

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT – IV**

Cont. Appl. No. 40 of 2024

In

C.P (IB) No. 1093/MB-IV/2020

*Under Section 425 of the Companies Act,
2013 r/w Section 60(5) of the Insolvency and
Bankruptcy Code, 2016.*

In the matter of

Indian Bank (e-Allahabad Bank)

.....Financial Creditor

Vs.

***N. Kumar Housing and Infrastructure
Private Limited***

.....Corporate debtor

And in the matter of

Minita D. Raja

*(Interim Resolution Professional of the
Corporate Debtor)*

..... Applicant

Vs.

Indian Bank (e-Allahabad Bank)

.....Contemnor/Respondent

Pronounced on: 03.12.2025

CORAM:

**SHRI ANIL RAJ CHELLAN
MEMBER (TECHNICAL)**

**SHRI K. R. SAJI KUMAR
MEMBER (JUDICIAL)**

Appearance : Hybrid

For the Applicant : Adv. Aakanksha Nehra a/w Adv. Shubham
Jaiswal, Adv. Muskan Sengar, IRP Ms. Minita D.
Raja (in person through VC)
For the Respondent : Adv. Prajwal Haldankar i/b VNA Legal

ORDER

Per: Anil Raj Chellan, Member (Technical)

1. The present Contempt Petition has been filed under Section 425 of the Companies Act read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (Code) by Ms. Minita D. Raja (Applicant), the Interim Resolution Professional (IRP) of N. Kumar Housing and Infrastructure Private Limited, the Corporate Debtor, seeking to prosecute the Indian Bank (e-Allahabad Bank) (Respondent) in pursuance of the willful disobedience of the Order dated 22.04.2024, passed by this Tribunal in I.A. 4701 of 2023 (Relevant Order) filed in CP(IB)1093/MB-IV/2020.

Submissions of Applicant

2. The Respondent sought to initiate the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor under C.P (IB) No. 1093/MB-IV/2020 before this Tribunal, which was allowed *vide* order dated 24.02.2023, and the Applicant was appointed as the IRP of the Corporate Debtor, as per the Respondent's suggestion. Upon appointment, the Applicant sincerely discharged her duties as per the provisions of the Code and the regulations made thereunder, and has incurred various expenses.

3. The Respondent remained unresponsive towards the telephonic and email reminders of the Applicant regarding the payment of the IRP fees and other CIRP expenses incurred in the due course of the CIRP period. Consequently, the Applicant filed I.A 4701 of 2023 on 04.10.2024 seeking remittance of IRP Fees and CIRP expenditure by the Respondent. This Tribunal allowed the Interlocutory Application *vide* the Relevant Order, with the direction that, "The

Financial Creditor is hereby directed to pay all RP's dues (fees & expenses) within one week after opening of the account by the RP, failing which, court may initiate contempt proceedings against the Financial Creditor."

4. In accordance with the aforesaid order, the IRP sent an email dated 06.05.2024 notifying the Respondent about the opening of the separate bank account for the remittance of CIRP expenses. In response to this communication, the Respondent inquired about Bill No. 1769 for Rs. 2.30 lakh for processing of counsel fees, in an email dated 07.05.2024. The IRP responded on 08.05.2024, providing details of the long-standing outstanding dues related to the payment of CIRP expenditures incurred to date by the Respondents.
5. On 13.05.2024, the Respondent issued another email to the IRP seeking a breakup of the bills mentioned in Column B of the earlier breakup, provided in the email dated 08.05.2024. In response to this request, the IRP promptly provided, on the same day, the requested breakdown of travel expenses.
6. The Applicant sent emails on 14.05.2024 and 17.05.2024 to inform the Respondent of the conclusion of the one week as stipulated in the Tribunal's Relevant Order, and also communicated the relevant bank details of the separate bank account opened for the purpose of remitting CIRP expenses.
7. Despite the issuance of the Relevant Order and multiple reminders from the Applicant, the Respondent has failed to disburse the CIRP expenditures, which encompass the IRP fees. As a result, the Ld. Counsel for the IRP issued a legal notice through email and courier dated 10.06.2024, to inquire about the status of compliance with the Relevant Order. However, the Respondent did not provide any response to this legal notice dated 10.06.2024.
8. Nevertheless, the Respondent remitted an amount of Rs. 10,00,000/- on 14.06.2024 against an outstanding of Rs. 61,87,920/- that is due and payable towards the IRP fees. Consequently, the Applicant asserts that the Respondent has not fully complied with the Relevant Order of this Tribunal, as there remains a balance payment of Rs. 51,87,920/- towards the IRP Fee

calculated up to the date of the Relevant Order. Additionally, an amount of Rs. 9,44,000/- has accrued as unpaid IRP Fee till 24.06.2024. The Ld. Counsel for the IRP had again issued a legal notice dated 21.06.2024 through courier inquiring about the status of the compliance of the Relevant Order; however, this inquiry has also gone unanswered by the Respondent.

