

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH**

IA (IBC)/248/KOB/2024

IN

CP(IBC)/12/KOB/2023

*(Under Section 114 of IBC, 2016 read with
Regulations 20 & 22 of the IBBI (Insolvency
Resolution Process for Personal Guarantors to
Corporate Debtors) Regulations, 2019)*

In the matter of:

Mr. Abdul Rehman Basheeruddin

MEMO OF PARTIES:

Mr. Ram Ratan Kanoongo, IBBI/IPA-
001/IP-P00070/2017-18/10156,
Resolution Professional. Email:
ram@headwayip.com

... Applicant/ Resolution Professional

-Vs-

Mr. Abdul Rehman Basheeruddin 2,
Denoar Farm Road, Zenith Park,
Chembur, Mumbai — 400 088. Email: -
abasheeruddin@furnacefabrica.com

... Respondent/ Personal Guarantor

Order delivered on: 28.06.2024

Coram:

Hon'ble Member (Technical) Hon'ble Member (Judicial)

Shri. Shyam Babu Gautam TMT. (Retd.) Justice T Krishna Valli

Appearances:

For the Applicant : Mr. Bhupendra Dave, Advocate

For the Respondent : None appeared

ORDER

Per Coram

1. This application is filed by Mr. Ram Ratan Kanoongo, Registration No.IBBI/IPA-00I/IP-P00070/2017-18/10156, the Resolution Professional of Mr. Abdul Rehman Basheeruddin, the Personal Guarantor to Furnace Fabrica (India) Limited, the Corporate Debtor, seeking an order from this Tribunal for closure of insolvency resolution process and proceed with filing an application under Section 121 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") for initiation of the bankruptcy.
2. The insolvency resolution process against Mr. Abdul Rehman Basheeruddin (hereinafter 'the Personal Guarantor') to Furnace Fabrica (India) Limited was initiated by way of an application under Section 95 of IBC,2016 by the Standard Chartered Bank.
3. This application was admitted by this Adjudicating Authority by way of an order dated 13.07.2023 in CP(IBC)/12/KOB/2023 and the applicant herein was appointed as the resolution professional under Section 97 of IBC, 2016. Subsequently, based on the report of Resolution Professional, the Insolvency Resolution Process initiated against this personal guarantor vide order dated 11.12.2023.

4. The Public notice issued by the Resolution Professional for commencement of the insolvency resolution process against the personal guarantor was made on 13.12.2023 in English newspaper, viz, 'Financial Express' and in newspaper in Marathi (vernacular language), viz. 'Navshakti' has circulation in the state where the debtor resides and English newspaper, viz, 'Financial Express' and in the newspaper in Malayalam (vernacular language), viz, 'Metro Vaarta' having circulation in Kerala where the registered office of the concerned corporate debtor is situated. The last date for submission of proof of claims was on 03.01.2024.
5. On 18.12.2023, the Resolution Professional informed the Personal Guarantor about the order of this Adjudicating Authority for the commencement of the insolvency resolution process and appointing Mr. Ram Ratan Kanoongo as the Resolution Professional.
6. The Resolution Professional as per Regulation 10 of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, (hereinafter, "Insolvency Resolution Process Regulations") the Resolution Professional shall prepare the Statement of Affairs of the Guarantor. The Resolution Professional requested the Personal Guarantor to furnish information. However, despite several reminders, no information was received by the Resolution Professional.
7. The Resolution Professional informed the creditors (the Financial Creditors of the Corporate Debtor) apprising them about the

commencement of personal insolvency of Mr. Abdul Rehman Basheeruddin and the publication of the Public Notice, the Resolution Professional advised for submission of a claim.

8. The Resolution Professional informed the Personal Guarantor about the commencement of the Moratorium period u/s 101 of the IBC,2016. The Resolution Professional also requested the Personal Guarantor to commence the preparation of the Repayment Plan. The Resolution Professional sent several reminder emails. Since no repayment plan was received, the Resolution Professional again requested the Personal Guarantor to prepare the Repayment Plan and also advised to attend the meeting (through Video Conferencing) with the Resolution Professional to discuss on the Repayment Plan and way forward in the process.
9. The Personal Guarantor informed the Resolution Professional about his unavailability till 20 January 2024 on account of his ongoing medical treatment. Personal Guarantor also suggested contacting, Mr. Niraj Prakash, his contact person in Mumbai, for any further details. The Resolution Professional apprising about this Adjudicating Authority order for the insolvency resolution process of the Personal Guarantor, requested Mr. Niraj Prakash to do the needful for submission of the repayment plan and share the information required for preparation of the statement of affairs of the Personal Guarantor. However, Mr. Niraj Prakash also failed to serve the information/ repayment plan.

