

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

I.A. No. 3394 of 2024

**In
Company Petition No. (IB)- 380(ND)/2021**

IN THE MATTER OF:

State Bank of India **... Applicant / Financial Creditor**

Vs.

Kiran Gupta **... Respondent/Personal Guarantor**

AND IN THE MATTER OF

Vijender Sharma **... Applicant/Resolution Professional**

**Order Under Section 112 of Insolvency & Bankruptcy Code, 2016
r/w Regulation 19 of IBBI (Insolvency Resolution Process for
Personal Guarantors to Corporate Debtors) Regulations, 2019**

ORDER PRONOUNCED ON: 23.07.2024

CORAM:

**CHIEF JUSTICE (Retd.) RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT**

**SHRI AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the : Mr. Ishwar Mohapatra, Adv.
Applicant/RP

ORDER

1. State Bank of India filed an application bearing C.P (IB) No. 380/2021 on 02.06.2021 under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 (the Code) read with rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 for initiation of Insolvency Resolution Process against Ms. Kiran Gupta, the Personal Guarantor to M/s. Metenere Limited (formerly Met Trade (India) Limited), the Corporate Debtor.
2. The instant application i.e I.A No. 3394 of 2024 has been filed by Mr. Vijender Sharma, the Resolution Professional of Ms. Kiran Gupta, inter-alia seeking an order of this Adjudicating Authority to take on record the report of RP reporting that the Personal Guarantor failed to submit repayment plan, accordingly, the Insolvency Resolution Process of Mr. Kiran Gupta be concluded and liberty be granted to the creditors in terms of Section 115(2) of the Code to move an application for bankruptcy under chapter IV and for seeking the following reliefs:

- i. To allow the present report to be taken on record, with respect to the decision taken by creditors in its 05th meeting held on 26.06.2024.
 - ii. To grant liberty to creditors in terms of sec-115(2) of IBC, 2016 to file an application for bankruptcy under chapter IV.
 - iii. Discharge the Resolution Professional from the charge of Resolution Professional of Ms. Kiran Gupta.
 - iv. Pass such other or further order / orders(s) as may be deemed fit and proper in facts and circumstances of the instant case.
3. Briefly stated the facts of the present case as averred by the applicant are that Mr. Virender Sharma ('applicant') having IBBI Registration No- IBBI/IPA-003/IP-N00003/2016-2017/10022 was appointed as the Resolution Professional of Ms. Kiran Gupta, Personal Guarantor of M/s. Metenere Limited by this Adjudicating Authority under Section 97(5) vide order dated 11.08.2021 in C.P. No. (IB)/380/PB/2021.
4. The Resolution Professional filed his report dated 19.08.2021 under Section 99 of IBC, 2016 recommending admission of the application filed under Section 95 of the Code. After giving an opportunity of hearing to the respondent Personal Guarantor, this Adjudicating Authority vide order dated 01.03.2024 under Section 100(1) of code admitted the application and initiated the insolvency resolution process of the Personal Guarantor.
5. In compliance with Section 102(1) & (2) of the Code, a public announcement was made by the Resolution Professional on 03.03.2024 in Financial Express newspaper in English and Jansatta in Hindi. Pursuant to the Public Announcement, RP received claims against the Personal Guarantor and, after perusal of documents, accepted the claims as follows:

S.No.	Name of Creditors	Secured/Unsecured	Related or Not	Claim amount submitted in Rs.	Claim Amount admitted by RP in Rs.
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i.	State Bank of India	Unsecured	Not	11,69,37,87,061	11,69,37,87,061
ii.	Bank of Baroda	Unsecured	Not	7,76,19,95,653	5,10,56,21,722
iii.	Canara Bank	Unsecured	Not	3,89,47,23,902	3,89,47,23,902
iv.	Indian Bank	Unsecured	Not	49,03,14,588	48,80,84,436
v.	DBS Bank	Unsecured	Not	1,25,24,57,078	1,23,78,12,580
vi.	IDBI Bank Limited	Unsecured	Not	5,46,30,70,623	5,46,28,58,623
vii.	Bank of India	Unsecured	Not	3,43,47,61,756	2,38,06,90,210
viii.	Exim Bank	Unsecured	Not	79,72,15,982	79,72,15,982
			<u>TOTAL</u>	<u>34,78,83,26,643</u>	<u>31,06,07,94,517</u>

