IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-II

IA (I.B.C) No. 2353/MB/2024, 4085/MB/2024

in

CP (IB) No. 708/MB/2022

[Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the National Company Law Tribunal Rules, 2016]

MR. UNMESH MANOHAR JOSHI
Address: 101, Oceana Apartment, Shivaji Park
Dadar (West), Mumbai-400028 **(Residential)** and
Kohinoor Corporate Office, Senapati Bapat Marg,
Dadar (West), Mumbai-400028 **(Office)**. **….Applicant**

V/s

1. **IL&FS FINANCIAL SERVICES LIMITED**
[CIN: U65990MH1995PLC093241]
Address: Plot C-22, G Block, Bandra-Kurla Complex,
Bandra (East), Mumbai-400051.

2. **MR. SHAILESH PRANLAL BHUTA**
RESOLUTION PROFESSIONAL OF MR. UNMESH MANOHAR JOSHI
[Registration No: IBBI/IPA-001/IP-P00853/2017-2018/11436]
Address: 901, Regent Chambers, Nariman Point
Mumbai-400021, Maharashtra. ….**Respondents**

IN THE MATTER OF:

IL&FS FINANCIAL SERVICES LIMITED **…Financial Creditor**

V/s

MR. UNMESH MANOHAR JOSHI **...Corporate Debtor**

Pronounced: **20.11.2026**

CORAM:

HON'BLE SHRI ASHISH KALIA, MEMBER (JUDICIAL)

HON'BLE SHRI BANWARI LAL MEENA, MEMBER (TECHNICAL)

Appearances: Hybrid

Applicant: Adv. Akshay Patil a/w. Adv. Rohan Agarwal & Adv. Neha Patil i/b. Adv. Akshay V. Kamble

IL&FS/Respondent No. 1: Adv. Amir Arsiwala a/w. Adv. Akash Jain, Adv. Sanjana Salvi & Adv. Divyang Salvi i/b. Mansukhlal Hiralal & Co.

RP/Respondent No. 2: Adv. Vamsh Shetty a/w. Adv. Rishabh Dhanuka & Adv. Mahima Shah i/b. Agarwal & Dhanuka Legal.

ORDER

[Per*: *ASHISH KALIA, MEMBER (JUDICIAL)]

1. BACKGROUND

1.1 This Interlocutory Application bearing IA (I.B.C) No. 2353/MB/2024 (hereinafter referred to as "the Application/Main Application") has been filed on 28.02.2024 by Mr. Unmesh Manohar Joshi (hereinafter referred to as "Applicant"), under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 11 of the National Company Law Tribunal Rules, 2016 (hereinafter referred to as "NCLT Rules"), seeking the quashing of report dated 02.01.2024 filed under Section

99 of the Code by Mr. Shailesh Pranlal Bhuta, the Resolution Professional (hereinafter referred to as "RP/Respondent No. 2) against the Applicant in the Company Petition bearing CP(IB) No. 708/MB/2024 (hereinafter referred to as "Company Petition").

1.2 The Applicant also prays, in addition, that the order dated 28.08.2023 passed by this Tribunal regarding appointment of the Respondent No. 2 as the Resolution Professional of the Applicant be recalled and appoint a new Resolution Professional. The Applicant further prayed for direction against the Respondent No. 2 or the new Resolution Professional to file a fresh report under Section 99(2) of the Code as well as other legal provisions and even sought stay upon the further adjudication of the Insolvency Resolution Process of the Applicant during the pendency and till the final disposal of the Main Application.

1.3 During the pending of the aforesaid Main Application, the Applicant also filed another Interlocutory Application bearing IA (I.B.C) No. 4085/MB/2024 on 20.08.2024, seeking directions against the RP/Respondent No. 2 to comply with the provisions of Section 99 of the Code as well as seek all the information and documents from the Applicant regarding preparation of the report under Section 99 of the Code.

