

**NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH**

**CORAM: MS. REETA KOHLI,
HON'BLE JUDICIAL MEMBER**

**MS. KAVITA BHATNAGAR
HON'BLE TECHNICAL MEMBER**

**IA (IBC) No. 155/JPR/2024
In CP No. (IB)- 44/9/JPR/2019**

IN THE MATTER OF:

**M/S RAJPUTANA CONSTRUCTIONS PRIVATE LIMITED
...Operational Creditor
VERSUS**

**RAJASTHAN LAND HOLDINGS LIMITED
...Corporate Debtor**

IA (IBC) No. 155/JPR/2024

MEMO OF PARTIES

Rajasthan Land Holdings Limited

R/o: 13, Parivar Marg, Civil Lines

Jaipur-302006, Email: ganeshbansal@ridcor.in

...Applicant

For the Applicant : Tarun Agarwal, Adv.
Bhaskar Agarwal, Adv.
Ayush Baheti, Adv.
Chitransh Gupta, Adv.

Dated : 28.09.2026

ORDER

1. The order in the above captioned subject matter was pronounced on 28.09.2026. The judgement authored by Hon'ble Member (T) constitutes the

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lead judgement, whereas the dissenting judgement has been rendered by Hon'ble Member (Judicial).

2. In view of the difference of opinion, the following points as per Member (T) arise for consideration under Section 419(5) of the Companies Act, 2013:

Issue-I: Whether, in the facts and circumstances of the present case, the Applicant, its subsidiaries and their respective directors are entitled to the blanket protection sought in IA No. 155/JPR/2024 against statutory, civil and penal consequences arising from the alleged non-compliances during the CIRP period under the Companies Act, 2013, the Income-tax Act, 1961, the applicable Goods and Services Tax enactments and other applicable laws, the determination of such liability and consequences under which falls within the jurisdiction of the respective statutory authorities?

Issue-II: Whether the jurisdiction conferred upon the Adjudicating Authority under Section 60(5)(c) of the Code, 2016 extends to granting the protection sought in the present Application against statutory, civil and penal consequences arising under such other enactments in respect of alleged non-compliances during the CIRP period?

Issue-III: Whether in the absence of the erstwhile RP being impleaded as a party and when no declaration or relief fixing liability upon her in respect of such non-compliances(as in Annexure-8 of the Application) has been sought can be attributed to her and made the basis for granting the protection sought by the Applicant, its subsidiaries and their respective directors

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notwithstanding the findings concerning the conduct of the erstwhile RP already recorded in the order dated 20.04.2023, which retain their effect within their determined scope.

Member (Judicial) has formulated the following issues:

Issue-I: Whether in view of the orders dated 17.05.2022, 20.04.2023 & 22.11.2023 of the Adjudicating Authority with respect to the observations on the conduct of the IRP/ RP and specific directions from time to time ensuring and safeguarding the interests of the Corporate Debtor and its subsidiaries having attained finality, this Court is left with any other option but to grant the relief sought?

Issue-II: Whether the relief being granted in the present IA is nothing but the consequential relief or the corollary of the outcome of the earlier orders of this Adjudicating Authority?

Issue-III: Whether this Court has the jurisdiction to adjudicate an issue which principally has attained finality in the earlier orders?

3. In view of the above, the Registry is directed to place the matter before the Hon'ble President for appropriate orders.


(Kavita Bhatnagar)
Technical Member


(Reeta Kohli)
Judicial Member

THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: MS. REETA KOHLI,
HON'BLE JUDICIAL MEMBER**

**MS. KAVITA BHATNAGAR
HON'BLE TECHNICAL MEMBER**

IA (IBC) No. 155/JPR/2024
In CP No. (IB)- 44/9/JPR/2019

IN THE MATTER OF:

M/S RAJPUTANA CONSTRUCTIONS PRIVATE LIMITED
...Operational Creditor
VERSUS

RAJASTHAN LAND HOLDINGS LIMITED
...Corporate Debtor

And in the matter of:

RAJASTHAN LAND HOLDINGS LIMITED
...Applicant

IA (IBC) No. 155/JPR/2024

MEMO OF PARTIES

Rajasthan Land Holdings Limited

R/o: 13, Parivar Marg, Civil Lines

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...Applicant

For the Applicant

:
Tarun Agarwal, Adv.
Bhaskar Agarwal, Adv.
Ayush Baheti, Adv.
Chitransh Gupta, Adv.

Order Pronounced On: 28.09.2026

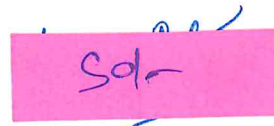


ORDER**Per: Ms. Kavita Bhatnagar, Technical Member**

1. The instant Application has been filed by Rajasthan Land Holdings Limited (“RLHL”/ “Applicant”) under Rule 11 of the National Company Law Tribunal Rules, 2016, seeking appropriate directions to indemnify RLHL, its subsidiaries, namely Chirayu Kath Real Estate Pvt. Ltd. (“CKRE”) and Devika Build Estate Pvt. Ltd. (“DBEPL”) (collectively, “RLHL Subsidiaries”), and their respective directors, from penalties/consequences that may be levied by statutory authorities on account of non-compliances committed by the erstwhile Resolution Professional, Ms. Anuradha Gupta (“RP”), during the Corporate Insolvency Resolution Process (“CIRP”) of RLHL. The prayer of the Applicant is reproduced herein as below:

