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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ C.R.P. 94/2024

MANISH KUMAR

..... Petitioner

Through: Mr. Ajay Shanker & Mr. Ajay
N. Jha, Advs.

versus

SMT. PREM KUMARI & ORS.

..... Respondents

Through: Mr. Varun Gupta, Adv. for R-1
to R-4 (through VC)

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **11.03.2024**

CM APPLs. 14528/2024 & 14529/2024 (exemptions)

1. Allowed, subject to all just exceptions.
2. Applications stand disposed of.

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3. Learned counsel for respondents No.1 to 4 is present on advance notice through video conferencing.
4. By way of the instant revision petition, petitioner is assailing the impugned order dated 27.01.2024 passed by learned District Judge, Commercial Courts-02, Patiala House Court, New Delhi, whereby his application under Order I Rule 10 CPC seeking deletion of his name from the array of parties was dismissed.
5. Briefly stated, the petitioner, who is defendant No.2 in the suit instituted at the behest of respondents No.1 to 4/plaintiffs claims that although the Lease Agreement dated 23.03.2013 was executed when



he was the Director of respondent No.5/defendant No.1, however, later on, he resigned from the directorship of the Company on 11.06.2020.

6. Learned counsel appearing for respondents No.1 and 2 appearing through video conferencing has no objection to the present revision petition being allowed.

7. The long and short of the submissions made by the learned counsels for the petitioner as well as the respondents No.1 to 4 is that the suit filed by respondents No.1 to 4/plaintiffs was initially stayed in view of the pendency of IBC proceedings before the NCLT under Section 17 of the IBC. However, later on, the said order of NCLT dated 25.11.2021 has been set aside by the NCLAT. Resultantly, the proceedings before the learned District Judge have been revived. It is well-settled that the director, more so one who has already resigned, cannot be sued in a personal capacity.

8. Thus, respondent No.5/company is not suffering from any kind of legal disability in the nature of being involved in any kind of winding up or liquidation proceedings under IBC. Indeed, the petitioner is *dominus litus* but in a commercial matter, where the contract has been entered with a juristic person, its Directors are not personally liable or to be sued in their personal capacity. Reference can be invited to decisions in **Ranbir Kumar Gugneja v. Continental Engines Ltd. & Ors.**, 2011 (1) AD 462, **Sanju Bathla & Anr. v. Manu Maheshwari & Anr.**, CRP 166 of 2018 dated 12.04.2021 (Delhi High Court) and **Mukesh Hans & Anr. v. Smt. Uma Bhasin & Ors.**, RFA 14 of 2020 dated 16.08.2010 (Delhi High Court).

9. In view of the foregoing discussion, the impugned order dated



27.01.2024 is set aside. The name of the petitioner, who is the defendant No.2 shall stand struck off from the array of parties.

10. Learned counsel for respondents No.1 to 4/plaintiffs shall file an amended memo of parties before the learned Trial Court.

11. The revision petition is accordingly disposed of.

12. This order is passed without prejudice to the rights and contentions of the parties.

DHARMESH SHARMA, J.

MARCH 11, 2024/ck