

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1799 of 2024 & I.A. No. 6569 of 2023

(Arising out of the Order dated 25.07.2024 passed by the National Company Law Tribunal, Mumbai Bench, Court-II in I.A. No. 838 of 2024 in CP(IB)/1792/MB/2017

IN THE MATTER OF:

Minita D Raja

Erstwhile Resolution Professional of Corporate Debtor

D/o Shri Dhirajlal V Raja,

R/o 138 Charukeshi Apartments,

Flat No. 18, 3rd Floor, Khare Town Dharampeth,

Nagpur, Maharashtra, 440010

Email: minita_9raja@rediffmail.com

...Appellant

Versus

The Cosmos Co-Op Bank Limited

Through its authorized representative

Having its office at: Cosmos Tower,

Plot No:- 06, S. No-132/B 1 ICS Colony,

Ganeshkhind Road, Pune-411007, Maharashtra, India

Email Address: vishwas.agale@cosmosbank.in

pradeep.khedkar@cosmosbank.in

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...Respondent

Present:

For Appellant

Mr. Sandeep Bajaj, Ms. Aakanksha Nehra, Mr.

Mayank Biyani, Mr. Shubham Jaiswal, Mr. N.S.

Aulakh, Advocates.

For Respondent

Mr. Prakhar Tandon, Advocate.

J U D G E M E N T

(12.03.2026)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed by the Appellant i.e., Minita D Raja who is the Erstwhile Resolution Professional of Crystal Clear Veg Oil Refinery Pvt. (Corporate Debtor) Ltd. under Section 61 of the Insolvency and Bankruptcy Code, 2016 (**‘Code’**) against the Impugned Order dated 25.07.2024 passed by the National Company Law Tribunal, Mumbai Bench, Court-II ("**Adjudicating Authority**") in IA 838 of 2024 in CP(IB)/1792/MB/2017.

The Cosmos Co-Op Bank Limited, who is the Financial Creditor of the Corporate Debtor is the Respondent herein.

2. It is the case of the Appellant that the Impugned Order dated 25.07.2024 is contrary to the provisions of Code and Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons, 2016 (“CIRP Regulations”) as well as in contradiction to the Adjudicating Authority own order dated 11.08.2023 passed by the Ld. Adjudicating Authority whereby the fee of the Resolution Professional was fixed at Rs. 50,000/- per month. The Appellant submitted that the Adjudicating Authority wrongly observed that description of tasks undertaken by the Appellant during the said period does not justify the payment of professional fee at the rate of Rs. 50,000 per month. The Appellant

submitted that the said finding is contrary to factual position. The Appellant submitted that the Resolution Professional, during the entire period of the CIRP till the date of handing over is duty bound to maintain the Corporate Debtor and complete the statutory compliances. The Appellant submitted that he pursued all litigation before various legal fora. The Appellant elaborated that reduction of fee from Rs.50,000/- to Rs.10,000/- is completely unjustified and contrary to the record of the case.

3. The Appellant submitted that from the date of commencement of CIRP on 16.04.2018 till 23.01.2024, the Appellant was in control of the Corporate Debtor and the handover of the Corporate Debtor to its management was done on 30.01.2024, in the presence of the officials of the Respondent Bank.

4. The Appellant explained that the CIRP could not succeed as the only one resolution plan was received which was not found to the satisfaction of the CoC. The COC in its 15th meeting held on 04.04.2019, passed a resolution by 100% of vote share in favour of withdrawal under Section 12A of the Code. The Appellant submitted that as per instructions of the CoC and the provisions of the Code, the Appellant had filed an application under Section 12A of the Code on 08.04.2019, which was numbered as M.A. No. 1339 of 2019. The Appellant stated that M.A. No. 1339 of 2019 was disposed of by the Adjudicating Authority vide order dated 04.01.2021 whereby the request of withdrawal of the CIRP was rejected. The Appellant further submitted that aggrieved by the same, the Respondent preferred an appeal before this Appellate Tribunal in Company Appeal (AT) (Ins.)