2. CONTENTIONS OF APPLICANT

2.1 It is submitted that the IL&FS Financial Services Limited (hereinafter referred to as "IL&FS/Financial Creditor/Respondent No. 1") had filed the above-mentioned Company Petition against the Applicant under Section 95 of the Code on 26.05.2022 as the Applicant was the Chairman, Managing Director

as well as personal guarantor of Kohinoor Housing Development Private Limited., (hereinafter referred to as "Corporate Debtor"). The alleged default amount as mentioned in the Part-III of the Company Petition is Rs. 260,31,42,638/- (Two Hundred and Sixty Crores Thirty-One Lakhs Forty-Two Thousand Six Hundred and Thirty-Eight Rupees) including the principal amount of Rs. 120,00,00,000/- while the date of default is 06.04.2018.

2.2 Pursuant to the filing of Company Petition, the Applicant challenged the constitutional validity of Section 95 of the Code before Hon'ble Supreme Court through filing the Writ Petition No. 541/2022 on 12.06.2022. During the pendency of the said Writ Petition, the Hon'ble Supreme Court passed an interim order dated 05.08.2022 wherein it was stated that the Applicant shall not transfer, alienate, encumber or dispose of any of his assets or legal rights and the Resolution Professional shall not proceed with the filing of the report and the same shall not be acted upon in the event of the report being filed.

2.3 Meanwhile, the Hon'ble Tribunal appointed Mr. Shailesh Pranlal Bhuta, i.e., Respondent No. 2 of the Main Application as the Resolution Professional *vide* order dated 28.08.2023 and directed him to file the report under Section 99 of the Code within 10 (Ten) days from the date of uploading of the said order. The said order was made available to the parties including the Applicant on 12.09.2023 pursuant to which the Applicant requested the RP/Respondent No. 2 not to take any action *vide* his Advocate's email dated 14.09.2023.

2.4 However, the Applicant, aggrieved by the Hon'ble Tribunal's order dated 28.08.2023, challenged the appointment of the Respondent No. 2 as the RP before Hon'ble NCLAT through his Company Appeal bearing Company Appeal (AT) (Insolvency) No. 1244/2023. The Hon'ble NCLAT had passed its

interim order dated 22.09.2023 wherein it restrained the Resolution Professional to take any further step or file any report in pursuance of the impugned order dated 28.08.2023. Later, the Hon'ble NCLAT dismissed the aforesaid Company Appeal *vide* its order dated 06.12.2023 on ground of the Hon'ble Supreme Court's ruling in ***Dilip B. Jiwrajka vs Union of India.,*** **[Writ Petition (Civil) No. 1281 of 2021]**.

2.5 The RP later prepared the report dated 02.01.2024 under Section 99 of the Code and filed the same before this Tribunal *vide* IA (I.B.C) No. 1294/MB/2024. The said report dated 02.01.2024 was taken on record and the said Interlocutory Application was allowed *vide* this Tribunal's order dated 20.06.2024 in IA (I.B.C) No. 1294/MB/2024.

2.6 The Ld. Counsel for the Applicant submits that the RP/Respondent No. 2 violated the Hon'ble Supreme Court's interim order dated 05.08.2022 in Writ Petition No. 541/2022 as well as Hon'ble NCLAT's interim order dated 22.09.2022 through preparation of the report on the basis of the exchange of communication between the Respondents. Further, the Respondent No. 2 proceeded to prepare the report dated 02.01.2024 under Section 99 of the Code without giving any adequate opportunity to the Applicant and had even a copy of the report to the Applicant without annexures through his email dated 02.01.2024. Despite the Applicant's request through his email dated 03.01.2024 to the RP for providing the copies of his report's annexures, the same was not given to the Applicant till this Tribunal's order dated 24.01.2024 pursuant to which the RP served the copy of the report along with annexures to the Applicant on 31.01.2024.