1. *“Pass an order indemnifying the directors of RLHL from any consequences whatsoever including initiation of proceedings, fines, penalties and imprisonment for compliances not made in terms of the Companies Act, 2013, Income Tax Act, 1961 and Goods and Services Act, 2017 during the CIRP Period,*
2. *Pass an order indemnifying RLHL from any consequences whatsoever including striking off its name from the Register of Companies, initiation of proceedings, fines and penalties for compliances not made in terms of the Companies Act, 2013, Income Tax Act, 1961 and Goods and Services Act, 2017 during the CIRP Period,*
3. *Pass an order indemnifying the directors of CKRE from any consequences whatsoever including initiation of proceedings, fines,*

- penalties and imprisonment for compliances not made in terms of the Companies Act, 2013, Income Tax Act, 1961 and Goods and Services Act, 2017 during the CIRP Period,*
4. *Pass an order indemnifying CKRE from any consequences whatsoever including striking off its name from the Register of Companies, initiation of proceedings, fines and penalties for compliances not made in terms of the Companies Act, 2013, Income Tax Act, 1961 and Goods and Services Act, 2017 during the CIRP Period,*
 5. *Pass an order indemnifying the directors of DBEPL from any consequences whatsoever including initiation of proceedings, fines, penalties and imprisonment for compliances not made in terms of the Companies Act, 2013, Income Tax Act, 1961 and Goods and Services Act, 2017 during the CIRP Period,*
 6. *Pass an order indemnifying DBEPL from any consequences whatsoever including striking off its name from the Register of Companies, initiation of proceedings, fines and penalties for compliances not made in terms of the Companies Act, 2013, Income Tax Act, 1961 and Goods and Services Act, 2017 during the CIRP Period,*
 7. *Declare/direct that RLHL Entities and their Directors, shall not, without prior approval of this Hon'ble Tribunal, be made subject to any civil/criminal liability arising from the wrongdoings/inaction on the part of Ms. Anuradha Gupta (erstwhile resolution professional of RLHL),*
 8. *Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."*



2. The instant Application bearing *IA (IBC) No. 155/JPR/2024* has been filed based on the following set of facts:

2.1. It is stated that *vide* order dated 24.09.2019 passed in *CP (IB) No. 44/9/JPR/2019*, filed by *M/s Rajputana Constructions Private Limited* (“Operational Creditor”) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“Code”), the CIRP of RLHL was admitted and Ms. Anuradha Gupta was appointed as the Interim Resolution Professional, who was subsequently confirmed as the RP by the Committee of Creditors (“CoC”) on 24.10.2019.

2.2. During the CIRP, *IL&FS Transportation Networks Limited* (“ITNL”), filed a claim as a Financial Creditor. Thereafter, ITNL was declared a related party of RLHL by the RP and was accordingly denied admission/voting rights in the CoC. Thus, Coc comprised only Operational Creditors.

2.3. It is further stated that an amount of approximately Rs. 7 crores was lying in the bank account of RLHL against a total claim of Rs. 26,76,962/- (Rupees Twenty-Six Lakhs Seventy-Six Thousand Nine Hundred Sixty-Two Only) raised by the Operational Creditors, and ITNL had also offered to withdraw its claim of approximately Rs. 181

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crores to enable settlement of the Operational Creditors dues from available funds.

2.4. Furthermore, it is stated that this Adjudicating Authority *vide* order dated 20.04.2023 terminated the CIRP of RLHL. The Applicant relies upon the observation of the aforementioned order, recording that the RP had treated the Corporate Debtor as a sick company despite adequate liquidity to discharge its debts, and the CIRP continuation resulted in misappropriate CIRP cost including RP's fee of Rs. 41,13,334/- (Rupees Forty-One Lakhs Thirteen Thousand Three Hundred Thirty-Four) out of a total CIRP cost of Rs. 73,31,510/- (Rupees Seventy-Three Lakhs Thirty-One Thousand Five Hundred Ten), which is disproportionate to the claims of the Operational Creditors.

2.5. Thus, the RP was accordingly directed to refund excess remuneration of Rs. 16,68,334/- (Rupees Sixteen Lakhs Sixty-Eight Thousand Three Hundred Thirty-Four), in respect of which the Applicant has filed Contempt Petition No. 01/425/JPR/2024 before this Adjudicating Authority which was duly disposed of.

2.6. It is further submitted by the Applicant that the directors of RLHL and the RLHL Subsidiaries had resigned prior to the Admission Order and according to the Applicant RP has failed to take necessary steps for

appointment of directors in RLHL, Subsidiaries, notices dated 08.11.2021, 10.11.2021 and 11.11.2021 were thereafter issued by the Registrar of Companies (“ROC”) proposing to strike off the RLHL, Subsidiaries. It is stated that *I.A. No. 23/2022* was filed by the RP seeking appointment of directors, and this Adjudicating Authority *vide* order dated 19.04.2022 directed the RP to propose names within two weeks but the RP failed to comply. By order dated 17.05.2022, this Adjudicating Authority directed restoration of their names and further directed that no precipitative action be taken against RLHL or the RLHL Subsidiaries during pendency of the proceedings. The Applicant alleges that despite the said directions given under aforementioned order no necessary steps for appointment of directors in the RLHL Subsidiaries were taken by the RP.