No. 247 of 2021, which came to be allowed by this Appellate Tribunal vide its Order dated 17.11.2022; thereby remanding the matter back to the Adjudicating Authority with the direction to consider the application under Section 12A i.e. M.A. No. 1339 of 2019, on its merits. The Appellant elaborated that M.A. No. 1339 of 2019 was finally allowed by the Adjudicating Authority vide its Order dated 23.01.2024.

5. The Appellant submitted that during the entire intervening period, the Appellant continued to perform its duties as the Resolution Professional and continued to run the Corporate Debtor. The Appellant conceded that, although the Corporate Debtor did not have any operational business, however, the Appellant was obliged to undertake the corporate and secretarial compliances including in respect of protecting the immovable property of the Corporate Debtor. The Appellant stated that the CoC mainly constituted of the Respondent who held 93.2 % voting share of the CoC and it was the Respondent that was also the applicant in the application filed under Section 7 of the Code i.e. Company Petition (IB) No. 1792 of 2017, whereby corporate insolvency resolution process was commenced against the Corporate Debtor vide Order dated 16.04.2018.

6. The Appellant submitted that the CoC had fixed the fees of the Appellant acting as the Resolution Professional at Rs 2,50,000/- per month in its second meeting held on 03.07.2018. Thereafter, the CoC renegotiated the fees of the Appellant to Rs. 2,00,000/- per month vide email correspondences exchanged

between the Appellant and the Respondent Bank including email dated 10.07.2020 issued by the Respondent Bank to the Appellant.

7. The Appellant submitted that when the resolution for filing of application under Section 12A of the Code was passed by the CoC, the Respondent had submitted the Undertaking dated 04.04.2019 along with its Form FA dated 03.04.2019, wherein as per Regulation 30A of the CIRP Regulations, the Respondent undertook to bear and pay to the Appellant the actual expenditure and cost incurred on CIRP of the Corporate Debtor. The Appellant castigated the conduct of the Respondent and stated that while on the one hand, the Appellant performed all her statutory duties as per the Code, on the other hand the Respondent unilaterally and in an arbitrary manner stopped paying the fee of the Appellant from July 2020. The Appellant stated that the Respondent contended that as no CIRP process was continuing, the Appellant was not entitled for any fee. The Appellant, being aggrieved by the actions of the Respondent, preferred an application bearing I.A. No. 3791 of 2022 before the Adjudicating Authority seeking direction to the Respondent to pay the fee and reimburse the expenses incurred by the Respondent.

8. It is the case of the Appellant that he was entitled for the fee of Rs. 2 lakhs duly approved by the CoC in terms of Regulation 34 of the CIRP Regulations. However, the Adjudicating Authority in its order reduced the said fee from Rs 2,00,000/- per month to Rs 50,000/- per month for the period commencing from July, 2020 to March, 2023 vide order dated 11.08.2023 in I.A. No. 3791 of 2022.

The Appellant conceded that since the Corporate Debtor was not operating and further no resolution of the Corporate Debtor was taking place, the Appellant did not challenge the same and accepted in graceful manner.

9. The Appellant reiterated that M.A. No. 1339 of 2019 (the application under Section 12A of the Code) could only be decided by the Adjudicating Authority vide its Order dated 23.01.2024 and the Corporate Debtor was handed over on 30.01.2024. The Appellant emphasized that during the period of April, 2023 upto 30.01.2024, the Appellant continued performing her duties as the Resolution Professional. Therefore, the Appellant requested that her fee be paid as per the quantum fixed by the Adjudicating Authority vide its Order dated 11.08.2023 for the said period as well however, the Respondent refused to pay any fee again contending that no work had been performed by the Appellant as the Resolution Professional during the said period.