2.7 It is further submitted that the adverse inference ought to be drawn against the Resolution Professional and it may be deemed that RP did not address the purported email dated 21.09.2023 to Applicant. Since the RP failed to issue notice to the Applicant despite taking almost a month after the Hon'ble NCLAT's order dated 06.12.2023 to prepare the report, the RP/Respondent No. 2 has violated the provisions of Section 99(2) of the Code.

3. CONTENTIONS OF RESPONDENTS

3.1 The IL&FS/Respondent No. 1, *vide* its limited Affidavit in Reply dated 05.07.2024, submitted that this Tribunal did not have any embargo in the appointment of the Resolution Professional and till the Hon'ble NCLAT's interim order dated 22.09.2023, there was no embargo upon the Resolution Professional to examine the aforesaid Company Petition as well as prepare its report and it has no objection to the IA (I.B.C) No. 1294/MB/2024 filed by the Respondent No. 2 regarding submission of his report under Section 99 of the Code.

3.2 The RP/Respondent No. 2, *vide* his Affidavits in Reply dated 19.06.2024 and 29.11.2024 contended that the Applicant has failed to distinguish the difference between the Orders of the Hon'ble Supreme Court of India dated 05.08.2022 and order of the Hon'ble NCLAT dated 22.09.2023. It is stated that during the time of passing of Order dated 05.08.2022, the Respondent No.2 was appointed as the Resolution Professional. Keeping in mind, the Applicant approached the Hon'ble NCLAT against the Order dated 28.08.2023 whereby the Resolution Professional was directed not to take any

further steps or submit the report and therefore, it cannot be said that the RP has breached the orders of the Hon'ble NCLAT or the Supreme Court.

3.3 Moreover, the Applicant has failed to make out a case of prejudice being caused to them and has failed to show that grave harm is being caused to them. As previously mentioned, the role of the Resolution Professional is limited to only recommending and guiding this Tribunal. Hence the RP/Respondent No. 2 has under no circumstances caused or is causing any prejudice to the Applicant of the RP's report. Moreover, the Applicant has also failed to show as to the failure on part of the RP's Report to perform its duties in light of the pendency of the Hon'ble Supreme Court of India and the Hon'ble NCLAT Orders.

3.4 The Ld. Counsel for the Respondent No. 2, *vide* his Affidavit in Reply dated 22.04.2026, submits that the RP addressed the email dated 21.09.2023 to the Applicant calling upon the Applicant to furnish proof of repayment of the debt claimed to be outstanding and unpaid to the IL&FS/Respondent No. 1. The Applicant has failed to respond to the said communication till date and such conduct of the Applicant demonstrates that the Respondent No. 2 had not only complied with Section 99(2) of the Code but also the Applicant had failed to discharge his outstanding debt liability.

3.5 In fact, the Applicant, *vide* its reply email dated 28.12.2023, confirmed that no repayment of the outstanding dues has been made since the filing of the aforesaid Company Petition. Also, the Applicant acknowledged the receipt of the RP's report dated 02.01.2024 *vide* his email dated 03.12.2024. All the communications made to the RP/Respondent No. 2 were made by the Applicant through the email address "unmesh.joshi@kohinoorgroup.co.in"

so, the Applicant responded to the RP's email dated 02.01.2024 regarding the RP's report on one hand while conveniently failed to respond to the earlier intimation sent through email dated 21.09.2023 which was sent to the same email address.

3.6 It is also submitted that the email intimation issued by the RP constitutes deemed communication or intimation within the meaning of Section 4 of the Information Technology Act, 2000 (hereinafter referred to as "IT Act"). Section 4 of the IT Act grants legal recognition to electronic records and provides that where any law requires information to be furnished in writing or in printed or typewritten form, such requirement shall be deemed to be satisfied if the information is rendered or made available in an electronic form and is accessible so as to be usable for a subsequent reference and therefore, the email communications sent by the RP falls within the ambit of the said provision. Moreover, the legal validity of service of notice and communication through electronic mail has been firmly settled by the Hon'ble Bombay High Court in ***Kross Television India Pvt. Ltd. & Anr. v. Vikhyat Chitra Production & Ors.,*** **[2017 SCC OnLine Bom 1433]** wherein it was held that when an alternative mode is used and the service is shown to be effected & is acknowledged, then it cannot be suggested that the Defendant had no notice regarding the same.