- 2.7. Pursuant to the Order of this Adjudicating Authority dated 20.04.2023, control of RLHL was directed to be restored to its erstwhile management, and directors of RLHL, CKRE and DBEPL were appointed on 11.08.2023. Subsequently, by order dated 22.11.2023, this Adjudicating Authority directed handing over of a list of documents by the RP to the management, and by order dated 15.12.2023 recorded that the said documents had been handed over.



The process of handover of control of RLHL to the management stood completed on 26.12.2023.

2.8. It is further stated that upon taking over documents from the RP, the management of RLHL discovered that the RP had failed to fulfil compliance-related duties on behalf of RLHL and the RLHL Subsidiaries during the CIRP period from 24.09.2019 to 20.04.2023, including failure to file annual returns and financial statements, failure to hold annual general meetings, failure to file income tax returns and maintain books of accounts, and failure to file returns under the GST Act, thereby exposing RLHL entities and their directors to penal consequences, including fines and imprisonment, under the Companies Act, 2013, the Income Tax Act, 1961, and the GST Act, 2017. A detailed chart highlighting various non-compliances as well as consequential penal provisions is hereby Annexed and Marked as Annexure-8.

2.9. Furthermore, vide email dated 17.01.2024, RLHL sought clarifications from the RP regarding certain non-compliances under the Income Tax Act, 1961, to which no response was received, and that *vide* email dated 14.02.2024, the RP declined to furnish certain documents necessary for effecting complete handover, citing confidentiality. Aggrieved by the aforementioned conduct, RLHL has also filed a complaint against the

RP before the Insolvency and Bankruptcy Board of India on 31.01.2024.

2.10. The Applicant has placed its reliance on Sections 18, 25 and 208 of the Code, and *Circular No. IP/002/2018* dated 03.01.2018 issued by the Insolvency and Bankruptcy Board of India, which explicitly makes it clear that it was the duty of the RP to exercise reasonable care and diligence and take necessary steps to ensure compliance of RLHL with applicable laws during the CIRP Period. It is further contended that RLHL Entities and their directors, who had no control over the affairs of RLHL during the CIRP Period, ought not to be visited with penal consequences arising during the said period.

Analysis and Findings

3. This Adjudicating Authority has heard the Learned Counsel appearing for the Applicant and have perused the material placed on record, including the orders passed from time to time in *CP (IB) No. 44/9/JPR/2019*, the alleged non-compliances set out in *Annexure-8*, and *Circular No. IP/002/2018* dated 03.01.2018 issued by the Insolvency and Bankruptcy Board of India (“IBBI Circular”).
4. At the outset, it is necessary to ascertain the true nature and scope of the reliefs sought in the present Application. The Applicant seeks protection for

RLHL, its subsidiaries, namely *Chirayu Kath Real Estate Pvt. Ltd. (CKRE)* and *Devika Build Estate Pvt. Ltd. (DBEPL)* and their respective directors against statutory and penal consequences arising from the alleged non-compliances during the CIRP period i.e. from 24.09.2019 to 20.04.2023. The reliefs sought are thus confined to acts of commission or omission occurring during the CIRP period as above. Insofar as the expression “prospective” is used in the context of such protection it refers only to proceedings or actions that may be initiated subsequently in respect of alleged non-compliances during the CIRP period and does not contemplate protection against any acts of commission or omission occurring for the conclusion of the CIRP. Prayer (7) additionally seeks a direction that RLHL, the aforesaid subsidiaries and their directors shall not be subjected to civil or criminal liability arising from the alleged wrong doings or initiation of the erstwhile RP without prior approval of this Adjudicating Authority.

5. The relief sought raises two questions for consideration. First, whether this Adjudicating Authority in exercise of its jurisdiction under the Code read with Rule 11 of the NCLT Rules 2016, can grant protection against statutory civil or penal consequences arising under independent enactments in respect of alleged non-compliances during the CIRP period.

Second, whether the findings and directions contained in the earlier orders of this Adjudicating Authority particularly the order dated 20.04.2023 read

with the statutory obligations of the Resolution Professional under the Code and the IBBI circular dated 03.01.2018, furnish a legal basis for granting the protection sought by the Applicant.

6. From the above it follows that whether, in exercise of jurisdiction under the Code read with Rule 11 of the National Company Law Tribunal Rules, 2016, this Adjudicating Authority can grant a blanket and prospective immunity against statutory, civil or penal consequences arising under independent enactments. The second is whether the alleged non-compliances during the CIRP period can, in the present proceedings and on the existing array of parties, be attributed to the erstwhile Resolution Professional so as to absolve RLHL, the RLHL Subsidiaries and/or their directors of the consequences thereof.
7. As regards the first question, Rule 11 preserves the inherent powers of this Tribunal to make such orders as may be necessary for meeting the ends of justice or preventing abuse of its process. Such inherent power, however, cannot be used to confer upon this Adjudicating Authority a substantive jurisdiction which is otherwise not vested in it by the Code or the governing statute. The consequences of a default under the Companies Act, 2013, the Income Tax Act, 1961 or the Goods and Services Tax Act, 2017 are required to be examined by the authorities competent under the respective enactments, having regard to the nature of the particular default, the

statutory provision governing it, the period during which it occurred and the person upon whom the concerned statute places responsibility.