10. The Appellant stated that she had to file another application bearing no. I.A. No. 838 of 2024 seeking her fee as the Resolution Professional at the rate as fixed by the Adjudicating Authority as well as other expenditure incurred by her; which led to the passing of the Impugned Order, whereby, the Adjudicating Authority passed the Impugned Order further reducing the already reduced fixed fees of Rs. 50,000/- by the Adjudicating Authority's own earlier order dated 11.08.2023 to Rs. 10,000/-. The Appellant stated that Adjudicating Authority has erred in observing that description of tasks undertaken by the Appellant during the said period does not justify the payment of professional fee at the rate of Rs.

50,000/-. The Appellant further submitted that the said finding is contrary to the records of the case.

11. Concluding his arguments, the Appellant requested this Appellate Tribunal to set aside the Impugned Order and allow the present appeal.

12. Per contra, the Respondent refuted all the averments of the Appellant treating these as baseless and misleading.

13. The Respondent stated that during the CIRP of the Corporate Debtor namely Crystal Clear Veg Oil Refinery Pvt. Ltd., only solitary Resolution Plan amounting to Rs. 65,00,000/- was received from one of the Resolution Applicant against the claim of Financial Creditors of Rs. 17,67,00,000/-, however, since the said, Resolution Plan was not satisfactory, the same was rejected by the CoC in their commercial wisdom during 12th CoC Meeting held on 06.03.2019. The Respondent stated that the CoC also decided that the CIRP proceedings against the Corporate Debtor would be withdrawn, as a result of this, an application under the provisions of Section 12 A of the Code was filed, along with form FA on 4th April 2019, through Interlocutory Application under the provisions of Section 12 A of the Code on 8th April 2019.

14. The Respondent stated that the aforementioned application filed under the provisions of section 12A of the Code, which was rejected by the Adjudicating Authority, vide order dated 4th January 2021, referring the matter to the Reserve Bank of India. Aggrieved by the aforementioned order, the Respondent herein challenged the said order dated 4th January 2021 before this Appellate Tribunal in

Company Appeal (AT) (Insolvency) No. 247 of 2021 and this Appellate Tribunal set aside the order dated 4th January 2021, vide judgement dated 17th November, 2022, and directed the Adjudicating Authority to allow the section 12A application within 45 days. The Respondent stated that as a result of the above, the Adjudicating Authority, allowed the withdrawal of the CIRP against the CD on 23rd January 2024, whereas, the possession was handed over on 30th January, 2024.

15. It is the case of the Respondent that, wherein the Respondent on various occasions requested the Appellant to file an application for urgent listing of withdrawal application, however, only after receiving entire fees, the Appellant filed an urgent hearing application for listing the withdrawal application vide IA No. 1151 of 2020 before the Adjudicating Authority on 17th February 2020, whereas, the withdrawal application was filed by the Appellant on 8th April 2019. The Respondent assailed the conduct of the Appellant as the Appellant delayed in filing of the urgency application intentionally to the withdrawal proceedings and to extract the fees from the Respondent. The Respondent pleaded that since the CIRP period was over on 6th April 2019, the Respondent was not liable to pay any fees to the Appellant, especially so since the Corporate Debtor was not a going concern, and the Appellant did not have to do any work with regards to the CIRP of the Corporate Debtor, since withdrawal application had already been filed. Furthermore, there were no employees and only security guards were working, and the Respondent has been paying the security guards.

16. The Respondent brought to our notice that till February 2023, the Respondent has incurred CIRP expenses to the extent of Rs. 1,41,84,097/- out of which, Respondent has paid the RP and her support staff's fee to the extent of Rs. 76,05,557/-, a case wherein, CIRP was supposed to be withdrawn in 2019 and no substantial work has been undertaken since 2019.

17. The Respondent admitted that the Appellant was not running the Corporate Debtor as a going concern and was not carrying out any specific duties as prescribed under the provisions of the Code or CIRP regulations. The Respondent conceded that even the Code is purposefully silent on the issue of payment of fees to the Resolution Professional during the pendency of a 12A application.