9. The Applicant asserts that the Respondent has willfully disregarded the Relevant Order of this Tribunal, despite being aware of the explicit and time-bound directions of this Tribunal contained in the Relevant Order as well as subsequent reminders. This conduct is alleged to constitute contempt of the Relevant Order issued by this Tribunal.

Submissions of Respondent

10. An Affidavit-in-reply dated 07.01.2025 has been filed by and on behalf of the Respondent contesting the averments made in the Contempt Petition.
11. It is submitted that the Ex-director of the Corporate Guarantor has filed a Writ Petition No. 3766 of 2023 before the Hon'ble Bombay High Court at Nagpur Bench seeking reconsideration of the letter dated 14.06.2023 issued by the Financial Creditor/Respondent, which declined to accept the One Time Settlement proposal submitted by the Corporate Debtor. The Hon'ble Bombay High Court passed an *ex-parte* order on 20.06.2023, restraining the Financial Creditor/Respondent from taking any precipitative steps in Company Petition No. 1093 of 2023. It is further submitted that the order was passed based on the incorrect statement made by the ex-directors that the outstanding dues amounting to Rs. 18,47,00,000/-, of which Rs. 10,00,00,000/- had been deposited on 16.05.2023, and that they were ready and willing to deposit the balance Rs.8,64,69,791/-. A Civil Application has been filed for vacating the said *ex-parte* order, which is currently pending adjudication before the Hon'ble High Court. Given that the order of the Hon'ble High Court dated 20.06.2023 remains in effect, no precipitative steps can be taken in the CIRP initiated in respect of the Corporate Debtor.
12. On account of the *ex-parte* order, the directors of the Corporate Debtor have not provided any co-operation to the Applicant. They have not even handed

over the Corporate Debtor's books and financial statements. Consequently, the Applicant has been unable to undertake any constructive work in the CIRP of the Corporate Debtor. Additionally, the IRP has filed I.A. No. 2192 of 2023 seeking directions against the suspended directors and erstwhile Auditors, indicating that no constructive work has been done in the CIRP of the Corporate Debtor.

13. In the circumstances, and taking into account the expenses incurred by the IRP, the Financial Creditor has deposited/remitted an amount of Rs. 37,26,391/- to the Applicant/IRP. The Applicant asserts a claim of Rs.61,31,920/- as CIRP expenditure, which includes monthly fees of IRP amounting to Rs. 4,00,000/- calculated from 24.03.2023 to 23.06.2024, resulting in a cumulative total of Rs. 56,00,000/-. It is stated that the financial creditor has previously remitted Rs. 31,19,920/- towards IRP fees in accordance with the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), along with Rs. 27,26,391/- towards the CIRP expenses. Furthermore, due to the restraining order issued by the Hon'ble Bombay High Court, the financial creditor is compelled to refrain from taking any precipitative steps; as a result, the Applicant is unable to take any further steps in the CIRP, rendering it inappropriate to claim Rs. 4,00,000/- as monthly IRP fees. The Respondent has placed reliance on the judgment of the Hon'ble NCLAT, in *Mritunjay Kumar v. Propertree Real Estate Solutions Pvt Ltd. & Anr* [Company Appeal (AT) No.950/2021], wherein it was held that when the entire CIRP is stayed, there is no question of incurring any cost or claiming any fee.
14. It is submitted that, due to the *ex-parte* order, the CIRP came to a standstill on 20.06.2023, and the CIRP was effectively in force only from 24.02.2023 to 20.06.2023. The fees for the legal counsel were never approved by the CoC as asserted by the Applicant. The Applicant is unilaterally demanding Rs. 4,00,000/- per month, which is highly excessive and contrary to Regulation 34B read with Schedule-II appended thereto, which stipulates that the IRP fees for a claim up to Rs. 500 crore should be Rs. 2,00,000/- The Respondent further states that, it, in obedience of the order passed on 22.04.2024, a sum of Rs.21,19,920/- was remitted on 06.01.2025 towards

IRP Fees. Additionally, in a letter dated 06.01.2025, the financial creditor has agreed to remit Rs. 4,00,000/- for the first month and Rs. 2,00,000/- for each subsequent month.