8. Consequently, this Adjudicating Authority cannot, by invoking Rule 11, grant a general or prospective immunity to RLHL, CKRE, DBEPL or their directors from initiation of proceedings or from fines, penalties, prosecution or other statutory consequences which may arise under such independent enactments. For the same reason, a direction that no civil or criminal liability may be imposed upon such entities or persons without prior approval of this Adjudicating Authority would amount to placing a restriction upon the exercise of statutory jurisdiction by authorities functioning under other enactments, for which no foundation in the Code or Rule 11 has been shown. Prayer (7), as framed, therefore, cannot be granted.
9. The above conclusion, however, does not dispose of the Applicant's underlying contention that during the CIRP period the management of the Corporate Debtor stood displaced and that certain statutory compliances were required to be attended to by the Resolution Professional. That contention requires separate consideration because the Code itself alters the management and control of a corporate debtor upon commencement of CIRP.
10. In this regard, the Applicant has relied upon Sections 18, 25 and 208 of the Code and the IBBI Circular dated 03.01.2018. Paragraph 2 of the said

Circular requires an insolvency professional acting as an Interim Resolution Professional, Resolution Professional or Liquidator to exercise reasonable care and diligence and take all necessary steps to ensure that the corporate person undergoing the insolvency resolution process complies with the applicable laws during the process. Paragraph 3 further provides, in substance, that where a corporate person suffers loss, including penalty, on account of non-compliance with applicable law, such loss shall not form part of insolvency resolution process cost and that the insolvency professional would be responsible for such non-compliance where it is on account of his or her conduct.

11. The Circular therefore recognises an obligation upon an insolvency professional to exercise reasonable care and diligence to ensure compliance with applicable laws during the process. At the same time, it does not create an automatic or self-executing liability upon the Resolution Professional merely because a statutory non-compliance is subsequently discovered. The main requirement contained in the Circular itself is that the non-compliance must be attributable to the conduct of the insolvency professional. Whether a particular default is so attributable necessarily depends upon the nature of the statutory obligation, the person upon whom the concerned enactment places the obligation, the relevant period, and the surrounding facts.

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12. This Adjudicating Authority is also conscious and have also carefully considered the earlier orders passed by this Adjudicating Authority during the CIRP, including the orders dated 19.04.2022, 17.05.2022 and 20.04.2023. These orders undoubtedly form part of the relevant factual background. The order dated 17.05.2022 directed restoration of the names of the subsidiaries and restrained precipitative action during the pendency of the proceedings, whereas the order dated 20.04.2023 contains observations concerning the manner in which the CIRP was conducted, the availability of funds with the Corporate Debtor, the CIRP costs and remuneration of the RP. Those findings and directions are neither being reopened nor diluted in the present proceedings. At the same time, the legal consequence sought to be drawn from those orders must remain confined to what was actually adjudicated therein. Neither of those orders determined the individual statutory liability, if any, arising from each of the defaults now enumerated by the Applicant, nor did they declare that the Corporate Debtor, its subsidiaries or their respective directors would stand absolved from statutory consequences under the Companies Act, 2013, the Income-tax Act, 1961, the GST enactments or any other applicable law. An observation regarding the conduct or responsibility of the RP cannot, by itself, be converted into a general adjudication extinguishing liabilities which arise under separate statutes and which were not the subject matter of

determination in those proceedings and fastening upon the erstwhile RP responsibility for every statutory default now alleged in Annexure-8.

13. It is also material to note that the Applicant has not sought any declaration holding Ms Anuradha Gupta, the erstwhile Resolution Professional personally liable for the statutory non-compliance referred to in Annexure 8. Nor has any direction for recovery of penalties, compensation or other amounts from her been sought. In this context the non-impleadment of Ms. Anuradha Gupta cannot by itself be treated as fatal to the maintainability of the present Application. The findings already recorded in the order dated 20.04.2023 may be taken into consideration within their actual scope without requiring their adjudication afresh. However, if any fresh finding attributing the particular statutory non-compliances enumerated in *Annexure-8* to the personal acts or omissions of the erstwhile RP were required to be returned, such a finding could not be recorded adversely to her without affording her an opportunity of hearing. Since no such declaration or direction against the erstwhile RP has been sought in the present Application, this Adjudicating Authority does not consider it necessary to determine her personal liability for the alleged statutory defaults.
14. This Adjudicating Authority therefore find merit in the proposition underlying the statutory obligations of an insolvency professional under the

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Code and the IBBI Circular dated 03.01.2018, read with the findings and directions contained in the order dated 20.04.2023. They are undoubtedly relevant to the Applicant's contention that the alleged non-compliances occurred during a period when the management of RLHL stood displaced. There is equally no difficulty in accepting that, during CIRP, management of the affairs of the Corporate Debtor vested in the IRP/RP and that the insolvency professional was required to take necessary steps for ensuring compliance with applicable laws. The issue before us, however, is materially different: whether the existence, or even breach, of such obligations automatically entitles RLHL, its subsidiaries and their respective directors to immunity from statutory consequences under separate enactments. In our considered view, the latter does not necessarily follow from the former. Statutory liability is provision-specific and may, depending upon the enactment concerned, attach to the company, the person responsible for the particular compliance, an officer in default, or another person identified by the statute. The displacement of management does not by itself extinguish every independent statutory obligation which may rest upon another person. Thus, refusal of the protection sought cannot be understood as a finding that the erstwhile directors are liable for defaults occurring during CIRP; equally, findings concerning the conduct of the RP cannot, without examination of the particular statutory obligation, operate as an advance declaration that

every other person stands immune. The existence of such obligations and the findings concerning the conduct of CIRP do not, by themselves, establish that RLHL, its subsidiaries and their respective directors are entitled to exemption from every statutory consequence arising under the Companies Act, 2013, the Income Tax Act, 1961 or the Goods and Services Tax Act, 2017. The entitlement to any such protection must be examined with reference to the particular statutory obligation, the person upon whom it was imposed, the circumstances in which the alleged default occurred and the jurisdiction of the authority competent to determine the resulting liability.