18. The Respondent submits that the Appellant has no right to claim any fees for the period starting from re-consideration of the MA 1339/2019 before the Adjudicating Authority, on the direction of this Hon'ble Tribunal, till the passing of the Order dated 23 January, 2024 allowing the withdrawal application. Despite the same, the Appellant has filed the present Appeal to merely extract more money from the Respondent under the garb of CIRP costs and has frivolously filed the present Appeal with mala fide intention even though she is absolutely not entitled to any further payment. The Respondent has already paid the Applicant a hefty sum amounting to almost 1.5 Crores, which is extremely unreasonable to begin with, especially considering that the Appellant has miserably failed to fulfil her duty as the RP of the Corporate Debtor.

19. Concluding arguments, the Respondent regards this Appellate Tribunal to dismiss the Appeal with costs.

FINDINGS

20. After noting rival contentions of the parties as noted above, we find that issue before us is limited as to whether after filing of an application under Section 12A of the Code read with Regulation 30A of the CIRP Regulations. The Appellant was entitled to be compensated for performing her duties as a resolution professional till the same was allowed by the Adjudicating Authority. Another issue is whether the Adjudicating Authority could, on its own fix, the fee of the Resolution Professional without any recommendations of the CoC.

21. We find that amount presently in dispute is ₹8.24 lakhs as the claim is limited to unpaid fees of the Appellant for period commencing from April, 2023 till 30.01.2024.

22. It is worth noting that the CoC fixed the fees of the Appellant originally at Rs. 2,50,000/- per month, in the 2nd CoC meeting hold on 03.07.2018 then re-negotiated to Rs. 2,00,000/- per month as communicated to the Appellant vide e-mail dated 10.07.2020. We also note that the Adjudicating Authority had fixed the fees of the Appellant at Rs. 50,000/- per month vide its Order dated 11.08.2023 passed in I.A. No. 3791 of 2022 and which has now further been reduced vide the Impugned Order dated 25.07.2024 to Rs. 10,000/- per month.

23. At this stage we take into consideration the relevant portion of the CIRP regulations which reads as under: -

"Regulation 30A: Withdrawal of application.

(1) An application for withdrawal under section 12A may be made to the Adjudicating Authority –

(a) before the constitution of the committee, by the applicant through the interim resolution professional;

(b) after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be:

Provided that where the application is made under clause (b) after the issue of invitation for expression of interest under regulation 36A:, the applicant shall state the reasons justifying withdrawal after issue of such invitation.

(2) The application under sub-regulation (1) shall be made in Form FA of the Schedule accompanied by a bank guarantee-

(a) towards estimated expenses incurred on or by the interim resolution professional for purposes of regulation 33:, till the date of filing of the application under clause (a) of sub regulation(1);or

(b) towards estimated expenses incurred for purposes of clauses (aa), (ab), (c) and (d) of regulation 31:, till the date of filing of the application under clause (b) of sub-regulation (1).

(3) Where an application for withdrawal is under clause (a) of sub-regulation (1), the interim resolution professional

shall submit the application to the Adjudicating Authority on behalf of the applicant, within three days of its receipt.

(4) Where an application for withdrawal is under clause (b) of sub-regulation (1), the committee shall consider the application, within seven days of its receipt.

(5) Where the application referred to in sub-regulation (4) is approved by the committee with ninety percent voting share, the resolution professional shall submit such application along with the approval of the committee, to the Adjudicating Authority on behalf of the applicant, within three days of such approval.

(6) The Adjudicating Authority may, by order, approve the application submitted under subregulation (3) or (5).

(7) Where the application is approved under sub-regulation (6), the applicant shall deposit an amount, towards the actual expenses incurred for the purposes referred to in clause (a) or clause (b) of sub-regulation (2) till the date of approval by the Adjudicating Authority, as determined by the interim resolution professional or resolution professional, as the case may be, within three days of such approval, in the bank account of the corporate debtor, failing which the bank guarantee received under sub-regulation (2) shall be invoked, without prejudice to any other action permissible against the applicant under the Code.]