4. REJOINDER OF THE APPLICANT

4.1 The Applicant, *vide* its Rejoinder dated 26.08.2024, submits that the mere address of a solitary email communication dated 21.09.2023 and lack of any other communication through hand delivery, registered post, speed post and

courier does not constitute a compliance with the provisions of Section 99 of Code or principles of natural justice. Section 99(2) of the Code stipulates that Resolution Professional would require the debtor to prove repayment of debt claimed as unpaid by the Creditor. The process contemplated under Section 99(2) of the Code not only require a proper notice through hand delivery, registered post, speed post and courier in addition to electronic communication but further personal interaction/hearing seeking information/ explanation as contemplated u/s 99(4) of the Code. Thus, a mere sending of an email without there being any other communication through hand delivery, registered post, speed post and courier and a proof of delivery or confirmation, does not constitute issuance of notice or a proper service of notice or opportunity of hearing or compliance of natural justice as contemplated u/s 99(2) and 99(4) of the Code.

4.2 The Ld. Counsel for the Applicant, *vide* its Additional Affidavit dated 02.06.2026, submitted that the RP/Respondent No. 2 has failed to produce any cogent material or electronic evidence to establish that the alleged email dated 21.09.2023 was ever served upon or delivered to the Applicant. The mandatory requirement of communication under Section 99(2) of the Code remains wholly unfulfilled and non-compliance with such mandatory procedural safeguard vitiates the very foundation of the Report under Section 99 of the Code and renders the subsequent process legally unsustainable.

5. CONTENTIONS OF THE APPLICANT IN IA (I.B.C) NO. 4085/2024

5.1 It is contended that the RP has failed to comply with the provisions of the Section 99 of the Code and therefore, the report dated 02.01.2024 filed by the RP/Respondent No.2 cannot be accepted by this Tribunal.

5.2 The Applicant also contended that since the Respondents have violated the provisions of law as well as interim orders passed by Hon'ble NCLAT and Hon'ble Supreme Court during the pendency of proceedings filed by the Applicant, he prays for replacement of the RP/Respondent No. 2 as well as seeks direction for filing of another report under Section 99 of the Code.

6. CONTENTIONS OF THE RESPONDENT IN IA (I.B.C) NO. 4085/2024

6.1 The Ld. Counsel for the IL&FS/Respondent No. 1 submits that since the Hon'ble NCLAT had already vacated the stay upon the proceedings against the Applicant *vide* its order dated 06.12.2023 and even confirmed the appointment of the Respondent No. 2 as the RP, the Applicant deliberately filed the said Interlocutory Application on 20.08.2024 i.e., period of 8 months after the service of RP's report dated 02.01.2024. Further, the RP/Respondent No. 2 has acted accordingly under Section 99 of the Code and hence, allowing this Interlocutory Application will merely frustrate the pending proceedings against the Applicant.

6.2 It is submitted that the Respondent No. 2 had repeated clarified in his affidavits dated that, *vide* email dated 21.09.2023, information regarding repayments was duly sought and the report dated 02.01.2024 was served

upon the Applicant only after attempting to obtain the relevant details from the Respondent No. 1 as well as the Applicant.

6.3 The Ld. Counsel for the Respondent No. 1 further submits that the loan facility was defaulted by the Corporate Debtor in 2018 and it is already suffering inordinate losses as well as affecting public money at large on account of frivolous applications filed by the Applicant/Personal Guarantor which is evident from the fact that the Applicant sought similar prayers in the Main Application as well as IA (IBC) No. 4085/2024.