15. The dismissal of the present Application should therefore not be understood as a finding that RLHL, its subsidiaries or their respective directors are responsible for the alleged statutory defaults, nor does it amount to an exoneration of the erstwhile RP from any obligation which may have rested upon her during the CIRP. The width of Section 60(5)(c) of the Code does not alter this position. There is a distinction between jurisdiction to consider a question arising out of or in relation to CIRP and the nature of relief which can lawfully be granted while deciding such question. The existence of a nexus with CIRP does not, by itself, convert this Adjudicating Authority into the statutory authority under every enactment which may have application to the Corporate Debtor, nor does it enable this Authority to determine in advance liabilities which depend upon the ingredients, defences and

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adjudicatory mechanism prescribed by those enactments. Consequently, no finding is being returned in these proceedings either fastening or excluding the liability of any particular person in respect of the individual statutory defaults referred to in Annexure-8. Those questions, if and when they arise, must be determined in accordance with the enactment governing the particular statutory obligation.

16. In view of the foregoing, this Adjudicating Authority holds that the protection sought by the Applicant against statutory and penal consequences arising from alleged non-compliances during the CIRP period cannot be granted in the general terms in which prayers (1) to (7) have been framed. The findings and directions contained in the earlier orders, including the order dated 20.04.2023, have been duly considered and shall retain their effect within their actual scope. However, they do not constitute an adjudication of the individual statutory defaults enumerated in Annexure-8 or automatically confer immunity upon RLHL, its subsidiaries or their respective directors from proceedings under the respective enactments. It shall remain open to the Applicant, its subsidiaries and the concerned directors, in any such proceedings, to rely upon the earlier orders of this Adjudicating Authority, the vesting of management in the IRP/RP during CIRP, the statutory responsibilities of the RP, and all other relevant material to demonstrate that responsibility for the particular default did not rest upon

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them. The competent statutory authority would necessarily consider such material in accordance with the governing enactment and the facts pertaining to the particular default. Further, the direction sought in prayer (7), requiring prior approval of this Adjudicating Authority before civil or criminal liability may be imposed, cannot be granted in exercise of jurisdiction under the Code read with Rule 11 of the National Company Law Tribunal Rules, 2016.

17. This Adjudicating Authority further holds that no finding attributing the alleged non compliances to Ms Anuradha Gupta, the erstwhile RP can be recorded in her absence. She has also not been arrayed as a respondent in the present Application and no explanation by her concerning the individual non compliances catalogued in Annexure-8 is therefore before us and neither has the Applicant has made any prayer seeking any declaration or direction against the erstwhile RP in this Application.
18. In any such proceedings, it shall remain open to RLHL, CKRE, DBEPL and/or their respective directors, as the case may be, to place before the competent authority the orders passed during the CIRP, the circumstances relating to management and control during the relevant period, the IBBI Circular dated 03.01.2018, the correspondence with the erstwhile Resolution Professional, and any other material available to them in support of their contention that the concerned non-compliance was not attributable to them.

Any such contention shall necessarily be considered by the competent authority independently and in accordance with the applicable statutory framework, uninfluenced by the dismissal of the present Application.

19. Accordingly, **IA (IBC) No. 155/JPR/2024 is dismissed**, subject to the observations and liberties contained in paragraphs 16, 17 and 18 above. It is clarified that nothing contained in this order shall prejudice the rights and contentions of the Applicant, the RLHL Subsidiaries, their respective directors, the erstwhile Resolution Professional, or any competent statutory authority in any proceedings concerning a specific statutory non-compliance.



KAVITA BHATNAGAR
TECHNICAL MEMBER

AW/LRA

Per: Reeta Kohli, Judicial Member

1. The present application has been filed by the applicant, who was the Corporate Debtor in the main CP, with the following prayers: -

“ (a) Pass an order indemnifying the directors of RLHL from any consequences whatsoever including initiation of proceedings, fines, penalties and imprisonment for compliances not made in terms of the Companies Act, 2013, Income Tax Act, 1961 and Goods and Services Act, 2017 during the CIRP Period,

(b) Pass an order indemnifying RLHL from any consequences whatsoever including striking off its name from the Register of Companies, initiation of proceedings, fines and penalties for compliances not made in terms of the Companies Act, 2013, Income Tax Act, 1961 and Goods and Services Act, 2017 during the CIRP Period,

(c) Pass an order indemnifying the directors of CKRE from any consequences whatsoever including initiation of proceedings, fines, penalties and imprisonment for compliances not made in terms of the Companies Act, 2013, Income Tax Act, 1961 and Goods and Services Act, 2017 during the CIRP Period,