Regulation 31: Insolvency resolution process costs.

“Insolvency resolution process costs” under Section 5(13)(e) shall mean-

- (a) amounts due to suppliers of essential goods and services under Regulation 32;
- (b) [(aa) fee payable to authorised representative under sub-regulation (7) of regulation 16A;
- (ab) out of pocket expenses of authorised representative for discharge of his functions under section 25;]
- (b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);
- (c) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33;
- (d) expenses incurred on or by the resolution professional fixed under Regulation 34; and**
- (e) other costs directly relating to the corporate insolvency resolution process and approved by the committee.

Regulations 33. Costs of the interim resolution professional.—

(1) The applicant shall fix the expenses to be incurred on or by the interim resolution professional.

(2) The Adjudicating Authority shall fix expenses where the applicant has not fixed expenses under sub-regulation (1).

(3) The applicant shall bear the expenses which shall be reimbursed by the committee to the extent it ratifies.

(4) The amount of expenses ratified by the committee shall be treated as insolvency resolution process costs.

[Explanation. – For the purposes of this regulation, “expenses” include the fee to be paid to the interim resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the interim resolution professional.]

Regulation 34. Resolution professional costs.

The committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs.

[Explanation. - For the purposes of this regulation, “expenses” include the fee to be paid to the resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the resolution professional.

Section 12A: Withdrawal of application admitted under section 7, 9 or 10.

[12A. The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be prescribed.]

“Regulation 34B. Fee to be paid to interim resolution professional and resolution professional.

(1) The fee of interim resolution professional or resolution professional, under regulation 33 and 34, shall be decided by the applicant or committee in accordance with this regulation.

(2) The fee of the interim resolution professional or the resolution professional, appointed on or after 1st October 2022, shall not be less than the fee specified in clause 1 for the period specified in clause 2 of Schedule-II:

Provided that the applicant or the committee may decide to fix higher amount of fee for the reasons to be recorded, taking into consideration market factors such as size and scale of business operations of corporate debtor, business sector in which corporate debtor operates, level of operating economic activity of corporate debtor and complexity related to process.

(3) After the expiry of period mentioned in clause 2 of Schedule-II, the fee of the interim resolution professional or resolution professional shall be as decided by the applicant or committee, as the case may be.

(4) For the resolution plan approved by the committee on or after 1st October 2022, the committee may decide, in its discretion, to pay performance-linked incentive fee, not

exceeding five crore rupees, in accordance with clause 3 and clause 4 of Schedule-II or may extend any other performance linked incentive structure as it deems necessary.

(5) The fee under this regulation may be paid from the funds, available with the corporate debtor, contributed by the applicant or members of the committee and/or raised by way of interim finance and shall be included in the insolvency resolution process cost.

“Schedule-II -(Under Regulation 34B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

1. Minimum Fixed Fee. 1. Minimum fixed fee as per the table -1 below shall be paid to the interim resolution professional or the resolution professional, as the case may be, for the period mentioned in clause 2

Table-1: Minimum Fixed Fee Structure

Quantum of Claims Admitted	Minimum Fee Per Month (Rs. lakh)
(i) Less than or equal to Rs. 50 crore	1.00
(ii) More than Rs.50 crore but less than or equal to Rs.500 crore	2.00
(iii) More than Rs.500 crore but less than or equal to Rs.2,500 crore	3.00
(iv) More than Rs.2,500 crore but less than or equal to Rs.10,000 crore	4.00
(v) More than Rs.10,000 crore	5.00

Period for minimum fixed fee.