6.4 Thus, the intention behind filing the aforesaid Interlocutory Application by the Applicant is solely to create unnecessary delay and amounts to abuse of legal process.

7. ANALYSIS AND FINDINGS

7.1 We have perused all the documents and pleadings and heard both the Ld. Counsels for the Applicant and the Respondents.

7.2 The issues to be determined in the present Applications are (i) Whether the report dated 02.01.2024 filed by the RP/Respondent No. 2 *vide* IA (I.B.C) No. 1294/2024 is maintainable? and (ii) Whether the Interlocutory Application bearing IA (I.B.C) No. 4085/2024 is maintainable?

7.3 As far as the issue (i) is concerned, upon perusal of documents, we find that the RP/Respondent No. 2 had made the communications to the Applicant regarding seeking information of debt as well as serving the copy of the RP's report dated 02.01.2024 to the same email address of the Applicant i.e., "unmesh.joshi@kohinoorgroup.co.in". However, the Applicant seems to replied only the RP's email regarding the copy of the RP's report along with

the annexures and claimed not to receive the earlier email dated 21.09.2023. In fact, the Applicant through his counsel's email dated 03.12.2024 acknowledged the receipt of the RP's report dated 02.01.2024. The Applicant has failed to provide evidence about non-delivery of receipt of the RP/Respondent No. 2's email dated 21.09.2023 for seeking information regarding the debt. Applying the legal principle held by Hon'ble Bombay High Court in ***Kross Television*** **(supra),** it is clearly evident that the notice under Section 99(2) and 99(4) of the Code was duly served to the Applicant through the email and the Applicant cannot approbate and reprobate regarding the receipt of the RP's emails through his own email address.

7.4 Further, it is also evident from the perusal of Hon'ble Supreme Court's decision in ***Dilip Jiwrajka*** **(supra)** and Hon'ble NCLAT's order dated 06.12.2023 in Company Appeal (AT) (Insolvency) No. 1244/2023 that pursuant to the upholding the constitutionality of Section 95 of the Code by the Apex Court and vacating the stay on RP's proceedings by the Hon'ble NCLAT, the Respondent No. 2 had acted according to the provisions of Section 99 of the Code. On the basis of the above discussions, we find that the Applicant has not made out his case for rejection of the RP's report dated 02.01.2024 as well as replacement of the Respondent No. 2 as the RP of the aforesaid Company Petition and his claim is not supported by the law and facts. Thus, we hold that the **IA (I.B.C) No. 2352/2024** is not maintainable and so, the issue (i) is decided against the Applicant.

7.5 Regarding the maintainability of **IA (I.B.C) No. 4085/MB/2024**, upon perusal of documents, it was found that the Applicant had sought similar prayers as that of the Main Application. In fact, there is nothing on record to suggest that

the RP/Respondent No. 2 has violated the provisions of Section 99 of the Code or the interim orders passed by the Hon'ble NCLAT & Hon'ble Supreme Court during the pendency of the legal proceedings filed by the Applicant. Since the Applicant has already failed to made out its case in the main Application and the fact that the communication made by the Respondent No. 2 through emails dated 21.09.2023 is clearly evident in the present matter, it shows that there is no merit in allowing the said Interlocutory Application i.e., **IA (I.B.C) No. 4085/MB/2024**. Thus, issue (ii) is also decided against the Applicant.

ORDER

In view of the above discussions, the **IA (I.B.C) No. 2353/MB/2024** & **IA (I.B.C) No. 4085/MB/2024**, filed by **Mr. Unmesh Manohar Joshi**, Applicant in the present IAs as well as the Respondent in **CP (IB) No. 708/MB/2022**, are **dismissed.**

The designated Registrar is directed to forward the electronic version of this Order to the IBBI, only for the purposes of information and record. Ordered accordingly.

Sd/-

BANWARI LAL MEENA
MEMBER (TECHNICAL)

Sd/-

ASHISH KALIA
MEMBER (JUDICIAL)

//LRA-Tanmay Jain//