6. It is submitted that on 04.03.2024 the RP sent mail to Personal Guarantor intimating her about the commencement of her insolvency resolution process basis the order of this Adjudicating Authority dt. 01-03-2024. The RP vide aforesaid mail, also reminded the Personal Guarantor to provide the required documents as sought in its mail dated 11-08-2021 and to submit the repayment plan. The RP also mentioned to the Personal Guarantor that pursuant to provisions of the Code r/w allied Regulations, the RP is duty bound to place the repayment plan before the Adjudicating Authority and before the creditors for modification and approval in a time bound manner, as per timelines laid down in the Code.
7. On 06.04.2024, the RP submitted its report to this Adjudicating Authority under Section-106 intimating that he has not received any repayment plan from the Personal Guarantor, the said report

- was taken on record by this Adjudicating Authority on 22.04.2024.
8. On 20.04.2024 Mr. Raman Gupta, husband of Ms. Kiran Gupta vide email requested the RP to adjourn the 1st meeting of creditors due to assignment of debt by creditors to NARCL and also requested for four weeks' time to provide the relevant documents to RP. The 1st meeting of creditors was held on 30.04.2024 which was not attended by the Personal Guarantor though the minutes of said meeting was circulated to him by email dated 30.04.2024.
 9. On 07.05.2024, the RP received the power of attorney from the Personal Guarantor in favour of her husband and mentioned that in view of health & other issues Ms. Kiran Gupta is not in a position to submit the required documents/information in a short span of 7 days and requested for additional 15 days. Thereafter the 2nd, 3rd, 4th and 5th meeting of creditors was held on 27.05.2024, 06.06.2024, 17.06.2024 and 26.06.2024 in which the Personal Guarantor did submit some information & documents to RP but no repayment plan was received by the RP.
 10. In the 5th meeting of creditors dated 26.06.2024, the creditors mentioned that because no repayment plan was received from the personal guarantor despite giving her sufficient time, the RP can submit his report to the Adjudicating Authority u/s-112 of the code.

Analysis and Findings

11. We have heard Ld. Counsel for the applicant and perused the application. In the present case, the Personal Guarantor has failed to give a repayment plan in consultation with Resolution Professional which shall contain a proposal to the creditors for restructuring her debts or affairs in terms of Section 105 of the code.
12. We would now like to refer to Section 115 of the Code, which reads as follows:

115. Effect of order of Adjudicating Authority on repayment plan. -

(1) Where the Adjudicating Authority has approved the repayment plan under section 114, such repayment plan shall –

(a) take effect as if proposed by the debtor in the meeting; and

(b) be binding on creditors mentioned in the repayment plan and the debtor.

(2) Where the Adjudicating Authority rejects the repayment plan under section 114, the debtor and the creditors shall be entitled to file an application for bankruptcy under Chapter IV.

(3) A copy of the order passed by the Adjudicating Authority under sub-section (2) shall be provided to the Board, for the purpose of recording an entry in the register referred to in section 196.

13. As per Section 105 of the Code the debtor/ Personal Guarantor shall prepare in consultation with the RP, a repayment plan, then as per Section 106, the RP shall submit the repayment plan along with his report on such plan to the Adjudicating Authority. After conducting the meeting of creditors on the repayment plan the RP shall prepare report of the meeting of creditors as per Section 112 and submit it to the Adjudicating Authority as per Section 113. The Adjudicating Authority may then pass an order under Section 114 either approving or rejecting the report. But in the case before us, in the absence of any repayment plan filed by the personal guarantor the supra procedure could not be carried out. The non-filing of repayment plan causes similar effect of rejection of repayment plan under section 114 as provided under section 115(2) of IBC 2016.

14. In these given circumstances, since the Personal Guarantor has not filed repayment plan in spite of giving sufficient time, I.A No 3394 of 2024 stands allowed and as provided under section 115(2) of IBC 2016, the debtor and creditors shall be entitled to file an application for bankruptcy under Chapter IV of the Code.

Order

15. IA No. 3394/2024 is allowed and **disposed of**.

16. The debtor and Creditors shall be entitled to file an application for

bankruptcy under Part III, Chapter IV of the Code.

17. The Resolution Professional is discharged from the Insolvency Resolution Process of Personal Guarantor Ms. Kiran Gupta
18. The Registry is directed to forward the copy of this order to the IBBI as provided under Section 115(3) of IBC, 2016
19. Certified copies of this order may be issued, if applied for, upon compliance of all requisite formalities.

Sd/-

**(RAMALINGAM SUDHAKAR)
PRESIDENT**

Sd/-

**(AVINASH K. SRIVASTAVA)
MEMBER, TECHNICAL**