2. The minimum fixed fee shall be applicable for the period, from appointment as interim resolution professional or resolution professional, till the time of

(a) submission of application for approval of resolution plan under section 30;

(b) submission of application to liquidate the corporate debtor under section 33; (c) submission of application for withdrawal under section 12A; or

(d) order for closure of corporate insolvency resolution process; whichever is earlier.

24. We find that the Adjudicating Authority has held that expenses to the Appellant are payable only up to the date of filing of the Section 12A of the Code

application relying on Regulation 30A(2)(a) of the CIRP Regulations. However, when we take into consideration Regulation 30A, especially Regulation 30A(7), we find that Regulation 30A(2)(a) of the CIRP Regulations uses the term “estimated expenses incurred on or by the IRP.... till the date of filing of the application”; and further Regulation 30A(7) provide for “actual expenses incurred... till the date of approval by the Adjudicating Authority as determined by the interim resolution professional or resolution professional”. Thus, we find that Regulation 30A(7) of the CIRP Regulations makes it clear that Payment of expenses are payable up to date of approval order being passed by the Adjudicating Authority, which includes expenses incurred on or by the Resolution Professional. The Explanation to Regulation 34 of the CIRP Regulations read with Regulation 31(d) of the CIRP Regulations, amplify that the fees payable to the resolution professional is also a part of the expenses to be incurred by the resolution professional.

25. We note that Regulation 33 of the CIRP Regulations provides that the Applicant shall fix the expenses to be incurred on or by the Interim Resolution Professional. It further provides that if the same are not fixed under Regulation 33(1) of the CIRP Regulations, the Adjudicating Authority will fix the expenses to be incurred on or by the Interim Resolution Professional. Regulation 33 of the CIRP Regulations, additionally provides that the expenses shall be ratified by the CoC. We also note that, Regulation 34 of the CIRP Regulations provides for the CoC to fix the expenses to be incurred on/by the resolution professional and the

expenses shall constitute insolvency resolution process costs. We observe that only in case, the applicant seeking initiation of CIRP, if do not propose fee of the IRP then only, there is a jurisdiction vested to the Adjudicating Authority to fix the expenses under Regulation 33(2) of the CIRP Regulations. We find that the CoC enjoys exclusive powers of fixing the fees and expenses to be incurred by the resolution professional based on the commercial wisdom of the CoC. We further observe that there is no jurisdiction vested to the Adjudicating Authority on this aspect.

26. We note that the Adjudicating Authority vide its own earlier order dated 11.08.2023 passed in I.A. No. 3791 of 2022 after considering all the facts and circumstances, fixed the fee of Rs 50,000/- per month for the Appellant, however, vide the Impugned Order the said amount has been reduced to Rs. 10,000/- per month, without any recommendation of the CoC. We have noted that the Adjudicating Authority can fix the fee only at the stage of initiation of the CIRP, if not recommended by the Applicant in terms of Regulation 33 of CIRP Regulations. The Code and the CIRP Regulations do not mention any other power to the Adjudicating Authority to fix the fee of the Resolution Professional on its own and the onus is on the CoC. Thus, the Adjudicating Authority is not correct in fixing the fee of the Resolution Professional.

27. We find that the Adjudicating Authority has erred in holding that the CIRP Regulations do not contemplate the payment of any further professional fee after filing of application under Section 12A of the Code. We have already noted that

Regulation 30A (7) provides that the Applicant shall deposit an amount towards the actual expenses incurred till the date of approval by the Adjudicating Authority as determined by the Resolution Professional. Thus, the Adjudicating Authority has not taken into consideration the said provision while passing the Impugned Order.

28. We also tend to agree with both the Appellant and Respondent on the point that the fees and costs charged by an Insolvency Resolution Professional must be transparent and a reasonable reflection of the work necessarily and properly undertaken. However, we wonder if drastic reduction of fees payable to Resolution Professionals happens, then how can one expect the Resolution Professional to discharge duties. As a matter of fact, at no point, neither the Appellant nor the Respondent approached the Adjudicating Authority seeking directions for reduction of the fees that was payable to the Appellant for acting as the Resolution Professional.

