



visited his office on 28th & 29th of September 2022, and all information and documents, as well as clarifications sought by her were duly provided by the Applicant. The key of the registered office of the Corporate Debtor was handed over to her. Moreover, the official email ID was handed over to her and the password was changed by her. The handover of assets to the RP, Mrs. Vaishali Patrikar, is complete; the same is known to the Respondents. It is also pertinent that the Applicant had explained to the RP, Mrs. Vaishali Patrikar in detail, the computation of fee and expenses payable to him, and handed over the detailed calculation sheet and the ledger statement supporting the calculations along with tally data. She verified the same and expressed satisfaction with the explanations and clarifications provided by the Applicant, during the course of their meeting.

3.1 Pursuant to the passing of the order dated 22.09.2022 by this Tribunal the applicant firstly cooperated fully and handed over charge to the new RP appointed for the CD.

3.2 The applicant did not insist on the fees being paid against handover, as he neither wanted the CIRP to run into a road- block, nor a professional colleague to face any challenge due to delay in handover. It is also pertinent that at that stage the RP had assured the applicant that the fees would be paid as per the order of the NCLT. The Applicant then wrote an email on 30.09.2022 to the COC vide which he informed them about the compliance with the order dated 22.09.2022 and his handing over of charge to the new RP. He also requested that the Respondents pay his fee as per the undertaking rendered by them before this Tribunal.

3.3 On 22.09.2022, and as per the direction issued by the Bench which is recorded in the order passed on 22.09.2022. However, the Respondents have failed to do SO notwithstanding receipt of his email dated 30.09.2022, and his emails sent by way of reminder on

04.10.2022 and 06.10.2022. In fact, there is no response whatsoever by the Respondents to the emails issued by the Applicant, and neither have they paid his fee along with GST until date, which, as per the computation already provided by him to the Respondents aggregates to Rs. 80,91,968.71. It is pertinent and may be noted that the calculations were not disputed by the Respondents. The Applicant states that consequently he is in great difficulty, since till date his fee with the GST payable has not been released by the Respondents, and as such he has defaulted on the payment of GST.

3.4 It is the case of the Applicant that the Respondents have deliberately and intentionally failed to pay the Applicant's fee along with GST despite an undertaking rendered on their behalf by a Senior Counsel before this the Tribunal on 22.09.2022, and despite the direction issued by this Bench vide order passed on 22.09.2022.

3.5 The same tantamount to wilful breach of undertaking, as well as wilful disobedience of an order passed by this Tribunal. It is also astonishing to note that the RP who replaced the Applicant in this matter, i.e., Mrs. Vaishali Patrikar, her registration number being IBBI/IPA-002/IP- N00812/2019-2020/12566, does not seem to have placed the orders passed by this Tribunal before the COC for the release of the Applicant's fees. It is not as if the COC is unaware of the same, because the Applicant had in any case circulated the same to the COC under the cover of his email dated 30.09.2023. Nevertheless, the RP's conduct is unbecoming, and it may also be noted that for reasons best known to her, she has filed an application alleging fraud against the Applicant and seeking that his fee be withheld.

3.6 The Applicant affirms that the Respondents, by flagrantly disobeying the order dated 22.09.2022 passed by this Tribunal and

committing a breach of the undertaking made on their behalf before this Tribunal on 22.09.2022 regarding the Applicant's fee, have rendered themselves liable for the strictest punishment in law. It will be in the interest of justice, and to uphold the majesty of law, that exemplary punishment be imposed on and awarded to the Respondents.

4. Heard the Ld. Counsel for both sides and perused the records.
5. Learned Counsel for Respondent submitted that it is paid about Rs.80 lakhs as their contribution so far. Besides this the Respondents have offered to provide interest bearing interim finance but the rate of interest at which such interim finance was offered was not acceptable to the CoC. This Bench note that it is recorded in order dated 22.09.2022 that “*Ld. Sr. Counsel appearing on behalf of the CoC on instructions make statement across the bar that the fees of the erstwhile RP shall be paid as decided by the CoC. It is further clarified the erstwhile RP be paid Rs.2.25 lakh per month 01.10.2021 till end of September 2022 upon completion of handover of assets*”. Further, the order dated 03.11.2022 was passed to modify the order to clarify that the payment of Rs.2.25 lakhs per month includes payment of GST at the rate of 18% p.a.

5.1 Learned Counsel further pressed that the statement recorded in order dated 22.09.2022 was made on behalf of CoC and not on behalf of any specific member of CoC. He further submitted that the contribution towards CIRP expenses is required to be made in case the Corporate Debtor does not have resources available with it. However, in this case, the Corporate Debtor resolution is being carried out and the dues payable to the Applicant, subject to CoC approval, if any required, form part of CIRP cost which shall be paid by the

Corporate Debtor out of the resolution money. Accordingly, it cannot be said that there is wilful disobedience on the part of the contemnor.

5.2 We note that all disobedience of the order does not result into the contempt. It is only if such disobedience is wilful, such disobedience results into contempt of the order of the court. It is not in dispute that the Resolution Professional's fee forms part of CIRP cost and has to be paid in priority over all other claims from the proceeds of the resolution or liquidation. Accordingly, it cannot be said that non-contribution towards the pending dues of the applicant by CoC members is wilful in view of fact that those members seized of resources of Corporate Debtor are fully informed that such dues are stand paid.

5.3 Accordingly, we do not find that there is any wilful disobedience of order dated 22.09.2022. Hence, this Contempt Application 18/2023 is dismissed.

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1. Heard the Ld. Counsel for the parties and perused the records.
2. Reserved for orders.

Sd/-

**PRABHAT KUMAR**  
**MEMBER (TECHNICAL)**  
/NP/

Sd/-

**JUSTICE VIRENDRASINGH BISHT**  
**MEMBER (JUDICIAL)**