

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**MUMBAI BENCH COURT III**

**I.A. 3552/2022**

**In**

**C.P. No. (IB) 14/MB/C-III/2022**

Under Section 60(5) R/W 112 of the Insolvency and Bankruptcy Code, 2016  
R/W Rule 11 of the NCLT Rules, 2016

Filed by

**Mr. Pradeep Kumar Kabra** )  
(Resolution Professional) )  
Having registration No. )  
IBBI/IPA-001/IP-P01104/2017-18/11790 )  
Having his office address at; )  
301, 3<sup>rd</sup> Floor, Reegus Business Centre )  
New Citylight Road, Above Mercedes )  
Benz Showroom, Bharthana Vesu, )  
Surat- 395007 )

*... Applicant*

IN THE MATTER OF

**State Bank of India.**

*... Financial Creditor*

Vs

**Mr. Prakash Pundlik Shenvi**

*... Corporate Debtor*

**Order pronounced on: 10.07.2024**

**Coram:**

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati (Technical)

**Appearances:**

*For the Applicant : Adv. Aniket Malu*

***Per: Ms. Lakshmi Gurung, Member (Judicial)***

**ORDER**

1. The above I.A. has been filed by the Resolution Professional under section 112 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) placing on record “*the report of the Resolution Professional of meeting of creditors rejecting repayment plan submitted by the Personal Guarantor.*”

**Brief Facts :-**

2. State Bank of India (**SBI/Financial Creditor**), through RP, filed the petition for initiation of Individual Insolvency Resolution Process (**IIRP**) against the Personal Guarantor under Section 95 of IBC. The Tribunal vide its order dated 15.02.2022 declared interim moratorium from the date of the filing of above captioned Petition i.e. 30.10.2021 in terms of Section 96 of the IBC and directed the RP to file a report under Section 99 of the IBC.
3. Accordingly, the RP submitted his report on 25.03.2022 recommending admission of the above captioned Petition. Accordingly, vide order dated 01.04.2022, the Petition was admitted under section 100 of IBC initiating IIRP against the Personal Guarantor.
4. Thereafter, the RP made public notice inviting claims from all the Creditors in Business Standard, Free Journal in English language and Navshakti in Marathi language both circulated in Mumbai. As per the claims received by the RP, list of creditors was submitted which is as follows:-

Sl.	Name of Creditor	Amount claimed (Rs.)	Amount admitted (Rs.)	Security interest	Voting Right (%)
1	State Bank of India	1,03,74,00,000	69,22,31,502	No	67.18
2	Omkara Assets Reconstruction Pvt. Ltd.	45,91,64,521	33,81,64,521	No	32.82
<b>Total</b>		<b>1,49,65,64,521</b>	<b>1,03,03,96,023</b>		<b>100</b>

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5. The Personal Guarantor in consultation with the RP prepared repayment plan as per Section 105 of IBC and Regulation 17 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) proposing an amount of Rs. 30,00,000/- to be paid to the creditors.
6. It is submitted that the RP, based on the documents, records and information available prepared a report on the repayment plan and submitted the same to this Tribunal in terms of Section 106 of IBC.
7. The 1<sup>st</sup> meeting of the Creditors of the Personal Guarantor was convened for the consideration of the repayment plan. After detailed discussion the Creditors were of the considered view that the repayment plan be considered in the next meeting after receipt of valuation report and investigation agency report.
8. On 13.07.2022 & 19.07.2022 the RP vide his email sought information from NSDL and CSDL regarding shares and demat account held by the Personal Guarantor. The NSDL & CDSL replied vide an email dated 19.07.2022 stating that there is no demat account in the name of the Personal Guarantor.
9. The RP filed an application for extension of IIRP of the Personal Guarantor by 60 days as the initial period of 120 days expired on 09.09.2022. Vide its order dated 04.10.2022 the time of IIRP was extended by 60 days by this Tribunal, thereby extending it from 10.09.2022 to 09.11.2022.
10. The 2<sup>nd</sup> meeting of the creditors was held on 10.10.2022 to consider the repayment plan and the Personal Guarantor was directed to improve the value of the repayment plan and submit within 3 days.

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11. The 3<sup>rd</sup> meeting of Creditors was convened on 18.10.2022 to consider the revised repayment plan. The chairman of the meeting asked the Personal Guarantor to share the revised repayment plan with all the changes discussed in the meeting and submit the same to be shared with Creditors.
12. As discussed in the 3<sup>rd</sup> meeting of Creditors a revised repayment was received from the Personal Guarantor proposing a repayment plan of Rs. 33,00,000/-. The RP shared the minutes of 3<sup>rd</sup> meeting of Creditors along with the revised repayment plan with the Creditors.
13. The proposed resolution approving the repayment plan was put to e-voting. The e-voting started on 20.10.2022 and ended on 02.11.2022. The voting results have been annexed to the report. The said repayment plan has been rejected by all the creditors by 100% voting.
14. The RP received claim from Siemens Financial Services Private Limited and the same was perused and provisionally admitted by the RP on 03.11.2022.
15. In the above backdrop, the RP has prepared a report under Section 112 of IBC and submitted to this Tribunal seeking appropriate orders.