15. Taking into account the facts of the present case, the Respondent seeks a direction to the Applicant to re-calculate the IRP fees from inception as per CIRP Regulations and to refund excess money paid by the Respondent. It is asserted that there is no willful disobedience of the Relevant Order. The petition is not maintainable, as the IRP was well aware of the restraining order of the Hon'ble Bombay High Court and could not take any further action in the CIRP. Despite this, the Applicant continued to raise her professional fees, which is against public policy. The Respondent has already deposited Rs. 37,26,391/-, with a further deposit of Rs. 21,19,920/-, resulting in an aggregate sum of Rs. 58,46,311/-, which has been paid towards the IRP fees and the CIRP expenditures.
16. The Respondent further submits that the Applicant has not provided clarification regarding the bills requested by the Respondent. On the date of the Relevant Order, the Respondent intended to make the requisite payments as per the CIRP Regulations; however, the Applicant was not ready to open a separate bank account for the same. The Respondent seeks re-calculation of the IRP fees in accordance with the applicable Regulations, as the current calculation is causing grave injustice to the Respondent.

Rejoinder of Applicant

17. The Applicant has filed an affidavit-in rejoinder on 04.04.2025, contesting the assertions that there has been no willful disobedience. The Applicant highlights that, despite being informed about the opening of a separate bank account and receiving multiple reminders, the Respondent has failed to remit the full amount of IRP fees till the date of filing the rejoinder. To date, the Respondent has only remitted Rs. 21,19,920/- which was paid subsequent to the filing of this Application, against a total outstanding amount of Rs. 61,31,920/-. Consequently, the net amount owed is Rs.40,12,000/- after adjusting the part payment. This outstanding amount does not include the CIRP Cost incurred from July, 2024 till date of this rejoinder.

18. The Applicant asserts that as per the letter dated 06.01.2025, the IRP fees is Rs. 61,87,920/- and not Rs. 31,19,920/-. The Respondents have unilaterally adjusted the IRP fees from Rs. 4,00,000/- per month to Rs.2,00,000/- per month after initial first month as provided in the letter dated 06.01.2025, which was the first time the Respondents had raised an issue with respect to the IRP fees, as the same was fixed and accepted by the Respondent in the mandate dated 07.01.2020, issued by the Applicant to the Respondent.
19. The assertion that no constructive work has been done following the restraining order of the Hon'ble Bombay High Court is disputed, as the impugned order was only a direction to the CoC not to take any precipitative steps in the CIRP and not with respect to the conclusion of the CIRP. Furthermore, this Tribunal *vide* order dated 10.07.2023 has observed that the restraint does not hinder the CIRP, which has to be continued under the supervision of the CoC. The Applicant has further asserted that all the requisite CIRP Regulations were followed and that the legal counsel fee was also approved by the CoC in the 1st and 2nd CoC meetings.
20. The Applicant contests the assertion that the IRP fees levied are contrary to Regulation 34B(2) read with Schedule-II to the CIRP Regulations. The Applicant maintains that no upper limit has been prescribed for the fee payable to the IRP, and the IRP fees were already fixed and accepted by the Respondent as per the mandate dated 07.02.2020. Consequently, the prayer of the Respondent for re-calculation of the IRP fees deserves to be dismissed.

Analysis and Findings

21. We have heard the Ld. Counsel for the parties and perused the documents on record.
22. The undisputed facts of the case are that the CIRP in respect of the Corporate Debtor was initiated on 24.02.2023, and the Applicant was appointed as IRP. The Applicant subsequently issued a public announcement on 27.02.2023. In addition, the Applicant made various efforts to engage with the suspended management of the Corporate Debtor and to assume control and custody of

the assets of the Corporate Debtor. Meanwhile, one of the suspended directors of the Corporate Debtor preferred an appeal challenging the admission order before the Hon'ble NCLAT on 13.03.2023.