(d) Pass an order indemnifying CKRE from any consequences whatsoever including striking off its name from the Register of Companies, initiation of proceedings, fines and penalties for compliances not made in terms of the Companies Act, 2013, Income Tax Act, 1961 and Goods and Services Act, 2017 during the CIRP Period,

(e) Pass an order indemnifying the directors of DBEPL from any consequences whatsoever including initiation of proceedings, fines, penalties and imprisonment for compliances not made in terms of Companies Act, 2013, Income Tax Act, 1961 and Goods and Services Act, 2017 during the CIRP Period,

(f) Pass an order indemnifying DBEPL from any consequences whatsoever including striking off its name from the Register of Companies, initiation of proceedings, fines and penalties for compliances not made in terms of the Companies Act, 2013,

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Income Tax Act, 1961 and Goods and Services Act, 2017 during the CIRP Period,

(g) Declare/direct that RLHL Entities and their Directors, shall not, without prior approval of this Hon'ble Tribunal, be made subject to any civil/criminal liability arising wrongdoings/inaction on the part of Ms. Anuradha Gupta (erstwhile resolution professional of RLHL),

(h) Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The contention of the applicant is that: -
 - A. This Adjudicating Authority, vide order dated 24.09.2019, was pleased to admit the applicant-Corporate Debtor into CIRP and appointed Ms. Anuradha Gupta as the IRP, who was subsequently appointed as the RP of the applicant.
 - B. The CoC of the applicant-RLHL comprised only of Operational Creditors, as the claim of ITNL was denied being a related party.
 - C. During the course of the proceedings, it was brought to the attention of this Adjudicating Authority that an amount of Rs. 7 crores ^{is} available in the bank account of the applicant-RLHL against the total claims of Rs. 26,76,962/- of the three Operational Creditors, as ITNL had agreed to withdraw their claim of approximately Rs. 181 crores and the prayer was made for termination of the CIRP.
 - D. In view of the abovesaid, this Adjudicating Authority, vide order dated 20.04.2023, terminated the CIRP of the applicant, on the ground that the RP had imprudently treated RLHL as a sick company despite the

availability of sufficient funds to meet its debts. The Adjudicating Authority also took note of the fact that the RP had claimed a fee of Rs. 41,13,384/- out of the total CIRP cost of Rs. 73,31,510/-, when there was no need of conducting the CIRP against the Corporate Debtor/applicant at the first instance.

- E. The Hon'ble Adjudicating Authority, vide order dated 20.04.2023, directed the RP to refund the excess amount of remuneration amounting to Rs. 16,68,334/-.
- F. It is pertinent to note that the Directors of the applicant/company and its subsidiaries had resigned from their respective posts prior to the admission order due to various internal issues. The applicant-RLHL has 100% controlling stakes in its subsidiaries.
- G. After the passing of the admission order, the RP received notices dated 08.11.2021, 10.11.2021 and 11.11.2021 from the ROC, informing that the names of the applicant and its subsidiaries shall be struck off on account of non-appointment of directors.
- H. In view of the above, the RP filed an application seeking necessary directions for the appointment of directors in the RLHL and its subsidiaries and also prayed for directions to the ROC not to strike off the names of the RLHL subsidiaries.

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- I. The Adjudicating Authority, *vide* order dated 19.04.2022, had directed the RP to propose the names of Directors to be appointed but the RP failed to comply with the said order. On the next date of hearing, i.e., 17.05.2022, the RP submitted that this Adjudicating Authority may appoint suitable persons as directors.
- J. The Adjudicating Authority, taking note of the fact that the ROC had already struck off the names of the RLHL subsidiaries from the register of companies, directed that the names of the RLHL subsidiaries be restored to the Register of Companies and no precipitative action be taken against the applicant or its subsidiaries during the pendency of the case.
- K. Despite the aforesaid order passed by this Adjudicating Authority safeguarding the interests of the applicant and its subsidiaries, the RP failed to take the requisite steps by appointing directors. The IA preferred by the RP was subsequently disposed of with no direction to continue the interim protection safeguarding the interest of applicant-RLHL and its subsidiaries.
- L. Further, it was vehemently contended that despite the clear directions issued by the Adjudicating Authority *vide* order dated 20.04.2023, the RP failed to initiate the process of handing over the control of the applicant-company to Erstwhile Management. It is because of this

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negligent conduct on the part of the RP, after the termination of the CIRP, the Directors of applicant-RLHL were appointed on 11.08.2023, and subsequently directors of its subsidiaries were also appointed.

- M. The Adjudicating Authority, vide order dated 22.11.2023, passed in an application preferred by the RP seeking appropriate directions for handing over the charge of RLHL, took note of the statement made by one of the directors that handing over the charge of RLHL is necessary for statutory compliances to be made by Board of Directors of RLHL. The Adjudicating Authority, vide order dated 15.12.2023, taking note of the list of documents handed over by the RP gave the control and management of RLHL in the hands of its Erstwhile Management and the said process stood completed on 26.12.2023.
- N. It has been contended by the Applicant that it is only after receiving the documents from the RP on 26.12.2023 the management of the applicant discovered that the RP had failed to fulfil the compliances-related duties on behalf of the applicant and its subsidiaries during the course of CIRP period from 14.09.2019 to 20.04.2023. It was further submitted that said non-compliances may attract various civil and criminal consequences for RLHL entities, their directors under the Companies Act, 2013, the Income-tax Act, 1961, the Goods and Services Tax Act and also the Insolvency and Bankruptcy Code,