29. It is undisputed fact that the CoC mainly constituted of the Respondent who held 93.2 % voting share. Furthermore, it was the Respondent that was also the applicant in the application filed under Section 7 of the Code i.e. Company Petition (IB) No. 1792 of 2017, whereby CIRP was commenced against the Corporate Debtor vide Order dated 16.04.2018.

30. It is noted that the Appellant was entitled for the fee as duly approved by the CoC in terms of Regulation 34 of the CIRP Regulations, whereas the Adjudicating Authority on its own reduced the said fee from Rs. 2,00,000/- per

month to Rs. 50,000/- per month for the period commencing from July, 2020 to March, 2023 vide order dated 11.08.2023. It is a fact that the Appellant as well as the Respondent did not challenge the Order dated 11.08.2023 and therefore the said order has attained finality. It is also a fact that the Appellant continued to perform the same duties until the date of hand over to the CoC. This, however does not change the legal position. As a rule, it is prerogative of the CoC to fix fee of Resolution Professional and not for Adjudicating Authority, in normal course of business. Only, exception provided is when the Applicant in Section 7 does not propose the fee of IRP then only the Adjudicating Authority can fix the fee of the IRP. We do not find any other provision in the Code or CIRP Regulation empowering the Adjudicating Authority to fix/enhance/reduce fee of the Resolution Professional.

31. We wonder can it be anybody's case that after filing application under section 12A of the Code but before being allowed the application by the Adjudicating Authority and handing over, no payment is to be made by the CoC to Resolution Professional? It may not be feasible to give actual amount of guarantee towards CIRP expenses including, fee of IRP/RP till date of approval of withdrawal application by the Adjudicating Authority, as the date would not be known when the application for withdrawal is being allowed by the Adjudicating Authority. Thus, the CoC is duty bound to make payment to the Resolution Professional as per regulations or as per negotiated terms.

32. We find that it is prerogative and privilege and function of CoC to fix suitable fee transparently for the Resolution Professional commensurate with work. We sympathize with CoC, who despite claims of Rs. 17.67 Crores against the Corporate Debtor were saddled with fee of Resolution Professional. We note that CoC had paid till February, 2023 Rs. 1,71,84,097/- out of which Rs. 76,05,557/- were paid to support staff. We are conscious of the fact that solitary Resolution Plan which was rejected by the CoC was only of Rs. 65 Lakhs. In other words, the CoC had already incurred twice the cost towards the Resolution Professional in comparison to much lower expected Resolution Plan value.

33. However, the issue remains as to whether the work and responsibility of Resolution Professional get over after filing Section 12 A application and can the Resolution Professional walk away from the CIRP after filing 12A application. In our opinion, the answer is clear and categorically NO. The Resolution Professional is duty bound to continue looking after the affairs of the Corporate Debtor till it is handed over to the CoC.

34. Another issue before us is as to who is competent to fix the fee of Resolution Plan. We hold, based on our discussion in previous paragraphs, that it is legitimate function of CoC and the Adjudicating Authority has hardly any role, except in situation noted earlier.

35. The final issue pending as to whether the Adjudicating Authority would have reduced the fee from Rs. 50,000/- per month to Rs. 10,000/- per month without any recommendation by the CoC. We note that rightly or wrongly, it was

done earlier by the Adjudicating Authority, who reduced fee of the Resolution Professional from Rs. 2 Lakhs to Rs. 50,000/- per month and which was not challenged and attained finality. However, this cannot be ratified as correct law.

36. In view of our comprehensive finding as above, we find merit in the Appeal. The appeal succeeds. The Impugned Order is set aside. I.A., if any, stand closed. No order as to cost. The case is remanded back to the Adjudicating Authority, to decide the same in accordance with law. The concerned parties are directed to appear before the Adjudicating Authority on **23.03.2026**.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

Sim