23. In an application filed by the Applicant before the Hon'ble NCLAT (IA. No. 1126/2023), the Applicant was directed not to constitute the CoC. Subsequently, various communications transpired between the suspended directors and the Applicant, advising against any actions during the pendency of the Appeal. The Hon'ble NCLAT disposed of the application on 26.04.2023 with a direction that if no settlement takes place with the financial creditor within one month from the date of the order, it shall be open for the Applicant to constitute the CoC. Since there was no settlement between the parties, the Applicant constituted the CoC on 27.06.2023.
24. The first and second CoC meetings were held on 04.07.2023 and 21.07.2023, respectively. However, discussions on the agenda items to be voted upon has been deferred as the sole financial creditor member of the CoC stated their inability to discuss and vote on agenda items, in view of the order dated 20.06.2023 passed by the Hon'ble Bombay High Court restraining them from taking any precipitative steps in the pending company petitions (against the Corporate Debtor and the principal borrower - Poonam Resorts Limited).
25. The Applicant's case presented in IA No. 4701/2023 was that since her appointment as the IRP on 24.02.2023, she has been discharging the various duties and carrying out all the functions as envisaged under the provisions of the Code, and the rules and regulations. In the discharge of the various duties and functions, the Applicant has incurred various expenses and is entitled to professional fees, which are CIRP costs. Despite sending multiple emails to the sole CoC member/Respondent for reimbursing the CIRP expenditure, there has been no response. Consequently, the Applicant filed IA No. 4701/2023 to seek the following reliefs:
- (a) *Direct the Respondent to release the outstanding and unpaid Corporate Insolvency Resolution Process expenses pertaining to the Corporate Debtor i.e. N. Kumar Housing & Infrastructure Pvt Ltd. within such time*

period as deemed appropriate to this Hon'ble. Tribunal and to continue to reimburse such expenses in a periodical manner to ensure smooth conduct of CIRP of the Corporate Debtor, as may be incurred in the future from time to time; and/ or

(b) Pass any such order as the Hon'ble Tribunal may deem fit.

26. On 22.02.2024, the Tribunal passed the following order:

“O R D E R

1. *Mr. Sandeep Bajaj a/w Ms. Aakanksha Nehra, Ritisha Chaudhary and Ms. Gunjan Nayyar, Ld. Counsel for the Applicant/Resolution Professional present (VC). Ms. Minita D Raja, Resolution Professional present in person (VC). Mr. Ajikumar, Ld. Counsel for Respondent present (VC).*
 2. *Counsel for the sole-Financial Creditor appeared. He has given an undertaking that after the Applicant/RP opens a separate account for depositing the RP's fees/expenses, the Financial Creditor/Respondent will make all payment within one week. Counsel for the RP agreed to open a separate account and convey the bank account details to the Counsel for the Financial Creditor within two days.*
 3. *The Financial Creditor is hereby directed to pay all RP's dues (fees & expenses) within one week after opening of the account by the RP, failing which, court may initiate contempt proceedings against the Financial Creditor.*
 4. *With the foregoing, IA-4701/2023 is disposed of.”*
27. Subsequently, the Applicant *vide* email dated 06.05.2024 notified the Respondent that a separate account has been opened for depositing the RP's fees/expenses. Notwithstanding this communication and despite subsequent reminders and legal notice, the Respondent has remitted only Rs.21,19,920/- out of Rs.61,31,920. According to the Applicant, this part payment constitutes non-compliance with the Relevant Order.

28. Conversely, the Respondent asserts that it has remitted Rs.31,19,920/- towards IRP fees as per CIRP Regulations and Rs.27,26,391/- towards CIRP expenses, resulting in a total of Rs.58,46,311/-. The Respondent has defended the lesser payment in comparison to the amount claimed by the Applicant in the Application by stating that the payment made is in compliance with the applicable Regulations and that the amount claimed by the Applicant is not commensurate with the work performed by her. Furthermore, on the date of the Relevant Order, the Respondent intended to make the requisite payments as per the CIRP Regulations.
29. A close scrutiny of the records reveals that the discrepancy in payments by the Respondent is attributable to the calculation of RP fees by the Applicant at a rate of Rs.4,00,000/- per month, as initially fixed by the Respondent at the time of her engagement, specifically during the filing of the Company Petition. In contrast, the Respondent asserts that the Applicant is entitled to RP fees only as per the CIRP Regulations. Although three CoC meetings were held, no resolution appears to have been passed by the CoC to fix or ratify the IRP fees. Furthermore, the Tribunal has not made any adjudication regarding the professional fee of IRP in IA. No. 4701/2023 or in any other related application.
30. Notwithstanding the circumstances, an order was passed in IA. No.4701/2023 based on an undertaking given by the Ld. Counsel representing the sole financial creditor during the hearing on 22.02.2024. This undertaking is to the effect that the RP's fees/expenses would be deposited within one week after the Applicant opens a separate account. Consequently, an order was passed directing the Respondent to deposit all RP dues (fees and expenses) *within one week after opening of the account by the RP*. Although the fees payable to the IRP was not expressly fixed, it is imperative to consider the undertaking in the context in which it was given. The Respondent was evidently cognizant that the restraining order issued by the Hon'ble Bombay High Court was hindering constructive progress in the CIRP. Moreover, there was no indication in the Relevant Order suggesting that the Respondent was intending to make IRP fees as per CIRP Regulations. This culminates in the conclusion that the Ld. Counsel