2016. Learned counsel has drawn our attention to various non-compliance on the part of the RP during the CIRP period under the Companies Act, 2013, the Income-tax Act, 1961, as well as the applicable GST Act. The counsel contended that because of non-compliances on the part of the RP, the total liability imposed upon the applicant-RLHL and its directors during the CIRP period may be approximately Rs. 2.9 crores, with the same/similar liabilities in respect of the subsidiaries. The directors of RLHL may have liability of approximately Rs. 41 lakhs with the fear of imprisonment as well. It is contended that the applicant-company, its subsidiaries and their directors cannot be made liable for the dereliction of duty on the part of the RP or for the negligent conduct of which the Hon'ble Court has already taken note of. Hence, the prayer made in the present application.

- O. Learned counsel, during the course of arguments on the issue of maintainability of the present application, submitted that this Adjudicating Authority has the jurisdiction under Section 60(5)(c) of the Code to entertain and dispose of any question of law or fact arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor, including the authority to grant necessary reliefs, immunities, or protections from past liabilities and

has placed reliance on *Arcade Casters v. Kalvakolanu Murali Krishna Prasad*, 2025 SCC OnLine NCLT 1154 (Para 5). The Counsel further submitted that vide order dated 17.05.2022 the court exercised its inherent power to restrain the ROC from taking precipitative action against RLHL or the RLHL Subsidiaries in the present case.

- P. The Ld. Counsel has further placed reliance on the judgment in *Jean Lavabre Dominique v. Voyager Hotels and Motels Private Limited*, 2023 SCC OnLine NCLT 22785 (para 9.10), whereby the Adjudicating Authority granted immunity to the applicant therein from levy of penalties by the ROC and the Income Tax Department for non-filing of ITRs since the Company Law Board had stayed the applicant therein from holding meetings of the board of directors, without which the audited balance sheet could not have been adopted by the shareholders.
- Q. The Ld. Counsel has also placed reliance on order dated 05.10.2018 in MA No. 1110 of 2018 in CP No. 3638 of 2018 wherein the Hon'ble Mumbai Bench directed that no action should be initiated against directors of a company without prior approval of the Adjudicating Authority, on wrongs of the erstwhile directors of the Company. Further, reliance has also been placed on the Order dated 29.01.2009 passed by Hon'ble Company Law Board, Principal Bench, New Delhi,

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in the Union of India vs. Satyam Computer Services Ltd.
(MANU/CL/0050/2009).

3. This Adjudicating Authority have heard the Learned Counsel for the applicant and appreciated the documents placed on record, along with the observations made by this Adjudicating Authority against the RP. These observations include the callous conduct on the part of the RP in which she proceeded with the CIRP without taking note of the amount already lying in the bank account of the Corporate Debtor and without realising that the liabilities of the Operational Creditors can be easily discharged.
4. It is pertinent to mention the conduct of the RP while proceeding with the CIRP process and inflating the CIRP Cost for which this Adjudicating Authority had to intervene and direct the RP to refund the amount deserves to be taken note of. This Adjudicating Authority, vide order dated 20.04.2023, observed as under:

...."22. As per the responsibilities of the RP enumerated in the Code, the RP is supposed to run the company as a prudent business person preserving all round interests. It appears as if the Corporate Debtor is being treated by the RP as a company which is sick while there is sufficient capital/liquidity in the Corporate Debtor to meet its debts. It seems as if the RP has continued the CIRP of the Corporate Debtor just to ensure higher billing even though the matter had remained stayed from 05.08.2020 to 16.03.2021

23. We cannot fathom any reason why the RP has gone forward with the CIRP of the Corporate Debtor when the Company had cash of Rs. 3,68,22,145.11/- on the CIRP admission date and is

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able to settle the Operational Debt raised by the Operational Creditors which is amounting to a total of Rs. 25 Lakhs approx. The RP has mentioned the CIRP cost of Rs. 73,31,510/- out of which the RP fees is Rs 41,13,334/- and the Legal fees is Rs. 16.71 Lacs, when the claim of the OCs was only Rs. 26,76,962/-. There appears no reasonable explanation with respect to the conduct of the RP of conducting a CIRP which costed three times the debt which is due by the Corporate Debtor. The RP is an officer of the court and ought to have informed this Adjudicating Authority that there is no need for conducting the CIRP of the Corporate Debtor as the Corporate Debtor has availability of funds to settle its dues against the Operational Creditors.

24. An amount of Rs. 7.00 Crores plus is lying in the Bank account of the Corporate Debtor against total claim of approx. Rs. 26 Lacs. It was also brought to the notice during the hearings that the RP is debiting the account of the CD towards the fees of the RP, Legal fees etc and the three OCs as members of the CoC are not reimbursing the CIRP cost.

25. We find no reason why the Operational Creditors have not claimed their dues. It is a clear case of some hidden motives and misuse of IBC and apparently gives rise to the suspicion of understanding among certain parties to continue the CIRP for some oblique purpose and till the amount lying in the account of the CD is exhausted as the CoC is not bearing the CIRP expenses."