**Findings:**

16. We note that after series of deliberations vide multiple meetings of the creditors, the revised repayment plan was put to e-voting on 20.10.2022. A Repayment plan put forth in the 3<sup>rd</sup> meeting is as extracted herein below:

Sl.	Name of Creditor	Amount claimed by the creditor (Rs.)	Amount admitted (Rs.)	Amount proposed to be paid (Rs.)
1	State Bank of India	1,03,74,00,000	69,22,31,502	20,15,433

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2	Omkara Reconstruction Ltd.	Assets Pvt.	45,91,64,521	33,81,64,521	9,84,566
<b>Total</b>			<b>1,49,65,64,521</b>	<b>1,03,03,96,023</b>	<b>33,00,000</b>

17. At this stage it is appropriate to refer to sections 108, 111, 112, 113, 114 and 115 of IBC.

**Section 108: Conduct of meeting of creditors.**

- (1) The meeting of the creditors shall be conducted in accordance with the provisions of this section and sections 109,110 and 111.*
- (2) In the meeting of the creditors, the creditors may decide to approve, modify or reject the repayment plan.*
- (3) The resolution professional shall ensure that if modifications are suggested by the creditors, consent of the debtor shall be obtained for each modification.*
- (4) The resolution professional may for a sufficient cause adjourn the meeting of the creditors for a period of not more than seven days at a time.*

**Section 111: Approval of repayment plan by creditors**

*The repayment plan or any modification to the repayment plan shall be approved by a majority of more than **three-fourth** in value of the creditors present in person or by proxy and voting on the resolution in a meeting of the creditors.*

**Section 112: Report of meeting of creditors on repayment plan**

- (1) The resolution professional shall prepare a report of the meeting of the creditors on repayment plan.*

(2) *The report under sub-section (1) shall contain—*

- a) whether the repayment plan was approved or rejected and if approved, the list the modifications, if any;*
- b) the resolutions which were proposed at the meeting and the decision on such resolutions;*
- c) list of the creditors who were present or represented at the meeting, and the voting records of each creditor for all meetings of the creditors; and*
- d) such other information as the resolution professional thinks appropriate to make known to the Adjudicating Authority.*

**Section 113: Notice of decisions taken at meeting of creditors.**

The resolution professional shall provide a copy of the report of the meeting of creditors prepared under [section 99](#) to—

- a. the debtor;*
- b. the creditors, including those who were not present at the meeting; and*
- c. the Adjudicating Authority.*

**Section 114: Order of Adjudicating Authority on repayment plan.**

***(1) The Adjudicating Authority shall by an order approve or reject the repayment plan on the basis of the report of the meeting of the creditors submitted by the resolution professional under section 112:***

***Provided*** that where a meeting of creditors is not summoned, the Adjudicating Authority shall pass an order on the basis of the report prepared by the resolution professional under section 106.

*(2) The order of the Adjudicating Authority approving the repayment plan may also provide for directions for implementing the repayment plan.*

*(3) Where the Adjudicating Authority is of the opinion that the repayment plan requires modification, it may direct the resolution*

*professional to re-convene a meeting of the creditors for reconsidering the repayment plan.*

**Section 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](#).*

18. Considering the above sections, we perused the Report prepared by Resolution Professional (**RP**) under section 112 of IBC and submitted to this Tribunal under section 113 of IBC. We note that the creditors, in the 3<sup>rd</sup> meeting of creditors have rejected the repayment plan proposed by the Personal Guarantor by 100% voting.
19. For approval of the repayment plan by creditors, a majority of more than three-fourth of the creditors is required under section 111 of IBC. The Repayment Plan has not been approved by the requisite majority of three-fourth in value of the creditors, as required under section 111 of IBC. Rather, the Creditors have rejected the repayment plan with 100% voting. Therefore **we reject the repayment plan** as proposed by the Personal Guarantor. Accordingly, RP's report under section 111 of IBC is taken on record. I.A. is stands **disposed of**.

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20. As the repayment plan has been rejected, the debtor and the creditors are entitled to file appropriate application for initiation of Bankruptcy under Chapter IV of part III of IBC.
21. Copy of this order be forwarded to the IBBI.

**Sd/-**

**Charanjeet Singh Gulati**  
**Member (Technical)**  
*--Rajeev, PS--*

**Sd/-**

**Lakshmi Gurung**  
**Member (Judicial)**