for the Respondent has undertaken to make the payment claimed in IA. No. 4701/2023, specifically the amount of Rs. 61,31,920/-.

31. The Respondent has raised an additional defence, asserting that the fees claimed by the Applicant are not commensurate with the work discharged by the Applicant in the CIRP. In support of the above argument, the counsel for the Respondent relied on the judgement of *Mritunjay Kumar v. Propertree Real Estate Solutions Pvt Ltd. & Anr* [Company Appeal (AT) No.950/2021]. The above defence, in our view, has no relevance to the present Application, as we are not determining the correctness or entitlement of the Applicant to IRP fees claimed in this Petition.
32. In the circumstances, the only question arising for consideration is whether the conduct of the Respondent subsequent to the Relevant Order is in deference to the Court and such deference is deliberate and willful.
33. It is an admitted fact that the Respondent has not deposited the entire amount of Rs.61,87,920/- claimed in IA. No.4701/2023. After giving an undertaking to make the payment, with full awareness of the circumstances and implications of their actions, the Respondent cannot now question the appropriateness of the fees claimed by the Applicant. Furthermore, it is unnecessary to examine the merits of this defence in the Contempt Petition.
34. By the Relevant Order, this Tribunal has clearly directed the Respondent to pay all the fees and expenses of the Applicant within one week after opening of the account by her. Additionally, it is pertinent to notice that the Relevant Order expressly stipulates that the court may initiate contempt proceedings against the financial creditor if it fails to deposit the RP dues within one week after opening of the account by the RP. If a party, who is entirely in the know of the judgment/order of the Court, is conscious and aware of the consequences and implications of the order of the Court/Tribunal, acts in violation of such an order, it must be held that disobedience is wilful. To establish contempt of court, it is adequate to demonstrate that the conduct was wilful, and that the contemnor was aware of all the facts constituting a breach of the undertaking. Therefore, we are of the view that the omission

to make the payment as undertaken by the counsel for the Respondent constitutes a deliberate act intended to undermine the Relevant Order. They never approached the Tribunal seeking any clarification of the Relevant Order, if at all the Respondent had any doubt regarding the Relevant Order. This indicates that the Relevant Order attained finality and Respondent's act amounts to disobedience to the Relevant Order and wilful breach of undertaking given to the Court.

35. The object of the law of contempt is to uphold the majesty of the rule of law by ensuring that the authority of the Court/Tribunal is not denigrated or undermined by the willful breach or contumacious conduct on the part of the contemnors. Consequently, a willful breach of an assurance in the form of an undertaking given by a counsel /advocate on behalf of his client to the court would amount to "civil contempt" as defined under Section 2(b) of the Contempt of Courts Act, 1971.
36. Thus, we are of the considered view that the Applicant has made out a case for initiating action in contempt jurisdiction against the Respondent under Section 425 of the Companies Act, 2013. Consequently, the Respondent is given 10 days to remit the balance IRP dues amounting to Rs.3,41,609/- given that it has asserted the deposit of Rs.58,46,311/- out of the total obligation of Rs.61,87,920/- stated in IA. No. 4701/2023. In case of failure to do so, we direct that a senior officer of the Respondent not below the rank of General Manager to be present in person before this Tribunal on **16.12.2025** and to show cause as to why proceedings under the Contempt of Courts Act, 1971 should not be initiated against the Respondent and its officers.
37. List on **16.12.2025 on priority.**

Sd/-
ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

/JJ/

Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)