5. Even prior to the aforesaid order, this Adjudicating Authority, vide order dated 19.04.2022 in an Application bearing IA No. 23/JPR/2022 while taking note of the necessity of filling up the vacancies of the directors, had held as under:

....“Under the circumstances, any appointment of directors shall be subject to prior approval of the Adjudicating Authority /Tribunal in accordance with applicable laws and few proposed names in this regard, for consideration and not necessarily binding on the Adjudicating Authority/Tribunal, may be submitted by the RP within two weeks in an application which shall be filed

before the Adjudicating Authority on or before 05.05.2022, with advance copy to the opposite counsels.”

6. Subsequently, vide order dated 17.05.2022, the Adjudicating Authority held as under:

....“On the previous date of hearing, it was directed that the RP may suggest some names for filling up vacancies of directors of the subsidiaries of the Corporate Debtor concerned. The same has not been done till today.

In this regard, Ms. Anuradha Gupta RP is present in person and submits that the Adjudicating Authority/Tribunal may appoint suitable persons for filling the vacancies on the Board of the subsidiary companies.

Ms. Pooja Singh, JTA appearing from the office of the RoC submits that prior to the order dated 19.04.2022, the concerned subsidiary company had already been struck off in March, 2022. In the special circumstances of this case, wherein CIR Proceeding is pending against the holding company, which is the CD in question before us, the RoC is directed to restore the names of the concerned companies henceforth and forthwith. No precipitate action shall be taken in respect of either the CD or its subsidiaries during the pendency of this case.”

7. The relevant paragraph of the order dated 22.11.2023 also deserves to be noticed, which reads as under:

...“It has been resolved that pursuant to the order dated 20.04.2023 in the matter of IA No. 100/JPR/2023 and CP No. (IB)-44/9/JPR/2019 passed by this Adjudicating Authority in the matter of Insolvency proceeding of Rajasthan Land Holding Ltd., a wholly owned subsidiary of the company, the following directors/authorized representative of the company are authorized to carryout the activities mentioned hereinbelow. Mr. Himanshu Joshi, one of the directors of RLHL is present today who submits that handing over of the charge of the company is very much required since statutory compliances have to be made by the Board of Directors. In this regard, a list of documents to be handed over

to the management of RLHL by the RP so that specific order be passed in this regard.”

8. Additionally, it deserves to be taken note of the fact that the RP in present case herself failed to perform the duties in terms of the Code. The RP was duty-bound to ensure compliance with all applicable laws on behalf of the Corporate Debtor during the CIRP process and the said fact has been duly taken note by this Adjudicating Authority in its Order dated 20.04.2023.
9. At this juncture, it is relevant to take note of the order rendered by the coordinate bench in the matter of *Union of India, Ministry of Corporate Affairs v. Infrastructure Leasing And Financial Services Limited* bearing MA No. 1110 of 2018 in CP No. 3638 of 2018 wherein the NCLT, Mumbai Bench directed that no action should be initiated against directors of a company without prior approval of the Adjudicating Authority, on wrongs of the erstwhile directors of the Company. For ease of reference, the relevant portion of the aforesaid Order is reproduced hereunder:-

“5. The present Miscellaneous Application has been filed for seeking declaration that for the past wrongs , no action should be initiated against the current Directors without the prior leave of this Tribunal ,and no civil, criminal, administrative or coercive action should be initiated against the newly appointed Directors, without the leave of the Court and further declaration has been sought that freshly appointed Directors should not be subject to any disability or disqualification under any law, regulations or guidelines, (including Section 164 and 167 of the Companies Act, 2013) or from any liability, financial or otherwise arising out of in connection with their Directorship in respect of R1 Company,

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consequent to their appointment and in discharging their responsibility as Directors of R1 Company.

...

8. In the case of Union of India v. Satyam Computer Services Ltd. (2009) 148 Com Case 629, the then Company Law Board had previously suspended the Board of Directors. On a similar type of application by the Government, the Company Law Board has passed orders to protect the Board of Directors

...

11. We are of the considered opinion that for exercising effective control over Respondent No. 1, the newly appointed Board of Directors of Respondent No. 1 ought to be given the powers, which were earlier being exerted by the suspended Board of Directors of the Respondent No 1 company.

12. Thus we are issuing direction that for the past actions of the suspended Directors or any of the Officers of the R1 company and the past wrongs of the suspended Directors and its officials, no action should be initiated against the newly appointed Directors, without prior approval of this Tribunal."

10. However, in the present case, the RP failed to manage the affairs of the Corporate Debtor as a going concern and to safeguard and protect the interests of the Corporate Debtor. The attention of the Court has also been drawn to the circular issued by the IBBI on 03.01.2018 stating that it is the duty of the RP to take necessary steps to ensure compliance with all applicable laws on behalf of the Corporate Debtor and that the RP would be responsible for any non-compliance of provisions of applicable laws if such non-compliance is on account of his own conduct and also to the circular issued by the MCA dated 17.02.2020 laying down the obligation of the RP, being the Chief Executive Officer to file all necessary

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forms/documents/disclosures/returns for the purposes of compliance under the provisions of the Companies Act, 2013.

11. Therefore, keeping in view the totality of the circumstances, the peculiar facts and circumstances of the present case, and the observations made by this Adjudicating Authority in its earlier orders, which have attained finality, there is no other option left but to allow the present application.
12. Accordingly, in view of the aforesaid facts and circumstances, the present application bearing *IA No. 155/JPR/2024* is allowed.


REETA KOHLI
JUDICIAL MEMBER