10. The Resolution Professional requested several times to Personal Guarantor to submit repayment plans including during Personal Guarantor's visit to office of Resolution Professional. The Personal Guarantor has submitted a signed Repayment Plan (dated 31 January 2024), which upon perusal was found not in line with the provisions of the IBC, 2016, and the applicable regulations. During the meeting, the said IBC non-compliant repayment plan was discussed, and the Resolution Professional apprised and advised the Personal Guarantor for submission of a repayment plan in line with the provisions of IBC, 2016.
11. The Resolution Professional requested a compliant Repayment Plan from the Personal Guarantor, but despite multiple attempts, no IBC-compliant plan was received, causing the insolvency resolution process to expire.
12. Resolution Professional commenced the first meeting of Creditors on 29 February 2024, where they discussed the Repayment Plan dated 31 January 2024. The creditors, Mr. Shashikiran Prasad and Mr. Badri Prasad, raised objections. The Resolution Professional requested their written reply and supporting documents, which were shared with other creditors.
13. In the second meeting of Creditors which was held on 18 March 2024, the Personal Guarantor informed that he has no money with him to give to any of the parties, and in return, Mr. Badri Prasad (one of the creditors of the Personal Guarantor) owes money to the Personal Guarantor. Mr. Badri Prasad denied the above

contentions made by the Personal Guarantor. Notably, no IBC-compliant repayment plan was submitted by the Personal Guarantor.

14. Accordingly, under Section 104 of IBC, 2016 read with Regulation 9 of the Insolvency Resolution Process Regulations the Resolution Professional prepared the list of creditors after taking all the possible steps to reach out to the maximum number of creditors. The list of creditors is as under: Amount (in crores)

| Sl. No | Name of creditor | Amount claimed | Amount admitted | Amount under Verification | Voting Share (in %) |
|--------|-------------------------|----------------|-----------------|---------------------------|---------------------|
| 1. | State Bank of India | 135.70 | 124.31 | 6.49 | 58.54% |
| 2. | Standard Chartered Bank | 51.50 | 51.50 | - | 24.26% |
| 3. | Axis Bank | 18.83 | 18.83 | - | 8.87% |
| 4. | Exim Bank | 15.86 | 15.84 | - | 7.46% |
| 5. | Shashikiran Prasad | 1.50 | 1.50 | - | 0.71% |
| 6. | Badri Prasad | 0.35 | 0.35 | - | 0.16% |
| | | 223.74 | 212.32 | 6.49 | 100% |

15. Resolution Professional received a non-compliant Repayment Plan dated 31st January 2024 which despite several discussions, reminders to the Personal Guarantor, neither revised nor fresh IBC compliant Repayment Plan was received by the Resolution Professional within the prescribed timeframe. Consequently, the Resolution Professional was not able to submit the Report of

Repayment Plan to this Adjudicating Authority under the Section 106 of IBC, 2016.

16. However, the Personal Guarantor failed to submit a repayment plan before the completion of insolvency resolution process i.e. from 11.12.2023 to 09.04.2024. Since no compliant Repayment Plan was received within the provided timeframe, Resolution Professional could not file the report under Section 112 of IBC, 2016.

17. Heard submissions of the learned counsel for the Applicant and perused documents on record. Section 114(1) of the IBC, 2016 states as follows.

“114. (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.”

18. As per subsection (1) provided above, this Adjudicating Authority perused the submissions of the Resolution Professional that despite meetings and deliberations held between the Personal

Guarantor and Committee of Creditors, no viable repayment plan for the debt is received and that no report on repayment plan u/s 106 or 112 could be made out by Resolution Professional accordingly. In these cases, the non-filing of the repayment plan has the same effect of rejection of repayment plan. In the situation as provided under Section 115 (2) of IBC, 2016, the debtor and creditors are entitled to file an application for Bankruptcy under Chapter IV of the IBC, 2016 under Part III.

19. The moratorium declared under section 101 shall cease to have effect from the date of this order.
20. In view of the aforesaid **IA (IBC)/248/KOB/2024** is **allowed** and **disposed** of accordingly.
21. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and for taking necessary steps.
22. Let the certified copy of the order be issued upon compliance with requisite formalities.
23. File be consigned to records.

Sd/-
SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

Sd/-
T KRISHNA VALLI
(MEMBER JUDICIAL)

Signed on this, the 28th day of June, 2024.