and in such a case the relinquishment does not become effective or operative till such action is taken. As to whether the act of relinquishment of an office is unilateral or’ bilateral in character would depend upon the nature of the office and conditions governing it. ... Similarly, in company law, a director of a company is entitled to relinquish his office at any time he pleases by proper notice to the company and*

*acceptance of the resignation is not required. [See: Glossop v. Glossop, (1907) 2 Ch 370, Halsbury's Law of England, 4th Ed., Vol. 7, p. 316, para 536]."*

21. The above judgment of Hon'ble Supreme Court clearly establishes the fact that unless the rules and/or regulations governing a Company warrants the approval of resignation of an officer by the Board, the officer's resignation takes effect from the date of communication of such resignation.
22. In the present case, the Corporate Debtor has been admitted to CIRP vide order dated 20.08.2019 consequent to which the Board of the Corporate Debtor got suspended and the management and affairs of the Corporate Debtor has been taken over by the Resolution Professional. Sections 17, 18, 20 and 25 of the I&B Code empowers the RP to carry out certain duties and functions independently for the purpose of running the Corporate Debtor and also for carrying out CIRP-related activities. However, section 28 mandates the approval of CoC for certain actions to be taken by the RP.
23. It is pertinent here to refer to section 28 of the Code that requires the RP to seek approval of CoC for taking certain actions. Section 28 of the Code is reproduced below:

*"(1) Notwithstanding anything contained in any other law for the time being in force, the resolution professional, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors namely: —*

*(a) raise any interim finance in excess of the amount as may be decided by the committee of creditors in their meeting;*

*(b) create any security interest over the assets of the corporate debtor;*

*(c) change the capital structure of the corporate debtor, including by way of issuance of additional securities, creating a new*

*class of securities or buying back or redemption of issued securities in case the corporate debtor is a company;*

*(d) record any change in the ownership interest of the corporate debtor;*

*(e) give instructions to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as may be decided by the committee of creditors in their meeting;*

*(f) undertake any related party transaction;*

*(g) amend any constitutional documents of the corporate debtor;*

*(h) delegate its authority to any other person;*

*(i) dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties;*

***(j) make any change in the management of the corporate debtor or its subsidiary;***

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

*(l) make changes in the appointment or terms of contract of such personnel as specified by the committee of creditors; or*

*(m) make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor.*

*(2) The resolution professional shall convene a meeting of the committee of creditors and seek the vote of the creditors prior to taking any of the actions under sub-section (1).*

*(3) No action under sub-section (1) shall be approved by the committee of creditors unless approved by a vote of sixty-six per cent of the voting shares.*

*(4) Where any action under sub-section (1) is taken by the resolution professional without seeking the approval of the committee of creditors in the manner as required in this section, such action shall be void.*



*(5) The committee of creditors may report the actions of the resolution professional under sub-section (4) to the Board for taking necessary actions against him under this Code.”*

24. Clause 1(j) of section 28 of the Code requires approval of CoC by 66% votes for change in management of the Corporate Debtor or its subsidiary. The RP relies solely on clause 1(j) of section 28 of the Code to contend that since the Applicant is a KMP of the Corporate Debtor, his resignation amounts to change in the management of the Corporate Debtor which requires ratification of the CoC under section 28 of the Code. Accordingly, the CoC, in its 6<sup>th</sup> CoC meeting held on 20.07.2020, rejected the Applicant's resignation.
25. Per contra, it is submitted by the Applicant that the RP has wrongly relied upon section 28(1)(j) of the Code which only mandates CoC's approval if the Resolution Professional is taking an action to change the management of the Corporate Debtor. It is the case of the Applicant that voluntary resignation by the Applicant cannot be treated as an action being taken by RP.
26. On a plain reading of section 28(1)(j), it is clear that it is only when the RP intends to change the management of the Corporate Debtor, s/he is required to seek approval of the CoC under section 28 of the Code. However, in the present case, it is the Applicant who has voluntarily tendered his resignation owing to his deteriorating health due to Covid-19. Notably, the resignation was communicated to the RP vide email dated 07.07.2020 which is duly acknowledged by the RP.
27. We are of earnest view that every citizen has a right to be gainfully employed on full-time basis. Since the Applicant in the present case is not relieved by the RP, he is unable to apply for a full-time employment and further, he is also not receiving any salary from the Corporate Debtor. Thus, considering the facts and circumstances herein, we hold that as the Applicant has already tendered his resignation, he should be



allowed to get relieved from his services. In the present case, since the Applicant has given his voluntary resignation, the same has to be accepted by the RP and such resignation of the Applicant during CIRP would not require the approval of the CoC and section 28(1)(j) of the Code has no applicability in the present case.

28. In view thereof, the Applicant needs to be relieved from his services with effect from the date of his resignation i.e. 07.07.2020 and the necessary consequential actions shall be taken by the RP in accordance with law. Accordingly, prayers 'a' and 'b' are **granted**.
29. However, we would like to clarify that the relinquishment of the Applicant from the office does not amount to waiver of his liabilities. Having held a KMP post at the time when the Corporate Debtor had defaulted and was subsequently admitted to CIRP, the Applicant shall co-operate with the RP in carrying out the CIRP-related activities and all the applications filed against the Applicant shall be heard and decided on merits.
30. As regards prayer 'c' seeking direction to RP to take custody of the Car bearing registration no. MH-04-EQ-6203, it is seen from the averments of the RP that the custody of the said car has already been taken over by the RP on 19.03.2021. In view thereof, the said prayer 'c' has become **infructuous**.
31. The Applicant in prayers 'd' and 'f' has sought payment from the RP against his salary dues, provident fund and gratuity. In this regard, we note that the payment to the employees of the Corporate Debtor is paid in accordance with the Code either during CIRP period or after approval of resolution plan, or on completion of sale of Corporate Debtor under liquidation, as the case may be. In the present case, it is seen that the RP has already made certain payments to the Applicant for his services and has fairly conceded in his reply to this application that any amount that is remaining to be paid shall be treated as CIRP costs and will be paid to the Applicant. In view thereof, the reliefs sought in respect of

salaries or provident fund/gratuity at this stage is premature and hence, prayers 'd' and 'f' are **not granted**.



32. As regards prayer 'e' seeking TDS amount from the RP, we note that in the event of non-payment of TDS amount, the Income Tax Department is the appropriate authority to seek the payment of the same by filing a claim before the RP. However, as per the submission of RP no such claim has been filed by the Income Tax Department. In any case, if the Income Tax Department files a claim in this regard, the RP shall verify and admit the same in accordance with law. Thus, no specific direction is required from this Tribunal. Accordingly, prayer 'e' cannot be **not granted**.
33. Thus, considering the facts and the discussions made above, the present application is **partly allowed** and **disposed of** in above terms.

Sd/-

**Charanjeet Singh Gulati**  
**Member (Technical)**

Uma, LRA

Sd/-

**Ms. Lakshmi Gurung**  
**Member (Judicial)**